

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 29th May, 2024

Morning Sitting

*The House met at the Senate Chamber,
Parliament Buildings, at 9.30 a.m.*

[The Deputy Speaker (Sen. Kathuri) in the Chair]

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

The Deputy Speaker (Sen. Kathuri): Clerk, do we have quorum?
Serjeant-at-Arms, ring the Quorum Bell for 10 minutes.

(The Quorum Bell was rung)

The Deputy Speaker (Sen. Kathuri): Serjeant-at-Arms, ring the Bell for 10 more minutes.

(The Quorum Bell was rung)

Clerk, call the First Order.

Let us have the Chairperson of the Standing Committee on Justice, Legal Affairs and Human Rights. Those Papers will be laid in the course of time. I also know their first Mediation Committee is being processed.

PAPERS LAID

REPORT ON THE IEBC (AMENDMENT) BILL, 2024

Sen. Mumma: Mr. Deputy Speaker, Sir, on behalf of the Chairperson, I beg to lay the following Paper on the Table of the Senate, today 29th May, 2024-

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Report of the Standing Committee on Justice, Legal Affairs and Human Rights on its consideration of the Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bills No.10 of 2024).

(Sen. Mumma laid the document on the Table)

The Deputy Speaker (Sen. Kathuri): Let us go to Order No.6. The Mediation Report will be done after we receive that document.

Sen. Wahome Wamatinga, you had a Paper or a Notice of Motion to present today?

Proceed then to give Notice of Motion.

NOTICE OF MOTION

CHALLENGE OF POWER PURCHASE AGREEMENT RENEWALS AND ELECTRICITY SUPPLY IN KENYA

Sen. Wamatinga: Mr. Deputy Speaker, Sir, I give notice of the following Motion addressing the challenge of power purchase agreement renewals and electricity supply in Kenya-

THAT, AWARE THAT on 29th March 2021, a Presidential Taskforce was formed to review power purchase agreements between the Government and Independent Power Producers (IPPs), during which a moratorium was imposed on Kenya Power and Lighting Company (KPLC), preventing KPLC from signing new agreements or renewing existing ones with Independent Power Producers, which moratorium was lifted by the Cabinet in March 2023.

FURTHER AWARE THAT the National Assembly, vide a Motion adopted on 19th April, 2023 placed a moratorium, restricting KPLC from signing and renewing Power Purchase Agreements (PPAs) with IPPs pending a report of inquiry by the Departmental Committee on Energy and the consequent House resolution on the report.

CONCERNED THAT Kenya imports 17% of its electricity from neighbouring countries and faces a challenge as the growing demand for electricity is conflicted with the lengthy process of developing power plants, which usually takes 6-10 years from conception to generation, leading to electricity shortage and load shedding which impedes economic growth.

COGNIZANT of the Senate resolution of 28th February, 2024 on a Motion by the Standing Committee on Energy on inquiry into the high cost of electricity in the country calling upon the Ministry of Energy to, among others, create a one stop IPP office that comprises all the stakeholders required for approval of power plants and that the Ministry, through KPLC and Independent Power Producers renegotiate the current power purchase agreements within 12 months of adoption of the report.

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NOW THEREFORE notwithstanding the resolution of the National Assembly that imposed a moratorium on Kenya Power whose timeline has lapsed, the Senate, in order to cushion Kenyans from the high cost of electricity, resolves:

(i) that the Ministry of Energy and Petroleum and Kenya Power and Lighting Company be allowed to enter into new power purchase agreements or renew existing power purchase agreements with IPPs; and,

(ii) that the Energy and Petroleum Regulatory Authority (EPRA) fast tracks the acquisition of necessary licenses required by IPPs with valid power purchase agreements for setting up power plants.

I thank you.

The Deputy Speaker (Sen. Kathuri): Next Order.

QUESTIONS AND STATEMENTS

Hon. Senators, today we were expecting three Cabinet Secretaries: The Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora, the Cabinet Secretary for the National Treasury and Economic Planning and the Cabinet Secretary for Environment, Climate Change and Forestry.

All of them have given apologies to the Senate because today they are attending the African Development Bank (AfDB) meeting, which is ongoing at the Kenyatta International Convention Centre (KICC). Today is also the climax of those meetings, which started from Sunday.

Now that they are not coming, we will go to the next Order.

Sen. Wafula, do you have something to say on my communication?

Sen. Wafula: Mr. Deputy Speaker, Sir, I had pending Statements to put forward. If the questions have been shelved, then it would be prudent for me to tackle my Statements.

The Deputy Speaker (Sen. Kathuri): Did you have questions to the Cabinet Secretaries?

Sen. Wafula: No. It is time for Questions and Statements, and if the questions are not there, we should proceed with Statements.

The Deputy Speaker (Sen. Kathuri): Sen. Dullo.

POINTS OF ORDER

DELAYED PROCESSING OF STATEMENTS BY COMMITTEES

Sen. Dullo: Mr. Deputy Speaker, Sir, I thank you for this opportunity. I am raising concern on the delay of Statements by Committees. I have Statements that I requested way back in February, and up to now, I have not gotten any response. I, therefore, need your intervention so that those processes can be fast-tracked.

If they delay, then the relevant departments might delay in responding to them or even fail at all.

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The Deputy Speaker (Sen. Kathuri): Sen. Wafula, if you look at the Order Paper, it only had Questions today, but not Statements. They may be scheduled for today in the afternoon.

Sen. Dullo, with regard to the delayed Statements, the Liaison Committee will be discussing that matter. You should be requesting the Chairpersons to fast-track those Statements. Out of the 750 Statements, we are halfway, meaning that almost 50 per cent of the Statements have been processed.

Today, we will still request all Chairpersons and whoever is in this House to fast-track those Statements.

Sen. Wambua!

Sen. Wambua: Thank you, Mr. Deputy Speaker, Sir. I have two issues. The first one is on Statements, and I am happy that the Liaison Committee will be meeting today to discuss those pending Statements.

Mr. Deputy Speaker, Sir, if the Liaison Committee could benefit from an unsolicited opinion, we will be proceeding on recess after tomorrow and the amount of work in terms of Statements and Petitions before committees is too much. At times, you will wonder if we were to add more work to committees, what would we be doing?

Now that we are proceeding on recess, can you in Liaison Committee find a way of ensuring that Committees transact as much business as possible during this time, so that we reduce the backlog?

The second issue is on the questions to the Cabinet Secretaries. This is now the second Wednesday that they have not appeared. Last week, I was holding brief for Sen. Mumma and right now, you have to give directions on what happens to those Questions that are still pending from last week, considering that some of them have timelines. They are related to current affairs.

Mr. Deputy Speaker, Sir, you should give guidance on that and the issue of the Statements as well.

The Deputy Speaker (Sen. Kathuri): Thank you, Sen. Wambua. The reasons given by the Cabinet Secretaries today look very genuine. However, the Senate Business Committee (SBC) will ensure that we still have the Questions of those Cabinet Secretaries who were aligned today next week.

I request them to try their level best and appear on Wednesday, next week in order to clear these pending Questions from last week. The Senate Majority Leader will ensure that the Cabinet Secretaries appear before the Senate next week.

Proceed, Senate Majority Leader.

NEED FOR CABINET SECRETARIES TO NOTIFY THE SENATE OF THEIR UNAVAILABILITY

The Senate Majority Leader (Sen. Cheruiyot): Mr. Deputy Speaker, Sir, it makes a lot of sense. However, there are certain positions that we had already taken as a House. I hope that today, as your good office dispenses of its responsibility, you shall take into consideration resolutions that we have taken previously.

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Number one, you understand that in scheduling of questions, we do it one week prior, at the very minimum. So, there is no Cabinet Secretary who can say they have been ambushed. Yesterday, we scheduled all the Questions of the Cabinet Secretaries that are supposed to appear. In fact, it is only that because we are going on recess. However, we gave them more than seven days.

Previously, we had taken the position that the Cabinet Secretaries that are appearing before us should give their apology, notifying the House of their unavailability, seven days before as well, so that, as a House, we do not grope in the dark. We should know the reasons a certain Cabinet Secretary is not going to appear before us in advance.

I have with me three copies of letters. One is from Hon. Soipan Tuya, responding to a letter, which we sent on the 21st May. They are all citing this meeting that is going on at Kenya International Convention Centre (KICC). It is an important meeting, but I do not believe that it is an emergency. I do not think that it was planned just the other day.

(Applause)

I expect better from the Prime Cabinet Secretary, who is the coordinator of Government business, other than to write to Parliament two days before appearance. He needs to be better organized. I expect better from hon. Soipan and the Cabinet Secretary for Finance and National Treasury. If he is managing our finances the way he is managing our letters, then we are in a difficult situation as a country.

You cannot write 24 hours before appearance to a House, especially the two Cabinet Secretaries who have previously served in Parliament. Hon. Soipan has been in Parliament for over ten years, while the Prime Cabinet Secretary was in Parliament before I was born. So, it is not fair for them to treat Parliament casually.

I wish that as you respond to these three letters, let it be known that there is no problem in not appearing, but give sufficient notice. We expect the Prime Cabinet Secretary to show good leadership and guide the other Cabinet Secretaries in coordinating the operations of the Cabinet by responding in the time that was stipulated.

The same way Parliament takes trouble to plan its Calendar and ensure that Cabinet Secretaries have seven days' notice before appearing before us, what is so difficult for them to sit down, plan their diary and know that on such and such a day, they are expected in Parliament and at KICC at the same time? If that KICC meeting must proceed, they should write to us so that when we meet to schedule Questions, we do not find ourselves here.

As you write to them, please, make it clear that it is gross misconduct and unbecoming in their person and office to write to Parliament in two days. This is greatly unacceptable and cannot be entertained in this House.

I thank you.

The Deputy Speaker (Sen. Kathuri): Thank you, Senate Majority Leader. Let me give some guidance on this matter. Parliament gives seven days' notice. It is on our policy that you cannot invite the Cabinet Secretaries in less than seven days' notice. The same rule should be applied by them, so that they also respect Parliament. They should be

writing on whether they are coming or not, in not less than seven days. That must be followed strictly.

Sen. Mungatana, proceed?

Sen. Mungatana, MGH: Thank you, Mr. Deputy Speaker, Sir. In this House, if you are unable to prosecute a Question or a Statement for whatever reason, we have an understanding that you can give a Senator to hold your brief.

(The Clerk-at-The Table consulted with the Deputy Speaker)

Mr. Deputy Speaker, Sir, I need to be protected from the Clerk.

The Deputy Speaker (Sen. Kathuri): Thank you for that. We were consulting on a very important national matter.

Sen. Mungatana, MGH: Thank you. I wanted you to hear this. In this House, when a Senator is not present for any reason, he can give another Senator the authority to ask the Question or even read a Statement on their behalf. In your response to Cabinet Secretaries who are absent, can you engage the Prime Cabinet Secretary to be organized, as the Senate Majority Leader has said?

He should be organized in such a way that he can ask one Cabinet Secretary to come and answer on behalf of the other one, when the other one is engaged. This will ensure we have smooth running of business in this House.

For example, right now, it cannot be that all the Cabinet Secretaries are attending the African Development Bank (ADB) Summit. I am sure if they were organized, one could have come to handle something and go back to the meeting and another one to do the same. If someone must sit there throughout, they could donate their capacity. The Principal Secretary can accompany the Cabinet Secretary so that this is done.

My request is that you, maybe, engage the Prime Cabinet Secretary to see if it is possible for him to create the rule of delegation. This will enable Cabinet Secretaries to appear. We will use time well and those Questions will be dispensed with.

I submit. Thank you.

The Deputy Speaker (Sen. Kathuri): I hear you, Sen. Mungatana. That is a matter that can be considered by the SBC. I wonder whether we can get the details that we want. I wonder whether the Cabinet Secretary appearing on behalf of another can make commitments and answer Supplementary Questions. It is a catch-22 situation, but it is something that can be deliberated on.

(Sen. Mungatana spoke off record)

Give him the microphone for one minute.

Sen. Mungatana, MGH: Mr. Deputy Speaker, Sir, you are quite right. However, some of the Cabinet Secretaries have even acted in those positions and they would come with the Principal Secretaries. If they have any details they would require, the Principal Secretaries and the support team; the directors who are there can help.

Let us push the idea that if somebody is not present, the business of the House should not stall. If he feels he cannot tackle the Question, they can always say that it is

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beyond the original question and request that the Supplementary Question be put in writing, so that they can tackle it. In this manner, the business of the House will move and not be stalled as has happened previously.

