

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Wednesday, 11<sup>th</sup> October, 2017

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

*[The Speaker (Hon. Lusaka) in the Chair]*

#### PRAYER

#### COMMUNICATION FROM THE CHAIR

##### VISITING DELEGATION OF STAFF FROM UASIN GISHU AND MERU COUNTY ASSEMBLIES

**The Speaker** (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery this afternoon of visitors from Uasin Gishu and Meru County Assemblies. The officers are visiting the Senate on a one week attachment programme. I request each member of the delegation to stand up when called out so that they may be acknowledged in the Senate tradition.

From Meru County:-

- |                           |   |                           |
|---------------------------|---|---------------------------|
| 1. Mr. Stanley K. Karoney | - | Principal Finance Officer |
| 2. Ms. Ann N. Kiberenge   | - | Senior Finance Officer    |

From Uasin Gishu County:-

- |                       |   |                        |
|-----------------------|---|------------------------|
| 1. Mr. Aaron Sitienei | - | Senior Clerk Assistant |
| 2. Mr. Richard Yego   | - | Clerk Assistant        |
| 3. Mr. Oscar Kemboi   | - | Human Resource Officer |

Hon. Senators, on behalf of the Senate and on my own behalf, I welcome the delegation to the Senate and wish them well for the remainder of their stay.

I thank you.

*(Applause)*

#### MESSAGES FROM THE NATIONAL ASSEMBLY

##### APPROVAL OF THE ELECTION LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.39 OF 2017)

**The Speaker** (Hon. Lusaka): Hon. Senators, I wish to report to the Senate that pursuant to Standing Order 41(3) and (4), I have received the following message from the

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Speaker of the National Assembly regarding the approval by the National Assembly of the Election Laws (Amendment) Bill (National Assembly Bill No. 39 of 2017)-

“PURSUANT to the provisions of Standing Orders 41(1) and 142 of the National Assembly, I hereby convey the following Message from the National Assembly –

WHEREAS the Election Laws (Amendment) Bill (National Assembly Bill No. 39 of 2017) was published *vide Kenya Gazette* Supplement No. 148 of 27<sup>th</sup> September, 2017, as a Bill concerning county governments, to amend the Independent Electoral and Boundaries Commission Act, 2011 (No. 24 of 2011) and Election Offences Act, 2016 (No. 37 of 2016) to provide for proper conduct of affairs and business of the Independent Electoral and Boundaries Commission for effective management of elections;

AND WHEREAS the National Assembly considered and passed the said Bill on Wednesday, 11<sup>th</sup> October, 2017, with amendments in the form attached hereto;

NOW THEREFORE, in accordance with the provisions of Articles 110(4) of the Constitution and Standing Order 142 of the National Assembly Standing Orders, I hereby refer the said Bill to the Senate for consideration.”

Hon. Senators, pursuant to Standing Order 151, which requires that a Bill originating in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading in accordance with Standing Order 133, I direct that the Bill be read a First Time this afternoon, and as indicated in the Supplementary Order Paper.

I thank you.

Hon. Senators, I now wish to refer you to the Supplementary Order Paper for us to be able to proceed to the Notices of Motions.

Proceed, Senate Majority Leader.

### NOTICES OF MOTIONS

#### ESTABLISHMENT OF AD HOC COMMITTEE ON THE ELECTION LAWS (AMENDMENT) BILL, 2017

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I beg to move Notice of the following Motion:-

THAT, aware that the country is still in an election cycle, arising out of the requirement for a fresh Presidential Election in October, 2017; further aware that there is need to legislate on and address certain legal lacunas and in compliance with judicial decisions asking Parliament to legislate on certain matters to ensure that the elections conform with the provisions of Article 81 of the Constitution on general principles for the

electoral system; noting that such election-related matters would ordinarily require consideration by the relevant Standing Committee of the House, in this case, the Standing Committee on Justice, Legal Affairs and Human Rights, which is yet to be established; further noting the limited period of time before the date of the said fresh election; cognizant of the urgent need to consider and conclude with all matters relating to the elections to allow the Independent Electoral and Boundaries Commission ample time to implement any changes related to the review of the election-related laws;

NOW THEREFORE, the Senate resolves—

a) to establish an *Ad-hoc* Committee to be known as the *Ad-hoc* Committee on the Election Laws (Amendment) Bill 2017, comprising not more than nine Senators, to undertake the functions of the Standing Committee on Justice, Legal Affairs and Human Rights, as contemplated under Standing Order 212(3);

b) that, the following Senators be appointed to the Committee;

1. Sen. Fatuma Adan Dullo;
2. Sen. Paul Kimani Wamatangi;
3. Sen. Johnson Arthur Sakaja;
4. Sen. Naomi Jillo Waqo; and,
5. Sen. Aaron Cheruiyot.

c) that, the Election Laws (Amendment) Bill (National Assembly Bill No. 39 of 2017) be committed to the *Ad-hoc* Committee;

d) that, the *Ad-hoc* Committee considers the Election Laws (Amendment) Bill (National Assembly Bill No. 39 of 2017) and reports to the Senate on or before Thursday, 12<sup>th</sup> October, 2017.

#### DEVELOPMENT OF EFFECTIVE WASTE MANAGEMENT AND DISPOSAL REGULATIONS

**Sen. Kihika:** Mr. Speaker, Sir, I beg to give Notice of the following Motion:-

THAT, aware that cities, towns and urban areas in Kenya are increasingly getting overpopulated leading to overstretching of services and amenities; concerned that improper management of waste has become a major cause of pollution of neighbourhoods, water sources and other natural resources leading to the rise of environment-related diseases which cause many deaths; further concerned that in most urban areas, waste is dumped in an uncontrolled manner posing a great challenge to the wellbeing of urban dwellers, particularly those living near dumpsites; acknowledging that the problem continues to rise despite the efforts made to mitigate the problem through various statutory bodies, private entities and communities; the Senate calls upon the National Government to take immediate steps to develop effective waste management regulations and put in place proper disposal facilities, including for harmful waste and that this be done in consultation with all key stakeholders.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Next Order!

**The Clerk-at-the-Table:** Order No.7; Statements

**The Speaker** (Hon. Lusaka): There is a request for a Statement from Sen. Mutula Kilonzo Jnr. However, since I cannot see him in the Chamber, I order that we proceed to the next Order.

## BILL

### *First Reading*

ELECTION LAWS (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILL NO.39 OF 2017)

*(Order for First Readings read – Read the First Time and ordered  
to be referred to the relevant Departmental Committees)*

## MOTION

ESTABLISHMENT OF AD HOC COMMITTEE ON THE  
ELECTION LAWS (AMENDMENT) BILL, 2017

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, aware that the country is still in an election cycle, arising out of the requirement for a fresh Presidential Election in October, 2017; further aware that there is need to legislate on and address certain legal lacunas and in compliance with judicial decisions asking Parliament to legislate on certain matters to ensure that the elections conform with the provisions of Article 81 of the Constitution on general principles for the electoral system; noting that such election-related matters would ordinarily require consideration by the relevant Standing Committee of the House, in this case, the Standing Committee on Justice, Legal Affairs and Human Rights, which is yet to be established; further noting the limited period of time before the date of the said fresh election; cognizant of the urgent need to consider and conclude with all matters relating to the elections to allow the Independent Electoral and Boundaries Commission ample time to implement any changes related to the review of the election-related laws;

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1. Sen. Fatuma Adan Dullo;
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c) that, the Election Laws (Amendment) Bill (National Assembly Bill No. 39 of 2017) be committed to the *Ad-hoc* Committee;

d) that, the *Ad-hoc* Committee considers the Election Laws (Amendment) Bill (National Assembly Bill No. 39 of 2017) and reports to the Senate on or before Thursday, 12<sup>th</sup> October, 2017.

Mr. Speaker, Sir, this is a straight-forward Motion. As you can see, it is long and self explanatory. We want to deal with the Election Laws (Amendment) Bill (National Assembly Bill No. 39 of 2017) that came from the National Assembly.

The country is at cross-roads. When such times occur, the constitutional institutions must rise to the occasion. This Senate is being called upon to rise to the occasion, to listen to the views of Kenyans, to legislate and to fill the legislative gaps. There are so many things that are happening at a very fast rate. Kenyans are asking who should do what and why we cannot ensure that this country moves forward.

We have a fresh judgment that came out this morning. A judge of the High Court - in a very persuasive manner that is difficult to disagree with - has come to the conclusion that the mode of nomination and conducting fresh nominations in an election or conducting fresh elections, as contemplated by the Supreme Court in its judgment of 2013, that the procedure enunciated by the Supreme Court after the Attorney-General being the *amicus curie* at that point in time, had posed some questions to the Supreme Court; that the answers given are what we call in law, *Obiter dictum*; because there are various issues that came out.

Mr. Speaker, Sir, this means that they are only good to persuade the judges in the lower court to follow but they were not bound by the decision of the Supreme Court. This is very instructive. Many Kenyans are saying that the High Court judge has gone against the Supreme Court which, as known by many people, has only two original jurisdictions; one is to make a decision in so far as presidential elections are concerned and, second, is to give advisory opinion if it is requested by a state organ at the national or county level.

Mr. Speaker, Sir, in exercise of that jurisdiction, the Supreme Court gave the opinion they wanted but the original jurisdiction of interpretation of the Constitution is a preserve of the High Court. That is why Justice Mativo was within the constitutional confines when he came to the conclusion this morning that it was wrong for the IEBC to deny Dr. Ekuru Aokot, who is a lawyer, a chance to participate in the elections.

In paragraph 73 of that judgment, the judge says that there is nothing in law that stops all the participants of the 8<sup>th</sup> August, 2017 presidential elections from participating in those elections. Now we have a serious *Ratio decidendi* and a precedence that has been established by the High Court which points out to the possibility that the reason why the judge has to fill the gap is because “judge-made” laws arise where the Legislature has not legislated on a particular matter.

As the Senate of the Republic of Kenya, we now have an opportunity to look at the Bill as was sent from the National Assembly and make a determination as to whether what the National Assembly has gone through and given to this House suffices to fill the gap in the law. If not, what else can the Senate do to fill the *lacuna* created by the situation we are in?

Mr. Speaker, Sir, that is why we are accommodating this Bill from the National Assembly. There was a similar Bill that was tabled in this House and a Committee was formed. Generally, the Senate will make a decision on how to treat this Bill. However, as we speak, we have a different Motion that comes from the National Assembly that mandates us to deal with this Bill.

The Committee that has been established has a fantastic opportunity because the composition of its membership is the same with that of the select Committee that we had formed. They sat through public participation in a joint manner with a National Assembly Committee and have, therefore, views of Kenyans, but nothing stops them from accommodating more views. The report that was adopted by the select Committee has been returned to this House, richer and more informed.

Mr. Speaker, Sir, there is a new decision that came this morning and debate is going on in the country. This is healthy for the nation, except that I still insist that the minority side should provide their membership to this Committee. We take seriously participation of all shades of opinions in this nation. Although the majority side as it sits here has proposed five people, we are waiting for the minority side to propose five people; to rescind the letter they wrote to you that they will not participate in Committees and business of this House.

History will judge the minority side so harshly; that at a point and a most critical time when Parliament was required to pronounce itself on a very important matter of national importance, the minority side ran away from responsibility. The minority side have threatened that when all this process of law has gone through, they will rush to the courts to injunct the law from being applied and declare it unconstitutional. It is perceived that they will run away from it because they never participated.

Mr. Speaker, Sir, for the record, today the Senator for Narok is sitting here, listening and so is the Senator for Turkana. However, the Senator for Bungoma who happens to be your Senator was here, quickly inserted his card and “ran” away.

It must be known to the nation that it is a lie for anyone to say that the Jubilee Coalition forced laws on anybody in this Republic because we have no capacity to force anybody to accept a certain position. It must go on record that there is an abdication of duty by the minority side whose responsibility in this House was to continue to provide the representation that was given by their people in the different constituencies.

I hope when that time comes, the judge will be faced with the situation whether there was a possibility that a law was done by one side of a House. That is not possible because the democratic right of every citizen so to speak, is also a constitutional right. The right not to also participate in law making is a constitutional right of the minority side. If the citizens who voted them were serious enough, they would take it as a serious breach of trust between the elected leaders from the minority side and those of us who are at the majority side. If those citizens that voted them were serious enough, they would invoke the doctrine of social contract to demand that the relationship must be severed

because there is an abdication of duty which was given to them *via* the vote on 8<sup>th</sup> August, 2017.

Mr. Speaker, Sir, there are a lot of stories; people are saying that Mr. Chiloba must go or Mr. Chebukati must go and that the elections of 8<sup>th</sup> August were null, void and fake. All the persons who are sitting pretty in this House and calling themselves Senators went through the hands of Mr. Chiloba and Mr. Chebukati.

If any person in the minority side is serious enough; that there is a fraud and things are wrong in IEBC, they must lead by example; they cannot have their cake and eat it. They cannot earn allowances and salaries on account of an election that was supervised by the same people they are making noise about.

Sen. Orenge must be ashamed of himself to, at his age, make noise at a Mr. Chiloba, who was born 40 years after him. He should be the senior counsel to guide him, instead he is “making noise” yet he has not provided his resignation; he has not stated that he is resigning because he does not trust IEBC. He cannot trust IEBC to have given him a certificate that he won elections in Siaya County and “make the same noise” to the same IEBC. If he has a high moral ground, he should resign.

He should show this country that he means what he says, so that we can say that the resignations of all the minority sides from Parliament is a demonstration that they have no faith in IEBC. To “make noise”, to hire young people and to sadly, tell and instruct young girls to strip so that we can see their private clothes, is the lowest we have sunk as a Republic of Kenya. It is a shame!

