

**PARLIAMENT OF KENYA****THE SENATE****THE HANSARD****Wednesday, 26<sup>th</sup> January, 2022****Special Sitting**

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

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

**PRAYER****BILL***Second Reading*

**THE POLITICAL PARTIES (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILLS NO. 56 OF 2021)**

**The Speaker** (Hon. Lusaka): Can we hear from the Senate Majority Leader, Sen. Poghisio.

**The Senate Majority Leader** (Sen. Poghisio): Mr Speaker, Sir, I beg to move that the Political Parties (Amendment) Bill (National Assembly Bills No. 56 of 2021) be now read a Second Time. The Bill was published on 26<sup>th</sup> November, 2021, amended and passed by the National Assembly on 5<sup>th</sup> January, 2022.

This Bill principally seeks to amend the Political Parties Act herein referred to as the Principal Act. The Bill has been referred to the Senate. I believe it is now the moment for us to safeguard the interest of the county governments in as far as the formation and administration of political parties and identification of candidates to contest in elective posts is concerned.

The importance of political parties for democracy cannot be overstated. A healthy resilient democracy is based on inclusiveness; which political parties and representative institutions are in a key position to safeguard. Without political parties, electors would have to individually evaluate every candidate in every election. Political parties enable electors to make judgements on a few groups and then apply their judgement of the party to all the candidates affiliated to that group.

It is in this sense that this Bill seeks to propose amendments aimed at strengthening party autonomy. It also seeks to encourage individual and citizen participation in political parties and requires registration of members and maintenance of members' lists. It also requires that parties be formed on certain common political ideals.

In our Constitution 2010, a political party is defined as an association contemplated in Part III of Chapter 7. Part III of Chapter 7 contains Article 91 and 92 which outline the basic requirement for political parties and legislation on political parties by Parliament respectively.

Section II of the Political Parties Act, No. 11 of 2011, a political party is defined as having the meaning assigned to it in Article 260 of the Constitution. From the cited provisions, we note that the term political parties is not clearly defined. The Bill defines political parties as an association of citizens with common ideals that are pursuing a certain agenda.

Specifically, the Bill proposes the following amendments and I will go through them quite fast. Clause 2 of the Bill deletes the definition of the term party primary, gives a new definition of the term political party and inserts a number of new definitions of terms that have been introduced as a result of the Bill.

Clause 3 of the Bill states that the Kenyan citizen may be subject to provisions of the Political Parties Act. He can join the political party upon payment of a party member fees and complying with any requirement prescribed by a party. This is a new provision that is not contained in the Principal Act.

Clause 4 of the Bill inserts new provisions to the principal Act by: -

- (a) Inserting the roles and functions of a political party which includes promoting and enhancing national unity, recruiting and enlisting members.
- (b) Making provision for an application to the registrar for the reservation of a name, symbol and slogan for a proposed political party. The registrar shall reserve the name, symbol and slogan for 90 days if they have not been registered or reserved by another political party. Notification of the availability to the applicant shall be made within 14 days of the application.

Clause 5 of the Bill amends Section 5 of the principal Act: -

- (a) To include the provision that an application for provisional registration of a party may be made after the registrar notifies the applicant of the availability of the name, symbol and slogan.
- b) Provisional registration of a political party which has not applied for full registration shall lapse at the expiry of 275 days from the date of issue of the certificate of provisional registration. This amendment increases the number of days from the current 180 days.

Clause 6 of the Bill amends Section 6 of the principal Act to make it mandatory for a party to submit a statement of ideologies. That statement sets out the doctrine, ethical ideals and principles of the party and they submit that when applying for the provisional registration. Further, the application shall include a request to register the party slogan.

Clause 7 makes it mandatory for a provisionally registered party to submit the address of the official website of the party in order to qualify to be fully registered.

A coalition registered by the registrar as a political party is exempted from the provisions on the provisional registration. Upon deposit of a coalition agreement, the registrar shall issue the coalition political party with the certificate of full registration.

Clause 8 forbids registration of a party if the slogan is obscene, offensive or similar to the slogan of another party.

Clause 9 amends Section 10 of the principal Act so as to allow political parties to form coalition parties before or after an election.

Mr. Speaker, Sir, currently, coalitions can be formed. However, it is now clear that coalitions can be formed before or after.

The amendment further provides that a coalition party shall submit coalition agreements at least 120 days before a general election.

Currently, for coalitions and coalition agreement entered into before an election shall be deposited with the registrar at least three months before the election, while one entered after an election shall be deposited to the registrar within 21 days of the signing of that coalition agreement.

Clause 10 of the Bill deletes a few paragraphs of Section 14 of the principal Act where a member of a political party will be deemed to have resigned from a political party and moves the provision to a new Section.

Clause 11 of the Bill incorporates the provisions deleted under Clause 10 and further provides a procedure that a political party should follow before deeming a member to have resigned.

The procedure includes notifying the member that he or she has been deemed to have resigned and affording the member a fair hearing. This clause shall also make provision for the party to expel a member after affording the member a fair hearing.

Clause 12 of the Bill obligates the registrar to publish in the political party's official website a declaration of the parties' assets. This is in addition to the current position where the registrar publishes in the gazette and the newspaper.

Clause 13 of the Bill makes it mandatory for a political party to give notification of the intention to change their constitution, name, colour, slogan, rules address or location in an at least one daily newspaper of nationwide circulation and its website. Currently, the party is to give this notification in at least two daily newspapers of nationwide circulation.

The clause further provides that an objection to the proposed change shall be dealt with in accordance with the party constitution and that once the registrar is satisfied that the party has complied with the set provisions, notify the party once the change is made to their constitution.

Clause 14 of the Bill proposes to amend the principal Act so as to introduce suspension of the political party before deregistration. The registrar notifies the party of its contravention so that the party can remedy within a period not exceeding three months. Failure to comply, the party is suspended for not more than a year. After the suspension period, the party persists with its contravention it is deregistered. Currently, the Act only provides for deregistration.

Clause 15 of the Bill deletes the provision of the principal Act that states that a Member of Parliament (MP) or Member of County Assembly (MCA) would cease being one if the registration of the political party was caused by a willful action or omission of such a Member.

Mr. Speaker, Sir, the amendments as we provide for them and each clause are in the Act. The National Assembly Bill is with the Members and they have read the report of the Committee. That should assist us in debating this Bill. I hope that knowing the importance of this Bill, we will move quickly to process it.

As I conclude, the Bill does not limit fundamental rights and freedoms as espoused in Chapter Four of our Constitution. In strengthening fundamental rights, the Bill seeks to make provisions for the use of technology by the Registrar of Political Parties on the management of political party records.

Hon. Members, this will safeguard and enhance an electronic electoral system. That is what Clause 32 provides for. It proposes to amend the Election Act to mandate the registrar to certify nomination rules and membership list of the parties. Therefore, we require to go electronic.

Mr. Speaker Sir, I take this opportunity to welcome hon. Members back from their festive season. Further, I invite each Senator to give their wisdom as we astutely and judiciously consider the amendments in this Bill.

Mr. Speaker Sir, with those few remarks, I beg to move and ask Sen. Orengo to second.

Thank you, Mr. Speaker, Sir.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, I thank the Mover, the Senate Majority Leader.

This Bill is essentially straightforward. We cannot pretend that over the years, our Government has operated on the basis of cooperation between political parties. Even in earlier elections and formations of Government, for example, the Grand Coalition Government and the National Rainbow Coalition (NARC) Government, they were coalitions.

I want to commend this Bill because it provides a framework for establishing coalitions. It makes it possible for them to operate in such a way that every party and every individual who was a member of a party which forms part to that coalition knows that their rights are enshrined under a legal framework to deal with the problems that may arise.

Those who have observed the various coalitions that we have had saw that down the line they have had some problems, but there was no legal framework to do so.

Secondly, under the entire umbrella of trying to bring the nation together, through a political party, framework and institutions, the reality of doing so through a recognized political and legal framework is essential.

Mr. Speaker, Sir, the question of political parties fund has been a matter that has been discussed within various coalitions. There has been attempts to try and bring legislation to enable parties who have not previously met the threshold to benefit from the political parties fund. I think this is positive.

Thirdly, in this Bill, there is a definition of what a political party is required to do in terms of making its policies clearly. If you look their Regulations and the Schedule of the Political Parties Act at the moment, each party is required to state clearly their objectives. However, the fact that now they are required to state their ideology, world view and vision and the likes, we may be entering a new period when political parties can be known not by what they do only, but what they aspire to do so that political party system is strengthened within our country.

Mr. Speaker, Sir, lastly, I want to disabuse anyone because there are concerns that have been expressed. This Political Parties Bill has not in any way abrogated the Constitution in terms of political rights under Article 38 of the Constitution. They have not limited any rights under the Constitution, particularly the freedom of association and assembly. Those rights are intact. The Constitution is very clear on its supremacy against any statutes or any regulation made under any statute.

What is also intact is the right of any individual, particularly as provided in the bill of rights when threatened, not even when violated. There is a remedy through Article 22 and 23 of the Constitution. You can invoke the powers of the High Court.

For anybody that was harbouring any fears about the constitutionality of this Bill, I think it will meet the constitutional muster. I know that anything that may be brought against this Bill is not for its provisions, but for the political objectives that one may probably have.

There are those people whenever a new idea comes are always opposed to it. For example, when we were bringing a constitutional framework for increasing money going to the counties, some people were opposed to it. I can hear them now say they want it.

When this Constitution was being brought into place, they said 20 or 30 per cent of it was not good. They wake up 15 years later and find out that it is good. Those who take too long sleeping when people are awake should be damned. For those who want to move ahead with this Bill, I ask the Senate to pass it.

Mr. Speaker, Sir, with those few remarks, I beg to second.

*(Question proposed)*

**Sen. Khaniri:** Mr. Speaker Sir, I thank you for giving me the opportunity---

**The Speaker** (Hon. Lusaka): Sorry for the interruption. Since I see a lot of interests, I propose that for everybody to get a chance to talk, we use five minutes.

Thank you.

**Sen. Khaniri:** Mr. Speaker, Sir, I will try and comply with that. Let me thank you for giving me the opportunity and state that at the very onset that I support this Bill.

I have read, internalized and I think this is a very good piece of legislation. As a House of Senate, we must always endeavour to enact or rather pass laws that add value, improve service delivery to the people of this country, better the lives of Kenyans and improve on governance.

Mr. Speaker, Sir, having gone through this Bill a number of times I am left wondering why there was so much hullabaloo in our neighbouring House when they were debating it.

I have a lot of confidence in this House. I know that we are going to have a very mature debate and agree on the way forward. I am not casting aspersion on our neighbours, but I sat in that Chamber for four consecutive terms and I never experienced what we saw in December when they were considering this Bill.

The nearest that came to that was I think the late hon. Otieno Kajwang' and the late hon. Mwenje fighting on the corridors not in the Chamber. The other incidence that, maybe, I remember is Hon. Ojwang' K'obudo removing his shoes and banging the Dispatch Table. For the period I was there, I never experienced fist fights and people biting other peoples noses and ears.

Mr. Speaker Sir, this Bill improves the existing legislation on Political Parties Bill. It has made so many new provisions that are very good for the country. Just to give one or two examples, in the current Act, the role of political parties is not specified. The Act just establishes political parties, but it does not go further to say what the role of a political party is.

This Bill provides explicitly what the role of a political party is. May be just to go through the roles and functions of a political party have been provided for in this Bill. It includes to promote representation in Parliament and county assemblies of women and persons with disabilities, youth, ethnic and minorities and marginalized communities.

It also provides that a party may sensitize the public on the functioning of the political and electoral system among other roles that have been stated here very clearly.

The reason for forming a political party is absolutely. For now, we just use them as vehicles for election. However, this Bill now gives proper roles and functions of a political party.

This Bill also goes further to streamline the whole process of registering a political party having in mind that this is an Information Technology (IT) era. When the previous Act was passed we were in a different era. Things like websites were not in existence. This Bill says that political party shall include its official website and file that with the registrar when they are registering.

This Bill also gives clear guidelines on formation of coalitions, distribution of political parties' fund. I think the threshold has been reduced. Earlier on, you had to get 20 MP to be able to qualify to get a share of the political parties' fund. This has been reduced to one MP, one Senator reduced from three, one governor reduced from three and one MCA reduced from 40.

Mr. Speaker Sir, this is progressive and we must support this Bill. I see my time is up. I support it the way it is. I know there are friends and colleagues who are proposing amendments. We are ready to look at the amendments and if they make sense, we will consider them. As it is for me, I support the Bill as it is. I think it will go a long way in streamlining the management of political parties in this country.

**The Speaker** (Hon. Lusaka): Sen. Halake, you may proceed.

**Sen. Halake:** Mr. Speaker, Sir, I thank you very much. I rise to support this Bill. Political Parties Amendment Bill (National Assembly Bill No. 56 of 2021) is a welcome and very timely piece of legislation.

Like my colleagues have said, it is timely that we have this. Given the little time there is, I will limit myself to three things. As you know I am the Chairperson of Centre for Multiparty Democracy (CMD). As such, I will go straight to the regulations of coalitions, reviewing of formula for sharing funds and the strengthening of the office of Registrar of Political Parties.

Mr. Speaker, Sir, looking at the Bill, particularly clauses on political coalitions, I am very impressed. I note that proposals to make provisions for registration of political coalition and for the issuance of full registration certificates to political parties that deposit coalition agreements with the registrar is a welcomed. It is a timely piece of provision that the political parties have been lacking in this country for a very long time.

Whereas there are many ways of ensuring that coalition contributes meaningfully to multiparty democracy, an effective regulatory framework would go a long way in

improving the performance and utility of political parties. Currently, coalition arrangements have several short comings.

We are very happy, for instance, as political parties with the specific legislation for coalition building which is very timely progressive intervention in this Bill. This is needed to regulate the formation and management of coalition governments. It will protect individual party ideology and platforms. It will also ensure that voters are still able to make choices amongst the competing parties and formations to stabilize coalition governments and to strengthen parties.

Mr. Speaker, Sir, with regards to funding of political parties, I strongly welcome the proposal to redistribute political parties' funds as provided for in the Bill, addressing both individual parties and coalition arrangements.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order! Let us consult in low tones.

**Sen. Halake:** Mr. Speaker, Sir, as the Chairperson of the CMD, a democratic system is best served when established parties last longer than an electoral cycle. We have seen that most of our political parties exist just as a political vehicle for elections. This Bill will ensure that the sustainability of our political parties' systems live beyond an election cycle.

The proposed new criteria for distributing the funds is fairer. It will promote inclusivity and address the feuding in political parties and coalition arrangements such as what we have witnessed in the few cycles of elections.

This Bill also looks at strengthening the Office of the Registrar of Political Parties (ORPP), which is a welcome move. I will not go into the other issues which are very good in this piece of legislation. There is clarity around what a political party is and what coalition is, but I will not go into that because Sen. Khaniri has done that very well.

Mr. Speaker, Sir, as the Chairperson of CMPD, let me just jump into what I see as very progressive provisions within this Bill. This is especially with regards to strengthening of the ORPP. Party organisational structure and processes are important in the functioning of parties.

In this regard, I welcome the proposal to review the regulatory framework to provide for an administrative mechanism to ensure routine monitoring and supervision of political parties. This is generally to ensure adherence to laws, party constitution and rules and procedures. This is such a welcome and progressive provision. When we have a strengthened ORPP, we will then be able to enforce the constitutions of our parties and have sustainable parties in this country.

The Bill also proposes to strengthen the role of the ORPP. This is very reasonably and in order to give the Office more teeth and enable the administrative capacity of the office to enable to reign in Kenyan parties. We had 89 political parties just a few weeks ago, but now they are over 90. If ORPP has no teeth to make sure that the rule of law as pertains to political parties is adhered to, then we will be going around in circles.

As I said, this piece of legislation is welcome, especially for me as the Chairperson of the CMPD. There could not have been a better Bill to ensure that our political and democratic process is strengthened and becomes sustainable.

I support.

**The Speaker** (Hon. Lusaka): Sen. Cherargei, proceed.

**Sen. Cherargei:** Thank you, Mr Speaker, Sir, for giving me the opportunity to contribute to this Bill. I have looked at the Committee report, but during my time as the Chairperson of the Committee on Justice, Legal Affairs and Human Right, I never produced a contradicting report as such. The decisions and arguments made by the Committee look like the Committee was instructed not to touch anything. In any case, the Kriegler Report was very clear on elections---

*(Sen. Dullo consulted loudly)*

I wish the Deputy Senate Majority Leader would consult in low tones so that I can concentrate.

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

**The Speaker** (Hon. Lusaka): There is an intervention from Sen. Omogeni.

**Sen. Omogeni:** Mr. Speaker, Sir, I have tremendous respect for my junior, Sen. Cherargei. He did very good work as the Chairperson of the Committee on Justice, Legal Affairs and Human Rights.

However, he is making some remarks on the Floor without substantiating. He is saying that I was instructed to write this report in the manner it has been presented. That is far from it. The report that I have presented is a result of a very heavy workload. The Committee had presentations from the public, gave due consideration to all the views that were presented and analysed the Constitution.

Mr. Speaker, Sir, is he in order to make that wild allegation that I was given instructions to write this report the way it is without substantiating?

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

**The Speaker** (Hon. Lusaka): There is another intervention from Sen. Pareno.

**Sen. Pareno:** On a point of order, Mr. Speaker, Sir. I was going to ask that you rule on what Sen. Cherargei has just said. He has imputed improper motive on a properly constituted Committee of this House by saying that they had been instructed. He should either substantiate or apologise to the Hon. Senior Counsel, the Committee on Justice, Legal Affairs and Human Rights and the House at large.

**The Speaker** (Hon. Lusaka): I see other interventions. I do not know whether they are still on the same.

Sen. Kinyua, please go ahead before I make a ruling.

**Sen. Kinyua:** Thank you, Mr Speaker, Sir. I listened to Sen. Cherargei and he said that the report is contradicting. Since he is the one who was reading it, it is upon him to say whether he is being contradicted by it or not. I do not think there is anything out of order. He is the one who is reading it.

**The Speaker** (Hon. Lusaka): There is another intervention from Sen. Farhiya.

**Sen. Farhiya:** Mr. Speaker, Sir, I would like to bring to your attention that I have sat in this House and every time Sen. Cherargei contributes, he always accuses a Senator. It has become a habitual problem. I think you need to address this decisively and let us have proper decorum in this House.

**The Speaker** (Hon. Lusaka): Sen. Ngugi, proceed.



**Sen. Ngugi:** Thank you, Mr Speaker, Sir. I think you need to rule on this matter. I am Member of this Committee that generated this report and everything that we did was in accordance with the rules and laws of this House.

We spent a lot of time in public participation and received memoranda from 25 groups. We retreated to consider each and every matter that was raised. Therefore, for the Hon. Member of Nandi to say that we were directed to write our report in a certain way is out of order.

**The Speaker** (Hon. Lusaka): Sen. Ochillo-Ayacko, proceed.

**Sen. Ochillo-Ayacko:** Thank you, Mr Speaker, Sir. You have heard what Sen. Khaniri said about this experience in the House. Is Sen. Cherargei in order to start things that might lead to the behaviour that the National Assembly had last time? If that is the path of debate he is taking, attacking Members and accusing them of bad behaviour--- This House is made up of human beings who can go mad. Would I be in order to ask you to be firm on Sen. Cherargei so that we do not degenerate into chaos?

**The Speaker** (Hon. Lusaka): Sen. Madzayo, proceed.

**Sen. Madzayo:** Asante, Bw. Spika. Nimekuwa hapa nikimsikiza ndugu yangu Sen. Cheragei lakini heshima si utumwa. Yule ambaye anamwambia hivyo ni kiongozi aliyeongoza kamati hii na walifanya kazi yao vizuri. Hakuna mtu aliyewafuata na kuwaambia jinsi ya kuandika ripoti yao. Ni makossa wala sio haki kuchezea majina kwa sababu umeketi hapa mbele ya Bunge na hakuna hatua yote inayoweza kuchukuliwa baada ya kuchafua majina ya Maseneta wengine. Je, ni haki Sen. Cherargei kutamka mambo ya uongo kama hayo?

**The Speaker** (Hon. Lusaka): Hon. Senators, I want to give a direction.

Sen. Cherargei, you can read the mood of the House. Please let us not concentrate on things that are going to divert us from discussing the main issue as to why we are here. Just take care of what you are saying because these are colleagues and when you cast aspersions on senior counsels like Sen. Omogeni and Sen. Orengo who are on that Committee, I leave it to your conscience.

Please do not go towards that direction.

**Sen. Cherargei:** Mr. Speaker, Sir, I think it is also important that we should not criminalize anybody's opinion. I just said the report is contradicting because when you look at the issue where it was being---

**The Senate Minority Leader** (Sen. Orengo): On a point of order, Mr. Speaker, Sir.

**Sen. Cherargei:** But I have not said anything, senior counsel---

**The Speaker** (Hon. Lusaka): Take your seat, Sen. Cherargei.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, when there is a violation of the Standing Orders and the hon. Member is imputing improper motive, and you cannot impute improper motive until you have a substantial Motion; it is so bad.

Sen. Omogeni brought a report on Building Bridges Initiative (BBI) here that is being commended universally. If you properly read this report and you went to the right law school, you will find that this report---

*(Laughter)*

Mr. Speaker, Sir, the Member was the Chairperson of the Committee on Justice, Legal Affairs and Human Rights. However, during his tenure, no such report ever came to this House. It was mundane, it was a report that could not even be taken to a county assembly. Since he has imputed improper motive, he should either apologize and withdraw, or you ask him to stop speaking.

**The Speaker** (Hon. Lusaka): Sen. Cherargei, take your seat. I want to invoke Standing Order No. 96(4) which states that: -

“No Senator shall impute improper motive to any other Senator or to a Member of the National Assembly or Senate except upon a specific substantive Motion of which at least three days’ notice has been given, calling in question the conduct of that Senator or Member of the Assembly.”

Standing Order No. 97 says: -

“A Senator who has used exceptionable words and declines to explain or retract the words or to offer apologies for the use of the words to the satisfaction of the Speaker, shall be deemed to be disorderly and shall be dealt with in accordance with the rules pertaining to the disorderly conduct.”

Given to what I heard, I want you to withdraw and apologize to the Senate.

**Sen. Cherargei:** Mr. Speaker, Sir, I wish to withdraw and apologize, but with a rider that you must not demean anybody because of the fact that you are senior. Respect is a two-way traffic. Even if I am young, you must respect me.

Mr. Speaker, Sir, as I was saying, this report is contradictory because when you look at Clause 28 of the Bill, it says that appeals can end at the Court of Appeal. However, the Committee finds that it is not wrong to say “as the Constitution provides the appeal can end at the Supreme Court”.

We are aware that the main aim of this law is for some few individuals to process their own things like what they are trying to do with some formation called *kuzimia*.

When you look at the powers that the Registrar of Political Parties has been given, they are unnecessary. When you even look at the party rules and regulations that were provided by the Independent Electoral and Boundaries Commission (IEBC) in 2017, they are still in force. Why are you bringing the Registrar of Political Parties to come and micromanage party primaries?

