

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 5th January, 2017

Special Sitting

*(Convened via Kenya Gazette Notice
No.10691 of 30th December, 2016)*

*The House met at the Senate Chamber,
Parliament Buildings, at 2.30 p.m.*

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

PRAYER

PAPER LAID

REPORT ON THE ELECTION LAWS (AMENDMENT) (NO.3) BILL
(NATIONAL ASSEMBLY BILLS NO.63 OF 2015)

Sen. Wako: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Thursday 5th January, 2017:-

The Report of the Standing Committee on Legal Affairs and Human Rights and Standing Committee on Information and Technology on the Election Laws (Amendment) (No.3) Bill (National Assembly Bills No.63 of 2015), together with the attached minority report.

(Sen. Wako laid the document on the Table)

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. Considering the fact that this House ordered the Committee on Legal Affairs and Human Rights and the Standing Committee on Information and Technology to have sessions with members of the public to compile the report that has just been tabled; noting that Members have not yet had time to read it and considering its importance as the voice of the people to this House on their views on the Bill that we are considering today, would I be in order to request that you create time at least to have some highlights from the Chairperson and a few Members to discuss the Report - albeit one hour?

The Speaker (Hon. Ethuro): I will respond to that as I get to the next Order.

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Before we proceed with that Order and in light of the point of order raised by Sen. (Dr.) Machage, I have also prepared a brief Communication just to guide us on how to proceed or rather on how to conduct ourselves as we proceed.

COMMUNICATION FROM THE CHAIR

GUIDELINES ON PROCESSING OF THE ELECTION LAWS (AMENDMENT) (NO.3) BILL (NATIONAL ASSEMBLY BILL NO.63 OF 2015)

Hon. Members, you will recall that at the end of the morning sitting today, I directed, with the leave of the House, that we will continue with the debate on the Second Reading of the Election Laws (Amendment) (No.3) Bill (National Assembly Bill No.63 of 2015) this afternoon. It is just as well that the Report has been tabled and during this Second Reading, we will be able to use that opportunity to allow the Chairperson, during his contribution on the Second Reading, to shed light on what the Report contains.

The Report is now available to every Member. So, we will have plenty of time before the time for the Third Reading where the input will impact on the Bill. This is a matter that we discussed quite at length in the morning and the position still remains the same. What you need is time. The Report is now available and as Members continue to contribute, you will be able to look at the Report yourself.

Hon. Senators, you also recall that part of the reason why we referred this matter to the Committees of the House was to allow for public participation as well as inform the debate through the Report of the said Committees. I, therefore, thank the two Committees that facilitated the public participation on behalf of the Senate - the Committee on Legal Affairs and Human Rights and the Committee on Information and Technology - for the long sittings that they held since this matter was referred to them. In fact, I know for a fact, a number of Members, as Sen. Mutula Kilonzo Jnr. said in the morning, part of the reason one Motion was being brought could be because Members served very well and maybe they lacked sleep.

Allow me to also thank Members of the House for the sobriety on the matters before the House. I wish to encourage you to pursue that path. As Wole Soyinka says, a tiger does not proclaim its tigritude; it pounces. In other words, a tiger does not stand in the forest and say: "I am a tiger." Kenya already knows the Senators. When you pass where the tiger has walked before, you see the skeleton and then you know that some tigritude has been emanated there.

Finally, as we embark on the Report before us, I want us to bear in mind our role as representatives of the people, adhere to the rules of debate that bind all of us; that this is going to the defining moment of this debate this afternoon and we conclude this Bill.

In the words of Edmund Burke in his *Speech to the electors of Bristol*, he said: "Parliament is not a congress of ambassadors from different and hostile interests, which interest each must maintain as an agent and an advocate against other agents and other agents and other advocates. Parliament is a deliberative assembly of one nation with one interest; that of the whole where not local purposes or local prejudices ought to guide but the general good resulting from the general reason of the whole".

I thank you.

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Sen. (Prof.) Anyang'-Nyong'o, you had a balance of eight minutes. You may elect to continue or terminate. The choice is yours.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I choose to continue.

The point I was making in the morning was simple. When I was using that story of Othello, I meant to use it as an illustration. This law that the Committee Chaired by Sen. Orenge and Sen. Murungi produced is like a maiden. It is fresh, beautiful and not to be contaminated. The people of Kenya are in love with this law, Senators are in love with this law and the people who appeared before Sen. Wako's Committee the other day - if you listened to them - are in love with this law, particularly the section that says; "in order to avoid another trouble in the next elections, let us use a method that will improve sufficiency, efficiency, transparency and effectiveness". Even Kriegler in his report after the 2007 elections appealed to us to have a process of election that is electronic and that cannot be manipulated easily by human behaviour.

Mr. Speaker, Sir, the people out there are looking at us to preserve this maiden and not to violate it. Let us not be like the Brabantio who feared that the Moor could marry his beautiful daughter. Let us not have fear that the people of Kenya cannot embrace this law and that the Independent Electoral and Boundaries Commission (IEBC) cannot implement this law. Let us not debate in fear and not fear to debate. This House must rise like a tiger which does not need to proclaim its tigrity; it pounces. Let us pounce into the future with this law. This law has not even been tried. The IEBC has not implemented this law. Why do we fear to see it implemented? As I said in the morning, if you look at Section 44 (b) of this law, it states clearly the kind of regulation that IEBC should put in place together with all of us in ensuring this law works. Why are we afraid to jump forward and ensure that we do exactly what the law says?

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

Sen. Omondi: On a point of order, Mr. Speaker, Sir. I believe in equity and equal opportunity. Have you realized that the majority side has been given copies of the report but the minority side has not been given copies? I need a copy. I want to go through the copy.

The Speaker (Hon. Ethuro): Order, Senator!

Sen. Omondi: Mr. Speaker, Sir, I just need a copy.

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Senators! Sen. Omondi shall be given a copy just like everybody else. I do not think it is worth plenary time to interrupt another Member just because you need a copy. Whether they start from this side, they will reach the other side. Just be patient a bit unless you see them withdraw from the chamber with copies then you know they are finished.

Proceed, Sen. (Prof.) Anyang'-Nyong'o.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, anybody who knows the "a", "b", "c" of sounds today will know that in any part of this country, given the level of technology, people can communicate easily through satellite and ViaSat. That is why I can sit in my Rata home without a Wi-Fi but a ViaSat and watch Liverpool playing Manchester United in England with local natives and a television will not go off. In any

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case, even if I take my telephone or my ipad and I rub something, there is a backup within the ipad or the phone. It will tell you to go to the trash and retrieve what you trashed. So, we have time from now until the election to deal with any technological problem without changing the law.

What amazes me is when I look at the law that has been changed and how it has been worded, what comes as an amendment is a poor workmanship than the original law. So, why are we abandoning the original law for poor workmanship? Why are we afraid of this law?

Mr. Speaker, Sir, this law fulfils exactly what Kriegler told us to do. He told us that if we want free and fair elections, we should ensure that the process and system of election is sacrosanct as much as possible. He asked us to ensure there is consensus in developing this electoral law. We had consensus on this law. We had two Senators from both sides and a Committee of both the Senate and the National Assembly that produced this law. Why are we subjecting ourselves to some form of partisanship by proposing an amendment which is only proposed by one side? Why do we want to plunge this country into another era of uncertainty and suspicion?

I was told yesterday, and I felt sad, that one of the reasons why this law is being changed is because there are some lawyers who went to the President and asked him: "Do you think you can win elections with the law as it is today?" That is why I am telling you we should not create uncertainty in the society. If we stick to this, there is uncertainty being created which is not necessary. The President was told to change the law if he wants to win free and fair elections. We should avoid this kind of uncertainty by making sure that what we agreed together as two Houses, we stick to it. If we continue imposing these laws on the people of Kenya, the uncertainty is going to continue.

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

Sen. Mugo: On a point of order, Mr. Speaker, Sir. Can the Hon. Senator for Kisumu Town substantiate and say who informed him that the President---

(Loud Consultations)

Can you also let me speak and not just your side? I also have a right to speak.

The Speaker (Hon. Ethuro): Order, Senator! I did not recognize Sen. Mugo because of where she sits but I recognized her because she rose on a point of order.

Sen. Mugo: Mr. Speaker, Sir, that is a strong statement from the Senator which creates the impression that the President is bringing these rules so that we can win the election. Could he substantiate and tell this House the source of the information? Those are lies and we should not tell lies in this House.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, if you understood me, I said let us stop these uncertainties because they lead to talks and rumours that create further fear in society. I said that I was told and I was alarmed that this kind of amendment creates such fear and uncertainty and it is not necessary. Let us stop the amendment so that we avoid such uncertainties and fear in the society.

Sen. Wamatangi: On a point of order, Mr. Speaker, Sir. Just before we commenced the business of the House, you stood up and read a communication from the National Assembly that commenced this debate. You said that you have received the Bill

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from the National Assembly. This Bill did not come from the President. Actually legislative work in this country belongs to Parliament. So, it is not right to create the impression wrongly with the purpose and intent of misleading and whipping up emotions.

Mr. Speaker, Sir, this House does not rely on hearsay from outside. There is no way the Senator for Kisumu can stand and tell this House that he heard something somewhere and that becomes an issue here unless he substantiates. Our Standing Orders are also against introducing or discussing a person such as the President without moving a special Motion. Therefore, is he in order to try and mislead this country?

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I am being misunderstood. What I said was the following and I do not want to discuss the President. I just said that this kind of amendment creates uncertainty in society and that I was alarmed when somebody approached me on their own and asked if I knew why this thing was being amended. They said that it is being amended because some lawyers have gone to the President and told him that; if this law stays as it is, do you think you can win elections? That is what I was told and I am telling you that one of the things that this amendment is creating in this Republic is the kind of fear and uncertainty that we wanted to avoid by having an electronic system of voting that will keep every Kenya certain that the election will be free and fair. That is all I am saying.

My friend on the other side, I am completely with you and I would not like the character of the President to be discussed in that manner. I would like to have a law like this one on which we all have consensus on both sides of the House so that when we go out there, the people of Kenya have confidence in both us and the law. Why should we decide, after we have done such a beautiful law, to sit somewhere and bring an amendment which is railroaded in the “lower House” and you want to railroad here to? This should not happen.

I beg to oppose.

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Anyang'-Nyong'o. You know, you have ended by “railroading” everywhere. You even had the opportunity to finish your eight minutes. That cannot be described in that kind of manner.

Sen. Wako: Mr. Speaker, Sir, thank you for giving me this opportunity to speak on the Report of the Joint Standing Committee on Legal Affairs and Human Rights and the Committee on Information and Technology. The Report has been laid and because I understand that I am not moving a Motion but speaking during the Second Reading of a Bill that came from the House, I understand that I have a very limited time to introduce this Report. However, I cry for your indulgence. If I exceed the time, allow me to continue *kidogo tu nimalize*.

The Speaker (Hon. Ethuro): Order, Sen. Wako. If you had used the first minute properly, I would give you the indulgence but I will not.

Sen. Wako: Thank you. Hon. Members will recall that on 28th December, 2016, the Speaker of the Senate relayed a message from the Speaker of the National Assembly to the House regarding the passage of the Election Laws (Amendment) (No.3) Bill (National Assembly Bill No.63 of 2015). The Bill was read the first time here on 28th December, 2016 and the Speaker committed the Bill to the Standing Committee on Legal Affairs and Human Rights for consideration and public participation. Further, during the debate that afternoon, cognizance of the technological issues that may arise during the

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consideration of the Bill, the Speaker ruled that the Standing Committee on Information and Technology should join the Committee on Legal Affairs and Human Rights.

Mr. Speaker, Sir, I confirm that yours was a wise decision because we were relieved with technological issues. Therefore, I am very pleased that both I and my Co-Chair, Sen. Kagwe who chairs the Standing Committee on Information and Technology, were able to marshal this thing.

Mr. Speaker, Sir, I must acknowledge and give thanks to you. When you ruled that the Special Sitting will be on 4th January, I pleaded on behalf of both committees that we shall not have time particularly taking into account that 2nd January was a public holiday and sitting to seek views from the public had been advertised for 3rd January. So, there was no way we could sit on 3rd January and report to the House on 4th January. I am glad that you agreed to give us at least one day which has been useful.

I also take this opportunity to thank the Clerk and his officers who supported us in our deliberations. Because of the constraints of time, we had to meet up to very late hours at night to ensure that we heard all the views.

I believe there was no night in which we did not adjourn before 8.30 p.m. For sure, last night we did not sleep until today to ensure that this report is with you. Maybe, in future, consideration should be given to giving more time to the Committees to delve into these very important issues which are of national importance, particularly, where the public is concerned.

Mr. Speaker, Sir, there was an overwhelming response from the members of the public. All of them made written submissions; very well argued. They are in the volume that I have attached to the report so that Members can read for themselves what the overwhelming members of the public, religious community, trade unions and officers such as the Cabinet Secretary in charge of Information, Communication and Technology and my worthy successor, Prof. Githu Muigai stated. It is all there. If you read that, you will find that the overwhelming majority of the people in this country wanted a particular line of action to be taken. I will come to that later.

Public participation is very important. I am glad that pursuant to our request that we have a public participation, you readily agreed. There may have been attempts to ensure that we finish the debate on 28th December, 2016, just like the National Assembly did. However, the decision that this House took; that public participation must take place and that it is a cardinal principle of our Constitution - that decision was wise. The people responded very well.

The list of those who appeared before the Committee, the stakeholders, is at pages 9 to 10. They include, the Ministry of Information, Communication and Technology, the IEBC, the Communication Authority of Kenya (CAK), the Inter-Religious Council of Kenya, the Law Society of Kenya (LSK), the Attorney-General, political parties; KANU, CORD and Jubilee made extensive submissions. I emphasize that because election is also a political process. It is very important that when we are discussing election laws and regulations or even when the IEBC is discharging its constitutional mandate, it should be done through an intensive consultative process with the people of Kenya but in particular with political parties whose position is provided for and enshrined in the Constitution of Kenya.

The stakeholders were quite many. We also had the Computer Society of Kenya, the Kenya National Chamber of Commerce and the Kenya National Commission on Human Rights which is under the Constitution.

As chairman, I took very seriously the views of that commission which is entrusted by the Constitution to oversee laws and regulations in this area, including the right to vote and stand for any elective political position. We took their views quite seriously.

Therefore, our position at the beginning was that we adopt a bipartisan approach. I can assure you that the discussions in the Committees were very robust. We were very frank. All points of view were taken on board. We did not curtail any debate in the course of the discussions. However, as is in the nature of any democratic process, you cannot discuss issues *ad infinitum*. At the end of the day, you must cast the vote.

Hence, this report that I am presenting to the House today, unfortunately – I say unfortunately because the co-chair has tried a bit to hammer out an agreement which we thought addressed the mischief which many people made submissions regarding these clauses. If possible, we wanted to achieve a consensus which addresses that mischief; but unfortunately we were unable to hammer an agreement. Therefore, it had to come to voting. When we voted, 10 Members voted for the amendments as they are and six Members voted against the amendments. Those six Members decided to append the Minority report which is attached to this report. According to the Standing Orders, the Minority or any Member has a right to attach his or her views to the report which has been adopted by the Committee.

So, the Committee adopted this report through a vote of 10 against six. Unfortunately, the voting was along party lines. I would have preferred a voting to have been along ideas, concepts and so on so that some in CORD vote for one side and some also in Jubilee vote for the same so that we come up with – CORD includes FORD Kenya, Wiper Party of Kenya and ODM.

In other words, I would have liked the vote to take place but in a way more focused on the pros and cons of the ideas that had been meted out. That was not to be. It was along party lines.

Mr. Speaker, Sir, we addressed each and every proposed sub amendment. We went Clause by Clause. We were briefed by the legal counsel who had gone through this report.

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

Sen. Wamatangi: On a point of order, Mr. Speaker, Sir. As the co-chair of that Committee presents his report, we need your direction on that. The co-chair says that they have prepared a report which he has tabled before this House. He has proceeded to say that the Committee undertook a vote on this particular ---

The Speaker (Hon. Ethuro): Order! Why do you not raise the point of order before you justify it?

Sen. Wamatangi: Mr. Speaker, Sir, is the co-chair in order to then bring this report and table it when the result and purpose of having a Committee with an odd number all the time is for it to arrive at a decision, take a position and table a report that has the outcome.

Is it in order for the Committee to table two reports at the same time, one appended to the other? The Committee can only table a report that states the basic position of the Committee.

(Sen. Hassan consulted loudly)

The Speaker (Hon. Ethuro): Order! Order, Sen. Hassan Omar Hassan. Just because you do not like what your fellow Senator is saying is no justification for you to speak out of turn. This is a House of rules. Sen. Wako had the Floor and Sen. Wamatangi sought to raise a point of order. This is the easier one to deal with. That is not a point of order. It is not informed by facts and not based on any Standing Order.

Order, Members! I will only entertain points of order that are valid, or else, I will dismiss them with the contempt they deserve.

Proceed, Sen. Wako.

Sen. Wako: Mr. Speaker, Sir, in fact the Committee followed the Standing Orders. The decision of the Committee is by the majority.

(Loud Consultations)

The Speaker (Hon. Ethuro): Order, Members. This is debating time. Sen. Wako, you are wasting time because I have already dismissed that point order.

Sen. Wako: Thank you, Mr. Speaker, Sir. Sen. Kimani, do not be jittery.

(Laughter)

I refer Members to Chapter Two which deals with public participation. We came into this to facilitate public participation. In this Chapter, we have tried as much as possible to state the views and proposals of the public on each and every amendment that was part of the Act that was referred to us.

On page 11 we have the use of biometrics in the identification of voters and we have indicated the views of the Independent Electoral and Boundaries Commission (IEBC).

The Speaker (Hon. Ethuro): Sen. Wako, just to guide you, you have less than five minutes to go.

Sen. Wako: Mr. Speaker, Sir, since I have less than five minutes, I advise Senators to read that Report and get informed on where the views lay on each and every issue.

I will now go to one of the amendments that relates to the contentious New Clause 44 (a). The views are properly expressed. Some people were of the view that Section 44 is irrelevant because it is already provided for under the existing laws. The Cabinet Secretary in charge of Information Communication Technology (ICT) criticized the procurement process of the IEBC, in that it jumped the gun by going into the procurement process which closes on 9th, January only on the integrated system. His main criticism was that the procurement process did not include a back-up. However, IEBC stated that if that procurement process is carefully read, it includes the back-up.

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According to the authority of IEBC, it is possible to have a back-up which is supported electronically. There are those who said that, that electronic back-up can also fail and, therefore, there is room for a manual back-up system. However, the Attorney-General and everybody else emphasized that, that manual system should not be so open to replace the main system which is electronic. In other words, the manual must be such that it is exceptional rather than the norm. The manual system should not be used as the backdoor to replace the electronic system. Some said---

The Speaker (Hon. Ethuro): Chairperson, your time is up.

Sen. Wako: Mr. Speaker, Sir, Senators should read the Report carefully. At the end of the day, the majority decision carried, but in accordance with the Standing Orders, we have also attached a minority report, which I hope the Senators will also read before they make a final determination on this matter.

Thank you, Mr. Speaker, Sir.

Sen. Wamatangi: Thank you, Mr. Speaker, Sir. Before I go into the issues that I want to raise, I want to clarify that the substantive issue that I wanted to settle with the Chairman of the Committee was whether he was tabling one or two reports. It is important for that to be clear to this House.

First, let me laud the Committee for doing the work that this House gave it, that is, the work of hearing the issues that members of the public had. I also congratulate the Committee for keeping time. You gave them a timeline which they have met.

I want to go straight to the issues that have caused a lot of apparent friction that, in my view, is not necessarily justified. Listening largely to most of the debate that has prevailed and the amendments that were brought to this House, they center around the issue that the Co-Chairman of this Committee has finalised with, that is, the amendment that seeks to introduce a complementary system. I want to read the amendment because this is where the mischief is. I also want to be on record that I believe the temperatures that have been raised politically, because of the debate that has been held, have been unnecessary. It has been as a result of some people wanting to seek political attention, because the matters are as straightforward as they can be and have been said by the Chairman.

Mr. Speaker, Sir, the contentious Section 44 (a), as amended, is very clear in its language.

It states:-

“Notwithstanding the provisions of Section 39 and 44, the Commission shall put in place a complementary mechanism for identification---”

(Loud Consultations)

The Speaker (Hon. Ethuro): Order, Members. The Member shall be heard. Proceed, Sen. Kimani.

Sen. Wamatangi: Thank you, Mr. Speaker, Sir. The point I want to make is simple; that is why it may be in the interest of some of my colleagues to disrupt it by speaking in between so that it is not heard, but it will be heard. It says that the complementary mechanism is for identification of voters and not voting.

It goes further to say that it is also a complimentary system for transmission of the results that have been attained through voting. This is where the mischief lies. If we had taken time or the Members who are opposed to it had taken time to look at this Bill as it is, or the other provisions, they would find that there are no issues.

Clause 4(2) of this Bill says---

The Speaker (Hon. Ethuro): What is it, Sen. (Prof.) Anyang'-Nyong'o?

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, would I be in order to request Sen. Wamatangi to explain to the House what the significance of the word "notwithstanding" is in this particular amendment? The word "notwithstanding" negates the original legislation.

The Speaker (Hon. Ethuro): Order! That is not a point of order. It is a point of argument and seeking knowledge. I do not think that is the business of the Member.

Sen. Wamatangi: Thank you, Mr. Speaker, Sir. Just in payback to my good friend, Sen. (Prof.) Anyang'-Nyong'o, I also wish to ignore that point of order.

I wanted to make a very simple point that can be followed by anybody. Even a child in class can follow what this particular law says. Clause 4(2) says that the Commission shall within 90 days---

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

Sen. Orengo: On a point of order Mr. Speaker, Sir. I do not want to interfere with the contribution from Sen. Wamatangi. However, for him not to be seen as casting aspersions on our intelligence and capacity for understanding the English language, could he, probably, look at the report and find out what the President of the Law Society of Kenya (LSK) said. He said that the word "complementary" reading all the dictionaries in the world and the word "notwithstanding" are wordings which were causing considerable difficulties. It is not quite a simple matter as he is putting it. We will, probably, get persuaded if he can explain. Those particular words are in the Report and LSK says that those words are very complicated in terms of the law which we are trying to put forward.

The Speaker (Hon. Ethuro): Sen. Wamatangi, you can also disregard that particular order for the simple reason that it is a point of argument. Sen. Wamatangi has not pretended by any stretch of imagination that he is an authority on such matters.

Proceed, Sen. Wamatangi.

Sen. Wamatangi: Yes, Mr. Speaker, Sir---

The Speaker (Hon. Ethuro): He can make his contribution in the best way he understands it.

Sen. Wamatangi: Yes, Mr. Speaker, Sir. I have the interpretation in English language of what the word "complementary" means from the most available *google* search engine. It is here. You can *google*. It means a favourable alternative.

The Speaker (Hon. Ethuro): Order, Sen. Wamatangi. I directed that you continue with your contribution and ignore that one.

Sen. Wamatangi: Mr. Speaker, Sir, the point that I want to drive home is that - notwithstanding this argument that has been brought forward. Is that the gist of the argument from those who oppose or those with an opposing view to that report and largely from the other side of this House, is that the complementary mechanism as they have said may give rise to voting by non-existent or dead voters.

Clause 4 says that the Commission shall within 90 days from the date of a general election open the register of voters for inspection for a period of 30 days or such a period as the Commission may find fit. If there is a genuine fear that at any one time using a complementary system, that any voter who is not supposed to vote would be voting, the logical question to ask would be-- because it is provided for in the same Bill, that the voters' register will be opened for scrutiny 90 days before the elections occur - what would stop a concerned Kenyan from scrutinizing that same register which is available? They can then say that these particular voters who are here do not exist even before voting commences. The argument that there is any possibility that a system can be used to vote for people who are not in the register is not valid. It can be discounted by the provision of the same Act.

There are mechanisms in this country for one to lodge that complaint with the IEBC before the election. They can say that they have scrutinized as per the provision of the Act and found that the register is not up to date or that there are people in that particular register who should not be voting. It is wrong for us to allow the misdirection that there could be that mischief.

Secondly, this country knows the journey we have walked since 2007 and 2008. It would be wrong for any of us, as sitting Members of Parliament, to try and create a scenario that would take us back to where we were, not only in action, but even by trying to foment a scenario that would lead this country back to those dark days. Therefore, it behooves all of us to be sincere. The amendments contained in this Act do not amount to a scenario that would bring the kind of disaster, or disenfranchisement, that is envisaged or that is portrayed by those that are opposing this particular amendment.

On the amendment on the qualification of the Members of Parliament, I agree that there has to be a threshold that requires Members of Parliament to have qualifications even as high as a degree. However, when advertising for any position that requires qualification in any profession, it is required that you specify which kind of degree you want. You cannot say that you are advertising for a judge and you are asking people with any degree to apply. You will require the person to possess a degree in law. If you are calling for doctors, the people must have gone to medical schools and have a degree in medicine.

Mr. Speaker, Sir, the generalization of this requirement suggests that it is not placed anywhere based on a particular interest. I say that because in both Houses, we have medical doctors, veterinary doctors, geologists and all manner of qualifications. The value that this attributes by having that qualification can only be specified so that it becomes relevant in law.

I want to summarise by saying that this country is watching the actions that will be taken by this House this afternoon and on the way forward. We all have political interest. However, let it not be that the political interest of a few of us can be put first such that we compromise the peace, safety and security of our citizens for us to pursue a political agenda. This matter must be settled.

Sen. (Dr.) Khalwale is gladly thumping up for me on that contribution. It is precisely what I am addressing from his side. This is so that the Coalition for Reforms and Democracy (CORD) can realize that this country is greater than any ambition that any one of them may hold now and in the future. This is also so that when they propose

any amendments to this law, they must be based on fact, law and on the simple premise that there are more Kenyans out there who stand to suffer. The interest that either Sen. (Dr.) Khalwale may want to become a Deputy Vice President in the so-called big arrangement of the National Super Alliance (NASA), which is a non-existent outfit, premeditated on positions which do not exist in this country---

The politics of the day must not be used to determine the future of the people who do not sit in this House, so that we can satisfy a few who at the end of the day---

The Speaker (Hon. Ethuro): Order! Your time is up, Senator.

Proceed, Co-Chair, Sen. Kagwe.

Sen. Kagwe: Mr. Speaker, Sir, from the outset I pass my salutations to the Speaker himself, the team as well as my Co-Chair, Sen. Amos Wako.

From the outset, we have listened to the public. That is one of the reasons we started this process. We have listened to many people both for and against; institutions and individuals. One thing that was clear is that the spirit of the Senate and its maturity was maintained throughout the entire discussion even when we debated both in the Senate and at the Windsor Hotel. My hope and prayer is that even today, as we agree, disagree or agree to disagree, we will still maintain the dignity of this House.

There seems to be some confusion regarding the arguments that are being put forth across the floor. The first statement I would like to make is that there was not, to my mind, in the presentations that were being made by the public and indeed even the presentations that are being made from the Jubilee side, I have not heard a single person say that we want to move from an electronic system to a manual one. Let us make it clear that the intention that we have is not to revert from an electronic system of managing our voters to a manual system.

However, if you board an aircraft, for example, they will tell you that in spite of how efficient it is, underneath your seat there is always a lifesaver. If you enter a Matatu, you will find a spare wheel underneath. Those manning the aircraft or the pilot who announces that a life jacket is under your seat, they have no intention of using it at all. The idea is not to go and use a lifesaver, the idea is that you need a backup in the event of a problem. The reason there would be a spare wheel in any Matatu---

The Speaker (Hon. Ethuro): What is it Sen. Boy Juma Boy?

Sen. Boy Juma Boy: Kwa jambo la nidhamu, Bw. Spika. Singependa kumkatiza mwenyekiti lakini katika Ripoti hii kuna mahali panasema: *“Manual Complementary System.”* Ni makosa mwenyekiti akisema kwamba hakuna mahali pamezungumza kuhusu *“Manual System”*.

Sen. Kagwe: Mr. Speaker, Sir, as you know I have tremendous respect for my brother from Kwale County who is a Member of the Committee on Information and Technology (ICT). Therefore, I would have expected better. However, my brother from Kwale is actually misleading the House. This is because, and he has read his own conviction. He has said very clearly by using the words we have used *“complementary system”*. There is a narrative out there---

The Speaker (Hon. Ethuro): Order. You are either responding to him or making your own contribution.

Sen. Kagwe: I have already responded to him.

The Speaker (Hon. Ethuro): His words were: *“manual complementary.”*

Sen. Kagwe: Mr. Speaker, Sir, we have said very clearly that first there is no reverting from an electronic to a manual system. The system that we intend to use and the proposed system is an electronic one. I have gone on to try and explain that the reason---

Sen. Ongoro: On a point of order, Mr. Speaker, Sir. With all due respect, we are now making reference to a document which all of us have. Is it in order for the Chairperson of the Committee on Information and Technology to keep misleading this House and the nation that there is a specific complementary system that they are making reference to when the Report I have here, on page 12(47) actually under that subtitle of use of complementary mechanism says:-

“To introduce a complementary mechanism for identification of voters and transmission of election results that is simple, accurate, verifiable, secure and accountable.”

It does not actually state as he is stating here that it is an electronic system. He is misleading the House.

The Speaker (Hon. Ethuro): Order, Members. I want to appeal again. Was it Sen. Orenge who put it that you should not insult the intelligence of Members? I will treat it as gross disorder for anybody who is deliberately misleading others while trying to purport to be correcting another one who was misleading and that Member had not misled anybody.

Proceed, Sen. Kagwe.

Sen. Kagwe: Mr. Speaker, Sir, thank you for the protection because in the amendment it does not refer anywhere. It is possible that electronic systems, even if you have two of them, can fail at some point. We are being given examples of countries that have got an electronic voting system. What we have in Kenya, in reality as we speak, is not a full electronic system because the counting of votes is not electronic but manual.

In the USA where they have got a complete electronic system, I could read for you a litany of failures of the system. In fact, even as we speak, there are cases there about the failure of the system they have got. For example, in Florida in 2000 an electronic voting machine gave Mr. Al Gore a final count of negative 16000 votes.

All we are saying is that a system has got flaws. It is not born but made. Therefore, let us not lie to the nation that there are people who want to go back to the manual system when we have already got an electronic one.

We have proposed in this amendment some way forward on this matter. Article 83 (3) of the Constitution is clear that you cannot deny a voter the right to vote. Therefore, if at all an electronic process was to fail and you deny a voter the right to vote, you will be acting against the Constitution.

Mr. Speaker, Sir, there are those who have said that this clause is supposed to create chaos. On the basis of Article 83 (3), you will realize that as a matter of fact, without this clause, there would be chaos. This clause is to prevent chaos and not to cause chaos. I plead with my brothers and sisters on the other side that let us not use a system where we want to bully or intimidate by way of street demonstrations or otherwise; that we are going to change a good law, create a bad law, or we do not change a bad law on grounds that we are going to have chaos in our nation.

Kenyans must get used to the idea that there will be times when we will agree and there will be times when we will disagree. When we disagree, we will disagree democratically. We will come to this House, debate, and when we debate as is common practice in democracy, we will vote. When we take a vote, we will take a vote on the basis of the Constitution of Kenya. Even though some people might win an argument today, it does not follow that that they will win an argument tomorrow. We cannot resort to a situation that every time we lose a vote, we go to the streets to intimidate and bully the Government or opposition into accepting the views that we held. That is not democracy.

(Applause)

Mr. Speaker, Sir, we want to make sure that the regulations that we are going to publish for this election are so tight; that they are so consultative in nature that we have the views of all political parties so that whatever we fall back on if an electronic system fails does not bring back the dead to live. We do not want to hear of any dead people voting and we also do not want to have live people who are going to be killed by a system that we have not addressed ourselves to.

Mr. Speaker, Sir, I, therefore, seek from my friends across the Floor understanding and being honest with ourselves and the people who sent us to this House. Let us look at it and say just in the spirit that we had in the Committee, we listed to people out there, we told them that we have heard them and not everybody's view was going to be accepted and not everybody's view in this House is going to be accepted. There is a way forward in this matter. We can agree in the regulations. Ghana which is given as a perfect example of how people voted has got a system. There is a trigger mechanism that says; in the event that it has to go to a manual system, this must happen. We must have observers there, a person must be put aside, scrutinized by all parties concerned and all parties must agree that this person is a legitimate individual and allowed to vote by all parties and not just some guy standing somewhere in a polling station calling himself a returning officer.

Therefore, Mr. Speaker, Sir, all is not lost. This law should pass as it is. We should go back, look at the regulations seriously and agree on regulations that ensure free and fair elections. I beg to support.

The Speaker (Hon. Ethuro): Sen. Ong'era!