I submit.

The Deputy Speaker (Sen. Kathuri): Standing Order No.51(c) does not have that provision, but since the Standing Orders are not cast in stone, something can be done through the Procedure and Rules Committee of the Senate to see whether this is possible.

I request that we stop lamenting since we have given guidance that Cabinet Secretaries should respect this Senate by giving notice of seven days in advance if they are appearing or not.

Sen. Orwoba, Sen. Okenyuri and Sen. Cheptumo, kindly bear with me so that we can dispense with some of the business that we have.

Sen. Faki, you are a Member of the Mediation Committee, I request you to lay the document and give notice of the Motion since Sen. Dullo has left.

PAPERS LAID

REPORT OF THE MEDIATION COMMITTEE ON THE DIVISION OF REVENUE BILL, 2024

Sen. Faki: Thank you, Mr. Deputy Speaker, Sir. I beg to lay the following Paper on the Table of the Senate, today, 29th May, 2024-

Report of the Mediation Committee on the Division of Revenue Bill (National Assembly Bills No.14 of 2024).

I thank you.

(Sen. Faki laid the document on the Table)

The Deputy Speaker (Sen. Kathuri): Notice of Motion!

NOTICE OF MOTION

ADOPTION OF REPORT OF THE MEDIATION COMMITTEE ON THE DIVISION OF REVENUE BILL, 2024

Sen. Faki: Mr. Deputy Speaker, Sir, I beg to give Notice of the following Motion

THAT, the Senate adopts the Report of the Mediation Committee on the Division of Revenue Bill (National Assembly Bills No. 14 of 2024), laid on the Table of the Senate on Wednesday, 29th May, 2024, and that pursuant to Article 113(2) of the Constitution and Standing Order No.167(3) of the Senate, approves the mediated version of the Bill.

I thank you.

The Deputy Speaker (Sen. Kathuri): Let us move to the next Order.

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BILL*Second Reading*THE INDEPENDENT ELECTORAL AND
BOUNDARIES COMMISSION (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS NO. 10 OF 2024)

The Deputy Speaker (Sen. Kathuri): The Senate Majority Leader kindly move the Bill.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Deputy Speaker, Sir, I beg to move that The Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bills No.10 of 2024) be now read a Second Time.

Mr. Deputy Speaker, Sir, this Bill was first published on the 4th March, 2024 vide a gazette notice No.46 dated 2nd May, 2024. On the 2nd May, 2024 our colleagues in the National Assembly passed this Bill and referred it to the Senate for its consideration.

The principal object is to amend the IEBC Act to redefine key terms, expand qualifications criteria for some of the positions, streamline vacancy management. It also seeks to enhance transparency, efficiency and accountability in the electoral process and to make sure that the Commission appoints a more inclusive and transparent way, while ensuring continuity and stability within its administrative structure.

I will be quick to mention that this is one of the National Dialogue Committee (NADCO) Bills as they have been referred to. It is part of the Bills that we generated out of the National Dialogue Committee that Members of this august House, along with yours truly, had the opportunity to serve in.

Our colleagues in the National Assembly begun working on it. They have since concluded consideration and have referred it back to us as a House, so that we may do what is expected of us.

I beg that they indulge us so that we process this expeditiously, though with a lot of keenness given that it is an important Bill. I say this because there is already litigation before the courts of law on this matter. As you are aware, there are about 15 wards in the Republic of Kenya that up to date do not have Members of County Assembly (MCAs) for more than a year.

Banissa Constituency in Wajir or Mandera County has equally stayed a whole year without a Member of Parliament (MP). As Members may be aware, for more than a year after the National Assembly considered a Petition for the removal of the four IEBC commissioners and the retirement of the other three, IEBC has been un-constituted and, therefore, unable to conduct its operations.

Even as we were considering this matter before the NADCO, citizens from those wards and that specific constituency moved to court. The court has since made pronouncement to the IEBC Selection Panel. Remember, there is a selection panel as well that is supposed to select the commissioners and nominate their names for their appointment. They have been doing this work.

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I need not go on record because of the behind-the-scenes conversations lest somebody picks and uses them either for or against this House or the Selection Panel. This House has adults, so they understand what I mean.

Mr. Deputy Speaker, Sir, we are being asked to consider this Bill and give our views and thoughts to it. While I was moving the NADCO Report, I mentioned this Bill. Given that they arose out of a bipartisan process, even the consideration of amendments - there is nothing in our Standing Orders that bar any Member from bringing amendment to any Bill - courtesy and good order demands that we consult as we have always done anyway on many of the Bills.

I know the Standing Committee on Justice, Legal Affairs and Human Rights has recommended a number of amendments on this Bill. I guess it is the report that has been tabled a few minutes ago.

Should we conclude with this stage this morning session, then maybe we could consider the Committee of the Whole later in the day or tomorrow and we shall be guided by the decisions of our Committee. I believe that the Committee is made up of competent colleagues who have taken time to read through this Bill, listen to stakeholder views and make it even better. In as much as we give a good product to the country, it can always be made better.

Here are some of the salient issues that this Bill discusses. Section 1 of the Bill is about the name. Section 2 changes a few definitions, the first being the word “chairpersons” by deleting the words “or the vice chairpersons or a member of the Commission when discharging the functions of the chairperson”.

It brings clarity on what the responsibility of the chairperson of the IEBC *vis-à-vis* those of the other commissioners. This is a matter that has been heavily debated in our courts of law. It has been argued before the Supreme Court of Kenya and there has been a court finding and guidance on it.

(Sen. Cheptumo spoke off record)

The Deputy Speaker (Sen. Kathuri): Sen. Cheptumo, you will have an opportunity to debate this Bill. Is it a point of information?

Do you want to be informed Sen. Cheruiyot?

The Senate Majority Leader (Sen. Cheruiyot): I do not mind.

The Deputy Speaker (Sen. Kathuri): Okay proceed, Sen. Cheptumo.

Sen. Cheptumo: Mr. Deputy Speaker, Sir, you heard the Senate Majority Leader in his submission talking of sections. It is supposed to be clauses. Sections are used when you refer to an Act of Parliament.

The Deputy Speaker (Sen. Kathuri): Okay. Proceed, Sen. Cheruiyot.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Deputy Speaker, Sir, that is why I choose to be informed because Sen. Cheptumo does not speak in vain. You have seen it is very useful information. Thank you for that information.

I am referring to the second Clause of the Bill, which is about definitions. I was referring to this from my moving notes and part of it is amending already what is an Act of Parliament. That is why I referred to it as a section, but Sen. Cheptumo’s information

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is accurate. For purposes of moving this Bill, I will stick to the word 'clause,' so that it is clear before the various Members.

The Bill also gives life to Article 88 of our Constitution recognizing that the IEBC is a commission with various roles, among them the delimitation of boundaries, which has been a matter of concern in the country. The country is in a place where it cannot conduct elections.

It is a matter of grave national concern that for whatever reason, should there be a reason to warrant the conduct of an election, as it is today, we do not have a body that can conduct it. I do not think the country should ever find itself in such a situation after this.

We have made provisions that you will later on see in the law to ensure that once we pass this Bill, this shall never happen again, and our country will make progress. This business of having to change the IEBC after every election needs to become a thing of the past, and we have made provisions to ensure that, that happens.

Clause 3 of the Bill proposes to amend Section 6(2) of the Principal Act, which introduces information and communication technology, and accounting as additional accepted fields from, which, if experience is sought and proven, qualification for appointment as a member of the commission can be warranted.

We just wanted to make it a bit broader but give specific preference to professions that we think are relevant to the work of an IEBC commissioner, and we have included Accounting as a profession. Remember these are figures and you will remember the very funny memes that we had after the election during the infamous press conference by the--

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I am avoiding the term that Sen. Orwoba wants me to use given that this is a bipartisan Bill, and I do not want to spoil the mood in the House. However, you have had submissions by IEBC commissioners elsewhere on certain mathematical calculations that make you doubt their acumen in terms of addition and subtraction.

That is why we feel it is an important addition to have members of the accounting profession as part and parcel of those that can be. Before then, what was considered to be high-ranking was only the legal profession.

Of course, we have also provided Information and Communication Technology (ICT) because our election is increasingly becoming technology-aided; we use a system, passwords and all these things.

It is important to have a commissioner who has a high level of experience and expertise in matters of ICT. They can guide and lead their colleagues in understanding and appreciating the technology that is being deployed in that election.

Clause 4 of the Bill amends the Principal Act by deleting Subsections 4, 5, and 6, which speak to what happens when there is a vacancy in the office of the chairperson or a member of the commission resigns or chooses otherwise.

Clause 5 proposes to amend Section 10 of the Principal Act by deleting Subsection 4 and bringing in a new subsection, which provides that the Secretary shall hold office for a term of four years and is eligible for reappointment for a further term of four years.

There is a very big debate about this, and if I am not wrong, if I have seen from the JLAC, they have varied this provision. Later on, when Members of the Standing

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Committee on Justice and Legal Affairs speak to the House or address us, I would wish to be persuaded and hear why they hold a different view.

As the Committee that developed the Bill, we felt that if we tied to five years, which is the term of an election in the country, then there might be a possibility that the term of the CEO will be coming to an end the very year that they are supposed to be conducting the election. Therefore, four years was chosen. There was a feeling that if we keep it to three years, which is the number of years that most parastatal heads are given, it is too short a period.

Some of them actually can come in and exit without having conducted any election, especially in the case where their term of office is not renewed. Therefore, I want to be persuaded by JLAC on why they think that we need to vary that provision.

Clause 7 of the Bill proposes to amend Section 24 by inserting a new Subsection 24 to provide for the Commission's review of the conduct of the general election. This Clause aims to require the Commission to make necessary changes to make its operation more efficient, effective, transparent, and accountable.

Article 87 of our Constitution is quite explicit on what happens after a general election. The IEBC is supposed to publish a report and issue to the country. We have made it mandatory for them to send it to Parliament.

Parliament is a principal user of election results. We need to read through and reflect on the report of the IEBC itself after the general election to understand the challenges they went through.

Unfortunately, the culture in this country has been such that immediately a matter is dispensed of at the Supreme Court, that is the end of that conversation. If there are to be any other things that are to be mentioned, improvement of efficiency, lessons that are learned, or improvements that need to be made, they are left until a few months before the next general election.

We need to learn. We need to do better. I have said this time without a number. I was here in the year 2016 when we tried to amend the IEBC Act months before the election. We know what the results were. We were here again just before the 2022 election, and new provisions were being provided.

Let us learn and become better stewards of our country by making those provisions now, three years before the general election, so that those that will be in office will have the opportunity to prepare and set out their procedures in accordance with the law. Therefore, it is extremely diligent of us, as Members of Parliament, and Parliament as a House, to do this work at this time.

Clause 7 seven proposes the introduction of Part 3 immediately after the insertion of Section 24(a). This is to provide for the delimitation of boundaries and procedures thereof, a very thorough process. We know Article 88 of our Constitution and its provision on what the IEBC is supposed to do on the delimitation.

Already, as it is, we are in violation of our Constitution. The IEBC is supposed to review or do the delimitation of boundaries eight years after the passage of a constitution and not more than---

Let me just read that, so that I do not paraphrase. Article 88 of the Constitution provides that the Interim Independent and Boundaries Commission shall review boundaries.

Article 89 (2) states-

“(2) The Independent Electoral and Boundaries Commission shall review the names and boundaries of constituencies at intervals of not less than eight years, and not more than twelve years, but any review shall be completed at least twelve months before a general election of members of Parliament.”

We are already in violation of this part of the Constitution because this is the thirteenth year since the passage of this Constitution of Kenya, 2010.

As a House of Parliament, unfortunately, we have not been able to make the necessary law and provide the IEBC with the necessary provisions and tools for them to conduct this exercise.

This is something that we need to do with urgency, so that they review all these features that are provided in Part 5 - the geographical features, community interest, and all these petitions.

When we were at the National Dialogue Committee (NADCO), part of the larger contributions that we received from members of the public were to do with the review of boundaries. Either they want their constituency renamed or they want this or the other ward redrawn and all those things. The Constitution has given us this mandate as a House of Parliament.

The Constitution has given us that mandate as a House of Parliament. This is something that we need to enable the IEBC to conduct and furnish Parliament with a report. Parliament should then publish it for citizens to give their views on their constituency or ward to either be redrawn, renamed and ensure that the number of inhabitants in that particular ward remains within the quotas that have been allocated. I do not want to take too long on that topic.