If these people allow, because I can see that they have been instructed, and instructions are not bad; you can even be instructed by *wananchi*---

**The Speaker** (Hon. Lusaka): Order, Sen. Cherargei! Live to the expectations of this House. I am warning you.

**Sen. Cherargei:** Mr. Speaker, Sir, instructions are not bad. We also receive instructions from citizens. So, I should not use the word “instructions?”

**The Speaker** (Hon. Lusaka): When you say they have been instructed--- By who?

**Sen. Cherargei:** Mr. Speaker Sir, by *wananchi*. I want to say on the Floor of this House that most of the people here will become victims of party primaries if we do not take care and allow the Registrar of Political Parties to micromanage by producing party lists.

Mr. Speaker, Sir, if you look at the issue of coalition and political parties’ funds - and I heard my brother talking about it - they are the culprits. They are the ones that frustrated other political parties in NASA by ensuring that they do not get their funds.

There is no way that you can give even the audit of political parties because the Auditor-General does not nullify in terms of audit. Why are you bringing duplicity to the law?

The fourth point that I want to make is on the definition of political parties. It is sad. This weekend, I was in a place neighbouring Kisumu County called Kibukati. People there were wondering if they have their own local Savings and Credit Cooperative Society (SACCO), can they become part of a political party?

So, in as much, Senate should rise up to the occasion of debating this Bill with sobriety, the report is disappointing. It does not even live up to the standards that we would have expected. Even if this Bill is passed, the Senate will be embarrassed by the courts of law because these amendments are unconstitutional and illegal. They are being used by few individuals to fight political wars. I am not saying that the laws shall not be made or amendments cannot be brought, but it should not be an excuse to allow an unconstitutional process.

I reject it, Mr. Speaker Sir.

**Sen. Wambua:** Thank you, Mr. Speaker, Sir. I am very encouraged by the direction you have given Sen. Cherargei that in debating this Bill, we must live to the expectations of this House. Kenyans out there expect a sober, candid debate on this matter and that is what I stand to do.

From the onset, I must say that I support this Bill, but with amendments. I am very encouraged by the provisions of this Bill, especially on the issue of political parties funding.

This country knows that my party, Wiper, has been a victim of betrayal by a coalition partner who has been unwilling to share political party's funds. With the passing of this Bill, if it will pass, the distribution of funds to political parties will not be left to the decision of leaders of political parties. It will be in the law and funds will be shared in accordance with the provisions of the law.

This Bill is also progressive in terms of defining pre- and post-election coalitions, including going to the extent of coming up with a coalition political party.

Having said that, there are provisions in this Bill that I find offensive to democracy and are a contradiction to the Constitution. Article 229 of the Constitution, which is the supreme law gives the office of the Auditor-General the powers to audit political parties. Article 229(4)(f) is explicit that the Auditor-General shall audit the accounts of political parties that receive public funds.

Mr. Speaker, Sir, Clause 21 of this Bill proposes to exempt political parties from being audited by the Office of the Auditor-General. That is a direct contradiction to the Constitution. A way must be found to cure that mischief.

The other issue I have with this Bill is the role of the Registrar of Political Parties in party primaries. There is a problem with that because we are giving too much power and responsibilities to the ORPP to get involved in the primaries of political parties. What would happen in the event of a dispute within the political parties and they exhaust their internal mechanism of dispute resolution? What will be their recourse if the Registrar of Political Parties is a member or part of the processes of party nomination? That issue also needs to be cured.

Those are my remarks in this Bill, but I want to say something about the report. The team did a good job. For reasons best known and agreed among the Committee

Members, they found no reason to propose any amendments. I do not want and I will be the last person to cast aspersions on any Member of this House. However, it does not reflect very well on us as a House that when there are glaring contradictions between the proposed amendments and provisional provision of the Constitution, the Committee did not find it necessary to cure that mischief at that stage.

Mr. Speaker, Sir, with those remarks, I support the amendment.

**The Speaker** (Hon. Lusaka): Sen. Sakaja, proceed.

**Sen. Sakaja:** Mr. Speaker, Sir, thank you very much. I want to state at the outset that I support this Bill. I participated in the Committee because I am a member of the Justice, Legal Affairs and Human Rights Committee. We had several deliberations.

I supported the Bill for two reasons as it is without amendments of a single comma or a full stop. Waswahili say, *mtoto akililia wembe, mpe, akijikata ni shauri yake*. This Bill has a number of issues which were discussed. In fact, the decision to have it as it is, took a lot of processes. There are certain things that have been raised. The Chairman had a lot of concern as a professional which I am sure he will speak to if he has not spoken about yet. He may also not raise the issues because it is a Political Parties Bill. The Political Parties Bill is about politics and parties.

I have been a Chairperson of a political party before. I know the intricacies of leading a party. Sometime when something comes to the Floor of this House, we find that we have made a law that is not the best law because of the vagaries of politics. Only to realize later the trap that we have put ourselves in.

I will give a few examples to Members. I am glad that this is the Senate where we listen to each other even if it is from the opposing parties. We say that even a broken clock is right two times a day. If the broken clock is stuck at 7, it is right at 7 a.m. and at 7 p.m. so it is good to listen to each other.

Mr. Speaker, Sir, the first thing, the Registrar of Political Parties has been given a lot of power to make decisions on subjective issues without a criterion. The power to make decisions on subjective issues like ideology, like there is no criteria and it is dangerous. Let me address myself to Article 91 of the Constitution because that is the criteria for registering a party. If she does not like the ideology, and there is no way to measure the ideology, your party may not be registered.

The Registrar of Political Parties does not have a role to play when it comes to elections. That is the constitutional mandate of the IEBC and that is a provision that can be challenged in any court. Especially when there is a duplication in the roles of the registration by the IEBC and the Registrar of Political Parties. The IEBC is the only institutions with a role in elections. However, there is one provision that we even challenged the Registrar of Political Parties with. I will ask Members to listen because they might become victims of this.

The Political Parties Act states that the Registrar of Political Parties is the one who would give parties a certified copy of the register to use during nominations. I am sure that many have experienced missing their names on the register whenever they go for nomination or election. Kenyans have been complaining that they find their names in other parties. Your name as a candidate might be missing, but that is a register certified by the registrar. You will have no time to deal with it.

Number two says that someone who is not a member of your party cannot participate in the nominations. Sen. Pareno has been a Director of Elections for the ODM

party. I am sure that she knows how it is. In 2013, when I was the Chairperson of The National Alliance (TNA), we registered 6 million members. We sold 6 million cards at Ksh20. We told our members that if they were not in possession of the cards, they could not participate in the nomination.

Until the day of party primaries, the Registrar of Political Parties could not give us a copy of our register by the polling stations. When she came here she said she can only give us by ward. Now, if you have a register in every ward, surely those names are in every polling stations in the ward, people will just go round in buses. If I see a non-member of Sen. Wamatangi's party participating in a nomination, I will get you disqualified.

The essence of this Bill was to cure the problem where you have a coalition. In the coalition, for instance, in the last election in National Super Alliance (NASA), Hon. Raila Odinga and Hon. Kalonzo Musyoka were on an orange. However, you do not want to do so because Kalonzo Musyoka comes from Wiper party. The solution would not be to create a coalition party. However, the solution will be to say that where a coalition has filled a joint candidate, allow the coalition or the candidate to use the logo and the slogan of that party.

**The Speaker** (Hon. Lusaka): Your time has run out.

**Sen. Sakaja:** Mr. Speaker, Sir, please give me two more minutes. I am making points and they are listening, kindly.

*(Laughter)*

**The Speaker** (Hon. Lusaka): Okay, just two minutes.

**Sen. Sakaja:** Mr. Speaker, Sir, if you did that then you would sort out the issue because Article 38 says every Kenyan can join a party, but now you have created a section, a category of political parties, that an individual Kenyan cannot join. Therefore, it is going to be a challenge.

Mr. Speaker, Sir, finally, I have a lot more to say out of experience. Tomorrow, you will go for nominations in Bungoma when you are in a coalition. You win the nomination and get your ticket of ANC or Ford Kenya, whichever party it is. The person you have defeated will go and get a ticket of Azimio la Umoja or of a coalition you are in. How do you prevent that?

It might happen in Mombasa to Sen. Faki. You have won the Orange Democratic Movement (ODM) nomination, then somebody comes with a coalition ticket. Of course, the coalition agreement can speak to it, but by the time you would have solved it, it will be an election petition. Everybody will want to vote for a candidate who is on the party of the flag bearer. We should have limited the use of a coalition party to the presidential election.

There are main issues in this Bill, but when it was being formulated, they thought there would be a challenge of a contest because maybe one side thought they were the ones who need it. I want to categorically say that we also need it more than they do. We now need it. They are forming a coalition party and we are also forming one. What is good for the goose is also good for the gander. This law will not apply to one side of the elections; it will be applied to both sides. If it is a bad law, it is going to be bad for everyone. If it is good, it will be good for everyone.

With those few remarks, I support this Bill.

**The Speaker** (Hon. Lusaka): Sen. (Dr.) Zani, proceed.

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, I thank you. From the onset I support this Bill by stating that a country is as vibrant as its political parties. Kenya has over 70 political parties and increasing by day. The order in those political parties creates the order that is needed in a country.

This Bill is coming in at the right time when we are moving towards elections and looking at various coalitions. For a long time, most coalitions have had problems and have not had ways to resolve them. The Registrar of Political Parties, for example, would say, "Go to your coalition agreement and then follow that agreement."

Mr. Speaker, Sir, we also have provisions about coalitions and sharing where certain specifications have been put as to the number of MPs, for example, who were there as to the number of people who were in that political party and the provision. That has created a gap. Some of the issues we have seen within political parties are issues that can be resolved and have been resolved to a large extent. However, there is a need to have these resolutions in writing.

Mr. Speaker, Sir, this Bill addresses key issues as have been said. It addresses definitions of political parties, timelines for provisional and full registrations of these political parties, how to resign and how to expel members from the parties, certification of political parties and so on.

All these are within the amendment Bill. For example, the definition of a political party, party nominations and especially coalition political parties is very clear in Clause 2.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Senators! Let us consult in low tones.

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, in Clause 14(a), key provisions are made for rules and functions of political parties, including some that have been obvious over time. For example, Clause 4A(g) provides that a political party should articulate its policy in public. That policy should be provided to members to identify with.

Clause 7 says coalition political parties will be given certificates and that will help to a large extent. In the previous regimes, we had coalitions with agreements only, but without certificates. Therefore, lacking that identity.

As I said, political funding will also be stipulated within coalitions and the registrar will be given power to act according to the agreements. That means a provision will be made for the registrar to play a role in interpretation of the agreements.

Mr. Speaker, Sir, most of the financial issues have been addressed. The registrar will be able to solve matters to do with the distribution of political parties funds. One of the most important things about the discussion for the amendment of this particular law---

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

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

**Sen. Madzayo:** Mr. Speaker, Sir, I would like to move that the Mover be called now to reply. I ask for closure of the debate under Standing Order No.104 and I ask Sen. Pareno to second.

**The Speaker** (Hon. Lusaka): Order! There was a Member who was on her feet. Let her finish first and then I will allow your intervention.

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, apart from the provisions and the various amendments that have been made, a lot of vibrant discussions have come up. From some of the discussions, we know that legislation is not a one-time issue. It can always be amended over time.

In the report, certain specific issues have been put. For example, the threshold that political parties should meet to qualify for public funding and that is key.

We also have duplication and overlaps in disputes resolution arising from political party primaries, sharing inequalities in treatment of political parties among others, subjecting the existing political parties to the requirement of the Bill that new parties need to comply with prior to registration and lastly funding of political parties' liaison committee.

All these issues are important. Some have been directly addressed in the Bill and many more will create vibrant discussions, both at the level of political parties and the registrar.

Mr. Speaker, Sir, I support.

**The Speaker** (Hon. Lusaka): Order, Senators! Sen. Cherargei, I thought I should give a chance to Sen. Omogeni who is the Chairperson of the Committee to address the Senate and then I will allow you to seek your intervention.

**Sen. Omogeni:** Thank you, Mr. Speaker, Sir, for also giving me a chance to make my contribution.

First, I thank all Members of my Committee, the secretariat and members of the public who responded to our public invitation to give their views on this particular Bill.

Mr, Speaker, Sir, secondly, I have listened to the contributions by the distinguished Senators and that is how debate should be. My learned friend Sen. Cherargei must not agree with the contents of our report and I think he has all the freedom to provide an alternative view on the Floor of the Senate.

What I want to assure the House is that we have complied with the Constitution in the process of processing this Bill. We complied with Article 118 in that we invited members of the public to appear before our Committee and make their presentations.

If you look at the annexed memorandum that we received from the public, out of 25 bodies and individuals that appeared before us, 21 of those public bodies, civil societies, professional organizations and individuals are in support of this Bill. That is on record. I would have wished my learned friend, Sen. Cherargei, a former Member of the Committee, to sit in and listen to the views that were expressed by members of the public.

Even the political parties that appeared before the Committee are very happy that for once, there is going to be good management and distribution of political parties' funds. So, largely, there is full support for this Bill from civil society and political parties.

Some of the provisions are trying to answer an obligation that has been placed in this House. Under Article 87(1), Parliament has an obligation to pass legislations that can guide timely resolution of electoral disputes.

That is why this Bill is trying to amend the Political Parties Act by increasing membership of the Political Parties Appeals Tribunal, so that we have an expanded number of commissioners from the current seven by adding another *ad hoc* 18. This will help most of us who will find ourselves having disputes emanating from nominations to have timely resolution of such disputes before the Political Parties Disputes Tribunal.

Regarding all the other issues touching on audit of political parties, we have provided our reasoning in the report by saying that where the Constitution is very clear, a statute cannot limit powers that have been donated to a constitutional body.

In terms of political rights, we have answered in our report that this Bill can never take away the power of courts to protect fundamental rights of citizens. So, even where one feels that this Bill will infringe on their rights, they have a right to go to court.

Finally, we have travelled around the world looking at best practices from many jurisdictions to look into the issue of funding for political parties. The Agano Political Party appeared before us. In fact, its chairperson made a strong case that every political party that is registered in this country should qualify to get funding from the State.

If you go through our report, we have given comparative analysis on what happens in countries like United States of America (USA) and Germany, among others. So, it is a report that does not confine itself to what is prevailing in Kenya, but even the best practices from other countries.

Mr. Speaker, Sir, the impression I have is that my good friend, Sen. Cherargei, did not go through the entire report. If he takes time to read through the report and make an attempt to understand how to interpret and apply the Constitution, he will be of a different view.

Mr. Speaker, Sir, I Support.

**The Speaker** (Hon. Lusaka): Yes, Sen. Madzayo, proceed.

**Sen. Madzayo:** Mr. Speaker, Sir, the point I rose on was that the Mover be now called upon to reply and I asked Sen. Pareno to second me.

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

**The Speaker** (Hon. Lusaka): What is your point of intervention?

**Sen. Cherargei:** Mr. Speaker, Sir, when you look at the---

**The Speaker** (Hon. Lusaka): Order, Senator! She has to second first.

**Sen. Pareno:** Mr. Speaker, Sir, I second that we now call upon the Mover to respond.

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

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

**Sen. Cherargei:** Mr. Speaker, Sir, the Standing Orders of the Senate talk about the leave of the Senate which means that with the support of two Senators, we can seek the leave. I say that because some of my colleagues want to contribute to this important Bill. We cannot rush. I know that some people want to rush this process, but in the interest of the country and ensuring that the legislative process is respected, the Mover should not be called to reply.

You should rule them out of order and allow many colleagues to contribute to this Bill. You gave us five minutes and the reason for that was to ensure that everybody gets a chance. Let the majority have their way, but the minority should also have their say. It is important that you do that for history.

**The Speaker** (Hon. Lusaka): Just a minute. I am going to propose the question then you can raise those issues after that.

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

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

**Sen. Murkomen:** Mr. Speaker, Sir, whoever made such a proposal is bringing shame to this country. You made a clear communication to this House where you said



that we called for a Special Sitting because we consider the Political Parties (Amendment) Bill (National Assembly Bills No. 56 of 2021) a very serious Bill in this House. In your communication, you said that this House is a sober House and everybody will get 15 minutes to contribute to the Bill. The Minority leader also said that the debate on this Bill must be given due consideration.

It seems that we were coming here to rush everything. First, the debate time was limited to five minutes and we have now moved ahead and cut short the debating time for this important Bill. Why did we come for this Special Sitting? Why did we call the House? I know my colleagues here are in the majority and they can steal their way and pass this Bill. However, there are glaring, unclear and unconstitutional provisions in this Bill. We want to speak on these issues for the record. We want them to win, but we must be given chance to put the things we have raised on record.

We said that we were going to behave maturely as a Senate, but we have cut the debating time to five minutes. We have even gone ahead to ask the Mover to reply because we want to rush the process. History will record us in a very shameful way. It will be recorded that we took the people of Kenya for a ride. Therefore, since it was clear on your communication.

Mr. Speaker, Sir, your communication was made pursuant to Standing Order No. (1). Notwithstanding the provisions of the Standing Order on that issue, which I agree is clear, and the right for anyone here to call the Mover to reply, I think your communication supersedes. Otherwise, your word will not be your bond.

**The Speaker** (Hon. Lusaka): Order, Senators! I respect the Standing Orders of this House, but when a Member stands to talk, I also have to respect that. I will propose the question and after that, you will contribute what you want.

*(Question proposed)*

**The Speaker** (Hon. Lusaka): I now put the question----

*(Loud Consultations)*

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

*(Several Senators spoke off record)*

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

**The Speaker** (Hon. Lusaka): What is it, Sen. Sakaja?

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. When something is not being prosecuted in a fair way---

**The Speaker** (Hon. Lusaka): Allow me to interrupt you a bit. Several Members have logged in their cards. I do not know who wants to speak at this point.

Continue, Sen. Sakaja.

**Sen. Sakaja:** Mr. Speaker, Sir, if you heard my earlier contribution, I said that sometimes when something is so politically charged, people refuse to listen to the sense of the other side. Democracy is such that the majority have their way and the minority have their say. This is a House of debate. The word 'parliament' comes from the root

word parley. Are you stifling debate because you want the Bill to pass? Rest assured that it will pass. I stood here and supported it as it is.

The Members are soon going for nomination and they will be vying on political parties. They probably do not want to debate because of some reason. We must not stifle debate in this House. The outcome will be democratic. In fact, they will be shocked at how people will vote. As I said earlier, if it is a good Bill, then it is good for everyone. If it is a bad Bill, then it is bad for everyone. Let us not reduce the Senate to such a House.

I urge that every Member who wants to contribute to this Bill be allowed to contribute. I feel very sad. If you noticed, Members were very keen when I was contributing. I only had five minutes. I wish I had more time to tell them the pitfalls of this process. Do they know that they will be alone when they will go for nominations? They will not be in this Senate. They will be alone in their constituency or county dealing with a party office in Nairobi and that is when they will remember what they passed in this House.

In as much as there is political pressure or whatever other motivation, I urge the Members to be very wise in their decisions. Let every Member who wants to contribute do so. You will make your decisions. In fact, if Members sat across the table and removed mistrust some of the proposed amendments that we had and those that had been proposed in the National Assembly would have improved this Bill. However, it is said that it must be passed like that without amendments, but the result will be for all of us to face.

I urge that the Mover be not be called to reply. I oppose the Motion for the Mover to be called upon to reply. Let everybody contribute.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Muhamud.

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, we were called here for a Special Sitting that is to run for three days; Tuesday, Wednesday and Thursday. In fact, the notice clearly stated that yesterday and today we were to sit at 2.30 p.m. then we sit from 10.30 a.m. and 2.30 p.m. tomorrow. The reason was that we have a special Bill before this country which was debated in the National Assembly then brought to us.

Mr. Speaker, Sir, it is unfortunate that we want to rush its passage to the extent where we want to gag Members and go to vote. Whereas the majority might have their way when the vote is put, it is important that the Members of this House be allowed to ventilate and speak to this Bill. The nation is watching.

This House is a House of decorum and maturity. There were a lot of problems in the other House. We are not fighting, but we are fighting in a very indirect way by gagging people who they think are in the minority. It is unfortunate that my colleague from Kilifi County, a retired judge, is the one who proposed that. It should not have come from him.

I urge that hon. Members of this House be allowed to debate to the last person. In fact, five minutes was a rush. I actually thought that something was in the offing when the Speaker said that the Members were to debate for five minutes. I am not trying to challenge your ruling. I thought that this Bill was rushed to us in order for us to vote. I expected us to vote tomorrow and not today.

I object to the Mover being called to reply.

**The Speaker** (Hon. Lusaka): Order! I gave each of you five minutes so as to allow as many people as possible the opportunity to contribute.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order! Sen. Murkomen!

Listen to what I said. I wanted to give an opportunity to everybody to speak, but I am also following the Standing Orders. When somebody proposes something, I have to listen. I have to be balanced.

Proceed, Sen. Kinyua.

**Sen. Kinyua:** Asante, Bw. Spika. Hili ni jambo la kuvunja moyo sana. Sisi tulikuja hapa tukiwa tumejhami kujadili Mswada huu wa vyama kwa sababu ni Mswada ambao umezungumziwa katika ile Bunge lingine kwa mapana na marefu. Tulidhani kuwa Seneti ingejadili Mswada huu kwa marefu na mapana. Lakini nimestuka sana wakati ndugu yangu, Sen. Madzayo, ameamka na kusema ya kwamba angetaka tuwache kujadili Mswada huu. Kila mtu anataka kuongea kuhusu Mswada huu.

Bw. Spika, ulituambia ya kwamba Maseneta wengi wangetaka kujadili Mswada. Sujui imekuaje sasa tunataka kuvunjilia mbali kujadiliwa kwa Mswada huu na twende kupiga kura.

Pengine wanaona ni wengi watapiga kura na kushinda. Lakini, ukweli wa mambo ni sisi tunapaswa tusikizwe na tuseme yale ambayo tunapaswa kuyasema kwa sababu tunaona Mswada huu uko na dosari fulani na unapaswa kupigwa msasa.

Asante, Bw. Spika.

**The Speaker** (Hon. Lusaka): Okay, Order! Senators. I will use my discretion before I put the question to allow a few Senators to speak.

Proceed, Sen. Murkomen.

**Sen. Murkomen:** We speak on the Bill?

**The Speaker** (Hon. Lusaka): Yes, speak on the Bill.

**Sen. Murkomen:** Thank you, Mr. Speaker, Sir, for using the Standing Order No. 1 to vary the Motion on the time.

This Bill is very critical and important for us, particularly ----

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order! There is a bit of confusion on procedure. What is your point of clarification, Senator?

**Sen. Cheruiyot:** Mr. Speaker, Sir, I thought what Sen. Madzayo raised was on a procedural Motion. I thought we were still contributing to the Motion.

**The Speaker** (Hon. Lusaka): Just a minute we are consulting a bit.

*(The Senate Majority and Minority Leaders  
and the Clerk-at-the-Table consulted the Speaker)*

**The Speaker** (Hon. Lusaka): Order! Senators. After consultation, we will have to finish. I will have to propose and put the question. After that, I will use Standing Order No. 1 to allow for a bit of debate on the Bill.

*(Question, that the Mover be now called up to reply,  
put and agreed to)*

Hon. Senators, I want to allow a few Senators to contribute then we move on.

Sen. Murkomen, you have five minutes.

**Sen. Murkomen:** Thank you, Mr. Speaker, Sir. I will not go back to what happened before this, but I am happy with your decision.