Sen. Ong'era: Thank you, Mr. Speaker, Sir, for giving me this opportunity to oppose this Report. From the outset, I rise to oppose it because majority of Kenyans are opposed to this Report. There were over 54 Kenyans who represented the rest of the Kenyans' views in the just concluded Report of the Committee. Out of this, majority of them opposed these amendments.

Mr. Speaker, Sir, I want to appeal to my colleagues across the Floor that we are here to make good laws. We are not here to make laws that will be at the behest of a fear driven Government. I believe that the Jubilee Government has lost it. They know they are losing it. That is why they want to oppose and remove this amendment. When you know somebody has lost something and is driven by fear, that is when you act in the manner in which these people are acting. After having the Kiraitu and Orengo Select Committee,

we agreed on a consensus. We decided that we will make good laws for Kenya. We said let us have a Voter Registration Identification and Transmission System. A system that is credible and transparent. Why do we come back and say we amend? What is the hurry for?

Mr. Speaker, Sir, I tend to agree with what Sen. (Prof.) Anyang'-Nyong'o said. We need to correct that he is not the Member of Parliament for Kisumu Rural but the distinguished Senator for Kisumu. He said that he heard somewhere in the grapevine that maybe some lawyers went to see the President, and at the behest of these lawyers who were driven by fear, decided to change and bring these amendments. We are setting up this country on a dangerous coalition path.

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

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. This House, as you know - the Standing Orders are very clear - does not operate on conjecture, imagination or figment of any person's imagination. Did you hear Sen. Ong'era say that there are some lawyers who went to see the President? Can she substantiate because there is a proper linking of the name of the President to it and substantiate it?

Secondly, why is a Member of Parliament whose responsibility is to do legislation and amend law at any time; to pass, initiate and legislate at any time trying--- Why drag in the names of people who do not sit in this House and do not make law? Does Sen. Ong'era know she also plays a complementary role in this House?

Sen. Ong'era: Thank you, Mr. Speaker, Sir. It seems that distinguished Senator for Elgeyo-Marakwet County did not understand English. The word I used was 'maybe'. I tend to agree with what Sen. (Prof.) Anyang'-Nyong'o said. He heard somewhere in the grapevine. I was alluding to it. I did not say that I saw it categorically. These amendments---

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

Sen. Lesuuda: On a point of order, Mr. Speaker, Sir. I want to ask whether Sen. Ong'era is in order to continuously mislead this House. It is a narrative that is continuing to say that we rely on what we have heard out there. If we cannot rely on the media, how can we rely on the grapevine; that you have heard anyone discussing anywhere and we state it here almost sounding like a fact? This is a House of records and facts.

Sen. Ong'era: Mr. Speaker, Sir, I wonder whether Sen. Lesuuda---

The Speaker (Hon. Ethuro): What is your point of order, Sen. Muthama?

Sen. Muthama: On a point of order, Mr. Speaker, Sir. Are the Senators here really in order to continue accusing Sen. Ong'era on the remarks that were made by Sen. (Prof.) Anyang'-Nyong'o yet they did not question Sen. (Prof.) Anyang'-Nyong'o?

The Speaker (Hon. Ethuro): Order, Sen. Muthama, you have made it even worse.

(Laughter)

Those were challenged from the very beginning and Sen. (Prof.) Anyang'-Nyong'o defended himself very well. He said that it is this kind of things that create an environment that such rumours thrive. That is how he acquitted himself unless you had stepped out.

Sen. Ong'era, I will encourage you not to tread on very slippery ground. Stick to the bare minimum and you will be safe.

Sen. Ong'era: Mr. Speaker, Sir, I stand guided. However, I was merely quoting what Sen. (Prof.) Anyang'-Nyong'o had said.

Mr. Speaker, Sir, these amendments are setting this country on a collision path. I want to say categorically and without fear that Kenyans who are citizens of this country have reached a critical mass and they will never fear to even go to the streets or forests of this country because they have had enough. They are ready to fight for their democratic rights because these are inalienable rights.

Sen. Wamatangi: On a point of order, Mr. Speaker, Sir. Did you hear the distinguished Member, Sen. Ong'era, say that these amendments are setting this country on a collision path? While the talk has been very rife, what this side is looking for is to cause mayhem and chaos in the country so that they can get the popular “*nusu mkate*” thing.

(Loud consultations)

The Speaker (Hon. Ethuro): Order! Senators! I am impressed with your levels of investigation and the desire to interrogate each and every English word and in the process inviting trouble to yourselves. For you, Sen. Wamatangi, there is nothing in the normal usage of the English language, a language that I read well, to state that something is putting you on a collision path and that is just a statement. There is nothing like a collision path but a collision.

Hon. Members, it is important to listen to your own contributions as well. Sen. Wamatangi himself made the same assertions. Just because they are coming from another Member, they have taken a dangerous tread.

I determine that that is a very innocent expression and Sen. Ong'era should proceed uninterrupted.

Sen. Ong'era: Mr. Speaker, Sir, thank you for that wise decision. I was saying that Kenyans have achieved a critical mass. They are now enlightened and for sure they will not hesitate to fight for their democratic rights because these are inalienable rights.

Mr. Speaker, Sir, you cannot make law in anticipation of a happening by saying that we think there is a phobia or this system will fail and therefore let us anticipate for the worst. You make laws that can stand the test of time. You make laws that can improve this country. By refusing not to have an electronic system, we are going a thousand steps back.

We know that for a long time, this country had electoral malpractices which have been emanating from a manual system. It is because of that that in the wisdom of Sen. Kiraitu and Sen. Orendo - led Select Committee that they decided to ensure that we have voter identification, registration and transmission system that can stand the test of time.

Mr. Speaker, Sir, I want to conclude by telling my colleagues on that side this: The late Mwangale said that even though you refused to listen, you have heard me.

Thank you.

Sen. Sang: Mr. Speaker, Sir, thank you for the opportunity to contribute. I was a Member of that particular committee that sat to hear public views on the proposed

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amendment. I want to echo the sentiments of a number of my colleagues who sat in the same committee. Interesting enough, when members of the public appeared before us, we had a lot of discussions and presentations as to the kind of backup that is required. I want to be on record indicating that at no point did we have a person or a group appearing before us and saying that we do not need a backup. Therefore, it is important that whereas we might disagree, let us agree on issues that bring us together. Let us agree on the presentations that we brought and then we can agree to disagree on certain areas.

Mr. Speaker, Sir, no member of the public appearing before our committee said that there is no need for backup. We are living in this country and we know that for every procedure, you must provide for a backup. All of us here have gadgets such as phones and computers and the element of backup is important.

Secondly, the right to vote as provided for under the Constitution of Kenya is a right that is available to every Kenyan. It would be tragic and completely unconstitutional if a member or a citizen in this country entitled by the Constitution to vote is denied the right to vote because an Act of Parliament says that identification of that person must be electronic but the gadget fails to identify them. Therefore, it is important that as a House, when we make laws or amend legislation, whether by the Kiraitu-Orengo Committee or this particular amendment, it must be a law that furthers the implementation of the Constitution and allows every Kenyan the right to vote.

Mr. Speaker, Sir, the Constitution of Kenya clearly indicates that for you to win the presidency in this country, you must have 50 per cent plus 1. That particular “plus 1” could as well be lost if an individual entitled to vote appears in a polling station and the Electronic Voter Identification Device (EVID) is unable to function. That is why as leaders in this House, we need to look at this as politicians. If you are running against your competitor and tomorrow one of your supporters is unable to vote on the basis that he is unable to be identified because the machine failed, at the end of the day, you end up potentially losing your seat just because of one vote.

If we can agree and appreciate the value of one vote; that everybody has a right to vote and that vote is equal, we must provide for a law that protects that right.

If you look at the wording of the law – we spent some time in the Committee – in the Committee on Legal Affairs and Human Rights, all of us are lawyers and even in the Committee on Information and Technology, the understanding and the readings sometimes are in plain English. Clause 44(a) of the proposed amendment talks about a complementary mechanism. There is no stretch of an imagination that the word “complementary” means the primary. Complementary can only be subject to. It can only be subsequent to a primary mechanism. The mistake that has been sent across this country is that ---

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

Sen. Nabwala: On a point of order, Mr. Speaker, Sir. I am surprised that the Senator from the Jubilee side ---

The Speaker (Hon. Ethuro): Order, Senator! What is your point of order, not your surprises?

Sen. Nabwala: Mr. Speaker, Sir, I would like to inform him that the word complementary was raised by the public during the public participation. The issue is that

it is not well defined. He should tell us what these complementary mechanisms he is referring to are. If it is not manual, then what is it?

The Speaker (Hon. Ethuro): Order, Senator! That is a point of argument.

Sen. Sang: Mr. Speaker, Sir, I am sure Sen. Mukiite will have her opportunity to share her understanding of the word “complementary.” However, I am giving the definition that anticipates that there is a primary. The primary mechanism of identification, in this case, as captured under Section 44 is electronic.

Therefore, we are not only talking about a complimentary mechanism. The drafters of this amendment would have chosen to draft that amendment by being too prescriptive and tell us that the complimentary mechanism would be manual or electronic backup. I see the wisdom in leaving it open so that the IEBC who are the implementers of this legislation will define, give it to us and through regulations – I think this is important. As Members of Parliament (MPs), when we sit to make law, it is also important that we consider and give latitude to the implementers of the same legislation. We can be too prescriptive. In terms of making legislation, as MPs, we theorize. It is a theory on our side but we need to listen to the implementers. In this law, you are giving the implementers the little bit of latitude for them to look at the system they have, the electronic and the experience we have had in this country.

Mr. Speaker, Sir, it will not be lost on us that in 2013 most of the biometric voter identification machines did not work. Therefore, if you were to appear in a polling station and the machine does not work and you have no fallback position, then you will disenfranchise this country.

There is even a potential constitutional crisis. I am aware of these discussions in the Committee. The law allows IEBC to postpone the election to allow the machines and some of these things to be addressed. The Constitution clearly indicates that the election will be held on a particular date. If somebody appears in a polling station at 5 o'clock in the evening and the machine does not work and is told to wait past midnight, that means that will not be an election day. You are going into another day that is not provided for by the law. So, it is important for this Senate and Parliament to address itself to this issue.

Mr. Speaker, Sir, the concerns that have been raised – Section 109(1)(m) of the Elections Act provides that the IEBC will make regulations to provide for the manner in which, and the person by whom any question on the identity of any person claiming the right to vote shall be determined.

In other words, regulations to operationalise the proposed Section 44(a) have already been anticipated in the Section on regulations.

Mr. Speaker, Sir, I will answer the anticipated point of order by Sen. (Prof.) Anyang'-Nyong'o. You only make regulations pursuant to an Act to a provision within the law. They could not make regulations pursuant to the Section on backup before you provide for it, professor. So, the amendment is to provide for the law pursuant to which regulations can be made. Sen. (Prof.) Anyang'-Nyong'o, I think this is an area that you may need to take some time to read.

Mr. Speaker, Sir, finally, is the misinformation that has gone to the public. As leaders, we must be responsible in the kind of information that we pass around so that we do not create myths. I have seen Members in this House share some information that is rumours picked from wherever people pick them from. If you were to engage along those

lines – we are now discussing the just concluded elections in the United States of America (USA). There have been discussions as to how foreign countries are mentioned to have interfered with the electronic elections in the US. We know that some politicians in this country are close allies to some of these powers out there.

If we were to continue with that narrative, we would be questioning the obsession by certain leaders in this country for a purely electronic process as to whether they already have discussions with some of these powers to interfere with the elections. Some of these ridiculous ---

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

Sen. Ongoro: On a point of order, Mr. Speaker, Sir. Did you hear the hon. Senator making a very extreme statement that even as we debate a very important Bill, that some of the leaders on this side are very close to some powers out which we do not know. Is he in order to incense this country even further? This electronic results transmission was an idea of the Jubilee administration. What we did was just to say yes to what you already initiated. Is he in order to further confuse and mislead this country?

Sen. Sang: Mr. Speaker, Sir, I did not mention anybody. Of course, every one of us knows that Sen. Elizabeth Masha Ongoro is a close friend to a particular politician, and therefore, most likely when I mentioned this; she is able to identify herself.

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Members! What is exciting you, Sen. Ongoro?

Sen. Ongoro: Mr. Speaker, Sir, may I stand here and proudly state that not only am I close to that particular politician you are trying to insinuate, I believe he is the best leader for this country. I have no apologies to make. I want to tell Sen. Sang that it is my right under the freedom of association. Is he in order to offload the electronic voting issue on us, when it was a child of the Jubilee administration, which we are trying to adopt?

Sen. Sang: Mr. Speaker, Sir, assuming that what Sen. Elizabeth is saying, that the electronic voting was the idea of the Jubilee and theirs was manual, what is the problem in providing for a manual system they believed in, in the first place? They should not have a problem with this particular one. They should be excited that we are buying into the manual system they believed in, in the first place.

Sen. Elachi: On a point of order, Mr. Speaker, Sir.

(Loud Consultations)

The Speaker (Hon. Ethuro): Order, Senators. What is it Sen. Elachi?

Sen. Elachi: Mr. Speaker, Sir, is it in order to mislead Kenyans that the electronic or Biometric Voter Registration (BVR) has started now yet even in the Select Committee we returned the process that we had in 2013? I do not know which electronic voting we are now talking about. The former Prime Minister introduced this process. Is it in order to tell Kenyans that we have changed the system, while we are still on the same process? We will still use the same gadgets in 2013.

(Loud Consultations)

(Sen. Ongoro spoke off record)

The Speaker (Hon. Ethuro): Order, Senators. Order, Sen. Ongoro! I do not know what is exciting you. You are alleging allegiance to a personality that is yet to be identified.

(Laughter)

That is not how we pledge loyalty in this country.

Conclude, Sen. Sang.

(Sen. Ongoro spoke off record)

The Speaker (Hon. Ethuro): Order, Sen. Ongoro, I have not given you the Floor.

Sen. Sang: Mr. Speaker, Sir, elections are emotive and this is clearly why it is important for us to provide for complementary mechanisms. If somebody was told to wait for two hours because he or she is unable to vote, you can imagine how volatile they can be, if somebody can be volatile to this extent when we are only discussing about a law. Every Kenyan must be provided with an opportunity to vote within good time, so that the stability of this country can be secured.

Finally, I want to remind my colleagues on both sides that the Senate has won the admiration of all Kenyans on the basis of how we have conducted ourselves. One of the cardinal principles in a democracy is that people vote and accept the outcome. If we want to take this country forward we must believe that the outcome of a democratic process, like the one we had within the Committee and the one we are engaged in here, should be followed.

The Speaker (Hon. Ethuro): Your time is up, Senator.

Sen. Orengo.

Sen. Orengo: Mr. Speaker, Sir, I want to be as brief as possible, although 10 minutes is not good enough. I plead with both sides of the House. The Constitution of Kenya is clear on who exercises the authority of legislation in the Republic of Kenya; it is through the directly elected representatives of the people, which include Nominated Members. That power is delegated by the people of Kenya to us directly. I am worried by the Bill we are about to pass. One of the things that were included in the Bill that came from the National Assembly seeks to oust the jurisdiction of the Senate in matters that are important, and we do not seem to care about it. The Constitution is clear on the question of the delimitation of boundaries that the Senate cannot be ignored. Through this Bill, it looks clear---

Sen. Murkomen. On a point of order, Mr. Speaker, Sir. Is Sen. Orengo in order to mislead this House, and particularly the country, that the Senate has a role in delimitation of electoral units? The Constitution is succinct and clear in Article 89 that it is only the Independent Electoral and Boundaries Commission (IEBC) that has a responsibility of dealing with boundaries.

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It states in Article 89 (9) that once the Commission has gazzetted the electoral unit, any person who is aggrieved cannot go to Parliament and does not require approval of any House of Parliament, but he or she can take the issue to the High Court. It is totally misleading for Sen. Orenge to allocate the National Assembly or the Senate a responsibility that the Constitution is so clear in Article 89 that it is only in the jurisdiction of the IEBC.

Sen. Orenge: Mr. Speaker, Sir, the problem with the Senator for Elgeyo-Marakwet and that is why there are so many sieges in Elgeyo-Marakwet--- It is because people do not listen to each other, but at least in this Senate, people listen to each other. I was not speaking in terms of what is in the Constitution; I am talking in terms of what is in this Bill. When it comes to provisions that relate to reporting on account of reports which have been made by the IEBC, it goes only to the National Assembly and does not come to the Senate. That is very clear; he just wants to take my time.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. I sympathize with my mentor and Senior Counsel. It looks like he was speaking through his mouth, but he was not listening to himself. He had said that the Senate is being excluded on matters of delimitation of electoral units.

(Loud Consultations)

It is my turn. I must be heard.

The Speaker (Hon. Ethuro): Order, Members! This is an important area. We will hear Sen. Murkomen. I will still give a chance to Members who want to contradict him.

Sen. Murkomen, I am not sure if you want to push that argument far, but the Floor is yours; try the best.

Sen. Murkomen: Mr. Speaker, Sir, I do not refuse the argument by Sen. Orenge that the Bill from the National Assembly says that on delimitation of boundaries the National Assembly should approve. However, the Constitution is clear that neither the National Assembly nor the Senate has a role in approval of electoral units. My argument is that the Senior Counsel is wrong in law, the Constitution and argument when he says that since the National Assembly is trying to abrogate itself unconstitutionally on a responsibility that is not given to them by the Constitution, we should preside over the House and also abrogate ourselves such a responsibility, which is unconstitutional. That is why I read Article 89 of the Constitution.

The Speaker (Hon. Ethuro): Order, Members. On the assumption that Sen. Sang may augment Sen. Murkomen's argument, I will give him the first chance. The other assumption is that Sen. Mutula Kilonzo Jnr. may wish to contradict it; I will give him the next chance.

Sen. Sang: Mr. Speaker, Sir, I want to agree with what Sen. Orenge has said, that there is a provision within the proposed law that tries to give the National Assembly some role in delimitation of boundaries. That proposed law is unconstitutional on the basis of Article 89. If you look at---

The Speaker (Hon. Ethuro): Order, Sen. Sang

Sen. Sang: Just one Article Mr. Speaker, Sir---

(Loud consultations)

(Members spoke off record)

The Speaker (Hon. Ethuro): Order, Members. When I call out for order, I am only interrupting you. I am not stopping you from contributing thereafter. Let us be very clear. Sen. Sang has actually got the crux of the matter. My concern is that there must have been an admission by Sen. Murkomen in the first instance because even when Sen. Orenge tried to tell him that it is not the Constitution, it is this Bill which Sen. Sang has agreed to, we just need to be fair to each other. That was all we are asking.

Proceed Sen. Sang.

Sen. Sang: Mr. Speaker, Sir, if you look at Article 2(4), which I am sure Sen. Orenge is well versed with and he has quoted it severally in this House, on the supremacy of the Constitution, it clearly says that any law, including the proposed Elections (Amendment) Bill that we are discussing, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid. This is to the extent that we do not need to flog a dead horse. That provision is a dead horse and we do not need to deal with it. By operation of the Constitution, it is dead.

(Several Members stood up on points of order)

The Speaker (Hon. Ethuro): Order, Members. You do not deny a Member an opportunity to contribute just because of your own understanding of the same. Sen. Orenge will contribute but I had allowed Sen. Mutula Kilonzo Jnr. to make a brief intervention. We will hold your time Sen. Orenge.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, in Article 260, the Constitution says that we must read it in a way that breathes life into it. It must make sense. Allow me to educate Sen. Murkomen a bit.

There is a special reason why this Bill---

(Sen. Murkomen stood up in his place)

Why not wait, Sen. Murkomen? I want to educate you.

The Speaker (Hon. Ethuro): Order Senator. You cannot challenge that after you determine whether it---

Sen. Mutula Kilonzo Jnr.: You have been educated enough.

The Speaker (Hon. Ethuro): For now it is just a word.

Proceed, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, the reason this Bill is here is pursuant to Article 110(2) which makes this a Special Bill because it relates to election of Members of County Assemblies (MCAs) or the county executive. Sen. Murkomen, those Wards that are stated in Clause 32 are those of elected members and that is our jurisdiction.

Secondly, this Senate through me has published a Bill on county boundaries. Those wards exist in counties. This is in Article 188. That is our jurisdiction. What is even worse is that if the National Assembly has abrogated itself and given itself a jurisdiction that does not exist and it is unconstitutional, Sen. Sang and Sen. Murkomen have abdicated their responsibilities as Senators by voting “yes” to it. What are you talking about? Allow me to educate these young men, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order, Sen. Mutula Kilonzo Jnr. I thought you had finished.

Sen. Mutula Kilonzo Jnr.: Governor John Mruttu mentioned something that is very important. He said that there are wards that border counties. Therefore, it is possible that in the delimitation of a ward, you will affect the boundary of a county. This gentleman and good Senator from Elgeyo Marakwet County should read this backwards, forwards and conjunctively. He should not read it selectively. That is the end of my education to Sen. Murkomen.

(Laughter)

The Speaker (Hon. Ethuro): Order, Members. We need to make progress but I will allow Sen. Murkomen to confirm whether he has been educated or otherwise.

Sen. Murkomen: Mr. Speaker, Sir, it is a pity that my colleague has mis-educated the public. Either by qualification or otherwise, Sen. Mutula Kilonzo Jnr. is not qualified to educate me. He has confirmed that from his submissions.

Let us get it right. Neither the Senate nor the National Assembly has a responsibility on delimitation of boundaries. The County Governments Act, which I helped draft, makes it very clear that the Senate can play a role to say that we need 1450 wards like we proposed then and passed by Parliament. However, we have no role to go and say that the ward should be like this. The Constitution removed that responsibility from the National Assembly or the Senate.

My correction to Sen. Orenge was specific. Not just running around the question of whether a Bill concerns counties or Article 188 that Sen. Mutula Kilonzo Jnr. is talking about in so far as the delimitation of counties which the Constitution says we must pass in the Senate and the National Assembly by two-thirds. That is specific. The Constitution in Article 89 does not give us roles to deal with delimitation of wards and constituencies whether it is this House or the National Assembly. That is contained in the Constitution, which is the law; it cannot be changed by rhetoric and repetitions.

(Loud consultations)

The Speaker (Hon. Ethuro): Order Members. Obviously, it was never meant to be and it shall not be that the Chamber or a House of Parliament shall be a classroom for educating people.

(Laughter)

Proceed Sen. Orenge.

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Sen. Orengo: Mr. Speaker, Sir, normally, when a senior counsel is speaking, occasionally a junior counsel is allowed to educate another junior counsel. I am grateful to both my junior Sen. Sang and Sen. Mutula Kilonzo Jnr. If you go to the law reports, you will find the name of Sen. Mutula Kilonzo Jnr.. I am still waiting to see a reported case with Sen. Murkomen's name.

(Laughter)

You will also find the name of Sen. Kembi-Gitura there.

The Speaker (Hon. Ethuro): What is it, Sen. Murkomen? Comment on that particular issue, be specific.

(Loud consultations)

Order Senators. Order Sen. Murkomen. If a Member is mentioned, he has a right to reply. If Sen. Khaniri and I are yet to be registered, we just have to live with the reality.

(Laughter)

Sen. Murkomen: Mr. Speaker, Sir, we were not talking about litigation. I am sure my colleague may have been reported in a case that he either did at the High Court or in some magistrate's court. It is possible.

The Speaker (Hon. Ethuro): Sen. Murkomen, Sen. Orengo was specific.

Sen. Murkomen: Yes, and that is what I am responding to.

The Speaker (Hon. Ethuro): I thought that you had reported---

Sen. Murkomen: Mr. Speaker, Sir, I have been cited in referred journals, including books that speak about the role of the Senate in this Republic. I have taught in university where my colleagues took---

(Laughter)

The Speaker (Hon. Ethuro): Order Members. Sen. Murkomen did not have to make that intervention. Sometimes you must appreciate that there will be an opportunity to demonstrate how many other things you have done besides where you are supposed to have been. That is okay.

Let us allow Sen. Orengo to proceed.

Sen. Orengo: Mr. Speaker, Sir, I cannot deny that he has engaged in a lot of extracurricular activities which are on record.

Mr. Speaker, Sir, the point which has not been answered from many interventions is with regard to Section 44 that has brought a lot of contention. There are three words in those particular provisions and I think this is important because if you address it clearly and directly, it may let the country know what we are talking about.

There are three words; "notwithstanding", "complementary" and "commission". Under these provisions, the Clause, we are talking about the discretion to determine how

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somebody who cannot be identified electronically can be identified for purposes of voting. That discretion is not in the rules. It is given to the commission because it says that the commission shall put in place a complementary mechanism. It is the commission and not through regulations.

Mr. Speaker, Sir, if you remember, there was a time when District Commissioners (DC) were given discretion to decide, when they were Returning Officers and there was a lot of mess in the election process. I know that in Trans Nzoia, for example, where my friend the late Hon. Muliro won an election and then a Returning Officer who was a DC told him that he had lost and was therefore free to go to the High Court for purposes of determination.

This is so important that we cannot leave it to the Independent Electoral and Boundaries Commission (IEBC). It is this Senate and the National Assembly that must decide how we elect whoever has to become either the Speaker or the Leader of Minority or Majority. It is not a function that we can give to the electoral commission. If we give it to the commission also, why are you giving the commission lawmaking powers to manage the elections and also to make rules on how they conduct those elections?

If you were in court today Sen. Murkomen, a lot of judges are complaining that you are the ones who made the law. If you fail to make the law definitive and predictable, who is going to save you from laws that have lacunas and give a lot of people discretion, which should not be happening? Since our time is short, I want to say without contradiction that historically in this Parliament, there are laws that were made that Members of Parliament themselves have found themselves suffering tribulation because we were passing laws quickly without thinking.

I remember when Section 2(a) was being passed I was the only person who rose in that Parliament. We were brought back to the House in this kind of circumstances. Only President Moi and the then Vice-President Kibaki moved and seconded respectively and we were told there was no more debate. If you go to the record, I was the only one who spoke.

Mr. Speaker, Sir, the person that you think is your neighbour will be your enemy tomorrow. When I was in danger, it was Sen. G.G. Kariuki who saved me when somebody wanted to detain me. In fact, a Minister told me that I would be detained the following day. It was Sen. G.G. Kariuki who told me not to take those words for fun. He told me to run for my life because I was going to be chewed.

We are not listening to each other. I beg you that we listen to each other. This is one country, Kenya and I cannot understand circumstances in which the two joint Houses of Parliament pass a law which is agreed, celebrated and even the faith based communities give a contribution and hardly after 60 days, we say that there was a mistake. Can we be trusted?

Even in a marriage which you enter in a church and after three months you say that you cannot live together, something is wrong with you. You need a doctor. The person who brought this Bill to us in this Senate needs a doctor. We cannot be seen to be changing our minds like little--- I do not know; even animals have memory, but it looks like we do not have memory of what we have done.

Mr. Speaker, Sir, I plead that this Bill, if passed the way it is--- This House calls itself the superior Chamber and yet we are not even prepared to change a comma from the National Assembly, we are just becoming a conveyor belt. *Bure kabisa!*

(Applause)

In fact, I can say that His Excellency President Uhuru Kenyatta is doing better than us since some laws have gone to him and he has brought them back because he was unhappy with what Parliament had done. *Na hapa sisi*, we do not see anything wrong.

If you look at one of the provisions of---

The Speaker (Hon. Ethuro): Conclude, Sen. Orengo.

Sen. Orengo: Mr. Speaker, Sir, if you look at this Bill, part of the proposed amendments are amendments to laws that do not exist. Surely, what are we doing passing a non-existent law?

Article 95 of the Constitution says that Parliament shall carry out its function in accordance with the Constitution. I am very happy with Sen. Sang and I will forever call him a learned friend, but not so for your neighbour who is next to you because he needs to be candid. When Parliament is dealing with something which is clearly unconstitutional, we should say so but not let it pass. However, if it passes, even the courts are going to say: "Was Sen. Murkomen, Sen. Sang, Sen. Mutula Kilonzo Jnr, Attorney-General *Emeritus* and the Speaker who is a legal student, there? I urge you that this Bill is only for rejection.

In conclusion I want to talk to my sister *Nyar Ugenya*, Hon. Beth Mugo; we have gone through the trenches with you and you know how governments behave when they are in power. You can probably give people on the other side a little education that sometimes revolutions eat their own children. Governments eat their own people. This Government is going to punish you more than they will punish me. I am telling you that in another one year, you will be crying in my office to come and represent you.

I know and I can tell you.

(Applause)

I have appeared for President Kibaki when he was in the Opposition about laws which were made here. I have also appeared for President Uhuru Kenyatta and Deputy President William Ruto when Kenya African National Union (KANU) was going away and His Excellency Kibaki was taking away his Members and making them Ministers. I went to court on their behalf, but now that they are in power, they are forgetting.

When power gets into your head, you will never remember that one day; there is a bigger power; the Almighty, which will deal with you.

Mr. Speaker, Sir, I just want to finish by appreciating what you did. If you were any other Kenyan who is not patriotic we would not have had a time to debate. This thing would not have gone to public participation. However, in your own wisdom you gave us opportunity and for that I thank you and I shall forever be grateful.

However, if Sen. Murungi votes for this Bill, I will forever remember that the struggles you carried out in the streets were for nothing.

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(Laughter)

The Speaker (Hon. Ethuro): Order, Sen. Orengo! What is your point of order, Sen. Murungi?

Sen. Murungi: On a point of order, Mr. Speaker, Sir. The Powers and Privileges Act gives a Member of Parliament absolute freedom to vote in any way that his conscience dictates. Is it in order for a senior counsel, the oldest serving Member of Parliament on that side, to try to interfere with a Member's freedom to vote in a manner he wants?

(Laughter)

The Speaker (Hon. Ethuro): Order, Members! Sen. Kembi-Gitura has the Floor but for purposes of Sen. Murungi, I do not think Sen. Orengo is quite alive that you have real capacity and you cannot be intimidated. He was only reminding you of your history and that choices have consequences.

Sen. Kembi-Gitura: Thank you, Mr. Speaker, Sir. I wish to thank you for this opportunity. This is an important Bill that we are debating. I want to start by thanking you, like Sen. Orengo, and thanking the House for having given this House the opportunity not just to have public participation but also to have two joint committees of this House sitting together and considering this important issue.

Mr. Speaker, Sir, right from the outset, let me start by saying – because I am a Member of the Legal Affairs and Human Rights Committee – that in our public hearings, we listened to 54 oral submissions including memoranda that were given to us. We listened to these memoranda carefully and faithfully. Indeed, the last person to give his oral presentation on this matter was no less than the distinguished Senator for Siaya County, Sen. Orengo. He was the last person to give his words on the public participation. I am going to quote to some length about what he said at the public participation.

Mr. Speaker, Sir, let me from the outset start by referring to the Constitution itself at Article 86. It is the root law for voting. Article 86 says that at every election, the IEBC shall ensure that whatever voting method is used, the system is simple, accurate, verifiable, secure, accountable and transparent. Those are the key words in Article 86. At Article 86 (b) – so that we can disabuse the notion that we have an electronic voting system in Kenya – it says the votes cast are counted, tabulated and the results announced promptly by the presiding officer at each polling station. I want to submit that those are extremely important words in the Constitution.

Mr. Speaker, Sir, at section 44 which is the real subject of this debate – I am going to address myself to section 44 and 44 (a) as amended – section 44 is important because if you have to read it against Article 86 of the Constitution, then you will see where we are coming from in dealing with section 44 (a) as proposed to be amended. Section 44 (a) says that subject to this section, there is established an integrated electoral system which enables biometric voter registration, electronic voter identification and electronic transmission of results. Section 44 (b) is important because it says the

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Commission shall for purposes of sub-section One develop a policy on the progressive use of technology in the electoral process. So, sub-section (2) recognizes that we are not there yet. We would like to have a totally integrated electronic system but we are not there yet. It is work in progress.

Mr. Speaker, Sir, a section that nobody seems to be referring to in this law is section 44(7) (a) which says that the technology use for purposes of the first general election upon commencement of this section shall be restricted to the process of voter registration, identification of voter and results transmission. Those are the only three things that we are expected to deal with in this coming election; registration, identification and transmission.

If we were to go by section 44 only, you will note that section 44 has in place only technology voting. There is no window for voting other than using that registration, using that identification and using that transmission. When we were in the public participation, we listened to 54 people who gave their submissions before us. The only person in the whole list of people who came before us was a gentleman whose name I cannot remember now but he was the Chairman of the Computer Society of Kenya. He is the only person who purported to say that in the aeroplane industry, there is a technology called SITA which does not fail. Those are the words he used; that SITA cannot fail and it has never failed.