*(Applause)*

There is nothing honourable in the kind of nonsense we are seeing in the streets of Nairobi where people who purportedly are protesting are destroying people’s property; looting shops, vandalizing and breaking vehicles of people. It is a shame and there is nothing legal about it. There is absolutely nothing legal in this Republic that in every presidential election, one person will come up with demands, write the demands from one up to ten, present them to IEBC, make it impossible for IEBC to implement them and then pull out of that process and hope that he will benefit from that pulling out and that this country cannot go to an election.

Mr. Speaker, Sir, if IEBC is serious with its independence, we want to ensure that on 26<sup>th</sup> August, 2017, there must be an election because the courts have said there must be an election. You cannot choose the side of the judgment you will implement. We must have that election which will be conducted by IEBC. It will proceed whether we have ‘*Tinga*’ in the process or not. There is nowhere in our Constitution that says, “though shall have Mr. X on the ballot paper”.

Those of us who are pontifizing out there and pretending to be high priests of constitutional order must come up to their senses and tell the country that they are cheating. They are trying to get power through the back door. History will be written and read in many years. Kenyans will ask themselves what kind of nonsense was happening at such a period of time; where an individual would dictate an independent commission; that if it does not abide with what he has said, he will not participate in the elections.

If we do not have this election on 26<sup>th</sup> October, 2017, within the 60 days as the court has ordered, I will tell you for sure that we will have institutionalized anarchy, bullying and madness of a few people at the expense of the rest of the nation. Therefore, even as we continue to converse as the people of Kenya, this Committee has a responsibility to come up with legislation that we want, and fill the gaps that are remaining. This House has to pass the law.

History will record that there were Senators who were responsible. If we get one or two from the minority side, I shall say like God told Abraham, I will be happy with the two or one. Even if we get them and we get faithful ones on the majority side, this nation will stand because the minority side at a very important time in history, stood to ensure that the nation cannot go to anarchy.

When that time comes, those of us who are still young in this side of House, hopefully, God blesses us to live for long, will proudly narrate to our children and our great grandchildren that there was a time we stood firm and we were not ashamed. There were people who were writing all sorts of things in the newspapers and making noise in the streets but we stood the test of time to ensure that we do the right thing. The right thing is not about numbers; it is about what the Constitution requires us to do. It is by God's grace that this House has a majority side. Otherwise, this House and the country would have been held at ransom.

We will make and pass the law and the nation will move forward. Even with the events of today, I am proud to say that President Uhuru Kenyatta and his Government will make history. It may not be seen today that there was a man called Uhuru Kenyatta who was provoked to the highest limit but maintained the country in peace and unity.

Mr. Speaker, Sir, President Kenyatta has 70 per cent support of the people of Kenya but he is not misusing that support. If President Kenyatta told the people of Nairobi, Kiambu and Kajiado to fill Nairobi, there would be no space for National Super Alliance (NASA) to protest. But because he is a responsible President, he has given them security. However, they are abusing it. If it were another President, there would be disorder in this country. However, because we have President Uhuru Kenyatta in that Office, history will record, at the appointed time, after we swear Uhuru Kenyatta for his second term, and I see the promised land in a few days ahead of us--- When that day comes, we will sit back and write history slowly and remember and thank God that he gave us President Kenyatta at such a time as this, so that this nation can be guided with sobriety, order, respect for court orders – even the ones that we do not agree with – so that this country can move forward and we can build a nation that is united.

I wish to move and request Sen. Kihika to second.

**Sen. Kihika:** Mr. Speaker, Sir, I stand to second this Motion. It is a very critical and important time in the history of our country. Our major function, as the Senate, being to legislate for this country, I believe that this Motion is timely so that we can get the country back to stability. We have gone through elections and the Supreme Court nullified the presidential election results.

As we move forward expecting to do our civic duty on 26<sup>th</sup> October, 2017, it is important that, as the Senate, we legislate on whatever gaps the Supreme Court pointed out or may exist so that as the elections are held on 26<sup>th</sup> October, 2017 the law is in conformity. As we move forward, I am impressed by the Senators, more so from the

Majority side, who are here and ready to participate and make sure that they stabilize this country.

We have a Minority side that is hell-bent on causing mayhem and chaos in this country. They have become experts of fake crisis and that is the reason when we look across the isle, we see their seats empty even though when we began this process they were here.

They have cheated their electorates by coming just to sign in so that they are not thrown out. They should have been here participating in this legislation. That way, their voices would have been heard so that those they represent can record for history purposes, what it is that they oppose about this legislation. Instead, as senior as some of them are, they chose to be out on the streets yelling, shouting and inciting the youth.

In fact, we had a presidential candidate, who is now no longer one, claiming that he would want to see everybody on the streets until he can see the inner clothes of the womenfolk of this country. As women, we are completely disgusted. That is why as legislators, we are here to make sure that we have good laws and ensure that on 26<sup>th</sup> October, 2017 this country is ready for elections. We shall not have this same person, who has continued to bring chaos and disorder in this country, take advantage of the little gaps that exist within the election laws. We are here to seal those gaps properly and within the law.

That is why it would have been more appreciated had they been here and registered their voices. Since they opted not to be here, we cannot force them. However, we shall continue with our duty to make sure that we legislate within the law and ensure that we set this country on the proper footing that it has been and that they are trying to destabilize. As a country, we shall not let a disorganized Minority that knows they have no numbers and are, therefore, afraid of the ballot, to go ahead and cause chaos so that there are no elections. That is why we are here today. We are ready to proceed with this job and legislate.

I beg to second.

*(Question proposed)*

**Sen. Mwaura:** Mr. Speaker, Sir, I rise to support the establishment of this Select Committee. This Committee is very important because it seeks to fill the gap that is occasioned by the boycott that we are witnessing here.

In my opinion the boycott is inconsequential. This is because if you were to look at the provisions of the very Constitution, you would realise that people are trying to abdicate their duties, but avoiding being declared not to have attended sittings. By default they go ahead to validate the plenary sittings of this august House.

Our own Standing Orders provide that this Select Committee will conduct the business that would otherwise be conducted by the Committee on Legal Affairs and Human Rights which is supposed to do the following:

“To consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.”

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Mr. Speaker, Sir, the Eleventh Parliament had a very big task of ensuring that we are able to create enabling legislation, depending on the schedules of the Constitution that would actually ensure that the Constitution of Kenya, 2010, is fully implemented. However, I think it is in the Twelfth Parliament where you find the actual implementation of the Constitution. This is where the rubber is meeting the road. We have practical experiences of how individuals are using the Constitution to exercise their democratic right, but more poignantly, to actually occasion a constitutional crisis.

For example, how would you explain the case of an individual, who is running for the Office of President and then goes ahead to resign from running for that same position even when the Supreme Court has given him an opportunity to buttress his win, if at all he had actually won? We are in a country where laws are very clear on how a candidate for an election is supposed to tender their resignation, and yet some individuals would want to imagine that they are above the law? What kind of precedent are we creating?

We have a good opportunity. There comes a time when it is not necessarily a matter of law, but principle and belief; that we must stand for this country to continue being what it has always been. I believe that, that voice of reason is resident within the nominees to this Select Committee. These are men and women of integrity who will ensure that all the laws that we will make will serve the purpose of this election. Otherwise, we will not allow a situation where this country goes into anarchy. We will equally not allow a situation where one is given his democratic right to run for office and even goes ahead to fundraise and then they pocket the money. We cannot allow Kenyans to be misused for political expediency.

Mr. Speaker, Sir, I beg to support.

**The Speaker** (Hon. Lusaka): I do not see any other Senator who is willing to contribute. I, therefore, call upon the Mover to reply.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I beg to move and request the Committee to move with expediency to ensure that we get good laws for the Republic of Kenya.

*(Question put and agreed to)*

## **BILL**

### *Second Reading*

THE ELECTION LAWS (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILL NO.39 OF 2017)

*(By leave of the Senate)*

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Speaker, Sir. I beg to move the following Motion:-

THAT, the Election Laws (Amendment) Bill (National Assembly Bill No.39 of 2017) be read a Second Time.

Again, I have a great opportunity to come before the House with a very important Bill that has been passed by the National Assembly. This Bill which has already been committed to the *ad hoc* Committee by this House earlier on mirrors a Bill that was brought to this House by Sen. Dullo. The Bill went through public participation and we gave our views.

It looks like pursuant to the work that was done by the Joint Select Committee of this House and the National Assembly, there is an accommodation of the issues that were raised by members of the public. In the House, we will have the opportunity to look at this when the *ad hoc* Committee will come back with its recommendations before we go to the Committee Stage.

This Bill is very important. The first part of the Bill talks about the place of the Chairperson of the IEBC and what happens when there is a vacancy in that office. A law is made for men and not men made for law. Some people are asking this question: Why at this point in time are we discussing the Chairperson of the IEBC and the critical importance of commissioners of the IEBC? This is because of the experience we now have. For the first time, dealing with a nullified election and working on a fresh election has shown to all of us that every manager of the election is a very important person. It is a critical position. They play a very important role.

That is why we cannot leave this to conjecture; to any possibility of a chairperson of a very important commission who is supposed to deal with fresh elections. In that fresh election, if we do not get that 50 per cent plus one vote, we will have another repeat election, that is, a rerun? If the rerun is not good, will we have another fresh election? We could as well theoretically be in an election for the next two years.

Some of those people who are telling us that the law has been made and the election is “on the next day”. How are you sure that we will not have election the next day and the election will not get 50 per cent plus one vote? Therefore, you have a rerun and the rerun never meets the set thresholds and we will have a fresh election. It is possible for us theoretically to have elections even up to the end of next year. Therefore, to come to the conclusion that we made this law just for the 26<sup>th</sup> October, 2017, election, is actually a serious and fatal lie.

It would as well be that after the 26<sup>th</sup> of October, 2017, election, we come back to this Chamber and find that there are certain laws that we must accommodate so that the elections can be better, free, fair, simple and verifiable.

Mr. Speaker, Sir, there is already a litigant in court challenging technology itself. He argues that the actual use of technology for an election is unconstitutional. What will happen tomorrow if that person comes back here and the court declares that the use of technology is unconstitutional? That is not a new thing.

In Germany, for example, Dr. Wisner, a PhD holder in Physics and his father, Dr. Wisner Senior who is also a holder of PhD in Political Science, went to court after the 2005 Elections. They said that using technology in transmitting results and voting technologically was not possible for the voter to be able to monitor every step of the election to its final conclusion. This case went all the way and in 2009, the Supreme Court of Germany made a very important decision. This happened in a country called Germany with 99 per cent literacy levels and one of the top five countries in the world economically. The court said that they must discard the use of technology and use manual

systems. This was because it is only through the manual system that the voter can track his vote and the results to the logical conclusion.

Mr. Speaker, Sir, you never know; the courts might come to a similar conclusion in the case that is in court, just like the same way we had a judgement this morning from Justice Mativo in the High Court. All these decisions will require a National Assembly and a Senate or Parliament that are flexible enough to respond to the needs of the people. We cannot close our eyes and say that we will do nothing. We must do something so that we can accommodate those issues.

There are those who are also perpetuating propaganda that we want to reduce the powers of the Chairman of the IEBC. Far from it, this law does a very noble task; that when there is a vacancy in the position of the Chairman, the Vice-Chairman will be able to perform the duties of the Chairman until such a time that the Chairperson will be substantially appointed. If there is a situation where the Chairperson and the Vice-Chairperson are not there, there must be a possibility of the Commission electing a person who will perform the duties of the Chairperson and the Vice-Chairperson. Therefore, this is a very critical amendment.

We have also a very important provision in the amendments that creates the quorum of the Commission to the Constitutional minimum. People must understand the logic behind this amendment saying that we must have a quorum of the IEBC at any given time not below three commissioners. It is because the Constitution says that if you want to form any commission in the Republic of Kenya, you must have at least three commissioners. That is the constitutional minimum.

I was in the Committee that came up with the reduction of the IEBC commissioners from nine to seven. We have another opportunity in future perhaps we will say that the maximum number of commissioners in the IEBC should be five or we come to three. That is why in law; we came to this conclusion that the minimum quorum for the Commission to function is three commissioners.

This law does not sit on its own. It has also certain provisions that state how a meeting can be called, requirements for the notice that is given to the members for a meeting to be called and how the resolutions of the Commission are arrived at by the commissioners. Therefore, somebody alleging that we are creating a possibility of two or three people to sit in a corner and make a decision, it not true. He has not read the law. The law is not sitting in isolation. It is actually sitting in conformity with other provisions of the law.

We have also made it abundantly clear there that the decisions of the Commission are better made with consensus; the unanimous decisions of the Commission. However, where there is a dissenting opinion, the majority must have the final say in the decision. Their majority decision will be the decision of the Commission just like it happens everywhere in this world.

The next amendment in Section 6 deals with the amendment of Section 39 of the Elections Act. That amendment deals with electronic transmission and physical delivery of results. There is again an erroneous argument out there, that physical delivery of results is wrong. The primary document that determines that an election has been done in this country is the physically filled form. We are talking about electronic transmission by scanning a form and then transmitting it.

You are transmitting a physically signed form, that is, Form 34A at the moment, or Form 34B or whatever form, it will be called in the regulations of IEBC. What is important is to make it succinctly clear in the law that once those forms have been filled in the polling station, they must be physically delivered to the constituency returning officer and the national returning officer to facilitate the role of verification.

Again, a very important thing was going on in the Supreme Court in the morning; a clarification of the role of the Chairman of the IEBC in verification of Form 34A and Form 34B before announcing the results of the President. This also makes it clear that that verification must look into accurate record of the results as tallied in a polling station. To do so, you have to collect all kinds of pieces of evidence.

This law makes it abundantly clear that it is only the truth that can facilitate the returning officer at the national level to be able to announce results as per the amendment of Section 39. Therefore, when the Chairperson declares the President, he must do so guided by the results as received from the respective polling stations and subsequently, the constituency tallying centres.