This is a terrible, hopeless and useless Bill which fails all tests. It fails the test of drafting in terms of language. It fails the test of corresponding with other Bills, including the Elections Act. It also fails the constitutional test miserably.

Mr. Speaker, Sir, the part of the Bill that deals with the removal of a member or a member being deemed to have been expelled or resigned from a political party, is improperly drafted. Not so long ago, our colleague, Sen. Mwaura, was expelled from this House and from his experience I have proposed an amendment.

Mr. Speaker, Sir, we need a situation where if a Member is expelled by his political party, that political party should not collude with the Registrar of Political Parties and the Government Printer to degazette the Member quickly.

Mr. Speaker, Sir, I have proposed that we must give a 21days notice for that expulsion to take place and give the Member the right to take any legal processes and measures that will ensure that they defend themselves.

Mr. Speaker, Sir, I disagree entirely with the part that gives the registrar more powers.

Elections, under the Constitution, is a function of IEBC. Unfortunately, because some people want to micro-manage political parties, they have given the ORPP the responsibility to manage political parties in terms of verifying registers, giving specific timeliness and constricting the word register that the political parties are going to use. This is a hopeless provision. I am so glad and speak with no fear of contradiction.

It will be a shame tomorrow when the courts look at the provisions of this Bill and indicate that there were three Senior Counsel; Sen. Wako, Sen. Omogeni, Sen. Orendo and many other senior lawyers in this House, who could not see the very clear provisions of this Bill. That it at tries to take away the responsibilities of the IEBC and give it to the Registrar of Political parties.

Mr. Speaker Sir, in a week or two, these things will be declared hopeless without fear of contradiction. The powers being given to the registrar should be removed since she has no business managing elections. It is even ridiculous to the extent she is being given powers to manage the independents. The registrar will be allocating signs of symbols to be used by independent candidates in an election which is a direct responsibility of the IEBC in terms of election processes. I have made clear proposals that these areas should be removed.

There are provisions that try to create a new definition of what a political party is. There is an oxymoron being created called a “coalition political party”; a very useless oxymoron. The definition of a political party is in Article 260 of the Constitution and on the Chapter that deals with elections. That part of the Constitution does not anticipate a situation where political parties will have two identities as a party or a group of parties and still have capacity to stand alone. You are either a political party or a coalition.

Mr. Speaker, tomorrow I will laugh at most of the people expediting this process. This is because they are being herded together to forget their political parties so that they can be in one basket to confuse the public that there is another party even though it is the

Orange Democratic Movement (ODM) in another color. This kind of process will only lead to many of these candidates who are here crying tomorrow.

I remember in 2016 we debated and in 2017 we amended the Elections Act and went for the nominations. The first victim of the law that was to ensure that independent candidates do not have a chance after going through nominations was the late Jakoyo Midiwo who was a leader in the National Assembly.

I will not be bothered or worried. I wish that oxymoron called a coalition political party passes. I know those who will cry. It will not be me and you, Mr. Speaker, because I know where you will go and where all of us will go. It will be those who are here---

**The Speaker** (Hon. Lusaka): You are out of order, Sen. Murkomen!

**Sen. Murkomen:** Thank you, Mr. Speaker, Sir. I respect your ruling. It is not you, Mr. Speaker, Sir.

I know where many politicians, including the next governor for Bungoma will be. They will be on the right side of history.

*(Laughter)*

Anyone watching from Kamukuywa or somewhere in Bungoma should just know that the Governor for Bungoma is sitting in this House, but I am not mentioning names. We are colleagues and Senators with experience in politics, for example, Sen. Khaniri who is trying to be governor of Vihiga County who has been here for six times. It will be a shame that the day he is leaving the Senate he becomes part and parcel of people passing this unfortunate Bill.

Let us reason together. Tomorrow you will be the ones being expelled and being denied the certificate by your supreme leader. Sen. Cheruiyot and I, were told of a story of a governor in one of the counties in Nyanza who, having been denied a certificate in 2007, was holding the leg of the party leader, begging and rolling on the floor. Time is coming, in a month or two. That governor is a friend of Sen. Outa. When Sen. Outa becomes the candidate and rolls again on the floor, those victims of this Bill will be here.

Mr. Speaker, I oppose this Bill.

**The Speaker** (Hon. Lusaka): Your time is up, since this is a very limited discretion.

**Sen. (Dr.) Ochillo-Ayacko:** Thank you, Mr. Speaker, Sir. I do not know why Sen. Murkomen is very annoyed. He should just relax. If this thing is bad, then it is bad for everyone. If it is good, it is good for everyone. It is a common denominator that all of us will be facing it.

Mr. Speaker, I want to take a minute. I have been in Parliament as a member of the National Democratic Party (NDP) which died when the merger took place with Kenya African National Union (KANU) which is now dying.

*(Loud consultations)*

Sorry, I withdraw. It is not on the verge of death, but not doing as well as the once ruling party ought to have been doing.

I have also been a member of the Liberal Democratic Party (LDP), the National Rainbow Coalition (NARC) and as a member of ODM. A time comes when people get

tired of killing political parties. We need a law that will midwife the existence of political parties for posterity and history.

This law is good. It allows parties to survive as a family, as a coalition and it is able to bring in diversity into it. Let us look at it positively. Let us not kill one another because of this. The competition is out there with the voters. Go there and talk to them.

Mr. Speaker, I beg to support.

*(Loud consultations)*

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

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

**Sen. Cheruiyot:** Mr. Speaker, Sir, the discretion of the Speaker should be fair. Protect me from “professional other things” that I will not mention.

**The Speaker** (Hon. Lusaka): I have been very fair, Sen. Cheruiyot.

**Sen. Cheruiyot:** Mr. Speaker, I plead with you, just as you gave my colleague Sen. Murkomen and Sen. Ochillo-Ayacko an opportunity to speak, there are a few of us who had requested to say something within three minutes. In fact, we will not say much about this Bill because this is a rope that is going to hang political parties. We want to peacefully hand it over to our colleagues.

Kindly allow us.

**The Speaker** (Hon. Lusaka): Sen. Cheruiyot, you will speak at the amendment stage. I have already allowed the Mover to reply.

**The Senate Majority Leader** (Sen. Poghisio): Mr. Speaker, Sir, I beg to reply.

It has been a good afternoon. Members have contributed, a good number have supported and I wish then to again bring it to the membership to pass it and agree with all of us. It is important that we all agree that the next stage will allow more Members to contribute when we come to doing the amendments and the Committee of the Whole and probably conclude this matter today.

Mr. Speaker Sir, I beg to reply.

**The Speaker** (Hon. Lusaka): We are now moving to Division.

*(Question put)*

Let the Division bell be rung for five minutes.

*(The Division Bell was rung)*

**The Speaker** (Hon. Lusaka): Order, Senators! Take your seats.

I now direct that the Bars be drawn.

*(The Bars were drawn)*

The Teller for the “Ayes” is Sen. Kwamboka and Sen. Cherargei is the Teller for the “Noes”.

The Clerk-at-the-Table will proceed. Since this is a matter affecting counties, it will be by Delegation.

*(Roll call voting in progress)*

Sen. Lelegwe said “yes” and “no”. We will treat it as a spoilt vote.

## **BILL**

### *Second Reading*

THE POLITICAL PARTIES (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILLS NO. 56 OF 2021)

## **DIVISION**

### **ROLL CALL VOTING**

*(Question, that The Political Parties (Amendment) Bill  
(National Assembly Bills No. 56 of 2021) be now read a  
Second Time, put and the Senate proceeded to vote by  
County Delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Dullo, Isiolo County; Sen. Abdul Haji, Garissa County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kavindu Muthama, Machakos County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. M. Kajwang', Homa Bay; Sen. (Eng.) Maina, Nyeri County; Sen. Madzayo, Kilifi County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Moi, Baringo County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu County; Sen. (Dr.) Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orenge, Siaya County; Sen. Outa, Kisumu County; Sen. Poghio, West Pokot County; Sen. Sakaja, Nairobi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and, Sen. Wambua, Kitui County.

**Teller of the Ayes:** Sen. Kwamboka.

**NOES:** Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Kinyua, Laikipia County; Sen. Linturi, Meru County; Sen. (Eng.) Mahamud, Mandera County; Sen. Murkomen, Elgeyo Marakwet County; and Sen. Wario, Tana River County.

**Teller of the Noes:** Sen. Cherargei.

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

**AYES:** 29

**NOES:** 7

**SPOILT VOTES:** 1

**ABSENTIONS:** 0

The Ayes have it.

*(Question carried by 29 votes to 7)*

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

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

### COMMITTEE OF THE WHOLE

*(Order for Committee read)*

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

### IN THE COMMITTEE

*[The Temporary Chairperson (Sen. Nyamunga) in the Chair]*

THE POLITICAL PARTIES (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILLS NO. 56 OF 2021)

*(Several Senators Stood in their place)*

**The Temporary Chairperson** (Sen. Nyamunga): Hon Senators, can we have order. I request all Senators who are logged in online not to log off.

Hon. Senators, we are considering The Political Parties (Amendment) Bill (National Assembly Bills No. 56 of 2021).

#### *Clause 2*

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, there is an amendment by Sen. Murkomen.

**Sen. Murkomen:** Thank you Madam Temporary Chairperson, I beg to move—  
THAT Clause 2 of the Bill be amended—

- (a) in paragraph (a) by deleting sub-paragraph (b);
- (b) in paragraph (c) by deleting the definition of the term—
  - (i) “direct party nomination”; and
  - (ii) “indirect party nomination”

In the first part, paragraph (a) by deleting sub paragraph (b). If you look at sub paragraph (b), is the definition of a political party to include coalition political party. The justification for this is that it creates confusion.

The Constitution is clear to what is a political party. A political party is an entity on its own. It can either be a coalition or become a political party. It cannot be a coalition political party. My argument is that this definition defeats the definition of Article 260 of the Constitution of what a political party is.

Number two, it creates confusion. That is not what was intended in the Constitution and therefore this paragraph is unconstitutional.

On the other part, is paragraph (c) of Clause 2, which inserts paragraph (c) by deleting the definition of direct party nomination and indirect party nomination. Just to



start with the use of the language, direct and indirect, if you look at the definition given by this Act, it says, direct party nomination means the process by which a political party through its registered members elects its candidate for an election. However, the understanding of what is a direct nomination in Kenya is one being given a certificate directly without the process of involving the members of the party.

My second argument is that the Constitution itself expects political parties through their own constitution and their regulations to determine how they are going to manage their political affairs. The amendments in this particular Bill are too prescriptive, in fact, it is constricting the political space. It is micro managing political parties and making it impossible for political parties to carry out the process of internal management independently.

All over the world, there has never been a country that has this level of prescription on management of political parties. I shall revisit later the provisions that are relating to the role of the Registrar of Political Parties in managing the political parties and the back and forth that will ensue.

For this time, it is enough to say that Clause 2 be amended as such. I ask Senator Aaron Cheruiyot to Second.

**The Temporary Chairperson** (Sen. Nyamunga): There is no seconding in Committee of the Whole stage. You just debate and give your comments.

*(Question of the amendment proposed)*

Proceed, Sen. Halake. Please be brief.

**Sen. Halake:** Madam Temporary Chairperson, I would like to point out that I sat with political parties as the Chairperson of the Center for Multiparty Democracy and I did submit a rationale for proposals to be made which were captured. Perhaps as the Chairperson of the Committee on Justice, Legal Affairs and Human Rights will attest, political parties have themselves interrogated Clause 2 and given what they think would work for them. I submit.

I do not support this amendment because the political parties have spoken for themselves.

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Cherargei, proceed. Sen. Cheruiyot will speak thereafter.

**Sen. Cherargei:** Madam Temporary Chairperson, when you look at the definition of political parties and the import, considering the comments that were made by stakeholders, they agreed that political parties should have a distinct definition and character. Looking at how it is defined here, even a cooperative organization like Lelchego in Nandi can be interpreted as a political party.

Therefore, it should have distinct, independent and unique characteristics. They have tried to look at the import of Article 260 and requirements of a political party in Article 91 but this one does not in any way give---

Madam Temporary Chairperson, if you look at the definition of a political party across the world, it should be one that engages in political activities. However, when you look at Non-Governmental Organizations (NGOs), the Cattle Association of Narok County and many others, there is no distinct interpretation of political parties.

I think this Clause is mischievous. It means if we have a co-operative society, group, CBO, or company, that could also mean it is a political party. I wish it was specific. Why should they include this Clause and then refer us to Articles 260 and 91 on the formation and character of political parties?

Madam Temporary Chairperson, I support the amendment by Sen. Murkomen.

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Cherargei, you can go ahead because it is almost on the same thing. You can as well move your amendment.

**Sen. Cherargei:** Madam Temporary Chairperson, I beg to move—  
THAT, Clause 2 of the Bill be amended—

(a) in the proposed definition of the term “direct party nominations” by deleting the words “through its registered members” appearing immediately after the words “political party”;

(b) in the proposed definition of the term “indirect party nomination” by deleting the words “selected from registered members of the political parties and interviews” appearing immediately after the words; and

(c) by deleting the proposed new definition of the term “statement of ideology”.

Madam Temporary Chairperson, it is like saying all political parties should have an ideology. I do not know what that word means.

Sen. Pareno has been the director of elections in the Orange Democratic Movement (ODM) Party. When you look at coalitions, the distinct that has been provided for--- I propose deletion of that. Political parties must be given---

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Cherargei, there is a slight confusion. So, just stick to Sen. Murkomen’s amendment.

**Sen. Cherargei:** Madam Temporary Chairperson, then I support Sen. Murkomen’s amendment. I will speak on mine when time comes.

**The Temporary Chairperson** (Sen. Nyamunga): Since Sen. Sakaja is not in, proceed Sen. Cheruiyot.

*(There was a technical hitch)*

**Sen. Cheruiyot:** Madam Temporary Chairperson, I am wondering what the problem is with my card today. When I make requests--- It is now working. I would have sacked somebody but now you have saved someone’s job.

Madam Temporary Chairperson, I support this amendment. I hope the promoters of this Bill will be gracious enough to listen to good sense. Basically, we are trying to assist you, so that your Bill can pass through the rigorous test of what is and what is not constitutional in our country.

Unfortunately, what we have come to know from experience, is that on many occasions, when you have the Executive spearheading and championing similar Bills and they are passed in such a manner in the circumstances this House is about to do, then good sense takes a backseat and it becomes about numbers alone.

Article 91(1) of our Constitution is very clear, reading from (a) to (h) and even (2) about what is and what is not a political party. It goes on to describe what passes the test of what a political party should do. Especially (2) provides the basis within which you cannot form a political party.

It includes things like a region, for example, which we are saying that it is common. I have seen some people who are pretenders to the throne pretending to be

running for president. We know this is the season for brokers. You will find people saying that a certain party is for Mt. Kenya, the Coast, Northern Kenya or Western Kenya. They need to read Article 91(2). You cannot form a political party on the basis of region alone.

Part of what is described is actually as falling foul of constitutional provisions on what a political party is, include even issues that other people may consider to be mundane as even linguistic background alone.

For example, somebody could say that they want to form their own political party with the speakers of a particular ethnic tribe. For good reasons, according to the Constitution, you cannot set up a political party on such a basis. It goes to great length to describe that.

Therefore, when you have such a provision in Clause 2 of this particular Bill where we are being told that anyone that has anything that looks like a political party ceases to have the distinct values and things that define them as a political party should collapse and refer to it as a coalition, that quickly falls a foul of the law. I wish we kept with the general practice in the republic, which is generally that people are allowed to form coalitions pre and post-election.

Unfortunately, the challenge is that people are trying to legislate good manners and things like trust. Those ones cannot be legislated. If you are a criminal or swindler, or if you shortchange your political partners, no amount of law will protect you from doing it. That is the challenge we are trying to circumvent by passing this particular law and giving comfort to certain people to be part of a big conglomerate.

Madam Temporary Chairperson, in the world of business, when entities are run under a group, where a certain group of companies has interest, for example, in real estate or fast moving consumer goods, they retain their independence. They still have their own many boards that run them.

It is on that basis that I plead with our colleagues. If you really love this Bill and think that it means well for you, listen to good sense. Delete this particular Clause and word it in the manner in which Sen. Cherargei will be proposing in his next amendment, which provides for coalition of political parties but each of them retains their distinctness.

Madam Temporary Chairperson, with those many remarks, I support this amendment.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): The Division will be at the end.

Sen. Cherargei, proceed on further amendment to that Clause. I request that we be brief and to the point.

**Sen. Cherargei:** Madam Temporary Chairperson, I beg to move—  
THAT, Clause 2 of the Bill be amended—

(a) in the proposed definition of the term “direct party nominations” by deleting the words “through its registered members” appearing immediately after the words “political party”;

(b) in the proposed definition of the term “indirect party nomination” by deleting the words “selected from registered members of the political parties and interviews” appearing immediately after the words; and

(c) by deleting the proposed new definition of the term “statement of ideology”.

Madam Temporary Chairperson, I only have two issues. The first one is that political parties should be given an opportunity to decide on the form and formation, how to nominate and how to run their affairs. We do not want political parties to be managed.

I have said before that when you look at the import of Articles 91 and 260, the mushrooming of many political parties that do not even meet the threshold of Article 91 should not be allowed. I think this one is trying to stifle or micromanage political parties. They should be allowed to do their bit.

My second point is on the statement of ideology. This removal of definition in essence is that you are just saying Kisii Tea Farmers Cooperative Society or Community Based Organisation (CBO) or a society or a company with the import or definition that has been given in this amendment will in its proposed form proceed and become a political party.

When you look at the jurisdictions across the world, the definition of political parties has been defined. The underlying factor is that they do what we call political activities but when you look at these proposed--- This should not be allowed because we will be reversing.

Under Article 91 of the Constitution of Kenya, Parliament is supposed to legislate. Some of these issues that we are raising on these amendments are supposed to put in place and ensure that the political party is defined properly. When we do that, a Non-Governmental Organisation (NGO) cannot go to court then come up and say that they want to become a political party.

I propose.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Kinyua wanted to make some comments. It seems he is out.

The Division will be at the end.

Can we hear from Sen. Cheruiyot?

**Sen. Cheruiyot:** Madam Temporary Chairperson, I continue to plead. Sen. Cherargei is granting a second opportunity to the promoters of this Bill. It is unfortunate that they are not in this House but I wish they were in. If they were here, they would have listened to what Sen. Cherargei is kindly requesting them to do.

I did not get time to read through the presentation by the Centre for Multiparty Democracy (CMD) but it is good that their president is here---

**The Temporary Chairperson** (Sen. Nyamunga): Sorry, Senator. Sen. Pareno, do you have an intervention? Please give her the microphone.

**Sen. Cherargei:** What is out of order?

**Sen. Pareno:** Madam Temporary Chairperson, I wanted to oppose the amendments proposed by Sen. Cherargei. I pressed and you did not see that I had pressed.

**The Temporary Chairperson** (Sen. Nyamunga): Time will come for the Division.

**Sen. Cheruiyot:** Madam Temporary Chairperson, it will be nice to hear from Sen. Pareno because she is a “deep state” in certain political parties. Anybody who has been a director of elections knows a lot about political parties and their distinct habits and practices and they are part of the practices that Sen. Cherargei is referring to.

I sympathise with my good friend, Sen. Wambua. I know how Wiper Democratic Movement-Kenya (WDM-K), the party he belongs to, conducts their nominations and how parties like Orange Democratic Movement (ODM) conducts theirs.

This time they will be held by the same standard. It will be extremely difficult. I know the practices in that particular political party. Many years ago, we were members of that particular political party. That is the point that Sen. Cherargei is trying to bring out. He is stating that there are distinct habits, characteristics and practices that are only unique to one particular political party. One will, unfortunately, get to lose if they are amalgamated in one political party as it is proposed under this coalition political party arrangement.

Therefore, listen to good sense and as requested ---

**Sen. Wambua:** On a point of order, Madam Temporary Chairperson.

**The Temporary Chairperson** (Sen. Nyamunga): There is an intervention by Sen. Wambua.

**Sen. Wambua:** Thank you, Madam Temporary Chairperson. Sen. Cheruiyot has mentioned WDM-K in relation to nominations. I want clarity from him that he is saying that---

*(Sen. Cherargei spoke off record)*

Sen. Cherargei, I am addressing Sen. Cheruiyot through the Temporary Chairperson.

I want clarity from Sen. Cheruiyot. Is he telling this House and this country that WDM-K has the best way of conducting nominations compared to the other parties that he is mentioning? Does he mean that when we pass this law, there will be a possibility that our best standard or practice will be watered down to the level of the parties that he is talking about?

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Cheruiyot, can you please conclude.

**Sen. Cheruiyot:** Madam Temporary Chairperson, I come from Kericho County. Sen. Outa is my good neighbour and friend. The last time he was announced as the winner of ODM nominations, he did not receive his certificate in Kisumu County Hall. Instead, they gave him the certificate inside Muhoroni sugar plantations.

*(Laughter)*

*(Sen. Outa spoke off record)*

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Outa, if you want to say something, please put the intervention.

Yes, Sen. Outa

**Sen. Outa:** Madam Temporary Chairperson, you have heard my good neighbor, Sen. Cheruiyot, trying to water down a nomination that was conducted freely and fairly in Kisumu in the last general election by saying that we were issued certificates in a sugar plantation.

I want him to table the evidence before this House for the world to know that the elections that were held in Kisumu were not free and fair. The nominations in Kisumu were the best in the Republic of Kenya.

**Sen. Pareno:** On a point of order, Madam Temporary Chairperson.

**The Temporary Chairperson** (Sen. Nyamunga): Can we hear from Sen. Pareno.

**Sen. Cheruiyot:** Sen. Wambua, you have every reason to be worried. You know-

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Cheruiyot, there is an intervention.

**Sen. Pareno:** Madam Temporary Chairperson, Sen. Cheruiyot is directly trying to impute on my conduct when he talks about the last general elections and issuance of nomination certificates. I was the Chairperson of the elections board at that time and I was the one issuing the certificates. I want to confirm that Sen. Outa is properly before this House, having been given a certificate after winning and that was done in broad daylight. It was never done in a plantation and he is out of order.

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Cheruiyot, please conclude.

**Sen. Cheruiyot:** Madam Temporary Chairperson, I am afraid for my friend, Sen. Wambua. What ODM considers to be free and fair is mass violence by the standard of WDM-K.

If I am given time, I can provide evidence by the next sitting. The county returning officer for Kisumu is my friend. I am always in Kisumu at least once every week for the 53 weeks that are in a year. I have very many friends over there. The gentleman who was the county returning officer is well known to me and I know where he had to make his announcements and how powerful one can be at that time.

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Cheruiyot, can we confine to the comments and the issue before us.

**Sen. Cheruiyot:** Madam Temporary Chairperson, I will confine myself but this is actually the issue before us. Due to the wordings of Clause 2, political parties will be forced to adhere to certain standards, which are alien to them.

It will be a forced marriage of circumstances and it will shock people later on. We are trying to give them an opportunity to understand that they can be in a political coalition without collapsing their party. That is what I am trying to explain and it is the same thing that Sen. Cherargei is trying to advise us.