When he was put to task by the bipartisan Committee that sat here, he was not able to explain to us how the Malaysian Aircraft disappeared and has never been traced to date, how accidents happen in the air or how it can happen that there can be lack of communication from the air controller to an aeroplane. SITA may not fail but can the communication between point (a) and point (b) fail? He was the only person who maintained that technology cannot fail. Everybody else who came before us took the view that technology does fail.

Mr. Speaker, Sir, Sen. Orengo, a gentleman for whom I have the greatest respect, started his submissions by using these words and I quote; “We must embrace technology”. I agree with him 100 per cent that we must embrace technology. That is the reason why there is section 44 (1) and (2) which talks about progressive embracing of technology so that not in the first generation election after the passing of this law but sometimes in the future, we shall be able to have a full electronic voting. Sen. Orengo did agree – and like I said, I am clear in my mind because he was the last person to give evidence. He said planes are safe most of the times. It is that small gap of the failing that we must take care of, take into account and consider when we are discussing a serious issue called elections in this nation.

Mr. Speaker, Sir, let us not tell Kenyans that there is a possibility of having chaos, riots and everything because of technology. Where we have had chaos in the past was not in the failure of the system, it was in the integrity of the voting system. There lies the issue which we must distinguish. We are trying to attain the integrity of a voting system that is acceptable to everybody. That takes us to section 44 (a) as proposed to be amended. Section 44 (a) is clear in its wording. I like myself because I am entitled to my view like everybody is entitled to their view and I have said it at the committee and I will say it here again. I like the word “complementary” very much in section 44 (a).

In the first instance, if we are left with Section 44 as currently existing, there will absolutely be no--- I hope I have 15 minutes and not 10 because everybody was getting 15 minutes.

Mr. Speaker, Sir, in Section 44, the word “complementary” is a word that gives discretion not to Parliament or anybody else but to the electoral commission which is an independent body. The IEBC is an independent body. Unlike what Sen. Orengo said, Section 44 gives the commission the power to make regulations but in consultation with relevant agencies. Why can the IEBC not make regulations under Section 44(a) in consultation with all other agencies including committees of Parliament which comprise of the National Assembly and the Senate; to make regulations that are acceptable to all of us?

Mr. Speaker, Sir, one governor came here and tried to ridicule people who may not be identifiable. Statistics show that if only 10 per cent of Kenyans do not vote because of a failure of any system, 2.5 million Kenyans will lose the right to vote and 2.5 million Kenyans will make a lot of difference in elections of this nation. If only 1 per cent does not vote because of a failure, 250,000 Kenyans will not vote.

These are the issues that we must take into account. That is why we must accept in good faith that we need to have a system other than total electronic or total technology. Nobody here except computer experts can disapprove. Nobody said that we do not need a backup and that backup is what we need to work on in good faith. All of us need to work together so that we have regulations that are watertight and which will ensure the integrity of a voting system that is acceptable to all of us in this country.

The case of Ghana has been quoted very many times. I want to remind everybody that what controlled the elections in Ghana is contained in the regulations and not in the substantive law. We went through those regulations word for word in the joint committee and saw that it is possible to make regulations under Section 44(a) which will make our elections have such integrity that they will not be questioned.

Mr. Speaker, Sir, as I conclude, the only other thing I would like to say is that what we need to be looking for is how to create a system that will make our elections have integrity. Like one or two other people said before me, we must work in such a way that we who have the power to legislate must appreciate – whether you call numbers or what you want to call it – that the only way for the Senate, the National Assembly or a legislative body to make a decision is by having a debate like the one we are having and then, if need be, have a vote. If a vote shows that the majority of the people voting after the debate need to have backup that is acceptable to everybody – the underlining word is “acceptable” – after serious scrutiny, then that must be the way to go and all of us must work towards this because at the end of the day, all of us are Kenyans.

We only have one country and we must protect it from the mistrust that is being created, most of which is artificial, trying to make Kenyans believe that there will be a problem going forward when indeed we have not had a problem even when we did not have any electronic voting at all. When we had a problem in 2007/2008, it had nothing to do with electronic voting. By the same argument, we did not have any problem in that regard in the elections of 2013.

That is the position and argument that all of us must push forward; that it is not electronic voting or otherwise that can give us problems. That is the attitude of

intimidating Kenyans and making them believe that there are problems where, indeed, there do not exist any problems at all. Let us embrace what is reasonable. Let us accept that even in the USA, in the last elections, in the State of Utah, the counting and tallying was manual.

Mr. Speaker, Sir, thank you very much for the opportunity. I hope we can now vote together.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I want to urge the House to reject this Bill. I want to urge Senators to vote against this Bill if we want to maintain the billing of this House as the “Upper House”, the House of revision and as the House of reference.

Looking at this Bill and the report that has been placed before us, I feel a little embarrassed that even after the National Assembly had passed a provision in the law that is clearly unconstitutional, and vesting the authority to approve the process of delimitation of boundaries in themselves when the Constitution is very clear that that is an exclusive role of the IEBC, I would have expected that Clause to be rejected by the Committee. However, what do we see in the Report?

Again, it was purely partisan. Six Senators from the CORD voted against that unconstitutional provision while 10 Senators of Jubilee voted to support an unconstitutional provision. These are some of the very simple things that we start with. When you hear some Senators pontificating here about integrity, probity and respect, respect must start with yourself. You should respect your intellect, those who elected you and, above all, the oath you took to defend and protect the Constitution of the Republic of Kenya. When something is under violation by a statute that has been brought before you, because of partisan thinking, whipping and inclination, you simply shout across the Floor that it does not matter. Parliaments do not act like that.

Mr. Speaker, Sir, this Bill is dangerous to this country. This Bill is laying a foundation for a possible conflict during elections. This Bill is laying a foundation for a conflict that will be triggered by the discretion given to the people who will conduct elections; who have proved before that they are not capable of managing discretion.

Mr. Speaker, Sir, the distinguished Senators of Meru and Siaya led a bipartisan committee and brought us a law here. This law was passed by both Houses. Even Members who agitated for amendments were convinced and whipped to drop those amendments.

Mr. Speaker, Sir, this law has not been put into use and here we are running back looking like now we are wiser after the event and creating a mischief that can create problems to the country. There is nobody in this country who is interested in pre or post-election conflicts. We want elections to have integrity. We want the vote every Kenyan casts to count and have meaning to both the caster of the vote and he or she for whom the vote is cast.

Mr. Speaker, Sir, we are talking about a situation where we are excitedly talking about equipment that will fail that we have not even procured. The tender for procurement of equipment is supposed to be opened on 9th this month. We must be candid to ourselves and to Kenyans. When you go to register as a voter, your biometrics are captured by equipment. It will store your biometrics which will include your finger prints, iris, voice, where necessary, and picture. When you go back to vote, if your thumb

prints are not captured, the alternative should be the other biometrics stored in the same equipment. So, the equipment that registered you must identify you when you go to vote.

We like to be very forgetful. I watched some movie where a baboon lifts a stone and sees a puff udder under it. It drops the stone and then falls down as if it is dead; then it stands again and within 30 seconds, it has forgotten what it had done; it lifts the same stone again and sees the same puff udder. We are pretending as if we were not born in this country, as if we did not grow up here and as if we do not live here.

There is a friend of mine called Mr. Henry Kosgey. I checked the HANSARD. When former President Moi brought a Bill here to introduce queue voting, my dear friend, Mr. Henry Kosgey who I meet and talk regularly with, spoke so extravagantly that it was not even necessary for him to speak that way. He said, "This is a good system. It is stress free. Anybody can vote. We do not need to spend money." in the next elections he got the longest queues in queue voting system in Tinderet while K.K. Sego got the shortest queues in Tinderet. The candidate with the shortest queues was declared the winner while the one with the longest queues was declared the loser. Mr. Henry Kosgey was kept out until the law was changed for him to come back.

Mr. Speaker, Sir, when Justice Aaron Ringera was teaching us law at the University of Nairobi, he used to tell us that if you want to test a good law, imagine that law in the hands of your worst enemy. If you feel safe with it, then it is a good law. We are behaving as if there is no tomorrow. Clause 44(a) of the Bill that has come from the National Assembly is trying to change what was negotiated and agreed upon. In case we forget, the negotiations that brought the Kiraitu-Orengo process cost Kenyans lives and property. People demonstrated. There were interlocutors from churches, diplomats and the private sector until we saw sense. I listened very carefully to the Committee hearings of this Committee. Respected organizations; the LSK, the KNHRC and even the most unexpected friend of mine called Mr. Kiprono Kittony spoke like I have never heard him before. They were all sounding caution and alarm bells to the country. Why?

I invite Members to read the Kriegler Report. Kriegler said that in 2007, after the conflict of that election, his commission found 1.2 million "dead" voters on our voters' roll. Now they could be 2 million or more. What safeguards can we have other than saying, when you come to vote, if it is my brother from Laikipia from whom I have great respect, the machines that registered you will identify you then you vote.

Mr. Speaker, Sir, the haste with which we have seen this process and the determination that I have seen even distinguished reasonable Members across the Floor; lawyers have voted without remembering who they are. In this country, quick fixes have always landed us in regrettable positions. I sat here and listened to young Sang from Nandi; a young man that has a lot of promise and I could not help wondering which direction he is headed. I urge you to live knowing there is tomorrow. As Sen. Orengo told you, politics has no permanent friends or enemies. Those that you are dancing excitedly for will be the pythons that will coil around you tomorrow. You will come running.

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

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. There is a trend that is developing. It was started by Sen. Orengo who is not in his seat at the moment and the Senate Minority Leader, where one makes contributions on the Floor of the House and

attempts to either berate, intimidate or despise another Senator. The threats have come from a person who is running for president. He told Sen. Sang that the people he is working with now are pythons who will coil around him. Could the same question be put back to the Minority Leader? How many people he is likely to coil around on the other side which he is leading now, if that is really what it means that those people who are friends today will fight you tomorrow? Why does he focus on individual Senators, especially, Sen. Sang? Can we not have a debate without trying to despise other people?

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Members!

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, at no point did I mention Sen. Sang in relation to a python coiling around anybody. The only issue I said about my good young friend Sen. Sang is that listening to him; I reached a conclusion that he is headed in the wrong direction. That is my opinion. You cannot take that away from me.

The Speaker (Hon. Ethuro): Order, Senators. The fundamental issue raised by Sen. Murkomen, leave the other one, because if he was displeased with the use of the words “pythons coiling” and then he challenges you on how many more you will coil, it defeats the very purpose why he was challenging it in the first place. So, ignore that one but the point is, and I want to agree with him completely; let us not personalize some of these things. Let us make generic contributions without identifying personalities.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, the only difficulty is that in the rules of debate, normally, you agree or disagree with your colleagues, but I take your cue. I mean nothing ill about Sen. Sang; he is a young man with a lot of promise.

Sen. Sang: On a point of order, Mr. Speaker, Sir. I have always held Sen. Wetangula in high regard but he insistently makes statements. I appreciate his prowess in the use of the English language, but every other time, he tries to belittle colleagues who may be younger than him. I am tempted to agree with Sen. (Dr.) Machage’s statements at one time when he was sitting where you are. He said that it would be tragic if this country was to have Sen. Moses Wetangula as a President and he saw nothing presidential at all in Sen. Wetangula. Every other time he belittles me, I tend to agree with him. I urge Sen. Wetangula not to make me believe that what Sen. (Dr.) Machage said on the Chair is true. I do not need to be belittled. I am a Senator in this House. He has a problem with the way I look at things and I have a problem with the way he looks at things, but I allow him because that is his position. He should not belittle me.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I do not look at any things, I only debate issues. In the rules of debate in this House we learn the hard way. If one develops a short fuse, he or she will have a lot of difficulty listening to debate in this House.

Senators should read the nature of great debates by Winston Churchill, Tom Mboya and Martin Shikuku and others. If you come here to be praised, you are in the wrong place. This is a House of politics and politics sometimes can be rough, and it will continue to be rough.

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Mr. Speaker, Sir, Section 44 (a)---

The Speaker (Hon. Ethuro): Order, Sen. Wetangula. Politics may be rough and that is why we have rules of debate, which demand that you do not engage in matters that invite many points of order. I would like you to appreciate that. Nobody is curtailing the manner in which you want to debate. Debate as you wish. You did not call him 'the young man'; you called him 'the young Sang.' For a moment I thought he was Chinese.

(Laughter)

Proceed, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, Section 44 that I was quoting, brought by Sen. Orengo and Sen. Kiraitu, the Senators who chaired the Committee, says:-

“Subject to this Section there is established an integrated electronic electoral system that enables biometric voter registration, electronic voter identification and electronic transmission of results”.

Mr. Speaker, Sir, I listened to the Deputy Speaker, who is also the Senator for Murang'a, mislead the House in every material way. Trying to amend that Section is to create confusion. Good lawyers like Sen. Orengo will tell you that when you want to create mischief in law, you use words like 'notwithstanding,' 'subject to', 'without prejudice' and all the colourful words that give you the law and then take it away.

I want to tell this House and the country that what Section 44 (a), in the Bill passed by the National Assembly, is trying to do is to oust the provisions of the Sections 39 and 44, and go back to where we ran from. It is embarrassing for a Government that calls itself 'digital' to start running away from digital to manual. In history, electronics came to cure the weight and shortcomings of manual work, but now we have a Government that is trying to take us back to manual. We do not need rocket science to know what they are trying to do. The dead voters are still on the roll. We know the flawed issues of identity cards in the country. In some regions in the country the underage are being given identity cards. In some parts of the country, if one applies for an identity card they wait for six months.

Mr. Speaker, Sir, we are trying to give discretion to electoral officers; that when an underage or a ghost voter votes, like it happened in the last elections--- In certain constituencies and polling centres, some candidates were getting 112 percent of the registered vote. It has been said clearly that voter cheating in this country is high in Central Kenya, Nyanza and Rift Valley. These are the epicenters of the theatre of theft of votes. We must fight so that at the end of the day, when I go to elections and win, I can win fairly and be happy about it. If I lose, I must lose fairly and congratulate the winner. That is the integrity of elections.

If we really want to be a House that we have described as an 'Upper' House, we should not be itching to vote. Instead, we should be itching to debate issues. I have seen some yawning and looking very impatient, wondering when the vote will be called, so that they can exercise the direction that they have been given and go home. That vote will come to haunt you.

Sen. Wangari: On a point of order, Mr. Speaker, Sir. I have just seen a yawn from the other side too. Is the Senate Minority Leader in order to keep calling people 'voting machines' as if they do not have a brain? Could you confirm that your list on the screen is full of requests to contribute? Is he in order?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, we can call the HANSARD to be printed and brought here to see if I ever called anybody, this afternoon, a voting machine. I said that anyone of us here--- When I am pointing the direction I am looking at, I could very well turn and point this way as well. I am cautioning us, including myself.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. We are talking about a presidential candidate, who is the Senator for Bungoma. Most important, is the caution you gave in terms of speaking about Senators and colleagues in a negative manner. The impression the Senate Minority Leader, who is a Leader in this House, is giving out there is that there are some Senators who have itchy fingers and want to vote and are yawning. That alone is derogatory to the institution of the Senate. No Senator here is less than the other in any way.

The Speaker (Hon. Ethuro): The Senate Majority Leader, please, refrain from characterization of colleagues. I can confirm for a fact that the interest of Senators wanting to contribute is so enormous that you would have done them a favour if you did a bit of self-censorship and reduced your own time.

It is also on record that when we called for one special sitting, the Senate Minority Leader himself went public and said that he has dictated some Senators not to appear. All these things are on record.

(Laughter)

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, have you noticed that since the former Inspector-General of Police entered the race for the Senator of Elgeyo-Marakwet, the sitting Senator has become increasingly impatient and erratic?

Sen. Murkomen: On a point of order, Mr. Speaker, Sir.

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

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. No sooner did you make the ruling than the same erratic Senator shot up because erraticism is in trying to deviate from your ruling. If it is a question of agitation of any Senator in this House because they are facing competition, did you see how the Senate Minority Leader has been extremely agitated since Sen. Okong'o announced that he is running for Presidency?

(Loud Consultations)

The Speaker (Hon. Ethuro): Order, Members! We need to be serious. There will be no further points of order. That is only subject to the Senate Minority Leader refraining himself from certain utterances directed to specific individuals and doing it so repetitively that he has to attract more points of order than necessary.

I will be forced to do what I would not like to do to one Sen. Wetangula who is the Senate Minority Leader.

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The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I will continue from where I was interrupted. However, I will be brief because I want to give room to others to contribute.

Mr. Speaker, Sir, I heard very extravagant political romanticism reaching the House. There were statements like the minority will have their say and the majority will have their way. It may be so. You may win today, but tomorrow is waiting. You may win the battle, but you will not win the war. You may vote today under the guise of numbers, but I want to tell you the numbers are not in this House. The numbers are out there. The numbers are waiting for you. When the history of this House is written and when your children and grandchildren read the history of this country, they will ask where you were when this happened. They will want to know what you said when this happened. They will ask why you did what you did, knowing that you are taking this country to the wrong direction.

It is not those who fight that carry the greatest responsibility. It is those who cause others to fight that carry the greatest responsibility. With a vote in this House this afternoon, this Senate is either going to set tranquil in the electoral process in the country or set the country on the cascade towards unpalatable consequences. I say this without any fear of contradiction.

You can cheat some people sometimes but you cannot cheat all the people all the time. I know the flurry of phone calls that have been going on around, I know that people have been told to vote this way, but I salute you, who will be guided by your conscience. I salute you who will come here knowing that your county did not send you here to vote in unconstitutional, unpopular, unworkable, dangerous, divisive Bills that can bring doom to this country. You were brought here to moderate the excesses of the “Lower” House. You were brought here to make this country good.

That is why we cannot tire in saluting you for asking the police not to cordon off this House because this is a House of debate and a House of reason. We want to salute you for bending backwards to give us an opportunity to debate this Bill; for Kenyans to know that what is happening is not the talk of failure of technology. I was totally embarrassed when I watched a man I respect so much because of his knowledge of legal matters, Prof. Githu Muigai, saying that technology by its very nature is bound to fail and it will fail. How do we go out there to spend billions of Kenyan tax payers’ money to buy technology that will fail? India has 700 million voters, they use technology and it works.

On electronic voting, somebody stands here and gives us a lecture that when you go and you are given a ballot paper, it is manual. When you mark, it is manual. When you put it in the box, it is manual. Why are you underrating our intelligence? That is common sense. This law is not talking about receiving a ballot, marking it and putting it into the box. It is talking about registration, identification and transmission of vote results.

Having in mind the history that we have come from and the history that we are facing, anybody who will perpetuate themselves in whatever form by undermining the process of elections, anybody who will convolute the electoral process by using numbers in a conclave like this and forgetting that there are more numbers out there, are courting disaster.

I am happy to see my brother, Sen. Murungi come in. I was waiting to see Sen. Murungi who is a man whom I have tremendous respect for. He is a man who has

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distinction of entering this Parliament in the party that I lead. I was waiting to see and I want to hear how Sen. Murungi sat with Sen. Orengo, brought here a Motion and a Bill, we voted on it and I have seen on the report that he has voted against himself.

In the Eighth Parliament, there was an MP called Chebellion. I think he still lives in Kericho. He sat in a Committee chaired by Kiliku on post-election violence in 1993. He was very active. When the report came to the House, he was frightened to vote against it. I believe that kings are not capable of being frightened.

Today is no ordinary day for this Senate; today is the day for the men and women in this House to distinguish themselves from boys and girls elsewhere and vote to give the country confidence, direction and to show that we can go to the next elections and get the outcome that we desire. It does not matter whoever wins, but we want a good election.

The Speaker (Hon. Ethuro): Order Members. We have one hour to go. The screens and the manual paper are full. What is it, Sen. (Prof.) Lonyangapuo?

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, the names displayed on the screen are so many. I have visited the place and seen it. I request that we reduce the time from 15 minutes to five minutes since most of it is repetitive so that we can deal with it.

The Speaker (Hon. Ethuro): Is that okay, Members, so that time will be five minutes per Member?

(Members responded to the affirmative)

Sen. Omondi: On a point of order Mr. Speaker, Sir.

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

Sen. Omondi: Mr. Speaker, Sir, you can see I am struggling. I cannot access the machine. I do not know the number I will appear on your screen since my machine is not working. In the morning I did not get the document and now it is the machine.

The Speaker (Hon. Ethuro): Sen. Omondi your name is here. If your machine is not working at the appointed hour you will be facilitated.

Sen. Billow: Mr. Speaker, Sir, five minutes *ni kidogo*. I have heard what my colleagues particularly those on the other side have said but with all due respect, I want to disagree and support this Bill.

I will give my reasons. First, many parts of the Bill including the one putting the requirements for degree for Members of Parliament and others I think is in order because we all know the role of Members of Parliament in oversight and legislation and that is why we have had serious problems in the last few years. Our oversight systems have collapsed particularly the National Assembly and that is why we are getting the kind of legislation that we always complain about.

I think this is a very good thing and I support. On the adequate time that has been given for the nomination, I think it is in order. On the polling stations, limited to 700 voters at most is a very good development because we have had challenges in some of our areas; where to get an extra polling station is always a challenge.

On the issue of the amendment to Section 19, in my view, there is nothing seriously wrong with this thing - politics aside. I come from Mandera County and I will give you examples of what happened to me in 2013. The actual Electronic Voter

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Identification Devices (EVIDS) came in the morning, having been delivered on the night before the election. In the morning, there was no time to charge the equipment, configure them and, therefore, in some of the polling constituencies they were not used at all.

Secondly, as we speak, there are constituencies such as Banisa and Mandera where to date there is no power connection even at the headquarters, forget about polling stations. Literally, in some of the constituencies, those EVIDS were not used at all since there was no time to configure them.

There was a 95 year old woman who left Eldoret to go and vote in Mandera because she wanted to vote for her people. She was not able to get her finger identified on the EVID. They tried four or five times without success. She started crying. They had to ask her to sit aside and for a few minutes she eventually had to plead and say: "If my finger is the one responsible for not allowing me to vote for the person I want, I want it to be cut off." It was not until later that they were able to reconfigure and she was able to use her finger. I think there are challenges in some of the areas, with all due respect. The concern we have like in any other election is that if it goes to a backup system whether manual or whatever, there is a risk of stealing of votes.

Mr. Speaker, Sir, in the same way that you are worried about stealing in a backup, there is also a possibility that votes can also be stolen when it is technologically driven or done through electronic transmission. The risk of theft is always there and not limited by technology. As we say in African tradition, one does not refuse to eat for fear of choking. We cannot say we will not have a backup system because we fear that it is going to be stolen.

The second thing which I think is important is that we are talking about a complementary system. It does not talk of manual and then there are the regulations that we will come up with and a provision for consultation by political parties on the regulations.

Mr. Speaker, Sir, the other issue that surprises me in this report is that it says very clearly - I want to be very quick on this - that in the submissions that were received, there were no views submitted with respect to Clause 19 which is the most contentious. You can read this report on page three of the minutes that have been done in this.

When you come to submissions by the Coalition for Reforms and Democracy (CORD) itself, apparently there is---

The Speaker (Hon. Ethuro): Your time is up. Let us have Sen. Hassan.

Sen. Hassan: Mr. Speaker, Sir, I think I am part of those six Members from CORD who decided to register a minority report. For the purposes of the records of this country, we decided to append this attachment.

With your direction, we decided to have public hearings which were not simply political aesthetics or relations for this Senate but they should have found that input into the very substance of this Bill.

The overwhelming majority of the petitioners; The Council of Governors, Kenya National Chamber of Commerce and Industry and everybody else across the board who gave opinions to this Act were overwhelmingly of the view that the electronic system must be backed by a technologically based system.

Mr. Speaker, Sir, for anybody to pretend that the people who came to present were simply talking about backup, all of them were saying that it was possible to have an electronic backup to an electronic system.

Secondly, is to just appreciate the history of this country which is replete with electoral theft. Two successive elections have been stolen and it is documented. So, for any person to come and have the pretention that a manual system can back up an electronic one is a person who does not appreciate the sanctity of the votes of the Kenyan people or what a free and fair election is for the stability of this country. The electronic system came to cure the manual. It is a contradiction for the manual system to be said to be the cure to the electronic system.

As we move forward to negotiate this Bill, it is important that Senators, regardless of political affiliations, when something is wrong, we must pronounce ourselves to it that it is wrong. Therefore, I urge my colleagues from the Jubilee coalition that this Bill in its manifestation, in its construction, in adherence to the Constitution, the potential of an election that is rigged portrays a potential conflict for this country. If there should be ever a dispute, if we should ever try to amend this Bill, then it must be done through negotiated process matching the similar way that the Joint Select Committee of Parliament decided to negotiate this Bill to ensure everybody was consulted in Parliament and outside Parliament.

Therefore, Mr. Speaker, Sir, I had so much preparedness today on the basis of the fact that we thought we would get ample time to prosecute the minority report but for the purposes of your own knowledge and record, I urge you all to read that Report because it speaks to a few issues that are fundamental. Let me tell Jubilee Government as I end – you know Jubilee is a self-proclaimed digital divide of the political space in Kenya. Just because Jubilee has failed over the last four years is not evidence that technology failed. Therefore, I want those proponents of the idea that technology fails to be sincere that the technology that fails is technology that can be backed, and repeated public opinion, the country watched, the media broadcast these things live and it is a denial for you to pretend that we did not support a backup system that is electronic, that everybody felt that the word complementary was ambiguous, that most of the comments that we received sought that section 44 (5) of the Election Laws (Amendment) Act of 2016 was sufficient to cure the issues of a backup system.

Therefore, Mr. Speaker, Sir, for anybody to come here with interpretations that somebody is going to have---

The Speaker (Hon. Ethuro): Your time is up. Sen. Wangari!

Sen. Wangari: Thank you, Mr. Speaker, Sir. I rise to support this Bill. There have been several myths out there that have been propagated through the media and other platforms that we wish to clarify.

First is that the only issue that is contained in this Bill is just Section 44 (a). In fact, there are many others that are positive. One that I relate with is the issue of solving of disputes after nominations. That is key; that we have a timeline. The issue of timelines that had been proposed by the consumers and practitioners that include IEBC have been dealt with in this Bill. The contentious one like in section 44 (a), if you look at the minority report that is a product of the process that Sen. Hassan and colleagues were in and you look at page four, it says; “views were expressed that a backup system in the

event of failure must also be technology based. Whereas various IT experts expressed various opinions stating that only a manual system can backup an electronic system, we are guided and persuaded by the experts who advised that it is possible to backup an electronic system through technology based mechanism”.

Mr. Speaker, Sir, the reason I read that is that I also followed the submissions and as Sen. Kembi-Gitura said, only one person was proposing this kind of backup. More importantly, if you look at the submission by the Coalition for Reforms and Democracy (CORD) to the Joint Committee, the issue of possible failures and digital alternative; if you look at page 17 of the submission by CORD, they acknowledge that electronic systems may fail but recommend alternative digital backups rather than manual backups. If you read the second paragraph, they talked of ViaSat; database failures would have disaster recovery centers. You have so many polling stations in this country. I do not know how that is possible apart from being good on paper.

More importantly is the implementation of what has been recommended. Section 44 (a) has been misinterpreted. We are in agreement that a backup is required. The issue of a spare wheel as stated by Sen. Kagwe; it is now about if it is a Michelin or a firestone. I have listened to comparisons by Sen. Orengo of Section 2 (a). The freedom of expression that is in this country cannot be compared to the time that Section 2 (a) was amended. We have given such space that people can insult the President and get away with it.

I want to allude to one Bill that was brought by Hon. Millie Odhiambo to this House of Intro-Vitro Fertilization. Is Intro-Vitro Fertilization the first way to conceive? It is not the primary way to conceive. If it fails, I seconded that Bill because I believed if it the primary one does not work, then you can use another way to backup. There cannot be two definitions of complementary. It is adding value to a system that is there; it can only be in addition. So, I want to support and hope that we can be able to push and tell Kenyans the truth. We cannot get another definition of democracy. We do not define democracy with majority and minority when you are in the minority. When you are in the majority which can happen sometime, you now back the definition of democracy.

Mr. Speaker, Sir, let us tell Kenyans the truth and be genuine. We cannot be defending and debating in this Floor and before we exit that door, we have a case in court. It is dishonest. That trust that they seek from us can only be two way. You cannot say we debate the issue of procedures and you go to court before we even finish that debate. It is dishonest and hypocritical. I support.

Sen. Omondi: Thank you, Mr. Speaker, Sir, for allowing me to make my contribution to this Bill. As I make my contribution, I want to start by opposing the Bill.

(Loud consultations)

Mr. Speaker, Sir, can you protect me from Members consulting loudly?

From the beginning, I said I oppose this amendment because I must listen to the voice of Kenyans who entrusted me to be in this House to represent them. This Bill is reducing the power given to Kenyans by the Constitution to make a decision during elections, to make choices and to speak. I want to say that the Jubilee government was digital from the beginning as they said. I do not see the reason why they should look for

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analogue procedures unless they have something behind. I want to say that we are disappointed. The Jubilee Government has failed and it is continuing to fail by forcing laws through tyranny of numbers.

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Sen. Omar! Proceed, Sen. Omondi.

Sen. Omondi: Mr. Speaker, Sir, we disagree to agree but if we have to agree, we must agree on something that will help Kenyans and not our personal interests. We must come out of self interest, selfishness and respect the rule of law and Kenyans. If we do not agree in this House, I want to request my fellow Senators that we give it back to Kenyans to rule on what they feel is workable for them. Kenyans have been giving feedback to us and every Kenyan is against this Bill. Everybody in the country is not happy about what is happening. They have condemned what the National Assembly did. We forget about the people we represent and we feel like we are representing ourselves. We should not forget about the people we represent.

Mr. Speaker, Sir, Kenyans are tired of the character of imposing things that are impossible to them. This evening, I want it to go on record that if we vote for this Bill, we will be welcoming a lot of issues in this country and I do not want to be part and parcel of the messes that come in this country. However, I want history to judge me correctly that I did my part. This Bill should be dropped and if we have to be forced by tyranny of numbers from the beginning---

The way things have been moving, it is like my fellow Senators from the other side came with a fixed mind; they are only voting to pass this Bill. I want to remind them that as they vote to pass this Bill, we are almost going for elections. I will ask Kenyans not to vote for them but send them home because after being given opportunity to be here to make laws that are friendly to Kenyans, they want to forget that they are here because of Kenyans.

Mr. Speaker, Sir, if this Bill will be voted for, I want to ask Kenyans to be on the watch out for whoever voted for it to be send home.

With those remarks, I oppose.

Sen. Melly: Mr. Speaker, Sir, thank you for giving me this opportunity. From the outset, I want to give an example of what Sen. (Prof.) Anyang'-Nyong'o said. The Senator for Kisumu said that he is able to watch Manchester United play Liverpool while at his home in Kisumu and that is only possible through technology. Sen. (Prof.) Anyang'-Nyong'o said that he can watch Liverpool play Manchester United in Kisumu through technology which I agree. However, the electric power could go off in Kisumu but he could be able to watch the same football if he has a solar panel or a generator.

Mr. Speaker, Sir, what we are bringing up here is the issue of the backup. The first issue – I want Members to be informed – is that the actual voting processes and counting will be manual. That is something we need to understand. The other issue is that technology will be limited to registration, identification and transmission of results. Technology will not be used concurrently with the backup. This is will come at the time when the system fails and you have no option.

Today, if you are in a tall building, in case of fire, the lifts may not be helpful. That is why every tall building has a staircase and a lift at the same time. When the lift fails, you have the second option to save your life through the staircase. We should understand that.

The other issue is that complementary backup is not manual. There is no where it has been mentioned that complementary backup will be manual as said by Members of the Opposition. The IEBC will develop the regulations and this House will have the opportunity to go through them and make their comments. So, Members should understand that when we talk of “complementary backup”, we do not mean “manual.”

Mr. Speaker, Sir, if you read the same Bill, it says that the commission shall, in consultation with the relevant agencies, institutions and stakeholders, make regulations which will be tabled in this House. To me, the issue we are dealing with is not the technical issue. What we are saying is that we need a backup. In case the system fails, we will have a system in place that could replace the same system and ensure that the process continues.

As I conclude, let me make this comment. Members of the Opposition, who are Members of CORD, should understand this. However, I think they also have information from their bosses to reject this Bill not basically for purposes of the contents because there is nothing technical. Even a student who just finished Form Four can understand that when power goes off and you have a backup, you are able to continue with a process. If elections happen today and there is failure of power, considering that a number of people have not voted, you cannot tell us to stop the voting because we refused to have a backup.

Mr. Speaker, Sir, to my understanding, this issue is just clear. Members should allow us to pass it even if they have the information that they should not pass this Bill. For the sake of this country and the leadership of this House which we have maintained all this time, I want to persuade them to join us in ensuring that we pass this Bill for the sake of this country.

Mr. Speaker, Sir, I thank you.