Finally, Mr. Speaker, Sir, this law preserves the complementary system that can be used by the Commission in identification of voters. It also makes it clear in Section 83 of the Bill that a court shall not declare an election void for non-compliance with any written law relating to that law if it appears that the election was conducted in accordance to the principle laid down in the Constitution and in the written law – note that where ‘or’ was before, we have put ‘and’ – that the non-compliance did not substantially affect the results of the election. Only a substantial violation of the law and a substantial impact on the results can annul or invalidate an election.

That does not include the argument that there is a form that was not photocopied or scanned well; or it that did not have a serial number. You must go further and say that the violation of the law has led to a substantial impact on the results of the election; and this is the law all over the world. I reckon that the omission of the word ‘and’ in Section 83 of the Bill was only occasioned by a very small mistake that was perhaps done to leave between (a) and (b) ‘or’ instead of ‘and.’

Mr. Speaker, Sir, this law is very important for us and for the Republic. It is a good law and it is important that it is respected so that we can fill the lacunas that are in the Constitution. In the Acts of Parliament, we are able to give meaning to the constitutional provisions that we want.

With those many remarks, I would like to move this Bill and request the country to continue interrogating and looking at this law. If they have anything that they want to send to us by tomorrow or even today, we can incorporate it for purposes of amendment of this Bill. So, I beg to move and request Sen. Dullo, who chaired the other Select Committee and who has a general understanding of all these amendments and the law as it is to second this Motion and contribute to it. Her Bill was a mirror of the Bill by Hon. Cheptumo in the National Assembly.

**Sen. Dullo:** Thank you Mr. Speaker, Sir. I rise to second this Bill. This Bill is actually a mirror of the Bill that I Tabled in this House. Generally, there is a perception that has been created out there that this Bill has taken away the power of the Chairman of the IEBC. It has also been said that it is a game-changer or it is going to affect or benefit so and so. This Bill has got nothing to do with all those perceptions that have been

created out there in the public. If you look at the provisions of the Bill, I think most of the people who are talking out there have not read the Bill to understand its content. I am asking the public and everybody who is making stories out there to read this Bill and understand it properly.

Mr. Speaker, Sir, you will see that this particular Bill is aligned to various decisions that were made in our courts like the cases of Maina Kiai, Peter Gichira and many other decisions; especially the Maraga 2017 decision and the 2013 Supreme Court decision. So, there is nothing wrong with this Bill that is aiming at benefitting the Jubilee Party or Hon. Uhuru Kenyatta. This Bill is for the benefit of the whole country and it is important that everybody reads this Bill and understands it.

Secondly, this Bill gives meaning to what reform is all about. As it is, there are a lot of gaps or lacunas in the current legislation, such as the Election Act and the rest, that we are amending. If we go for elections on 26<sup>th</sup> October, 2017, with the Act as it is, we are going to have a gap and a constitutional crisis. This Bill is important and it is addressing all those issues.

Mr. Speaker, Sir, as I mentioned earlier, this Bill is exactly like the one I moved in this House. Our Bill is supposed to go for the Second Reading, but since this has come, we are debating this particular Bill and we are going to subject it to the process that is legally required through this particular House and as per the legislation that is laid out.

We held public hearings to collect views on the Bill that I had tabled in this House. A lot of ideas were given to us that clearly showed us that this Bill is very important to Kenyans. This is because of what is happening in the country and what has happened even before in the Judiciary, particularly in the Maraga Ruling. There are several amendments that were introduced to the Bill that I Tabled in this House during the public hearing. Looking at this Bill, I can see that those amendments are included in this Bill that has been sent to us from the National Assembly.

In Section 2 of the Bill, it is talking about the definition of the Chairman in the event that we are running an election and there is only one Chairman who is legally qualified to declare the results. We have accommodated or created that the “Chairman” means the “Vice-Chairman” too; and this is the provision in so many legislations.

If you look at the Parliamentary Service Commission Act, it clearly shows who the Chairman and the Vice-Chairman is, and those definitions are all over. If you look at the Judicial Service Commission, you will find that the Chairman and the Vice-Chairman are clearly defined. There is nothing wrong in making sure that we have taken care of that provision. This is the only House or place where this situation can be corrected. This situation cannot be corrected by people running around, throwing stones and saying ‘no reforms, no election’. That is not a solution! Let them come back to this House for us to find a solution to this particular problem.

Mr. Speaker, Sir, looking at the provision of Section 3, which is to be amended, we are looking at where there was a lacuna or no provision. In the event that there is a vacancy in the office of the Chairman of IEBC, what needs to be done? We have provided for that because that is clearly a lacuna with regards to what needs to happen if that vacancy arises. Similarly in Section 3(a), we have provided for what is to happen in the absence of the Chairman, which is a lacuna in the current legislation. What should happen or who should take over in such an instance? Clearly, this is what is anticipated

on a day-to-day basis, because anything can happen to the Chairman of the IEBC; may God forbid. One old lady said that the Chairman can die; so what happens next? Does it mean that one person can hold this country at ransom? We have to provide a mechanism for continuity in the event that the Chair is not there. It is not that we are going to create this or that.

Mr. Speaker, Sir, Kenyans need to read this particular Bill and clearly understand it. I am appealing to all those who criticized this Bill that it is going to benefit one particular group or it is not the right time; which is the right time? In the Maina Kiai case, he was allowed only few weeks before elections, so why this particular one? Kenyans need to come to terms with the terms of this particular Bill, understand it properly, accept it the way it is. Our intention as parliamentarians and a party is to make sure that we hold this country together and there is no problem.

The other provision I wanted to talk about is Section 5 where we are saying that, that provision is unconstitutional in line with the decision that was made in the court. There is nothing wrong about that because if people are denied an opportunity to elect their leaders---This is in the case of independent candidates who were told to make sure that the people nominating them did not belong to a particular party. That decision has been made. We are just aligning the decision to the ruling of that case.

Mr. Speaker, Sir, the other provision is giving the IEBC the mandate to make sure that they have physically and manually delivered the results. There is nothing wrong with that. In the event that there is discrepancy in the results, the most prevailing position is the results that are tallied correctly at the polling station and also at the constituency level. Those results are supposed to be accurate.

I believe what we have done is clearly explaining the situation so that everything is done in line with the provisions of the Constitution without any problem. What happens in the current legislation is that, the electronically transmitted results prevail over the manual and that should not be the case. We debated thoroughly as a Committee about this section in the other Bill and it was exactly the same as this particular one. When you have electronically and manually transmitted results, you will find that the electronic version has a problem.

At the same time, sometimes you will find the manually transmitted results have a problem and for us to get out of this, it is important to go back to the root or the source in order to be sure which result is correct. That is the situation we are trying to cure.

Mr. Speaker, Sir, the other provision in this amendment is the live streaming of the results. For the benefit of Kenyans, there is nothing wrong with that because IEBC is mandated to ensure that Kenyans see on the screen of the television what is happening and how the results are streaming in. These are the issues that are beneficial to the public and not Jubilee as some people are alluding to.

On the issue of the quorum; the current Commission is constituted of seven Commissioners. Initially, they were nine. This was reduced by the Kiraitu Murungi and Sen. Orenge Committee and this is in the public domain. They used to be nine and now they have been reduced to seven and that has not been aligned to the legislation that is in place.

Mr. Speaker, Sir the constitutional provision is that the quorum of a particular commission should be three and this is what we are aligning to the current amendment

that we are carrying out. We have created this particular provision in order to allow the Commission to function and continue with its day to day activities and deliberations. It has nothing to do with reducing the powers of the Chair or the Commission, or interfering with the Commission. When IEBC appeared before us in the last public hearing, they were okay with all these provisions and yet there are other people making a lot of “noise” out there.

Another provision that I wanted to look at is the qualification of the Chair. In the Bill that I tabled on the Floor of this House, initially I thought we needed to take care of the qualifications of the IEBC Chair so that we can open up the field to other professions, but from the amendments from the National Assembly, it clearly means that we can leave the qualifications of the Chair as provided for in the Act because the day to day running of the Commission requires the mind of a lawyer who can look at legal issues and interpret them. It also needs a person who can look at tribunals’ decisions and make decisions.

Mr. Speaker, Sir, in the current Commission, the Chair is the only person who is a lawyer. In other commissions, you will find about two or three commissioners are lawyers and this clearly is in line with the activities of the Commission. In our deliberation in my Bill, we thought that in future, we need to introduce a clause where two or three members of the Commission are supposed to be lawyers.

We have retained the qualifications of the Chair of IEBC but the Vice Chairperson or the commissioner who will act in the position of the Vice Chairperson need not be holding the same qualifications. That means that if I am acting as Vice Chairperson I do not have to be a lawyer. The Chairperson and the members of IEBC are comfortable with that. It does not mean that we are taking away the powers of the Chairperson as indicated by some people.

The other provisions we have created relate to who should run for election in the event that the election is nullified. This is a clear provision. It has nothing to do with manipulating the process or changing the game. We are just indicating what happens in the event the election is nullified as stipulated clearly in this particular amendment.

Secondly, in Section 86 (a) we are legislating on who should run for a repeat election once an election is nullified. We all know what happened this morning. There is no provision in the current legislation to take care of that lacuna. Dr. Ekuru Aukot was today allowed to run for the repeat Presidential election. We are, therefore, providing for this specifically, and there is nothing wrong with that. We are just ensuring that wherever there is a lacuna, we take care of it in legislation.

Mr. Speaker, Sir, the final amendment I can see in this particular Bill is the issue of enhancing the penalty which is not there. Section 6 of the Elections Offences Act, 2016, is amended in the closing statement by deleting the words “Kshs 1 million” or “imprisonment of a term not exceeding 3 years” and substituting the word “Kshs 2 million or “to imprisonment for a term not exceeding five years”. This is the practice all over. It is not illegal and does not favour Jubilee or anybody.

In conclusion, this Bill has come at the right time when Kenya is bleeding and requires a solution. I will urge my colleagues who have just come in, logged in their cards and walked out, that they are just cheating Kenyans out there when they are saving their jobs in this House. They do not care what is happening to the public. There is no service

delivery. There are a lot of problems out there; hospitals are not functioning while some children are not going to school because of drought.

This Bill has come at the right time. I urge my colleagues who are throwing stones out there, destroying other people's property and killing people to stop it. People are running up and down, being stoned and tear-gas canisters being thrown at them. Those are not solutions. Those are innocent Kenyans or youths who do not have employment. You are supposed to sit in this House, legislate and provide employment through participation in legislation in this House.

Mr. Speaker, Sir, in conclusion, this Bill has come at the right time. We should embrace it as leaders of this country to make sure that we have the best election on 26<sup>th</sup> October, 2017. Whether somebody has withdrawn or not, the election is on. It will be conducted. I will make sure that we mobilise our people. The country should see that Uhuru Kenyatta is back in leadership.

*(Technical hitch)*

*(Question proposed)*

**Sen. (Eng.) Mahamud:** Thank you very much, Mr. Speaker, Sir, for giving me the opportunity to contribute to this Bill. The Election Laws (Amendment) Bill (National Assembly Bill No.39 of 2017) amends the Election Laws Act and the Election Offences Act. The amendments in this Bill are very genuine. They are only providing clarity in the laws that are being amended.

If there is a vacancy in the office of the chairperson, the law should provide for how to deal with the vacancy. There is a lacuna there. We are making provision on how a vacancy in the office of the chairperson will be filled. This is very nice.

This Bill also makes a provision where the positions of chairperson and vice chairperson are both vacant. One of the members must act as the chairperson. Nothing is wrong with that. The intention of the Bill is very good.

Mr. Speaker, Sir, when the Isaack Hassan team was removed – I was in that Joint Committee chaired by Sen. Kiraitu and Sen. Orengo – before then the Members of the Commission were nine. We reduced the number to seven. The law then forgot to adjust the quorum that is required. So, if they were nine and the quorum was five – what the Bill now provides is that, if they are seven let three become the quorum required to proceed with work.

In fact, in most of the ---

**Sen. Haji:** On a point of order, Mr. Speaker, Sir, there is a trend of hon. Members on the other side coming here to just log in and go away. This should not be allowed. There is need to change the Standing Orders so that Members of Parliament come to Parliament to participate as they have been elected.

Thank you, Mr. Speaker, Sir.

**Sen. Malala:** On a point of order, Mr. Speaker, Sir. I am surprised by the utterances of my colleague, that members of the NASA coalition only come in to sign in and leave. I am a Member of the NASA and I am here. What surprises me is that the hon. Members from Jubilee are blind to the fact that our country is torn in between. They are

blind to the fact that our country is burning. They are here seated, yet our country is burning out there.

Mr. Speaker, Sir, I take this opportunity to tell the Jubilee legislators that they are a shame to this country and its sovereignty. You cannot sit to pass legislation.

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Cheruiyot?

**Sen. Cheruiyot:** On a point of order, Mr. Speaker, Sir, in proper parliamentary procedure, when a Member rises on a point of order, they point out something that is out of order in the House. To the best of my recollection, the very distinguished Senator for Garissa rose on a point of order and raised something that is extremely valid and of great national importance. When my good friend, Sen. Malala, rose to dispute his point of order, I expected that he would, in keeping with the traditions of this House, also point to us what it is that he finds to be out of order. Instead he is going into a long lecture that has no substance and will not aid this House.

Mr. Speaker, Sir, I plead that you rule him out of order and declare his point of order void under the rule of ---

**Sen. Sakaja:** Relevance!

**Sen. Cheruiyot:** Relevance. Thank you, Sen. Sakaja. That is the word that I am looking for. He is completely irrelevant and out of order.

**The Speaker** (Hon. Lusaka): Sen. Malala is still on his feet.

**Sen. Cheruiyot:** Mr. Speaker, Sir, I forgive him. He is still learning the traditions of this House. As my good friend, I understand his mistakes.

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Malala?