As good Senators, we should pass laws that understand the distinct practices of our various political parties. If my colleagues who are supporting this particular legislation think that it makes good sense for them to proceed and pass this proposal despite our warning then so be it. We have warned them and given good reasons.

Finally, I had made a point and I want to hear what the president of CMD, my good friend, Sen. Halake, has to say about it. I thought that CMD in its formation, advocated for the growth of multiparty democracy in our country. In 1992 we had the repealing of Section 2(a) of the then Constitution and all Kenyans were being forced to be under one political formation. At that time, you would lose your sit in Parliament if you were kicked out of a political party.

The Senate Majority Leader who is not here, unfortunately, was once a victim in 1988 when he lost favour with the powers that be in the Kenya African National Union

(KANU). I am surprised that in his old age, he could be advocating for such a dangerous and draconian piece of legislation.

The reason why I mentioned the Centre for Multi-Party Democracy (CMD) is because if you read through their objectives and reason data, they speak about inculcating cultures of democracy and seeing the growth of multiparty democracy in our country.

How does amalgamating 10,15,20 political parties into one coalition political party, and forcing people to run under one nomination to come to Parliament, with only a distinction of being under one political party, sit with the practice of multiparty democracy? This is a comment that I would wish to listen to from CMD.

I thank you.

**The Temporary Chairperson** (Sen. Nyamunga): Proceed, Sen. Murkomen

**Sen. Cheruiyot:** Madam Temporary Chairperson, you noted Sen. Farhiya interrupted me when I was making my conclusion but I understand her. She can never understand some of these challenges that we are mentioning. She has said we either choose or not. A practising politician understands what a political party means.

In certain parts of the country, when you are done with your political party nominations, it is as good as a general election. It is not as easy as she may want to put it.

*(Loud consultations)*

**The Temporary Chairperson** (Sen. Nyamunga): What is the intervention Sen. Farhiya?

**Sen. Farhiya:** Madam Temporary Chairperson, to come into a coalition is a choice of different parties. Therefore, if they do not want to be subjected to that rigorous process of joint nomination, then they should not join those parties. The law does not prevent individual parties contesting for presidential and other seats. I want to respond to that because he mentioned me.

**The Temporary Chairperson** (Sen. Nyamunga): Proceed, Sen. Murkomen. Please let us stick to the point and be brief because there are a lot of interests.

**Sen. Murkomen:** Thank you, Madam Temporary Chairperson. One of the interventions by Sen. Cherargei that I have not contributed to and was not part of the amendment, is this part that deals with deletion of the proposed new definition of the term 'statement of ideology'.

Madam Temporary Chairperson, the statement of ideology which is applied later in the Bill sets out the doctrine, ethical ideals and principles of the party.

If you look at the Constitution, it sets the basic requirements of a political party. Putting in place stricter requirements for that political party is going beyond the Constitution.

The Constitution in Article 91 says:

“(1) Every political party shall--

- (a) have a national character as prescribed by an Act of Parliament;
- (b) have a democratically elected governing body;
- (c) promote and uphold national unity;
- (d) abide by the democratic principles of good governance, promote and practise democracy through regular, fair and free elections within the party;
- (e) respect the right of all persons to participate in the political process, including

minorities and marginalised groups;  
(f) respect and promote human rights and fundamental freedoms, and gender equality and equity;  
(g) promote the objects and principles of this Constitution and the rule of law; and  
(h) subscribe to and observe the code of conduct for political parties.

(2) A political party shall not--

(a) be founded on a religious, linguistic, racial, ethnic, gender or regional basis or seek to engage in advocacy of hatred on any such basis;  
(b) engage in or encourage violence by, or intimidation of, its members, supporters, opponents or any other person;  
(c) establish or maintain a paramilitary force, militia or similar organisation;  
(d) engage in bribery or other forms of corruption; or  
(e) except as is provided under this Chapter or by an Act of Parliament, accept or use public resources to promote its interests or its candidates in elections.”

Madam Temporary Chairperson, this statement of ideology is another road block. Statement of ideology will not help us to make political parties more responsive to the members. If you look at what is being defined here, it says “statement setting out doctrine, ethical ideals, and principles of the party.”

What you would have wanted to be principles or standards or requirements of a political party are already listed in the Constitution in Article 10 as the values and principles of a Constitution, Chapter 6 requirements for leadership and integrity and also particularly, as I have enlisted, in article 91 of the Constitution.

This only creates one more layer of bureaucracy, where the Registrar of Political Parties will tell another political party - this is the exact objective of this drafters - to wake up and say, they are not registering party XYZ because the Government is not comfortable with its ideology or that the Registrar of Political Parties is not satisfied that the ideology of this political party is in consonance with the values and principles that the Registrar is trying to follow. It is also possible that the registrar will just say the ideology of party X is the same ideology of party Y.

I support Sen. Cherargei’s amendment. However, this superfluous additional provisions on statement of ideology are unnecessary. They are just other bottlenecks in as far as management and running of political parties is concerned.

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, as I allow you to make comments, let us mention the rationale of the amendment. Why you are supporting it or not supporting it. Let us not go into the debate.

**Sen. Halake:** Thank you, Madam Temporary Chairperson. I know my friend, the Senator for Kericho County had mentioned that the president of CMD is here and should have supported amendments. However, as the president of CMD, I have brought specific verbatim proposals for my political parties as provided there-in. What they have said to me with regards to even the clauses that are being requested for amendment is that these are entrenching democracy by making sure that we do not have very many fragmented little parties.

For instance, in the United States of America (USA), we have two parties, The Democratic Party and The Republican Party. Is the democracy in America strong or not? In that same respect, consolidating similar ideologies and ensuring that we have strong coalitions is an entrenchment of a maturing democracy.



We cannot be in 1992 where the CMD was conceived. Today is 2022 and we are saying that political parties that have similar ideologies and an affinity can be grouped together and form a strong party as a coalition. That can only be an entrenchment, institutionalization and maturing of democracy and nothing less.

I do not support. I support what my political parties have given and have brought before this House.

I thank you.

**The Temporary Chairperson** (Sen. Nyamunga): Proceed, Sen. Olekina

**Sen. Olekina:** Thank you, Madam Temporary Chairperson, for giving me a few minutes to comment on this.

I rise to object to these proposed further amendments by Sen. Cherargei. There is confusion in what is direct or indirect nomination. The Bill explains what a direct nomination is. It is a form of a universal suffrage by the members of a political party.

We move on further to the issue of ideology. It is about time that this country starts to understand the issues of ideologies---

**The Temporary Chairperson** (Sen. Nyamunga): Are you commenting on Sen. Cherargei's or Sen. Murkomen's amendments?

**Sen. Olekina:** I am commenting on Sen. Cherargei's. I had consulted with the Clerks and they had told me that this is what is being discussed right now.

**The Temporary Chairperson** (Sen. Nyamunga): Okay. Go ahead.

**Sen. Olekina:** I object it because Sen. Cherargei wants to misguide the public on the definition of ideology and that of direct and indirect nominations.

Direct nomination is very simple. This bill seeks to bring discipline to the parties. When you have bonifide members who subscribe to a particular school of thought, then they ought to be allowed to choose the candidate that they want to represent their ideas.

Therefore, Madam Temporary Chairperson, the public ought to know that when the proposers of this Bill define the term 'direct nomination and indirect nomination', 'direct nomination' only means that members of that particular party and if it is a coalition party, members of the two political parties.

For example, if it is Jubilee Party and Orange Democratic Movement (ODM), those members of Jubilee and ODM will participate in either a direct nomination where it is universal suffrage or indirect nomination where it is through delegates.

Madam Temporary Chairperson, on the issue of ideology, it is about time that we tried to demystify what this ideology means. I was listening to Sen. Murkomen trying to -

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**The Temporary Chairperson** (Sen. Nyamunga): Sen. Olekina, please let us not go into the debate

**Sen. Olekina:** It is not about the debate. Kindly allow me to clarify one thing. Kin. When I heard Sen. Murkomen say to the public that the registrar of political parties might say that this ideology is similar to the other, that would encourage more parties to come into one and form a coalition.

I think that will encourage more parties to come into one and form a coalition. It is about time that we look at other democracies.

Madam Temporary Chairperson, this is my last comment on it. In the United States of America (USA) the Democrats subscribe to a bigger government where the government is in the peoples' while the Republicans are more conservatives. They want

lesser government in their life and want to pay less taxes. I think this is now an important issue at this age of our democracy in this country.

That is why I strongly oppose this amendment being proposed by my colleagues. The proposers of the Political Parties (Amendment) Bill saw it fit to try and clarify so that we can now be voting for people based on issues.

Thank you.

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, I am saying this for the third time. If you are bringing an amendment, just tell the House why you are making an amendment. If you are supporting or not supporting an amendment, just give us the rationale. It is as simple as that. Please let us not debate at the Committee of the Whole.

Yes, Senator.

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Chairperson, I just wanted to comment on the point that you are making. The Third Reading does not have a debate as in the Second Reading. On the Third Reading, Members can again have an opportunity to make general comments. During the Committee of the Whole House, the mover is supposed to justify to the Committee why that amendment is necessary and there should be an engagement.

I do not think even the Members who are contributing are doing the right thing. We should interrogate the Mover on specific provisions on why you need that amendment. It is almost a question-and-answer session. But you know we are now in debate which was there during the Second Reading.

In fact, I have realized that in this House, people do not use the Third Reading in the way that it should. So, you stand guided.

*(Laughter)*

We must now be technicians so that we interrogate why these amendments are necessary. I think we are debating again and that was during the Second Reading. The Clerk-at-the-Table can advise.

Madam Temporary Chairperson, I forgot. In the old Parliament, Sen. Wako used to move so many Bills. As the Attorney-General he would be engaged specifically on each and every word, a comma and so on in the Third Reading. Not a general debate.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): Division will be at the end.

*Clauses 3-6*

*(Question, that Clauses 3, 4, 5 and 6 be part of the Bill, proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): Division will be at the end.

*Clause 7*

**The Temporary Chairperson** (Sen. Nyamunga): Mover of the amendment, Sen. Wambua.

Sen. Olekina, are you moving on behalf of Sen. Wambua?

**Sen. Olekina:** Yes.

**The Temporary Chairperson** (Sen. Nyamunga): Okay, go ahead.

**Sen. Olekina:** Madam Temporary Chairperson, I have been delegated by Sen. Wambua and upon consultation with him and all the other colleagues, Sen. Wambua has chosen to withdraw the amendment.

**Sen. Cheruiyot:** On a Point of Order Madam Temporary Chairperson.

**The Temporary Chairperson** (Sen. Nyamunga): You know I have not even given you the microphone. You can go ahead anyway.

**Sen. Cheruiyot:** Thank you, Madam Temporary Chairperson. You know you are my good neighbour. Sen Wambua talked to me two minutes ago. He was trying to convince me to support his amendment. We were seated there. I do not know who called him but it was something written: "H E SKM."

I suspected maybe it was his Party Leader or something. He is behind there, in the consultation room. We can give him a minute to come back. He mentioned to me that he needed my support for his amendment.

**The Temporary Chairperson** (Sen. Nyamunga): You know there is only one option if he is not there to move the amendment. We can only drop it.

**Sen. Cheruiyot:** Alternatively, we can move to the next amendment as a matter of procedure, then he will formally withdraw.

**The Temporary Chairperson** (Sen. Nyamunga): It is never done that way.

**Sen. Cheruiyot:** There is the procedure of withdrawing an amendment Madam Temporary Chairperson.

**The Temporary Chairperson** (Sen. Nyamunga): The procedure is that if he is not there, we just drop the amendment.

**Sen. Cheruiyot:** No, Madam Temporary Chairperson.

**The Temporary Chairperson** (Sen. Nyamunga): Look at the Standing Orders.

**Sen. Murkomen:** On a Point of Order Madam Temporary Chairperson.

**The Temporary Chairperson** (Sen. Nyamunga): What is your Point of Order, Sen. Murkomen?

**Sen. Murkomen:** I totally agree with you Madam Temporary Chairperson that as per the Standing Orders, the amendment is withdrawn if the Member who is moving the amendment is not here.

What we are addressing is the move by Sen. Olekina purporting to withdraw an amendment on behalf of Sen. Wambua because there is no such a procedure in the Standing Orders. I am saying this because the danger out there is that the people of Kitui are watching and this can create two scenarios.

One, that Sen. Wambua ran away when serious business was coming, or that he was coerced and ran away or that he is being arm-twisted to withdraw an amendment. If the right procedure is followed---

**The Temporary Chairperson** (Sen. Nyamunga): Senator, it has always been our procedure. I have seen several Senators move amendments on behalf of others. It has been a practice in this House.

**Sen. Murkomen:** Madam Temporary Chairperson, Sen. Wambua is a very honourable man. He could have decided to follow the Standing Orders by absenting himself for purposes of this thing to be withdrawn honorably. However, the voice given by Sen. Olekina gives a different impression.

**The Temporary Chairperson** (Sen. Nyamunga): Let us cut the long story short. Just hold it. We drop Sen. Olekina's statement because we cannot prove it. We just drop it out altogether and move forward. That is the best that we can do.

Let us move forward.

*(Proposed amendment by Sen. Wambua dropped)*

Clause 8

*(Question, that Clause 8 be part of the Bill, proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): Division will be at the end.

Clause 9

**The Temporary Chairperson** (Sen. Nyamunga): Mover, Sen. Cherargei.

**Sen. Cherargei:** Thank you Madam Temporary Chairperson. I beg to move- THAT the Bill be amended by deleting Clause 9.

When you look at Section 10(1) of the principal Act that is amended by inserting the words, "or a coalition of parties" immediately after the words "form a coalition".

The input is that you do not need to form a coalition. As at now, under the Elections Act, you form a coalition and then you deposit the coalition agreement with the Registrar of Political Parties. It is now trying to use a conglomerate party here or the party that is amorphous. Something that does not --- where you are now using a political party or a coalition of political parties instead of political parties coming together to sign a coalition agreement.

What they are now trying to do is using the coalition of political parties. If for example there is a party called *kuzimia* coalition party of Kenya, it can come together and say that this is *kuzimia coalition* political party of Kenya. Then the next part says that, "provided that in the case of coalition political party, the coalition political party shall submit coalition agreement at least 120 days before a General Election."

The import is under the Election Act as it is, there is pre and post coalition agreement that has been deposited with the Registrar of Political Parties. The fact is that you want to force. In my culture, because we take care of cows, there is a saying that, you do not force cows to take water. In reality, you are trying to force that if there is to be a coalition of political parties or formation of a coalition, then it must be done within four months.

I am therefore proposing that this Clause 9 be deleted and remain as it is under the Principal Act. That is my justification

I thank you.

**The Temporary Chairperson** (Sen. Nyamunga): There are further comments by Sen. Murkomen but first, let me propose.

*(Question of the amendment proposed)*

Sen. Murkomen, you may proceed.

**Sen. Murkomen:** Thank you, Madam Temporary Chairperson. Sen. Cherargei is making a very important point here, that there is this creation of a coalition political party. I had already proposed its definition be removed in the definition political party because I do not think it is a political party.

However, we must keep our eyes on the issue of forcing this coalition political party to submit the coalition agreement at least 120 days, which is four months, before the general election. This creates a contradiction with the timelines required for coalition agreement, which is three months.

Furthermore, this period of time is a bit long, I want to help our friends because we are not the ones who intend to apply this Clause. The Minority side would really want to have this put in place by April, which is four months before the election. This is too early and by that time, you may not be ready. Ordinarily, if a Kenyan would challenge---

**The Temporary Chairperson** (Sen. Nyamunga): Senator, you are now surpassing.

**Sen. Murkomen:** Madam Temporary Chairperson, little but not so much. If a Kenyan was to challenge this constitutionality of timeline for coalition agreements, they would succeed for two reasons. One, constitutionally, a political party should be able to come together anytime. In parliamentary system of Government, coalition arrangements can happen one morning and in the afternoon the Prime Minister is removed.

In our situation we have constricted. Four months is the period given to whatever is now called a coalition political party. For the parent Act of 2011, it is three months. I think this time is unnecessary. Pre or post, at any given time, political parties should be able to come together and form a coalition.

If the Government of the day feels they have become weaker in Parliament, they can rope in another party and form a coalition. In the case of our friend, the President, he struggled to do the same. Unfortunately, he had only 10 per cent of the support from the Majority side.

**The Temporary Chairperson** (Sen. Nyamunga): Do you see the direction you are now taking?

**Sen. Murkomen:** Madam Temporary Chairperson, it is a live example.

*(Sen. Orenge spoke off record)*

I would like to tell Sen. Orenge that this Bill is not in abstract because I can see he is very agitated. This Bill is a culmination of the handshake. You know this marriage is supposed to be consummated.

**The Temporary Chairperson** (Sen. Nyamunga): Senator, can you stick to the amendments.

**Sen. Murkomen:** Yes, Madam Temporary Chairperson. That is why I am saying, I still think it is unconstitutional to lock political parties from forming a coalition political party or a coalition, including even the parent Act. Therefore, the wisdom that comes with this Bill and Sen. Cherargei's proposal, is that these 120 days are unnecessary.

**The Temporary Chairperson** (Sen. Nyamunga): Proceed, Sen. Cheruiyot.

**Sen. Cheruiyot:** Madam Temporary Chairperson, for the umpteenth time I will repeat to my colleagues. Please, listen to good reason. It will help this law of yours in the fate that awaits it in the courts.

I will give you a very clear example. Sen. Cherargei is trying to assist you and I do not know if he is even aware this. Sen. Pareno, you have run political parties and you know that about a year to elections IEBC publishes regulations and timelines that will govern the forthcoming general elections.

In the general elections of 2022, political parties were supposed to submit at least four months before the day of nomination, their nomination rules. Virtually, all political parties have already submitted their nomination rules. The IEBC has further published that by 22<sup>nd</sup> April, 2022, every political party in the country should have conducted its nominations. Four months before as per IEBC regulations, you should have already submitted your nominations regulations.

As we speak today, 26<sup>th</sup> of January, 2022 you hardly have two months to the nomination deadline. If you pass this law and convert yourself to a political party that you will call *Azimio* or whatever, you are already afoul of that particular Regulation. By the time you will be formed into a coalition political party, where is the four months that you need so as to submit your regulations?

In fact, you will have to apply to IEBC to selectively make rules for you as an individual party, to allow you to submit your regulation rules. On that basis alone, part of these Clauses will actually lead to this law being annulled by the courts.

Madam Temporary Chairperson, I hope our colleagues listen to this and perhaps agree with Sen. Cherargei. This makes a good proposal that individually, you can remain as a party but not a coalition political party. Otherwise, many of us will be waiting to see how IEBC will treat this particular coalition political party. If they are allowed to submit nomination rules outside the regulation time, then many other political parties will request IEBC to vary as many things as possible, as opposed.

That is why the submissions of IEBC raised a valid concern about this particular Clause. They said that you are now forming a political party while way deep into the electoral cycle and there are things that political parties should already have done by that particular time. I do not know but that presents a challenge. Therefore, it is for that good reason that I support what Sen. Cherargei is proposing.

**The Temporary Chairperson** (Sen. Nyamunga): Division will be at the end.

*Clause 10*

*(Question, that Clause 10 be part of the Bill, proposed)*

Division will be at the end.

*Clause 11*

**Sen. Murkomen:** Madam Temporary Chairperson, if there is a Clause that colleagues here should support, I beg them to support amendment of Clause 11 for two reasons. One, it does not fall within your political contest out there. It is about the debate that has been going on in the country about what Parliament wants or who wants to form a political party where or a coalition and so forth.

Clause 11 emanated from my experience representing Sen. Mwaura. I have to give the explanation of the proposed New Section 14(a). I have said we delete the (4) and substitute with the following which says:

“upon notification under sub-section 3---”

This is the procedure I would like us to follow.

“The Registrar shall where she or he is satisfied that the political party has complied with the procedure under sub-section 2 notify the member of receipt of the notification of the member’s resignation from the political party”.

That is on part one. So, when the political party deems a member to have resigned from a party, that notice is sent to the Registrar for purpose of removal of that member from the political party because he is deemed to have resigned from the party. Up to there, we notify the Registrar.

However, the other additional provision I have added there that I want us to really interrogate is the part that says:

“The registrar shall upon issuing the notification to the member under sub-section 4, publish by notice in the gazette, the registrar’s intention to remove upon the expiry of 21 days after publication of the notice, the members name from the register of the political party.”

Madam Temporary Chairperson, the explanation is that at the moment because of the absence of this type of law, a political party would put together a disciplinary panel under its own constitution. This is what happened with Jubilee Party in the situation of Sen. Mwaura.

Then they quickly moved that disciplinary process, expelled the Member at about 5.00 p.m., 4.00 p.m. or even 3.00 p.m., sent it to the Registrar immediately because the Registrar is compliant to that political party. She receives the notice for expulsion of the Member and the Government Printer is on standby with an already prepared gazette notice for removal of the Member. So the name of that Member moves from the party, it goes to the Registrar; the Registrar signs that night and sends it to the Government Printer. By midnight, the Member is removed from the party.

Then you wake up in the morning to run to court to get court orders to stop the implementation of that gazette notice. By the time you are even filing the matter, the Speaker of the House has announced that your job is gone. That is exactly what happened in Sen. Mwaura’s case. What only saved us was that the process of replacing him took a little longer time. It did not reach the Speaker and we got orders in the middle.

Now, what is the proposal here? Let the Registrar of Political Parties receive the notice from the party and send it to the Member telling the Member: “I have received notice that you have been expelled from your party or deemed to have resigned from your party. Take notice that upon expiry of 21 days, you will cease to be a member of that party and therefore the expulsion takes effect.”

What does that do? It gives a member the opportunity to exhaust the legal procedures that are existing in the party either by going to the Political Parties Tribunal or going to the High Court. Twenty one days are good enough. If in 21 days he has not got the remedy he requires, then the expulsion takes effect.

Why am I saying this? We should not be in a hurry to remove someone from a political party. We should not be in a hurry to remove an elected leader from his position in Parliament.

There are other ways a party can discipline its Members. They can deny him opportunity in some committees, they can do all these other things, they can even deny him the certificate later and so forth. However, to remove a popularly elected leader in such a cavalier manner and in a manner that is so expedited, I think it is unfair. Therefore, I am requesting my colleagues to accept this.

I only read part 14(a) which is for situations where the party deems the member to have resigned from the party. There are many reasons for deeming a member to have left the party: They have said supporting the ideology of another party, supporting the formation of another political party and so forth.

If you look at part (b), it talks about expulsion of a member from the political party. Again, a similar procedure. Let the party hold its internal inquiry, sent the letter and let the process follow.

I have the experience on this matter and I am almost clear in my mind that even in the next Parliament one of us here might face the same procedure similar to what happened to hon. Aisha Jumwa, the late hon. Dori and I represented him as well, May God rest his soul in peace; and now Sen. Mwaura's case.

I am begging Members because this Clause 11, which I am amending has nothing to do with other debate there. It is just giving members a fair hearing, fair processes and opportunity to exhaust existing legal mechanisms including court processes so that after those 21 days if you do not get the remedy that you require or you do not have a court injunction, you did not succeed in court and the party has the capacity to deal with it in court, then you can now be removed from the party.

However, what is happening at the moment is that people are being removed at lightning speed especially because the government of the day is in control of the procedure. This is dangerous.