Sen. Khaniri: Mr. Speaker, Sir, I thank you for the opportunity. From the outset, let me say that just as I had appealed earlier for sobriety, as we move to voting on this particular Bill, I appeal for sobriety. This House has demonstrated to Kenyans that it is a House of reason and a House that has upheld the rule of law. We should rise to the occasion, particularly this time round.

Mr. Speaker, Sir, the laws that we debate have the ability to make or break this country. An election in any country is an extremely important exercise that cannot be taken for granted. We must ensure that we put in place laws and regulations that will ensure free and fair elections. I have always seen the President on the television talking about peaceful elections. You cannot have peaceful elections if they are not free and fair. The beginning point is free and fair elections.

Mr. Speaker, Sir, I have not understood why the Jubilee administration is hell-bent on pushing these laws down the throats of Kenyans. Even when there is a lot of hue and cry or a lot of outcry from Kenyans, they still insist that the laws must be pushed down their throats. Laws governing elections must be debated. There must be consultations and if possible consensus because the country belongs to all of us.

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Mr. Speaker, Sir, I know for sure that the Jubilee government fears the next election because they have performed dismally and they know that they are going to lose. The passage of these particular rules is their lifeline. Without this, they are sure of going home and that is why they insist on these rules.

Mr. Speaker, Sir, this is bad law---

Sen. Mugo: On a point of order, Mr. Speaker, Sir. Is the Senator in order to mislead this House and Kenyans? When you follow all the surveys that have been done, the President has always been on top. In the last survey that was done by the University of Nairobi, the President had 55 per cent against 35 per cent. Why do you mislead Kenyans?

The Speaker (Hon. Ethuro): Order, Senator, you have put your case.

Sen. Khaniri: Mr. Speaker, Sir, I will refer the gracious lady, my big sister, to talk to Hillary Clinton about surveys and polls.

(Laughter)

We want to bring an end to the idea of ghost voting, dead people voting and the idea of people voting twice. In the last elections, there was a constituency that had total turn out of voters. The President got 51,000 votes. This is the rigging we are talking about. Elections in 2007 were rigged. We know that. We have evidence. It came out even in the hearings that were happening in the Wako Committee. It is now coming out. Elections in 2013 were rigged. It will come out. You cannot hide this forever.

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

Sen. Wamatangi: Mr. Speaker, Sir, with due respect to the Senator for Vihiga, this being a House of rules which we have had to uphold, is it in order for him to continue, in more than three occasions, to make allegations that one can only describe as maybe, fairly unfounded but if he continues to insist that elections in 2007 were rigged, he has no evidence that he has tabled and nothing to prove that, then he goes to another and says that the 2013 election was also rigged yet he has no prove. That is why I said he started with an unfounded claim but then we went wild in the course. Is he in order to mislead the House? He is one of the sticklers for rules in this country.

The Speaker (Hon. Ethuro): Order, you have challenged him.

Sen. Khaniri, your time is up!

Proceed, Sen. Murungi.

Sen. Murungi: Mr. Speaker, Sir, first, I would like the House to know that Sen. Orengo and the Minority Leader, Sen. Moses are my very good friends. However, I am not in this House to please them. I am not in this House courtesy of Sen. Orengo or Sen. Wetangula. I am here as an independent Senator; a Jubilee Senator. I am not here to please CORD.

Therefore, to their great disappointment, I will support this Bill. I am very sorry for you, my friends, but I am supporting this Bill. It is true that we have been involved in this struggle for democracy and constitutional reform in this country for very many years. We have fought very many street battles together. The Minority Leader was in KANU when these street battles were being fought. We were fighting with Sen. James Orengo a very harsh dictatorship which the Minority Leader was supporting. Once there was

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democracy in the country, we had an occasion to serve in Government with the two of them.

The Speaker (Hon. Ethuro): What is your point of order, Sen. Wetangula?

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Is it in order for the distinguished Senator for Meru, whom we have also recognised as a king, who is staring at embarrassment and humiliation by his turncoat behaviour to turn the debate into discussing me instead of justifying the unjustifiable that he has done in the Committee; of abandoning a very good work that he did with Sen. Orenge for which we put many feathers on his head in congratulations?

The Speaker (Hon. Ethuro): Order, Sen. Wetangula. I have mentioned in this House that you mention somebody adversely; he or she has the right to reply. You actually addressed him directly. To his credit, he did not challenge you then. Now, he has got the chance to do so. If there is somebody who has been picking on each and every Member, the credit goes to one, Sen. Moses Masika Wetangula.

Sen. Murungi: Mr. Speaker, Sir, one of the greatest leaders in this country, who we shall always remember is the late former Vice President, Kijana Wamalwa. He will go down in history for a very famous statement he made; that, good ideas must always give way to better ideas. It is true we developed a Bill for which we are congratulated all over Kenya.

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

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I did not want to interrupt Sen. Murungi but because he is repeating it, I will. The rules of this House are clear. If you mislead this House, you must apologise. Could he be asked to apologise for having mislead the House in supporting his Bill which he is currently opposing?

Sen. Murungi: Mr. Speaker, Sir, I am not opposing our Bill. There has been an addition. We are supporting the Bill that we will develop through the consensus process but we are fine tuning it. We are creating new layers of backup. In the old Bill we supported electronic backup to electronic voter identification and electronic transmission of results. What I am supporting now is that we have electronic voter identification and transmission system but we also have electronic backup and manual backup just to make sure that ---

The Speaker (Hon. Ethuro): your time is up, Sen. Murungi.

Proceed, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I rise to support this Bill. Jubilee has adopted the principle of hear no evil, speak no evil and see no evil. There is a pretense that we have no regulations on backup. The Committee on Legal Affairs and Human Rights under Section 45(5) has developed regulations on backup. So, the question of backup with the manual or otherwise is a creation and propaganda. I will just read one of them.

Clause 25(c) proposes as follows:-

“Maintain such physical documentation records to enable reconstruction of the information in the event of data loss during transmission or disaster”.

The argument on backup is fallacious.

Secondly, I am extremely disappointed that my colleagues on the other side have abdicated responsibilities by denying the Senate its role in regulations and on boundaries.

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I was always of the view that the Jubilee Coalition was sabotaging devolution and the Senate, and now I can confirm that. We will publish your records so that if this Senate is to be blamed for the laws that we have not passed, it is because of you. When it came to our kitty, your colleagues in the National Assembly looked for one clause and nullified those regulations. Senators from the Jubilee side were crying more than the bereaved. Now, when they bring the badly drafted law, you are all agreeing to it. Shame on you!

Thirdly, there is something---

Sen. Sang: On a point of order, Mr. Speaker, Sir. Is Sen. Mutula Kilonzo Jnr. in order to say that Jubilee Senators were crying more than the bereaved when the regulations on oversight were rejected by the National Assembly? Does he mean that the bereaved, in that case, were CORD?

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, allow me to ignore Sen. Sang, because the gentleman does not inspire my intellect.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Proceed, Sen. Mutula Kilonzo Jnr.

(Sen. Murkomen spoke off record)

Order, Sen. Murkomen. I gave you the chance, but you were just consulting. You are completely out of order. This is not your House to speak at will.

Proceed, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, the third point is that---

(Loud Consultations)

The Speaker (Hon. Ethuro): Order, Senators. Sen. Sang has already challenged him on that.

Proceed, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, the technology business is an attempt by Jubilee to hide a clause, so that they can dip into the public coffers for purposes of nominations, yet the Constitution is clear that we shall pass laws that will restrict the use of public resources for political parties. While we are concentrating on the real things, Jubilee is preparing to have another 'tenderpreneurship' on elections.

Fourth, we have a technical committee already in place under these rules, which includes the Attorney-General who has disappointed all of us who looked up to him. He should have advised the Independent Electoral and Boundaries Commission (IEBC).

Fifth, some of the amendments here seek to amend clauses that do not exist. An honest person would say "no" to them, because those proposals do not exist, but my colleagues have voted 'yes' to amendment of clauses that do not exist.

The Speaker (Hon. Ethuro): Your time is up.

Sen. Emma Mbura.

Sen. Mbura: Asante Bw. Spika kwa nafasi hii. Kwanza nataka kupongeza Seneti kwa kuonyesha hekima na utu kwa nchi nzima ya Kenya. Seneti ilionyesha kwamba ni tofauti na mabunge yote nchini.

Naunga mkono marekebisho katika Mswada huu. Nataka kutoa mfano wa uchaguzi uliopita katika nchini Marekani. Tulitazama katika runinga, tukasikia kwa redio na kusoma kwa mitandao ya kijamii vile Wamarekani walilalamika kuhusu upigaji wa kura. Kuna wale waliolalamika ya kwamba walipokuwa wanapigia Bi. Clinton kura kwa kuweka kidole, kura tatu zilienda kwa Bw. Donald Trump. Hayo ni mambo dhahiri ambayo yanafanyika. Tukubali au tukatae, Ukweli ni kwamba yanafanyika. Tuko hapa kuhakikisha kwamba hatutapatikana na mambo kama haya.

Bw. Spika, hakuna chombo chochote kilichotengezwa na mwanadamu ambacho ni kamili, kiwe juu ya hewa au majini. Chochote kinachotengenezwa na mwanadamu huwa si kamili na ni lazima tujitayarisha. Je, kukiwa na kasoro tutatumia mbinu gani? Ndugu zetu katika upinzani wamekataa jambo hilo lakini ndani ya mioyo yao wanakubali.

Mfano mzuri ni kwamba kuna baadhi ya watu nchini ambao wakiwa kwenye vilabu wanahakikisha kwamba wana glasi tatu na simu nne. Hayo mnayakubali kwa sababu simu moja isipofanya kazi, zile tatu zitawaokoa.

Bw. Spika, tutayakataa haya yote lakini ukweli ni kwamba ni lazima tuwe na kitu kingine ambacho kitatusaidia wakati kutakapotokea matatizo.

Kwa hayo machache naunga mkono. Msione haya kuupigia debe Mswada huu.

Sen. Musila: Mr. Speaker, Sir, I thank you for giving me this opportunity. I oppose this Bill for a few reasons. One, the law which is proposed to be amended was a product of negotiation by a Joint Committee. You were on that Chair when you ruled that not even a comma should be inserted in amending the Bill.

Mr. Speaker, Sir, only a few weeks after the law was assented to, we woke up in the morning to find the police barricading Parliament, and when we asked why, we were told that there was a Special Sitting of the National Assembly to amend that law, in a partisan manner. This was an act of intimidation, which should not be allowed in this country at this time.

Our argument on this side of the House is that since the Bill in question is a product of negotiations in a bipartisan manner, it follows, therefore, that if ever the need to amend any part of the law was necessary, the matter should have been referred to the same Committee, negotiated and agreed upon.

Mr. Speaker, Sir, some of us have been around for many years. I want to tell this House that every election since Independence has been marred by allegations of rigging. This explains why, in the wisdom of the Joint Committee, they chose to put electronic voting as a requisite for getting rid of this primitive practice.

The Electronic Voter Identification Device (EVID) does not need any network as it has been argued. I understand that if the battery is charged, it last for eight hours and does not require any backup. More so, even the Results Transmission System (RTS) requires network, but where there is no network, satellites exist. In fact, IEBC has hundreds of satellite phones for this purpose.

I want to submit that going manual in this election is a recipe for chaos in this country. This chaos may even be more serious than the ones we witnessed in 2007. Why should we revert to manual voting at this point in time? The Kriegler Report which has been referred to here, identified manual voting as the cause of the violence that we witnessed in 2007 which almost brought this country to civil war.

As I conclude, Mr. Speaker, Sir, the integrity of a voter register is very important in any election. It is critical that we ensure that the register that we have is done electronically. Any identification of the registered voter should be done electronically. This integrity will be lacking if we turn to manual. Let us join other civilized nations in going electronic and ensuring that there is no rigging.

We want a system where losers will go home, gracefully concede defeat. Those who win will go home confident, knowing that they have the backing of the majority of Kenyans unlike other times where we have always had allegations of rigging here and there.

For this reason, the only way we can ensure free and fair elections, is to refuse to accept this amendment which I strongly oppose.

Sen. Mugo: Thank you, Mr. Speaker, Sir, for giving me the opportunity to contribute to this Bill which I support.

The other side keeps on repeating that Jubilee wants to revert back to manual. However, it has been clearly explained that a back-up does not mean reversing. It is only to make sure that everybody who has a right to vote, votes in case where a machine does not work. Looking at the internet, there are many instances of countries where this method has been used, but the machines did not work. The things they cite are very similar to here. They talk of dirty hands thus the print does not come through. We know that the rural folks come from the shamba and go straight to vote. It is the same thing for the mechanics and the mama mbogas who rush to vote. They will not have time to clean their fingers. There will, therefore, be a lot of rejection of the finger prints. Therefore, we will be denying a chance to the people who are meant to vote.

Jubilee is supporting this Bill because if you are held responsible to run the country, you must also make sure elections are run properly. You do not want to hear that the elections have failed in the middle of the elections and then there will be more chaos than ever. In your houses, you have a lamp or a torch in case electricity fails. They say the temperature and rain are things that can make the machines to fail. I urge you that we look at this as a way of making sure that we have credible elections where nobody is shut out. It is also known that some people who fix those machines can do a small thing somewhere and ruin that machine when they are installing it. You cannot say that machines are 100 per cent effective.

In the State of Virginia in April 2014, the Virginia Board of Elections voted to decertify voting machines used in over 30 counties. It cited security concerns. Edgardo who was in charge, Commissioner of the State Elections Department, said using the machines creates an acceptable risk to the integrity of the election process in the Commonwealth. You know the State of Virginia is referred to as Commonwealth. We just need to have integrity. You can rig with the machine or you can rig manually.

I was being rigged out in 2007. My 15,000 votes had been removed. It is the High Court that declared me a winner after three days of goons from Kibera not allowing my votes to be counted. The court added the 15,000 votes. Yes the courts, because the matter went to court. I was a Member of the Government, who was rigging me out? You should not say that Jubilee rigs. It is not Jubilee or PNU, there are many---

Sen. Ndiema: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is your point of order, Sen. Ndiema?

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Sen. Ndiema: Mr. Speaker, Sir, I have been pressing this machine since we started, but when I press it does not show. When I press it, it shows that it is on then it goes off. This technology is not working. We need a manual back-up. I wanted to talk, but it was not showing.

(Loud Consultations)

The Speaker (Hon. Ethuro): Order, Senators.

Sen. Moi: Thank you, Mr. Speaker, Sir. I will be extremely brief. The whole issue revolves around Clause 44. The issue is on what will happen should the system fail. Clause 44 says:-

“The Commission shall put in place a complementary mechanism for identification of voters.”

The issue is complementary. What is complementary?

When you say “manual”, there are others who understand manual to mean differently. For example, *huko kwetu nikujaribu kuvuta bhangi kwa* police station. No one wants to hear anything called manual. That is the issue. However, we have heard the term “complementary” from my colleagues who are in Jubilee. Sen. Melly and Sen. Lesuuda have said that “complementary” means and can mean electronic. So, which is which? Do you see?

We had hoped that the Committee would have clarified all these issues for us. They say in part of their observations that it is that establishment of a multi-layered system where the primary electoral system should be electronic and a back-up system should also be electronic. Only if it fails then, you go to manual. Do you see the doubts which you are creating here? The issue of a manual back-up is a myth to many of us and many of our constituents.

Jubilee have always said that they are digital. That is a fact and we are all part of that. However, we seem to be running away from digital and rushing to analogue. We say and it was said by Chairman Kiprono Kittony of the Chamber of Commerce that Nairobi or Kenya is the hub of technology. It is the Silicon Valley of Africa and yet we are trying to run away from it.

What is important is the clarification in the regulation and whether it will be done here and by us. Who will do it? Is it the Independent Electoral and Boundaries Commission (IEBC), and do we trust them?

Those are the issues which we should all understand as we are voting today. Watch my vote.

(Applause)

The Speaker (Hon. Ethuro): Sen. Sijeny.

Sen. Sijeny: Mr. Speaker, Sir, I wish to oppose this Bill because there is a lot of dishonesty. When the Cabinet Secretary (CS) Mr. Mucheru came, he told us that he was proposing and wants a manual backup. Now the Jubilee side is trying to run away from that and yet the people they have given the job are insisting on manual.

We heard from Mr. Macharia of *Royal Media*, who demonstrated how---

(Loud consultations)

Sen. Sijeny: Mr. Speaker, Sir, I need protection from Sen. Hassan.

Mr. Macharia demonstrated how elections are done. They have collected results for a long time ago. The President goes to most remote areas even Isiolo, yet it is broadcast.

It is, therefore, possible that technology can assist where there is no network or there is. It was demonstrated. We have just seen that CS Matiang'i has given results---

The Speaker (Hon. Ethuro): Conclude.

Sen. Sijeny: Mr. Speaker, Sir, like now, we have seen one leader who is one of the authors of this ill Bill trying to harass a certain community from their area and these are the places where if you put manual registers the ghost voters will be the ones chased away.

I, therefore, object and say that digital or electronic backup is the way to go and we should not be taken back and just pass unconstitutional Bills because we are in a hurry.

I oppose.

The Speaker (Hon. Ethuro): Order Members. That brings us to the end of the debate on the Second Reading.

(Loud Consultations)

Order, Senators. I did not say that all of you have spoken. I said that brings us to the end of the debate of Second Reading.

Hon. Senators: Point of Order!

The Speaker (Hon. Ethuro): Order, Members. We need to vote. May the Division Bell be rung for one minute.

(The Division Bell was rung)

The Speaker (Hon. Ethuro): Order, Members! Assume your seats. Draw the bar and close the door.

(Loud consultations)

Order, Members! Order! Assume your seats. Let us proceed with voting Members. What is it, Sen. Wetangula?

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. So far so good, we have debated this Bill very well and we do not want either through acts or omissions of anybody to end up badly and spoil the name of this House and individual Senators. As we go to vote, I want to request and urge you that this may look like an ordinary Bill but because of the consequences of its possible outcome, the side that I lead is requesting the Chair that those who are holding proxies for heads of delegations must, as has previously been demanded by your own deputy, the distinguished Senator for Murang'a County, whenever he was in the Chair when we were

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sitting in the Garage and County Hall, that it is not enough to come and say I have been designated to vote. You must produce a letter of appointment to vote on behalf of your delegation because we do not want a situation where undefined proxies want to determine the outcome of this debate for reasons that you do not need any rocket science to know.

Mr. Speaker, Sir, I urge you to deal with each and every proxy vote properly. We should see the accreditation from the head of delegation before we allow voters who are legitimate.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. This has been a very long process. We have patiently abided by the rules with only one objective; that we wanted to give this process credibility so that whatever comes out is accepted by all Kenyans.

Mr. Speaker, Sir, I respect you and you know it. But because of my longevity in this Parliament together with yours, there is no occasion where the Speaker has ordered for the Bell to be rung and when the time ends, the Speaker fails to call for the drawing of the Bars. Granted that the first attempt when the time ended, you did not call for the Bars to be drawn but then extended the time by one minute.

Mr. Speaker, Sir, we are disturbed because we have got hearing capacity that as you did so, there were Senators shouting to you to extend the time. That was Sen. Sang and Sen. Cheruiyot of Kericho. Because of that opportunity of time, Sen. Onchwangi came in panting and said that I have come with a letter.

(Loud consultations)

The Speaker (Hon. Ethuro): Order Members, let us hear the Member.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, had I been given an opportunity to speak, I would have said only one thing, that what we are witnessing now is not legislation or lawmaking but a deliberate attempt to give a license to some people to ruin our Republic of Kenya ad infinitum.

Mr. Speaker, Sir, if that is the route you want to take, you are forcing us. We will then have no option but go and test the product to the Kenyans, something the Senate wanted to avoid. Consider our concerns and please do not allow somebody to come in panting with a letter saying I have now arrived and then they say that is it. That is not the Republic of Kenya but something else.

Hon. Senators: Point of order!

The Speaker (Hon. Ethuro): Order, Members! I will not allow that one from Sen. (Dr.) Khalwale to go unchallenged. It is a very serious matter because he is invoking my Office.

Hon. Members, the Standing Orders are very clear. In fact, the initial request for the Division Bell, as we have always done, is to try to gain what the Members would like to. The initial request was for three minutes. I am the one who said that let us start with one minute. When there was another proposal for another two minutes, I said let us try another one more minute and we can continue that way. The only legal thing about it is in Standing Order No.74(2) which states that:-

“When the Speaker directs that an electronic vote be taken, the Division Bell shall be rung for not more than ten minutes and the Senate shall proceed to a vote at the expiry of the ten minutes, or such further time as the Speaker may, for the convenience of the Senate, direct.”

When the Speaker directs that an electronic vote be taken, the Division Bell shall be rung for not more than 10 minutes.

Sen. (Dr.) Khalwale, you can invoke your seniority if I exceeded 10 minutes. That is what the Standing Orders outlaw but anything within 10 minutes, we can continue doing it. More importantly Members, ---

(Loud consultations)

Order, Members! I do not want to lose my cool and neither do I want you to lose yours.

More importantly, when a Senator comes and charges as if I was privy to what was happening at the door, it is not only unfair but also unacceptable. There were Members to my left, right and everybody was talking. I was trying to get what was happening. So, there is no Standing Order that your Speaker has breached. Sen. (Dr.) Khalwale, you need to be fair to me. I appreciate that the number of speakers was a bit too much, you may not have got the chance; so, you are hitting at me. I understand.

Order, Members. On the point of order raised by Sen. Wetangula; that is a fair point of order. We have always done it. I do not know why you are remembering your history and not the most recent one which we have done in this Chamber.

What is it, Sen. Mong'are?

Sen. Okong'o: Mr. Speaker, Sir, when you gave the guidelines of this sitting, you said that this House can sit up to midnight. As we went on with the debate, you reduced the amount of time for Members to debate to one minute. It is only six heading to seven o'clock and some of us who are interested in this debate were not given the opportunity.

More importantly, I do not know whether you are aware that I have given a statement of intent to run for the presidency. I was much prepared to give my input. You mentioned that we were to go up to midnight; I did not understand the hurry in which we were to cut short the debate.

That notwithstanding, some of us have made decisions for this country. We will vote accordingly.

The Speaker (Hon. Ethuro): Order, Sen. Mong'are. In fact, the last time I heard about your presidential candidature was through contributions of some Members. As far as I am concerned, you are the Senator for Nyamira County; nothing more, nothing less.

Secondly, this is a Special Sitting. We deal with the business that has been gazetted. Part of that business had nothing to do with presidential announcements.

Thirdly and more importantly, in the morning sitting, I convened a meeting of political leadership which obviously you are aspiring to but not yet, and by leave of the House, we agreed on how to proceed. One of the agreements was that we will continue with the Second Reading until 6.30 p.m. We acted on that basis in order to go to the Committee of the Whole.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, it has come to our attention that there is a problem with one delegation. It is required under Standing Order No. 71(2) (a) that:-

“Each county delegation shall have one vote to be cast on behalf of the county by the head of the county delegation or, in the absence of the head of delegation by another Member designated by the head of the delegation”.

An unprecedented situation is in the Senate today, where there are two letters from one Delegation. A determination must be made as to how the vote will be cast. As we sit here we cannot determine whether one or both letters are properly signed by the person. I request that before we proceed to vote, a determination should be made about the vote for Kisii County. That vote is now held by two persons; one carrying a blue letter and the other carrying a yellow letter, purportedly signed by one person. We seek your directions because we do not want rigging in the Senate.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. I want to emphasize the point raised by Sen. Mutula Kilonzo Jnr. and speak to the Kisii Delegation. The Kisii Delegation, led by the distinguished Sen. Chris Obure, has always had Sen. Janet Ong’era carrying the proxy for the Delegation leader.

(Loud Consultations)

The Speaker (Hon. Ethuro): Order, Members.

The Senate Minority Leader (Sen. Wetangula): Sen. Cheruiyot, if you have a contrary view, the Speaker will give you time. You are too ‘new’ to shout at older people.

Mr. Speaker, Sir, Sen. Ong’era has a written letter from Sen. Chris Obure, the Senator for Kisii County. I have seen the letter that the Nominated Senator rushed in panting with. That letter does not revoke the appointment of Sen. Onge’ra as the proxy for the Delegation leader. If the Delegation from Kisii is being caused this embarrassment by their Delegation leader, by giving letters to two Senators, then we will look at his conduct. Between the Nominated Senator and Sen. Janet Ong’era, who attends the sittings of this House; who has been voting; who has been contributing; who has been consistent? That must be taken into account, otherwise, on the basis of that contradiction, the Kisii vote must be lost. We cannot have two proxies voting for one principal.

The Speaker (Hon. Ethuro): Conclude, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Even in ordinary voting when one votes twice, the vote does not count.

Sen. Orengo: Mr. Speaker, Sir, the point that has been raised by the Leader of Minority on the question of the Kisii Delegation is an important matter that you need to resolve. You need to resolve it in terms of Article 123 of the Constitution. Article 123(4)(a) deals with the discretion of the head of delegation while absent to designate somebody to vote on behalf of the delegation.

Article 123(4)(b) says:-

“The person who votes on behalf of a delegation shall determine whether or not to vote in support of, or against, the matter, after consulting other members of the delegation.”

The nominated Senator from Kisii cannot vote if he purports to want to vote without consulting with the other Members of the delegation from Kisii. He cannot do that according to the strict reading of the Constitution. You may need to consider that.

Secondly, there is the issue of “designation” as used in the Constitution. This Constitution wants a proper record. By dint of this Constitution, Presidential decisions cannot be recognized unless they are in a written form. You cannot create a precedence where in the middle of a debate, somebody walks with a letter from the streets and says that I have just been given a letter. A letter like that must be properly deposited in the office of the Clerk or in the office of the Speaker. It must be authenticated to prove whether the signatures are correct and to confirm with the Head of the Delegation.

Finally, the only other thing that I want to add is that in this institution called Parliament, there are some traditions which have never died. I know that Parliament is the only institution in the country which starts on time. Even in the KANU days, they used to start on time. When it comes to 6.30 p.m., it happens on time. When it comes to the ringing of the bell on Division, when we say ten minutes or less, it shall be those two or three minutes. There is no negotiating about one or two minutes. We are not in a little market, trading horses or cabbages.

I would want to appeal to you to keep this great tradition of Parliament like ringing of the bell. They may seem like ordinary, but they are part of a great tradition that keeps this institution to be what it is.

The Speaker (Hon. Ethuro): I will allow further contributions, but just like the intervention by Sen. (Dr.) Khalwale with due respect to senior counsel because I think he owes it to himself and to me in particular. I am not, by any stretch of the imagination mismanaging the timing. I have said the tradition in the particular manner of calling for the number, for the amount of time, for the division bell. I read what the Standing Orders say and you should be able to read. Let us not waste time on what we think are our opinions.

Let us agree on what is right and we just dismissing the matter. Therefore, to create an impression that we are bending rules for particular situations is unacceptable to me. That is just the way I deal with this business.

Sen. Sang. Sorry Sen. Kembi-Gitura. I think I have given you the chance before Sen. Sang.

Sen. Kembi-Gitura: Thank you very much, Mr. Speaker, Sir. This is an important point being made because it is true we have discussed the issue of designations over a long period of time. I want to believe that my colleagues who have talked about it from the Minority side have seen the letters of designation and that is the only reason that they have raised the issue.

(Loud Consultations)

Mr. Speaker, Sir, it is true that there are two letters but there is one which is later than the other one. We all listened to you and nobody talked when you were talking. Let us listen to each other because at the end of the day the Speaker is going to make a ruling on this. The point I am making is that, if you have seen those two letters which I have had

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the privilege of seeing, the second letter bears a later date than the first one and is specific to the instruction to vote on this specific Bill.

There is no ambiguity; it is talking about a specific bill being what we are dealing with. Therefore, if it is about designations let us do what we have always done. We have not questioned letters of designation but have always said that there must be a letter designating a member of the delegation to vote on behalf of the Member of the Delegation who is not there.

The fact that traditionally one person was designated and has not been designated this time for a specific task, that in my view settles the position which I think is a very easy one and one we can deal with without being intransigent because it is clear.

The Speaker (Hon. Ethuro): Sen. Sang.

Sen. Sang: Mr. Speaker, Sir, my specific contribution to this particular one was that I you look at Article 123(4) A, and I want to agree with Sen. Kembi-Gitura, it says:-

“Each County Delegation shall have one vote to be cast on behalf of the county by the head of the delegation or in the absence of the head of delegation by another member of the delegation designated by the head.”

I think that is important that the designation is by the head of the delegation.

Once you are presented with two - I know since in this House I am a Member of the Speaker's Panel – in this House we have Senators who have been given standing instructions to vote generally on all matters when the head of delegation is not there. However, on a matter as important as this, I am sure for a head of delegation to give specific instructions to a particular Member of the delegation, he had reasons for it since the letter by Sen. Onchwangi is a clear one speaking to this particular one. If tomorrow we have to vote on another matter, I am sure that Sen. Hosea Onchwangi will not appear with that particular one because it lapses with this voting.

Mr. Speaker, Sir, you must be cognizant that we agree this matter has been divisive and people have different positions but the head of delegation for Kisii county saw it fit that Sen. Ochwang'i - and I have no idea why the Senators are raising a lot of issues when the head of delegation has spoken clearly and given his communication. The position is as clear as it can be. It is very simple.

The Speaker (Hon. Ethuro): Hon. Members. Let me just see if you still want to proceed and I will allow you to. Let me just advise now.

This matter was raised by Sen. Mutula Kilonzo Jnr. and supported by Sen. Wetangula, Sen. (Dr.) Khalwale and Sen. Orenge. So, three for that side. From this side, only two have spoken to it. Do you really want to continue? They have a balance of one and so we will agree on two additional on each side.

Sen. Sang: Pardon.

The Speaker (Hon. Ethuro): Order, Sen. Sang. I am not responsible for your failure to listen. I had already discounted the third from this side and I was now looking for which other number we can agree additionally. So we agree on two from each side.

Let us have Sen. Billow to complete the third.

Sen. Billow: Thank you, Mr. Speaker, Sir. We must express our fidelity to the Constitution, both in spirit and letter. It is not just about the letter of this thing. I think the spirit of Article 123 is clear that with regards to the delegation, it is about a specific matter. That is what Article 123 (4) (b) says. So, where we have a letter in which the

person is authorized to vote for a specific matter, I do not think there is any ambiguity. That is what the Constitution says. It is about a specific matter. So, the delegation can only be voting for a specific matter. The fact that this Senator has that letter and the fact that it is the latest he got, it is important.

Secondly, Mr. Speaker, Sir, we must have judicial notice of what is going on in this country. Yes, Sen. Obure was a Member of CORD but we must have judicial notice of the fact that he has changed his allegiance and published it in all the public newspapers that he is now a member of Jubilee. He said so and it has been published. So, do not be surprised that he has now changed his letter from Sen. Janet Ong'era, an active Member of CORD, to his colleague on this side. So, you must have judicial that you are losing ground and it is a pity. So, you cannot blame us.

The Speaker (Hon. Ethuro): Let us have the two from this side; Sen. Hassan and Sen. Ongoro.

Sen. Hassan: Mr. Speaker, Sir, I was a bit obligated to speak on account of the remarks by Sen. Billow to come and justify a travesty of law telling us that Sen. Obure has shifted from the CORD Coalition to the Jubilee Coalition hence the consequence of his letter. So, I ask Sen. Billow to go and tell Sen. Obure to resign as a member of the CORD Coalition and face an election. We cannot allow this type of behavior on a very contentious matter that we have had here. We cannot allow people to go and forge letters as a matter of desperation to go and fetch somebody. In fact, the person running to this place was Sen. Onchwangi. Because the guy hardly attends Senate, you go fish him to come and vote and leave out a person who is outstanding in terms of the contribution that she has had to this Senate.

Mr. Speaker, Sir, we do not mind voting and losing but we mind that there is integrity in this House. This is one of the areas that enjoy enormous integrity; it is important that every vote counts in a manner that is proper.

The Speaker (Hon. Ethuro): Sen. (Eng.) Muriuki!

Sen. (Eng.) Muriuki: On a point of order, Mr. Speaker, Sir. I do not think we should spend so much time on the matter at hand. The intention is that each delegation of each county who would wish to vote is not left out. The designation of the Member to vote on behalf of the head of delegation as per the Constitution; the discretion is left with the head of delegation who is the elected member of that county.

Mr. Speaker, Sir, the reasons as to why Sen. Obure chose one Member or the other of the delegation in Kisii is not relevant. The issue is that he had one Member. For this particular Bill, he has given that authority to somebody else who is still a member of that delegation. That should stand and we should respect the wishes of Sen. Obure who has the discretion.

