



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – FOURTH SESSION

NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

THURSDAY, SEPTEMBER 01, 2016

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **Presiding** – the Speaker
4. **COMMUNICATIONS FROM THE CHAIR**

The Speaker conveyed the following Communications –

(i) Official Launch of the Sustainable Development Goals (SDGs) in Kenya

“Hon. Members,

I wish to inform the House that I am in receipt of letter from the Executive regarding the planned Official Launch of the Sustainable Development Goals (SDGs) in Kenya. As you may recall, the Government of Kenya was instrumental in the development of these SDGs and is therefore keen to fast-track domestication and operationalization of this new global development framework. I also hasten to state that several delegations from relevant Parliamentary Committees and Caucuses, such as the Disaster Risk Reduction Caucus and the Parliamentary Caucus on MDGs did participate in the deliberations that developed the SDGs. Suffice it to say, the legislature's strategic position in governance is necessary for enactment of enabling legislation; appropriation of funds for implementation of this important framework; and exercising oversight over the implementation, among other roles.

Honourable Members, to this end, the Executive, through the Ministry of Devolution and Planning will convene a forum of key stakeholders for build awareness on the SDGs and officially launching the SDGs in Kenya. The launch is scheduled to take place on Wednesday, September 14, 2016 at the Safaricom Stadium, Kasarani from 9.00am and will be presided over by H.E. President Uhuru Kenyatta, CGH. In this regard, I hereby draw the attention of the House to this important event and invite all Honourable Members to attend.

I thank you.”

(ii) IMPLEMENTATION OF NTSA (OPERATION OF MOTOR CYCLES) REGULATIONS, 2015

Hon. Members, this Communication relates to a matter that was raised by the Member for Kiharu, Hon. Irungu Kang'ata, on the alleged implementation of regulations by the National Transport Safety Authority (NTSA). As I indicated yesterday, there is various ways by which the regulation-making authorities may deal with regulations soon after they are gazetted and, more particularly, the requirement by the Statutory Instruments Act for the tabling of those regulations or any other regulations in the House within seven days.

I want to confirm that NTSA did not table before this House the NTSA (Operation of Motorcycle) Regulations, 2015, for ease of reference. The Cabinet Secretary for Transport and Infrastructure transmitted the gazetted NTSA (Operation of Motorcycle) Regulations, 2015 to the National Assembly for tabling as required under Section 11 (1) of the Statutory Instruments Act, 2013.

As usual, the Regulations were referred to the Select Committee on Delegated Legislation for scrutiny to see whether they conform to the Constitution and the enabling Act, pursuant to which they are made or any other laws of the country and the principles of good governance and rule of law.

The Select Committee on Delegated Legislation held a meeting on Friday 19th June 2015 to scrutinize the said Regulations through which the Committee approved the Regulations having observed that the Regulations are in accordance with the Constitution, the parent Act and other written laws of the country.

Pursuant thereto, there was no need for the Committee on Delegated Legislation to table a report. In keeping with our Standing Order No. 210(4) (a), those of you who have copies of the Standing Orders could be looking at them so that the Hon. Member for Kiharu may rest. Standing Order No. 210(4) says as follows:-

"(4) If the Committee- (a) resolves that the statutory instrument be acceded to; the Clerk shall convey that resolution to the relevant state department or the authority that published the statutory instrument."

Therefore, there is no need for tabling the Regulations. They can only be tabled here if the Committee does not accede to the statutory instrument, in which case the Committee may recommend to the House that the Assembly resolves that all or any part of the statutory instrument be annulled. The rest is provided under that Standing Order.

Therefore, the Member for Kiharu is advised that the Clerk of the National Assembly communicated to the Director-General of NTSA on 30th June, 2015 that the Regulations conform to the requirements of the Constitution, the parent Act and all other relevant laws of the country.

Therefore, their implementation violates no known law, unless the Member for Kiharu has imagined some recent ones. Indeed, hon. Members, it is fair to commend the Committee on Delegated Legislation. It shows that the Committee has been working. It is only that the methods of doing their work are not always by reports here.

I will do the other Communication at the statement stage.

I thank you."