The government of the day tomorrow might be Sen. Murkomen. Murkomen is a fair man but it can be someone else that will do the same to colleague here whom they are together in the same party and they have disagreed.

Let us do law for posterity and this provision is useful for county assemblies. I do not think there is a Senator here who is in legal practice including Sen. Mutula Kilonzo Jnr. who has never received a case from the county assembly, National Assembly or the Senate of a party trying to expel somebody from their political party and you are running around to get orders in time before they gazette that expulsion. I think this is a fair provision

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Cheruiyot, please just be direct to the point.

**Sen. Cheruiyot:** Madam Temporary Chairperson, I have listened to Sen. Murkomen. There is something still constitutional about it and I wish the promoters of this Bill would listen to good reasoning. I am sure if they had listened to Sen. Orengo's advice they would not have had this provision.

This is because what Sen. Murkomen is proposing actually gives strength to Article 103(3) of our Constitution that Parliament shall enact legislation providing for circumstances under which a member of a political party shall be deemed for purposes of Clause 1(e) to have resigned from a political party. It speaks about resignation only. It is not even about this business of expulsion and so it leaves me wondering.



Even as we debate about what he is proposing to us and wanting to guide us as an institution please reward so that you give additional time I would want him to clarify because that is the purpose of this particular stage when you do amendments, that you issue clarifications and those of us who are not clear about it.

Is it for resignation purposes or for expulsion? If it is for expulsion according to my reading of this particular wording of this Clause, then it is completely out of the law. This is because nowhere in our Constitution does it speak about the expulsion of a Member of Parliament. It is about resignation and providing circumstances under which a Member is deemed to have resigned but not about expulsion. Therefore, Sen. Murkomen needs to first of all give us that clarification then perhaps if that is clearer for me I can make up my mind whether to support him or not. That is the purpose of this.

**Sen. Murkomen:** If Sen. Cheruiyot cared to listen and not to be distracted by Sen. Ngugi, who is not facing elections---

**Sen. Ngugi:** *Umeseema nini?*

**Sen. Murkomen:** I did not know Sen. Ngugi was still here, but your consultation was---

**The Temporary Chairperson** (Sen. Nyamunga): What is your intervention, Sen. Ngugi?

**Sen. Ngugi:** Madam Temporary Chairperson, we will know whether anyone is vying for any position - even the civil servants - on 9<sup>th</sup> of February. I did not know that nowadays the Senator for Elgeyo-Marakwet is a Commissioner in IEBC.

**Sen. Cheruiyot:** On a point of order, Madam Temporary Chairperson. Sen. Murkomen used very wrong words; he said: "If I cared to listen". How do we help such a man? It is his amendments we are trying to clean up then he is using not very friendly language on us. If he does not withdraw that remark, I will withdraw my support for these amendments.

*(Laughter)*

**Sen. Murkomen:** Madam Temporary Chairperson, I want Sen. Cheruiyot to listen very carefully. He can withdraw his support for this Bill but we can come and use it against him in the next few months. The point I am making is that, if Sen. Cheruiyot cared to listen to my earlier presentation which Madam Chairperson followed so keenly and I was watching you. I said that already the Act has provisions on the expulsion of members from a political party. That is the one that was used against Sen. Mwaura, hon. Aisha Jumwa, hon. Dori and all other Members. Although they survived at the Court of Appeal.

So if he listened to what I said, the current existing provision on expulsion, we need to provide a mechanism that allows a Member to have time to seek for legal remedies in a court of law in as far as expulsion is concerned. Since this Bill was giving also a similar provision on when a Member is deemed to have resigned from the party and that deeming to have resigned is emanating from the Constitution, so this is the structure of how to operationalize it. I also said after the Registrar has received that notification from the party saying so and so has been deemed to have resigned from the party because he is promoting another party or ideology---

In the same way, after the Registrar of Parties has received a notification from the party saying so-and-so has been deemed to be promoting another party's ideology or is

part of the formation of another party. The registrar should gazette the deeming, which is like a removal or expulsion. The member should then be given 21 days to wait for his fate.

If he decides not to take legal action after 21 days he ceases to be in that party. If he or she goes to court and gets interim orders and eventually succeeds in court so be it. If he or she does not go to court, then they are expelled. That is the point I am trying to make. Of all the amendments that are here, I am sure, nobody has been given any instructions by their political party against it because it is new and useful to all of us.

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Cheruiyot, can you conclude.

**Sen. Cheruiyot:** Madam Temporary Chairperson, it is my job to also make---

*(Senators spoke off record)*

**Sen. Cheruiyot:** Madam Temporary Chairperson, it is still not clear. I do not think he equally cared to listen though I want to use better English than what he is supporting. My reading of Article 103 (3) about the legislation that we are enacting for purposes of somebody being considered to have resigned. He has now clarified about the specifications and he has made it clear that it is about the process for him. That is what matters at the end of the day so that you do not have a situation as what he has briefly described.

I really wanted to hear the comments of the Senator for West Pokot County because previously under the old Constitution something similar to this has been applied to him. On one fine morning in 1988, he said something that Kenya African National Union (KANU); the then ruling political party found to be have been offensive against the party leader and the party and they removed him actually within an instance of being a member of parliament.

In fact, he once said that, he had walked out of parliament to do something and when he came back, the serjeant-at-arms could not allow him back to the to the precincts of parliament because he had lost his membership to this House. How such a man, 30 years later comes to support this legislation with all the uncertainty about it, without giving life to the process that Sen. Murkomen is describing baffles me. It is something that I would wish to request my colleagues; that even if they love their party leaders or political parties, this is not legislation that you pass.

I cannot pass this legislation even if I am sure that my own father is the party leader of the party that I belong to. Why would you want to make it easier for somebody if you disagree politically and you know, the things that make some of these party leaders of ours angry, you make it easier for them to kick you out of political parties?

The Constitution, actually gave us powers as legislators to legislate how we can be removed from Parliament. Then we come and make it so easy for them to kick us out. Surely, have we lost our minds? We need to be clear about this, and listen to the proposal that is being given to us. You are being told at least let us then set out a process. Give it time lines so that you are able to be given time to prepare yourself and prepare a response.

My good friend, Sen. Madzayo, is a believer in the rule of law. You believe in Justice. Please allow this provision to be amended as is being proposed by Sen.

Murkomen. What is so difficult in giving a political party, whatever time that is mentioned? Be it even six or seven days as he is proposing. Then you present yourself, make a case, at least you are able to—even within the intervening time—push for mitigation of whatever they are proposing in certain quarters.

Otherwise, if we make it immediate and you know how when they want to kick you out of Parliament, it works like clockwork. We have sat here on certain occasions when we have handled impeachment of Governors and by the time we are walking out to the parking, the Gazette Notice is already out. That is what is going to happen to us, yet we want to give them this registration. Surely, colleagues, it is not fair. I plead with you to listen to this proposal. For that good reason, I support this amendment.

**The Temporary Chairperson** (Sen. Nyamunga): Proceed, Minority leader.

**The Senate Minority Leader** (Sen. Orenge): Madam Temporary Chairperson. I just wanted some clarity from the chair, although there is already precedent on how to deal with special sittings. The Gazette Notice No.429 that was issued by the Speaker on the 20<sup>th</sup> January, 2022, directed that the special sitting on Tuesday and Wednesday, shall commence settings are 2.30 p.m.

What is significant in this Gazette Notice is that it did not state the period for that special sitting. So that when the special sitting is within the day it can go on until midnight. In fact, that has happened before. This was very deliberate on the part of the Speaker. I think we should have some clarity that this special sitting commences at 2:30, but it goes on, so long as we do not go to one minute past midnight of the 27<sup>th</sup> day of January because on the 27<sup>th</sup> day, the special sitting starts at 10.00 a.m. The Gazette Notice is quite clear.

Otherwise, where the Standing Orders state that we should sit from 2:30 to 6:30 p.m. a Motion would have been necessary to extend the sitting until a later time. I just wanted that clarity because it has been a practice that where the time of ending the sitting is not stated so long as it is within the day you do not need to rise in a Point of Order to extend the time because you are extending it from what time to what time. It would have extended time if it stated that the time ends at 6:30 p.m.

Equally, the Speaker knows that sittings normally start at 2:30 p.m. in the afternoon. He need not have stated it or he could have said 2.30 to 6:30p.m. I just need direction because there has been practice on this in both Houses and it is not really a matter for debate because the Gazette Notice speaks for itself.

**The Temporary Chairperson** (Sen. Nyamunga): We are not going to debate on that. I will give the way forward on that shortly. Sen. Murkomen Proceed.

**Sen. Murkomen:** Madam Temporary Chairperson, on matters extension of time in your clarification, the first thing is to ask whether the Chair of a Committee can give directions on the matters of time at the Committee stage while chairing a committee.

Second, precedent which has been there even before when we have had special sitting particularly at the time when we were considering the Division of Revenue Bill. We had to extend time. One had to come with a Motion to extend time. Even then, the Gazette Notice did not state that the sitting would be from 2.30 to 6.30 p.m. The last thing is about yesterday. What happened yesterday? Thank you.

**The Temporary Chairperson** (Sen. Nyamunga): Yesterday there was no business. I am giving a direction on that shortly. Sen. Cherargei Proceed. Kindly let us

be brief and to the point. Tell the House why you are supporting or not supporting the amendment.

**Sen. Cherargei:** Madam Temporary Chairperson, I think we are here up to midnight. Time should not be an issue. When we see the introduction---

**The Temporary Chairperson** (Sen. Nyamunga): It is not a matter of time but we need to be seen to be moving forward.

**Sen. Cherargei:** Madam Temporary Chairperson, in any principles of natural justice, justice ought to be done at any given time. The proposal of introduction of section, and I know most of my colleagues who are nominated, especially those that belong to the Jubilee Party have been living under morbid fear for the last three years because somebody wakes up one morning and decides to remove you from the party list.

The Registrar of Political Parties degazettes you and before you know it you are out of Parliament. It will be contravening principles of natural justice. The introduction of the New Section by Sen. Murkomen, which proposes 21 days is very important because it will give proper timelines. It will give proper timelines, so that you do not wake up one morning and you are not a Member of Parliament (MP), Member of County Assembly (MCA) or any other elective position.

Madam Temporary Chairperson, what Sen. Murkomen is trying to do is to ensure that the principles of natural justice and its principalities--- He taught me because he was a lecturer in Moi University School of Law. He is trying to be meticulous and ensure that when you are removed---

The only protection that elected Senators have is that we cannot be removed, but nominated Senators can. In fact, I can confess that people like the late Sen. Prengei were being told to vote out Sen. (Prof.) Kindiki, so that they are not removed from Jubilee Party.

Sometimes parties in Kenya belong to particular individuals who have interests. Today, if you vote against a party position because of your conscience and your party leader believes that you defied him or her, you can lose your position.

Madam Temporary Chairperson, secondly and finally, is the freedom of association and engagement. You can imagine if I come to your county and conduct a *harambee*. You are a Member of ODM Party while I am Member of the United Democratic Alliance (UDA) Party. Somebody somewhere may think that you are promoting ideologies of another political party. Therefore, I think we need this new clause. I call upon my colleagues to support it because this is new. I do not think there are any instructions to oppose it.

Madam Temporary Chairperson, I support.

**The Senate Minority Leader** (Sen. Orenge): Madam Temporary Chairperson, I oppose the amendment. The reason I oppose the amendment is because the Mover has not been clear on this issue.

First of all, there was a certificate accompanying the Bill that was not taking away the right under the Bill of Rights. That is to say that the Bill of Rights has not been touched. If you look at the Clause, it requires that notification should be given to the member. Secondly, the member must be given a fair opportunity.

If you read this particular Bill, because the law should be read holistically, you do not just read one Section and then assume that, that Section will help you understand the Bill properly.

Since the Bill of Rights has not been negated by this Bill, the governing legislation then would be Article 47, which guarantees that if any institution of Government makes an adverse decision, you should be informed and know the reasons. Then there is the Fair Administrative Action Act.

Madam Temporary Chairperson, I just wanted to inform the Committee that if you look at Section 4 of that Act, and that is why Sen. (Dr.) Mwaura succeeded, the requirements under the Fair Administrative Action Act are onerous. You must be given notice, fair hearing and opportunity to cross-examine. The right to review the High Court and go to the Court of Appeal is also in this Act, and it has not been negated.

*(Sen. Murkomen stood in his place)*

When you were speaking, I did not rise. Why are you agitated? I am just---

*(Sen. Murkomen spoke off record)*

**The Temporary Chairperson** (Sen. Nyamunga): Just let him conclude, I will give you an opportunity.

**Sen. Murkomen:** Madam Temporary Chairperson, I want Sen. Orengo to relax because points of order are allowed by the Standing Orders. When he becomes the governor of Siaya and they come for his MCAs voting for his Motion and they want to expel them, he will remember me in this Chamber.

I am raising this point of order because I did not say the Bill does not allow a member to go through all the motions. Again, Sen. Orengo is misinterpreting or misleading the public as to what I said.

I said that when the process is completed and sent to the Registrar of Political Parties, there is nothing that intervenes between the period that the decision by the party is made, the gazette by the Registrar and removal of a member from the Chamber. There is no law that intervenes. Sen. Orengo, I am sure you are sharp enough to appreciate what I am saying.

I even gave the example of Sen. (Dr.) Mwaura who was removed at 4.00 p.m. A party could have gone through all its disciplinary process, but makes a decision at 4.00 p.m., and sends it to the Registrar who could be sitting on her desk. By 4.10 p.m., the Registrar issues a gazette notice for removal of the member.

By 4.30 p.m., that gazette is already with the Government Printer. By 5.00 p.m., the person is expelled from the party and loses their position. That is what I am talking about. It is not the process of being heard by a party after a disciplinary action.

We know that in the case of Sen. (Dr.) Mwaura, disciplinary action was done and there was enough time. He was even heard and represented, but the problem occurs after that and his ability to go and seek legal intervention, because a Gazette Notice could come immediately and the person is expelled.

In fact, he was lucky that the replacement did not come as fast. If it was fast, he would be gone. So, what that amendment seeks, Sen. Orengo--- Sen. Olekina, do not distract Sen. Orengo because this is a very serious matter, especially for someone who will become a governor.

The problem we are dealing with here is that if Sen. (Dr.) Mwaura had been expelled from Jubilee Party at 9.00 a.m., it would have been possible for the decision to be gazetted at 10.00 a.m., and Sen. (Dr.) Mwaura be announced by the Speaker in the Chamber at 2.30 p.m. as having been removed.

The Jubilee Party would have sent his replacement, which was supposed to be Sen. Leshore by 4.00 p.m. The Speaker would have come back here to make another communication at 6.00 p.m. Even if Sen. (Dr.) Mwaura went to the High Court or the Court of Appeal to reverse that decision, it would have been impossible.

What we are saying is that between the period one is gazetted for expulsion, let the Gazette Notice come out saying that so-and-so has been expelled from, for example, the Jubilee Party, but it will take effect 21 days from the day of the gazette.

That is all Sen. Orengo.

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Chairperson, even for purposes of election petitions against members, once---

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, I would like to interrupt a little bit and give a direction that when we were given the notice for this Sitting, it was to start from 2.30 p.m., and there was no limit of time. Therefore, we are going to sit today until we finish this matter. We are following precedent. This is not the first time that this is being done.

Senator, you can continue.

**The Senate Minority Leader** (Sen. Orengo): I have seen this in election petitions. In fact, there was an order that went to the Speaker for removal of Sen. Wetangula from this House. According to the Election Petitions Act, once your election is nullified, then it is for you to take the action. If you are indolent, then that right will lapse.

My position is that once you have got constitutional protection and you are not indolent – like Sen. Mwaura was not indolent and ran to court and got stay orders – any member who is affected by the decision of the Registrar of Political Parties and is conscious of their rights, I am sure that that Gazette Notice will not hit the assembly or the Senate before an action is taken.

More importantly, there is constitutional protection where there is a threat. Under Articles 22 and 23 of the Constitution, you do not need to wait until you are removed.

You can even avoid the Registrar and say there is a real threat for your removal and you can invoke Article 23 of the Constitution even on a mere threat. At the end of the day, it is Sen. Murkomen we should be interrogating, and he should give clarification. The amendment is not mine. Instead of waiting for us to seek clarification, he is giving us a lecture and Sen. Cheruiyot is also giving us another lecture. In a way, they are talking to themselves. How are they going to persuade us?

The Members have had the notice of the amendments that they have and this is not a debate on the Bill; it is on the specific amendments that they are trying to bring. We seek clarification from them. In fact, there should be a question and answer, but if they lecture us, then the only thing that we can do is listen.

**Sen. Olekina**: Thank you, Madam Temporary Chairperson. I would like Sen. Murkomen to convince me because Clause 11, which he seeks to amend says that the Registrar is then mandated under the proposed Section 14A(iv) to remove the name of the member from the register within seven days. It further says that where the Registrar is not

satisfied with party decision, the Registrar shall refer the matter back to the concerned political party for reconsideration.

I seek clarity on whether they are seeking to have a period where when the member has been either expelled or has resigned, there is another period of 14 days to allow him to follow through the due process or it is 21 days. What about these seven days the Registrar has been given? What about this rider that the Registrar has to be satisfied? Does it not help in any way?

**Sen. Murkomen:** For the record, this is one thing I will want to convince us to support. Sen. Olekina has asked for a very important clarification. The seven days is the period within which the Registrar must act. Let me put it this way. The party has sat down, had its disciplinary Committee meeting and expelled member X and they send the letter to the Registrar. They tell the Registrar that “Mr. X has been removed from our register, kindly effect the removal”.

When the Registrar receives the letter, he has seven days to act, and so they act within the seven days. Assume they act on the first or last day, that is not my problem. Once they act by agreeing to expel Mr. X, that expulsion should take effect within 21 days, starting from the day when your name was degazetted from the register.

The point is this: The Registrar will gazette your removal by stating to the Government Printer that from this day, 26<sup>th</sup> January, 2022, 21 days from this day, so-and-so will cease being in the register. Those 21 days gives one the opportunity to seek legal redress. If you do not succeed, then in 21 days you are done.

Sen. Orenge appreciates this position, but says it is up to one to run around the courts. As I told you, in the case of Sen. (Dr.) Mwaura, we ran around the courts the time between his expulsion from Jubilee and the Registrar gazetting his expulsion. He was expelled on a Monday afternoon. The Registrar gazetted his expulsion and the Speaker communicated the next day that he had been expelled. All that happened before we got an order.

What saved him is that his replacement did not take effect in good time. If it had happened that fast, Sen. (Dr.) Mwaura would be in court today seeking to come back because he would not get legal redress in the interim. Gladly, the High Court also acted very first. Justice Serگون did a good thing to make his decision within 3 months. Had they taken six, eight or ten months, we would still be in court waiting for that decision, and we would have gone to the next election before he would be reinstated.

This is something I am begging to explain to us. I jokingly told Sen. Orenge that though it applies to all of us who are going to be governors, that this is the power that the political parties can use if they are unhappy with one. They know that it can be difficult to impeach a governor because he is working with a certain number of Member of County Assemblies (MCAs) who are supporting him. The party will then put up a kangaroo process and expel the members who are with the governor. If the governor runs to court and they move with the same speed, they will just expel them and the impeachment process takes place very first. This thing is useful to all of us in many ways as individuals, governors or people interested in governance and well-being of our counties.

**Sen. Faki:** Thank you, Madam Temporary Chairperson. I also wish to seek a clarification. There is due process throughout the Act even under the Fair Administration

Act and the Constitution. They provide for due process. I think this amendment from Sen. Murkomen is to have another layer of protection after the judgement.

It is like saying that in a criminal trial, once somebody is convicted, we give a notice of that conviction that he is going to serve time at Kamiti Maximum Prison 21 days from now. This is not possible because the decision is supposed to take effect immediately. It is up to you to run to the courts within the seven-day window and protect your interests. Giving another seven days appears as if the member was not aware of the proceedings taking place before The Political Parties Tribunal (PPT) or even before the court where the decision has been made for the member to be expelled.

Madam Temporary Chairperson, I do not think the seven or 21 days will be a viable position.

**The Temporary Chairperson** (Sen. Nyamunga): Division will be at the end. Sen. (Dr.) Mwaura, do you have further amendments? We drop that one.

*Clauses 12-19*

*(Question, that Clauses 12-19 be part of the Bill, proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): Division will be at the end

*Clauses 20*

**Sen. Cherargei:** Madam Temporary Chairperson, I beg to move: -

THAT clause 20 of the Bill be amended by deleting the word “ninety” appearing immediately after the words “therefor the word” and substituting therefor the word “thirty”.

The clarification on this is that we should not force coalition agreements to be done within three months. I know that the National Assembly reduced it from 120 days to 90 days. The import is that we should allow coalition of parties. We should reduce it to at least 30 days. When coalition of political parties come together and they want to run jointly for a general election in the Republic of Kenya, 30 days is more than sufficient. What they need to do is to draft that coalition agreement, agree on terms of engagement, and they can come up with the deposit before. That is at least 30 days before the general elections, which should be around July.

It applies *mutatis mutandis* 30 days after the general election.

Madam Temporary Chairperson, we will be disallowing it because we know the nature of our politics. For example, civil servants have been told to resign by 9<sup>th</sup> February and yet coalitions need to be made 90 days before the general election. This means that civil servants will have to resign and form a political party, a coalition party or a coalition agreement. Therefore, the 90 days period is a bit pressing and stifling the growth of democracy. This is because we need people to make their decision as practically as possible.

This general election of 2022 is unique because the winners are known. In the past, winners were known a month or even weeks to the general election. Therefore, this amendment is straightforward. It will reduce the number of days from 90 to 30, or one



month so that there is sufficient time for parties to engage and allow the growth of democracy.

I thank you, Madam Temporary Chairperson.

*(Question of the amendment proposed)*

**Sen. Cheruiyot:** Madam Temporary Speaker, I was listening to the people who want this rope so badly. I want to see their faces after 22<sup>nd</sup> April once they have equally been hanged across their counties, especially these ones.

Before making my submissions, I want to understand why Sen. Cherargei wants 30 days. I thought this is business that can be transacted within two weeks. You should open this window up to as late as even---

*(Loud consultations)*

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, can you give Sen. Cheruiyot time to execute his point, while he is supporting that amendment?

**Sen. Cheruiyot:** You can first go look for Sen. Kwamboka up there. She needs to see you then you come back later.

**The Temporary Chairperson** (Sen. Nyamunga): Now you are getting out of order.

**Sen. Cheruiyot:** Madam Temporary Chairperson, this is the point that I wanted Sen. Cherargei to clarify for me. In our political seasons, we have seen coalitions being formed up to the last week before the general election.

If you remember in 2013, within the same week, certain political players cast their lot with one side of the coalition at Kenyatta International Convention Center (KICC) about two weeks before the election, before quickly crossing over to Jevanjee Gardens to join the eventual winning coalition; the Jubilee Coalition.

Sen. Cherargei needs to convince those of us who want to support his amendment. Why 30 days? I thought he should leave it to the last week before general elections and also to the discretion of those who want to deposit.

At the end of the day, like we have said---

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Cherargei took a lot of time explaining that.

**Sen. Cheruiyot:** No, he explained from 60 days to 30 days. You should tell Lawrence, at the Table, not to interfere too much. He is giving you the wrong directions. You need to follow my trail of thought. He explained from 60 to 30 days.