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

Sen. Ongoro: Thank you, Mr. Speaker, Sir. I still want to take us back to Standing Order No.71 (2) (a). It is true as it states that each county delegation shall have one vote to be cast on behalf of the county. Therefore, what is the spirit of this statement? It means the person voting as head of that delegation or on behalf of the head carries the aspirations and feelings of that county. I want to stand here to ask Sen. Onchwangi to prove if his voting card does not read Nairobi County. I do not understand whether he has the letter or not. If he truly carries the aspirations of the people of Kisii County, does he

understand how they want this way to go? Because of that, that letter given to him is null and void. We must give it to somebody who votes in Kisii, knows about Kisii politics and who understands the aspirations of the people of Kisii.

Sen. Kivuti: Mr. Speaker, Sir, I think we are unnecessarily pushing the matter too far. Sen. Obure is the determinant of the vote for Kisii delegation. I do not think that can be challenged. So, the decision of Sen. Obure, if anybody wants to challenge it here and now, it is like telling us--- I listened to Sen. Hassan trying to insinuate that they know how everybody in this House is going to vote. That is not correct. In fact, I will not be surprised if one of them on the other side may vote “yes” for the Motion. We shall say “*hallelujah*”.

(Sen. (Prof.) Anyang’-Nyong’o stood in his place)

The Speaker (Hon. Ethuro): Order, Member! We need to make progress. What makes you so sure that I am not coming to your point of order? I am just concerned when a whole professor; Sen. (Prof.) Anyang’-Nyong’o, a man of such standing, a political scientist par excellence decides to stand when lesser mortals are very obedient. So, let us agree on fairness; one, this matter, as far as I am concerned, I have enough information to dispose of it. If you feel you want to ventilate more, I will allow that also on only one condition; each of you to get one minute. I believe in debating a matter but there is also a limit.

Sen. (Prof.) Anyang’-Nyong’o, you have one minute!

Sen. (Prof.) Anyang’-Nyong’o: On a point of order, Mr. Speaker, Sir. Is it in order to assert at this moment, because that letter relates to this moment, that Sen. Obure is still carrying the responsibility of the delegation from Kisii when Sen. Billow has said that he has announced and abandoned the mandate he was given by the Kisii people on the ODM Party and has joined Jubilee? Constitutionally, is he still responsible for that delegation?

Secondly, Sen. Ongoro has said that we need to identify the credentials for Sen. Onchwangi. Is he a registered voter in Nairobi? Does he carry the responsibility of being part of the delegation? Is he part of the delegation of Kisii because he is a Kisii? That must be determined.

The Speaker (Hon. Ethuro): Order! Sen. Mbuvi!

Sen. Mbuvi: On a point of order, Mr. Speaker, Sir. Was it in order for Sen. Ongoro who falls under my delegation to mislead this House by telling us Sen. Onchwangi votes in Nairobi while I have consulted Sen. Onchwangi and he has handed over his voter’s card and I can even table his voter’s card? He is a voter of Kisii County, Kitutu Chache Constituency.

The Speaker (Hon. Ethuro): Order, Sen. Mbuvi! I have not asked for substantiation.

Sen. Mbuvi: Is she in order to mislead the House by saying that Sen. Onchwangi is a voter of Nairobi County?

The Speaker (Hon. Ethuro): That is fair enough.

Sen. Khaniri: Mr. Speaker, Sir, the Standing Order No.72 that Members are referring to which makes for this provision is also anchored in the Constitution.

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Mr. Speaker, Sir, I want to bring to your attention the provision of Article 123 of our Constitution and in particular subsection 4(a), (b) and (c).

Sen. Kagwe: On a point of order, Mr. Speaker, Sir. I have tremendous respect for Sen. Khaniri's knowledge.

Sen. Khaniri: I have not even said anything.

Sen. Kagwe: However, we have just gone through exactly the same part of the Constitution with Sen. Orengo. Is that not repetitive? Is it in order to go through exactly the same thing, over and over again?

Sen. Khaniri: Mr. Speaker, Sir, why is he panicking?

The Speaker (Hon. Ethuro): Order, Members, relax. Sen. Kagwe is not panicking. Sen. Khaniri, you have excelled in this particular matter. Repetitiveness is not allowed.

Sen. Khaniri: Mr. Speaker, Sir, I am not repeating anything.

The Speaker (Hon. Ethuro): Sen. Orengo, Sen. Mutula Kilonzo Jnr., and Sen. Wetangula said it.

Sen. Khaniri: I wanted to say what Sen. Orengo did not say.

The Speaker (Hon. Ethuro): Then say it and do not quote it to us. By the way, let me now guide you. All of us, particularly the Chair that you are directing your argument to, have the Constitution. Just make reference to the Section and I will read it for myself. You do not have to repeat it.

Sen. Khaniri: Thank you, Mr. Speaker, Sir. The particular section I want to bring to your attention is 2(b) and (c) which says that:-

“(b) the person who votes on behalf of a delegation shall determine whether or not to vote in support of or against the matter, after consulting the other members of the delegation; and

(c) the matter is carried only if it is supported by a majority of all the delegations.”

The Speaker (Hon. Ethuro): Order, Sen. Khaniri, which matter?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I do not want to be a victim of repetition. I just want to invite you to determine under Article 123(4)(b) - because I am sitting here with Sen. Ong'era - whether Sen. Ong'era has consulted or whether Sen. Onchwangi has consulted Sen. Ong'era as required by the Constitution before the proxy casts a vote. It is very clear that the person who votes on behalf of a delegation shall vote after consulting the other Members of the delegation.

Mr. Speaker, Sir, you are faced with two things. First, you have two proxy votes, each carrying a letter. The latter letter does not revoke the earlier letter. Secondly, the two Members of the delegation must consult as---

(Sen. Wetangula's microphone went off)

(Loud consultations)

The Speaker (Hon. Ethuro): Sen. Munyes.

Sen. Munyes: Mr. Speaker, Sir, thank you for allowing me the opportunity since morning. I wanted to say a word and I must thank you for giving me this last one. We

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need not to set a wrong precedent. It is the spirit of the Senator representing that region and we must respect him. He has appended his signature on a matter he thinks he is right and we must respect that as Members. Assuming I am away, does it mean that somebody cannot vote on behalf of Turkana? The Member has appended his signature on this matter.

Sen. Muthama: Mr. Speaker, Sir, thank you. I have been waiting for a chance just to say one thing. This House must read a great sinister motive coming from Sen. Obure. Sen. Obure was elected on the Orange Democratic Movement (ODM) ticket which is under the CORD. We cannot allow him to write a letter and give it to the opposing side. The party's position must be respected. It cost us time and everything to sponsor this man to be the Senator. So, nullify the vote.

Mr. Speaker, Sir, I warn him not to defile the country because the country cannot be defiled. We will stand firm and say "no"!

(Loud consultations)

The Speaker (Hon. Ethuro): order! Senators! That is the more reason the Division Bell should have been rung for 10 minutes, so that some of you should, maybe, have taken a cup of tea or coffee. I appreciate the energy levels must be getting down and, in the process, we are getting agitated.

Order, Members, remember we have taken time on such a straight forward matter. Let me dispose of it.

(Loud consultations)

Order, Members, you know you do not force people to talk. Sen. Cheruiyot, you have no responsibility over another Member here. It is strange that you are sitting where you usually do not sit but there is nothing wrong with that unusual occurrence. Be that as it may, Members, let us read this thing in a more sober manner without being collared by other considerations. So far, we have done very well.

Article 123 of the Constitution is about Decisions of the Senate. Article 123(1) states that:-

“On election, all the members of the Senate who were registered as voters in a particular county shall collectively constitute a single delegation for purposes of clause (4) and the member elected under Article 98 (1) (a) shall be the head of the delegation.”

The way we constitute our delegations is on the day you came to the Senate after the elections. If you changed your registration status by virtue of a new IEBC inviting you to move around and decide where you want to register, we will not stop you. You can move and register in another county but for purposes of voting in the Senate, that will be after the next election. For the current one, we will go by where you voted or were registered as a voter in the last general elections. That is on elections.

There is also something about “shall be the head of the delegation.” Article 98(1)(a) talks about the elected Senator being the head of the delegation. All the

nominated Senators are Members of the delegation. If we are very clear on that one, then we can proceed to (4). I hope you are reading others because they are equally important but I do not want to repeat because that is the same thing I have asked everybody to do. So, let us deal with the substantive issue.

Article 123(4) states that:-

“Except as provided otherwise in this Constitution, in any matter in the Senate affecting counties—

(a) each county delegation shall have one vote to be cast on behalf of the county by the head of the county delegation or, in the absence of the head of the delegation, by another member of the delegation designated by the head of the delegation;

(b) the person who votes on behalf of a delegation shall determine whether or not to vote in support of, or against, the matter, after consulting the other members of the delegation; and

(c) the matter is carried only if it is supported by a majority of all the delegations.”

In appreciating that provision, we undertook an administrative exercise, where we requested all the heads of delegations to indicate their designated Members who can vote on their behalf. The designation must come from the head of delegation. Just to give you a few examples, we have hon. Mike Gideon Mbuvi Kioko Sonko, EBS:-

- (1) Sen. Beth Mugo
- (2) Sen. Beatrice Elachi
- (3) Sen. Martha Wangari.

The head of delegation of Isiolo, Sen. (Dr.) Mohammed A. Kuti has nominated Sen. Fatuma A. Dullo.

The head of Kakamega County, Sen. (Dr.) Khalwale has appointed:-

- (a) Sen. Kanainza Nyongesa
- (b) Sen. Godliver Omondi

Being the head of Bungoma County Delegation hereby designates the following:-

- (a) Sen. Moses Wetangula
- (b) Sen. Moses Wetangula

I wonder how that happens in the absence of one, Sen. Moses Masika Wetangula.

The head of delegation for Kisii County; hon. Christopher M. Obure:-

- (a) Sen. Janet Ong’era
- (b) Sen. Hosea Onchwangi

So, the two of them are there.

The head of delegation, Henry ole Ndiema, Trans Nzoia County, has nominated:-

- (a) Sen. Catherine Mukiite
- (b) Sen. Zipporah Kittony

The head of Kwale County, Sen. Boy Juma Boy has nominated Sen. (Dr.) Agnes Zani.

So, I am sure we are all in agreement that the head of delegation for Kisii County is Sen. Chris Obure. He has nominated two. The issue that has generated debate is some two letters. As Sen. Mutula Kilonzo Jnr. who moved this clearly stated, one letter is blue, the other one is yellow.

Let us start with the yellow letter. It is dated 24th October, 2013. It reads: “This is to confirm that Sen. Janet Ong’era has the full authority in my absence to cast a vote on any Motion or Bill affecting counties on behalf of Kisii County.” She is already a member of the list.

The blue letter is dated 5th January, 2017. I am sure there is something significant about colours here. It states: “This is to inform you that if the Senate Special Sitings on 5th January, 2017 decide to go into Division on the Elections Laws (Amendment) (No.3) Bill, I have designated Sen. Hosea Onchwangi to vote on behalf of the Kisii County delegation”. This letter is more recent and more specific. Sen. Onchwangi is part of the county delegation already. On that basis, you will all agree with me that Sen. Chris Obure has validly nominated Sen. Hosea Onchwangi to vote on his behalf.

Order, Members. On part (b), the person who votes on behalf of a delegation shall determine whether or not to vote in support of or against the matter after consulting the other members of the delegation.

First, we have not started voting. So, you cannot impose the burden on Sen. Onchwangi to consult before. In fact, the only person – and I give him credit – who pronounced himself on the Floor of this House as having consulted the rest of his delegation in one instance which I remember, there could be more, and definitely not less, was the Senator for Kakamega who said, after consulting my delegation – he did not specify the delegation but I take it as part of the Members of his delegation. At least he appreciated that concept. None of you has done it the way Sen. (Dr.) Khalwale has done.

(Loud consultations)

Order, Members! I listen to all of you. Listen to me for once. The form in which the consultations take place is not prescribed. It is encouraged. It must be done. It does not tell us, after the consultations should they agree or disagree and which position is taken. That one is left to whoever will vote. That is internal - the delegation agreeing on how to vote on a particular matter.

On 4(c), Sen. Khaniri, the guru of Standing Orders, here, for once, you missed the boat. It is talking about the famous number of 24 plus.

(Sen. Khaniri spoke off record)

Senator, how was I supposed to know? It was prosecuted and it must be responded to. I rest my case. It is so directed that Sen. Hosea Onchwangi is the designated person who votes on behalf of the Kisii delegation.

What is it, Sen. Orengo?

Sen. Orengo: On a point of order, Mr. Speaker, Sir. My point of order is on the question of consultation. You can remember this. Such an issue arose in the last Parliament when there was a decision which was made by the President then, hon. Kibaki, under circumstances where he was required to consult the Prime Minister. It was a matter which affected the business of Parliament. Former Speaker Marende gave a ruling defining and telling us what consultation was; a very long ruling. He said that consultation in the end must entail concurrence. It is not just meeting somebody and

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saying, I have talked to you. To put that matter to rest, that issue went to the High Court. Judge Musimba who is now a Judge of the Court of Appeal gave a very long ruling on the word “consultation.” In the manner in which it is used in the Constitution – you may remember that the Accord was part of the Constitution – he said the word consultation does not mean that you go and sit with somebody or meet him along the corridors and say, I have spoken to him. It must entail some concurrence between the two delegations. If there is no concurrence, then it means nothing. I think that is what the two rulings were saying.

So, could you recall that ruling by the Speaker? When former Speaker Marende made a considered ruling, it was used in the High Court on that matter.

The Speaker (Hon. Ethuro): Hon. Members, we need to make progress.

Proceed, Sen. Kagwe.

Sen. Kagwe: Mr. Speaker, Sir, not to belabour the point, but just to follow up from what Sen. Orenge has said. I am not repeating, but to further highlight Article 123(4)(b) which says that there will be consultation with other Members. Article 123(4)(c) states that it will be supported by a majority. It appears to me that there are three members of the Kisii delegation. Sen. Obure is the Head of it. It they are three members and he has written one letter and he has consulted with the one person that he has written to and Sen. Onchwangi is waiting to consult with Sen. Ong’era. Whichever way we look at it, even if we talk about this thing for a while, it will end up in the same place.

Considering that you have made a ruling, I would propose that we proceed on the matter.

The Speaker (Hon. Ethuro): Could we briefly hear from Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I do not want to cast any aspersions against anybody. These are very unique and exciting times. The signature of Sen. Obure on the standing letter that Sen. Ong’era has, has been tested because she has used it and it has been admissible. However, the letter in possession of Sen. Onchwangi has not been tested. The only person who would confirm that the signature is, indeed, his would be Sen. Obure.

I would beg you that in the absence of Sen. Obure to own that signature, we should revert to the signature that is already tested on the Kisii vote. Kenyans have been reported to forge signatures. It is important that without that decision that this is a bona fide signature of Sen. Obure, we reject the letter in the hands of Sen. Onchwangi.

(Loud consultations)

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, Thank you for giving me the Floor again.

Looking at these two letters, the structure of the earlier letter is addressed to the Speaker, giving Sen. Ong’era unlimited authority to vote in the absence of Sen. Obure. The unlimited authority remains in force even today. The letter is addressed to the Speaker, it is copied to the Clerk as is expected and it is also copied to Sen. Ong’era as is expected. A clear look at the signature in the yellow and blue letter clearly indicates that the signature in the blue letter is not the same as the one on the yellow letter.

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Secondly, the blue letter is not copied to the Clerk of the House and it is not copied even to Sen. Onchwangi himself---

Mr. Hassan: On a point of information, Mr. Speaker, Sir.

The Senate Minority Leader (Sen. Wetangula): Wait, Sen. Hassan.

It is not copied to any of the delegation members to enable them to arrive at how to consult as envisaged under the Constitution. So far, you have done very well in this House and we have no doubt that you will continue doing well. We shudder to get to a situation where a process of this level of contention gets wind assistance from a letter whose authentication we cannot vouch for.

Hon. Senators: On a point of order, Mr. Speaker, Sir.

The Senate Minority Leader (Sen. Wetangula): I am on a point of order!

On behalf of the side I lead, I want to demand to see the proxy nominations for other members of other delegations that will purport to vote on behalf of their delegations. This applies to the delegation from Isiolo and Samburu counties. We want to see clear appointment letters for them to be allowed to vote in this matter.

The importance of this matter---

The Speaker (Hon. Ethuro): Sen. Wetangula, please, conclude.

The Senate Minority Leader (Sen. Wetangula): I am finishing, Mr. Speaker, Sir.

The critical importance of this matter cannot be overemphasized. It is not usual that you preside over this House and you have these long protracted arguments. They are not for nothing. They are not because the Senate wants to be romantic in its dealings today. It is because we are faced with a matter of momentous effect on the country and we want to ensure that everything is done properly.

Finally, I want to urge you to nullify the Kisii vote and allow us to vote on this matter.

The Speaker (Hon. Ethuro): Let me allow, Sen. Murungi then Sen. (Prof.) Kindiki.

(The Several Hon. Senators stood up in their places)

Order, Senators! Assume your seats.

Sen. Murungi: Thank you Mr. Speaker, Sir. You have heard the Senate Minority Leader asking to see the letters from Isiolo and Samburu delegations. Why is he elevating himself to be the Speaker of this House? These delegations have voted before in this House. They write their letters to the Speaker. They do not write their letters to him. Who is he to ask that the letters be brought to him?

Sen. Onchwangi is already in the list of the two Senators appointed by Sen. Obure to represent the Kisii delegation in this House through a previous letter. Why do we doubt that a person who has previously been nominated cannot be given a specific mandate by the same Senator to come and vote in this Special Sitting?

I urge you to overrule all these points of order. You only gave me five minutes during the contribution that we were making on a very important Motion. You gave other Members one minute and we have spent more than half an hour on points of order. I beg you to stop this debate and let us proceed with the votes.

The Speaker (Hon. Ethuro): Could we briefly hear from Sen. (Prof.) Kindiki.

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The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, the Senate Leader of Minority has insinuated that the letter addressed to you nominating Sen. Hosea Onchwangi to vote on behalf of Kisii County has not been copied to the Clerk and to other persons.

Is he in order to make that allegation considering that nowhere is there a requirement that letters addressed to you must be copied to other people?

Secondly, the allegation by the Senate Leader of Minority that there is forgery is a very serious allegation to make, and it should not be taken as casually as he imagines. The Senate Minority Leader is not a handwriting expert. If he doubts the signature, there are ways of challenging the authenticity of documents, if there is an investigation as we have always done in this House and it is found that there is some fraud, the sanctions against any responsible person could follow.

However, this is a tactic of delaying debate where we waste one hour on points of order. This is not in order. I request the Chair to rule the Senate Minority Leader out of order.

The Speaker (Hon. Ethuro): Lastly, Sen. Okong'o, Sen. Kembi-Gitura and finally Sen. Wako. Let us make brief interventions.

Sen. Okong'o: Mr. Speaker, Sir, the rules of natural justice contemplates that when a Member of any House is adversely mentioned, he needs to be given time and opportunity to defend himself against those adverse allegations. I therefore, beseech you to allow the good Sen. Onchwangi to defend himself against all these allegations. That is the tradition in this House.

The Speaker (Hon. Ethuro): Sen. Kembi-Gitura.

Sen. Kembi-Gitura: Mr. Speaker, Sir, I have listened carefully to the intervention by my colleague, Sen. Wetangula. I would like to say only two things---

The Speaker (Hon. Ethuro): Order Senators. Whoever has my letters, they were picked from my place. Bring them to the Chair.

Proceed, Mr. Kembi-Gitura.

Sen. Kembi-Gitura: Mr. Speaker, Sir, the only thing I would like to say on what Sen. Wetangula said is that, in my very considered opinion, I know he is a very senior Member of Parliament, having been here for a long time.

I think in the first instance, he owes this House an apology for the reason that under Standing Order 100, he has imputed an extremely improper motive on a Member of this House; Sen. Onchwangi. This is because the bottom line of what Sen. Wetangula said is that the letter is a forgery. It has been said clearly, with the greatest respect, that Sen. Wetangula is not competent to talk about a forgery because he is not a handwriting expert.

More importantly, in my honest opinion, we are consuming our time for no reason at all because you have made a ruling on this issue, you are a *functus officio* and there is nothing more you can do about it.

Anybody who is aggrieved by that letter, we have the Privileges Act with us and if you should for the sake of argument prove anything other than what the Speaker has ruled based on those two letters, you know very well what route to take, but this is not the route. You cannot take this route because the Speaker has made a ruling and he cannot

change the ruling because he is not a handwriting expert and neither is Sen. Wetangula and we must have good faith.

I think Sen. Wetangula owes this House an apology because Sen. Onchwangi is a Member of this House and an improper motive has been imputed upon him.

Sen. Wako: Mr. Speaker, Sir, I think there is something wrong when we take so long on procedural matters, points of order and so on. We have spent more than one hour on this issue. A way must be found where we must put a closure to this thing.

Everything has been said and you can make a ruling. But before you make a ruling I just want to know, this Sen. Onchwangi, I have never heard his voice. Could he just stand up and talk so that I can hear his voice? He should tell us under what circumstances he received the letter. Was it in Nairobi since the letter is dated today and how has he travelled up to here and so on, so that we hear him and then we make a ruling and proceed?

The Speaker (Hon. Ethuro): Order, Members. We must make progress. I have already ruled on this matter and no additional information has been able to persuade me. As Sen. Murungi quoted the late Hon. Kijana Wamalwa who said:-

“I am always willing for a better idea to replace a good idea.”

For now, there is nothing and Sen. Onchwangi is the one responsible.

If there are doubts about the letter, for avoidance of doubt, Sen. Wetangula is not the one to admit documents in the House. It is the job of the Chair.

Secondly, he has no capacity, neither does the Chair, to determine whether this is a forgery or not, so that we will take to the investigatory agencies to determine. Meanwhile Sen. Onchwangi is voting. Let us continue with the vote. We will give it one minute.

Hon. Senators, voting is underway. Assume your seats unless you are approaching the table for manual voting.

Order, Senators! Only Senators voting manually should be at the Table.

(Several Senators consulted the Speaker)

Assume your seats. Read your Standing Orders before you engage in whatever you wish to do. Standing Order No. 80 (4) states:-

“During division, Senators shall maintain order in the Senate and shall be in their designated seats and shall remain seated until the result is announced.”

These are your Standing Orders and not mine.

DIVISION

ELECTRONIC VOTING

(Question, that the Election Laws (Amendment) (No. 3) Bill (National Assembly Bills No. 63 of 2015) be now Read a Second Time put and the Senate proceeded to vote by County Delegations)

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AYES: Sen. Adan, Isiolo County; Sen. Billow, Mandera County; Sen. Cheruiyot, Kericho County; Sen. Chiaba, Lamu County; Sen. (Dr.) G.G Kariuki, Laikipia County; Sen. Haji, Garissa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. Kembu-Gitura, Murang'a County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Moi, Baringo County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Murungi, Meru County; Sen. Onchwangi, Kisii County; Sen. Sang, Nandi County and Sen. Wamatangi, Kiambu County.

NOES: Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. M. Kajwang, Homa Bay County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Okong'o, Nyamira County; Sen. Orenge, Siaya County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

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

AYES: 24

NOES: 19

ABSENTIONS: Nil

(Question carried by 24 votes to 19)

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

(Applause)

You can now open the door and draw the bars.

(The doors were opened and the bars drawn)

Let us move on to the Next Order.

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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[The Chairperson (Sen. Kembi-Gitura) took the Chair]

THE ELECTION LAWS (AMENDMENT) (NO.3) BILL
(NATIONAL ASSEMBLY BILL NO 63 OF 2015)

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, we are now in the Committee of the Whole. Let us have some order. We will vote by Division and so, business is not yet finished.

(Sen. M. Kajwang spoke off record)

Sen. M. Kajwang, may I request that you have some order?

(Loud consultations)

Order, Senators, we need to make some progress. Sen. Mutula Kilonzo Jnr., these are mainly your amendments. So, we need to go through them.

Clause 3

(Question that Clause 3 be part of the Bill proposed)

Clause 4

Sen. Mutula Kilonzo Jnr.: Mr. Chairman, Sir, I beg to move:-
THAT Clause 4 of the Bill be amended by deleting paragraph (b).

Mr. Chairman, Sir, the said paragraph does not exist in the Elections Act and was put there inadvertently.

(Question of the amendment proposed)

Clauses 5 - 15

(Question that Clauses 5 – 15 be part of the Bill proposed)

Clause 16

Sen. Mutula Kilonzo Jnr.: Mr. Chairman, Sir, I beg to move:-
THAT the Bill be amended by deleting Clause 16.

Mr. Chairman, Sir, Clause 16 of the amendment reads as follows:-

“For the purpose of providing efficient and effective conduct of elections, the number of voters per polling station shall not exceed 700.”

Mr. Chairman, Sir, this Clause was inserted by error because the amendment that was done by the Joint Committee says: For the efficient and effective conduct of the elections, the commission shall determine the number of votes per polling station but such number shall not exceed 500.

Mr. Chairman, Sir, the Bill we have just passed has two figures in the law. There is Section 38 of the National Assembly Act which talks of 700 and Section 38(a) which is already in the law which provides for 500. I proposed to the Committee but they refused and said that this Clause is superfluous. Therefore, you have created confusion and I hope Senators will agree with this amendment.

(Question of the amendment proposed)

Clause 17

(Question that Clause 17 be part of the Bill proposed)

Clause 18

Sen. Mutula Kilonzo Jnr.: Mr. Chairman, Sir, I beg to move:-
THAT the Bill be amended by deleting Clause 18.

The amendment to Clause 18 is the one that introduces amendments to Section 44 of the Elections Act by deleting the timelines from eight months to 120 days for purposes of procurement. The advice we have is that if you allow procurement to be done four months to the general elections, you will have the same problem like in 2013.

Mr. Chairman, Sir, secondly, this was part of the political settlement that was agreed and signed into law by His Excellency the President. Thank you.

(Question of the amendment proposed)

Clause 19

Sen. Mutula Kilonzo Jnr.: Mr. Chairman, Sir, I beg to move:-
THAT the Bill be amended by deleting clause 19.

Mr. Chairman, Sir, from the Memorandum we have received, Section 44(a) is unnecessary because it is an amendment to the political settlement. It is also superfluous and a contradiction in law where you use the word “complementary”. “Complementary” is pairing, “notwithstanding” negative. That Clause is in conflict with Section 44. We have introduced a monster in this law

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Mr. Chairman, Sir. The amendment that Sen. Mutula Kilonzo Jnr. is proposing to this particular amendment is very important. My point of order regards the contradiction between the words “notwithstanding” and “complementary.”

The word “notwithstanding” negates the previous law because it means “in spite of.” For example, notwithstanding the evidence, the consensus that the jury will not reach

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a verdict--- Synonyms to this means; despite, in spite of, regardless of. Notwithstanding his workload, he is a dedicated father. It means in spite of or regardless of. So, if you disregard the Bill, how can you then say that you will pick something which is complementary? Therefore, in the amendment, the drafters made a drastic mistake of using a word that negates the law.

Secondly, “notwithstanding” can also mean nevertheless or in spite of this. For example, she tells us she is an intellectual notwithstanding she faces the future as and provided for as a beauty queen. So, the word “notwithstanding” is the mischief in this amendment. So, we cannot save it by saying that what we are introducing is complementary. The two are contradictory in terms.

So, Mr. Chairman, Sir, let us approach this thing very carefully. The best thing to do is to do away with this amendment because it negates the law that was beautifully made and it will cause a lot of problems in this country.

Mr. Chairman, Sir, let me assure you this. You are a lawyer but I am not, although I studied constitutional law. Let me assure you that if this thing is taken to court, it will not hold water. So, let us not prolong the debate. Let us eliminate this amendment at this stage and then continue. That is my plea to this House.

The Chairperson (Sen. Kembi-Gitura): I believe that I have proposed the question. Is it not?

(An hon. Senator spoke off record)

Sen. (Prof.) Anyang'-Nyong'o, that is the problem I was having. You rose on a point of order and not a point of debate. I do not recall that I had proposed the question. I was going to propose the question then we debate on that issue. So, just for the sake of good order, and if need be, I will allow you a second chance to speak but I want to be sure in my mind that I have proposed the question. So, I will propose the question.

(Question of the amendment proposed)

Sen. (Prof.) Anyang'-Nyong'o: Mr. Chairman, Sir, let me now rise properly and in line with procedure. Right from the time that I received this amendment, I have agonized. Why the drafters of this amendment, after it had been carefully crafted by the original select Committee, why they introduced this word “notwithstanding”; thinking that by using that word they are complementing the original law. That is why they went ahead to use the word, a complementary mechanism for identification. This amendment is not complementing the original law. It is negating the original law. It is overthrowing the original law. In English, in meaning and as a concept, notwithstanding the fact that I am standing here today, I am not here. Notwithstanding that the Bishop of Canterbury is the Bishop, is a heathen.

Mr. Chairman, Sir, you see what I mean in English. So, even in drafting law, you must use a language that is meaningful in the ordinary use of language. You cannot invent a word and use it to negate a law and insist that you are not. It does not work that way. So, this amendment to the law has caused so much mischief. That is one of the reasons why people have been finding it very difficult to believe what we are being told.

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In essence, what the IEBC will do is that they will say, the law tells us that notwithstanding the law that exists, we can do other things. They will be right. We do not want to give them that discretion by this House. This is a House of law makers and learned people. It is a House of people who speak proper English from the Oxford Dictionary and not concocted English from River Road.

So, let us stick to what we learnt in school. Let us stick to what is proper. Let us stick to what is in the HANSARD which we always record in a proper manner. Let us not concoct a language that will make it very difficult for us to discipline the IEBC. Therefore, I would like to accept the amendment and persuade us that the word “notwithstanding” has brought mischief to the law making that the two Senators made, and a Committee that did such a beautiful work.

Sen. Kagwe: Mr. Chairman, Sir, I appreciate the passion with which my former teacher, Sen. (Prof.) Anyang'-Nyong'o, is addressing the issue. In many legislations, “notwithstanding” is a very common word. However, if indeed, this matter is as grave as my friend, Sen. (Prof.) Anyang'-Nyong'o thinks, in good spirit, what we should do then, is we pass this law and once we have passed it and it has been signed, this is a very simple thing to change. Let us bring an amendment and change it because the problem is that the spirit of good faith is unfortunately not there.

Therefore, what I would propose in good faith is that let us pass the law and bring an amendment after the law has been passed to address that issue.

The Chairperson (Sen. Kembi-Gitura): What is your point of order, Sen. (Prof.) Anyang'-Nyong'o? You are on the Floor. I have no issue about that.

Hon. Senators, I have the screen. All of your names are reflected. I will call each of you for your contributions.

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Mr. Chairman, Sir. Is it in order for my dear friend, Sen. Kagwe to say that the bad faith is only from this side and that we should exercise good faith and believe him that when we pass the Bill into law, he will maintain good faith when he does not believe that good faith comes from this side? The thing is mutual. If indeed, you are saying that we do it in good faith, you should not at the same time, be expressing yourself and saying, there is no good faith. Then, how do we take your good faith?

The Chairperson (Sen. Kembi-Gitura): Sen. Kagwe, did you insinuate that?

Sen. Kagwe: Mr. Chairman, Sir, Sen. (Prof.) Anyang'-Nyong'o did not understand what I meant. Professor, I agree that the deficit in trust and good faith is on both sides. Therefore, it is by building that trust together that we can eventually resolve all the issues that we are raising in this House.

The Senate Minority Leader (Sen. Wetangula): Mr. Chairman, Sir, I strongly support Sen. Mutula Kilonzo Jnr. for the amendment he has moved to delete this Clause. This is the single most dangerous Clause in this law.

As we said earlier, this Clause will ignite unhelpful consequences to this country. Plain English, like professor says – when you want to draft a law to strengthen, fortify or expand the application of the law you are dealing with, you start by saying, “subject to this section.” Then you go on to say, “This section applies but the following situations will also apply.” That is why we always say “subject to section this and this.”

Mr. Chairperson, Sir, when you say, “notwithstanding this section,” it means you are overthrowing the section and supplanting something else. This is what this is doing; meaning that while Section 44 which was drafted after negotiations says that there will be biometric voter registration, electronic voter identification and electronic transmission of results, then you go and say, notwithstanding that, meaning keep away that, the IEBC can then put in place a complementary mechanism for identification of voters and transmission of results.

The deficit in this provision is that we have handed a *carte blanche* to the IEBC. This *carte blanche* will lead to what we saw in 2013, where after, the first two hours of voting, all the electronic equipment collapsed through human intervention. The voting went on manually. Dead people voted. Ghosts voted. Ballot stuffing took place and we ended up with what we now know.

Mr. Chairperson, if you drive a Toyota car, the complement you can give to a wheel of a Toyota car cannot be a tyre of a bicycle. The complement you give to a wheel of a Pajero cannot be a wheel of a motor-cycle. Lawyers like Sen. Murungi will appreciate it. It is *ejusdem generis*, which he, as a distinguished senior lawyer, knows. If the Committee acted *bona fides* in this matter, they would have said that you put in place a complementary electronic process, so that we do not give room to IEBC to collapse the system and go manual.