**Sen. Malala:** On a point of order, Mr. Speaker, Sir. I would like to inform my colleague, the Senator for Kericho County, that we cannot have a Parliament without having a country. We cannot pretend to be sitting here passing legislation that will bring back the Nyayo era in this country yet we pretend that all is well.

So, I inform my colleagues that whatever you are doing will be null and void. There is nothing you are doing here. You are just choreographing legislation that will burn down our country. I am telling you as the Senator for Kakamega that the Jubilee Government has no interest in the people of Kenya.

*(Loud consultations)*

You can dispute but you will listen to this. I am surprised that hon. Members can come to this House without reason.

**The Speaker** (Hon. Lusaka): Order, Sen. Malala. I remind you of the rules of engagement. You should not impute improper motives on fellow Senators.

**Sen. Malala:** On a point of order, Mr. Speaker, Sir. But it is a shame for hon. Members to be seated here while the country is burning!

**The Speaker** (Hon. Lusaka): Order, Senator!

*(Laughter)*

Let us have order. I direct that we have decent engagement. If you have a point of order, point out what your point of order is without getting into a lot of unnecessary stories.

**Sen. Malala:** Mr. Speaker, Sir, to be precise, my point of order is that the Senate is made of two coalition; Jubilee and NASA.

**The Speaker** (Hon. Lusaka): Order, Senator! I rule you out of order. Let us proceed.

*(Sen. Malala bowed to the Chair and left the Chamber)*

**Sen. (Eng.) Mahamud:** Mr. Speaker Sir, as I was saying before being interrupted by a colleague who was totally out of order, the Bill addresses the issue of the quorum of the Commission. It is only in order that we change the quorum because the Commission now has seven members. When this initial law was made, there were nine members of the Commission. Therefore, it is only fair that the numbers are adjusted accordingly. I see nothing wrong with that. The Bill is trying to make it clear, so that we can have some order within the Commission.

The Bill also addresses the issue of transmission of presidential results. In fact, the provision now is to transmit electronically and physically. There is nothing wrong with that. It only makes it clearer; that you deliver both electronically and physically. Where the electronic system fails, at least, we will have the physical forms delivered. Tallying and verifying will be easier that way. Where there is discrepancy, of course, then there is a provision made. In fact, in the initial law there was no provision for what happens when there is discrepancy. As far as I am concerned, the Bill has good intentions. It will make the work of the Commission easier and better in terms of managing the elections.

The complementary mechanism that was in place last time was confusing and a bit complicated. It was required that when you revert to that system, you call the county returning officer at the headquarters. There is no telephone network in some places where some of us come from. As a result, there was a lot of confusion. We require a system which is very simple, accurate, verifiable, secure, accountable and transparent as provided for under Clause 8.

Our colleagues who are making a lot of noise about this Bill have not read it. The Bill is simple and straightforward. It actually makes things easier for this country. Our friend here has just talked about the country burning. We should be careful about such people who want to burn the country. We have seen a lot of things happening today and yesterday. One person withdrew and another one rejoined the race today. There is a lot of *lacuna* in the law. In fact, this Bill makes it clear as to what happens in the event that there will be a petition; what happens thereafter, who will call the elections; who will participate in the elections, and if you withdraw what happens. This Bill will make all these clearer.

I would like to appeal to our colleagues who are not here and are busy confusing Kenyans. Kenyans are actually getting confused more and more. If they want to write themselves off, let them not write off Kenya because it is our country that we love dearly. They should come back to their senses because life must go on. Come 26th October,

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there will be elections. For those who do not want to participate, it is their business and not ours. This Senate seeks to make laws that will make it simpler and easier for Kenyans to undertake their constitutional right to elect their leaders. We will not elect our leaders by going to Uhuru Park, through the streets, and stoning peoples' cars and making their life difficult.

With those few remarks, I beg to support.

**Sen. Kang'ata:** Thank you, Mr. Speaker, Sir, for giving me the opportunity to address myself to the Election Laws (Amendment) Bill, 2017. I rise to support the proposed amendments for several reasons.

First, the amendment, as appearing in the first Bill, is in respect to amending Section 2 of that original Act, so that we have a new definition of the term 'chairperson.' If the proposed amendment passes through, the 'chairperson' will mean the chairperson of the Commission appointed in accordance with Article 250 (2) of the Constitution or the vice-chairperson or a member of the Commission when discharging the functions of the chairperson.

There was a major *lacuna* in the original Act. It did not provide for a chairperson assuming the responsibility of the chair in the absence of the substantive chairperson. We all know that anything can happen to the chairperson. The chairperson may be absent on account of being sick or official duty outside our territorial jurisdiction. Therefore, it makes a lot of sense for us to expressly provide that we have a situation where the vice-chairperson or any other member can be appointed and discharge the functions of the chairperson.

We have other entities, independent commissions and arms of the Government which have a similar arrangement. I refer you to the Parliamentary Service Commission, Judicial Service Commission and any other entity. It was only in the IEBC where we had elevated the chairperson to be like the sole custodian of wisdom and everything. We did not have a situation of a deputy relieving him. There is the notion that maybe this amendment is geared towards whittling down the powers of the Chairman of IEBC. That is not true. From where we sit - those of us who belong to the Jubilee Party- we have no problem *per se* with the Chairman of IEBC.

The country should take this point very seriously. When I look at all the laws, President Uhuru Kenyatta ought to be sworn in as the new President as soon as possible; I will tell you why. First, the NASA Coalition is relying upon the judgement of 2013 that was rendered by the Supreme Court to argue that we should have fresh nominations and elections. However, there is a problem with that reliance. Paragraph 290 of that judgement has several errors.

First, there is what we call *obiter dictum*, that is, a 'by-the-way' finding of the court. It is not a substantive finding of that court or what we call *ratio decidendi*. It does not appear in the main judgement of that court. That means that there are some parties who did not even have the opportunity to file submissions on that issue. Therefore, one cannot say that a so-called 'by-the-way' finding can have major legal import of great proportion by which NASA is trying to import.

Secondly, there is also the issue of the wording in that clause. I have looked at the wording and noted that it makes reference to a non-existing provision in the Constitution.

It talks of Article 138 (1) (b). That Article does not deal with the issues concerning the abandonment of a quest. I think that was an error on the face of the record.

Even if you were to argue that it is in respect to the so-called abandonment of a quest, when you look at the Constitution and the relevant Article, nowhere in that Article do you see anything to do with abandonment. You only see the issue of death of a candidate. Since Raila has not died, one cannot rely on that so-called Article. Take into account that we have what we call Elections General Regulations of 2012, which have been made under the Elections Act. Regulation 52 of the Elections General Regulations of 2012 provide as follows:

“If there is only one candidate left after the others have withdrawn, then that candidate must be declared the winner.”

One, the withdrawal must be done within three days after nomination. Number two, once you do that, the candidate who is left is declared the winner. Yesterday, the Rt. Hon. Raila wrote to the IEBC purporting to have withdrawn from the presidential race. He did this way beyond the three days threshold established by that regulation. Therefore, we can argue that his withdrawal is illegal and has no effect. We can as well proceed with the elections on 26<sup>th</sup> October, 2017. If one was to construe that, then these amendments are important because we want to ensure we have free and fair election on 26<sup>th</sup> October, 2017.

On the other hand, if we were to construe Regulation 52(1) as having no relation to Regulation 52(2), then from where I sit, Regulation 52(2) clearly provides that if you have only one candidate, then that candidate ought to be declared the winner. I urge the IEBC to do the honourable thing to declare the only one candidate duly nominated the winner.

Mr. Speaker, Sir, I have to take into account the new development which happened today. Another candidate who contested in the presidential election on 8<sup>th</sup> August, 2017, has been given an opportunity to vie again. If the court did not allow Dr. Ekuru Aukot to contest, there is the likelihood that Hon. Uhuru Kenyatta would have been declared the winner. I urge Dr. Ekuru Aukot, wherever he is and other possible contestants, to withdraw immediately so that Hon. Uhuru Kenyatta is announced as the winner. If they do so, the current high tension in the country will calm down.

If that was to happen, we would still press on with these amendments since they are good for posterity. However, the urgency would most likely go down. Of course, we need to ensure everything is in order and that our laws are okay. That is why we are having these amendments for posterity, not necessarily for the election scheduled to be held on 26<sup>th</sup> October, 2017.

Mr. Speaker, Sir, I also want to draw hon. Members' attention to Section (3) of the Judicature Act. It establishes the hierarchy of laws. That is the source of Kenyan law. These sources are the Constitution, statutes, delegated legislations, and other Acts of Parliament which we have imported from other jurisdictions that may have the force of law in Kenya. We also have court decisions.

It appears in this country we have a preconceived notion that courts make law. This notion is slowly creeping in. They do not. They only do interpretation. In a situation where there is a clear clarity of a situation by an Act of Parliament, or even a legal instrument that has been made by a duly recognized body that makes subsidiary

legislations, that reigns supreme over the so called decisions of the court. I say so because I want people to understand the context of the Supreme Court 2013 Judgement. There was a gap which may have been explained by the Supreme Court. However, the current regulations which have been made under the Elections Act clarify all the ambiguities concerning withdrawal of a candidate and also the announcement of a particular candidate as the winner.

Mr. Speaker, Sir, I am aware that some mischievous fellow may go to court and try to block these proposed amendments. For the abundance of caution, let us pass this Bill very fast and then the President holds on before he assents to it until on 25<sup>th</sup> October, 2017 so that the effort of those planning to go to court to obtain some funny court orders, is thwarted. That is just a piece of advice to my dear fellow politicians in our coalition.

Finally, when you look at the totality of other amendments which are contained in this Bill, none of them offends the Constitution. In fact, some of them have been obtained from a judgement which was sought by NASA and came as a result of some serious submissions that were made in the Supreme Court by NASA. Take, for instance, the one concerning punishment of the returning officers where penalties are enhanced under the law.

It is NASA that went to the Supreme Court to claim that there were forms that were not signed, some did not have security features and others did not have the stamp of the IEBC. What do we do? Surely, unless the so called NASA brigade wanted a situation where we have a repeat election and then they sweet talked some officials of the IEBC not to sign some forms, then we must do what we ought to do. If they were very serious and determined in their submissions, they should be celebrating these proposals. They are the ones who made them in the court. We are just trying to rectify.

I saw the memorandum of the IEBC before the Committee that brought these amendments. That memorandum tended to support a vast majority of these amendments. Therefore, if at all the IEBC is in support of these amendments, who are we not to support them?

I support.

**Sen. (Dr.) Langat:** Mr. Speaker, Sir, I rise to also support the amendments to this Bill. If we do not do any amendments of the Constitution, we can allow it to survive the errors and fallacies that can allow it to be interpreted differently by different people.

I have also read this document. As a teacher of linguistics in the university, there are several fallacies, ambiguities and grammatical errors in this Act that can only be addressed by these proposed amendments. These amendments can reduce various interpretations, making it easier to be used as a tool that can drive the country to the right direction.

Times and needs change throughout the course of history. Therefore, there is the need for a document that can adapt to the changes. Our friends should believe strongly that change is the only thing that can remain when everything else has gone. Even if another need arises today, we shall keep on amending this Constitution and not sitting and watching things going their own ways.

I want to allude to a situation where you are in your house preparing to sleep, a snake enters and hides under the bed. Would you wait until morning to kill it? Amendments must continue to address the needs of the times in a society. The

amendments that are taking place in this document allow more democracy and freedom. For example, the situation that the Chairperson of the IEBC should not necessarily be a lawyer allows more administrators with vast skills to be accommodated in the same.

I concur very concomitantly with Sen. Kang'ata when he said that if we do not do it, we allow the courts to legislate instead of interpreting, hence making our work here irrelevant. This is, therefore, the right place to make this legislation instead of allowing the courts of law to do it on our behalf.

The beauty of a Constitution is that it can be amended in order to adapt to changes in the society.

Technology is there to serve man and not the other way round. However, overreliance on technology also has its own shortcomings. As a teacher, we used to embrace technology very much until we realized that it can never take the role of a teacher. So, the human resource still stands strong in the presence of technology, because technology was developed by the human mind not to replace it completely, but to make humans more effective. Therefore, the reliance on manual transmission is more important than relying on technology that can be hacked or manipulated. So, I support the fact that human resource surpasses the technology.

Mr. Speaker, Sir, our friends have taken the option of going to the streets. In my county, the people are complaining that they have not paid their agents and are wondering whether they can afford other agents. So, their option is to march on the streets and make the situation look dire. Our friends have not paid their agents, and that is one of the problems that they have.

Mr. Speaker, Sir, the amendments of the Constitution will prevent selfish individuals from over-relying on the courts and running there to escape realities in the society. Therefore, we strongly support the amendments to the Election Laws (Amendment) Bill (National Assembly Bill No.39 of 2017) and this is the right time. The time for doing things depends on the dynamics that arise in the society, and this is the time that we must do it. We are not going to retreat simply because people are going to the streets, thinking that they will scare us from doing this.

I beg to support this amendment since this is the right time.

Thank you very much, Mr. Speaker, Sir.

**Sen. Wamatangi:** Thank you, Mr. Speaker, Sir. I beg to support this Bill as my colleagues have done. First, I acknowledge that the elections of August 2017 were not only unique, but exceptional in the history of this country. This is because these are elections which were the second elections held under our new Constitution. This country remembers that in the year 2010, we gave ourselves a new Constitution. We conducted our first elections in 2013 under that Constitution and a lot of lessons had to be learnt and have been learnt since then.

Mr. Speaker, Sir, after the elections of August 2017, all the lessons that were carried forward from the previous election had to be implemented at this time. The new Constitution that we gave ourselves contains the prescription that has been quoted over and over again; the mandate of the IEBC. That mandate is clear; to deliver free, fair and credible elections. For the IEBC to deliver free, fair and credible elections, there has to be a platform; there have to be rules to the game that would make it possible to deliver those

requirements. We acknowledge that in law, like in all other aspects of life, there are incredible dynamics, hence finding ourselves in this scenario.