Mr. Deputy Speaker, Sir, Clause 9 of the Bill proposes to increase the number of persons appointed to the Selection Panel by the President to nine. You know very well that, the Selection Panel in existence presently, has seven members and there is a history to this. I like this law and the spirit that has guided it.

When the Parliamentary Service Commission (PSC) did not consider the opinions of our democracy in this House, during the very confusing handshake days, it ended up with the Majority and the Minority being on one side and within the Majority, there was another function that had a different political leaning.

Therefore, due to the lack of proper representation or drafting of the law, it ended up that the four members nominated to the Selection Panel representing only one side of the political divide. That is what ended up giving us the so-called Cherera Four. You know the consequences.

As it is specified in the law today, PSC cannot sit as was the case previously and just give us four individuals. They must be representative of the Majority and the Minority parties. Further to that, we have provided it because our colleague, Sen.

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Omtatah, went to court on this particular matter. For the very first time, I think he agreed with Parliament.

He said that Parliament was the only nominating body of that Selection Panel that did their nomination competitively. The rest of the nominating agencies such as the Public Service Commission (PSC), Inter-religious Council and the Law Society of Kenya (LSK) did it in a way that could not be understood.

We have provided it and made it specific in various sections of these clauses in this Bill. We have inserted a new Clause 2(b) that states that the respective nominating bodies shall select nominees for appointment through a competitive and transparent process.

Mr. Deputy Speaker, Sir, what are these nominating bodies? You know for a fact that our colleague, Sen. Omtatah, went to court on Parliament having four members out of seven members of the Selection Panel. The courts seem to have agreed that Parliament had over-rewarded itself. I do not agree with that provision because I do not know of any other institution that represents all shades of opinion than Parliament itself.

In this House, you will find the Majority and the Minority. However, be that as it may, as the National Dialogue Committee (NADCO) at that time, we agreed with that decision and decided to reduce the nomination of Parliament from four to two. That is such that Parliament will only nominate two members of the Selection Panel. One shall be from the Majority Party or coalition of parties and the other one shall be from the Minority Party or coalition of parties through a competitive process. That is a consultation that shall be led by PSC.

We have also made a provision that the Political Parties Liaison Committee (PPLC); a body that brings together various political parties to have three nominees in this Selection Panel. However, we have defined how each of those three are nominated.

Two of them have to be from parties, and as stated in Clause 1, one shall be from a party other than a parliamentary party. This is because there are many political parties in the PPLC. Unfortunately, if it was left as was the case previously, the non-parliamentary political parties are more than the parties in Parliament.

I do not want to call them what people normally refer to them as briefcase political parties. My good friend, Sen. Eddy Oketch, will understand them better because I know previously, in his attempt to come to this House, he ran on one such political party.

We broke it down quite elaborately, that those parties that do not have representation in Parliament shall nominate one and the other two shall be from parties that are in Parliament. One shall be from the majority party while the other one shall be from the minority coalition of parties within PPLC.

Mr Deputy Speaker, Sir, then, there is a nominee from LSK and another from the Institute of Certified Accountants of Kenya (ICPAK); a body that brings together our certified accountants in the country. Remember I had earlier on spoken to the need to have accountants; people who can do basic addition and subtraction, much as it appears to be too obvious. Then, finally, two persons that are nominated by the Inter-religious Council of Kenya.

Finally, it is just to provide for the dissolution of the selection panel-

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“The Selection Panel shall finalize the recruitment exercise within ninety days of its appointment and forward the names of the nominees to the President and shall thereafter stand dissolved.”

Thereafter, Parliament by resolution, can extend a tenure of the selection panel for a specified period if for one reason or the other, they have not concluded on their job within 90 days.

Clause 10 is just consequential provision. It says-

“The quorum for the conduct of business at the meeting of the Commission shall be at least five members of the Commission”.

I do not think there is any other matter for which I need to speak on. If there is anything that I have left, I believe that the very able retired Justice Sen. Madzayo, the Senate Minority Leader, shall be able to speak to in his seconding.

Mr. Deputy Speaker, Sir, with those very many remarks, I beg to move and request the Senator for Kilifi County and the Senate Minority Leader to second.

I thank you.

The Deputy Speaker (Sen. Kathuri): Sen. Madzayo, the Senate Minority Leader, proceed to second the Motion.

The Senate Minority Leader (Sen. Madzayo): Asante Bw. Naibu Spika. Cha kwanza, naunga mkono Mswada huu ambao unahusu mageuzi ya Tume huru ya kusimamia kura na mipaka katika Kenya.

Cha muhimu ni kuwa Mswada huu ulitengenezwa na Kamati ya NADCO na hatimaye, ikaletwa katika Bunge. Tulisikizana ya kwamba, ikitoka katika Bunge la Kitaifa, wataleta katika Bunge la Seneti ili iweze kujadiliwa na kukubaliana.

Kwa mda mrefu sana, hii nchi yetu ya Kenya imeketi bila kuwa na Tume ya kusimamia mambo ya kura. Ni jambo la kusikitisha sana kwa sababu hakuna nchi ambayo inaweza kuwa haina tume huru ya kusimamia mambo ya kura. Kwa hivyo, naunga sana mkono Mswada huu kwa sababu uko na mambo mengi ambayo yanaweza kusaidia upigaji kura.

Kitu cha kwanza ambacho mimi naunga mkono zaidi ni kwamba, inaleta mwelekeo. Tukizingatia ya kwamba katika nchi yetu ya Kenya, tunaendelea kuwa na wingi wa watu. Vile vile, itahitaji kuona ya kwamba katika wingi wa watu, kuna mageuzi kidogo baada ya mda, ili kuona ya kwamba majina, mipaka na maeneo bunge, yameangaliwa na kugeuzwa.

Katika mwelekeo, tunaangalia wingi wa watu ili tuweze kujua ni wadi ngapi zinawezwa kuongezwa katika maeneno fulani, ama maeneo bunge mangapi yanaweza kuongezwa kulingana na vile watu wanavyozaana katika nchi yetu.

Pia nataka kuunga mkono Mswada huu kwa sababu unanua kuangalia kina nani wanafaa kuteuliwa kama Wabunge. Mswada huu unapendekeza kuwe na watu wawili watakaoteuliwa na Parliamentary Service Commission (PSC). Mmoja wa watu hao atatoka katika party ya walio wengi na mwingine katika party ya walio wachache.

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Kipengele cha (d) kinasema kwamba watu watatu watateuliwa kutoka kwenye kamati ya vyama vya kisiasa. Miongoni mwa watu hao watatu, mmoja atatoka katika *party* isiyo na Wabunge wengi. Mwingine atatoka katika *party* ya walio wengi ndani ya Bunge.

The Deputy Speaker (Sen. Kathuri): Samahani, Kiongozi wa Wachache! *Party* ni chama.

The Senate Minority Leader (Sen. Madzayo): Asante, Bw. Naibu Spika kwa kunisahihisha. Mmoja atatoka chama cha walio wengi na mwingine atatoka chama cha walio wachache. Pia Mswada huu unapendekeza Law Society of Kenya (LSK) kuteua mtu mmoja. Vile vile, kutakuwa na mtu mmoja kutoka Institute of Certified Public Accountants of Kenya (ICPAK). Pia kuna watu wawili watakaoteuliwa na Inter-Religious Council of Kenya (IRCS).

Mapendekezo ya kamati ya NADCO yamejumuishwa na sasa tuna Mswada kutoka Bunge la Taifa. Kulingana nami, hii ni sheria ambayo itatoa mwelekeo mzuri katika nchi yetu.

Pia Mswada unapendekeza kuteuliwa kwa katibu atakayesimamia jopo hili. Katibu huyo atafanya kazi kwa kandarasi ya miaka minne. Haifai kuwa miaka mitano. Hapo kuna suitofahamu kuwa atakuwa na kandarasi ya miaka minne ilhali tunafanya uchaguzi kila baada ya miaka mitano. Tunahitaji maelezo mwafaka kwa nini mtu huyo awe na kandarasi ya miaka minne badala ya mitano.

Bw. Naibu Spika, mwisho ni kwamba Mswada huu unazingatia mambo ya kupiga kura na matakwa yanayohitajika kisheria. Kwa hivyo, naunga mkono.

(Sen. (Dr.) Oburu consulted with the Clerks-at-the-Table)

The Deputy Speaker (Sen. Kathuri): Sen. (Dr.) Oburu, the Chair is upstanding; just stand where you are so that you do not fall.

(Sen. Methu consulted with Sen. Wafula)

Sen. Methu, you must be keen while in the House. I will go ahead to propose the question.

(Question proposed)

Proceed, Sen. Wambua.

Sen. Wambua: Mr. Deputy Speaker, Sir, first, I take this opportunity to thank the NADCO that came up with this Bill. The fact that the Bill has been processed in the National Assembly and now it is our time to process it.

(Sen. (Dr.) Murango consulted with Sen. Cheruiyot)

Mr. Deputy Speaker, Sir, I want the Senate Majority Leader to hear this because it is important. Sen. (Dr.) Murango is engaging him yet this piece of information is important to the Senate Majority Leader.

The NADCO team has given this country a lifeline. Now that the Senate Majority Leader is here, I believe he will communicate this message to other Members of that team. The only thing that the team never acknowledged is that there was a bipartisan team before them that broke the ice.

We began our meetings when both sides could not see eye to eye. We laid a firm foundation on which the NADCO team was able to operate and come up with several Bills that, as I have said, have given this country a lifeline.

Mr. Deputy Speaker, Sir, I appreciate the fact that this Bill is a product of a negotiated document. There will be room for Members to propose amendments to align it with the supreme law and the realities of our time, but not to change its core values. I appreciate that the Bill seeks to enhance efficiency, transparency and accountability in our elections and electoral processes.

I will go straight to the salient issues of the Bill. I will make simple and straightforward comments. As late as yesterday afternoon, the Senate was debating a Motion on changing the Standing Orders. One of the issues in the proposed changes was definition of what constitutes a parliamentary party in the Senate.

If this Bill is passed, it will be binding to all Houses of Parliament. It takes the liberty to define what a parliamentary party means. It says that it is a party or coalition of parties consisting of not less than 5 per cent of membership of National Assembly.

For neatness and in order to align our own Standing Orders with the law on electoral justice, I would have wished we borrowed and lifted this provision from the Independent Electoral and Boundaries Commission (Amendment) Bill. That way, there will be no conflict between what is provided for in the IEBC Act and what we have in our Standing Orders. As I said, we can only align.

I see that Clause 3 makes an amendment to Section 6 of the principal Act and includes the services of Information Communication Technology (ICT) personnel and accountants.

It is a good thing, but I remind the Senate Majority Leader that the only time we are going to get close to where we want to be is not to add more professions to the IEBC, but have people of integrity serving in the IEBC. Even these ICT personnel are basic. I was told garbage in, garbage out. It is what you feed to the system that determines the outcome of what you get. So, in itself, it is not a cure to electoral injustice.

I have listened to the Senate Majority Leader on the matter of the term of office for the Secretary to the Commission. I fully agree with the reasoning of the NADCO team and sentiments as captured in this Bill.

I would want to read the report of the Committee on Justice, Legal Affairs and Human Rights (JLAHRC) to see what amendment they will be proposing on the term of office for the secretary. However, if you ask me, this is well thoughtout.

The matter of the review of the conduct of the general election by the IEBC is necessary. This is okay for quality control and internal purposes. It is an opportunity for

IEBC to engage in self-reflection, carry out internal audits as an obligation of the law and establish a functioning monitoring and evaluation team within itself.

Mr. Deputy Speaker, Sir, this should not be deemed to say that now that the IEBC will be carrying out their internal audits, the report or verdict that they give out, is the final. At times, it is very difficult for people to objectively audit their operations. An external eye or person to look at the work of IEBC would have been necessary.

That is why maybe we have missed an opportunity here to in-build the services of external credible electoral auditors in the Bill as a requirement of the law that within a specific period after an election, then there is this independent external body that is supposed to carry out an audit of the IEBC election.

As I move towards the conclusion of my remarks, I agree and align myself with the sentiments of the Senate Majority Leader. On the fact that in a matter of delimitation of electoral units, I like it when the Senate Majority Leader admits in public and on record that we are in breach of the Constitution. This is because that is exactly what we have, and nobody stops anyone from moving to court to seek redress on this matter.