**The Temporary Chairperson** (Sen. Nyamunga): I am listening. I heard him explain up to 30 days. So, you wanted him to shorten it---

**Sen. Cheruiyot:** My question is: Why 30 days and not the last seven days of the coalition? It is a completely different matter.

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Cherargei, can you explain again why not less?

**Sen. (Eng.) Hargura:** On a point of order, Madam Temporary Chairperson.

**The Temporary Chairperson** (Sen. Nyamunga): What is your point of order?

**Sen. (Eng.) Hargura:** I just wanted Sen. Cherargei to be very clear. If I look at Section 30 of the original Act being amended, it says-

“A political party shall, at least, 60 days before a general election submit to the Registrar a register of its members and a statement of its assets and liabilities in the prescribed form.

That register is required when somebody is moving from one party to another. Therefore, it is not about coalition agreements; it is membership register. It should be given as early as possible, so that when a member is moving from one party to another, the Registrar has a register to check against him or her. However, if you say that we give it 30 days, somebody will even be locked out because you will be told that you are in the wrong party because the register is not there.

**The Temporary Chairperson** (Sen. Nyamunga): Proceed, Sen. Shiyonga.

**Sen. Shiyonga:** Madam Temporary Chairperson, I am concerned about the two members. If you look at the way the rhythm and the pattern is, it is like a matter of maybe coming here and entertaining questions. The questions and the discussion is good, but why can they not side-chat and then come? I know it is good and healthy, but for the two--

**The Temporary Chairperson** (Sen. Nyamunga): Continue, Sen. Murkomen.

**Sen. Murkomen:** Madam Temporary Chairperson, I want you to be firm on this. Is it in order for Sen. Shiyonga to insinuate that we should convert this very important Senate to be like Chwele Market, where people converse outside before coming to sell their produce? What we are doing here is on record and will be read by our children, grandchildren, our great grandchildren, and many generations beyond. Each one of us is not speaking to themselves, but speaking to the Senate.

**The Temporary Chairperson** (Sen. Nyamunga): That is concluded. Who was on the---

I will not entertain the back and forth. It cannot just be explaining the same thing back and forth. You better do the right thing; you come here and tell us why the amendment and if you are supporting or not supporting, just tell us why. We are getting into too much back and forth and wasting a lot of time.

Sen. Cherargei, I am giving you a final---

**Sen. Cherargei:** Madam Temporary Chairperson, it is a very important process because we are making laws. This is a House of laws and legislative process must be followed. If we use shortcuts, the courts of law will embarrass us because they will go and overturn the laws we are making and then we will accuse the Judiciary that they are making laws instead of us.

By the time you bring in the party register, registration of members, depositing *et cetera*, those 30 days are more than sufficient. This is because with the technology, there is that transfer through *E-Citizen*. Therefore, it does not need to be many days. It can still be done within 30 days because technology is efficient.

Party register and all these documents that are needed to process coalition engagements and agreements within political parties can be done within 30 days. Therefore, it should not be longer than that because political parties will know their formation or build coalitions within 30 days. We know that it has been one week or less days before. Therefore, that is what I wanted to clarify.

**The Temporary Chairperson** (Sen. Nyamunga): Please, conclude Sen. Cheruiyot.

**Sen. Cheruiyot:** Madam Temporary Chairperson, I am now convinced that the 30-day period specified will take care of all the challenges I was foreseeing and maybe it can be moved closer. I am fine with the 30 days' period. Therefore, I support his amendment.

Thank you, Madam Temporary Chairperson.

**The Temporary Chairperson** (Sen. Nyamunga): I wish to now put the question.

**Sen. Murkomen:** On a point of Order.

**The Temporary Chairperson** (Sen. Nyamunga): One minute, kindly. I am timing these comments.

**Sen. Murkomen:** Madam Temporary Chairperson, there is no Standing Order that gives the Speaker or the Chair to determine the period of speaking. The Chair cannot determine the time.

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senator, it is not going to be back and forth. Just make your comment.

**Sen. Murkomen:** Madam Temporary Chairperson. It is not back and forth. The Chair cannot determine the time. I agree with Sen. Cherargei that the time should be reduced. However, as I contributed earlier, the time should even be reduced to one week or seven days considering that you must give people an opportunity to continue voting for the party they choose. Those people must continue enjoying that choice even up to elections day or nominations.

Secondly, if you look at the party list - and Sen. (Eng.) Hargura captured it well - they are saying 90 days before. I want these proposers to follow this law. Today is 26<sup>th</sup> January, 2021, meaning that from 26<sup>th</sup> February to 26<sup>th</sup> April, 2021, those 90 days will have lapsed by the time this law is coming into effect.

Even for your sake, the 90 days will lapse. We are told to sit here maybe to harass us, finish this thing today because maybe the President is waiting to sign tomorrow, so that it becomes law. You are now going to tell Hon. Members to present the list 90 days before elections. Meanwhile, those 90 days have already passed. What kind of madness is this?

Therefore, instead of moving to 90, we should move it to either 20 or 10 days. Madam Temporary Chairperson, what will you tell the people of Kisumu where Orange Democratic Movement (ODM) is very popular? Forget the sugar-coated *Azimio* Coalition.

That is an ODM zone. Will you tell them that out of the 700,000 voters that are supposed to vote in Kisumu County, only the 200,000 in the ODM register will vote? Those are the ones who will chose the candidates who will now be voted by the 700,000, even though we all know it is the most popular party in that region.

Give people a chance to arrive at a polling station the same morning and say: "I am moving into ODM today and voting for it." He will be put in the register, given a certificate and go.

Madam Temporary Chairperson, I am being frank here. The Registrar of Political Parties said the same with regard to the challenges of implementation when she appeared before the Committee. What this does in areas where certain parties were popular, is that it makes the voters get disenfranchised. They would reach polling stations and be told

they are not in the registers of either ODM, United Democratic Alliance (UDA), Amani National Congress or Ford Kenya parties.

They leave disenfranchised to look for other political parties or independent candidates to vote for when they do not have a chance to determine the person being voted for in their popular party. Can these *Azimio* Coalition people tell us the wisdom that drove them to give us 90 days?

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Nderitu Kinyua.

**Sen. Kinyua:** Madam Temporary Chairperson, I was concerned whether Sen. Murkomen is supporting Sen. Cherargei's and Sen. Cheruiyot's amendments. We need to be specific in order to know whether you are talking about seven or 30 days.

**The Temporary Chairperson** (Sen. Nyamunga): They were asking for further clarifications, but it is on the same.

**Sen. Kinyua:** Madam Temporary Chairperson, I clarify on behalf of Sen. Cherargei that it is seven days.

**The Temporary Chairperson** (Sen. Nyamunga): Division will be at the end.

#### *Clause 21*

*(Question that Clause 21 be part of the Bill proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): Division will be at the end.

#### *Clause 22*

**The Temporary Chairperson** (Sen. Nyamunga): Sen. (Dr.) Irungu Kang'ata seems not be online too.

Go ahead Sen. Cherargei.

**Sen. Cheruiyot:** Madam Temporary Chairperson, Sen. (Dr.) Kang'ata mentioned to me that he would be online and when it gets to the point of this amendment, he would request to be allowed. However, he says where he is, there are challenges of internet. I should move the amendment on his behalf, just like Sen. Olekina wanted to do on behalf of Sen. Wambua.

**The Temporary Chairperson** (Sen. Nyamunga): We have just disallowed that previously. We are not allowing that amendment because there is no communication.

**Sen. Cheruiyot:** Madam Temporary Chairperson, honestly, you allowed Sen. Olekina. It was allowed because Sen. Wambua was not here, but on this one, I have mentioned to you that he requested that I move on his behalf.

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Wambua had informed the Clerk's office. Has Sen. (Dr.) Kang'ata informed the Clerk's office? Just check it, please.

**Sen. Cheruiyot:** Madam Temporary Chairperson, it is not my work to check.

**The Temporary Chairperson** (Sen. Nyamunga): We are going to check and come back to you.

**Sen. Cherargei:** Do not drop his amendment until we get a clarification from the Clerk's office.

**The Temporary Chairperson** (Sen. Nyamunga): Further amendment proposed by Sen. Kipchumba Murkomen.

**Sen. Murkomen:** Madam Temporary Chairperson, this is the real deal. If this Bill is going to collapse in a week, although I think it will not take a week if it ever reaches the stage of being law, it will be because of this Section. I am not a Judge and I am not intending to go to court, but I know that Kenyans of goodwill who appeared before the Committee were very particular about Clause 22.

If you read Article 88 of the Constitution about the Independent Electoral and Boundaries Commission (IEBC)—

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Farhiya.

**Sen. Farhiya:** Madam Temporary Chairperson, did you hear the Senator of Elgeyo-Marakwet calling us robots? He said that robots do not care to listen.

**Sen. Murkomen:** Did I say that?

**The Temporary Chairperson** (Sen. Nyamunga): We will check the HANSARD.

**Sen. Murkomen:** Madam Temporary Chairperson, I suspect that Sen. Farhiya is not appreciating what I am doing. I am a very senior member of this House. She came the other day and she must know that I know the procedure. You cannot call people robots. It is not acceptable.

**The Temporary Chairperson** (Sen. Nyamunga): That can be verified. Continue, Sen. Murkomen.

**Sen. Murkomen:** Madam Temporary Chairperson, maybe there is something ringing in her head that she is a robot and she thinks I am confirming.

*(Laughter)*

Madam Temporary Chairperson, I have not said that. Thank you Sen. Madzayo too. This is a very serious issue. If you read the functions of the IEBC in Article 88 (4) of the Constitution-

“The Commission is responsible for conducting or supervising referenda and elections to any elective body or office established by this Constitution and any other elections as prescribed by an Act of Parliament and in particular, for –

- (a) the continuous registration of citizens as voters;
- (b) the regular revision of the voters roll;
- (c) the delimitation of the constituencies and wards;
- (d) the regulation of the process by which parties nominate candidates for elections;

Clause 22(b) seeks to insert a new clause, which is the function of the Registrar of Political Parties. A first year Constitutional Law student will know that this drafting is not right. I really want to know who drafted such a thing.

That Clause states that the Registrar will;

‘Certify that an independent candidate in an election is not a member of any registered political party.’

Independent candidates are supposed to present themselves before the Independent Electoral and Boundaries Commission (IEBC). As an independent candidate, one will appear before IEBC and inform them that they are independent candidates, but they will be asked to go back to the Registrar of Political Parties, yet they had decided not to be a member of any political party.

That independent candidate will be asked to go and get clearance that they are not a member of any political party. That will be like going to register a Non-Governmental Organisation (NGO) just to be asked to first go and establish that you are not a company in order for you to be registered by the NGO Board.

Clause 22(c) (d) and (e) states that the Registrar will -

‘Certify that the symbol intended to be used by an independent candidate in an election does not resemble the symbol of a registered political party;  
Certify that the names appearing in a party list are the names of members of the political party presenting the party list; and  
Regulate political party nominations in accordance with the Act’

The demon lives in Clause 22(e).

The regulation and process by which parties nominate candidates is a function of IEBC under the Constitution of the Republic of Kenya. The office of the Registrar of Political Parties just keeps a register of members of political parties. They have no responsibility in regulating elections. They have no role. They are not an election body. In fact, that is why political parties, under their constitutions, establish an election board like the one that Sen. Pareno managed for a very long time. Those boards are run internally and they are respected because they are institutions of law.

Clause 22(f) states that the registrar shall;

‘train political party election agents upon the request and financing by a political party.’

It is not a legal requirement for me to be trained by the Registrar of the Political Parties and it is not something that I should put in law.

Senators, let us demonstrate to Kenyans that we also went to school like the judges who will sit upon the decision of this law. I conversed with a friend of mine and he told me that in the National Assembly, they saw this thing as it is and decided that they will not make a lot of noise and complain. Instead, they will let them pass it if they want, then they we will go and get a court order. Why are we burdening the courts with a lot of cases? The courts are supposed to serve the ‘hustlers’ who have land cases, marriage cases, robbery and even succession issues, but we are now burdening them by taking these petitions to court.

Sen. Faki and Sen. Madzayo were senior lawyers in the opposition, but they are now in ‘Government opposition’. They could not have been in that position in vain. Let us do the right thing by amending this thing for us not to burden the country.

I propose that it be deleted.

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Olekina, be brief.

**Sen. Olekina:** Madam Temporary Chairperson, I would not waste my time if these proceedings were not live with the whole Republic watching.

I want some clarification from the distinguished Senator. Is he saying that using the terms ‘certify that the symbol intended to be used by an independent candidate in an election does not resemble the symbol of a registered political party’ is a waste of time for the Registrar of Political Parties? Can he clarify that?

We are creating this amendment because we want discipline in political parties. We do not want a situation where someone participates in a nomination just for him to run again tomorrow. When such a person runs to the Registrar of Political Parties, they

need to be certified that they are not members of a political party. The rules are very clear.

The other thing is that the Registrar of Political Parties shall maintain a certified register of members of a political party. If the distinguished Senator wants us to delete this proposal, can he tell us how he would want the Registrar of Political Parties to handle people who are registered in two political parties and want to participate in nominations of two political parties. If this is not checked, we will continue with the indiscipline. Who will control that?

The second issue that he raised is that the Registrar is to 'regulate political party nominations in accordance with the Act.' The simple English definition of 'regulate' is to control and make sure that they are doing the right thing. It is not in terms of setting up regulations. He is defining it wrongly as compared to the way it has been defined in the Constitution or the Act. Can we be clearer? The nation is watching and we want to be sure that this Senate is enacting legislations that are clear.

Clause 22 of the Bill seeks to amend Section 34 of the Act to allow additional function to the Registrar. It is about the functions. The first one is to keep and maintain a register of members of registered political parties. Is he now seeking that we delete that? Does he want IEBC to keep that list?

Clause 22(b) states that the registrar shall, 'certify that an independent candidate in an election is not a member of any registered political party'. Who then does he intend to certify that? Is it IEBC? I would assume that it is the Registrar of Political Parties who should do that because this Act is the one that mandates the political parties to submit lists of their members and when you go through a nomination exercise, you have to get a certified copy of the registered members from the Registrar of Political Parties. That will help us stop this business where Sen. Murkomen is today a member of UDA and then Senator---

*(A Member spoke off record)*

This is a hypothetical situation that I want to use to clarify this issue. We do not want a situation where one goes out there and registers 50 members in his political party just for his friend, who is running for an MCA position, but in another political party, to ask him to give him those members for him to register them for nomination, yet they are members of another political party.

If he wants to convince us, he should do so and we are happy to be convinced. We would also not want to waste the court's time. His interpretation of this clause is wrong. I request that he reads it carefully and when he is trying to seek our support in the amendment, he should do so in a way that we will also know that it is a problem. As it is, the Clause is only seeking to assist in making sure that there is discipline.

**The Temporary Chairperson** (Sen. Nyamunga): I want to give a chance to Sen. Cheruiyot before Sen. Murkomen reacts in order for him to react on all the issues raised.

**The Senate Minority Leader** (Sen. Orengo): On a point of order, Madam Temporary Chairperson.

**The Temporary Chairperson** (Sen. Nyamunga): Yes, the Senate Minority Leader.

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Chairperson, I still want to emphasise that during the proceeding of the Committee of the Whole House,

people are supposed to put pointed questions. They are not supposed to elicit questions for debate. The debate ended during the Second Reading. We are not even in the Third Reading. Unfortunately, at the moment, three MPs are talking to each other.

**Sen. Cheruiyot:** The country is watching.

**The Senate Minority Leader (Sen. Orengo):** The country is not watching. You are talking amongst yourselves. We want you to give us an opportunity to interrogate, but you are talking to yourselves.

Madam Temporary Chairperson, this is about legislation. I plead with you to give them as much time as possible, but let them ask pointed questions that should not take a minute. Nowadays people assign time. That is why we are given three, five minutes or half an hour. Therefore, this will be a dictatorship of three people holding us at ransom because they want to talk until tomorrow.

**Sen. Murkomen:** On a point of order, Madam Temporary Chairperson.

**The Senate Minority Leader (Sen. Orengo):** No, I am on a point of order. Please, sit down.

Madam Temporary Chairperson, I need your direction. Let them give us an opportunity because they are the ones moving the amendments. It is now time for us to interrogate the amendments. However, they are not giving us time to interrogate those amendments. They are talking amongst themselves and it should be brought to an end.

**The Temporary Chairperson (Sen. Nyamunga):** Hon. Senators, we have talked about this issue several times. We will not have a back and forth on the same issue with the same people speaking. We have talked about it more than four times.

**Sen. Cheruiyot:** Madam Temporary Chairperson, you are being misled because I do not have an amendment. However, I have a duty to legislate. Therefore, any amendment that is brought to the Floor of the House is duty-bound to be heard.

**The Temporary Chairperson (Sen. Nyamunga):** You are not doing it in the manner that it should be done.

**Sen. Cheruiyot:** Madam Temporary Chairperson, I do not understand under which Standing Order, Sen. Orengo, wants to bundle us all together and say 'three people'. That is not fair.

**The Temporary Chairperson (Sen. Nyamunga):** That is not the issue. If you are supporting or opposing an amendment, be brief and tell us why you are doing it. Do not engage in further debate.

**Sen. Cheruiyot:** If it is about time---

**The Temporary Chairperson (Sen. Nyamunga):** It is not about time. It is about doing the right thing. Just tell us why you are supporting and be brief and let others interrogate too. That is how it should be done. You have not even put an intervention. Let him finish then it will be you.

**The Senate Minority Leader (Sen. Orengo):** They cannot embarrass the Chair; you are speaking and they are also speaking at the same time. You cannot intimidate the Chair.

**The Temporary Chairperson (Sen. Nyamunga):** That is not acceptable.

**Sen. Murkomen:** Madam Temporary Chairperson, you cannot be intimidated. You are '*unbwogable*.' Nobody can '*bwogo*' you.

You have done a fantastic job. There is no other Chair who has done this. I am not flattering you; I have been in this House for nine years.



*(Sen. Orengo spoke off record)*

She did better than me when I was there many years ago. I always appreciate people when they do better.

Madam Temporary Chairperson, you must rule Sen. Orengo out of order. He has said that we are stopping other people from interrogating the Bill. However, he has only interrogated one Clause and it is his right. The rest of the Members are seated and they seem to be waiting for something that might be a vote. It is only Sen. Orengo and Sen. Olekina who have interrogated this Bill. The rest are quiet.

If Sen. Cherargei, Sen. Cheruiyot, Sen. (Eng.) Mahamud and Sen. Kinyua are enthusiastic enough to take the responsibility seriously, should they be punished because Sen. Orengo is keeping quiet, so that they do not talk? That is out of order.

*(Sen. Cheruiyot stood in his place)*

**The Temporary Chairperson** (Sen. Nyamunga): No! You have been talking here the whole afternoon. Have your seat. I will give you an opportunity.

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Chairperson, I was carrying my books to try to respond to the issue raised in Clause 11. I have not been quiet.

The amendments are there in the Order Paper. During the Committee Stage you say, "I move in accordance with what is in the Order Paper". However, what is being done now is a strategy of three Members talking amongst themselves and not allowing us to interrogate what they are trying to move to the House.

This should be brought to an end, so that will give a chance to those who want to interrogate and not those who want to say 'I support'. For example, Sen. Cheruiyot has been standing throughout to support and not to interrogate.

**Sen. Cheruiyot:** Madam Temporary Chairperson, is Sen. Orengo---

**The Temporary Chairperson** (Sen. Nyamunga): I want to give a ruling on this--

-

**Sen. Cheruiyot:** He has mentioned me, and I would like to respond.

**The Temporary Chairperson** (Sen. Nyamunga): Go right ahead.

**Sen. Cheruiyot:** Madam Temporary Chairperson, every time I have had the Floor, it has been under your direction. Is Sen. Orengo accusing you as the Chair of this session that there are people who have requested a chance to speak, just like us, and you have denied them? Otherwise, I have no ability to deny anyone a chance.

**The Temporary Chairperson** (Sen. Nyamunga): We are now getting into arguments.

**Sen. Pareno:** What is your point of intervention?

**Sen. Cheruiyot:** Madam Temporary Chairperson, can Sen. Orengo explain how we are stopping other Members from participating?

**Sen. Pareno:** On a point of order, Madam Temporary Chairperson, how do we expect to conduct business in this manner when every other minute before you even give Sen. Cheruiyot the microphone, he has already taken it and is arguing with you?

Madam Temporary Chairperson, you must rule on this. Members must be orderly as we continue to do business in this House.

**The Temporary Chairperson** (Sen. Nyamunga): It is your responsibility; I should give you a chance to say your point of order. Please, let us make progress.

**Sen. Kinyua:** On a point of order, Madam Temporary Chairperson.

**The Temporary Chairperson** (Sen. Nyamunga): What is your point of order?

**Sen. Kinyua:** Madam Temporary Chairperson, I have listened to Sen. Orengo say that it is only some people who have been speaking. I have been listening here and heard Sen. Olekina, Sen. Faki, Sen. (Eng) Hargura, Sen. Cheruiyot and Sen. Cherargei speak. Sen. Orengo must have walked out and has just walked in. We are all participating. He should allow us to continue.

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, I have heard all your comments. We are at the Committee Stage. The next person that I will give an opportunity will have to state why they are making amendments and the reasons; as simple as that.

Anybody supporting or not will stand and explain why in not less than three sentences. We will not have debates.

**Sen. Wamatangi:** Madam Temporary Chairperson, I agree with what Sen. Murkomen said that you have done well in managing the process.

*(Loud consultations)*

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, when you talk people listen. Can we give each other an opportunity to say whatever we want?

**Sen. Wamatangi:** Madam Temporary Chairperson, I support what Sen. Murkomen has said. You have done very well.

In the amendments that Sen. Murkomen, Sen. Cherargei and Sen. Cheruiyot have put, they have executed their legislative mandate very well. However, the process must have an end.

At the end of the day, the expectations of Senators are that by the close of this debate, there will be a vote on those amendments. Allow me to remind all of us here that at the beginning of the debate, we said that this House will be different from what the other House did. Therefore, we cannot exchange the shame of blows, fists and biting into name-calling, time-dragging and gimmicks that are shameful. Let us expedite this process.

I urge all the Members who will be contributing to expedite their process, say the things they want to say and wait for Members to vote. Let us be honourable and respectable in the business of passing laws and uphold the status of this House as it has been.

I support that you be firm, so that we move quickly. Allow everybody to speak, but let them speak definitively, decidedly and conclusively.

**The Temporary Chairperson** (Sen. Nyamunga): I think we have canvassed enough on that amendment. I will now put the question.

*(Loud consultations)*

**Sen. Cheruiyot:** I was on the Floor.

**The Temporary Chairperson** (Sen. Nyamunga): You have gone back and forth until---

**Sen. Cheruiyot:** I was on the Floor before the point of order.

**The Temporary Chairperson** (Sen. Nyamunga): No! Sit down. Go and sit down. I have made a decision on that.

*(Question of the amendment proposed)*

Division will be at the end.

*Clause 23*

*(Question that Clause 23 be part of the Bill proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): Division will be at the end.