Mr. Speaker, Sir, I would just like to highlight some few issues, especially after sitting with Members of the *Ad-hoc* Committee on the Election Laws (Amendment) Bill 2017, that we have just formed. I want to register my appreciation to Members of this House for showing faith in me and my colleagues to prosecute and deal with this matter by appointing us to this Committee. Kenyans gave their views and if there is anyone with doubt as to what Kenyans want out of an electoral process, they ought to have listened to them.

Indeed, during the public hearings, there were Kenyans who came armed with fully designed Form 34As and 34Bs to show the Committee where they believe or think that improvement should be made in our electoral process. One lesson that we must all learn is that Kenyans are equally decisive as to when and how they want to get justice, which is entitled and enshrined in the Constitution. One famous saying is ‘justice delayed is justice denied.’ By delaying the right of Kenyans to determine whom they want as their leader, we have denied justice to Kenyans.

Mr. Speaker, Sir, it is heart-wrenching because as legislators, we also mingle with Kenyans. Everywhere you go, if you speak to a business person, the first story you will hear right now is about the losses that the business community has had to endure. If you speak to a school child--- It is also important to remind ourselves that it is at this time towards the end of the year that our young people usually prepare to sit for national examinations. Let us also remember that, indeed, we had to go out of our way, as leaders, to ensure that when we set the date of the elections on 26<sup>th</sup> of October, we took special consideration of our children to sit for their examinations.

For this reason, the question that would be echoing in the mind of somebody, who is true and patriotic to this country, is this: If, indeed, self-interest would override the interest of all those hundreds of thousands of young people who have prepared for eight years in primary and four years in secondary education? This is their chance to go sit for national examinations and earn the title that they have deservedly worked for. However, at the expense of political greed, all that can be and is about to be sacrificed because a few people who cannot be satisfied.

Mr. Speaker, Sir, I also want to recognize the violence that has been around in this whole country. Let no one cheat Kenyans that there is anyone from any political divide who enjoys or has immunity to the losses resulting from violence. Sometimes the images that are portrayed are very wrong. These are images of someone who is pursuing their own selfish interests while putting others in danger, even though they may come from their ‘strongholds.’

A politician goes out and says, “This is my stronghold and these are my people” so that you can go, introduce and visit violence to those people! It is presumed that because that is your stronghold, those people have no complaints and therefore they can go ahead and suffer. There is nothing that is further from the truth! Those young men that are being maimed and hurt by hooligans are sons and daughters of mothers. It is time this country claimed a clean break.

One of the things that this House must do is to stand firm and show direction. It is not unique in the history of legislation that legislators have had to stand firm even at times when divisions have threatened to divide them in the execution of their duties.

Mr. Speaker, Sir, I laud my colleagues in the Jubilee coalition who have decided that, even though there are campaigns out there to malign our names and portray us as self-seekers, we know that what we are pursuing, after all is said and done, will be judged correctly for what it is. It is an act of sacrifice to ensure that this country can find its way forward irrespective of the ridicule, abuses and humiliation that sometimes we have to suffer. I say to my colleagues; *Aluta continua*. We must make sure that we forge on and deliver to this country a way forward by ensuring that we have passed laws that will help us conduct elections and thus show Kenyans the way forward.

As I had earlier said, I had the privilege, courtesy of my colleagues in this House, to sit in the Joint Parliamentary Select Committee on Election Laws. I listened to the views of Kenyans and also had time to peruse through the issues that required amendments in this Bill. I will single out two issues: First, is on the issue of having a Chairperson in the IEBC, who as provided for in law can have a deputy or a Vice-chairperson and also legislation that cushions that; that in the absence of the two, there will still be continuity in the execution of the work of IEBC.

Mr. Speaker, Sir, I remember during the public hearings, we had the opportunity to listen to the Kenya National Human Rights Commission (KNHRC). During their presentation, their chairperson was very vocal. One of the proposals that they opposed vehemently was this provision on the Chairperson. One of our colleagues; Sen. Sakaja, asked the Chairperson one question but she did not offer an answer. The question was: As well-meaning as the KNHRC is, when Kenyans go to elections on 26<sup>th</sup> October, 2017; that day when the whole country will be expectant that there will be a pronouncement on the election outcome, suppose the IEBC Chairman resigns, what will happen? The KNHRC Chairperson could not answer that question. She had to own up and apologise. She said: "I had not contemplated this in that context"

Mr. Speaker, Sir, it is important that at this time, when national duty calls; that we stand up and make sure that we provide what should be provided. I support that proposition. It was not provided for in the previous Election Laws Act with the assumption that the IEBC Chairperson will always be available to execute the IEBC business.

If time allows, let me touch on my second last point on the issue of quorum. It was a subject of misinformation to Kenyans. Every Kenyan who appeared before the Joint Parliamentary Select Committee on Election Laws during the public hearings, their word was that we are making the quorum threshold so low to allow the IEBC to propagate business below acceptable levels in comparison to the levels allowed in corporate governance.

Mr. Speaker, Sir, from the provisions herein, nothing can be further from the truth. The IEBC as constituted now has seven commissioners. As the Leader of Majority had said, legally, the IEBC can have as few as three commissioners to be legitimately composed. This provision provides - subject to the requirement that the quorum of IEBC must at all times be 50 per cent of all the existing members - that by inference, all the time a meeting is called and the quorum met, there will be four commissioners sitting.

Therefore, there is no time that a decision will be made by less than four out of the seven commissioners.

That was one of the main subjects of misinformation; that we are seeking to lower the quorum threshold. I want Kenyans to know that, that was not so. The decisions of the IEBC will be taken by the majority of the commissioners and such decisions will be lawful.

Lastly is on the question of transmission. This was probably the single most contested issue. In the last elections as we know, the Supreme Court nullified the August 8<sup>th</sup> Presidential election results on the basis of transmission by a hacked system. If I may remind this House, before we went to those elections, this Parliament formed a committee that was popularly known as the Kiraitu-Orengo Committee. It is in the deliberations of that Committee that there was a contestation of what to call the complementary transmission system to the newly introduced electronic one.

Mr. Speaker, Sir, the debate then, raged on whether to call it manual because it was considered to be crude and the avenue through which people “steal” elections. It has been explained and it is in the public domain that 70 per cent of our voting system is manual. Yesterday I listened to what a lady colleague in the National Assembly was saying that she walked manually to the voting booth and voted manually.

Mr. Speaker, Sir, ---

**The Speaker** (Hon. Lusaka): Your time is up, Sen. Wamatangi. Let us have Sen. Beth Mugo.

**Sen. Mugo:** Thank you, Mr. Speaker, Sir. From the onset, I support this Bill. Had this Bill been enacted earlier than 8<sup>th</sup> August, 2017, I do not think the Presidential elections would have been annulled. This Bill seeks to fill the gaps as they were found by the Supreme Court judges in their majority ruling. This is not to make it easier for the Jubilee Government to win the elections but to make the election of the President, now and in future, free, fair and transparent and to reduce the many questions that were asked by the judges. It is surprising that our colleagues in the minority coalition find fault with this Bill. Indeed, they should applaud it. They should be here to amend any area that they feel is not in line with the existing laws.

As I had earlier said, when I seconded this Motion, instead of lumping all these clauses of the Bill together, the minority coalition should say this or that clause supports Jubilee, therefore we will not support it. Because they know that is not the case, they avoid coming to this House to argue their case out and serve their electorate. They come to the House to check in their attendance so that they can get their salaries at the end of the month.

As we know, there is a limitation to the total number of House sittings a Senator can be absent from without permission during any Session. When they are out there, they tell their followers not to go to work but instead go and cause mayhem. What kind of leadership is that?

Mr. Speaker, Sir, having said that, I would like to congratulate the Joint Select Committee for a job well done in a very short time. I believe they were not sleeping. Some of us watched some of the people who made presentations and many of them supported this Bill.

Mr. Speaker, Sir, some people contested that that was not a Senate committee but a Jubilee select committee. That is misleading and a lie because according to the Standing Orders, we do not go by parties. The quorum is made of MPs. Indeed, there are more parties than just the Jubilee Party and the NASA. Therefore, Members from the other side should stop confusing Kenyans that this is a one-party issue. We have had many select committees properly constituted and other parties properly represented.

Secondly, those of us who followed the proceeding heard what the judges said. They pointed out gaps and said that there were ambiguities here and there. The Opposition Leader said that he will not take part in the elections but we have heard different interpretations of the law by different lawyers. We need to ask ourselves what will happen and whether we shall have a new election. It is unfortunate that our economy cannot afford to have three more months of campaigns because of instability. We do not know whether President Uhuru will be sworn in or whether we shall have elections on 26<sup>th</sup> October, 2017. Therefore, removing the ambiguity is very important because it will address what happens in such cases.

The Senator here alluded to the issue of transmission which also came up in the Eleventh Parliament and we passed a law that there will be a complementary method in case one fails. I do not know why it did not work. That is why it is very important to have this clearly defined; that both manual and electronic systems will work together so that there are no questions about figures. I believe that most of what happened was man-made because hacking was never proven.

Mr. Speaker, Sir, we should not insist on conducting elections electronically. As we have heard, technologically advanced countries like Germany and France opted to go the manual way because we cannot trust machines since you do not know when they will break. Even the mobile phones that we use sometimes do not work because machines are not human beings. Therefore, we cannot pretend to be so advanced that we cannot trust our people and insist on using technology as opposed to manual system. Relying on both is better and that is what is provided for in this law. So, we should make everybody happy.

The other issue is about election officers not signing documents or filling forms 34(a) or (b) properly and submitting them late. Even the NASA brigade should appreciate that that is not the way to go. We certainly know that some officers colluded with some members of some parties especially in some parts of Mombasa. How do you explain how the lawyers knew exactly which forms to ask for during presentation on the presidential petition? The time was too short for them to have gone through all those mountains of papers yet they singled out Mombasa and some other areas. That was a pointer that maybe some people colluded. To cure this, we need a law that will make officers take responsibility. They should know the consequences of colluding with some people; they will be jailed. That will also ensure that we have a credible and transparent election.

If Members of the opposition are interested in having a level playing ground to ensure we have a free and transparent election, why would they object to that? They have been raising issues about the staff of the IEBC and that is why they have been demonstrating out there. The judges of the Supreme Court said that nobody was found culpable but pointed out the flaws in the processes. This law will cure the flaws in the

processes. They are not being genuine because they oppose the reforms which are being truly spearheaded by this law. They have flimsy excuses which cannot be proven.

We are asking them to come back to the House where they belong and collect salary from so that we debate here and give Kenya the way forward. We oppose those creating crises which do not exist because they want to make people believe in them yet they have no goodwill for this country and its children. They only think about themselves and believe that only Raila Amolo Odinga can be the president. They want to see the country burn just for the sake of making sure that one person gets power.

I was shocked on 8<sup>th</sup> August when I heard Raila saying that Uhuru must go home. That is just enmity and has nothing to do with the legal--- He said it very forcefully and you could tell that he was angry with President Uhuru the person and not with what was happening.

We urge the NASA fraternity to ensure that we have a Kenya where there is peace, love and unity as one of our leaders kept on reminding us. Elections should not breed enmity. It is a competition that comes and goes and anyone with goodwill for this country will not try to create a crisis where it does not exist. We have never had an annulled election in this country and, indeed, even in Africa and many other countries. Extraordinary circumstances call for extraordinary solutions, and our development partners should understand that. Of course, they may not understand that since they have never had elections annulled. We are going through a very difficult time and they should understand that Jubilee is not trying to do anything out of the ordinary; to benefit ourselves. We are doing it for the sake of our country and so should our Christian and Muslim leaders.

If our religious leaders really care for this country, they must also join us and support the good work that we, as parliamentarians, are doing. We are taking the responsibility to create laws, just as the Executive has to take the responsibility to deliver an election and the courts have to interpret our laws properly.

We cannot just say that this is the wrong time. It is the right time because the presidential election was annulled. It is by the grace of God that we have not had violence in this country. It is only because it affected the Jubilee side. If this had happened to NASA, there would be fire. They are now saying that the country is on fire. The country is not on fire; they are the ones lighting the fire. Indeed, the country would have been on fire if Hon. Raila Odinga's election was annulled.

I support the Bill.

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. Allow me to join my colleagues in supporting this Bill. I will pick up from where the great Sen. Mugo has stopped. Exceptional times, and I must add extraordinary times, call for extraordinary measures. Indeed we are living in extraordinary times.

We are living in a time when a democratically elected President has his election annulled, not because he got less votes. In fact, there was no question in the Supreme Court about the number of votes, but because one or two forms were not stamped. No question was ever asked even about the content of the forms, but only because some did not have watermarks, *et cetera*.

We are living in extraordinary times because a petitioner who goes to the court asking for annulment of the election is granted his wishes and prayers and told that we

shall go back to another election, but he then removes himself from that very election. That is in complete disobedience to the order of the Supreme Court; that the election should be held on 26<sup>th</sup> October, 2017. Now that same person is trying to play the victim.

I want to first of all congratulate Jubilee; from the President, the Deputy President and all the members. It is clear to the world and to us all that our President has abided by the rule of law. He has accepted to go back to the ballot. There are very few presidents in Africa, and indeed in the world, who knowing well that they got a majority of the votes in an election - a majority of more than 1.5 million votes - accept the decision of four judges to go back to a fresh election.

Immediately the ruling was given, the President and his deputy started campaigning. While they have been busy looking for votes from the people, our opponents have been busy in press conferences. While we have been asking people to give us votes, they have been asking them to send them money through M-Pesa. They have now decided that they do not want an election.