When your phone data collapses, the complimentary will be found in a similar electronic. You do not lose your telephone data and go to the old manual record and try to recover it. Whatever is complementing must be of the same nature. We have no problem with complements. However, we have problems of overthrowing the entire electronic system and bringing in something else.

There are many people with experience in this country. Our distinguished Sen. (Dr.) G.G. Kariuki has been a victim of election rigging. He knows this very well. You sit pretty thinking that things will work well, but you will be the one wailing on the streets tomorrow saying things have gone wrong.

It is an assault on our intellect from a very good friend the Senator of Nyeri County to stand here, look us in the eyes and purport to say that we pass it, we will amend. Why are we passing something that we will come back to amend. If we do not believe in it, we do not believe in it. There is no point in saying, pass it, we will amend it.

Ken. Kagwe: On a point of order, Mr. Chairperson, Sir.

The Chairperson (Sen. Kembi-Gitura): What is your point of order, Sen. Kagwe?

Sen. Kagwe: Mr. Chairman, Sir, I was expressing myself in very good faith to my very good friend about my opinion on how these things can be resolved. Is my friend, Sen. Wetangula, in order to keep on preaching such threats and telling people how they will kill each other? It is not right. Why not speak without constantly coming up with a threat.

Sen. Wetangula is a Presidential candidate who I respect. A Presidential candidate should speak to the positive that we will do whatever it is going to take to resolve the issues we have without anybody going to the street or anybody being harmed, no matter how big the challenge. Is the Presidential candidate in order to look defeated as if he cannot move forward, when he has the ability and might and intellect to do it?

The Senate Minority Leader (Sen. Wetangula): Mr. Chairman, Sir, it does appear that the Senator for Nyeri has a very fertile imagination. At no time did I say that people will kill each other and the HANSARD will bear me out. At no time did I say that people will go to the streets neither did I threaten anybody.

The Chairperson (Sen. Kembi-Gitura): I hear you, Sen. Wetangula. I think the point that Sen. Kagwe was making is that he is entitled to his opinion in the same way that everybody else is entitled to his own opinion.

The Senate Minority Leader (Sen. Wetangula): But he has gone on beyond the opinion---

The Chairperson (Sen. Kembi-Gitura): I think it is good that we respect other people's opinion. What is your point of order, Sen. Murungi?

Sen. Murungi: Thank you, Mr. Chairman Sir. We are on the Third Reading in the Committee stage. We will not have time for debate like in the Second Reading. Whereas I appreciate that the Senate Minority Leader has got his say on this matter, could he be conscious about time and be precise in the comments that he is making.

The Senate Minority Leader (Sen. Wetangula): Keep your peace. This matter is very important---

The Chairperson (Sen. Kembi-Gitura): I hear you, Sen. Murungi. Sen. Wetangula, I am not trying to stop you, but let us have an agreement on time so that we can finish. I have a very long list of requests for the Floor.

The Senate Minority Leader (Sen. Wetangula): I want to urge you, Mr. Chairman, Sir, to keep in mind the principle that; "time for man and not man for time". We have already visited this country on a matter that is not good. I was responding to the point of order by the Senator for Nyeri County, who obviously did not hear what I said. If he did, he did not understand. If he understood, he ignored what I said.

We must put this on record. This is a House of record. Those of us who want to vote quickly and go home are in the wrong place. You have one vote and the rest of us have votes. We have passed this matter at Second Reading. When they do not pass these clauses, they will not kill the Bill. We will send it to mediation so that this matter can be re-looked at. People can be wiser tomorrow than they were today and give this country a difference. That is what we are saying. It is okay; you have cast your vote on the first matter, but be open minded and ask yourself why are we overthrowing a section that everybody, including Kriegler said that it is the way to go in order to have a peaceful election?

There is nobody in this country who would want to see conflict. There is nobody in this country who would want to see people running on the streets. There is nobody in this country who would want to see policemen at every corner. That is not the country we would want. We want a country where when you go for elections, you believe in the integrity of the process, the equipment in place, those manning the equipment and, consequently, the integrity of the results. Hence my full support for the proposal by Sen. Mutula Kilonzo Jnr. and the team that prepared the minority report that we delete this Clause and go back to the *status quo ante*, where we were to allow IEBC to use equipment for the process.

My last point, just for purposes of emphasis; have we asked ourselves that if you go to register as a voter, there is no qualification. Registration of a voter is left to

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exclusively be biometric. However, the biometric that will be captured when you are registering as a voter, where will they go, can they not identify you when you go to vote? At registration, it captures the image of Sen. Njoroge. Therefore, at voting, it should be able to capture his image as well so that he can vote. We are not asking for too much. We are just asking for simple logic to be followed.

Why do you want to throw the use of biometrics in identification and not registration yet it is one and the same. It does not add up. This is what we are saying. We urge you our colleagues, this will not kill this Bill, it will simply take us to mediation and mediation may bring up something better to bring out a more tranquil environment for the next elections.

Sen. Sang: On a point of order, Mr. Chairperson, Sir.

The Chairperson (Sen. Kembi-Gitura): What is your point of order, Sen. Sang?

Sen. Sang: Mr. Chairman, Sir, I request that you give us guidance if it is possible because we are in the Committee of the Whole. In accordance with tradition, at this point, most of the issues have been canvassed in the Second Reading.

Looking at the time that we have and the number of amendments that have been proposed, I request that you give guidance if contributions by Members at this stage can be limited to two minutes. This is because most of the issues have already been canvassed in the Second Reading.

This is repetition. We are continuing to repeat the same thing. Even the Mover of the amendments voted against it at the Second Reading. We have all spoken to these issues. In the interest of time and looking at the time available, I request that you direct that every Member speaks for two minutes so that we can be able to conclude this matter within the time gazzetted.

The Chairperson (Sen. Kembi-Gitura): What is your point of order, Sen. Wako?

Sen. Wako: Mr. Chairperson, Sir, whereas I may agree that we are taking unduly long time in these minutes, this Committee Stage is very critical because we are the legislature and, therefore, it is at this stage where we scrutinize the various amendments in great detail to ensure that they comply with the Constitution.

Second Reading is barely arguments to and fro, but when it comes to the Committee Stage, it is when we want to ensure in detail that what we are approving is constitutional. Therefore, to me, people should not come here and say that although we may not like it, although it is unconstitutional, we must nevertheless just pass it and in good faith we shall look at it again after passing it.

Mr. Chairperson, Sir, it will be a great condemnation of the Senate to pass a provision of the law on the basis that we are aware it has its shortcomings but we should look at it after passing it. This is the time to do it. In fact, I would be quite embarrassed when he says that the matter has to go to court and on a clear Clause like this. The court says it is clearly unnecessary, unconstitutional, badly drafted, mischievous and so on when we actually knew that when we were passing it, but it was on the basis of good faith, we shall discuss after.

Why discuss after and not deal with it now and finalize it?

The Chairperson (Sen. Kembi-Gitura): Sen. Hassan, I know that this is about extension or not extending time. It is the matter on the table now. I will be suggesting that

we must have a time limit, otherwise, we shall be here the whole night and we have only until midnight maximum time. So, I will be asking that we reduce the talking time.

Sen. Hassan: Mr. Chairman, Sir, one of the greatest frustrations of this kinds of rushed types of Bills - I have lately been trying to read HANSARDS of former parliaments, if you mind me saying this - the debates and the research is so interesting.

Lately, it is saddening that for instance, Sen. Sang will propose shortening of time in the morning, then come again, he talks for 15 minutes and then comes again proposes the shortening of time at this point.

In future, we should understand that people need to speak to these types of Bills and therefore, you should bring them during the normal sittings and not during special sittings so that people can exhaust their points. There is so much research that people have had which has gone to waste.

The Chairperson (Sen. Kembi-Gitura): I hear you Sen. Hassan, but you appreciate that my hands are tied. This is a Special Sitting that is gazetted and not a matter that we can take to tomorrow. That is why I am requesting, not that I am not hearing you, that we agree to limit the time of debate. I do not know whether two minutes is sufficient. What is the proposal?

Let us do five minutes maximum.

(Hon. Senators responded in the affirmative)

Thank you for agreeing. Sen. Orengo.

Sen. Orengo: Mr. Chairperson, Sir, first, the difficulty is about what we are going through in respect of what Sen. Kagwe said; that we can pass and then come back. Election timelines are already---

If we keep on changing the law midstream, I think we are not going to have a very good election. Having said that, the provisions which are in that Clause which is supposed to introduce a new section 44A, the problem about it is that 44A being a self-contained Clause and is not part of section 44, the regulations that are being made under Section 44 would not relate to regulations that are going to be made under Section 44A and also those that are being made under Section 109.

The problem is that if you truly believe that 44A has nothing to do with manual or any other kind of system but a system which the Commission is going to determine, you cannot then have any regulations in respect of that Section 44A because Parliament has not given any authority for regulations to be made under that section 44A and that I think is going to cause a lot of problems.

Finally, I want to give an example, there was a time when women wanted to have the numbers of nominated women to be increased in the National Assembly. There was a lot of debate and when the draft came, it was clearly in the discussion and there is a report where it was agreed that there should be six women and six men and it was put there in black and white.

However, when it went to the draftsman, the draftsman said that the number should not be put in legislation but we should just put a general clause which says that there shall be 12 nominated Members who shall be nominated and appointed on the principle of gender equality.

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When the matter went to court and I was appearing for the Federation of Women Lawyers (FIDA), the court said that if the Legislature wanted to have six men and six women, it should have said so and they said that equality does not mean that you have six women and six men. That law which was supposed to empower women was thrown away and the presiding judge who was a lady said that it did not mean that.

So, when you talk to any draftsman, the drafting of this legislation is poor particularly when you use the word “notwithstanding”. That word means you disregard and I think Sen. (Prof.) Anyang-Nyong'o put it very well and I do not need to repeat. It means that you disregard Section 44. The word is already out there in the general understanding of the public and you know they are not stupid. Already what they have in the news is that the Senate has passed legislation that allows manual identification and transmission.

That is what is already there because the words are clear in the legislation. I, therefore, support very strongly the proposals made by Sen. Mutula Kilonzo Jnr, and say that it is not too late while we are in Committee to get some sense which we did not get during the Second Reading.

I support.

Sen. Billow: Mr. Chairman, Sir, I have the greatest respect for my friend, Sen. Mutula Kilonzo Jnr., but I want to disagree and I want Sen. (Prof.) Anyang'-Nyong'o to pay a bit of attention here because the definitions of complementary; there are two aspects of that clause that I think Members may have disregarded which will change the meaning of this completely. One is on the complementary aspect and the other is the bottom aspect of it. The word that you defined as complimentary is with an 'I'. The complementary used here with an 'e' has a completely different meaning. I want to read the Oxford Dictionary of what this complementary with an 'e' means. It says, it is combining in such a way as to enhance or emphasize the qualities of each other. In another definition, it also says that it is combining in such a way as to enhance. In other words, the complementary used here is not taken in its abstract meaning. It means that there has to be a system there for which you are introducing something to complement.

So, Mr. Chairman, Sir, it is not like you are disregarding what was there before. If this paragraph read that notwithstanding the provisions, a manual mechanism, then it is true. What they had said would make sense. But in this case, it says a complementary mechanism notwithstanding whatever is in Section 44, not a complementary. It means this mechanism is complementing what is there in Section 44. I think that point seems to have been disregarded in this Report.

The second point to say is on the last bit. Why are we introducing a complementary mechanism for identification? It concludes that it is to ensure that the Commission complies with the provisions of Article 38. Article 38 is about giving those Kenyans the right to vote. That right to vote is expounded further in Article 83 which says that there has to be administrative arrangements for registration of voters and the conduct of elections shall be designed to facilitate and shall not deny an eligible citizen the right to vote.

I gave examples here where if you do not provide for this exception, an old woman of 95 years was not able to vote and she requested for her finger to be chopped off because she did not want to lose an opportunity to vote. What is said here is that it

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complements an existing system. It is not excluding. That reading of exclusion is not there because the word here is different from what Professor had read.

The Chairperson (Sen. Kembi-Gitura): Sen. M. Kajwang! And to tell you the truth, I am going to reduce the time. I do not know whether you appreciate it but I am going to reduce time to three minutes in the first instance because, like Sen. Sang said, these are issues we debated in the main debate, where we had ample time to debate. This has to do only with a clarification, emphasis but we do not have the whole night. I am going to reduce it to three minutes. I think that is fair and reasonable. Thank you very much Sen. Wako for supporting that position. Sen. M. Kajwang, you have three minutes.

Sen. M. Kajwang: Mr. Chairman, Sir, I support this amendment that Clause 19 be deleted; that introduces Section 44 (a). The debate the whole day has been on semantics and on the definition of the word complimentary and notwithstanding. I am an ICT practitioner and I want to bring a technical angle to this. Section 44 (a) that is introduced in this Bill is unnecessary because what we are trying to achieve through Section 44 (a) can still be achieved with Section 44 (5) (i). When you were debating this matter, you alluded to it; that the Bill already provides an avenue for us to come up with regulations. The specific regulation that will cure the fear that we have that technology may fail is an operations continuity plan.

Mr. Chairman, Sir, from the tech world where I come from, operations continuity planning and management is a discipline. People get certified in it. There are at least three ISO standards that talk about business continuity management. From ISO 27001 to ISO 27005 and there is a third ISO standard on business continuity management. There is a British standard on the same subject. The Americans have a standard. The French have a standard. We are not telling the IEBC to reinvent the wheel. It is not rocket science. There are frameworks, methodologies and there are standards that IEBC can follow to ensure that we have got an operations continuity plan that takes into account the fears and concerns that Members have raised here. I want to plead with my colleagues that the political temperature has risen because of Section 44 (a). If we were discernible and more keen on this matter, we can achieve that through Section 44 (5) (i).

Mr. Chairman, Sir, if you go further to Section 44 (6), the regulations that IEBC comes up with would ordinarily go to the National Assembly. Section 44 (6) gives Senate the mandate of looking at regulations that relate to technology. So, this will not be a lost cause. I want to plead with my colleagues that we do not need to inflame the public any further by bringing Section 44 (a). Let us attempt to achieve this through delegated legislation and the relevant committees in the National Assembly and at the Senate, we look at this matter and we give IEBC an opportunity to come up with an operations continuity plan that is benchmarked on the best standards and benchmarked on the best frameworks available in the market.

Sen. Murungi: Thank you, Mr. Chairman, Sir. I agree with Sen. Billow that Section 44 (a) should not be read in isolation and a vacuum. It should be read in the total context and we should read the whole of it. The word 'notwithstanding' should also be read with the word 'complementary mechanisms'. In this context, the word notwithstanding could be understood to mean in addition to. So, in addition to what is provided in Section 44, the Commission will put in place complementary mechanism for identification of voters and transmission of election results. Again, that is the broader

context of Article 38. So, I think the fears which are expressed here, if you read this in the totality both of the Constitution and sections 44 and 44 (a), then this section makes sense. I do not think we should create a lot of emotions about a single word 'complementary'. It just means in addition. If you will Google as Sen. (Prof.) Anyang'-Nyong'o did, you will realize that those words fit the meaning of this sub-section. So, I plead with my colleagues – because it is clear – that we move on.

Sen. Ndiema: thank you, Mr. Chairman, Sir for the opportunity to say something. The issue that we are discussing here of a complementary, I think if it had been handled differently, we would not have had all this. Electronic systems fail and when they do not work, we may revert to the manual system. During the last elections, the electronic system refused to show my name until they went to the manual back up and they went to the Biometric Voter Register (BVR) and I finally voted after eight hours. I think the choice of the word "complementary" is what is bringing a problem. If we had put a word which says 'contingency' or even say 'contingency manual system', there would have been no problem. Why are we running away from addressing the facts? In my own understanding of complementary, it means they run together. This is likely to cause confusion. If it was a second tier way of sorting a situation, it would have been better. The way it is, some people may interpret that they will run together while others understand that it is for emergency cases. For electronic voting, you do not; it is a complementary because the Act as it is now provides for electronic. Even if you have to give back up for 10 times, it is allowed. So, I do not think what was meant there was electronic but manual.

Mr. Chairman, Sir, I am disappointed that the Committee did not arrive at a compromise that would have provided for manual system because in reality, electronics systems do fail. Even aircrafts fail. Even vehicles fail and we are forced to walk.

The Chairperson (Sen. Kembi-Gitura): Senator, your time is up.

Sen. Haji: Mr. Chairman, Sir, thank you for giving me this opportunity. I want to remind my colleagues that every time we sit in the Chamber or in a committee, we always say prayers. I do not intend to read the whole prayer but let me quote the section which says "we seek guidance to treat and consider all matters that shall come under our deliberation in so just and faithful a manner, as to advance the peace, prosperity and welfare of our country and of those whose interests You have committed to our charge."

If we are sincere to this prayer, I do not see the reason why my brothers and sisters on the other side insist on something which is not really tangible. We know that everything that is made by human beings is bound to fail and we have seen that many times. The technology that people are talking about is not the only solution to getting a proper and fair election.

Mr. Chairman, Sir, that reminds me of something in my community. If somebody is interested in your wife, even if you offer your daughter, he will not be satisfied and that is what I am seeing. If you read this Report, you will see that all the people who have expressed dissatisfaction on the issue of "complementary" are none other than those who from the outset were in the media and other platforms saying that they are not satisfied.

Mr. Chairman, Sir, I want to appeal to my brothers. We have been here since morning up to this time and we are repeating the same matter all the time. I want to caution people that they should stop reminding us about what happened in 2007 because

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that is an anticipation. For us leaders to anticipate that there will be trouble if a, b, c is not done---

(Sen. Haji's microphone went off)

The Chairperson (Sen. Kembi-Gitura): Sen. Haji, your time is up.

Sen. Madzayo: On a point of order.

The Chairperson (Sen. Kembi-Gitura): Sen. Madzayo, what is your point of order?

Sen. Madzayo: Mr. Chairman, Sir, I have a lot of respect for the distinguished Sen. Haji as my Mzee but---

The Chairperson (Sen. Kembi-Gitura): But it is too late. Do you want me to give you time to contribute when your chance comes? Now you cannot reply because time is up.

Sen. Madzayo: Okay.

The Chairperson (Sen. Kembi-Gitura): Thank you.

Sen. Hassan: Mr. Chairman, Sir, thank you for this opportunity. One of the reasons that we objected to this section is largely because of inputs we got from very many authorities who understand operationalization of law. These include the Law Society of Kenya (LSK), which you are a member to and the Committee of the Council of Governors (CoG) which is ably led by Governor Kivutha Kibwana. Allow me to quote some of the things they said. They said that the provision of the complementary mechanism to the proposed Section 44(a) created ambiguity in its interpretation of the definition. It was very specific in its implementation and negates the requirement of inclusivity of stakeholders while providing broad and unqualified discretion to the IEBC, hence leaving room for abuse.

Let me just make one particular comment. There is a book I like to read called *The Life of Reforms* where I get some of the inspirations. It says that the weak do not remain weak forever. Sometimes, my concern is not even just about the Jubilee Government. I have concerns with even ourselves coming to power. I want accountability across the board. When this men and women on this side are given excess power, they can abuse it in a manner. So, I hope that 2 or 10 years from now, we will be seeking to amend a law yet Raila Odinga or Moses Wetangula is standing here to stop you from that. You could be a weak opposition, sitting on this side and we will be laughing at you.

Do right when God the Almighty gives you the opportunity to. I do not believe that all those authority and legal practitioners came to this Senate to lie. I have memorandum after memorandum speaking to this subject about the unqualified and discriminatory nature and the creation of a complementary mechanism.

Today, I heard Sen. Orengo call out to Sen. Mugo. Sen. Mugo has been in the struggle for multipartism. I met her on the streets and she knows what it means to deal with dictatorships. Let us not---

(Sen. Hassan's microphone went off)

The Chairperson (Sen. Kembi-Gitura): Senator, time is up.

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Sen. Elachi: Mr. Chairman, Sir, while I agree with all, today Kenyans are waiting for us to give any alternative of what those who made presentations to the Committee wanted. People with disability presented and requested this Senate to ensure that we have backup of any kind. There are many lawyers and that is why we decided that all Members of the Committee should be lawyers.

Sen. Omondi: Point of information, Mr. Chairman, Sir.

The Chairperson (Sen. Kembi-Gitura): Do you want to be informed? Your time is running.

Sen. Elachi: No.

The Chairperson (Sen. Kembi-Gitura): Your time is running. If you do not want to be informed, proceed.

Sen. Elachi: The Committee in the Senate is full of lawyers but at the same time, in the interpretations you have given us, you have left us wondering ---

The Chairperson (Sen. Kembi-Gitura): Sen. Godliver, you have to make up your mind whether you are on a point of order or a point of information.

Proceed, Sen. Elachi.

Sen. Elachi: You have left us wondering whether Articles 83, 86 and 38 is the principle of any Kenyan who is eligible to vote ---

(Sen. Omondi spoke off record)

The Chairperson (Sen. Kembi-Gitura): Sen. Godliver, I am presiding. Order, Sen. Godliver! Just listen to me, please. You said you were on a point of information and Sen. Elachi said she does not want to be informed. How does it become a point of order?

Sen. Omondi: Mr. Chairman, I asked for another time to rise on a point of order.

The Chairperson (Sen. Kembi-Gitura): What is your point of order?

Sen. Omondi: Mr. Chairman, Sir, is Sen. Elachi in order to tell us that they mind about persons with disabilities when it comes now to voting while they do not mind about them getting Identity cards? Is she in order to mess us by pretending to have interest of persons with disabilities when in the real sense, they have not even bothered to get them identity cards? Is she in order?

The Chairperson (Sen. Kembi-Gitura): Sen. Godliver, that is a point of argument. I will allow you to argue it.

Proceed, Sen. Elachi.

Sen. Elachi: Mr. Chairman, I would like to repeat what I said. I said that persons with disabilities got an opportunity to present their views. Persons with disabilities have benefited from this Government.

Having said that, I would like to understand that since even the dissenting report gives an expression very well that indeed we need a backup system, is it fair for Kenyans to go to bed tonight knowing that this Senate could not give an alternative for 2017 election yet the Constitution is very clear. Article 38 or 83 states that one is eligible to vote. Is it fair for this Senate to do that to Kenyans today?

The Chairperson (Sen. Kembi-Gitura): You must allow me to reduce time further. With great respect to Sen. Mutula Kilonzo Jnr. who was in the Committee work with me – we know what time we went home last night – so, I will reduce time. I am not

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reducing time for the sake of it, it is because we are in Committee and we must finish our business. Whereas, I appreciate the gravity of this situation, it is imperative that we compact our argument because they are supplementary to what we had a chance to say during the day. I think that is acceptable. Is it not?

Thank you very much. We will make it two minutes. I have a full screen.

Proceed, Sen. Wako.

Sen. Wako: Mr. Chairman, I will not repeat what my colleagues have said about the ambiguity of this Clause but I just want to draw your attention to the fact that nearly all the people who presented all their views to us, including the Attorney General, the IEBC, LSK; in fact, all of them underline the importance of having this matter dealt with in depth under the regulations so that whatever ambiguities that may be there can be dealt with under the regulations in the same way that Ghana and Nigeria have dealt with this issue.

Part of the problem that we have under Clause 44(a) is, which regulation. No power has been given to make those regulations. The commission just decides. It could also do it under its general power under Section 109 of the Elections Act. When you talk about persons with disabilities under Section 109, the commission has a power to provide for regulations for the manner in which a voter with special needs, including, a person with disability may vote. We had very good presentations from the Association of Physically Disabled Persons. My view was that we ought to enable them, under these regulations, to make those powers under Section 44. We do not have those powers now. Under Section 44 because it says it is just not a commission to make regulations on their own; it imposes a duty on the commission to make regulations but in consultations with the stakeholders such as political parties, agencies ---

The Chairperson (Sen. Kembi-Gitura): Your time is up, Sen. Wako.

Proceed, Sen. Cheruiyot.

Sen. Cheruiyot: Thank you, Mr. Chairman, Sir, for giving me this chance, though with the two minutes I doubt if I can put across any important point other than just to say that when 50 per cent of the people that voted for me to come here wake up, they head to their fields to pluck tea. One of the effects of tea plucking is that it greatly disfigures your finger prints. I observed that in 2013 during the voting exercise that it was a big struggle to identify members of the society with the Electronic Voter Identification Devices (EVIDs). It is for this reason that I stood up and supported this inclusion of Clause 44(a) so that we have an alternative mechanism where we do not disenfranchise certain voters. Even if the Senate had not bothered or this law had not come to Parliament, some of us were considering going to the High Court because Section 38 of our Constitution is very clear about not putting unreasonable barriers to our people when they want to vote. For that reason, I support the inclusion.

Sen. (Dr.) Zani: Mr. Chairperson, Sir, the use of the word “complementary” is not as simple as we would like to believe it is. It creates a complication in terms of when exactly do we trigger in the complementary aspect. When do we realise that we need to turn to a complementary system? Whichever that system is, that sought of ambiguity will create a lot of problems at the election time. I do not know who will control, at what point, we will proceed with the previous arrangement of having BVR, EVID and RTS,

and where we will change to an alternative system. Unless that is very clear, we will have a lot of ambiguity.

Secondly, we have the whole issue of a commission that has been put in charge of this. One Senator has already said we do not have regulations. Also, it has been alluded to already that there are issues with the IEBC. I have been looking at the report from the Select Committee where the IEBC, in terms of competency, there were failures in 2013 as far as technology was concerned. There was failure to ensure that there were no multiple registers. There was also the failure to ensure that the staff were well trained and would work well. With all those levels of integrity, it creates a niche. We should move towards more about looking at a complimentary system in terms of making it better.

If you look at that report on the current status, even on BVR, how many they are, we should be thinking about how to enhance and make it better. We have already quoted countries such as Gambia, India and Philippines. India dealt with 1.33 billion voters. They gave that information within a very short time. It is all about ensuring that we have free and fair elections.

The Chairperson (Sen. Kembi-Gitura): Your time is up, Sen. (Dr.) Zani. Proceed, Sen. Madzayo.

Sen. Madzayo: Mr. Chairperson, Sir, great philosophers many years ago said that it is easier to destroy than build. We are at a historical moment and should all apply our minds to this. Allow me to refer to the late Prof. George Saitoti, the former Vice President. At Kasarani he said that, above all, Kenya is more important than anyone of us. Looking at Section 44, there is danger in so many ways. Unless we are very sure of what we want to put in place, we may find ourselves in a quagmire, because people who died many years ago may 'rise' from the dead, 'vote' and 'go back' to their graves. It is in that regard that we are saying that care must be exercised. We do not want to lose Kenyans through any bloody mayhem.

History has a lot of events and we cannot destroy our country because of this particular law that we want to introduce. I would urge us to apply better mind---

The Chairperson (Sen. Kembi-Gitura): Time is up, Senator.

Sen. Musila.

Sen. Musila: Thank you, Mr. Chairman, Sir. Although my good friend and brother, Sen. Haji, says that we should not keep reminding ourselves about the past, I think it is very important that we go by history. The point of contention, as my colleagues have said, is the use of a complementary mechanism which is not defined. We all live in this country and know what happened in the last elections. Equipment worth billions of shillings was bought and made not to work. They were made to fail because by 9.00 a.m., the equipment could not work and the excuse was that the batteries were not charged. How could equipment be bought and presented to a polling station when the batteries were not charged? The complementary mechanism has to be defined. If we do not do that, we are courting disaster.

There are two equipments that are used in this process. One is the Electronic Voter Identification Device (EVID) which never fails because it is charged and takes eight hours before it goes off. Since we are told that there is electricity in every primary school, those batteries can be charged in every polling station.

Transmission of results---

The Chairperson (Sen. Kembi-Gitura): Senator, your time is up.

Sen. Mungai, you have two minutes by agreement.

Sen. Mungai: Thank you Mr. Chairman, Sir, for giving me this opportunity to contribute to this very serious topic that has had Kenyans glued to their television sets to know the way forward for this country.

My contribution will be short and based on the submissions that were made by Dr. Shem Ochuodho. On behalf of Kenyans in diaspora, he said that they have noted that it was not necessary to over-emphasise the use of technology during elections. Instead, there is need to look at human interface; the ICT department at the IEBC and its ability to handle the technology. I am quoting from the submissions. He further said that the Kenya Diaspora Association supports the use of a backup to the EVID and the Results Transmission System (RTS). They said that every electronic data has to have a backup. These are our brothers that are outside our country. They have also stated that even technology giants like Google, YouTube and Yahoo prepare for technology failure. This is what we are doing. I urge---

The Chairperson (Sen. Kembi-Gitura): Your time is up.

Sen. (Dr.) G.G. Kariuki: Mr. Chairman, Sir, mine is just a comment. We have taken too long in the Committee stage. I think we shall have another occasion in the Third Reading. If we proceed this way, we will stay here the whole night. What is the idea? Is it to have everybody speak? People have repeatedly spoken since I came here and they want to continue doing so. Could we vote and then move on?

The amendment itself is good, but there is no way we can support that side because time has gone.

Thank you.

The Chairperson (Sen. Kembi-Gitura): Sen. Nabwala, you have two minutes.

Sen. Nabwala: Thank you Mr. Chairman. I would like to also contribute on the contentious Clause 44(a). This Bill was committed to the Committee and there was public participation. When you look at the Report, you can see that those who participated raised concerns regarding words like 'complementary' and many other words which they said are not clear and should be defined. What was the purpose of public participation if we will ignore their contributions? We need to take the views of the public as per the Constitution. I think the Law Society of Kenya (LSK) and the Kenya National Chamber of Commerce and Industry (KNCCI) did a good job. They made very crucial comments, which we must take into account as we move forward, to prepare a law that is good for this country and will help us to conduct a free and fair election.

I do not support.

The Chairperson (Sen. Kembi-Gitura): Sen. Kanainza, you have two minutes.

Sen. Kanainza: Thank you Mr. Chairperson. It is such a shame that a country, which is supposed to be 'digitalized' by now is going back to the traditional way; the manual system of conducting elections, which is time wasting and unreliable. People spent their time and more than 54 delegations gave their submissions through public participation. Most of them were in support of the electronic system. Mr. S.K. Macharia said that it is possible to transmit results electronically and also use electronic backup. I do not know why we are insisting on using a manual backup. Some people are talking

about areas that do not have network coverage. It is cheaper to use satellite phones in such areas.

Recently, we saw it being used by the Cabinet Secretary, Dr. Matiangi, in releasing examination results. In Kenya, we are using the IFMIS in procurement and it is working. Kenyans are also able to transfer money through Mpesa. That means that everything is on a digital platform. For sure, there is no need for us to insist that we must use a manual backup. I do not know why the Jubilee Senators are insisting and trying to make Kenyans believe that the electronic system cannot work in Kenya.

I agree with the amendment.

The Chairperson (Sen. Kembi-Gitura): Honorable Senators, I see many requests on the screen. I cannot stop you from speaking if you are on the screen, but I do not know how much more time you want us to spend on this.

Sen. Melly.

Sen. Melly: Mr. Chairperson, Sir, there is this issue that is coming up again on the complementary back up. I should be very clear that the complementary back up is not a manual system, not necessarily.

Secondly, if you read the submission by the Independent Electoral and Boundaries Commission (IEBC) it says:-

“The commission shall in consultation with the relevant agencies, institution and shareholders make regulations.”

I am sure these regulations will be tabled at the Senate and Members will have time to ventilate. The question as to which complementary, we cannot answer now because the technical people who are the IEBC will have chance and time to give us their recommendations and this House will look into it and approve or not.

I support.

The Chairperson (Sen. Kembi-Gitura): Sen. Wetangula, you have two minutes.

The Senate Minority Leader (Sen. Wetangula): Mr. Chairman, Sir, I just sought the Floor again because of what Sen. Haji said. It is always not good to cast aspersions on Members of the public who come to give contributions. If you look at the list, very distinguished organizations came. The Law Society of Kenya (LSK), the Kenya Private Sector Alliance (KEPSA), the National Chamber of Commerce and the Council of Governors cannot be called “the usual complainants”.

One of the governors who came here is a distinguished professor of law; Governor Kivutha Kibwana who gave very cogent views.

Even if we hold divergent views, I want us to respect Members of the public who come here.

The Chairperson (Sen. Kembi-Gitura): What is your point of order Sen. Haji?

Sen. Haji: Mr. Chairman, Sir, my point of order is that I think I have a right to my opinion and my opinion is right because before the public appeared before the committee, these are the same people who were talking to the press everywhere saying that these should not be accepted.

So, I am talking about facts; not from the bush.