This proposed IEBC law has dealt very heavily with giving effect to Article 89 of the Constitution on the timings for reviewing electoral boundaries. What I do not know and perhaps at some point the Senate Majority Leader will also give guidance on this one, is why we are always in a hurry to give effect to Article 89 of the Constitution, and always so slow and disinterested in giving effect to the provisions of Article 188 of the Constitution?

If a time comes when it is necessary to review the boundaries of wards and constituencies, then likewise, the time has come that we must review the boundaries of counties. I have now seen that one of the duties that have been assigned to the IEBC in this Bill is to review the names and boundaries of constituencies, which is fine. However, because we are not assigning county responsibilities to IEBC, I have seen that the National Cohesion and Integration Commission (NCIC)---

(Sen. Methu and Sen. Cheruiyot consulted loudly)

Mr. Deputy Speaker, Sir, Sen. Methu and Sen. Cheruiyot are in breach of the orders of the Speaker yesterday. Just protect me from those two.

The Deputy Speaker (Sen. Kathuri): Bring the House to speed. What did the Speaker say?

Sen. Wambua: Mr. Deputy Speaker, Sir, thank you for that opportunity.

(Laughter)

Yesterday, the Speaker, in his Communication from the Chair, pleaded with us to conduct our business with decorum.

(Sen. Faki consulted loudly)

The Deputy Speaker (Sen. Kathuri): Sen. Muhammad Faki, listen to what the---

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Sen. Wambua: Mr. Deputy Speaker, Sir, that is exactly the same thing the Speaker said yesterday. We have nearly turned this House into a marketplace where people come in and instead of following and contributing to debate, they transact other personal businesses. They are always on phone.

That was the Communication from the Speaker yesterday. In fact, he said that we should not push the Chair to the point that he may have to rule that there will be no phones allowed in the Chamber. However, you can see many people, including my sister, are already on the phone. The import of that Communication yesterday was that we receive guests---

(Sen. Orwoba consulted loudly)

I have been asked to communicate something. I am just doing so.
So, we receive guests in this House.

The Deputy Speaker (Sen. Kathuri): Please note that you are eating on your 20 minutes.

Sen. Wambua: Sen. Gloria, I am okay. Do not worry about me. We receive guests in this House. When they see us consulting in high tones, walking on the gangways when the debate is going on and speaking on the phone like the Senate Majority Leader is doing now, they think we are not very serious. That was the Communication yesterday. I believe you are properly updated.

I was saying that I saw yesterday that the NCIC has now gone a step further and they are proposing a change the names of certain counties, including your county where you sit as Senator for Meru.

The arguments are sound. We have counties that are named, or share names with dominant communities within the boundaries, making it uneasy for other members of other communities living in those counties to also feel like they belong to those counties.

Mr. Deputy Speaker, Sir, I was wondering whether we have missed an opportunity to assign an advisory role to the IEBC as contemplated in Article 188 of the Constitution. When and if it is time to delimit or review the boundaries of counties, the IEBC should have a role to play.

(Sen. Joe Nyutu answered his phone)

The Deputy Speaker (Sen. Kathuri): Sen. Nyutu, you are bordering on being out of order. The space behind the Chair or outside can be well-utilized to make calls and do other things. So, because I was party to that decision which was made and the Communication made by the Speaker, I ask Members to desist from taking calls from the Chamber.

Proceed.

Sen. Wambua: Thank you, Mr. Deputy Speaker, Sir. In conclusion, I urge Members to give their input to this Bill bearing in mind, as I said, that it is a product of a negotiation.

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Sen. Cherarkey, those mannerisms form part of the Speaker's warnings yesterday. I reserve the right to declare my support or opposition to the Bill at any point in my submission. This is debate 101.

I fully support the Bill and urge Members to debate it. We want to read the report of the JLAHRC that has been tabled to see what they think. I hope that, at the end of the day, we will fast-track this Bill.

If there is a Bill that we need to have passed like last year, it is this one. For the simple reason of what the Senate Majority Leader has captured. We have people in this country who are not represented in Parliament because the IEBC is not properly constituted. If we can finish this Bill and properly constitute IEBC, we can hold elections in wards where there are vacancies for representatives of the people.

With those many remarks, I support.

The Deputy Speaker (Sen. Kathuri): Next in line is Sen. Mumma Muyeka. Sen. Mumma, your first name is similar to a word used in the last two weeks, 'Catherine.' I will seek to amend your name at some point.

Proceed and use your minutes.

Sen. Mumma: Thank you, Mr. Deputy Speaker. Sir, I do not know whether I can tell you this. On behalf of the chairperson of the JLAHRC, please quickly allow me to read out the amendments that JLAHRC has proposed to this Bill.

The Deputy Speaker (Sen. Kathuri): Sorry, Sen. Mumma. Hon. Senators, when the Chair gives Senators chances to debate, this is one of many things I allow a Member to contribute--- I can give three Senators a chance to debate the matter from the opposition side. What is the problem with giving Sen. Wambua and Sen. Mumma opportunities from my left? You can sit on either side of the House. Nobody should direct the Speaker. I am a sober guy who eats *Miraa*. I am alert.

Sen. Mumma: Thank you, Mr. Chairperson. Depersonalizing issues is not good. Hon. Chair – sorry, Mr. Deputy Speaker, Sir, for the confusion.

I rise on behalf of the Chairperson of the JLAHRC to present the amendments proposed by the JLAHRC so that as Members debate, they might want to contextualize that.

I request the secretariat print out this one page of the JLAHRC proposed amendments from the report and share it with Members so they can contextualize it as they speak.

I will straight away go to the amendments. The Committee has largely accepted the Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bills No. 10 of 2024) as it is. However, the Committee has proposed further amendments to improve the Bill for the sake of the Senate.

In Clause 2, we have proposed that paragraph (a), which describes Parliamentary parties or Coalition Parties, be 'consisting of not less than 5 per cent of the membership of the National Assembly.' We add the words "Senate" to refer to both the National Assembly and the Senate. This is the proposal we have inserted in the proposed Clause 2 amendment.

We have further added another Clause (g) that indicates that whenever a Parliamentary Committee is expressed, it will refer to both the National Assembly and the Senate.

The committee has proposed that the Clause 3 be deleted and substituted with the following clause to provide that those appointed as commissioners have ten years' experience. The committee feels this is an important commission and we should provide a higher bar regarding the experience of commissions. The JLAHRC Members proposed to increase the experience to 10 years.

We have carried the day in terms of the proposed inclusion of qualifications on ICT and those on accounting. In the newly proposed Clause 24(b), we have proposed to insert the words "of each House of Parliament" immediately after the words "parliamentary committee." This ensures that the continued interpretation of Parliament to mean the National Assembly is corrected so that both the Senate and the National Assembly are included in that definition.

In Subclause Clause 6(2), we propose that at the end of the words "National Assembly," we substitute that with the words "the relevant House of Parliament." In paragraph 7 of the newly proposed Clause 24(b), we delete the words "National Assembly appearing at the beginning of the paragraph and substitute that with the words "each House of Parliament." In paragraph 8 of the new proposed Clause 24(b), we have proposed the inserting of the word "and the Senate" immediately after the word, "National Assembly."

Finally, in paragraph nine of the new proposed Clause 24(b), we insert the word "Senate" immediately after the words "National Assembly. The NADCO did not consider these amendments, but they are important.

The Deputy Speaker (Sen. Kathuri): What is your point of order, Sen. Cherarkey?

Sen. Cherarkey: Mr. Deputy Speaker, Sir, I beg your indulgence. We are in the Second Reading Stage of the Bill and not the Committee of the Whole. However, I appreciate what Sen. Mumma is doing. Are we in the Committee of the Whole or the Third Reading?

The rule of debate is that as we engage with the Bill, we give the merits and demerits, not the Committee's proposed amendments. Is it in order as per the rules of debate *vis-a-vis* the rules of the Committee of the Whole stage?

The Deputy Speaker (Sen. Kathuri): Sen. Cherarkey, refer to your Standing Orders where that matter is addressed and come back to me.

Sen. Mumma: Thank you, Mr. Deputy Speaker, Sir. As I said clearly, we intended to share what we have put so that you take it into account. If you only focus on the clauses that were brought by the NADCO, you will miss on the very many others that we have brought on board which made the Senate not to be an equal House.

Thank you very much.

The Deputy Speaker (Sen. Kathuri): Sen. Mumma, you are enriching the debate.

Sen. Mumma: Thank you, Mr. Deputy Speaker, Sir. I wish to stop there so that others can have a chance to contribute.

The Deputy Speaker (Sen. Kathuri): Thank you. You can proceed to the other duty that you have. Proceed, Sen. Wambua.

Sen. Wambua: Sen. Mumma has done a very good ---

(Sen. Mumma stood in her place)

The Deputy Speaker (Sen. Kathuri): Sen. Mumma, have your seat for a minute.

Sen. Wambua: Mr. Deputy Speaker, Sir, as you rightly ruled, Sen. Mumma has enriched the debate. She has introduced the provisions of the JLAHRC to the Bill that we are debating.

Mr. Deputy Speaker, Sir, what I need is your guidance on whether the Bill that will be debated will be as amended or as enriched by Sen. Mumma or as tabled and moved by the Senate Majority Leader. In which case, then are we doing the Third Reading in the Second Reading?

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

Sen. Wambua: Sen. Cherarkey, read your Standing Orders. I am on a point of order. How can you be on another point of order? Do you mean you can rise on a point of order when I am rising on a point of clarification? Think.

The Deputy Speaker (Sen. Kathuri): Sen. Wambua, stop engaging other Members directly. What is your point of order, Sen. Cherarkey?

Sen. Cherarkey: Mr. Deputy Speaker, Sir, this House is a House of rules. Under Standing Order No. 97, Sen. Wambua had contributed to this matter. The Standing Orders should guide us. Why would he want to speak to the same matter?

Mr. Deputy Speaker, Sir, can you kindly listen to me under Standing Order No. 97?

“97. Speaking twice to a Question-

(1) No Senator shall speak more than once to a Question except in the Committee of the Whole.”

Sen. Wambua should have waited until we are in the Committee of the Whole.

The Deputy Speaker (Sen. Kathuri): He was seeking clarification.

Sen. Cherarkey: No, Mr. Deputy Speaker, Sir. It does not happen. It says you cannot do that in this Standing Order No.97.

The Deputy Speaker (Sen. Kathuri): I used Standing Order No.1 to give him that opportunity. I also thought the House could benefit from whatever clarification he was seeking.

Sen. Cherarkey: Nonetheless, you can introduce it in the Committee of the Whole.

The Deputy Speaker (Sen. Kathuri): The Chair is not here to gag Members. That is not one of my duties. Sen. Orwoba, let us hear what you have because today you are also making some noise. Let us hear what you have in your mind and whether it corresponds to what you have done this morning.

Sen. Orwoba: Thank you, Mr. Deputy Speaker, Sir. My personality is that I must speak up. It is not noise.

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As I support this Bill, I would like to add my voice on particular matters starting with the delimitation of electoral units. You can see there that the Bill states –

“Procedure for delimitation of electoral boundaries

(1) The Commission shall discharge its mandate of the delimitation of boundaries of constituencies and wards in accordance with the Constitution, this Act and any other law.”

It is talking about electoral units, but if you go further and see what they are outlining, you will notice that first of all, an electoral unit is either a ward, a constituency or a county. All of these units are within devolution and yet, when you look at how they are outlining the responsibility and what is happening in that section, you will note that the same is limited to the National Assembly.

You can reference the part where they say –

“The Parliamentary Committee shall, within fourteen days of receipt of the revised preliminary report, table the report in the National Assembly together with its recommendations.”

That Parliamentary Committee does not specify whether it will be limited to the National Assembly or the National Assembly and the Senate. The next point they say –

“The National Assembly shall, within 14 days of tabling, revised preliminary report.” Again, they are referencing the National Assembly. On the next point, again, you will see that it is about the National Assembly.

[The Deputy Speaker (Sen. Kathuri) left the Chair]

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

Additionally, on the role of the delimitation of boundaries, which is a core function of devolution, because you have the wards there, the constituencies and the counties. You know that the Senate as the ‘Upper’ House is there to protect the devolution. Yet we have absolutely no role or particular influence in this structure based on this Bill that has been proposed.

Madam Temporary Speaker, so that you understand the seriousness of this matter on all boundary disputes that we are experiencing now. I will give an example of the boundary disputes that we have between Nyamira and Kisii counties in Keroka.

If we have no influence as the Senate to make sure that we are protecting devolution, you will find that some of the decisions that will be taken here based on the numbers that we have in the National Assembly, will mean that, for instance, Keroka can suddenly move to Nyamira from Kisii County.