*(Several Members spoke off record)*

*Clause 24*

**The Temporary Chairperson** (Sen. Nyamunga): You cannot be there and arguing.

**Sen. Shiyonga:** Madam Temporary Chairperson, do not allow somebody---

**The Temporary Chairperson** (Sen. Nyamunga): Continue, Sen. Murkomen. I have given direction on how we move forward.

**Sen. Murkomen:** I have heard you. I know how this House runs. When you go wrong, you must be ready to be told so. You are a Chairperson and cannot say you are absolute. You are not. You are guided by the Standing Orders.

I am still waiting for clarification from Sen. Cheruiyot on Clause 22, Sen. Cherargei and Sen. (Eng.) Mahamud. How did you jump---

**The Temporary Chairperson** (Sen. Nyamunga): We cannot deliberate on only one issue back and forth by only three Members. It will not work.

**Sen. Murkomen:** No, there is no back and forth. Sen. Cheruiyot was already on the Floor. I had my pen and paper waiting for his clarification. The Senate Minority Leader (Sen. Orenge) raised his point of order and by virtue of that point of order, you remove a Member from the Floor. How do you trust---

**The Temporary Chairperson** (Sen. Nyamunga): Can you make your next amendment.

**Sen. Murkomen:** How do I make it before I listen to the other one?

**The Temporary Chairperson** (Sen. Nyamunga): Just make that amendment.

**Sen. Murkomen:** Under what Standing Order will I proceed to deny my colleagues---

**The Temporary Chairperson** (Sen. Nyamunga): We will come to that later, but for now---

**Sen. Murkomen:** No, this is serious.

**The Temporary Chairperson** (Sen. Nyamunga): We are still here. There are amendments that we have skipped.

**Sen. Murkomen:** You people are already many. So, leave us to make our case. Sen. Orengo, I told you not to heckle. You need what I am saying more than rushing the time.

**The Temporary Chairperson** (Sen. Nyamunga): Let us have some order.

**Sen. Kwamboka:** Let us have some order.

**Sen. Murkomen:** Who called you? Nobody called you.

**The Temporary Chairperson** (Sen. Nyamunga): Let us have some order.

**Sen. Murkomen:** Madam Temporary Chairperson, next time---

*(Several Members spoke off record)*

Madam Temporary Chairperson, protect me. I cannot even hear myself.

**The Temporary Chairperson** (Sen. Nyamunga): What is your point of order Sen. Wamatangi?

**Sen. Wamatangi:** Let us sit down, Members. Madam Chair I propose---

*(Several Members stood up in their places)*

**The Temporary Chairperson** (Sen. Nyamunga): Please, let us have order. We are not going to entertain disorder.

**Sen. Wamatangi:** Madam Temporary Chairpersons, the amendments being moved here are in the Order Paper. They all have to go through the process of being heard in this House. That guarantees that every Member will have an opportunity to prosecute.

I propose, as we normally do, that we have a time allocation for each. If we agree it is 15 minutes, then everybody who wants to say anything can do so within that time.

**Sen. Murkomen:** Under what Standing Order?

**Sen. Wamatangi:** There is only one Chairperson. We are not saying that anybody is stopped from making their contribution. They should, but at the end of the day, this must end by midnight.

I propose a Motion that we allow each amendment to take a maximum of at least 15 minutes. If the House so resolves that we have it as 10 minutes, so be it. We need to have surety that when we look at one amendment, it will take a certain time for it to close. Otherwise, we will continue to go round and round and never conclude the business at the end of the day.

Members, we need to appreciate that even if takes two years, it will still have to close. The sooner we close it, the better.

**The Temporary Chairperson** (Sen. Nyamunga): I think your proposal is well put.

**Sen Wamatangi:** Madam Temporary Chairperson, I beg to move that for each of the amendments, the House allocates 10 minutes.

I ask Sen. Kavindu Muthama to second.

**The Temporary Chairperson** (Sen. Nyamunga): Let me make a comment on that.

*(Sen. Murkomen spoke off record)*

No, I have not given you an opportunity. Initially, I had suggested that we put timelines and Members objected that there was no Standing Order on that. The problem is that we are not going by the rule. If one is proposing an amendment, they should stick to the reason for it and just state if you are supporting or not. It would take less than 5 minutes.

*(Loud consultations)*

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Speaker, I have just made reference to Erskine and May, which is “holy grail” in so far as Parliamentary proceedings are concerned. If we go the American way, during the Committee Stage---

*(Loud consultations)*

They are not even listening.

In the American system, you can filibuster even during Committee Stage. You can take as much time as possible or filibuster for a whole year. However, under the Parliamentary system we inherited in the Commonwealth, during the Committee of Whole Stage, the person proposing the amendment gives justification for it. Only those seeking clarification---

Clarification is not saying that you support because that is engaging in debate. Anybody standing to comment on a proposed amendment should be seeking clarification on the text because we have a text. Now, we are having a general debate, which can go on forever. It is now not a Committee of the Whole House. It is like a *baraza*. We have turned a Committee of the Whole House into a *baraza* where anybody can say anything.

The Senator is already putting his hands up. They stand and shout any time while we are sitting. We are sitting here and you are saying anything that you want to. We are not lesser beings and we are sitting to listen to you.

*(Several Senators spoke off record)*

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Members, please, let us have order.

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Chairperson, we will have to go through all the amendments because they are in the Order Paper. There is no way we can run from them. Let the person moving the amendment give a justification. Let those who are seeking clarification do so; not those who are supporting. Supporting is not seeking clarification, if you follow the parliamentary system that we have adopted in this country.

**Sen. Cheruiyot:** Okay. *Sawa*.

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Chairperson, in fact, today I can tell you that we have never had proceedings in the Committee of the Whole House the way we are doing now. Never; not even when Sen. Murkomen was the Senate Majority Leader. He was a very stringent Leader of this House who would not allow debate during the Third Reading. He would not even allow you to read the amendment. He only allowed you to say: “I propose the amendment as it is in the Order Paper.”

*(Sen. Murkomen spoke off record)*

*(Loud consultations)*

It is because some people have just woken up.

**Sen. Cheruiyot:** You are taking too long.

**The Senate Minority Leader** (Sen. Orengo): No, Madam Temporary Chairperson! I have my time.

**The Chairperson** (Sen. Nyamunga): Hon. Senators, let us have some order.

*(Loud consultations)*

*(Sen. Cheruiyot spoke off record)*

**The Chairperson** (Sen. Nyamunga): Sen. Cheruiyot, please!

**The Senate Minority Leader** (Sen. Orengo): Through the Chairperson, Sen. Cheruiyot, I am giving you very good advice.

Madam Temporary Chairperson, I was in this House when President Moi was the Leader of Government Business and the House used to have some order. As a young parliamentarian, they would listen when I spoke and I would not stand up when another Member was speaking. You are turning this debate into a *baraza*. Please, let us have some respect.

*(Loud consultations)*

When the Chairperson gives you direction, please, listen. We are here and if you want to stay here until tomorrow---

*(Sen. Kihika spoke off record)*

Unfortunately, when we were here at 2.30 p.m., you were in Nakuru County.

**Sen. Kihika:** Yes!

**The Senate Minority Leader** (Sen. Orengo): You then came here pleading for some more time.

**The Chairperson** (Sen. Nyamunga): Point noted.

Sen. Cheruiyot, you have two minutes and then we finish with that.

**Sen. Cheruiyot:** Madam Temporary Chairperson, let me just make a comment about what Orengo or rather Sen. Orengo has said, ---

**An Hon. Senator:** Proceed.

*(Sen. Orengo spoke off record)*

**Sen. Cheruiyot:** I have said "Senator". You know you are a son of Kericho County and so, I respect you.

Madam Temporary Chairperson, the Speaker gave directions and that is why we are doing what we are doing. If you remember very well, when the Speaker gave directions, he said that those who he had been denied an opportunity to debate, would get

an opportunity to comment during the Committee of the Whole. Had they allowed us to debate, then we would not be doing this.

**The Chairperson** (Sen. Nyamunga): Please, make your point.

**Sen. Cheruiyot:** Madam Temporary Chairperson, allow me to make my point about Clause 22.

**The Chairperson** (Sen. Nyamunga): Senate Majority Leader, proceed.

**Sen. Murkomen:** Na wewe Kenya African National Union (KANU) ilikufukuza.

*(Laughter)*

**An Hon. Member:** Sasa tutachemsha.

**The Chairperson** (Sen. Nyamunga): Hon. Senators, let us have some order, please.

**The Senate Majority Leader** (Sen. Poghisio): Madam Temporary Chairperson, the Standing Orders cannot even allow somebody who is disorderly to raise a point of order. Many of my friends who are here are actually disorderly, if you look at the definition of 'disorderly.' Look at that. That is disorderly. We are allowing a group of disorderlies to actually raise points of order. They are not even entitled to points of order.

Madam Temporary Chairperson, many times, people rise on their feet and they are here before you even recognise them. I think there is something about our decorum. If you were to be strict about points of order, nobody would even qualify. According to our Standing Orders, you are supposed to state which Standing Order you are standing on.

We can return to normalcy if we agree that you propose your amendments according to the Order Paper and you sit down. In this case, I am seeing somebody propose their amendment, comment on their amendment, come and comment again on their amendment.

*(Laughter)*

Madam Temporary Chairperson, we are losing this thing. The strategy being used here is called filibustering. We have seen it, but we cannot allow it to continue.

**The Chairperson** (Sen. Nyamunga): Senator, please, we are not going to have further comments. We are going to do it our usual way.

**Sen. Cheruiyot:** Madam Temporary Chairperson, I will make my point if you also save me from the frivolous points of order, like what the Senate Majority Leader is saying.

**The Chairperson** (Sen. Nyamunga): Okay. Just go ahead, I have heard and I am going to be very strict. Just state your amendment and there will be no further comments.

**Sen. Cheruiyot:** Thank you, Madam Temporary Chairperson. The clarification that I need from Sen. Murkomen to help me understand---

*(An Hon. Senator spoke off record)*

*(Laughter)*

**The Chairperson** (Sen. Nyamunga): You see you are now taking us back.

**Sen. Cheruiyot:** No, Madam Temporary Chairperson, it is not my amendment. So, clarifications about Clause 22 are for him.

Madam Temporary Chairperson, I need to understand---

**The Senate Majority Leader** (Sen. Poghisio): You have to understand it yourself.

**Sen. Cheruiyot:** Madam Temporary Chairperson, protect me from the Senate Majority Leader who was once a victim of this same law, but has forgotten in his old days.

**The Chairperson** (Sen. Nyamunga): Kindly, let us not divert attention. I have given you two minutes and they will be over. I will then give a ruling.

*(Sen. Kwamboka spoke off record)*

**Sen. Cheruiyot:** Madam Temporary Chairperson, how will I proceed if Sen. Poghisio is interrupting me and Sen. Kwamboka is shouting? Honestly!

**The Chairperson** (Sen. Nyamunga): Sen. Kwamboka, let us have some order. Let all of us have some order.

I am giving you just two minutes to get that clarification from Sen. Murkomen.

**Sen. Cheruiyot:** Madam Temporary Chairperson, I will do it. We need to understand Article 88 of our Constitution that sets up IEBC. Article 88(4) (d), the regulations---

**The Senate Majority Leader** (Sen. Poghisio): Kindly.

**Sen. Cheruiyot:** Madam Temporary Chairperson, he has begun once again.

*(Laughter)*

**The Chairperson** (Sen. Nyamunga): Just continue. I am checking him.

*(Loud consultations)*

**Sen. Cheruiyot:** Sen. Kang'ata, your amendments is still pending.

Madam Temporary Chairman, Sir, Article 88(4)(d) grants the powers of the regulation of the process by which parties nominate candidates for elections. This is a purely constitutionally granted power to IEBC. Somebody then sits somewhere and purports to send a legislation to this House, wanting to transfer a constitutionally granted power to an independent institution to some office called the ORPP. If that is the reason--

**The Chairperson** (Sen. Nyamunga): If we are going by our agreement, just ask Sen. Murkomen the area where you need clarification.

**Sen. Cheruiyot:** Madam Temporary Chairperson, two minutes are not yet over. I was on the first minute and one second and then you interrupted. So, give me my 58 seconds.

**The Chairperson** (Sen. Nyamunga): Go ahead.

**Sen. Cheruiyot:** Madam Temporary Chairperson, we need to understand; if we have got to a point where we want to seize instead of granting additional powers to independent clean set up constitutional offices and setting them in the hands of a single



individual, who on the whims of the politics of the day, can make a decision that can be so fatal to us, political practitioners.

Is it for that reason that Sen. Murkomen is moving his amendment? If it is, then---

*(Sen. Orengo spoke off record)*

No, Sen. Orengo. It could be for another reason. You know, Kericho County people do not---

**The Chairperson** (Sen. Nyamunga): Senator, conclude.

**Sen. Cheruiyot:** Okay, Madam Temporary Chairperson. I want to conclude, but I will do so if Sen. Orengo can grant me the peace that I want. It is difficult to talk when you are being interrupted.

**The Chairperson** (Sen. Nyamunga): I think Sen. Murkomen should respond to that.

**Sen. Cheruiyot:** Thank you, Madam Temporary Chairperson.

*(Sen. Poghio spoke off record)*

**The Chairperson** (Sen. Nyamunga): Sen. Murkomen, please, proceed.

**Sen. Murkomen:** Madam Temporary Chairperson, you can see the Senate Majority Leader making a lot of noise. If the history of this House will be written, it will be said that there was a very silent Senate Majority Leader, who guided people on nothing in the Chamber, spoke to nothing; not even a Bill, and got extremely irritated when debate of the House went on.

**The Chairperson** (Sen. Nyamunga): Sen. Murkomen, ---

*(Sen. Poghio stood behind  
Sen. Murkomen and spoke off record)*

**Sen. Murkomen:** Madam Temporary Chairperson, I am asking for a point of order and this one is standing behind me and heckling.

**The Senate Majority Leader** (Sen. Poghio): I can walk.

**The Chairperson** (Sen. Nyamunga): No, you are not the one on a point of order. Sen. Murkomen, please, just respond and give clarification.

**Sen. Murkomen:** Madam Temporary Chairperson, please, can we have intellectual leadership from the Senate Majority Leader and not just coming here to vote.

*(Loud consultations)*

**The Chairperson** (Sen. Nyamunga): Sen. Murkomen, you are getting out of order.

**Sen. Murkomen:** Madam Temporary Chairperson, I am very serious. I am not out of order. We have a Senate Majority Leader who only comes here to vote from the time he assumed that position.

*(Loud consultations)*

**The Chairperson** (Sen. Nyamunga): I have given you a very good opportunity. Please, respond.

*(Sen. Kwamboka spoke off record)*

Sen. Kwamboka, please!

**Sen. Murkomen:** Madam Temporary Chairperson, in the next---

**Sen. Kwamboka:** You are provoking us.

*(Loud consultations)*

**Sen. Murkomen:** Madam Temporary Chairperson, let me respond in one minute.

**An Hon. Senator:** Sen. Kwamboka, beat him up.

*(Laughter)*

**The Chairperson** (Sen. Nyamunga): No! I think these people are out of order.

Sen. Murkomen, please, react.

**Sen. Murkomen:** Madam Temporary Chairperson, I cannot even hear myself.

If you look at the amendment provided, I made a statement of fact and it is incontrovertible. If you look at the amendment proposed, the objective is to protect the constitutional responsibility of IEBC. Once Sen. Cheruiyot appreciates, like I did--- I do not want to take a lot of time because time is of the essence and I want to be concise. Once he appreciates the constitutional responsibility of the Independent Electoral and Boundaries Commission (IEBC) Article 88 then he will appreciate why I am proposing that this be deleted from the office of the Registrar of Political Parties (ORPP). If you wanted to strengthen or be prescriptive in so far as how the IEBC is going to perform that function of regulation, then move this to be a function of the IEBC. That is what I was saying.

Madam Temporary Chairperson, in the next Senate I will be proposing that apart from searching hon. Members at the entrance of this Chamber, we must put there an alcohol gadget---

**The Senate Majority Leader** (Sen. Poghio): Madam Temporary Chairperson, you know for sure that Sen. Murkomen is a very angry man because he is not the Leader of Majority; and it is not my fault, really. He shows that anger every day. This Senator has talked about me without bringing a Motion and you should rule him out of order. He has discussed me!

Madam Temporary Chairperson, I just want you to take control of the session. I know that---

**The Temporary Chairperson** (Sen. Nyamunga): You know I am really in control of the session. The problem is that I am also guided by the rules.

**The Senate Majority Leader** (Sen. Poghio): Yes, but somebody cannot discuss me here in your presence without a substantive Motion. You know that for sure. This anger that Sen. Murkomen carries is really causing a lot of problems not only here, but even outside there. He is still angry with me everywhere he goes.

*(Laughter)*

He has to deal with that anger and should also be orderly. What makes it worse is that ever since he ceased to be the Leader of Majority, he behaves in a manner that we did not know existed in him. Now, the only thing I want to ask is that since he debated me here, you should rule that he cannot discuss a Member without a substantive Motion.

**The Temporary Chairperson** (Sen. Nyamunga): Let us move forward.

*Clause 24*

**Sen. Murkomen:** Madam Temporary Chairperson, I am prosecuting very serious parliamentary business; I am not angry.

**The Temporary Chairperson** (Sen. Nyamunga): Please, just make your comments.

**Sen. Murkomen:** My colleague, Sen. Poghio, knows that he has my full support. If only he can be coming to the Chamber to guide us; he cannot just come to vote.

I already made my proposal in the definition section that I do not believe it is part of the establishment of the Registrar of Political Parties to do direct nomination.

It is actually to cross-reference the initial amendment I proposed in Clause 2. If you look at Section 38(c) 1 to 6 it states: -

“A registered member of a political party shall be entitled to participate in the nomination conducted by the political party. A political party that intends to conduct shall use a certified register of the nomination. A political party that intends to conduct a political nomination under the Act shall apply in writing to the Registrar for a certified copy of a register of members at least 21 days before the nomination.”

No. 5 states that: -

“A political party shall not allow any person who is not a registered member of the political party to participate in the party nominations.”

I believe the intention is good. The intention is to ensure that the register being used by political parties is only confined to those who are inside the register participating in the nominations. However, practically, that is not the story out there. Out there, most of the members of our political parties do not find themselves being part and parcel of the register.

Even today, we have thousands of members of the public who are registered in political parties that they did not choose. If this becomes a strict condition for purposes of elections, I foresee a situation where many election petitions will be based on these requirements that are here.

What has happened before is that before this drafting happened, the rules were a little bit relaxed, so that a member would register, join a party and then they vote. In 2013 and 2017, we allowed political parties to adopt the IEBC register as part of their register and allow members who would like to vote because they associate with the party, to come and vote.

Madam Temporary Chairperson, I felt that it was unfortunate that these strict provisions are being brought in closer to election time.

If you remember, one of the most contentious issues that the Kriegler Commission raised was that do not change the rules too much close to the elections.

Now, the nominations are less than three months away and you are putting in place these strict requirements for these political parties. What will happen is that not only will confusion ensue, but it will also lead to a situation where the political parties will find themselves in so many petitions. That is with regard to Section 38(c).

Section 38(e) is on notification. I refer to my earlier arguments on the functions of the ORPP vis-a-vis the functions of the IEBC. If you look at Section 38(e) it says: -

“A political party shall not less than 10 days before the date of party nomination, notify the Registrar in writing of the methods it intends to use in conducting party nominations.”

Now, you are not writing to the IEBC that manages elections. It is the office of the Registrar of Political Parties that is managing your nomination. So, you are writing to them indicating the date of party nominations, the venue, list of members who wish to be nominated and all that. I find this to be in complete contravention of Article 88 of the Constitution. This is not a function of the ORPP; this is a function of IEBC.

These are not my words; these are also the sentiments of the Chairperson of the IEBC when he gave his presentation before the Committees of the National Assembly and the Senate. He said that there was a heavy encroachment on the constitutional function of IEBC.

We are also being told that at least seven days before the date of nomination the Registrar shall publish in an official website. I do not have a problem with that.

Section 38(f) which I am also proposing that it be deleted states as follows:

“A political party that intends to conduct direct nominations shall post---”

Again I had already said that this prescription of what a direct and indirect nomination is not necessary because there are many methods that a party can apply for nomination. Confining it to what is defined as direct and indirect is constricting the democratic space that the political parties could be able to apply.

Lastly, Section 38(g) is on the question of indirect party nominations.

Madam Temporary Chairperson, I object the question of direct and indirect party nominations for the similar reasons that I argued that the direct and indirect nominations are unnecessary. The submitting of the list of delegates to the Registrar of Political Parties is encroaching on the responsibilities of the Independent Electoral and Boundaries Commission (IEBC) by creating constriction of the political space that was not expected in the Constitution and constricting political parties' rights against Article 38 of the Constitution.

Clause 38(h) states that a political party conducting party nominations shall ensure that each candidate who is nominated makes and deposits a self-declaration form of leadership and integrity, possess qualification to hold elective office as specified in the Constitution and meets such other requirements as may be prescribed by the Constitution. That is again superfluous because there are very clear provisions in the Elections Act of what one can present to the IEBC.

The proposed declaration of integrity is unconstitutional because you cannot force people to say whether they are of good integrity or not. It is the responsibility of those who are contesting to bring provision stating whether they have committed an offence under Chapter 6 of the Constitution in the past or not.

Madam Temporary Chairperson, I, therefore, propose that Clause 24 of the Bill be amended by deleting the new proposed —

- (a) section 38A;
- (b) section 38C;
- (c) section 38E;
- (d) section 38F;
- (e) section 38G; and,
- (f) section 38H.

**The Temporary Speaker** (Sen. Nyamunga): Before I put the Question, if the amendment by Sen. Murkomen is carried, then Sen. Were's amendment will not be moved. Sen. Cherargei's amendment will only be moved in respect of Part (b).

*(Question of the amendment proposed)*

The Division will be at the end.

Sen. Were is not online. We will, therefore, drop her amendment and proceed to Sen. Cherargei's amendment.

**Sen. Were:** Madam Temporary Chairperson, I am online. I do not know why you do not see online.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Were, you will move your amendment after Sen. Cherargei.

Proceed, Sen. Cherargei.

**Sen. Cherargei:** Madam Temporary Chairperson, although Sen. Murkomen has expended with Clause 24, I beg to move-

THAT clause 24 of the Bill be amended by-

- (b) deleting the proposed new section 38D.

The proposed new Section states that the Registrar of Parties shall ensure that the register of members used in any party nominations is accessible to the registered members of the party.

Madam Temporary Chairperson, that is a consequence of Clause 38C. As you are aware, it looks like the Registrar of Political Parties has been given unnecessary powers, which is duplicate to the role of the IEBC. The register that they are talking about is the register that should be used. It is not clear. Sometimes the appointment process of the Registrar of Political Parties is normally done by the Executive. Therefore, that means that if somebody wants to be mischievous, they will ensure that the register provided to political parties by the Registrar of Political Parties is mischievously altered. That is why it is dangerous to pass this Bill as it is. This House will be committing political suicide if we pass this Bill as it is.

The effect of deleting the proposed new section 38D under Clause 24 is to ensure that there is practicability even now that we have COVID-19. You can imagine if the register of members of the political parties is pinned and everyone comes touching the lists.

With modern day technology and considering many other aspects, the Section must be deleted, so that we become more practical and ensure that party lists are made accessible. If we are not careful, there will be very many fake party lists. How will we ensure that there is rigorous process?