The Senate Minority Leader (Sen. Wetangula): Mr. Chairperson, Sir, my senior brother has a right to his opinion but we have the right to defend those who cannot defend themselves here.

We invited the public and they came, gave views and I am shocked at the outcome of the proceedings from the Committee because out of 56 people and organizations who gave their views, three quarters said these provisions are wrong.

However, of course as usual, the vote accelerated and accentuated by interests that we know were cast against public opinion. The matter will now move to the court of real public opinion out there.

(Question of the amendment put)

The Division will be at the end.

(Question that Clauses 20-22 be part of the Bill Proposed)

The Division will be at the end.

Clause 23

Sen. Mutula Kilonzo Jnr: Mr. Chairman, Sir, I beg to move:-
THAT, the Bill be amended by deleting Clause 23.

We raised this at the Committee; that the Joint Select Committee amended the election offences in their entirety. To that extent, therefore, there are no offences in the new Election Act.

By accident, inadvertently, by mistake or deliberately, the National Assembly passed an amendment of Section 56 of the Elections Act that does not exist. As a consequence, when you have amendment No.37 of 2017, by the time the President signs this in to law he has no way of removing it. It will have to appear in the Act and therefore, will present a conflict.

I had proposed in the spirit of bipartisanship that you remove it. It has no value, it deletes nothing and is in the law when it is not supposed to be there. However, when you sign it into law you create a conflict of having passed something that does not exist and this is something we should have done to clean up the law but nobody agreed with me.

I propose.

(Question of the amendment proposed)

The Chairperson (Sen. Kembi-Gitura): The Division will be at the end.

Sen. (Prof.) Anyang-Nyong'o you have two minutes.

Sen. (Prof.) Anyang-Nyong'o: Mr. Chairman, Sir, I really would like to support that proposal that the Section be deleted. One, because let us not legislate in fear. There seems to be a mentality that if we amend or delete a clause in this amendment exercise, we shall go to mediation and therefore, we will somehow put the other side in bad light.

Let us not make legislation under fear. It is so important that electoral laws that we are making be ones that can stand the test of time and can lead us to a free and fair election. I plead with the other side that this amendment that was introduced without looking properly into law; let us not carry that mistake in this Senate. Let us listen to

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Senator Mutula Kilonzo Jnr. who has looked at this thing carefully and agree with that amendment.

I support.

Sen. M. Kajwang: Mr. Chairperson, Sir, I support this amendment. I am looking at the Act that is supposed to be amended and particularly, Section 56. The Act tells me that Section 56 is repealed by Act No.37 of 2016.

If we aspire to be the Upper House through which quality checks and controls on legislations shall be undertaken and to inspire the nation to believe in this Senate, then we cannot pass a Bill with such obvious errors. If it means for nothing else, but we cannot be a quality control unit that then passes a Bill to amend a Section that has already been repealed.

I beg for sanity and soberness that we live up to the billing of this House and keep the high expectations that Kenyans expect out of this House alive.

I support.

The Chairperson (Sen. Kembi-Gitura): Sen. Wamatangi two minutes. Did you ask for the Floor?

Sen. Wamatangi: No, Mr. Chairperson, Sir.

The Chairperson (Sen. Kembi-Gitura): Switch it off. Sen. Wetangula you have two minutes.

The Senate Minority Leader (Sen. Wetangula): Mr. Chairperson, Sir, this again is a terrible indictment of this House. One can understand the House where the process was engulfed with fist fights and all manner of quarrels. This is a House of scrutiny, revision and record.

When our children in future will read that we sat in this House and passed a law that purported to amend a Section of the law that has been repealed, what will people think of us? What Sen. Mutula Kilonzo Jnr., has brought is just simple and sensible. This House itself passed a law that separated election offences from other election issues. So, now we have an Election Offences Act and that is why Section 56 of that Act was repealed.

I want to urge this House to salvage our image. Bulldoze what you want but please do not drag our image into the mud. That we sit here until 11.00 p.m., to approve an amendment of a law that we repealed. What will people think of this House?

For posterity, let us be bipartisan on such matters and salvage the image of this House. When it will be taken to the President to assent to a Bill amending a repealed Section of the law, what will the President think of you who have been bending backwards to please?

The Chairperson (Sen. Kembi-Gitura): Time is up.

(Question of the amendment put)

The Division will be at the end.

Clauses 24-27

(Question, that Clauses 24 – 27 be part of the Bill proposed)

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The Chairperson (Sen. Kembi-Gitura): Division at the end.

Clause 28

Sen. Mutula Kilonzo Jnr.: Mr. Chairman, Sir, I beg to move that the Bill be amended by deleting Clause 28.

Anybody who has the elections Act, if you turn to the Third Schedule and look at what we are proposing to insert; it is already in the law. So, once again, we have something called an editing error in a Bill we are going to pass. There is even a risk that the President is going to sign a memorandum because we are going to put him in such an awkward position to sign something that is already in the Act. Therefore, I proposed it in the Committee and I now propose again to your good sense that you allow that we delete this section; not because there is anything contentious about it or because there is an issue, but just because we are performing a legislative duty and that legislative duty includes not making the most ridiculous errors like this one. If we are going to be a House of review, we cannot allow the National Assembly to make such an obvious petty error and we repeat it. Today, I stand to clean my image as the Senator of Makueni County by not participating in something that will come to haunt me when I am much older.

(Question of the amendment proposed)

The Senate Minority Leader (Sen. Wetangula): I salute the gallant Senator of Makueni for continuing to bring to the attention of this House that we must salvage our image. We must live to what the public has been saying. After the last sitting, I walked into a club in Karen and a group of senior citizens, including former Permanent Secretaries, former Ministers from your community stood up and saluted me and said we used to underestimate and misunderstand the role of the Senate. Now, we appreciate why the Senate is there and must be there. These are not people in my political formation, they are your formation but they said we can now see the voice of moderation from the Senate. Why can that voice of moderation and decision of moderation salvage our image by not appearing to amend the law that does not exist? What are our children going to say? Tomorrow, this Bill will be on-line, and Sen. Mungai's son will read about it and he will see that his father was there saying "Aye!" God help us.

(Laughter)

Sen. (Prof.) Anyang'-Nyong'o: Mr. Chairman, Sir, I seek guidance because when I read this amendment, and I look at the Third Schedule which is on Oath of Secrecy, I do hope that it is. When I read that Oath of Secrecy, it says the Third Schedule to the Election Act, 2011 is amended by inserting the words 'commissioner for oaths magistrates' immediately before the words 'member, secretary, returning officer'. May be I am blind but where do the words 'member secretary returning officer' appear in this Third Schedule? The words "member", "secretary", "returning officer" do not appear in

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the Third Schedule. So, what are we amending? If I can read it to you, the Third Schedule says:-

“I ---, swear that I shall maintain the secrecy of the ballot and shall not communicate except for the purpose authorized by law, before the poll is closed, any information as to the name or number or register of voters of any voter who has or has not applied for a ballot paper or voted at that station”.

There is no reference to this thing called “member, secretary, returning officer”. So, what are we amending?

Mr. Chairman, Sir, I think these people are doing work in a hurry and they have not done a good job. We had presented with a yellow logarithm as we say, something that does not exist in reality. So, this is on its face value. There is no amendment and the best thing is to delete the whole thing because we are making a fool of ourselves.

(Question of the amendment put)

The Chairperson (Sen. Kembi-Gitura): Division will be at the end.

Clauses 29-31

(Question, that Clauses 29 – 31 be part of the Bill proposed)

Division will be at the end.

Clause 32

Sen. Mutula Kilonzo Jnr.: Mr. Chairman, Sir, I beg to move that the Bill be amended by deleting Clause 32.

The previous clause 32 in the IEBC Act, section 36, provided for a transition in the first review. This is the first review of boundaries and constituencies. Therefore, the minimum that was supposed to be done is to delete the section because it is not necessary. But what does the National Assembly do? The National Assembly introduces 11 clauses about how the limitation of boundaries will be done under Article 89 of the Constitution, who will do it, who will present the report, how the interim report will be done. In clause 36 (5), they say the Parliamentary Committee shall within fourteen days on receipt of the revised report table the report to the national Assembly for recommendations. Under clause 7, the National Assembly shall within fourteen days of the tabling of the report, consider the report and forward the recommendations to the commission. Within fourteen days of the expiry of the period provided under clause 7, the commission shall upon the receipt and considerations of the National Assembly and the representation from the public prepare a report for publication in the Kenya Gazette. Clause 9, where the National Assembly fails to make recommendations within the periods specified, the commission shall publish the report in clause 8.

Mr. Chairman, Sir, if you look at Article 89, this is the second review of boundaries. The other review would be after a period of eight or 12 years. Sen.

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Murkomen says this clause is unconstitutional because this is not their work. It is already here. First, we should have deleted it if they did not have a mandate. The reason that this Bill is here is because these matters concern county governments. Therefore, we have a mandate. The wards will touch on counties. Therefore, for somebody to exclude you in a ward in Murang'a where you are supposed to have a voice is ousting the jurisdiction of the Senate when we are watching with our eyes open. It is called "ousting of jurisdiction"

By passing this law, we are abdicating our responsibilities on counties. It is a fact. Therefore, these matters are so contentious. When it comes to these boundaries, if you are a Senator and you have no role, you can be recalled.

Mr. Chairman, Sir, I beg you and Senators to consider the work of Senate and why this is the most mischievous of the amendments I have seen.

The Chairperson (Sen. Kembi-Gitura): For the record, when you are moving the amendment, you only have two minutes. No, it is just that it got finished.

(Sen. Hassan spoke off record)

No, it has been two minutes for the past one hour. However, I did not stop you because maybe you were not aware of that fact. So, it is two minutes.

(Question of the amendment proposed)

The Chairperson (Sen. Kembi-Gitura): Sen. Kanainza, you have two minutes.

Sen. Kanainza: Mr. Chairman, Sir, it is very clear in Article 89 of the Constitution. The proposal to exclude the Senate from the review of boundaries is an assault on the Senate because we know that the role of the Senate is to protect the counties, its people and governments. That is an affront of the Constitution and unacceptable attempt to further undermine devolution.

Therefore, I propose that the Senate should delete Clause 32 from the Bill because to be sincere, it undermines the role of the Senate as the defender of devolution.

The Senate Minority Leader (Sen. Wetangula): Mr. Chairman, Sir, if there is a Clause or section that must be deleted, it is this Clause 32. This Senate has been on the warpath demanding recognition, respect and to have everything to do with the protection of counties. Here is one situation where this Senate is behaving like a former Russian president who reformed himself out of office. That president was called Mikhail Gorbachev.

Mr. Chairman, Sir, this Senate should not pass a law where the National Assembly is taking away our responsibility under Article 96 of the Constitution as protectors of counties. We have even spent public money to go to court to seek interpretation and opinions as to what our mandate should be. Here we are, because of narrow partisan interests, signing away our responsibility. Who is better placed to deal with the issue of boundaries of wards and constituencies in your county than the Senator? The Senator is above the contradictions of the county and you are most likely not going to be involved in the gerrymandering of boundaries by an MP to cut off an area where people do not like him and pull in an area where people like him, and so on, and so forth, because your constituency is the county. Why are we doing this?

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I want to urge the House to reject this Clause by voting against it so that it is---

(Sen. Wetangula's microphone went off)

The Chairperson (Sen. Kembi-Gitura): Time is up. Sen. (Prof.) Anyang'-Nyong'o, you have two minutes.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Chairman, Sir, I just want to remind the House that if we pass this amendment as it is and we do not reject it as Sen. Mutula Kilonzo Jnr. has proposed, we shall be committing suicide. I want to illustrate. The amendment says that within fourteen days of the expiry of the period provided for in paragraph 7, the commission shall, upon receipt and consideration of the National Assembly and representation from the public, prepare the final report for publication in the Gazette.

Mr. Chairman, Sir, the National Assembly does not even give us enough days for a Bill to be referred to the Senate. In other words, this is one of the Bills that will be passed by the National Assembly straight to the commission for publication and forget the Senate.

The other provision is that where the National Assembly fails to make recommendation within the period specified in paragraph 7, the commission shall publish its report in accordance with paragraph 8. In other words, if the National Assembly does not do it, forget about the Senate, the commission takes over. If you pass this thing, you are committing suicide. Are we here to commit suicide as a House or to look at laws rationally and carefully and pass laws not only that will make this House do its work properly but also not to make this House completely irrelevant to law-making in Parliament?

Mr. Chairman, Sir, if we go ahead and pass this, I will be the most pitied human being on the face of the earth, being the Senator in the Republic of Kenya and not knowing what to do even in my own interest.

I appeal to you not to turn yourselves into voting machines. You have heads, you have gone to school, you have read the Constitution and you can read this thing and understand it. You should reject it.

Thank you very much.

Sen. Musila: Mr. Chairman, Sir, I support this amendment. In doing so, I appeal to my brothers and sisters across that this is a grave matter for the existence of this House. We cannot remove delimitation of boundaries from the Senate which may touch on devolution. The Constitution gives this House the power to defend devolution and the counties.

Mr. Chairman, Sir, we can talk about our differences but this time round, see that you retain the dignity of this House by ensuring that we delete this and show the two Houses are as important and not just one House to vote another one out in terms of responsibility.

Mr. Chairman, Sir, I support.

Sen. M. Kajwang: Mr. Chairman, Sir, I support this amendment. It is on rare occasions when we debate in this House that I agree with the Deputy Senate Majority

Leader, Sen. Murkomen. On this particular matter, I agree with Sen. Murkomen's earlier pronouncement that this particular Clause is unconstitutional.

When you read Article 89, it is very clear that in reviewing constituency and ward boundaries, the commission shall consult interested parties. There is no provision for the National Assembly to sit down and make binding recommendations on the electoral commission. So, first, it is unconstitutional.

Secondly, it is not urgent. Any review of boundaries does not take effect immediately but it should be at least not 12 months to the next elections. So, there is no reason we should be called for a Special Sitting to discuss something that will be of no effect to the next elections.

Thirdly, even if we were to give this job to Members of the National Assembly or the Senate as custodians of devolution, there is a good reason why the drafters of the Constitution excluded elected members from delimitation of boundaries. The English word is "gerrymandering" and that is what we are trying to avoid.

I can imagine a situation like in Homa Bay County where I come from. If you were to leave this to the elected representatives, then my uncles and aunties who come from Subaland and feel that they have been ignored for a very long period of time, the elected leaders will sit down and carve a constituency that just has elements from Suba or carve wards of element from Suba. They could as well carve counties from people with a common historical origin.

Mr. Chairman, Sir, this House should not allow this particular Clause to pass. I support this amendment and hope that we will make the right decision.

Sen. Murkomen: On a point of order, Mr. Chairman, Sir. Considering the number of amendments that are still pending and considering the time that we have sat here, I propose that persons who speak to this amendment should speak for one minute.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Chairman, Sir. I respect colleagues in this House. There are Members who have sat here all through like Sen. (Dr.) G.G. Kariuki here but they are not complaining. There are colleagues who have been walking up and down everywhere and they have even gone out to have supper. We are sitting here struggling to give the country a good law yet somebody walks in and says that you give us one minute. What can you say on an amendment in one minute? That is ridiculous to the extreme.

The Chairperson (Sen. Kembi-Gitura): It will be two minutes then. Sen. Nabwala, let us go on. You have two minutes.

Sen. Nabwala: Mr. Chairperson, Sir, I rise to support the amendment. I read a sinister motive in this Clause. The National Assembly wants to hive off some of the words and before you realize it, you will find that the Senator is irrelevant. The mandate of the Senate is to protect counties. There is no reason why they should remove the Senate to give themselves the role of delimiting the boundaries. According to the Constitution, the commission has this role of determining boundaries. So, I do not see the reason why the National Assembly should take over a role that is not theirs.

I, therefore, support the amendment because we shall be committing suicide if we are to support this kind of amendment to eliminate the Senate from the role of protecting counties.

Sen. Wako: Mr. Chairperson, Sir, I can live with Clause 44(a) but not this one. Sir Winston Churchill once said: “I never became Prime Minister to preside over the liquidation of the British Empire where the sun never sets”. We are presiding over the liquidation of the Senate. The problem is wider than the issue of electoral boundaries. The definition of a Parliamentary Committee in the IEBC Act is the relevant departmental Committee of the National Assembly responsible for matters relating to the commission. The commission is a very key organ in matters relating to the democratic governance of this country which is a responsibility of the Senate under Article 94(4) of the Constitution. How can you now ensure that the Senate cannot have any say in matters relating to election, delineation of boundaries and so on? How can you not have a say? It means that once we enact some of these things, this may be the last time this Senate is debating anything which touches on elections. If we pass this Bill, it means the National Assembly is supreme.

Let us not undermine our authority, particularly coming from the National Assembly.

Sen. Hassan: Mr. Chairperson, Sir, the National Assembly knows that this is a House that they can underestimate. What they think of you is the fact that they know that there is literally nothing you can do. They bring you laws to remove yourselves from constitutionally enshrined roles. You passed a law here in 2015; the Security Laws (Amendment) Act which you refused to speak to was passed, removing the role of the Senate in the oversight of the NIS, and yet the Constitution says, Parliament. You have been removed from the roles of treaty ratification. They continue to do it. Every day, Senators come to this Senator to lament about how the National Assembly is underestimating them. Trust me, it is not that the National Assembly underestimates us on this side - I will be very audacious – the National Assembly knows on that aside there is literally nothing you can do to stop them. They know it. Phone calls will be made, influences will be there and all of you will come here to just vote. I can tell you, maybe some of you might not be coming to this Senate again, leave nothing but leave a legacy.

As Sen. Wako said, everything else is okay but to sign your own death warrant, oh my God! There are things that we must go with a bit of decorum. You say, fine, let the amendments stay but your survival is key. Today I got a bit upset here almost saying that you are undermining this Senate by the day. All we come here is to talk about how the oversight fund has been taken, how comes it is not back.

The Chairperson (Sen. Kembi-Gitura): Your time is up.

Proceed, Sen. Haji.

Sen. Haji: Mr. Chairperson, while I support most of the amendments, I want to agree with my colleagues on this side that when it comes to the IEBC, the Senate must have a role. If we allow the National Assembly to dictate everything, it is as good as saying that we do not exist. So, from the onset, I declare my intention to vote with them on this matter.

Sen. Madzayo: Mr. Chairman, Sir, there is a Swahili saying which goes, “*Ukikata mti usiketi upande ambao---*”

The Chairperson (Sen. Kembi-Gitura): What is your point of order, Sen. (Prof.) Anyang'-Nyong'o?

Sen. (Prof.) Anyang'-Nyong'o: Is it in order for Sen. Murkomen to work as a prefect in this House? He is interfering with Senators. He is all over the place intimidating everybody.

Mr. Chairperson, let him sit at this seat and listen to us. This prefect attitude is not good in this House. I am getting fed up with Sen. Murkomen.

The Chairperson (Sen. Kembi-Gitura): Order, Senators. Sen. (Prof.) Anyang'-Nyong'o, with great respect, I cannot restrain anybody to sit in one place. I do not know what business he is in but that cannot be my business.

Sen. Madzayo, your time is running.

Sen. Madzayo: Bw. Mwenyekiti kuna msemu usemao, “Akataye mti haketi upande ule ambao utaanguka.” Ni jambo la kusikitisha hivi leo tukiona ya kwamba kitanzi kiko. Kamba imewekwa pale, unapanda juu, unavuruta kamba mwenyewe, unajinyonga ukiona kabisa kwamba wewe unaenda kunyongwa ijapokuwa mimi naweza kuunga mkono hapa lakini nafikiri tungetafakari hiyo na kuangalia kama hiyo tunayoifanya hivi sasa ni sawa ama si sawa. Kwa maoni yangu, si sawa.

(Question of the amendment put)

The Chairperson (Sen. Kembi-Gitura): Division will be at the end

Clauses 33, 34 and 35

(Question, that Clauses 33, 34 and 35 be part of the Bill, proposed)

The Chairperson (Sen. Kembi-Gitura): Division will be at the end.

New Clause 26A

Sen. Mutula Kilonzo Jnr.: Mr. Chairman, I beg to move:-

THAT, the Bill be amended by inserting the following new Clause immediately after Clause 26-

26A. Section 109(1)(a) of the elections Act is amended to read-

(a) in subsection (1)(a) by deleting the word “prisoner” appearing immediately after the word “abroad” and substituting therefor the words “and prisoners”;

We have now provided for regulations for diaspora voting together with prisoners. However, in the amendment, the words “citizens living abroad,” is together with the word “prisoner.”

Therefore, the amendment is to provide---

The Chairperson (Sen. Kembi-Gitura): Sen. Mutula Kilonzo Jnr., my record shows that you are proposing to put a new Clause 26A. Am I correct?

Sen. Mutula Kilonzo Jnr.: Yes, Mr. Chairman.

The Chairperson (Sen. Kembi-Gitura): That is what the Order Paper reads.

Sen. Mutula Kilonzo Jnr.: Mr. Chairperson, I am not sure what the Secretariat did, but the days to make the amendment---

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The Chairperson (Sen. Kembi-Gitura): The Order Paper that I have shows that you are proposing to put a new Clause 26A.

Sen. Mutula Kilonzo Jnr.: Yes Mr. Chairperson. A new Clause 26A by amending Section 109.

The Chairperson (Sen. Kembi-Gitura): Okay.

Sen. Mutula Kilonzo Jnr.: Mr. Chairperson, we have now provided that the regulations will give the IEBC a role to find a method of how diaspora and prisoners will be voting. The words appearing in the Act read:-

“Progressive registration of Kenya citizens living abroad prisoner.”

Therefore, the way it is now, we will not be able to make regulations on diaspora voting and prisoners without introducing the word and prisoners.

I beg to move.

(Question, that New Clause 26A be read a Second Time, proposed)

Sen. M. Kajwang: Thank you, Mr. Chairman, Sir. I wish to support this amendment. I have had the privilege of serving in this House as a Vice-Chairperson of a Select Committee that was meant to look at the laws relating to prisons and borstal institutions. This was a Committee which was ably chaired by Sen. Dullo. When we went round the prisons and detention facilities, there was clear concern that the laws in place did not take into account the right of prisoners to vote. Perhaps, this can be cured by that typo because it previously said “abroad prisons.” However, it is now very clear that even persons in prisons will have regulations that relate to them.

During public participation, the Council of Governors (CoGs), through Governor Mruttu, gave us the account of prisoners in Manyani. The statistics that we got during the work of that Select Committee was that out of the 52,000 persons that are held in detention facilities in Kenya, close to two-thirds of them are in remand. They have not been sentenced. Therefore, we should not deny these Kenyans the right to vote.

This read alongside 44(a), we should ensure that voting in these prisons is electronic. Otherwise, people will be intimidated to vote for a particular line because that is the only way they will be assured to get their *ugali* and beans rations for the day.

I support.

Sen. (Prof.) Anyang’-Nyong’o: Mr. Chairman, Sir, this is a very important issue. In the United States of America (USA), for example, the black people or anybody who was imprisoned lost his right to vote when they came out of prison. Certain states have started amending it and getting rid of that law. It is very unconstitutional, undemocratic and tyrannical to deprive somebody their God given right to choose the people who make those laws that send him to prison just because he is in prison. He should at least be given an opportunity to have a say on those laws.

I agree entirely with the proposal by the new amendment.

The Senate Minority Leader (Sen. Wetangula): Mr. Chairman, I hope that nobody in his right frame of mind will oppose this because it is simple, clear and straightforward. You cannot have a provision that says, “provide for the progressive progression of Kenyans living abroad prisoner.” It does not make sense. The distinguished Senator for Makueni is trying to salvage the image of this Senate so as to

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make sure that the law that we pass reads sense, makes sense and must progress the rights of Kenyans, including those living in prisons. There are no prisoners living abroad. Those who are in prisons abroad are not our prisoners. They are prisoners of somebody else.

I want to urge that for once, let us take the attitude of the distinguished Senator for Garissa, Sen. Haji, and see things differently. I urge you, Prof. Kindiki, and your team, to change this for us to look good in the eyes of the public. They should see that we at least pay attention to detail as we pass the laws. *Hii mambo yakushikilia hapo hapo*, does not help us.

I beg to support.

Sen. Hassan: Mr. Chairman, Sir, the whole idea about sending somebody to prison, the restriction on his freedom of movement is punishment enough. If you look at the whole concept of imprisonment, that person does not lose all the other rights. One of those important rights is the right to vote.

I want to support this amendment to ensure that we speak to some of the issues around human rights. This Senate is a House of policy. It has not spoken enough on matters of human rights or matters that will enhance the realization of the rights of certain individuals. I want to support this amendment and add my voice to the fact that it will be a good practice to lead by example and allow this amendment to pass.

Sen. Musila: Thank you, Mr. Chairman, Sir. I support and I want to contribute in relation to the proposed new Clause 26A(c). One of the weaknesses of the amendments that we have been making this afternoon was leaving it open without saying who makes the regulations. The proposal by the distinguished Senator for Makueni is to make sure that these regulations are not made by the IEBC or somebody else, but by the House.

On (d), it proposes to insert the words “and the Senate” immediately after the word “National Assembly.” Again, this is a classic example where the National Assembly wants to remove Senate from making laws. This amendment includes us, the Senators, to be involved in making regulations. Would you refuse to be included in making these regulations? The answer should be; “no, you must be included”.

Sen. Omondi: Thank you, Mr. Chairman, Sir. I also support the amendment that allows prisoners to be given their constitutional right to make a decision by voting.

With those few remarks, I support the amendments.

Sen. Kanainza: Thank you, Mr. Chairman, Sir. This is an eye opener to Kenyans that it might be mandatory for every Kenyan above 18 years to participate in the voting exercise.

Looking at 26A and B when we talk about the House of Parliament even outside there people know that you are referring to the National Assembly and I am happy that it is captured in part D that Houses of Parliament talks of the National Assembly and the Senate and this is so clear to our colleagues who are keeping quiet here that Parliament refers to the Senate and the National Assembly and the Senate being the “Upper House” has a very big mandate to ensure that every Kenyan is able to access freedom of participation and voting.

The Chairperson (Sen. Kembi-Gitura): Sen. Madzayo.

Sen. Madzayo: Bwana Mwenyekiti, naunga mkono sharia hii kwa sababu aliye gerezani ama aliyefungwa kwa makosa mengine nasiyo makosa ya kwamba hawezi

kupigakura, kupiga kura ni haki ya kila Mkenya popote alipo ulimwenguni, hata akiwa ndani ya korokoro.

Sheria hii kwangu mimi naiona inafaa kabisa na ni jambo hususan sana ya kwamba waruhusiwe waweze kujiandikisha ili waweze kupiga kura kwa hakizao kama binadamu wengine.

[The Chairperson (Sen. Kembi-Gitura) left the Chair]

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

[Question, that New Clause 26A be read a Second Time, put]

The Temporary Chairperson (Sen. Sang): Division will be at the end.

New Clause 28 A

(Question that New Clause 28A be read a Second Time proposed)

Division will be at the end.

Sen. Mutula Kilonzo Jnr: Mr. Temporary Chairperson, Sir, I did not move B, C and D of 26. It was not called. Why do you not call it first?

The Temporary Chairperson (Sen. Sang): so 26 is the one you moved as a Clause?

Sen. Mutula Kilonzo Jnr: No, I asked them and they said it must be mentioned. Therefore, it should have read B, C and D but I will take a minute.

The Temporary Chairperson (Sen. Sang): No, we are done with that so that was part of--- You moved it as a clause.

Sen. Mutula Kilonzo Jnr: My contribution is very important.

The Temporary Chairperson (Sen. Sang): We are done with that. So new Clause 28. Proceed to move.

Sen. Mutula Kilonzo Jnr: Mr. Temporary Chairperson, Sir, if you allow me a minute, this is a very important Clause on 26.

The Temporary Chairperson (Sen. Sang): Sen. Mutula Kilonzo Jnr, we are already past that stage.

Sen. Mutula Kilonzo Jnr: No, Mr. Temporary Chairperson, Sir, it is a very important section. There are segments to that Section and I requested to confirm with the former Chair. It is something that must get at even if---

The Temporary Chairperson (Sen. Sang): He read 26A. It is new Clause 26 A and in that it is an entire New Clause.

Sen. Mutula Kilonzo Jnr: No, Mr. Temporary Chairperson, Sir. When I requested the secretariat----, in fact what happened is that New Clause 26A had sections (a), (b), (c) and (d). The secretariat told me to read only (a). When I asked him how I was to move parts (b), (c) and (d), he said that I wait until they called them out.

So, he should have read new 26 B, C and D. I would have easily done it. I do not ask things for the sake of it and I only have two minutes.

The Temporary Chairperson(Sen. Sang): Sen. Mutula Kilonzo Jnr, you have a few other amendments where you are moving an entire new clause and new clause means you move the entire Clause 1,2 and 3 as it were. That is what you should have done. You have one minute to conclude.

New Clause 26A (b) (c) (d)

Sen. Mutula Kilonzo Jnr: Mr. Temporary Chairperson, Senators, I want to draw your attention to the new clause B, C and D of 26. I heard most of you say that we will pass regulations on the new 44A and any other regulations. The Elections Act as drafted, these regulations will not come to the Senate.

The regulations on your elections, your Members of County Assembly (MCA), your Member of Parliament (MP) will go to the National Assembly. I am proposing that we have a role in regulations concerning elections. Even on 44A, the National Assembly is the only one that will make those regulations.

It is about the jurisdiction of the Senate to determine elections of your MCAs and yourself.

The Temporary Chairperson (Sen. Sang): Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Chairperson, Sir, once again I salute Sen. Mutula Kilonzo Jnr, and appeal to the House the same way Sen. Wako said that we are presiding over our own destruction.

Do you know that by this amendment you are taking all the powers relating to making regulations to do with elections including yours to the National Assembly and you will have no say? *Bure!*

They will determine everything about elections and you will then be just consumers of that product; the programs and everything about election rules. We are ousting ourselves and washing our hands like Pontius Pilate who said: "I have nothing to do with that innocent man. You are the ones."

I want to urge this House honestly and this has been dubbed the House of wise people. Where has the wisdom gone? Let us stand and defend the future of this House. I assure you that when I am the President, I will not undermine this House.

The Temporary Chairperson (Sen. Sang): What is it Sen. Adan?

Sen. Adan: Mr. Temporary Chairperson, Sir, looking at the time, I am kindly requesting if you can allow contribution to take one minute so that we can be able to deal with the remaining clauses.

The Temporary Chairperson (Sen. Sang): looking at the time Hon. Senators, we must be able to make progress and therefore moving forward, every Senator has one minute.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Temporary Chairperson.

The Temporary Chairperson (Sen. Sang): Sen. M. Kajwang.

Sen. M. Kajwang: Mr. Temporary Chairperson, you need to protect me by granting him a point of order because I cannot---

The Temporary Chairperson(Sen. Sang): You cannot direct the Chair.

Sen. M. Kajwang: Mr. Temporary Chairperson, I beg that you cool him down so that I am able to contribute.

The Temporary Chairperson (Sen. Sang): It is so directed. Proceed.

Sen. M. Kajwang: Mr. Temporary Chairperson, the Elections Act 44(6) which was the gist of my earlier argument that we do not need 44A because already the Act gives Parliament in totality a role in the regulations required to be made under subsection 4.

However, I support the amendment by Sen. Mutula Kilonzo Jnr., because the role of this Senate in regulations is limited to the requirements under sub-section 4 and I support that we grant Senate greater powers and particularly the committee that you chair on Delegated Legislation on regulations that relate to elections because they affect counties of which we are the defenders and protectors.

The Temporary Chairperson (Sen. Sang): Sen. (Prof.) Anyang'-Nyong'o.

Sen. (Prof.) Anyang-Nyong'o: Mr. Temporary Chairperson, I just want to read to the House the amendment that Sen. Mutula Kilonzo Jnr. is proposing in sub-section (4) by inserting the words "and the Senate" immediately after the word 'National Assembly'.

I want to read it so that Members can understand the gist of the amendment. The current clause reads that:-

"The Commission shall publish in the gazette, not later than sixty days prior to the date of the general election the regulations approved by the National Assembly under sub-section (3)."

It is approved by the National Assembly and not the Senate. These amendments that Sen. Mutula Kilonzo Jnr. is proposing are very fundamental. If we cannot insert the words 'and the Senate' after the words 'National Assembly', believe you me we are writing ourselves out of the law. The National Assembly will say: "You people are complaining; we do not bring these issues to the Senate."

The Chairperson (Sen. Sang): Very well. Let us hear Sen. Kanainza.

Sen. Kanainza: Mr. Chairman, Sir, it is a very sad night that we are sitting here and other people are blindly supporting a legislation that will kill the Senate. How do we allow the National Assembly to provoke us to this level? This is not the first time that the National Assembly has sought to exclude the role of the Senate through legislation. Some of us are here waiting to vote for this legislation, the election law that will affect the future of the Senate. The country is watching. I urge my fellow Senators that it is high time the recommendations that have been brought forth including the amendments by Sen. Mutula Kilonzo Jnr., it is enough for us to reject this Bill in totality.