If these are not extraordinary times, then I do not know what can be termed so. I would like to tell the former Prime Minister, Raila Odinga, that we will not allow him, more so in Nairobi, to kill the people he wishes to serve. We will not allow him to burn the country he wishes to serve as President. We will not allow him to destroy the future of the children whom he wishes to serve as President. We will not allow him to destroy businesses of the hardworking Kenyans whom he wants to serve.

Apart from those of us who were born in Nairobi, everyone else who comes to Nairobi does so for the same thing; to make a living and pursue their dreams. The law provides that you can picket or demonstrate, but peaceably and unarmed. I am sure that those stones they are carrying are not accessories; they are weapons. The minute you are not peaceful, that demonstration should not last for ten minutes.

Very soon the people of Nairobi will say enough is enough. The people whose businesses are being destroyed and savings are being thrown up in the air will say; enough is enough. Remember that when the pursuit of liberty upsets order, the pursuit of that order will forever silence liberty. We do not want to get there.

I ask Hon. Raila Odinga and his cohorts: What does it profit a man to gain the world and lose his soul? What does it profit a man to seek power and gain it, and then burn a country? It is absolutely nothing. We will be bringing legislation in this House to deal with picketing or demonstration, because the world over, they even provide places where you can picket and demonstrate.

What the people who elected me in this City are going through today--- In fact, I stepped out there and found out that even some of the staff of Parliament are afraid to walk home. They are afraid of being mugged, beaten up or raped. Is that the country that we are seeking to be in? Is that the country that Hon. Raila Odinga is seeking to serve as President?

We have restrained ourselves, as Jubilee, because we believe in the rule of law. If we decide tomorrow to also bring our young people in these streets, these people will have no place to walk. If we decide that people in all the counties around Nairobi, which are all Jubilee zones, including Nairobi, should come and retaliate - an eye for an eye - we will all lose our sight. Who will gain from that?

I am glad that the National Police Service Spokesman, Mr. Kinoti, has said it today that anybody who has been assaulted or robbed in these protests should file a formal complaint. We want the Police to also stop sleeping. Businessmen and children are being harassed. We want to provide jobs for our people, yet they are being harassed and robbed. Those are crimes. Those people who are protesting do not even know what we are discussing today. They are criminals who should be behind bars.

Going into the subject of this Bill, I would like to start by saying that Parliament is correctly within its mandate to amend these laws. We listened to the judgement of the Supreme Court and have studied it thoroughly. The most popular statement used by judges in court when making rulings is that nothing would have been easier than for Parliament to provide for A, B, C and D. Nowhere in the ruling of the Supreme Court did they suspend the operations of Parliament until a fresh election is held.

We have had calls from the international community, bishops and others that we need to do these laws in a bipartisan manner. I support what they are saying. It would have been very good for us all to sit down and discuss these issues. We were elected to Parliament. 'Parliament' comes from the word '*parler*'; to talk. I can see my friend, Sen. Olekina. You were elected by the people of Narok County to come into the hallowed Chambers of the Senate to discuss and register even your disagreement. I am sure that when you were campaigning you did not say that you would represent them in the streets of Nairobi and outside the Anniversary Towers. This is the place.

Where you do not agree, the most respectable thing to do is to register your disagreement. We have been willing and we have reached out. I heard the Senate Majority Leader asking them to give names of Members they would wish to serve in this Committee. As Jubilee, we will only have a majority of one in the Committee. This is because four Members will come from NASA and five will come from Jubilee. When we previously sat, and the Senate Deputy Majority Leader, Sen. Dullo, will tell you that there are certain amendments that were originally in the Bill that we are looking at which we said that it is, probably, not right. We have amended many. The version of the Bill that has come out from the National Assembly has taken those changes into account.

If we decide to abscond our duty, on whom does our obligation to create a bipartisan setting lie? Is it the person who shows up to work or the person who decides not to show up? We need perspective. We need to be very clear that the people who are destroying this country, the people who are not giving Kenyans a bipartisan platform to engage are in NASA and not Jubilee. If they are ready even today, we will take their names, sit with them and---

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

**The Speaker** (Hon. Lusaka): What is your point of order Sen. Olekina?

**Sen. Olekina:** Mr. Speaker, Sir, I rise under Standing Order No. 94 which is on responsibility for statement of fact. I would like to request Sen. Sakaja to substantiate his claim. I have listened to him talk even when I was coming in. He has said that the former Prime Minister intends to kill the people that he wants to serve. I have heard that statement and it is quite troubling. It is important that when a Senator provides certain information, he should table the facts that he has in this House.

**Sen. Sakaja:** Mr. Speaker, Sir, everybody knows the context in which 'peaceful' demonstrations have been held in this country for many years. It is utterly irresponsible

when you know that people have lost their lives every time they have called for peaceful demonstrations. I stand by my words. If you know that by demonstrating out there, you will not achieve your goal, yet you lose lives, then you are indirectly killing those people.

When you tell young people that I want you to come out tomorrow in full numbers or when you tell women that I want to see your underwear tomorrow, what are you doing to them? More than just killing them, in terms of their lives, you are killing their hopes, dreams, dignity and their ability to earn a living in this country.

**Sen. Olekina:** On a point of order, Mr. Speaker, Sir!

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Olekina?

**Sen. Olekina:** Mr. Speaker, Sir, for the respect of this House, it is absolutely ludicrous for a hon. Member to allege that the former Prime Minister, whom we respect a lot, has asked people to go and show us their underwear. What he needs to do is to not just to provide allegations or hearsays. The Standing Orders are very clear. He ought to provide the evidence, substantiate or he withdraws and apologises.

Mr. Speaker, Sir, I wait for you to rule on that.

**The Speaker** (Hon. Lusaka): Proceed.

**Sen. Sakaja:** Mr. Speaker, Sir, I hope that my friend, Sen. Olekina, reads the Standing Orders and procedures.

First, we cannot discuss the conduct of the former Prime Minister because he is not a Member of this House.

Secondly, I am more than happy to provide recordings of where he has asked women to show him underwear unless *nguo ya ndani* means something else. In fact, *chupi* is the word he used. I will also provide evidence where he asked those young people to show up. I am shocked that Sen. Olekina has not seen that. He is not sure of what he is going to take his leader through.

Mr. Speaker, Sir, allow me to go on.

**The Speaker** (Hon. Lusaka): Proceed.

**Sen. Sakaja:** Mr. Speaker, Sir, I was going to the substantive provisions. I hope that you are pausing my time because this is becoming vexatious and frivolous.

The first provision that we have looked at in this Bill and everything is in order. I was talking to Sen. Kajwang and he said that we are shortening time yet it has been done before. For the Constitutional Amendment Bill 2008, the publication period was reduced from 14 days to five days. The National Accord and Reconciliation Bill was reduced from 14 days to five days. The Security Laws Amendment Bill in 2014 was reduced from 14 days to one day. The Anti-Doping Bill was reduced from 14 days to seven days. It has been done severally. This is one of those exceptional times that it must be done.

On the provisions of the Chairman and I am glad my colleague, Sen. Wamatangi, has alluded to that fact, we were providing for an eventuality that can happen. If the law is followed as it is today without implicit reference to Article 259(3)(b) of the Constitution, once votes have been tallied, have been added and are just waiting for declaration of the President, if Chebukati, the Chairman of IEBC decides to resign, this country will have to wait for us to begin the process of hiring a new Chairman of IEBC before we declare the results that are right before us. Is Parliament wrong to provide perpetual continuity and succession within the IEBC? Of course, not.

In fact what we conceded in that provision was that instead of the word “person” let us talk about a member of the Commission. I can see that my time is almost up.

In terms of quorum, Sen. Wamatangi and the rest have said it very well. We are not saying that the quorum becomes three members. We are saying that the quorum be 50 per cent of the members currently existing, provided that it does not go below three which is the constitutional minimum of a constitutional commission.

More importantly, if you read the ruling of the Supreme Court, the biggest reason as to why the election was annulled was because of the transmission of results. We had to provide within that complementary mechanism that we will electronically transmit results and physically deliver the results and the forms to IEBC.

I will read section 1(e) which says:-

“Any failure to transmit or publish the results in electronic format shall not invalidate the result as announced.

If there is a discrepancy between the electronically transmitted and the manually delivered, there must a decision as to what was announced in the polling station for a declaration to be made.”

That is a provision that is extremely important and I will ask Members to make sure that they go through this.

More importantly, there was an issue within the law which made them annul the elections. This was because of irregularities and illegalities which could not overturn the outcome. There is no perfect election in this world. We are saying that even if there are certain irregularities or illegalities, but they are not material enough to change the will of the people or they are not big enough to change what the outcome would have been, then they shall not invalidate an election because of those irregularities or illegalities. Those are provisions that are extremely important that we must support in the House.

Finally, another provision that we must be aware of as Members is that the Chairman may declare a person elected as the President before all the constituencies have submitted the results. This can happen if in the opinion of the Commission, the results that are pending are not enough to affect the results of the outcome. If they, probably, see that Sen. Olekina has held results for Narok North, but they are not enough to change 50 per cent plus one or the 25 per cent in 24 counties, then no one will hold the Chairman at ransom from declaring a President.

Today, this country is being held at ransom because of one section of our political divide. We ask ourselves if we should also stay frozen or should we play our mandated role, given by millions of Kenyans, to actually correct those wrongs. History must judge us right and history will judge us right. Indeed, we are playing our role to sort out those anomalies. Nothing would have been more irresponsible for Parliament as burying our heads in the sand and waiting for another election to be annulled knowing what the Judiciary has said with regard to that.

Finally and this is completely final for I can see the hon. Senator looking at the time. Article 142 is very clear. The term of office of the President is from the time he is sworn in to the time another President is sworn in. If NASA wants to take us in circles until next year, until the year after next, it is okay. We do not want this election more than they do. Uhuru Kenyatta will remain President until the day another President is elected and sworn in. Even if it is 2022, it shall still remain his first term.

I support.

**Sen. (Rev.) Waqo:** Thank you, Mr. Speaker, Sir. I stand to support this Bill. First of all, I want to appreciate the leaders and also this House for their faith in me by nominating me as one of the Members of the Select Committee. That has given me the opportunity to learn and also to better understand the Bill. It has also given me a good opportunity of interacting with Kenyans who came forward in numbers and expressed their feelings and told us why this needs to be done.

In fact I was severally moved by the women who came forward and shared their concerns. I remember one woman saying, “We, as women, are the people who suffer anytime elections are held in Kenya.” She further said “even today, we are suffering. Many women even after the elections of 8<sup>th</sup> August, 2017, were raped and displaced. Many of them are suffering and nobody talks about them just because of the chaos caused by our colleagues.” So, I stand to support this Motion and also pray that very soon, Kenyans will enjoy the fruits of this.

Mr. Speaker, Sir yesterday in the evening we were all bothered by the news that came up. This morning again, there is news that someone else is considered to vie for the presidency. I support that very much, but in the dynamics that we are in, we may not know where we are heading tomorrow. As an African woman when I see demonstrations on the streets of Nairobi and when I see women removing their clothes and exposing their private parts, I am shocked because that is un-African. We are misbehaving and showing our young people a very bad example. I do not know what we are doing about this as leaders.

It is my prayer that our women out there will not be misled by the politicians, because they are being misled. I remember that even in the past, when African women did not have any clothes to put on, they used to cover their upper part and the lower part such that nobody could see their private areas. It is unfortunate today in our modern society that a woman who left her husband, her children and home in the morning could openly do those things in front of others and expose everything on her body.

Mr. Speaker, Sir, visionary leaders consider their people and the times they are in. We are leaders and legislators. Politics is perception and many people have perceived what we are doing in the wrong way. But the bible says ‘my people perish due to lack of knowledge.’ I, therefore, urge Kenyans to take time to go through the proposed amendments so that they can understand and argue from that point of view of understanding and making others understand, instead of just brushing it off and saying that what we are doing is killing Kenyans.

Mr. Speaker, Sir, the big question that Kenyans are asking today is; whether we are in a political crisis or in a constitutional crisis. I think that the crisis we are in is man-made; we are the ones who are doing that, especially the NASA people. As I was driving to Parliament today, we were so scared and I saw many Kenyans running helter-skelter. What are we trying to do when we confuse the entire nation? The NASA team, it is high time for you to come forward and join the others. Your candidate has already resigned and we do not see why you should be on the streets to confuse Kenyans.

Mr. Speaker, Sir, I support this Bill, firstly, on the Chairmanship. The proposals and definitions given therein will help Kenyans to go forward. The Amendments proposed will not only help the Jubilee team, but the entire nation. It is high time for us to

think of all the vacuums that are there so that we can fill them and serve our people. Many people are saying that what we are doing is wrong. For the past many years, we have been naïve for us not to have made these amendments we are doing today. So, on the issue of the Chairman of the IEBC, if we do not have any other person who can play his role, it shows that we are not doing our work well. It is better for us to have somebody who can be there in his/her absence.

Mr. Speaker, Sir, on the other issue of quorum, many people are accusing us, saying that we are denying people their opportunity and their right. What the Bill is proposing is that the quorum should always be half and not less than three. That is the only safe game that we can play in Kenya today.

I also want to comment on the issue of transmission of votes, whether electronic transmission or physical delivery. When women appeared before the Joint Committee, many of them said “I left my home manually; I voted manually; I left the polling station and reached my home manually. Where did my vote go after that?” That question can only be answered when we provide an alternative. What we are saying is not that we want to rely on the manual transmission of votes, which is not even there; we are saying all votes must be electronically transmitted and physically delivered. When that happens, then we are accountable to all the Kenyans who come forward to vote.

Mr. Speaker, Sir, the other area that I want to touch on before I finish is on Section 86(a). If we had done the Amendments that we are doing today before, today we would not be in any crisis. Under that, Section 3(a) says that where there more than two remaining candidates in an election after the withdrawal, the election shall proceed as scheduled. Whereas part (b) of that says that where only one candidate remains after the withdrawal, the remaining candidate shall be declared elected forthwith as the president-elect without any election being held. If this provision was there, today Kenyans would have been celebrating. But now that it is not there, we are saying that this has to be enacted and Kenyans will not be in the same dilemma that we are in today in future.