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At the end of the day, the Senate has no role to play in this particular proposal that is being put here. I would like that to be noted because if this Bill is passed as it is, the Senate then becomes redundant in matters of delimitation of boundaries.

Madam Temporary Speaker, another issue on this particular matter of delimitation of boundaries is that you will notice that it is centrally squared in the National Assembly. If we will increase or decrease the number of wards or constituencies, the first beneficiary or the first loser of that particular action is a Member of Parliament (MP) from the National Assembly.

This means you are allowing the judge of the outcome of a situation where they are either a loser or a beneficiary to be someone who is already partisan. For instance, I come from Bobasi Constituency where I vied. Our constituency is very big and we have eight wards. In those eight wards, if you look at the issues that we have to deal with in our neighbouring constituency like Bonchari Constituency, even in terms of resources, it does not make economic sense.

Madam Temporary Speaker, if that Bill is taken to the National Assembly, where my sitting MP of Bobasi Constituency is seated, outrightly, based on clan issues and re-election issues, he will completely vote against it having two constituencies in Bobasi. Hitherto, that is the person whom we are now entrusting squarely in terms of the delimitation of boundaries.

In that aspect, I even think that if we will talk about the increase of wards, constituencies or counties, that should be a role that should either be completely independent from both Houses; the Senate and the National Assembly. This should be in a way that it is only the IEBC based on the metrics and the statistics that they have, decide what is there. If we will involve either of the Houses, it has to be both Houses voting for or against it. Since it will be both Houses benefiting or losing.

I say this as a politician who gets the National Government Constituencies Development Fund (NG-CDF) based on the number of wards that we have. If the Members are told now, "We are reducing your number of wards," they will not vote for that thing.

This is something that we have not thought through. I would propose to have both Houses completely not be part of the delimitation of boundaries in terms of the decision of whether to increase or reduce or to have both Houses come on board to vote or participate in the same.

I also want to weigh in in terms of what we have on the composition of the commission. It might sound cliché that every time I stand, I will be standing on the issue of gender parity and women representation. I am specially elected to do this job of ensuring that women and girls are represented in all spaces.

On the issue of the composition of the commission, there is a clear process and an outlining of who in terms of skill set or background should be appointed. Now, we are talking about bringing the accountants and adding more ICT specialists on board.

The strange thing about this Bill is that it is one of the Bills under NADCO, which was a national dialogue and it was supposed to include women who form more than 51 per cent of this population.

Madam Temporary Speaker, when you look at all the proposals that are here, there is no attempt on engaging the gender parity. So that Senators in the House do not think that I am just speaking passionately out of nowhere, when Sen. Wambua was saying that we need to get off our phones, when some of us are on our phones, we are researching and ensuring the points we speak are factual. This is so that a Member stands on a Standing Order No.105 on factual points.

Looking at the Samuel Kivuitu Electoral Commission of Kenya (ECK) members without looking at the skillset or the ethnic background, you will see that we had Mr. Bashir Sheikh, Mr. Eliphelet M'Thambu, Mr. Henry Jura, Mr. Edward Cheron, Mr. Frank Kwinga, Mr. Nathaniel Chebelyon and Ms. Wangui Karanja – one lady.

I like speaking from data and if you look at how we have progressed on the representation of women in active politics from 2003, we have had 7.14 per cent of women elected to the Parliament of Kenya. That gradually increased in 2022 to 23.4 per cent.

Madam Temporary Speaker, I looked at the commission to see if there was any influence. The latest IEBC commissioners is comprised of two women out of the total commissioners that are there. If right now we have an opportunity to dictate on who becomes a commissioner, where they come from and their religious background or political institution, why are we not being intentional on ensuring that at least our two-third gender threshold is met.

There is nowhere in this proposal where it says that out of all these members, at least two-thirds should be of one gender. I believe that is something that needs to be looked into because I have given the data and statistics. Coming from a proposal that had a Special Bipartisan Committee from both sides of the divide and yet both sides of the divide did not even think about women. I am disappointed over that issue.

Madam Temporary Speaker, we need to be careful in every single Bill that comes to this 'Upper' House and on how we engage with it. I have said this before that sometimes we are pushing the agenda of the National Assembly. When I look at all the references made in this Bill, then we are actually proposing that the National Assembly takes charge in terms of all the procedures---

The Temporary Speaker (Sen. Mumma): Sen. Gloria, would you wish to be informed by Sen. Wakoli?

Sen. Orwoba: Yes, I would like him to inform me.

Sen. Wafula: Thank you, Madam Temporary Speaker. I bring to the attention of Sen. Orwoba that on page 309, 2(c) in nominating the persons paragraph 2(a)(b) and (e), the respective nominating bodies shall ensure that no more than two-thirds of the nominees are of the same gender. This is on the breakdown of persons to be nominated.

The Senator is in the spirit, and she is fighting a good cause.

Sen. Orwoba: Thank you, Sen. Wafula. That is why I agreed to be informed by him because he always has proper information.

Madam Temporary Speaker, as I conclude, I congratulate the NADCO team for the proposed Bills that we are going to see because they are several of them. However, I have to speak up and say that it was unfortunate that the issue of the two-third gender rule was excluded from the NADCO Report.

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As much as we try to mitigate and find a way that we finally deal with the two-thirds gender rule, we know that both Houses, the National Assembly and the Senate are guided by Standing Orders. There was an assumption that having a sit-down with both the Speakers of the National Assembly and the Senate that somehow, we could sneak in the proposals and amendments that we wanted to have to ensure that the two-thirds gender rule is met.

Madam Temporary Speaker, our Standing Orders are clear. Once the report was tabled by the committee and the report did not have any matter on the two-thirds gender rule or recommendation, we know that when this Bill comes as a stand-alone Bill, the chances of it passing are nil. This is because of the numbers we have in the National Assembly and the Senate. That is the reality we are in.

As a matter of fact, it is imperative that I clear the air as we talk about the NADCO Bills. This is because people are saying that it will still come as a NADCO Bill. No, it will not come as a NADCO Bill, but it will come as a stand-alone Bill. Since it will not be NADCO Bill, the spirit of the House will not be the spirit of bipartisanship which is what is happening with the NADCO Bills.

Madam Temporary Speaker, you will note that with the NADCO Bills as much we are both in the Government and opposition, there is an assumption that we have agreed in passing these Bills. As I contribute to this Bill, I am finding out that it was a clear sabotage on the women agenda.

As I congratulate the NADCO team, I also have to fault them yet again for letting down the women of Kenya in an opportunity we could have maximized to ensure the representation of the 51 per cent population of Kenya. The two-thirds gender Bill is not part of a NADCO Bill and it will not come as a NADCO Bill. In that essence then, we will continue to fight in every single amendment that comes to this House that there be an intentional approach of ensuring that women and girls are represented.

I thank Sen. Wakoli for pointing that section that speaks of not more than two-thirds. I hope that when we pass this Bill, it will be implemented. As you have seen in the past lists of commissioners, the two-thirds gender rule was never met. If it continues like that, then the most important independent body in the industry or field of politics will not have women represented in it.

Madam Temporary Speaker, this will contribute in ensuring that we have less and less women being represented in both the National Assembly and the Senate.

With those few remarks, I support the Bill. I will be in the House to rally people during the Committee of the Whole so that women are represented in all these single line items in the Bill. I thank you.

The Temporary Speaker (Sen. Mumma): Sen. Faki.

Sen. Faki: Asante, Bi. Spika wa Muda, kwa kunipa fursa hii kuchangia Mswada wa Mabadiliko wa Sheria ya IEBC. Ni masikitiko kwamba zaidi ya mwaka mmoja, hatujakuwa na tume ya uchaguzi katika nchi yetu.

Mswada huu utasaidia pakubwa kuweka tume ofisini ili iweze kufanya kura katika maeneo Bunge kadhaa na pia maeneo ya wadi ambayo hayana wawakilishi kwa sasa. Jambo la msingi ni kwamba wale ambao watachaguliwa kwanza kwa lile jopo la

kuchaguana na pia wale makimishina watako chaguliwa, wanafaa wawe watu wa tajiriba na wenye ukweli na kusimamia haki.

Hii ni kwa sababu kutoka tuanze kupiga kura, mahali panaleta shida sana ni kwa tume ya uchaguzi wa kura. Hii ni kutoka tulipoanza kura za kwanza ya vyama vingi mwaka 1992 mpaka 2002, tulipopata kura ya kwanza ambayo ilikuwa haina shaka.

Bi. Spika wa Muda, tumeona zile kura zilizofata baadae zikiwa na shida hata kwenda mahakamani. Kwa upande mwingine, mahakama pia zimeleta hukumu zingine hazieleweki.

Kwa hiyo, tukipata watu wenye tajiriba kuu ambao wanaweza kusimamia haki, itakuwa bora kwa nchi yetu kwa sababu, tutaweka matatizo yanayotokea baada ya kura kuisha katika kaburi la saha.

Vilevile, sheria hii itatoa nafasi kwa IEBC kusimamia mipaka ya maeneo bunge na wadi katika nchi yetu. Tumeona kwamba kutoka katiba ipitishwe mwaka wa 2010, hatujaweza kukagua tena maeneo bunge ili kubadilisha majina ama kutoa mipaka mipya ya maeneo yetu. Kume kuwa na mkurupuko wa wingi wa watu katika maeneo yetu. Tunapata kwamba maeneo mengine yana watu wengi kupita kiasi.

Sio sawa kwa eneo bunge kuwa na wapigaji kura zaidi ya laki tatu, ilihali maeneo bunge mengine yana wapiga kura elfu ishirini ama thelathini. Hii ni kwa sababu tunataka tuwe na usawa wa uwakilishi katika nchi yetu. Watu hawafai kupata shida kutafuta Mbunge wao kwa sababu ana watu wengi sana wa kuwasimamia.

Swala hili la mipaka lazima liende katika Bunge la Kitaifa na pia lije Seneti. Hii ni kwa sababu Seneti ndio inayosimamia ugatuzi ambao unawakilishwa mashinani na bunge za kaunti. Kwa sababu bunge la kaunti linachaguliwa moja kwa moja kutoka kwa wananchi, itafaa kwamba Mswada wa kubadilisha maeneo wadi, lazima yafika katika Seneti ili uangaliwe na kukaguliwa sawasawa.

Kwa kumalizia, ni masikitiko kwamba tumeona Bunge la Kitaifa limewatimua makamishna wa zamani bila ya kufuata mwongozo wa kisawasawa. Ile tume iliyochaguliwa na Mhe. Raisi, wao ndio walishitaki, wenye kuchunguza na wao ndio waliotoa hukumu ya kuwaondoa watu wale.

Inafaa kwa siku za usoni, Mswada wowote wa kuwaondoa makamishna ufikishwe katika Seneti. Hii ni kwa sababu, wao ndio wanaosimamia kura za magavana, wabunge na maseneta. Kwa hiyo, ni lazima tuwe na uamuzi kwa suala hilo

Asante, kwa kunipa fursa hii.

The Temporary Speaker (Sen. Mumma): Sen. Mungatana, proceed

Sen. Mungatana, MGH: Thank you, Madam Temporary Speaker, for giving me the opportunity to also give my views on this Bill. I will make only three points: The first one is on the selection panel. I support this proposal very much. This is because those of us who have been around for a long time, you will remember the days of the second President, late Daniel Moi and Justice Chesoni as the head of the commission that is charged with electoral processes.

In those days, Kenyans used to appoint the head of the electoral commission and it was a direct appointment. There were no processes in between. We have since progressed to a position where there is a select committee that appoints people to be commissioners. That is progression number two.

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This Bill has, however, brought progression number three. What we have now is a scrutiny of the selection panel itself, which is a development of what was the initial selection panel. This is a very good development. We should support and pass this Bill.

I am serving as the head of delegation for Pan-African Parliament. Kenya is held in very high esteem in the African continent because of this kind of thing. People discuss Kenya and how we choose our commissioners. It will be a pleasure when we go for the next sessions to tell them that nowadays, it is not the President who appoints, but a selection committee. We have even interrogated the very selection committee so that the selection panel is a democratized institution. We need to agree that we shall support that on principle.

Secondly, on the same issue, Tana River County is affected. This is because we lost a very able United Democratic Alliance (UDA) Member of County Assembly (MCA) from Chewani Ward. In fact, Chewani Ward is like the headquarters of Tana River County. The honourable Member who was chosen there, we used to call him Doheny, did not stay for too long. He left us because of a tragic road accident. We used to call him the mayor of Tana River because he was right at the centre. He passed away and the people of Chewani Ward have remained without representation.