(iii) Consideration of the Election Laws (Amendment) Bill, 2016

"Honourable Members,

You will recall that yesterday, Wednesday, August 30th, 2016 during the afternoon sitting, during the Second Reading of the Election Laws (Amendment) Bill, 2016, the Member for Kisumu Town West, Hon. Olago Aluoch rose on a Point of Order seeking direction from the Speaker on matters arising out of the debate. Specifically, he sought determination on whether the Members could propose amendments to the Bill in light of the Communication from the Speaker with regard to further amendments to the Report of the Joint Committee on matters relating to the Independent Electoral and Boundaries Commission. The Member additionally sought direction from the Speaker on whether it would be proper for the House to continue debate on the Bill in its present form, which according to the Honourable Member, does not conform to the resolution of the House on the Report of the Joint Committee on matters relating to the Independent Electoral and Boundaries Commission with regard to the recommendation to *restrict candidates seeking political offices from changing parties* - an act commonly referred to as "party-hopping".

Honourable Members,

On the question of proposing amendments to the Bill, I am guided by the Communication of Thursday, 25th August, 2016 on the consideration of the Report of the Joint Parliamentary Select committee on matters relating to the Independent Electoral and Boundaries Commission (IEBC). On that day, the Speaker did direct as follows and I quote—

"May I reiterate that Report in itself makes recommendations but whose actualization lies in the passage of the two Bills. It is therefore in place of the House to look into itself and decide whether to engage in the current processes or await the Bills which will undoubtedly go through all the stages, including Second Reading, and consideration of any amendments at Committee stage, in accordance with the Standing Orders."

From the foregoing, it is quite clear that any prescription on amendments in the Communication only applied to the consideration of the Report of the Joint Parliamentary Select Committee. Members of the House are therefore at liberty to propose amendments to and indeed to amend the Bill in the usual manner as provided for under the Standing Orders. That settles the issue.

Honourable Members,

On the second issue on whether it is proper for the House to continue debate on the Bill, allow me to revisit the resolution of the House on the Report of the Joint Parliamentary Select Committee on matters relating to the Independent Electoral and Boundaries Commission. You will recall that the Hon Olago Aluoch had successfully moved the House to resolve to delete sub-paragraph (7) of Paragraph 659 of the Report relating to the recommendation to *restrict candidates seeking political offices from changing parties*- an act commonly referred to as "party-hopping". During the debate on the adoption of the Report and also in the Point of Order that is the subject of this Communication, the Honourable Member urged that the recommendation in the Report and clauses 8, 9, 10, 11 and 12 of the Bill contravene the political rights of an individual by prescribing timelines that restrict the individual from either changing parties or standing as an independent candidate in contravention of Article 38 of the Constitution and the freedom of association.

Honourable Members,

The Constitution and legislation passed by this House outline a clear framework for the enjoyment of political rights and the place and regulation of political parties in our democracy, respectively. Article 38 of the Constitution provides, and I quote—

- "(1) Every citizen is free to make political choices, which includes the right—*
- (a) to form, or participate in forming, a political party;*
 - (b) to participate in the activities of, or recruit members for, a political party; or*
 - (c) to campaign for a political party or cause.*
- (2) Every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for—*
- (a) any elective public body or office established under this Constitution; or*
 - (b) any office of any political party of which the citizen is a member.*
- (3) Every adult citizen has the right, **without unreasonable restrictions—***
- (a) to be registered as a voter;*
 - (b) to vote by secret ballot in any election or referendum; and*
 - (c) to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office."*

A clear reading of Article 38 reveals that the political rights are not absolute but are subject to reasonable restrictions. The Constitution empowered Parliament to legislate on the regulation of the enjoyment of political rights including prescribing any reasonable restrictions. Article 82(1) of the Constitution, in this regard, provides—

- "(1) Parliament shall enact legislation to provide for—*
- (a) the delimitation by the Independent Electoral and Boundaries Commission of electoral units for election of members of the National Assembly and county assemblies;*
 - (b) the nomination of candidates;*
 - (c) the continuous registration of citizens as voters;*
 - (d) the conduct of elections and referenda and the regulation and efficient supervision of elections and referenda, **including the nomination of candidates for elections;** and*
 - (e) the progressive registration of citizens residing outside Kenya, and the progressive realisation of their right to vote."*

Honourable Members,

As you may recall, the Tenth Parliament, in line with the requirement under Article 82 of the Constitution, passed the Elections Act, 2011 to regulate, among others, the procedure for the nomination of candidates by political parties. Indeed, the Act currently obliges political parties as well as persons intending to stand as independent candidates to submit various documentation to the Independent Electoral and Boundaries Commission within stipulated timelines and generally regulates the activities of political parties and candidates in the period before an election. The Act requires parties to—

- (a) conduct primaries at least forty five days before the general election at section 13;
- (b) submit their membership lists to the Commission at least forty five days to a general election at section 28; and
- (c) To submit their nomination rules to the Commission at least ninety days before the general election at section 27.