As I finish, I want to comment on Section 6 of Election Offence Act 2016. Again, when many people appeared before the panel, they were saying, “why should we give people five years; it is too short.” They were reminding us of the dilemma, the pain and the billions that we are using as a country. They were saying “those people need to be jailed even for 15years.”

Mr. Speaker, Sir, it is only prudent for us to accept this and approve it so that anybody who will mess up with elections can surely be dealt with. Kenyans then will sit back and say, yes, those who have done the wrong thing have been dealt with in the right way.

In conclusion, 26<sup>th</sup> October, 2017 is approaching. I urge all Kenyans to turn out in large numbers and confirm that President Uhuru Kenyatta is our President; today, tomorrow until 2022. That is the only request I have for Kenyans so that we can prove these people wrong again.

Mr. Speaker, Sir, I beg to support.

**Sen. Cheruiyot:** Mr. Speaker, Sir, I thank you for giving me this chance to make submissions and thoughts about the Bill that is before us this afternoon.

I start from a discussion that has taken place in so many fora. Last week when we sat down to do the public participation during the Joint Select Committee, a good number

of the people that appeared before the Committee kept on reminding us that it was not prudent in terms of the timing to be doing those kinds of amendments.

I take the view that nothing could be further from the truth because we live in a country that is governed by the Constitution. As a democracy we have chosen that every time there will be a disagreement ---

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Mwaura?

**Sen. Mwaura:** On a point of order, Mr. Speaker, Sir. Listening to the contributions of Members, and considering the time, a lot of issues have been canvassed yet the interest is still very high. With your indulgence, I propose that we reduce the speaking time to three minutes.

**The Speaker** (Hon. Lusaka): Many issues have been well articulated. I grant three minutes.

What is your point of order, Sen. Sakaja?

**Sen. Sakaja:** On a point of order, Mr. Speaker, Sir. I just need your direction. There was an issue that had been raised for me to substantiate. I request that you direct that a projector is provided tomorrow so that I can show this *chupi* business and the words of Hon. Raila in front of the House. Could you direct that I get such projection facilities to show clearly before the Senate that word “*chupi*” did not come from me? The demand to see under wears came from the words of Hon. Raila. It would be of benefit to the House to see.

**The Speaker** (Hon. Lusaka): Most of the Members watched the clip.

**Sen. Sakaja:** So, I do not have to substantiate?

**The Speaker** (Hon. Lusaka): You do not have to substantiate anything.

**Sen. Sakaja:** To preserve the dignity of this House, I oblige.

**The Speaker** (Hon. Lusaka): Proceed, Senator.

**Sen. Cheruiyot:** Mr. Speaker, Sir, I need your guidance. Naturally, when laws are made, they are not made in such a way that you can canvass back to would be offenders or so. I was already on my feet making my contributions before Sen. Mwaura rose on a point of order. So, do I have three or 15 minutes?

**The Speaker** (Hon. Lusaka): That will be from the next speaker.

**Sen. Cheruiyot:** Thank you, Mr. Speaker, Sir. I will be gracious enough. I will not take 15 minutes. I will be mindful of my colleagues who would wish to make a contribution.

Let me continue from where I was before I was interrupted. Many speakers have debated this issue on whether it is right for us to legislate as a House especially at this very interesting time in our country. I wish to remind everybody who cares to listen, is mindful and sincere in their hearts that they wish the best for this country, that the only way we can have a country where we all live, and which we celebrate and rejoice to be members of, is if we respect the Constitution and the institutions that are therein. Parliament is a congregation of the people of Kenya.

I have said times without number that the 47 elected Senators plus the 20 nominated Senators in this House are a representation of the 45 million Kenyans. When they stand to speak in this House, they do so, on behalf of the people of Kenya. Each afternoon when I rise and make a presentation, I make sure that I consult the people of Kericho who have sent me to this House before I make my submissions.

The conversations I have had with them in the last few days have led me to make the submission that I make before this House today. They told me, “if it was not enough for us to vote, have our votes counted, and that there are other procedures that were supposed to have been followed before our presidential candidate of choice is to be declared, please, as our duly elected Senator, can you go back to Parliament and do what we elected you to do to ensure that when we go for a fresh round of voting, we are able to vote and our vote matters more than anything else.”

Mr. Speaker, Sir, we should respect our Constitution. We are very much aware that in Article 1, there are various institutions that exercise powers that are delegated to them by the people of Kenya. One such institution is this Senate. You cannot pretend to be a democrat where on one side you support the ruling of the Supreme Court but on the other side you castigate the Members of this House for coming here to do what is dutifully theirs.

From today henceforth, we must choose how we want to live in this country. Do we want to be governed by the rule of law or anarchy? I keep on hearing arguments being fronted in this House by Members of the NASA coalition just like the distinguished Senator for Kakamega when he spoke earlier on today. They tell us that if we legislate, this country shall burn.

Mr. Speaker, Sir, we cannot allow that, at the threat of violence, this House retreats and ceases to transact what is rightly given to it. Some people have said that they do not want to respect the Constitution. They threaten us that there will be violence and this country will burn. We must stand up for what is right.

As I support this Motion, my conscience is so ripe. I am so sure that history will be very kind to me. There are many Members of this House who are rising to make these laws because they know we are dutifully doing what is right for this country. We are guiding the nation at these very peculiar and interesting times. In the future when we look back and read our history, my children and their children will say, I am glad that our father supported these amendments because they saved this country during a very critical time.

Mr. Speaker, Sir, the solution can only be found in this House. I have had very erroneous arguments being fronted by Members of the Minority that we should not be gathered in this House because Jubilee will take advantage of the tyranny of numbers, and therefore, it is foolhardy to come to this House.

I wish to remind them that in December last year; we had a Select Committee like this one where we gathered as a Joint Select Committee. We listened to their views. Jubilee still had the majority even at that time but we accommodated them. Who lied to them that if they come to the House this time, we shall not listen to them? We are not fools. We are very much aware that a free and fair game is not what our competitors are looking for. They are looking for chaos and anarchy. They want to precipitate a constitutional crisis so that the international community can tell us, just like it happened in 2008, to provide for a coalition Government or something so that you can carry the country on board. I want to be clear about this. This time, nothing of the sort will happen.

Mr. Speaker, Sir, in conclusion, I agree with many of the amendments that have been proposed. To show the goodwill of the Committee that had earlier on been set, there are many things that we found during our deliberations and said that we do not agree with

them, for example, the provision of the Chairperson of the IEBC being required by an Act of Parliament that they must be a lawyer, and not only just a lawyer but somebody who has the qualifications of a Supreme Court Judge. It is something that many Members of this Committee felt that it is unfair. You are being biased and that it was a selfish provision but in the interest of the country, realising very much that these provisions may be subject to some court process, we decided to shelve it because some people felt that we were mutilating the Constitution.

There are many things, one of which was even placed before us, that the reason why we decided to have a complementary system for transmission of result is that we felt that it would be secure when you have a scanned document presented before the IEBC but you know what happened at the Supreme Court where somebody made false and misleading allegations that there was a hack into the KIEMS kit. The court upheld a decision that we have disagreed with. Now, we have made good provision and said that should there be a discrepancy, what should be able to surmount and be recorded as a true reflection of what the voters said at a particular polling station is what the returning officers have announced.

Mr. Speaker, Sir, we have given the election managers a good platform to determine what it is, because at the heart of democracy as they say, is the voter. We have always been reminded that the Constitution was made for man and not man for the Constitution. This is a good move if you ask me.

As we continue to listen to the views that will be presented before the Select *ad hoc* Committee, that has been approved by this House this afternoon, we would even be seeking more views on how we can improve and enrich this Bill. I continue to call upon my colleagues from the NASA coalition to please turn upon before this Committee. If you have your fears and ways that you think we can reform and make IEBC better so that we move this country forward, please come to the Committee. The streets do not hold any solution for you. Looting property of the people of Kenya will not help you.

Finally, and in closing, I wish to single out a Member of this House; the distinguished Senator for Siaya County, Sen. James Orengo, a man who has built his name fighting for democratisation in this country and the expansion of democratic space who is right now on the streets, demanding that a member of the IEBC be pushed out of office using illegal means. What is the difference between him and the dictators that he used to fight? Those dictators would haunt people out of office without regard to due process. What is the difference between what he is doing and what he has fought against all his life? It is a shame! I call on them to come back to their senses so that we can reason together and live together like brothers.

**Sen. Seneta:** Thank you, Mr. Speaker, Sir for giving me this chance to also contribute to this important Election Laws Amendment Bill. However, just before I speak, I also want to bring to the attention of all Kenyans, the international community and also the religious group that Parliament is rightfully in place. It is the mandate of Parliament to legislate according to our Constitution, Article 94. If I just read Article 94, Section 5, it clearly indicates that:

“No person or body, other than Parliament, has the power to make the provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation”.

I want to inform Kenyans whom we represent in this House that we are not doing the wrong thing; we are simply carrying out our mandate as Parliament. I also want to regret the fact that Kenyans are being misled by the same leaders who are supposed to represent them in this House. They are being misled by the same leaders who are supposed to come and make policies and give them direction. I really regret that they are misleading them by calling for reforms that can neither be made at Uhuru Park nor by the roadside. So, I want to call upon the leadership of NASA to come to the right place and represent Kenyans.

I want to support these amendments one, with regard to the issue of electronic transmission. We discovered during 8<sup>th</sup> August that even in some areas in our counties like an area called Torosei in Kajiado where there is no network, this transmission of results can be a challenge. Therefore, if we do not have the manual---

**The Speaker** (Hon. Lusaka): You had three minutes. One more minute. Just conclude.

**Sen. Seneta:** Mr. Speaker, Sir, I was bringing to the attention of this House that there is an area called Torosei in Kajiado County where you wake up and there is no network in a certain place, electronic transmission may be a challenge. We should not depend on electronic transmission. We shall have missed the point because we shall have missed the votes of those Kenyans who voted that day. Today in the morning, some of us woke up without Safaricom network. We could not call until 9.00 a.m. So, in a situation where on 26<sup>th</sup> we do not have network then what will happen? I really want to support this Election Laws Amendment Bill.

**Sen. Kibiru:** Thank you, Mr. Speaker, Sir. I also rise to support the amendments. I would start by saying that I represent Kirinyaga County which has close to about 600 000 human beings. I also want to add that most of them are descendants of children and great grandchildren of the Mau Mau fighters.

They sent me and said that I need to be clear and state that the fact that they have been keeping quiet is not that they are cowards. They are just trying to follow the laid down procedures of trying to create a harmonious Kenya. They asked me to support the amendments.

Indeed, eight groups from various interest groups in Kirinyaga County did present their views at the County Hall. They supported most of the proposed amendments. Like I said, where we come from we say: "Even those who do not die go visiting." That is a direct translation of my language.

I would like to say that the Chairman or anybody can be absent at the hour of need. So, it is important to give that provision and allow somebody else to deputise and to be able to announce the results, if such an eventuality occurs.

Lastly, I was just wondering whether moving forward, we will continue to allow the fraudulent stealing of taxpayers' money. Every time I see my righthand side, I normally see people come, log in and walk out in less than seconds. I believe it is high time we came up with a deterrent measure to ensure that we do not benefit illegally by taking taxpayers' money without working for it.

I support the amendment.

**Sen. (Dr.) Milgo:** Thank you very much, Mr. speaker, Sir. I also rise to support this Motion for the fact that right now the country is still in an election cycle. If this Bill

had been amended earlier, we would have been saved the stress that we are being subjected to right now. The gaps in election laws have allowed one presidential candidate to use what he is popularly calling “the irreducible minimums” to take the country in circles. I remember he was pushing the election time from the 17<sup>th</sup> to 26<sup>th</sup> October yet he knew that he was not going to take part in the same election. The fact that he has withdrawn from the elections still is a pointer that surely he does not have the interests of the country at heart.

We do realize the effect of the election date being pushed to 26<sup>th</sup> October, 2017. The students in this country have been made to do exams at the wrong time, away from their preparation. This has caused them together with their parents psychological and emotional stress.

I support this Bill, particularly, looking at the provision on the complementary function of electronic and manual roles. Had the manual provision been there, I am sure that this country would be peaceful because our President would have been declared the winner. The results were nullified on account that there was wrong transmission.

In addition, I support this Bill because of the fact that some Forms 34A and 34B were not signed, particularly, in the NASA strongholds. Maybe they did not sign the results, knowing that they would not win.

As I stand here, I represent the women of Kenya. It is a shame that a presidential candidate would call upon women to strip. That is disrespectful and he should be made to withdraw such a statement. He should even be taken to a court of law because he has brought shame to our women in Kenya.

I beg to support.

**Sen. Kinyua:** Bw. Spika, nasimama kuunga mkono Mswada huu. Wakati huu ndiyo mzuri zaidi wa kufanyia sheria hii mabadiliko. Hii ni kwa sababu inajulikana wazi kwamba sheria inatengenezwa wakati mwingi kukiwa na vurugu na vita.

Ni vizuri tutengeneze sheria hii wakati huu. Kuna ndugu zetu ambao wanatembea wakisema ya kwamba hakutakuwa na uchaguzi bila mabadiliko ya sheria. Mabadiliko ya sheria hayawezi kufanywa katika maandamano kule Uhuru Park au sehemu zingine zozote isipokuwa hapa katika Bunge ambako tunatunga sheria.