The Chairperson (Sen. Sang): Yes, Sen. Madzayo.

Sen. Madzayo: Thank you, Mr. Temporary Chairperson, Sir, I do not think I have anything to contribute on the Bill.

Sen. Nabwala: Mr. Temporary Chairperson, Sir. I also support these amendments because it is like the Senate is signing its own death warrant. I cannot trust the National Assembly, particularly when they short-changed us in the oversight money after we had agreed that they were would support the legislation. We have also seen that they have been by-passing us when they pass legislation which they send to the President to assent

to, without our input. We must exert our position because the country looks to the Senate for protection. Our role is to protect counties. I support the amendment.

The Temporary Chairperson (Sen. Sang): Very well. I now wish to put the question which is that the New Clause 26A be read a second. Division on this will come at the end.

(Question that New Clause 26A be now read a Second Time put)

Let us move on.

Proceed, Sen. Mutula Kilonzo Jnr to New Clause 28A. You have one minute to do so.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Temporary Chairperson Sir.

The Temporary Chairperson (Sen. Sang): Order, Sen. Wetangula! What is your point of order?

The Senate Minority Leader (Sen. Wetangula): We are not going to run this House like a village *baraza*. I cannot say point of order ten times and you are just saying you are going to direct.

The Temporary Chairperson (Sen. Sang): What is your point of order?

The Senate Minority Leader (Sen. Wetangula): This kind of behavior is not right. If you have no mind of fairness, you have no business sitting on the Chair.

The Chairperson (Sen. Sang): What is your point of order? Proceed Sen. Mutula Kilonzo Jnr. It seems there is no point of order.

Sen. Mutula Kilonzo Jnr.: Mr. Chairman, Sir, I beg to move that the Bill be amended---

The Chairperson (Sen. Sang): What is it Sen. Orengo?

Sen. Orengo: On a point of order, Mr. Temporary Chairman, Sir. There is something that is happening to this House which is terrible. If you read Article 117 of the Constitution, it says there shall be freedom of speech in this Parliament. That is apart from the Bill of rights. There is something which is happening in this Parliament which never used to happen. To switch off a Member of Parliament when he is trying to say something is ludicrous. You better look at what is happening in South Africa. Nobody is ever switched off. In this Parliament, we are just becoming dictators and having authoritarianism of the worst type. If in Parliament somebody cannot be allowed to speak---

Sen. Murkomen: On a point of order, Mr. Temporary Chairperson, Sir.

Sen. Orengo: Look at you, you better listen to me. You all the time open your mouth when somebody is speaking. You better learn some manners. You are not the only Member in this House when somebody speaks you are on a point of order. What we are saying is that there must be freedom of speech.

The Temporary Chairperson (Sen. Sang): Sen. Orengo, the microphone is only switched off---

Sen. Orengo: But the Clerks here---- *(Sen. Orengo spoke off record)*

The Temporary Chairperson (Sen. Sang): Order, Sen. Orengo! The microphones are switched on and off when directed by the Chair or the Speaker.

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Proceed Sen. Mutula Kilonzo Jnr.

(Several Senators stood up on points of order)

The Temporary Chairperson (Sen. Sang): Hon. Senators, we have business and you know the time that we have. It is at the discretion of the Chairperson to allow--- What is it Sen. Wetangula?

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Temporary Chairperson, Sir. I just want us to proceed in this House like a House. When Sen. Kembi-Gitura, the Deputy Speaker, sits on the Chair, any time you say point of order, he will hold and listen to you. I want to say this---

The Temporary Chairperson (Sen. Sang): What is your point of order?

The Senate Minority Leader (Sen. Wetangula): I want to bring to the attention of the House; one, the point I wanted to bring earlier is that you cannot expect Sen. Mutula Kilonzo Jnr. to move an amendment of a magnitude he has in one minute.

The Temporary Chairperson (Sen. Sang): I will give directions on that.

The Senate Minority Leader (Sen. Wetangula): That is not right. Secondly, I want to urge you that sitting on this Chair to preside on any proceedings in this House does not make anybody a better Senator. It is to make the House orderly. Respect is two way; we respect the Chair and we want the Chair to respect us. We cannot say point of order, the Chair says he will rule and Sen. Murkomen is busy shouting "point of order" at whoever is speaking. This kind of conspiracy has to stop. We will not allow it.

The Chairperson (Sen. Sang): Hon. Senators, I have ruled on the matter of the time available for every Senator. It is on the basis of the business ahead of us and the time that we have. This Senate has to transact this business and we need to conclude within the time gazetted. This is a Special Sitting. So, one minute per Senator.

Let us proceed.

New Clause 28A

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairperson, Sir, I beg to move: - THAT, the Bill be amended by inserting New Clause 28A after Clause 28:-

Amendment of section 2 of No. 9 of 2011

28A. Section 2 of the Independent Electoral and Boundaries Commission Act is amended by deleting the definition of the word "Parliamentary Committee" and substituting therefor the following new definition-

"Parliamentary Committee" means the relevant Committee of the National Assembly or the Senate, as the case may be, responsible for matters relating to the Commission;

Now that the Speaker of the Senate has ruled that matters of elections are matters concerning the Senate and we are here because of those matters, now that we are in

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elections time, we amend this section so that the relevant Parliamentary Committee of the Senate can be involved in matters elections under the IEBC Act. This is a straight forward amendment.

(Question of the New Clause 28A proposed)

(New Clause 28A read the First Time)

*(Question, that the New Clause 28A be read
a Second Time proposed)*

The Temporary Chairperson (Sen. Sang): Proceed, Sen. Musila. You have one minute.

Sen. Musila: Mr. Temporary Chairman, Sir, first, I want to protest this issue of one minute. There is no legislator brought here, elected by his people, to be given a minute in a House.

I support this amendment. I am angry because you are reducing time. The former Chair was given that proposition of one minute and he ruled it out. Now, you sat there, we gave you this position with a lot of respect and now you are reducing it to one minute. What can I say in one minute? I protest.

(Laughter)

The Temporary Chairperson (Sen. Sang): Very well. Proceed, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Some of the Senators think this is a laughing matter. I want to tell you that it is not.

Mr. Temporary Chairperson, Sir, I support the amendment and I want us to be serious with what we are doing because when we start laughing on a matter serious as this as if we are at Gikomba Market, it is a terrible indictment.

Mr. Temporary Chairman, Sir, this Senate, must participate in all matters to do with elections. We have the Committee on Legal Affairs and Human Rights chaired by Sen. Wako and you are the Vice Chair. You cannot sit here and oust yourself from participating in critical issues to do with elections in the country. Where are we getting to? Then, we come here to speak about this and we are told to speak for one minute each.

Mr. Temporary Chairman, Sir---

(Sen. Wetangula's microphone went off)

The Temporary Chairperson (Sen. Sang): Give Sen. M. Kajwang the microphone.

Sen. M. Kajwang: Mr. Temporary Chairman, Sir, the people of Homa Bay elected me to come to this House and debate and talk. Talk and debate I shall, whether you give me a minute or half a minute.

Mr. Temporary Chairman, Sir, I support this amendment. The good thing is that God has given us, you and I, with relative youth and good age. I pray that we shall live to see the day that Sen. Orenge and Sen. (Dr.) G.G. Kariuki have seen today where they

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remind each other of the days gone by and I will remind you of this particular date when you sat on that Chair and made the decisions that you made. I pray that these decisions will not cause turmoil in this country.

Sen. Wako: Mr. Temporary Chairman, Sir, I will obey you as my Vice Chair.

The Temporary Chairperson (Sen. Sang): As the Chair.

Sen. Wako: My Vice Chair.

The Temporary Chairperson (Sen. Sang): Proceed.

Sen. Wako: I support the amendment and the reasons have already been advanced. When we were talking about the role of the Senate on issues relating to elections, the only worry for me in the amendment is the word “or”. It means that relevant committee in the National Assembly or the Senate. It should be “or” because once you put “or” the mischief is not quite settled once and for all because they may chose the National Assembly or the Senate to be on its own but chances are that they will emphasise on the National Assembly.

So, I would like to substitute the word “or” with the word “and”. That is my proposal.

Sen. Nabwala: Mr. Temporary Chairman, Sir, I also stand to protest about the issue of one minute. When you look at Article 117 of the Constitution, it gives privileges and immunities of Parliament to the majority leader and the leader of the minority party. Therefore, I find it a bit of an insult when the microphone is switched off when the Senate Minority Leader is speaking on behalf of the people.

I support the amendment.

Sen. Kanainza: Mr. Temporary Chairman, Sir, I support the amendment. Before I sit down, I would like to protest. We have people here laughing anyhow yet they are not contributing to the fundamental things that we are discussing here but they are just waiting to vote.

Sen. Wetangula is our Senate Minority Leader and he deserves respect. In the Standing Orders, Paragraph 87 is about Point of Orders and they must be granted. I protest.

The Temporary Chairperson (Sen. Sang): Very well. I will not put the question.

(Question, that New Clause 28A be read a Second Time, put)

Division will be at the end. Next.

New Clause 36

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, although you have moved, in your discussion under Standing Order No.36, the word “and” in the parliamentary committee is very important. I propose that you allow me to move the amendment of Clause 28(a) in the amended form. It is small thing that should not cause any problems, so that I move to the other one.

The Temporary Chairperson (Sen. Sang): Very well. Sen. Wako, you just mentioned that you are proposing an amendment but you did not move an amendment. You are the Chairman of the Committee on Legal Affairs and Human Rights and you

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ought to have known that for you to move an amendment, you have to do it in the normal procedure. That is specifically provided for by the law.

(Sen. Wako spoke off record)

You made it as part of your contribution but you did not move an amendment as provided for by the Standing Orders.

Sen. Wako: Then I stand on my feet.

The Temporary Chairperson (Sen. Sang): As you insist on the law and the rules and procedures of this House, you cannot, on one hand, want to bend when it favours you.

Sen. Wako: That alone has taken more than three minutes. Is it agreed?

The Temporary Chairperson (Sen. Sang): Chairman, we are on New Clause 36.

Sen. Mutula Kilonzo Jnr.: You know you are the Chair of the Committee on Delegated Legislation. Some of these things are small---

The Temporary Chairperson (Sen. Sang): Sen. Mutula Kilonzo Jnr., proceed with New Clause 36.

Sen. Mutula Kilonzo Jnr.: I will remind you of this day.

The Temporary Chairperson (Sen. Sang): Okay.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairman, Sir, I beg to move:-

THAT the Bill be amended by inserting the following new clause immediately after Clause 35-

Amendment of 36. Section 29 of the Election Campaign Financing Act is amended in section 29 of No. subsection (1) by inserting the words “and the Senate” immediately 42 of 2013 after the words “National Assembly”.

Mr. Temporary Chairman, Sir, although we have postponed the regulations on the election campaign financing, even when they come to force, we will have no role. I have proposed that we amend and include the Senate in the same.

I thank you.

The Temporary Chairperson (Sen. Sang): Very well. Sen. (Prof.) Anyang'-Nyong'o, you have one minute.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Temporary Chairman, Sir, first, I want to commend Sen. Mutula Kilonzo Jnr. for all these amendments that he has moved because he was very careful and meticulous to ensure that the law is properly written. I also commend him because in the areas where the National Assembly deliberately decided to leave out the words “and the Senate” and he has made sure they are inserted.

Mr. Temporary Chairman, Sir, this New Clause 36 is very important that inserting the words “the Senate” immediately after the words “the National Assembly” follows logically from what Sen. Mutula Kilonzo Jnr. has been proposing.

Therefore, I support the amendment proposed by Sen. Mutula Kilonzo Jnr. However, while doing so, I would also like to stand on Standing Order No.1 and appeal to you to use your powers.

(Sen. Murkomen consulted with the Temporary Chairperson)

Mr. Temporary Chairman, Sir, Sen. Murkomen cannot let the Chair listen to people because he is always interfering.

The Temporary Chairperson (Sen. Sang): Sen. (Prof.) Anyang'-Nyong'o, I will allow you 10 seconds more to conclude.

Sen. Murkomen, you are completely out of order.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Temporary Chairman, Sir, I was drawing your attention to Standing Order No.1 which gives you discretion as the Chairman to revisit amendment to Clause 28(a) so that we can propose a proper amendment and bring the word “and”.

Therefore, I would like to propose this amendment to Clause 28(a).

The Temporary Chairperson (Sen. Sang): You cannot proceed because we are speaking to New Clause 36.

Sen. (Prof.) Anyang'-Nyong'o: Then after I finish with New Clause 36, I will appeal to you to use your powers under Standing Order No.1 to revisit it.

The Temporary Chairperson (Sen. Sang): We are past there. That is the same request that was made by Sen. Wako and it has been rejected.

Sen. (Prof.) Anyang'-Nyong'o: You are not listening to my request. My proposal is, notwithstanding what Sen. Wako did, after we are done with New Clause 36, could you use Standing Order No.1---

The Temporary Chairperson (Sen. Sang): I am not sure you want to use the word “notwithstanding” that has been contentious in this House but request is rejected. We are beyond that.

We do not have any other request for the Floor. I will now propose the question.

(Question that New Clause 36 be read a Second Time proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clause 2

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT the Bill be amended by deleting clause 2 and substituting therefor the following clause- 2.

Section 2 of the Elections Act is amended by –

(a) deleting the words “or referendum” appearing in the definition of the word “returning officer”; and

(b) by inserting the word ‘facial’ immediately after the word “fingerprints” in the definition of the word ‘biometric’.

Mr. Temporary Chairperson, Sir, the IEBC had recommended that we include the word “facial” in the definition of biometrics. It is based on technology. The cameras we have in the city can now recognise you by your facial features. Therefore, it is just an amendment to the definition of biometrics to include the word “facial” after the word fingerprint. - (a) deleting the words “or referendum” appearing in the definition of the word “returning officer”; in fact, the said amendment is otherwise in the Bill.

(Question of the amendment proposed)

The Senate Minority Leader (Sen. Wetangula): I continue saluting the industry of the Senator for Makeni. I support this amendment and call upon the House to realise and appreciate that the biometrics that we talk about include thumb prints, the iris, voice, facial and any other feature that can be described. This afternoon we were arguing, debating and shouting at each other as if the only form of biometrics is finger print yet the innovations of science have given opportunity to expand that where fingerprints fail, something else can be used to identify an individual. I support this amendment. It is important and everybody of goodwill for this country should support it.

Sen. M. Kajwang: Mr. Temporary Chairperson, I support this amendment. It is extremely important. As we discuss the definition of biometric, there has been this perception that biometric only means fingers to that extent that our brothers from quarrying, fishing and tea picking areas believe that because fingers are deformed, then they will not be identified. It is important that the nation knows that the definition of biometric is extremely wide. It will be a very rare case where you find a Kenyan who lacks any of the many features that have been presented there. I urge that let us not be afraid of biometric identification or recognition. The definition is very clear.

Mr. Temporary Chairperson, I must express this, that the IEBC has gone ahead to issue specifications for new equipment and the only technical specification is recognition of finger prints. This is wrong.

The Temporary Chairperson (Sen. Sang): Very well. I will now put the question.

(Question of the amendment put)

Division will be at the end. Next Clause.

The Title and Clause 1

(Question, that the Title and Clause 1 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Hon. Senators, we now proceed to the Division. Moving forward, we will have four Divisions. The first Division will be with regard to Clauses for deletion; Clauses 16, 18, 19, 23, 28 and 32.

The second Division will be new clauses for Second Reading; that is, New Clauses 26A, 28A and 36.

The next Division will be clause with amendments; that is Clause 2 and 4.

The last Division will be on Clauses without amendments.

What is it, Sen. Wetangula?

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Temporary Chairperson, Sir. I want to urge you that it is not fair and just to band all those clauses, particularly, the amendments that Sen. Mutula Kilonzo Jnr. has moved; to be

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voted on as a block. There are Members who have expressed their opinions on one clause in one way and on another in another way; for example, the distinguished Senator for Garissa who singled out one on boundaries and said he saw the point and he would vote differently.

So, when you band it with every other clause, then you are making it difficult for Members to make informed choices. I suggest that we vote on each clause on its own and because of the time taken, it will also be desirable for the Chair, in the shortest time possible to tell, what that amendment was for so that people vote from an informed position.

Otherwise, if you will just say, vote for all these, then we are not doing justice to ourselves.

Sen. Murkomen: On a point of order, Mr. Temporary Chairperson, Sir. It is wrong to change the rules midway. We have practiced traditions. This is not the first Division we are having. We have had Divisions for the last four years. That is the tradition we have been applying. I have sat in that Chair. I have had situations where we have had to take Divisions in the manner in which you have proposed. We should proceed, as we have always proceeded.

Sen. M. Kajwang: On a point of order, Mr. Temporary Chairperson, Sir. I appreciate the importance of tradition and customs, even though some of them might not be right. We know communities in this country that have got customs that advocate for genital mutilations of females. So, we cannot take everything as it is.

Of the many amendments that Sen. Mutula Kilonzo Jnr. has proposed, I support many. There are some that I would beg to differ with. You must give me an option through which I can exercise that choice to support the ones I wish to support and object to the ones that I do not wish to support.

I pray that you will be wise in your judgment on this.

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Temporary Chairperson, Sir. Some of the amendments are contentious. Senators would want to vote the way they want. There are some amendments that people do not have objections to. To ask Sen. Haji to vote Clause 18 or 19 on technology together with one on boundaries is prejudicing his rights. If you put the one on prisoners, the one on elections and the one of technology together, you would have violated our rights.

Sen. Musila: Mr. Temporary Chairperson, Sir, I would like to assist you. It would be absolutely wrong for you to band all the amendments together. As it has been said, I may have a favourable opinion on one and an unfavourable opinion on another. Therefore, we have to vote on every amendment; we cannot do it wholesale. That is a fair advice to the Chair.

Sen. Murungi: Mr. Temporary Chairperson, Sir, I think we have heard enough. It is time for you to make a decision and then we move on.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Temporary Chairperson, Sir, under what point of order or constitutional provision is somebody proposing in this House that we vote for these things as an omnibus, yet when the amendments were being read, you said that we shall vote subsequently on each amendment. I would want to know under what Standing Order somebody is making the proposal that we vote on them as an omnibus.

The Temporary Chairperson (Sen. Sang): Hon. Senators, as you are aware, this is not the first Bill that we are passing in this House and neither is it my first day to sit on the Chair. We have transacted businesses and more contentious Bills in this House and this is the tradition we have set for ourselves. As I give this communication, let us be honest with ourselves. We should not bend the rules when we want to. This is not the first time we are voting on Bills.

My direction, as you requested, is that we will proceed in the manner that I have directed.

I now direct that the Division Bell be rung for one minute.

(The Division Bell was rung)

Sen. Murungi: On a point of order, Mr. Temporary Chairperson, Sir. I kindly request that the bell be rung for another one minute. I know that some of my colleagues are coming; we need one minute to allow them to come.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Chairperson, Sir, when you make a ruling, it should not be a ruling in vain. You ordered for the Bell to be rung for one minute at 2300 Hours and it is now 2304 Hours, going to 2305 Hours. The bell has rung for four minutes.

(Loud consultations)

I look at my sister, Sen. Elachi, banging tables and sympathize with her. I have even noticed that the Chair is participating in counting, to see how many Members are in the House. This must stop. When you order that the Bell be rung for one minute, it should be one minute.

(Loud consultations)

What are these voting machines saying?

The Temporary Chairperson (Sen. Sang): Hon. Senators, I direct that the Division Bell be rung for a further one minute.

(The Division Bell was rung)

(The Bar was drawn and doors closed)

Order, Senators! I now put the Question, which is that Clauses 16, 18, 19, 23, 28 and 32 be deleted.

Proceed to vote.

(The Senators proceeded to vote)

The Temporary Chairperson (Sen. Sang): Order Senators. We now proceed to the Second Division, New Clauses for Second Reading. You are aware of the provisions

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on voting. Let us be seated. I will now put the question which is that:- New Clauses 26A, 28A and 36 be now read a second time.

Proceed to vote. Assisted voters, proceed to vote manually. Please note we are pressed with time.

(The Senators proceeded to vote)

The third division is on clauses with the amendments. I put the question that Clauses 2 and 4 be amended as proposed.

Proceed to vote.

(The Senators proceeded to vote)

The Temporary Chairperson (Sen. Sang): Order, Senators. In order to proceed to the next Division, I will now release the results of the three Divisions we have done. The outcome of the same will determine how we will proceed to the last Division.

DIVISION

ELECTRONIC VOTING

(Question, that Clauses 16, 18, 19, 23, 28 and 32 be deleted put, and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang’-Nyong’o, Kisumu County; Sen. Hassan, Mombasa County; Sen. M. Kajwang, Homa Bay County; Sen. Madzayo, Kilifi County; Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Omondi, Kakamega County; Sen. Orengo, Siaya County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

NOES: Sen. Adan, Isiolo County; Sen. Billow, Mandera County; Sen. Cheruiyot, Kericho County; Sen. Chiaba, Lamu County; Sen. (Dr.) G.G Kariuki, Laikipia County; Sen. Haji, Garissa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. Kembu-Gitura, Murang’a County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Onchwangi, Kisii County; Sen. Sang, Nandi County and Sen. Wamatangi, Kiambu County.

The Temporary Chairperson (Sen. Sang): With regard to the first Division, clauses for deletion, the outcome of the Division is as follows:

AYES: 26

NOES: 10

ABSENTIONS: NIL

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(Question defeated by 26 votes to 10)

Hon. Senators, this means the proposed deletions are defeated.

DIVISION

ELECTRONIC VOTING

(Question, that New Clauses 26A, 28A and 36 be now read a Second Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen.(Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Hassan, Mombasa County; Sen. M. Kajwang, Homa Bay County; Sen. Madzayo, Kilifi County; Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Omondi, Kakamega County; Sen. Orenge, Siaya County; Sen. Wako, Busia County; Sen. Wetangula, Bungoma County;

NOES: Sen. Adan, Isiolo County; Sen. Billow, Mandera County; Sen. Cheruiyot, Kericho County; Sen. Chiaba, Lamu County; Sen.(Dr.) G.G. Kariuki, Laikipia County; Sen. Haji, Garissa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. Kembu-Gitura, Murang'a County; Sen.(Prof.) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen.(Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Prof.)Lonyangapuo, West Pokot County; Sen.(Dr.)Machage, Migori County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Onchwangi, Kisii County; Sen. Sang, Nandi County; Sen. Wamatangi, Kiambu County.

ABSTENTION: Sen. Ndiema, Trans Nzoia County.

The Temporary Chairperson (Sen. Sang): Hon. Senators, with regard to the second division, the results are as follows:-

AYES: 10

NOES: 25

ABSTENTIONS: 1

(Question was defeated by 25 votes to 10)

Hon. Senators, this means that the New Clauses are defeated.

DIVISION

ELECTRONIC VOTING

(Question, that Clauses 2 and 4 be amended as proposed put, and the Senate proceeded to vote by County Delegations)

AYES: Sen.(Prof.)Anyang'-Nyong'o, Kisumu County; Sen. Hassan, Mombasa County; Sen. M. Kajwang, Homa Bay County; Sen. Madzayo, Kilifi County; Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Omondi, Kakamega County; Sen. Wako, Busia County; Sen. Wetangula, Bungoma County;

NOES: Sen. Adan, Isiolo County; Sen. Billow, Mandera County; Sen. Cheruiyot, Kericho County; Sen. Chiaba, Lamu County; Sen.(Dr.) G.G. Kariuki, Laikipia County; Sen. Haji, Garissa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Muranga County; Sen.(Prof.) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen.(Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen.(Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.)Machage, Migori County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. (Eng.)Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Onchwangi, Kisii County; Sen. Sang, Nandi County and Sen. Wamatangi, Kiambu County.

The Temporary Chairperson (Sen. Sang): Hon. Senators, with regard to the third division on clauses with amendments, the outcome of the Division is as follows:-

AYES: 9

NOES: 25

ABSTENTIONS: 0

(Question defeated by 25 votes to 9)

Hon. Senators, this means that the clauses with amendments are defeated.

With that, we will proceed to the last division. I now put the question that clauses 3 to 35 and Clause 2, the Title and Clause 1 be part of the Bill.

Proceed to vote.

DIVISION

ELECTRONIC VOTING

(Question that Clauses 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, Clause 2, the Title and Clause 1 be part of the Bill put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Adan, Isiolo County; Sen. Billow, Mandera County; Sen. Cheruiyot, Kericho County; Sen. Chiaba, Lamu County; Sen. (Dr.) G.G Kariuki, Laikipia County; Sen. Haji, Garissa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang'a County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Omondi, Kakamega

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County; Sen. Onchwangi, Kisii County; Sen. Sang, Nandi County and Sen. Wamatangi, Kiambu County.

NOES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Hassan, Mombasa County; Sen. M. Kajwang, Homa Bay County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Orengo, Siaya County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

The Temporary Chairperson (Sen. Sang): Hon. Senators, the outcome of the last Division is as follows:

AYES: 26

NOES: 10

ABSTENTIONS: NIL

The "Ayes" have it.

(Question carried by 26 votes to 10)

The Temporary Chairperson (Sen. Sang): Hon. Senators, we now move to reporting of the Bill.

I request the Mover to proceed.

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 Laws (Amendment) (No.3) Bill (National Assembly Bill No.63 of 2015) and its approval thereof without amendments. I request Sen. Elachi to second.

The Temporary Chairperson (Sen. Sang): There is no seconding on that particular one.

(Question proposed)

(Question put and agreed to)

Could the Door be opened and the Bars drawn?

(The Door was opened and the Bars drawn)

(The House resumed)

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

REPORT AND THIRD READING

THE ELECTION LAWS (AMENDMENT) (NO.3) BILL
(NATIONAL ASSEMBLY BILL NO.63 OF 2015)

Sen. Sang: Mr. Speaker, Sir, I beg to report that the Committee of the Whole has considered The Election Laws (Amendment) (No.3) Bill (National Assembly Bill No.63 of 2015) and its approval thereof without amendments.

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

Sen. Murungi seconded.

(Question proposed)

(Question put and agreed to)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to move that The Election Laws (Amendment) (No.3) Bill (National Assembly Bill No.63 of 2015) be now read a Third Time. I request Sen. Mbuvi to second.

Sen. Mbuvi seconded.

(Question proposed)

The Speaker (Hon. Ethuro): Let the Division Bell be rung for one minute

(The Division Bell was rung)

I order the Door to be closed and the Bars drawn

(The Door was closed and the Bars drawn)

Let the voting commence.

(Voting in progress)

Those who wish to be assisted to vote may approach the Table.

(Several Senators approached the Clerk-at-the-Table)

DIVISION

ELECTRONIC VOTING

(Question, that the Election Laws (Amendment) (No.3) Bill (National Assembly Bills No.63 of 2015) be now read a Third Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Adan, Isiolo County; Sen. Billow, Mandera County; Sen. Cheruiyot, Kericho County; Sen. Chiaba, Lamu County; Sen. (Dr.) G.G. Kariuki, Laikipia County; Sen. Haji, Garissa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang'a County; Sen. (Prof.) Kindiki, Tharaka-Nithi; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Onchwangi, Kisii County; Sen. Sang, Nandi County and Sen. Wamatangi, Kiambu County.

NOES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Hassan, Mombasa County; Sen. Kajwang M., Homa Bay County; Sen. Madzayo, Kilifi County; Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Omondi, Kakamega County; Sen. Orengo, Siaya County; Sen. Wako, Busia County; Sen. Wetangula, Bungoma County

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

AYES: 26

NOES: 10

ABSTENTIONS: 0

The "Ayes" have it.

(Question carried by 26 votes to 10)

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

The Speaker (Hon. Ethuro): Order, Members!
You may now open the Door and draw the Bar.

(The Doors were opened and the Bars drawn)

What is it, Sen. Wetangula? Bear in mind that we have no business.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. We have business. I rise pursuant to Standing Order No.71, 78 and 79. When we started voting, I raised a question that we had reason to believe that the Samburu delegation led by distinguished Senator, Sammy Leshore, who is not here, did not have a designated Member of the delegation to vote.

Mr. Speaker, Sir, in the first vote that was more critical than any other, the Ayes got 24 votes. Among these 24 votes, was an invalid vote by an unauthorised Member of the Samburu delegation. I raised the issue, at that time, that apart from the embarrassing situation that we went through with Sen. Onchwangi, we wanted to see the proxy notifications in writing as required by usage from the Senator for Samburu and Sen. (Dr.) Kuti for Sen. Fatuma Dullo. You then, and rightly so, read to us the proxy notifications

that were on record and on the file before you. I do not recall hearing any notification from the Samburu delegation.

Consequently, the provisions of Standing Order No.71 which draws from the Constitution have been violated. As a result, and in this case, I have cross checked with the Clerks-at-the-Table. I have no issue with the vote cast by the distinguished Sen. Dullo from Isiolo but we have every issue with the vote cast by the Member of the Samburu delegation. As a consequence of that, we as a House of record, Parliament and Senate, have engaged in a malpractice in voting to the extent where an unauthorized Member of the delegation has voted and given the House that one critical vote that made the difference because the outcome was 24 votes.

I would like to move the chair because we have not sat here all this time for nothing. I want to move that under Standing Order No.78 – it is very easy to shout *imekwisha. Itakwishia kwingine*. I urge the Chair that under Standing Order No.78 which states:-

“In case of confusion or error occurring in the course of a roll call vote concerning the numbers or names recorded, which cannot otherwise be corrected, the Speaker shall direct the Senate to proceed to another roll call vote.”

Standing Order No.79 states:-

“If, after an electronic vote or a roll call vote has been made, it is discovered that the number has been inaccurately reported or that an error has occurred in the names on the division lists, the fact shall be reported to the Senate and the Speaker shall direct that the necessary corrections be made.”

Mr. Speaker, Sir, I am moving under Standing Order No. 78 and 79 that an unauthorized Member of a delegation voted. This is electoral fraud. This amounts to cheating. This is rigging. We will not encourage a deviation from the norms that we have set in this House.

You read to us letters from each delegation including, the contentious one from Kisii delegation. Those delegations found it necessary under the Standing Order, the Constitution and your previous rulings to write to you. They did not send text messages; that is not a recognised way of communication in this House. It is letters that come to this House to appoint a Member of the delegation to vote. Some Members in this House have made a habit of trivializing everything that Members say and continuously making childish snide remarks when a Member is on the Floor, speaking. We take great exception to this.

The Speaker (Hon. Ethuro): Conclude, Senator.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, this matter is not simple. It is serious. In the case of Raila Odinga versus Francis Ole Kaparo and two others, the vote in the National Assembly was successfully challenged because unauthorized persons were allowed to vote. This matter falls within that context. I want to urge you---

Sen. Murkomen: On a point of order, Mr. Speaker, Sir.

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

Sen. Murkomen: Thank you, Mr. Speaker, Sir. When a Member stands on a point of order, it must be because something is out of order. What the Senate Minority Leader is raising on a point of order is something that we canvassed and finished long

time ago. What is he addressing? Who is he addressing it to? Is he in order to continue raising a point of order on a business in the Order Paper that was dispensed with a long time ago?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, earlier on in the proceedings, you cautioned the distinguished Senator for Elgeyo-Marakwet from behaving as if he owns this House. You were so right. I am not asking the Senator for Elgeyo-Marakwet to rule on a matter. I am asking the distinguished Speaker of this House---

The Speaker (Hon. Ethuro): Order, Senator! Conclude.

The Senate Minority Leader (Sen. Wetangula): I want to conclude Mr. Speaker, Sir, by urging you that the good name that you have curved out as a distinguished Speaker of this House, must be translated into probity, honesty, good conduct and above all, fidelity to the law which includes any statute, the Constitution and the Standing Orders. It is a sad day in the history of this country that a Senator can vote as a masquerade and provide a victory that is undeserved in a matter in the House---

The Speaker (Hon. Ethuro): Order, Senate Minority Leader! Senator, a point of order is a point of order. To debate on it will be out of time, out turn. It will not help you, especially on a matter that I had already indicated to you that I have sufficient information. I have correspondence on record. It is on file. I have correspondence on a text message to me. I am the only competent authority on this matter for now.

(Sen. Wetangula spoke off record)

I am not under your direction. You are the one who is under my direction.

Hon. Members, I have indulged the Senate Minority Leader because he is a leader of this House. However, he also needs to extend the courtesy to the Chair.

ADJOURNMENT

The Speaker (Hon. Ethuro): Hon. Senators, there being no other business, the Senate stands adjourned until Tuesday, 14th February, 2017, at 2.30 p.m.

The House rose at 11.55 p.m.