It is of interest to the people of Tana River that this process that will bring in the selection panel and re-establish the IEBC be done as fast as possible. We have a reason to support this Bill to go as fast as it can with the amendments that I shall be discussing later in my contribution. Concerning the selection panel, I leave it there.

On the question of delimitation of boundaries, I would like to bring to the attention of the House that the process on how the IEBC will delimit the boundaries is very detailed. However, for purposes of debate and those who are listening to us, to outline that the schedule that has been provided in this Bill is talking about giving public sensitization and public hearing.

Those regulations within the Third Schedule make it possible for everybody in Tana River to know that there is this process going on. In the past, it was only the elite who used to participate in giving names and opinions in delimitation of boundaries and wards. This was the case on our county, and I am sure many other counties as well. People did not quite engage. At that time, they used to be called councilors. I am very glad that in this proposed Third Schedule, people will be involved. There will be public hearings and notices.

Madam Temporary Speaker, it is not the normal public participation that is said. We have had abuse of what is public participation. Some people in the counties just select the same people to go and sit and they say there was public participation. The same people are given allowance and moved from place to place and then we are told public participation happened. All of us are aware of that.

In this one, there is public hearings. It is very clearly delimited. They have gone ahead to explain what the concept of public participation under the Third Schedule would be. That elaborate procedure is well taken care of within this Bill. I urge Senators to support this proposed system of delimiting boundaries.

Madam Temporary Speaker, one of the regulations demands that the officers - and they mentioned them such as the Director of Survey - is demanded upon by this regulation to give cooperation to the IEBC when they are carrying out this process.

We want to see how this work out. We have wards and constituencies in Tana River County bordering my kind neighbor, Hon. Sen. Wambua, from Kitui County. These are places where our people campaigned and voted for candidates for wards all the way to presidential level. Some of them because of the recent disputes and involvement of police have had schools being annexed by Kitui County yet they are polling stations that are gazetted in Tana River County.

I would be very interested in seeing how we will resolve these issues. We want to see whether Director of Survey will state the wards are in Tana River County or those that have been delimited with the IEBC are on the other side of the county. I hope this process will be proper and transparent and it settle some of the disputes that we are having on the boundaries with some of the neighbouring counties.

I laud the Third Schedule proposed in this Bill. I thank the people who put in some thought around that area. The only thing that was not spoken to was the question of delimitation on the protected constituencies. I am told that maybe some regulations will be set, or it will be a political question that needs to be resolved from the highest offices in this land.

Every time the word 'delimitation' or 'population' is mentioned, those of us who come from counties that have huge areas, but limited populations get very worried. As we are speaking now, when we go with what the Constitution thresholds have predetermined, in Tana River County, we stand to lose at least one constituency. In fact, if we go strictly by what is supposed to happen, two constituencies are supposed to go so that they merge into one that is Bura and Galole constituencies. Garsen Constituency has the correct population and all the other parameters.

I would have thought that the NADCO report based on protecting minorities and sparsely populated areas would have gone to propose constitutional amendments that would protect these constituencies. Members of Parliament (MP) who are coming from those currently protected areas are worried whether these constituencies will be there in the next election. Our people in those constituencies are also worried if those constituencies will be protected.

Even as we are talking about proper procedure in delimitation, we must also put in our minds the political question of how to protect the currently protected constituencies. What do we tell the people because they are worried? We have an answer to the people of Tana River County and elsewhere that the wards and constituencies will be contested once the IEBC selection panel is done and the commissioners are in place.

As to how many protected constituencies will be there, whether they will be available for contest by the Hon. Members seated here and those aspiring, or the voters will continue benefitting from the NG-CDF, we do not have an answer. That should have dealt with by NADCO so that people are certain about the politics of our counties and constituencies.

Madam Temporary Speaker, I underline and emphasize that in this country we must be fair as we talk about population. I have heard people in this Senate and outside stating that if a constituency has 300,000 people and another has 20,000 then it is fair that we give more resources to the first and leave the other.

I want to give a very simple example. In the constituency that has 300,000 people, the likelihood is that there are day schools. Pupils walk to school and in the evening, they are back home. If you are awarding NG-CDF and you give them Kshs5000 or Kshs3000 then the day scholar will still walk to and from school.

Madam Temporary Speaker, in some of our areas you will have to send the child to book a lodging. Let us say they have been given Kshs10,000. They still have to travel and book a place to sleep for the night and travel again the following day to reach their boarding school. Schools are that far and when the floods come as they have, they will not just spend that Kshs3,000 just like the first constituency but Kshs10,000 because of the travel expenses and accommodation.

Even that small example will tell you that we still need equal resources, if not more for those areas. This is because we have to somehow pay for the sins of this country. I argue this way because we committed a sin some time ago. Session Paper No.10 of 1965 which specifically stated that the resources of the country which we collect from everybody will be concentrated in high potential areas.

It was so bad that in parts where we come from, people used to say *tunaenda Kenya* (we are going to Kenya). It was because of how hard life was. We thank God for devolution and NG-CDF and the things it has done.

In terms of reparations for these areas, I persuade Hon. Members here, even outside that when say not anyone touching the NG-CDF. Let us leave it as it is. Do not say it is unfair because historically we are doing reparations to some of these areas.

Madam Temporary Speaker, finally, I want to talk about the question of the Standing JLAHRC proposals to amend this Bill. I have listened carefully to the proposals from them, and they are so important.

I urge Members that at the Third Reading, we must ensure we pass our amendments in this House. We cannot have a situation where we are a passing a law that is against us. Many times, people do not pay attention to these things. As one Hon. Senator has said, we debate the principles and then we leave the details out.

Madam Temporary Speaker, we must make sure that the amendments by JLAC are passed at the Third Reading. When we take them back to the National Assembly and it agrees with them, then it is good because both Houses must be represented in these processes.

If the National Assembly says no, we must stick to our guns to the ground and we must go for mediation. We must not allow a situation where even things to do with boundary demarcation, we are being told that we are not part of that; it is the National Assembly. Why? We should not accept that. We should not pass any such laws.

I commend the Standing Committee on Justice and Legal Affairs Committee for the work they have done. Let us not leave even one of those proposals they have made to go without passing at the Third Reading.

I pray that a special announcement be made when this Bill is coming for a Committee of the Whole so that we are all there. By that, we will get to know the betrayers of the Senate because some are seated with us. They are supporters of the National Assembly because, in the next election, some have even declared that they are going to run for seats in the National Assembly.

Some of us have been there, and we do not want the National Assembly ever again. We are in a senior House and we must put our house in order. It is not a solution for you to support whatever the National Assembly brings because you intend to run there in the next election.

We must make a special arrangement so that at the Committee of the Whole, we support the amendments that JLAC has proposed. That way we are able to keep the dignity of this House, especially on matters to do with the delimitation of boundaries.

As I conclude, it is all very well to prepare a panel to appoint IEBC commissioners and everybody else. However, here is a critical thing about the automation and the systems in the IEBC that we have not yet touched on in this Bill. When I inquired why nothing has been discussed about the electoral system, how we vote, how we transmit the results to the constituency, and how the presidential results are being transmitted up to the Bomas of Kenya at the national tallying centre, I was told that there will be regulations by the IEBC. I pray that this be done in good time.

The problem with human beings is that they are subject to manipulation. Systems, if left to work efficiently, are less efficient subject to manipulation as opposed to human beings.

So, the way forward---

Madam Temporary Speaker, I request one minute to conclude.

The Temporary Speaker (Sen. Mumma): That is fine. Just conclude in one minute.

Sen. Mungatana, MGH: Thank you, Temporary Speaker. I was just concluding and saying that the way forward for our electoral system is for us to prepare fool proof automated systems. It is not even in the selection of these people, because even if we select commissioners, some are with you today, some are against you.

However, if the opposition and the government side agree on the system, I am sure that we will have less acrimony after the results are announced. We should invest all the attention on the systems rather than the personnel.

We have seen from the previous election that people can just do things. Machines do not care, for example when we go to pay taxes at the Kenya Revenue Authority (KRA). If you are to pay this amount, you must pay.

If you have overloaded your lorry, it passes and it is in your name, you must pay. A machine does not know whether you are a Member of Parliament, you are a Senator, or you are a governor. If it is overloaded, you have to pay. This is how systems will help us give more credible results as elections are being done.

With those few remarks, Madam Speaker, I beg to support this Bill with those amendments proposed by the JLAC.

The Temporary Speaker (Sen. Mumma): Sen. Osotsi, you have the Floor.

Sen. Osotsi: Thank you, Madam Temporary Speaker, for the opportunity again to make my voice heard on the IEBC Amendment Bill. We must commend the National Dialogue Committee (NADCO) team for coming up with this Bill.

I join my colleague, Sen. Wambua to say that this is a product of bipartisan negotiations between the Azimio la Umoja Coalition of Kenya and the Kenya Kwanza Coalition. A number of the proposals contained in this Bill are going to address some of the challenges that we have had in this country in election management.

I also think a lot needs to be done to ensure that we have a level playing field in our election. We will also have an opportunity to look at the proposals contained in the Elections Amendment Bill, which is also a product of NADCO.

Allow me to comment on the composition of the selection panel. The Bill says that two persons shall be nominated by the Parliamentary Service Commission to represent the Minority and Majority parties. Whereas I agree with that, I think something is missing. What is missing is how political parties will be directly involved in that nomination process.

If you give that task purely to the Parliamentary Service Commission to determine for you the choice of the Minority and Majority, you are likely not to get the right people that the parties.

I want to give an example. In the current panel, someone who was nominated to represent the Azimio la Umoja Coalition was not even known to the Azimio la Umoja leadership.

I will be proposing an amendment to this. We must have a preliminary process done by the Majority political party and Minority political party to submit, even if it means three names, to the Parliamentary Service Commission. The Parliamentary Service Commission will then choose one representative from a Minority and one representative from Majority from among the names submitted by political parties.

Otherwise, we will not be doing justice to the political parties if we allow the Parliamentary Service Commission, which we know is dominated by the government side, to choose for the Minority site, representation in this Selection panel.

The same applies to the Political Parties Liaison Committee (PPLC). The PPLC process must also have the input the Majority and Minority political party.

I have served in the PPLC. It is a club of briefcase parties. There are over 80 political parties. The main political parties in the PPLC, that is the Orange Democratic Movement (ODM), the United Democratic Alliance (UDA), and the other big parties do not feel safe in the PPLC. They are intimidated by these briefcase parties.

Now you are giving them a chance to determine for you three persons, One for the Majority party, one for the Minority party and one for the other small parties. They will also give you a choice which they feel is their best.

Again, we need the involvement of the respective parties. We must have a preliminary process of choosing the names, which are then presented to them to decide. Otherwise, we will be doing favour and justice to the Majority and Minority parties.

We want to agree that the main contestation in our election has been the use of technology. We saw that in the year 2017 and in 2022. Looking at the selection panel, I do not see how that aspect of the use of technology is being captured.

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How I wish that we had at least one Information, Communication and Technology (ICT) expert sitting on this selection panel. Apart from accounting knowledge, we have also proposed that the chairperson of the Commission must have ICT experience and knowledge.

Yes, accounting knowledge is taken care of by ICPAK, however, no one in that panel is adequately experienced and knowledgeable on matters of ICT to help us get the right Commissioner with ICT knowledge. This is very critical in election management.

Madam Temporary Speaker, I do not know how that proposal to have PSC cater for the budget of the selection was arrived at. We are suffering in this House because of low budgets. Our committees are not able to run effectively. We put a budget towards NADCO and now, we are putting another budget towards this selection panel and yet, we have no additional budget as Parliament.

This is a process that will lead to IEBC commissioners being appointed. The right institution that should have catered for the budget of this process is the IEBC. I am wondering where the PSC is coming in. We are just one of the bodies going to facilitate the appointment of the commissioners. There are other bodies such as the LSK, ICPAK, PPLC and the Inter-religious Council.

This should have been the budget of IEBC, not PSC. We are setting the wrong precedence as Parliament. We want to cover the budget for other institutions when we have a strained budget as a Parliament. I am not opposing; I am just questioning that decision.

Madam Temporary Speaker, I am also very excited about the decision to amend this Act so that the decisions of the Commission shall not be made by one person without the concurrence of the majority of the members.