Tumekuwa tukiwasikiliza hawa ndugu zetu wa upinzani wakisema maneno mengi. Ijulikane wazi kwamba uvumilivu wetu si uwoga. Sisi ni watu ambao tunapenda sheria na tutaifuata. Hasa Mswada huu unaweka wazi maana ya neno ‘mwenyekiti.’ Hakuna kitu kisichokuwa na mbadala. Ni vizuri kuwa na naibu Mwenyekiti anayeweza kutangaza mshindi wa uchaguzi wakati Mwenyekiti hayuko.

Ni vizuri ijulikane ya kwamba mshindi alikuwa ni Mhe. Uhuru Kenyatta. Wanaogopa kwa sababu hata uchaguzi ukifanywa leo, mshindi atakuwa ni Mhe. Uhuru Kenyatta. Itakuwa hivyo hata tarehe 26 Oktoba.

Naunga mkono Mswada huu na mambo yote ambayo yametajwa, hasa idadi ya Makamishina inayohitajika kufanya uamuzi. Ni lazima wawe nusu yao ama zaidi. Haya yote ni mabadiliko yanayohitajika. Tusipoyafanya ukienda kortini mahakimu watatoa uamuzi wao na kusema kuhusu mabadiliko ya sheria ambayo sisi Wabunge tunafaa kufanya. Tukitengeneza sheria nzuri ambazo ni wazi, hakuna kitu kitamfanya hakimu---

**The Speaker** (Sen. Lusaka): Your time is up.

Sen. Ndwiga Peter Njeru.

**Sen. Ndwiga:** Mr. Speaker, Sir, first, I want to laud our Members who sat in the Committee for representing us very well. Afterwards, they have also expounded the merits of this Bill in the House.

Because of limited time, I do not wish to repeat what has been said by my colleagues, but I wish to say the following. One, if we imagine that people are in the streets because of this Bill or the IEBC, we are missing something. Long before the election of 8<sup>th</sup> August, 2017, some of us warned that since some people knew that they would not win any election, they would not accept the results. Even if elections are held in December, January or whatever time, there is no way that these people will win any election. Therefore, let us stop courting them to come to the House. They will still come because they need their salaries.

As a House and country, we need to realize that the objective of these demonstrations we see in the streets is not about these elections, but to divide this country; they want to secede. Let us not be blind to the facts that our colleagues out there have subtly said that for as long as the country remains the same, they will never ever win any election. They did taste a bit of power during the ‘*nusu mkate*’ Government and that has gotten into them. They still want to be in Government by any means. I think it is imperative for us, as a nation and House, to get---

**The Speaker** (Sen. Lusaka): What is your point of order, Sen. Paul Mwangi?

**Sen. Mwangi:** Mr. Speaker, Sir, it is not a point of order. I wanted you to know that I want to contribute to this Motion.

**Sen. Ndwiga:** Mr. Speaker, Sir, we have only three minutes to contribute.

**The Speaker** (Sen. Lusaka): Proceed.

**Sen. Ndwiga:** Mr. Speaker, Sir, I want to recap what my neighbour from Kirinyaga said; that we are not quiet because we do not know what to do. Those of us who are remnants of the Mau Mau war know what needs to be done. However, we want to obey the law and have a peaceful country. We do not want to send this country into chaos.

I beg to support.

**Sen. Poghiso:** Mr. Speaker, Sir, I am a beneficiary of the three minutes rule and know that, that time is very short. I laud everyone who has contributed.

There is something that is happening in this House, which is that debate is one-sided. The plus side to that is that this side is getting to be sharpened as better debaters, because they have the opportunity to debate all the time. I worry about the other side and the situation where we will have one side--- It is like sitting on a see-saw and there is nobody on the other side. We need each other.

I want to appeal that debate in our tradition is adversarial. We need to get challenged. There may be areas even in this Bill that I do not like, but I have no one to challenge me. So, I get going without anybody challenging. The desire for debate and to be challenged needs to be introduced in the House. I was challenging my friends on the other side that they are missing out on the nature of debate. So, all those on this side, who have now become sharpened to debate, are benefitting but we need the other side to grow as well.

Mr. Speaker, Sir, I know a lot about technology. Once we agree in our electoral laws that we fully embrace technology in transmission of results, we must provide that

technology. When I was the Minister for Information and Technology, I presided over the availability of most broadband in this country. However, we have many spots that have not received this technology. If we insist on electronic transmission of results, then we have to legislate to provide technology in every corner of this country.

We need to pass legislation in this House which will compel those companies, especially the mobile telephony, to provide that technology. They must provide those networks in all parts of the country because there is a lot of discrimination. I was surprised we insisted on electronic transmission of results yet we in other areas, people have to climb trees to be able to find network and communicate. So, how would you transmit a whole list of election results if you have to climb a tree or find some vantage points in order to relay that information?

I beg to support.

**Sen. (Eng.) Maina:** Thank you, Mr. Speaker, Sir. I rise to support this Bill. The amendments that we are discussing have become necessary because of the situation that we progressively noticed and which we find ourselves in, under the new Constitution.

This Constitution is a challenge. Today we are discussing the Election Laws (Amendment) Bill (National Assembly Bill No. 39 of 2017) and, probably, tomorrow there will be another issue. We need to interrogate this Constitution further after we are through with this Bill. The amendments are specific and are actually clarifying various ambiguous situations that were left to the interpretation of the Supreme Court. Anybody reading any other motive is missing the point.

This country is suffering. We cannot afford the quagmire we find ourselves in. A country where the Government is not clearly defined in accordance with the Constitution is the worst thing that can happen. What we are witnessing today in this country is costing our economy tremendously. Yet, our priority in this country right now is to create employment opportunities for the youth and develop other sectors of the economy.

It is our duty as the Legislature in this country to pass this Bill so that we move the country forward. In all elections, there has to be a winner and a loser. This country should not be subjected to the kind of quagmire that we are seeing and sideshows to satisfy some self interest of some individuals.

I support the amendments because this is the wish of my constituents and the majority of Kenyans. This is what democracy is all about. Personally, having read these amendments, I see no reason anybody would think that they conflict any constitutional interest.

I beg to support.

**Sen. Mwangi:** Thank you, Mr. Speaker, Sir. I support the Election Laws (Amendment) Bill (National Assembly Bill No. 39 of 2017) because it addresses what is to happen if a rogue election official decides to destroy this country by refusing to announce the winner of an election. In such a situation, we can revert to the Vice Chairman or other officials to announce the winner.

We need to worry about this country at a time like this when things are not normal. We have some of the legislators demonstrating on our streets, calling for the sacking of election officials. One wonders who has given them this authority to be sacking election officials when they are in office. This is not their responsibility, but that

of the Executive. They should know that they did not win the 2013 elections. We have a President in office responsible for the Executive matters in the country. .

We also know what happened with the Supreme Court Judges who annulled the elections. A Judge can decide to be blind and nullify an election which was, otherwise, properly done and orders for a repeat of election. In this case, we should relook at the Constitution and amend it appropriately. We can push this country to the dogs if we do not act. It is Parliament that has the responsibility of enacting laws. We have heard people saying that we should not enact these laws.

I support.

**Sen. Cherargei:** Thank you, Mr. Speaker, Sir. The Election Laws (Amendment) Bill (National Assembly Bill No. 39 of 2017) is timely. I am glad that the rights of voters as envisaged under Article 38 of the Constitution will now be fortified and sanctified. I agree also that as provided in the principles of elections under Article 81 of the Constitution, there is no bad timing. Going forward, we want to see that the conduct of our elections maintains its integrity.

I come from a place where there are rain makers. I am glad that it has started raining since the withdrawal of Hon. Raila Odinga as a presidential candidate. It means that this nation is blessed and President Uhuru Kenyatta will win again.

I support.

**Sen. Mwaura:** Thank you, Mr. Speaker, Sir. That is a good comical relief. Indeed, when you see the intensity of the rain, then you know that we are about to plant and harvest.

Mr. Speaker, Sir, I rise to support this amendment. A lot has been said about it, but I do not think we can say that there is any single amendment that is not in the best interest of this country. All the amendments are anticipatory and, therefore, are designed to ensure that we avert a crisis in the event of a situation arising and there is a lacuna in law. In fact, we have found ourselves where we are because we have some blind spots in the Constitution and, of course, the role of Parliament is to legislate.

Until today, this country was being held at ransom by the fact that we had only two candidates running for the repeat Presidential elections. It is not a must that a particular candidate is the only one who can be the President of this republic. In this case, I mean, Hon. Raila Amollo Odinga. There are so many Kenyans who are qualified and who can superintend over the public affairs of all of us.

Mr. Speaker Sir, I am very encouraged that the Judiciary has also started to respond. When you go by the whims and the desires of an individual at the expense of a country, putting the lives of 45 million Kenyans in jeopardy, that is totally uncalled for. We must have a situation where, even when matters are before any court of law, there is no ambiguity in terms of interpretation of the law. That is what we are doing; we are exercising our democratic role.

With the kind of example that the NASA coalition has shown us, I urge Kenyans to realize that these are not leaders that this country deserves. Indeed, the future of this Republic is more secure under the leadership of His Excellency, President Uhuru Muigai wa Kenyatta and his deputy, William Samoei arap Ruto. Hon. Raila Odinga, in my opinion, has failed to demonstrate leadership; he is an anarchist and in my own submission, I want to imagine that he wants to precipitate a constitutional crisis so that he

can introduce what he is well known for, a *nusu mkate* Government, otherwise known as *con-socialism*. We are a democratic Republic and we believe that votes must count. Therefore, every leader must go out to campaign and ---

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

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Ndwiga?

**Sen. Ndwiga:** Mr. Speaker, Sir, this amendment has been sufficiently debated. Will I be in order to request that the Mover be called upon to reply?

*(Hon. Senators spoke off record.)*

**The Speaker** (Hon. Lusaka): Order, Hon. Senators! Order! I do not see on the console a request from any other Senator desiring to contribute.

I therefore call upon the mover to reply.

**The Leader of Majority** (Sen. Murkomen): Thank you, Mr. Speaker, Sir. I have listened to the contributions of hon. Senators; and I must say that these are distinguished contributions. I have also noted the passion and the commitment of the Senators from the Majority side. We have almost 40 Senators and 35 are seated in this House today; and we have more than 25 delegations that are ready to pass this Bill.

*(Applause)*

The Deputy Speaker, Sen. Kindiki, will bear me witness that it was not easy in the last Parliament for such number of delegations to be seated in the House continuously from 2.30 p.m. to this moment, and this is commendable.

*(Applause)*

As I had said earlier, history will record and appreciate the Senators who have made these tremendous contributions on behalf of the great Republic of Kenya. History will record us right that at such a time as this, we took our responsibility seriously by filling the gap to provide legislative solutions to the problems we faced.

With those many remarks, Mr. Speaker, Sir, I beg to reply.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Hon. Senators, I wish to confirm that this Bill affects counties and, therefore, voting will be by delegation.

I now direct that we proceed to an electronic division. I, therefore, direct that the Division Bell be rung for two minutes.

*(The Division Bell was rung)*

Hon. Senators, the division bell has stopped. I, therefore, direct that the bars be drawn and the doors be closed.

*(The doors were closed and the bar drawn)*

Hon. Senators, I request that you log in for electronic voting and relax.

Those who have challenges with technology, we will have to do a roll call and you will have to vote manually. *Mutatembea mpaka huku.*

*(Some Hon. Senators, walked to the Clerks-at-the table)*

*(Voting in progress)*

**The Speaker** (Hon. Lusaka): Those who have challenges in using the electronic system can approach the Clerks-at-the-Table to be assisted to vote manually.

*(Several Senators approached the Clerks-at-the-Table)*

## DIVISION

### ELECTRONIC VOTING

*(Question, that the Election Laws (Amendment) Bill  
(National Assembly Bill No.39 of 2017) be now read a Second Time,  
put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. (Eng.) Hargura, Marsabit County; Sen. Iman, Garissa County; Sen. Kang'ata, Murang'a County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Lelegwe, Samburu County; Sen. Loitiptip, Lamu County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Eng.) Maina, Nyeri County; Sen. Mpaayei, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mwangi, Nyandarua County; Sen. Ndwiga, Embu County; Sen. Poghisio, West Pokot County; Sen. Sakaja, Nairobi City County; Sen. Wamatangi, Kiambu County; and, Sen. Wario, Tana River County.

**NOES:** Nil

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

**AYES:** 24

**NOES:** 0

**ABSTENTIONS:** 0

The "Ayes" have it.

*(Question carried by 24 votes to 0)*

*(The Bill was accordingly read a Second Time  
and referred to a Committee of the Whole tomorrow)*

**The Speaker** (Hon. Lusaka): I now direct that the doors be opened and the Bars drawn.

*(The doors were opened and the Bars drawn)*

Looking at the time, we will postpone Motion No.11 to tomorrow.

### MOTION

#### DEVELOPMENT OF EFFECTIVE WASTE MANAGEMENT AND DISPOSAL REGULATIONS

THAT, aware that cities, towns and urban areas in Kenya are increasingly getting overpopulated leading to overstretching of services and amenities;

CONCERNED that improper management of waste has become a major cause of pollution of neighborhoods, water sources and other natural resources leading to rise of environment-related diseases which cause many deaths;

FURTHER CONCERNED that in most urban areas, waste is dumped in an uncontrolled manner posing a great challenge to the wellbeing of urban dwellers, particularly those living near dumpsites;

ACKNOWLEDGING that the problem continues to rise despite the efforts made to mitigate the problem through various statutory bodies, private entities and communities; the Senate calls upon the National Government to take immediate steps to develop effective waste management regulations and put in place proper disposal facilities, including for harmful waste and that this be done in consultation with all key stakeholders.

*(Motion deferred)*

### ADJOURNMENT

**The Speaker** (Hon. Lusaka): Hon. Senators, we have come to the end our business today. There being no other business, the senate therefore stands adjourned until tomorrow, Thursday, 12<sup>th</sup> October, 2017, at 2.30 p.m.

The Senate rose at 6.15 p.m.