Further, Honourable Members, the Constitution itself prescribes a timeline that "locks out" independent candidates from being members of a political party. Article 85 of the Constitution provides—

- "Any person is eligible to stand as an independent candidate for election if the person—*
- (a) is not a member of a registered political party and has not been a member for **at least three months immediately before the date of the election;**"*

Honourable Members,

It is therefore evident that the timelines contained in the Election Laws (Amendment) Bill, 2016 are not new or unusual. The timelines, and indeed the rest of the Bill, constitute proposals placed before the House for consideration, adoption, amendment or rejection. I must note that, in addition, I have scrutinized the Bill and I do not find any provision that may be interpreted as violating the fundamental rights and freedoms afforded under the Constitution, including the freedom of association and political rights. This, as I have previously ruled, does not preclude any individual from seeking a determination of the constitutionality of the provisions of the Bill **after its enactment** in the High Court as the body mandated to interpret the Constitution under Article 165.

Please be guided accordingly.

I thank you!"

5. PETITION

The following Member presented a Petition –

The Member for Kacheliba (Hon. Mark Lomunokol) on behalf of the Member for Kapengulia (Hon. Samuel Moroto) presented a Petition on behalf of the Pokot Indigenous Population (SUK) regarding existence of numerous police posts and barriers along the West Pokot and Trans Nzoia border.

Petition referred to the relevant Departmental Committees pursuant to Standing Order 227(1)

6. PAPERS

The following papers were laid on the Table of the House –

- i. The Report of the Departmental Committee on Finance, Planning and Trade on its consideration of a Petition to amend Article 231 (4) of the Constitution regarding portraits on notes and coins issued by the Central Bank of Kenya; and
- ii. The Report of the Departmental Committee on Finance, Planning and Trade on its consideration of a Petition to amend the Accountants Act No. 15 of 2008.

(Vice-Chairperson, Departmental Committee on Finance, Planning and Trade)

- iii. The Report of the Select Committee on Regional Integration on its consideration of East African Legislative Assembly Reports and Bills.

(Chairperson, Select Committee on Regional Integration)

7. STATEMENT

Pursuant to the provision of Standing Order 44(2)(a), the Leader of the Majority Party issued a Statement regarding the Business of the House for the week commencing Tuesday, October 4, 2016.

8. PROCEDURAL MOTION – APPROVAL OF A SITTING AT 6.45 P.M

Motion made and question proposed.

THAT, pursuant to the provisions of Standing Order 30(3)(b), this House resolves to hold a Sitting today Thursday, September 1, 2016 commencing at 6.45 p.m. for purposes of considering urgent Business before the House.

(The Leader of the Majority Party)

There being no debate arising;

Question put and agreed to.

9. MOTION - RATIFICATION OF THE DEFENCE COOPERATION AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA & THE GOVERNMENT OF UNITED KINGDOM

Motion made and Question proposed –

THAT, this House **adopts** the Report of the Departmental Committee on Defence and Foreign Relations on its consideration of the Agreement between the Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Defence Cooperation, laid on the Table of the House on Wednesday, 6th July, 2016, and pursuant to the provisions of section 8 of the Treaty Making and Ratification Act, 2012, **approves** the ratification of the Agreement between the Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Defence Cooperation.

(Chairperson, Departmental Committee on Defence & Foreign Relations – 19.07.2016)

Debate on the Motion having been concluded on Thursday, September 01, 2016 (Morning Sitting);

Mover replied;

Question put and agreed to.

10. THE PUBLIC FUNDRAISING APPEALS BILL (SENATE BILL NO. 28 OF 2014)

Order for Second Reading read;

Motion made and Question proposed –

THAT, the Public Fundraising Appeals Bill (Senate Bill No.28 of 2014) be now read a Second Time

(Chairperson, Departmental Committee on Justice & Legal Affairs)

Debate arising;

Pursuant to the provisions of Standing Order 40(2), debate on the Bill was accordingly interrupted for Committee of the whole House.