In the last election, there was an accusation that the Chairperson of the Commission made a unilateral decision. We saw the contestation between Chebukati and the Cherera Four; that, the results were only communicated to them, they were not involved in tabulating the final results. This amendment is going to take care of that limitation that we had in the 2022 General Election.

Madam Temporary Speaker, the use of technology is a big issue. It is the elephant in the room on matters of electoral justice in this country. For us on this side, we have been talking about the opening of the servers. We hope that the servers will be opened so that Kenyans can know the truth. Even as we are talking about that, we need to factor it into law.

We are going to have an opportunity to discuss the amendments to the Election Act. One amendment that I would have expected the NADCO team to deal with was an amendment to Section 44(8) of the Election Act.

Section 44(8) provides that there will be a joint ICT technical committee on matters of adoption and use of technology. However, just before the 2022 General Election, this section was amended further to make it discretionary for IEBC to determine whether to have external people or not. That is why, there were problems around the adoption of technology.

In 2017, we had this committee, and I was a member. We were even taken to Dubai to assess the technology and the printing of ballot papers. As a result, we got

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adequate information that helped us to execute our matter in the Supreme Court. However, due to that mysterious amendment in 2022, it was not possible. That is why a lot of questions arose around the use of technology.

Political parties and all stakeholders must be involved in the process of adoption of technology from procurement, installation, testing and implementation. They must be involved from day one to the last day of the election until the results are declared to the nation.

I propose that, we need to revisit that Section 44(8) of the Election Act and ensure that it is mandatory for IEBC to have a joint technical committee on matters of ICT, composed of all the stakeholders, including political parties. That way, we will be able to deal with the problem of the use of technology in our election.

Madam Temporary Speaker, on the issue of delimitation of boundaries; this Bill talks about the use of the latest official population census report as a basis for delimitation of boundaries. Whereas I agree with that because it is also provided in the Constitution, we have had contestation around the census. In this country, the census has been made a secret.

I remember, before the 2022 General Elections, even the IEBC was complaining that they were not able to get the official census report from Kenya National Bureau of Statistics (KNBS). The census report must not be a secret. I support the provisions in this Bill that this report must be subjected to public scrutiny so that, those contesting the numbers posted by the KNBS are free to do so.

We have had concerns raised by the people of Northern and Western Kenya which to date, have not been addressed. You know, this data is used for many things including, division of revenue. It is the most important data that must go through proper public scrutiny.

Madam Temporary Speaker, we also need to ensure there is fairness. Yes, population is important but the distribution of these constituencies and wards must ensure some equity. For example, there is a constituency in my county called Hamisi. It is geographically big with a big population. However, when you apply this formula, they miss the target by around 5,000 people. Are we going to deny Vihiga County a new constituency on that basis and allocate all the constituencies in one area?

I think there must be a system of saying that constituencies that are almost getting to the threshold in every county, must enjoy at least one additional constituency. Then, the others are spread to other areas. That proposal was in the Building Bridges Initiative (BBI).

Madam Temporary Speaker, as we talk about the delimitation of the constituencies, we should not just talk about the numbers but also the equitable distribution of these constituencies across the 47 counties.

Clause 7 of the Bill seeks to amend Section 24 of the IEBC Act. We need to amend as you had suggested to ensure that we are specific when we refer to parliamentary parties. That means parliamentary parties in the Senate and the National Assembly.

It is stated here that the National Assembly will receive delimitation of boundaries report, discuss, debate and forward it to the IEBC. Where is the Senate? This Clause 7 is

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unconstitutional because the Senate cannot be left out of a serious matter of delimitation of constituencies.

I do not know where Sen. Omogeni was because he was a Member of the NADCO. We respect him as a senior council in this country. However, it is unfortunate that a mistake of this high magnitude was made without our representation noticing that the National Assembly should not have unilateral powers on matters of delimitation of boundaries of constituencies without involvement of the Senate.

Madam Temporary Speaker, those are the few issues I wanted to raise about this Bill. The NADCO spirit must be adhered to. People went on the street and others died agitating for electoral justice. It is important for us to give them justice by ensuring that we pass this and any other law that has been brought to us.

As we go on, it is also important that we look at other election-related laws and ensure that they are panel-beaten. As proposed by the Kriegler Commission, laws must be in place at least two years before election, so that we do not hurry amendments to laws and end up having elections done in a hurry with the challenges we have at the moment.

With those few remarks, I support this Bill with amendments.

I thank you.

The Temporary Speaker (Sen. Mumma): Proceed, Sen. Nyutu.

Sen. Joe Nyutu: Madam Temporary Speaker, thank you for this opportunity for me to also air my views regarding this Bill. I support most of the amendments being made on this Bill.

We know that selection of IEBC Commissioners is an issue that has always caused us problems because that has a direct bearing on fairness of an election. The amendments made on membership of the Selection Panel is going to involve both majority and minority parties. That is something that should be encouraged by all of us.

We all live in this country, whether we are on minority or majority side. Every time we have a dispute regarding fairness of an election, our economy suffers, and our people's businesses and their way of lives are disrupted. The fact that both majority and minority will be considered in picking members of the Selection Panel makes me feel that this Bill is progressive. Fairness of the Selection Panel would not be appreciated by Kenyans if they were to be picked by parliamentary parties or politicians.

The fact that some professional bodies like the ICPAK will also produce a member to this panel is progressive because we expect such professional bodies to not be inclined politically. The LSK will also produce a member to the panel, which is also a good thing.

I do not want to say that Kenya is a notoriously religious community, but the people of Kenya are religious. Having a member from the IRCK will add to the trust that Kenyans will have in the Selection Panel. That is being progressive and therefore this Bill should be supported.

We have had commissions, committees or panels that are picked to do a particular job but overstay and end up spending huge amounts of money from the public coffers. There is an amendment proposing that the Selection Panel be dissolved three months after being formed. This is encouraging because they will do their job and go home after three months.

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We will save on expenditure to be incurred from the public coffers. I am excited that the panel will be dissolved after three months. The mandate can only be extended as provided in the amendment upon careful considerations by Parliament. That is encouraging to me.

Delimitation of constituency and ward boundaries is something that took a lot of my time when I was looking at this particular Bill and amendments that have been proposed. One thing that encourages me is that we will involve all and sundry. Those are our people in the villages. Of course, there is a provision for public participation. One important thing is that there will also be sensitization of members of the public.

One thing that is not clear in the amendments is whether, when collecting the views of the public, we have a provision to have such views collected in vernacular. We have people who are knowledgeable but may not be good in Kiswahili or English.

I would have loved to see an amendment proposing that views can also be collected in vernacular and a provision is made for a good interpreter in order for the views of all and sundry to be captured. I say this because over the past 20 or so years, we have been having an increase of vernacular radio and television stations.

Our people have been given a lot of civic education through vernacular stations. Since we also want their views, a provision should be made to ensure that those who can only express themselves in vernacular are not left out of this very important process that affects them directly.

I join those who have spoken before me and talked about the figures that the population census produces. They have been disputed in the past. So, there should be a better process for carrying out a population census.

I propose that the officers carrying out the census, visit homes and places of work to collect data on the population and counting of people. As they do so, they should refer to the data with the Civil Registration Services. This will ensure that we are not told of numbers that are non-existent in some places. Every piece of information that they collect is compared and contrasted against what we have at the Civil Registration Services. We should get the exact numbers of people that we have in our regions. The birth certificate should be a prerequisite for somebody to be counted.

I am also excited by the fact that we will have individual responsibility for officers, especially when we are doing the delimitation of boundaries. Any officer that is supposed to publish on the Kenya Gazette the views of the public and fail to do so, will have committed an offence and be liable to imprisonment for a term of one year. This will bring in individual responsibility so that we do not have people who have been compromised somewhere, leading to failure in publishing important information in Kenya Gazette.

That is also something that caught my eye and thought was very important. We should slowly move from collective responsibility to individual responsibility of anyone serving in a public office, especially if it is a matter that affects the public.

We need a foolproof election. As I said earlier, when we have these disputes, some of us value our peace, are patriotic and would not want to see any destruction of property and disruption of people's lives.

We want to see a fair and free election every five years. That is why I like the provision or the amendment that requires the Commission to review its operations and make necessary changes required to make its operations more efficient, effective, transparent and accountable.

We need to improve the efficiency of our elections. We do not want to hear cries of *fungua* server every five years after every election.

I come from an education background. There is a review of the methods that are used in imparting knowledge every year. So, it is important for IEBC to review its performance to see the effectiveness of its technology and system of transmission of data from polling stations to county or constituency tallying stations.

The IEBC need to review the training and performance of staff that are temporarily employed including presiding officers, deputy presiding officers, polling clerks, and counting clerks. That is also something that caught my eye and that made me feel that I should strongly support this Bill.

There is also a provision that any individual can go to court and challenge the decision on the delimitation of any boundaries. This is important because sometimes, I could give my views as a member of the public and the Commission ignores them. There will be the option of going to court after this and pursue justice within 30 days of the publication of such a decision.

This is encouraging because we want every Kenyan to have the right to question any authority in this country. Such disputes and suits will be sorted out in three months.

We have had situations where somebody goes to court for an election petition. Previously, we did not have limits within which an election dispute could be sorted out apart from that of the presidency. These decisions are made too deep into the term of Parliament that they do not benefit even the petitioner. These amendments have sought to provide and protect that right which is important.

I have heard my colleague Sen. Osotsi mention that the Parliamentary Service Commission (PSC) should provide the budget for this panel. If we have to retain that amendment, let us have a provision that during the financial year of the review, there is an extra budget for the PSC.

Otherwise, as my colleague Sen. Osotsi said, it would be very unfair to have the same allocation but be given a different or an extra expenditure. We know that we are suffering budgetary constraints at PSC.

We want a very progressive society. We want people to be satisfied with the elections that we conduct, with the delimitation of boundaries and the names. We will be looking forward to such a time that we can review the boundaries of counties and if possible, create more counties.

Sen. Karungo Thang'wa is here. We would want to see Thika created as a county separated from Kiambu. This is because over half of the people are from Murang'a, but the County Government of Kiambu proudly collects revenue from our people without any benefit to them.

Finally, we need to defend the protected constituencies. In Muranga, we have Mathioya and Kangema Constituencies. We would not want to hear that these

constituencies have been collapsed. So, even as we do the delimitation of boundaries, the constituencies that are protected should remain protected.

If you are doing delimitation everywhere else, we should not touch the protected constituencies, which are the Kangema and Mathioya constituencies in Murangá County. These Constituencies should be protected alongside others, especially because the National Government Constituency Development Fund (NG-CDF) is allocated based on the number of constituencies.

As Murang'a County, we would not want to hear of a situation where we lose NG-CDF from one constituency because two or more constituencies have collapsed. With that, I submit and support the Bill.

The Temporary Speaker (Sen. Mumma): Sen. Mandago, proceed.

Sen. Mandago: Thank you, Madam Temporary Speaker, for the opportunity to contribute to this Bill. From the onset, I support the proposals for amendments to this Bill, however, with a number of concerns.

This Bill sets out to correct or remedy our current situation as a country. A number of constituencies and wards in our country have been without representation for more than a year because the electoral body has been absent. The amendments that have been brought and discussed under the National Dialogue Committee (NADCO) are good, but we have areas of concern.

I have read through this Bill, and my first concern is the role of the Senate as a Parliament. When you comb through this Bill, you will see that in all the clauses, reference has only been made to the National Assembly.

The Senate represents counties and boundary delimitation will happen in counties. Therefore, when proposals are made at the electoral body and submitted to the National Assembly, the role of the Senate must be defined so that Parliament in the Bill would mean the Senate and the National Assembly.

Under the provision in Part Two on Delimitation of Units, the electoral body has been mandated to review the names and boundaries of constituencies, including the number of names and boundaries. This Subclause in the regulations must be clearly defined.

My curiosity has arisen from the recent statement by the National Cohesion and Integration Commission (NCIC), listing a number of counties for which they intend to propose changes of names.

Names have meanings and there are reasons why those names exist. It is only in Africa where we have been made to believe that your name causes the problem. Only in Africa have we been told that you should rewrite your history. Forgive and forget - the way some Western countries have wanted us to forgive and forget the atrocities committed by the colonialists. I am wondering loudly, if we change the name of a county, what happens to the name of a constituency, ward, location, sublocation, and village?

Names of locations, counties, or sub-counties have never made Kenyans fight. People did not fight in West Pokot because it was called West Pokot. The naming of counties and constituencies is a matter that needs to be looked into deeply.

The period provided under Clause 7 –

"The National Assembly shall, within fourteen days of the tabling of the revised preliminary report, consider the report and forward its recommendations to the Commission."