I am aware that the regulations and rules of this amendment have already been prepared by the Executive. However, will they be able to capture this and ensure that it

has growth? I, therefore, propose the deletion of proposed new section 38D because Section 38 (c) has been dispensed with.

*(Question of the further amendment proposed)*

**The Temporary Speaker** (Sen. Nyamunga): The Division will be at the end.

Proceed, Sen. Were to make the amendment.

Sen. Were is not online. The amendment is, therefore, dropped.

*(The proposed amendment by Sen. Were dropped)*

*Clauses 25, 26 and 27*

*(Question that Clauses 25, 26 and 27 be part of the Bill proposed)*

**The Temporary Speaker** (Sen. Nyamunga): The Division will be at the end.

*Clause 28*

**Sen. Murkomen:** Madam Temporary Chairperson, I beg to move-

THAT clause 28 of the Bill be amended by deleting paragraph (a)

I am very happy if Members want to pass this Clause as it is, so that we can deal with it elsewhere. Sub-section 2 states that amending Section 41 of the principle Act by deleting both the Court of Appeal and Supreme Court and substituting therefor the words of the Court of Appeal and decision of Court of Appeal shall be final. This amendment is so straightforward. I do not even need to waste a lot of time on it.

The Constitution provides the channel through which a citizen can take when appealing a matter from the Magistrate's court to the court of appeal and eventually the Supreme Court. This amendment is purporting to amend the Constitution by doing away with the jurisdiction of the Supreme Court and limiting appeals to the Court of Appeal. This is outright unconstitutional.

*(Question of the amendment proposed)*

**The Temporary Speaker** (Sen. Nyamunga): The Division will be at the end.

*Clauses 29 and 30*

*(Question that Clauses 29 and 30 be part of the Bill proposed)*

**The Temporary Speaker** (Sen. Nyamunga): The Division will be at the end.

Next Clause

*Clause 31*

**Sen. Murkomen:** Madam Temporary Chairperson it is very sad that these amendments are coming to an end. I have really enjoyed moving the amendments and it is sad that they are coming to an end. Moving the amendments has been one of my best moments this afternoon.

Madam Temporary Chairperson, I do not understand how you have managed to sit there all afternoon. I am very proud of you. You are very strong. Whatever position you are looking for in Kisumu County, they should give it to you.

I beg to move-

THAT clause 31 of the Bill be amended by deleting—

(a) paragraph (b); and

(b) paragraph (c).

If you look at paragraph (b), it is the same story. It states that a political party that nominates a person for an election under this Act shall, at least 14 days before submitting the party membership list to the Commission under Section 28(1), submit the party membership list to the Registrar of Political Parties for certification.

Again, you should send the list to the Registrar for verification of names in the party membership list submitted by a political party under Section 28(1) to certify membership. That is straightforward.

The good thing with this part of the Bill is that it mirrors the other provisions that were debated earlier using the provisions of the Constitution. So, the argument is the same. It is assaulting the constitutional responsibility of the IEBC under Article 88 of the Constitution.

Therefore, I propose that we delete it. Clause 31(c) is also new.

Just imagine, for people who have managed parties like Sen. Pareno, how do you support this? Anyway, I know you will not vote on it but how do you support such a provision? Just look at it if you are running a party.

In fact, if I want to frustrate a political party under this Bill, I just wait for them to do their nomination, then go and collect the book they used. Then, I will contest everything and say that the register has a name of so-and-so who is a member of another party. In fact, one of the provisions here, which I do not propose for amendment, is stating that it is an offence for you to register somebody without their consent.

There are millions of people in the ODM Party who are registered without their consent. There are also millions of people in the Jubilee Party register. I do not know about the UDA and other new parties. However, I know for sure that the old parties have so many people who are there against their own will. That is enough ground to contest an election of a particular party.

Having managed and gone through the processes, you go ahead and make this proposal that says that a political party intending to submit a party list to the Commission shall, at least 14 days before the submission of the party list, submit the party membership list to the Registrar for certification?

If you have about 50 political parties, they should send their lists first to the Registrar for certification. Secondly, the Registrar shall verify the names appearing on the party list who belong to registered members of the political party and all those things.

For avoidance of doubt, we are erecting blocks and stones against political parties. I know Sen. (Eng.) Hargura and Sen. A. Haji here do not have problems with this. They

are wondering what this debate is all about because their nominations are done because they are just waiting to enter into the parties that they will choose.

However, it is not a joke for some of us who come from party strongholds where you have to go through rigorous nominations like Sen. (Dr.) Ochillo-Ayacko to get the ODM certificate in Migori. Therefore, if I want to mess up with the nominations of a party, I just go to court and say that the ODM Party did illegal nominations, provide the party register they used, indicate the people who are there illegally and say other things, then an independent candidate becomes the only candidate running.

You may find a region where a certain political party is strong but because of the strict provisions in this Bill, you will suffer. You will remember the son of Rev. Johanna Kanda Kipchumba Murkomen---

**The Temporary Chairperson** (Sen. Nyamunga): Senator, I think you are---

**Sen. Murkomen:** Thank you, Madam Temporary Chairperson.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): The Division will be at the end. Let us now have Sen. Were online.

**Sen. Were:** Madam Temporary Chairperson, can you hear me?

**The Temporary Chairperson** (Sen. Nyamunga): Sen. (Dr.) Ochillo-Ayacko, do you want to say something?

**Sen. (Dr.) Ochillo-Ayacko:** Madam Temporary Chairperson, I have heard Sen. Murkomen talk many times about the Constitution---

**Sen. Were:** Madam Temporary Chairperson, I have two amendments---

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Were, just hold on for one minute. Sen. (Dr.) Ochillo-Ayacko, I will give you time.

Okay, go on Sen. Were.

**Sen. Were:** Madam Temporary Chairperson, I beg to move-

*(There was a technical hitch)*

Sub section (3) talks about delegates in an indirect party nomination. That Section suggest that a delegate's identification number, contact and even address be taken to the IEBC. That is exposing the delegates to danger and it can be subject to abuse. So, I propose that that be deleted.

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Were, please hold on.

**Sen. Were:** I have a further amendment to Clause 31, which states that the Bill--- I have been told to hold on a bit. Let me know when I should continue.

**The Temporary Chairperson** (Sen. Nyamunga): Senator, move the amendment on Clause 31 first.

**Sen. Were:** Okay.

Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended in Clause 31 by inserting the following new paragraph immediately after paragraph (c)-



“(d) In Section 43 by deleting the words “six months” appearing immediately after the words “office at least” and substituting therefor the words “four months”.

This is in reference to public servants or what we commonly call civil servants who are required to resign six months to the elections. In every election cycle, civil servants have to always go to court because of this particular Section. Why would we have a law that does not seem to serve the people it is intended for?

It is, therefore, the role of Parliament to amend the law if it is not working for the people it is supposedly meant for. That is the main premise for my amendment of this Clause.

I thank you, Madam Temporary Chairperson. Can I proceed with Clause 24?

**The Temporary Chairperson** (Sen. Nyamunga): No, just a minute.

*(Question of the amendment proposed)*

The Division will be at the end. Now you can go ahead and move the amendment on Clause 24.

**Sen. Were:** Madam Temporary Chairperson, I beg to move-

THAT Clause 24 of the Bill be amended in the proposed New Section 38(G) by deleting subsection (3).

Subsection (3) talks about delegates who are supposed to elect candidates for a political party in an indirect nomination process.

Madam Temporary Chairperson, that subsection suggests that a party should submit delegates identification numbers, contacts and even email addresses. It proposes that details of delegates be submitted to the IEBC.

That process is subject to abuse and dangerous to delegates. They will be bribed and taken to hotels and it will subvert the essence of democracy that is supposed to be free and fair. It will be dangerous even to political parties. We will have rival political parties targeting the delegates and making sure that they either vote for a weak or strong candidate, or whichever case may be in their favour. Therefore, I propose that we delete that sub clause (3).

I thank you, Madam Temporary Chairperson, for your indulgence.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Mwaura, you can now move your amendment on Clause 11.

**Sen. (Dr.) Mwaura:** Madam Temporary Chairperson, can you hear me?

**The Temporary Chairperson** (Sen. Nyamunga): You are not clear. Can you be clearer? Go ahead.

**Sen. (Dr.) Mwaura:** Madam Temporary Chairperson, I beg to move-

THAT Clause 11 of the Bill be amended by inserting the following new section immediately after the proposed new Section 14B-

14C (1) A political party may, notwithstanding Section 14A and 14B and upon deeming a member to have resigned or finding a member to have contravened any

provision of the constitution of the political party and before expelling a Member, take disciplinary act including –

- (a) warning a member;
- (b) reprimanding a member;
- (c) suspending a member;
- (d) removing a member from a leadership position in a legislature;
- or
- (e) removing a member from the membership of committees in a legislature.

(2) A person who is deemed to have resigned or is expelled from a political party shall not lose their elective seat unless all possibility of appeal or review of the decision has been exhausted.

I am proposing this amendment for political parties not to rush to expel a member out of the political whim of the moment. That has been a clear case. This amendment will give avenue, by law, that there is a procedure which gives both parties a chance to make amends or even to have a sit-down.

It also guarantees that in the process an expulsion is procured by the party, then the Member does not lose their seat until they go through all the appeal mechanisms. This will give effect to Article 99(i) read together with Article 99(iii) of the Constitution. I am sure that you all know of my case which is a clear prototype. In my case, the party officials declared that one is going to be expelled even before the disciplinary Committee sat and indeed I went through that process and the outcome was the same.

In my case, the Jubilee National Disciplinary Committee recommended, according to the court documents that we later on got, that I should be suspended for six months but that was varied to an expulsion. The variation was an afterthought when the political party possibly realized that they never followed the Constitution.

This amendment is important because we know how the political alliances shift and you do not know who would want to use the law to settle political scores. This amendment will protect Members from losing their seats at any given point in time until the courts pronounce themselves at the Supreme Court. I agree with Sen. Murkomen's argument that there should be 21 days upon gazettement of the notice of expulsion. The reason for this is that one may not even know if the Registrar of Political Parties has accepted the decision of the party especially when the Registrar of Political Parties is subject to the appointing authority of a political party which could be the one that has formed the Government as it is the case at the moment. Some of these things are done in a very shadowy manner and within a very short time. In my case, I lost the case on 7<sup>th</sup> May, 2021 but on 10<sup>th</sup> May, there was a purported gazette notice which was issued on 11<sup>th</sup> May and backdated to 7<sup>th</sup> May. Such kind of misbehavior and especially when you know that the Government Printer can be protected by the political party in power, can only be cured through this process. If you are accused or if you have been expelled, you can seek redress before any action is taken.

Had my expulsion been successful, it would have opened a door for any person who differs with the Executive or the ---

**The Temporary Chairperson** (Sen. Nyamunga): Sen. (Dr.) Mwaura, do you want to summarise?

**Sen. (Dr.) Mwaura:** Madam Temporary Chairperson, a good example is the Senate Majority---

**The Temporary Chairperson** (Sen. Nyamunga): Kindly summarise.

**Sen. (Dr.) Mwaura:** Madam Temporary Chairperson, a good example is the Senate Majority Leader who during the old KANU days was a Member of Parliament in the morning but was not one in the afternoon. The same thing happened to me on 12<sup>th</sup> May. It was a painful process. I had to be in court for over 30 times. Somebody was illegally gazetted to replace me. This amendment cures this problem and it protects everyone from the shenanigans of a political party that is opaque and not transparent.

I beg to move.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): The Division will be at the end.

**Sen. (Dr.) Ochillo-Ayacko,** I promised to give you an opportunity to speak because we could not get you to speak before Sen. Were.

**Sen. (Dr.) Ochillo-Ayacko:** Thank you, Madam Temporary Chairperson. I appreciate the fact that we have all been sitting for long. Therefore, I will not be detailed.

Sen. Murkomen mentioned this when he was moving his amendment. If you read Article 88 of the Constitution which establishes the IEBC and confers upon it responsibilities and you read it against the provisions of Article 92, which is legislation on political parties, you will realise that there is nothing in Article 88 that gives exclusivity on political parties to IEBC. In fact, Article 92 gives Parliament the authority to make legislation and assign those regulatory and management responsibilities of political parties to another entity.

Sen. Murkomen should read the two articles, one against the other and advise himself instead of saying that we are invading the exclusive mandate of the IEBC.

**The Temporary Chairperson** (Sen. Nyamunga): Thank you. Sen. Pareno, I did not see your intervention for a very long time. Can you make your comment and, please, be brief?

**Sen. Pareno:** Thank you, Madam Temporary Chairperson. I kept trying to get your attention because Sen. Murkomen and Sen. Cheruiyot severally mentioned that Sen. Pareno was quiet yet things are going wrong.

With the not so little experience that I have had in running political parties, I can say that this Bill has come to cure a lot of gaps that we have had in running primaries for political parties. Sen. Murkomen has talked about the register and why the Registrar should be given the powers to verify the membership and the register. That has been a problem. During the party primaries, we have had other parties come to gang up against their competitor's most popular candidate just because there is no register to verify who is voting. This will bridge the gap that had been created by the Act that we had. In fact, most of the things that Sen. Murkomen has proposed are in the original Act and we are now tightening up.

I needed to clarify that because they kept on saying that Sen. Pareno is here and she is allowing parties to suffer. I can assure them that we are not going to suffer. Instead, we are going to have better management of political parties with the passage of this Bill.

**The Temporary Chairperson** (Sen. Nyamunga): Thank you, Senator.

Next.

*The Title and Clause 1*

*(Question, that the Title and Clause 1  
be part of the Bill, proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): The Division will be at the end.  
*(The Senate Minority Leader and the Senate Majority Whip  
consulted the Temporary Chairperson)*

Let the Bell be rung for five minutes. We want to move to Division.

*(The Division Bell was rung)*

**The Temporary Chairperson** (Sen. Nyamunga): Let us have the two Tellers at the Dispatch Table. Sen. Shiyonga for the Nays and Sen. Cherargei for the Ayes.

*(The two Tellers walked to the Dispatch table)*

We are going to have three divisions one at a time. Let us have some order. The first division is the clauses with amendments.

*(Question put)*

We shall have a roll call voting.

*(Voting in progress)*

*(Loud consultations)*

**The Temporary Chairperson** (Sen. Nyamunga): We need to have some order in the House so that we get the correct voting so that there is no confusion.

**Sen. Cherargei:** He voted Yes and No.

**The Temporary Chairperson** (Sen. Nyamunga): The Clerk had called Sen. Kihika.

**Clerk-at-the-Table:** No. It was Sen. Kibiru.

**The Temporary Chairperson** (Sen. Nyamunga): No. Sen. Kibiru was outside when you mentioned Sen. Kihika first.

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Chairperson, you are right.

**The Temporary Chairperson** (Sen. Nyamunga): Let us have Sen. Kihika. Just go through that again.

*(Roll call voting in progress)*

Hon. Senators, we are moving to the second Division. We will announce the results at the end.

## DIVISION

## ROLL CALL VOTING

*(Question THAT, Clause 2 (as proposed by Sen. Kipchumba Murkomen, MP) — Clause 9, (Deletion), Clause 11, (Sen. Kipchumba Murkomen, MP and Sen. Isaac Mwaura, MP), Clause 20, Clause 22, (Sen. Kipchumba Murkomen, MP), Clause 24, (Sen. Kipchumba Murkomen, MP), Clause 28, Clause 31 (Sen. Murkomen Kipchumba, MP and Sen. Petronilla Were, MP) be amended as proposed, put and the Senate proceeded to Vote by County Delegations)*

**AYES:** Sen. Cherargei, Nandi County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Lelegwe, Samburu County and Sen. Murkomen, Elgeyo Marakwet County.

**Teller of the Ayes:** Sen. Cherargei.

**NOES:** Sen. Abdul Haji, Sen. (Dr.) Ali, Wajir County; Garissa County; Sen. Boy, Kwale County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kavindu Muthama, Machakos County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbitio, Trans Nzoia County; Sen. Moi, Baringo County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu County; Sen. (Dr.) Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghisiu, West Pokot County; Sen. Sakaja, Nairobi City County; Sen. Wamatangi, Kiambu County and Sen. Wako, Busia County.

**Tellers of the Noes:** Sen. Shiyonga

**The Temporary Chairperson** (Sen. Nyamunga): Order, hon. Senators. The results of the Division are follows:

**AYES:** 4

**NOES:** 28

**ABSENTIONS:** Nil.

*(Question negated by 28 votes to 4)*

## DIVISION

## ROLL CALL VOTING

*(Question THAT, Clause 2 (as amended by Sen. Samson Cherargei, MP) and Clause 24, (as amended by Sen. Samson Cherargei, MP, and Sen. Petronilla Were, MP) be amended as proposed, put and the Senate proceeded to Vote by County delegations)*

**AYES:** Sen. Cherargei, Nandi County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Lelegwe, Samburu County and Sen. Murkomen, Elgeyo Marakwet County.

**Teller of the Ayes:** Sen. Cherargei.

**NOES:** Sen. Abdul Haji, Sen. (Dr.) Ali, Wajir County; Garissa County; Sen. Boy, Kwale County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen.

Hargura, Marsabit County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kavindu Muthama, Machakos County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. Madzayo, Kilifi County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Moi, Baringo County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu County; Sen. (Dr.) Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orenge, Siaya County; Sen. Outa, Kisumu County; Sen. Poghiso, West Pokot County; Sen. Sakaja, Nairobi County; Sen. Wamatangi, Kiambu County and Sen. Wako, Busia County.

**Tellers of the Noes:** Sen. Shiyonga

**The Temporary Chairperson** (Sen. Nyamunga): Order, hon. Senators. The results of the Division are follows:

**AYES:** 4

**NOES:** 27

**ABSENTIONS:** Nil.

*(Question negated by 27 votes to 4)*

Hon. Senators, all the amendments have been defeated and now we want to take a Division on the Bill.

*(Question, that Clauses 2-31, the Title and Clause 1 be part of the Bill, proposed)*

*(Roll call voting in progress)*

*(Loud consultations)*

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, kindly consult in low tones

*(Roll call voting in progress)*

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, I request you not to leave the Chamber as we still have another vote coming.

*(Roll call voting in progress)*

## DIVISION

### ROLL CALL VOTING

*(Question, that Clauses 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, the Title and Clause 1 be part of the Bill, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Haji A., Garissa County; Sen. (Eng.) Hargura, Marsabit County; Sen. Kajwang' M., Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kavindu Muthama, Machakos County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Moi, Baringo County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita-Taveta County; Sen. Ndwiga, Embu County; Sen. (Dr.) Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghiso, West Pokot County; Sen. Sakaja, Nairobi City County; Sen. Wako, Busia County; and, Sen. Wamatangi, Kiambu County.

**Teller of the Ayes:** Sen. Sakaja.

**NOES:** Sen. Cherargei, Nandi County; Sen. Kinyua, Laikipia County.  
Sen. (Dr.) Lelegwe, Samburu County; and Sen. Murkomen, Elgeyo-Marakwet County

**Teller of the Noes:** Sen. Shiyonga.

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

**AYES:** 28

**NOES:** 4

**ABSENTIONS:** Nil.

The "Ayes" have it.

*(Question carried by 28 votes to 4)*

**The Senate Majority Leader** (Sen. Poghiso): Madam Temporary Chairperson, I beg to move that the Committee do report to the Senate its consideration of the Political Parties (Amendment) Bill (National Assembly Bills No.56 of 2021) and its approval thereof without amendment.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## **REPORT**

THE POLITICAL PARTIES (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILLS NO.56 OF 2021)

**The Speaker** (Hon. Lusaka): I now call upon the Chairperson to report.

**Sen. Nyamunga:** Mr. Speaker, Sir, I beg to report that the Committee of the Whole has considered the Political Parties (Amendment) Bill (National Assembly Bills No.56 of 2021) and its approval thereof without amendments.

**The Senate Majority Leader** (Sen. Poghisio): Mr. Speaker, Sir, I beg to move that the House do agree with the Committee in the said report. I request Sen. Orengo to second.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, I beg to second.

*(Question proposed)*

*(Question put and agreed to)*

**The Senate Majority Leader** (Sen. Poghisio): Mr. Speaker, Sir, I beg to move that the Political Parties (Amendment) Bill (National Assembly Bills No.56 of 2021) be now read a Third Time. I request Sen. Orengo to second.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, my pleasure to second.

*(Question proposed)*

*(Question put and agreed to)*

**The Speaker** (Hon. Lusaka): Let the Division Bell be rung for one minute.

*(The Division Bell was rung)*

I now direct that the names be called out. Let us have the Tellers.

*(Roll Calling Voting in Progress)*

**The Speaker** (Hon. Lusaka): Sen. (Eng.) Maina, unmute and vote. We cannot hear you.

*(Roll Call voting in progress)*

### **THIRD READING**

THE POLITICAL PARTIES (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILLS NO. 56 OF 2021)

### **DIVISION**

### **ROLL CALL VOTING**

*(Question, that the Political Parties Amendment Bill (National Assembly Bills No. 56 of 2021) be read a Third Time put, and the Senate proceeded to vote by County Delegations)*



**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Haji, Garissa County; Sen. (Eng.) Hargura, Marsabit County; Sen. Kavindu Muthama, Machakos County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. (Eng.) Maina, Nyeri County; Sen. M. Kajwang', Homa Bay County; Sen. Madzayo, Kilifi County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Moi, Baringo County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orenge, Siaya County; Sen. Outa, Kisumu County; Sen. Poghiso, West Pokot County; Sen. Sakaja, Nairobi City County; Sen. Wako, Busia County and, Sen. Wamatangi, Kiambu County.

**Teller for the Ayes:** Sen. Kwamboka.

**NOES:** Sen. Cherargei, Nandi County; Sen. Kinyua, Laikipia County; and Sen. Murkomen, Elgeyo-Marakwet County.

**Teller for the Noes:** Sen. Sakaja.

**The Speaker** (Hon. Lusaka): Hon. Senators, these are the results of the division.

**AYES:** 28

**NOES:** 3

**ABSTENTIONS:** Nil

The 'Ayes' have it.

*(Question carried by 28 votes to 3)*

*(The Bill was accordingly read a Third Time and passed)*

Honourable Senators, I defer the other business that had been listed on the Order Paper.

### **COMMITTEE OF THE WHOLE**

THE HERITAGE AND MUSEUMS BILL  
(SENATE BILLS NO. 22 OF 2021)

*(Committee of the Whole deferred)*

### **COMMITTEE OF THE WHOLE**

THE COUNTY OVERSIGHT AND ACCOUNTABILITY  
BILL (SENATE BILLS NO. 17 OF 2021)

*(Committee of the Whole deferred)*

### **COMMITTEE OF THE WHOLE**

THE COUNTY GOVERNMENTS (AMENDMENT)  
BILL (SENATE BILLS NO. 38 OF 2021)

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

THE INTERGOVERNMENTAL RELATIONS (AMENDMENT)  
BILL (SENATE BILLS NO. 37 OF 2021)

*(Committee of the Whole deferred)*

**ADJOURNMENT**

**The Speaker** (Hon. Lusaka): Honorable Senators, it is now time to adjourn the House. The Senate, therefore, stands adjourned until Thursday, 27<sup>th</sup> January 2022 at 10.00 a.m.

The Senate rose at 9.01pm