We know how Parliament operates, that period is too short to allow for conversations along the report that has been submitted. The issue of delimitation of boundaries is a very emotive issue that accompanies the sharing of resources. It is an issue that determines how a regional area will be administered.

There is need to provide sufficient time for Parliament to have a conversation so that the report can be adopted. Otherwise, there could be a situation where the tabling, adoption and debating of the report is not prioritized and seven days lapses then the electoral body's decisions and recommendations take precedence over what the representatives of the people would have conversed and agreed upon.

I have issues with the composition that has been provided. On the First Schedule, the Law Society of Kenya (LSK) and the Inter-religious Council of Kenya (IRCK) have been given the opportunity to nominate.

There has been a growing trend in this country that the only professional body that seems to be getting representation in almost all the independent commissions and all other agencies, where we need representation other than what Parliament has determined, is from the LSK and IRCK.

Madam Temporary Speaker, we are talking about electoral management in this country, the only other cadre of public servants who have managed elections are the teachers. If we are to go back to the last general election and look at the number of presiding officers, deputy presiding officers and clerical officers, you will be surprised that 90 per cent of the human resource required to manage our elections are teachers.

I am therefore surprised to see these two professional bodies being given the opportunity to do that and teachers not being given representation while they form the bulk and the stake of the management of our elections.

The hon. Senators here who went for elections know that a majority of their agents and even their coordinators were teachers. I, therefore, propose that when the time comes, we need to look into this composition of professional bodies, so that it is not only two professional bodies in this country that are left to be permanent members of all these independent commissions.

Madam Temporary Speaker, where there is a need, I will propose that there be rotation in the various professional bodies that we have in this country so that all are given the opportunity to contribute to their country.

Madam Temporary Speaker, in this matter of composition also is the issue of qualification and experience. It would be extremely important and necessary to ensure that the qualification and experience are clearly defined so that even as the various professional bodies and independent bodies will nominate through a competitive process their representation into the electoral body, we should have a bare minimum qualification and experience required. Since, this is a very crucial exercise for the country, we would like it to be handled in the most professional manner and in a manner that will allow this country to make progress.

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I have looked at the Fifth Schedule at Section 7(3) –

“Representations to the Commission may be made orally or in writing.”

This talks about public hearings and in these public hearings, the electoral body would be required to organize public hearings in counties and sub-counties for members of the public to make their submissions.

Madam Temporary Speaker, Section 3 of that says that representation to the Commission may be made orally or in writing. I propose that even where submissions have been made in writing, the electoral body must read out that memorandum during that public hearing so that all the concerned stakeholders in that county, sub-county or constituency will know what has been submitted by the various stakeholders.

There has been a tendency of some organizations or mischievous individuals to sneak in proposals in writing which might be considered without the general input of the rest of the public. I therefore propose that all written submissions must be read out loudly in a language that is understood by a majority of the citizens in that electoral area.

This will give the citizens the opportunity to know the various submissions that have been made and once the Commission retreats to make a decision, the members of the public will know that it is based on what was submitted by the various stakeholders and the various considerations that had been given.

Madam Temporary Speaker, Section 9 of that Schedule speaks about the dissemination of maps:

“The Commission shall prepare and publish maps on its website.”

Publishing maps on the website is good because it is cost effective and is easily accessible to those with capacity in terms of technology and access to internet. However, this limits the rest of the public who are not accessible to internet, and we all know that not all parts of this country have access to internet.

We would like to thank the national Government because there is a robust programme to roll out a digital super highway in this country. However, because of redundancy measures and sometimes, technology can fail us, it will be necessary for the electoral body publishes the maps and makes them available, either to the counties, constituencies or wards that are being delimited.

Madam Temporary Speaker, this will give the public the opportunity to scrutinize those maps because boundaries have always contributed to wrangles and disagreements; and sometimes, they even cause fights. As a country and a continent, we know what the colonial boundaries have done to us.

Today, we have a problem between communities that were divided between two nationalities. We have the Maasai people of Kenya and the Maasai of Tanzania. We also have the Teso people of Uganda and the Teso people of Kenya. We have the Pokot of Kenya and the Pokot of Uganda.

Sometimes, we have seen how the movement of livestock for purposes of grazing, which was a usual occurrence to move around with our livestock and have them graze

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has created many security concerns and issues which end up leaving us with devastating relations between counties and communities.

Therefore, when these maps are availed to communities, there is opportunity to review and agree in a manner that is going to foster intercommunity relations within that jurisdiction. This will create acceptance and make the work of the Commission easy even as they conclude their report.

Madam Temporary Speaker, the other provision for access is that it will be available in Parliament. Parliament is a restricted area, and it is extremely difficult for citizens to access it. Even in our offices in the Bunge Tower, you will realize that the number of security officers might be twice the MPs who have offices there. If you work around Bunge Tower, you might be misconstrued to be part of a unit in our security organs by the virtue of the number of those officers.

If this Bill says that the maps will be available in Parliament, then in short, we shall be saying that the Kenyan citizens who want to access these maps will not have the opportunity to.

Therefore, I propose that the maps be availed to the counties, constituencies and wards whose boundaries are being delineated so that citizens can access them. There are various organs of Government that can be used to avail this to the public to the lowest unit. The National Government Administration is a state organ that can quickly disseminate information to the lowest level, including the village, coordinated by a village elder. Access to information to Kenyans is a provision in our Constitution. They should not be denied that because we are doing boundary reviews.

This Bill is definitely long overdue. As a country, it is regrettable that we had to be in such a state. We hope that since this is a product of both the majority and minority side in Parliament, it will put an end to quarrels happening during elections. The country should not be permanently set to an electoral mood but enable us to move into nation building immediately after elections.

I support this Bill with the amendments that we shall propose at the Committee of the Whole. Thank you.

The Temporary Speaker (Sen. Mumma): Sen. Onyonka, proceed.

Sen. Onyonka: Thank you, Madam Temporary Speaker, for giving me this opportunity to also contribute to this very important amendment Bill on what has bedeviled our country for a very long time. I first congratulate the Senate Majority Leader and the leadership on our side for coming up with the Independent Electoral and Boundaries Commission Amendment Bill document. This is a bipartisan document.

I have listened to my colleagues make their contributions. I believe all of us agree on the basics. The small differences and variations will most probably come in when we are having the sitting of the full House. I would like to persuade my colleagues that maybe for the third or fourth time, we are going to start discussing of the software of our electoral process. Previously, the software, arguments and discussions made, were based on the the winner should take it all.

I have always said, how I wish that our Kenyan brothers and sisters in the ruling class would understand that sometimes politics is never about the winner takes it all. It is

about sharing, give and take and maintaining and sustaining a country that has come from adversity, which is going to move on to its great potential.

The National Dialogue Committee (NADCO) Report is a good document. It deals with delimitation of boundaries and the commissioners who are going to be managing this Commission. That includes the chairperson and members who exist. It deals with how these people are going to be selected and the structure.

One of the issues that I would want us to look at in this House, is how we begin to handle the clamor and request for counties to be increased. I was in Kuria over the weekend because I lost a very good friend. The members of that community in their discussion because we discuss politics in funerals, had the contention that Kuria should be made a county.

According to them, they have been feeling that they have been marginalised and that if they got a county, they would most probably feel included and given an opportunity to chart their future.

Madam Temporary Speaker, the point I raised in that funeral was that, honestly, from where I stand, I do not see them getting that county government. What I saw is that there is a way we can actually solve the problem of those areas you have been talking about such as Mt. Elgon, where there has been a lot of discussion and anger towards the fact that the people of the region, especially the Sabaot, feel that they have been excluded from what has been taking place in Trans Nzoia County.

There are the Kuria people who feel like they have been excluded from Migori County. There are people from an area in the Central Rift region who also feel that with time and, given their history, they have to create their own constituencies.

I would like to introduce and suggest to my colleagues together with my good brother Sen. Cheruiyot, the Senate Majority Leader, that we need to look at a way of creating protection of certain constituencies and ring-fence them. For instance, I do not see a contradiction if the Kuria were given two extra constituencies without them being given a county.

In this case the Kuria would have four constituencies. That automatically means that they would be getting Kshs1 billion as a community from the national Government. If you add that to what the national Government would be giving out through the Senate as revenue going to Migori County they would actually be a beneficiary to such an arrangement.

It would accommodate the marginalisation and give resources to these communities that feels that they have not been part of us. That is exactly the same argument I would give to my county which is Kisii. There has been a question and debate that has been going on over and over whether we should have got three counties.

Yes, if we get an extra county in Kisii it would be a good idea. However, I wish that this team would look at the amendments where we again create protected constituencies. I would not mind that in Kisii County.

The community has talked about Bobasi Constituency which has got 12 wards. The Member of Parliament Hon. Obiri, tells you that even when he is given National Government Constituency Development Fund (NG-CDF) he has 242 secondary schools,

215 primary schools and all sorts of things. With that amount of money there is no way he is going to manage to run his constituency.

Madam Temporary Speaker, my argument is that we be magnanimous and look at these options. If the people of Bobasi were to be given one constituency, the people of South Mugirango are given another, for me Kisii County would be sorted. Kisii County does not need an extra county. The resources would come, and they would substitute whatever else the county government would do. Indeed, if the resources that the Kisii County Government are getting are utilized, nobody in the county would really complain.

The other critical issue is that we need to look at the structure of IEBC not in term of how it is going to be designed and the members who are going to be commissioners but on our responsibility as the Senate on devolution. How I wish that we could actually devolve the IEBC. I believe we have the capacity of making sure we change the structure constitutionally so that results do not have to be transmitted from Nairobi.

If you have the IEBC being localized in Kisii County and an IEBC county commissioner who runs those elections and in fact, makes election announcements on the presidential, MPs, Senate, the Women Representatives and the Members of the County Assembly (MCAs), I do not see any contradiction in that at all.

It would be much easier in that you can always pick those counties and look at it.

Madam Temporary Speaker, if you look at the structure of the USA, that is what they do. In one day, they will tell you, they look at the trend. By the time the elections have been conducted and 25 of these counties have announced the results, you can tell who is going to win these elections.

I also ask the Senate Majority Leader to consider, my honest observation Sen. Mungatana and I think Sen. Osotsi have said. Let us engage ourselves openly and sincerely on what we are going to do with technology.

India has 1.2 billion voters. It has got only three commissioners and everything that India runs is so simple and technological. When I was the deputy minister for foreign affairs, I was once taken to go and observe. Even the machine itself is so plain. You just look at the candidate press on that and it gives you a confirmation note on who you voted for.

These are the things that we must begin to look at and interrogate. When the elections are called and the presidential elections announced as I have heard my colleagues from the other side say, let these elections be believable and verifiable. Let us know who has won without doubts.

Many of us who win or lose make our elections the bogeyman. Every election after five years, we are having disputes, violence, noise and screaming at each other. The truth is that this country deserves better. It can succeed in making sure that its elections are believable and verifiable that Kenyans can believe in.

I do believe that with a few of the amendments here and there, our country should be able to conduct its elections as a model.

I have been around here for quite a bit. I heard Sen. Mungatana - because of experience when he is down at the Pan-African Parliament, - mention the comments people give about Kenya. We have a good name. People respect us internationally

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because we have done well as a country. The only blemish we have constantly had is that every five years we are having disputes about our elections.

I believe that we should be able to fix our elections. On the presidency, every five years there is a disagreement between the president and his deputy and all these individuals. We need to reduce our political disagreements, which are not based on any ideology, other than the fact that we are fighting over whatever little our country can give us. That disrupts our economic programs.

How I wish that members of the Kenya Kwanza Alliance, as we speak right now, would disagree on policy, ideology, environmental issues, industrial development and growth. How I wish we would be disagreeing on whether our education is on the right basis, whether it is the Competence Based Curriculum (CBC), the 8.4.4, or the British system that we had before.

These are the things we should be disagreeing about and not whether somebody should be traveling to certain areas where we come from so that we can show them how we are protected and secured by our tribe and communities for whatever reason.

The argument that population should determine the delimitation of boundaries must never be absolute. There must be other variables that we can use to come and determine even when there is the clamour---

The Temporary Speaker (Sen. Mumma): Sen. Onyonka, you still have seven minutes of your time when we resume.

ADJOURNMENT

The Temporary Speaker (Sen. Mumma): Hon. Senators. It is now 1.00 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until today, Wednesday, 29 May 2024 at 2.30 p.m.

The Senate adjourned at 1.00 p.m.