11. COMMITTEE OF THE WHOLE HOUSE

Order for Committee read –

IN THE COMMITTEE

The Fourth Chairperson in the Chair

(i) The Kenya Regiment (Territorial Force) (Repeal) Bill (National Assembly Bill No. 39 of 2015)

Clause 2 - agreed to;

Clause 3 - agreed to;

Title - agreed to;

Clause 1 - agreed to;

Bill to be reported without amendments.

(ii) The Election Offences (National Assembly Bill No. 38 of 2016)

Clauses 3 and 4 - agreed to

Clause 5 - amendment proposed –

THAT, clause 5 of the Bill be amended—

(a) in paragraph (h) by deleting the word “and” appearing immediately after the words “not being an election official” and substituting therefor the word “or”;

(b) inserting the following new paragraph immediately after paragraph (q) —

(r) “steals ballot papers with the aim of manipulating the election results”.

(Hon. Millie Odhiambo)

Question of the amendment proposed;

Debate arising;

Proposed amendment withdrawn;

Clause 5 - agreed to

Clauses 6, 7 and 8 - agreed to

Clause 9 - amendment proposed –

THAT the Bill be amended in Clause 9 by inserting the following new sub-section immediately after subsection (1) —

“(1) Despite sub-section (1), a person who make payments or reimbursements to persons attending a political meeting shall not be liable for bribery.

(Hon. David Ochieng)

Proposed amendment dropped;

Clause 9 - agreed to

Clause 10 - amendment proposed –

THAT, clause 10 of the Bill be amended in the opening paragraph of sub clause (1) by inserting the words “abusive, demeaning or culturally disparaging or discriminatory language” immediately after the words “harmful cultural practices”;

(Hon. Millie Odhiambo)

Proposed amendment withdrawn;

Clause 10 - agreed to

Clauses 11 and 12 - agreed to

Clause 13 - amendment proposed –

THAT, Clause 13 of the Bill be amended by inserting the following new paragraph immediately after paragraph (m)—

“(n) produces or distributes promotional, advertisement or campaign material before or after the period prescribed by the Commission,”

(Hon. Alice Wahome)

Proposed amendment dropped;

Clause 13 - agreed to

Clauses 14 and 15 - agreed to

Clause 16 - amendment proposed –

THAT, clause 16 of the Bill be amended in subclause 7(b) by inserting the words “ or a lake” immediately after the words “a river”;

(Hon. Millie Odhiambo)

Proposed amendment withdrawn;

Clause 16 - agreed to

Clauses 17, 18, 19, 20, 21, 22 and 23 - agreed to

Clause 24 - amendment proposed –

THAT, clause 24 of the Bill be amended in subclause (2) by inserting the words “or party primaries” immediately after the words “during a referendum”.

(Hon. Millie Odhiambo)

Proposed amendment withdrawn;

Clause 24 - agreed to

Clause 25 - agreed to

Clause 2 - amendment proposed –

THAT, clause 2 of the Bill be amended –

- (a) in the definition of the term “election” by inserting the words “party primaries” immediately after the words “county election”;
- (b) in the definition of the term “election period” by inserting the words “and for purposes of party primaries, shall be the period within which party primaries are held” immediately after the words “the election results”;
- (c) in the definition of the term “voter” by inserting the words “and for purposes of party primaries means members of the party” immediately after the words “Register of Voters”.

(Hon. Millie Odhiambo)

Proposed amendment withdrawn;

Clause 2 - agreed to

Title - agreed to

Clause 1 - agreed to

Bill to be reported with amendments.

(iii) The Election Laws (Amendment) Bill (National Assembly Bill No. 37 of 2016)

The Fourth Chairperson in the Chair

Clause 3 - amendment proposed –

THAT, the Bill be amended by deleting clause 3 and substituting thereof the following new clause in subsection (1) —

- (a) deleting the proviso to paragraph (a);
- (b) inserting the following new paragraph immediately after paragraph (a)—
 - “(ba) in the case of a referendum, between the date of the publication of the question and the date of the referendum”;
- (c) deleting subsection (3A); and
- (d) deleting subsection (3B).

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed –

Debate arising;

Question put and negatived.

Clause 3 - agreed to

Clause 4 - amendment proposed –

THAT, clause 4 of the Bill be amended in sub clause (2) by deleting the expression "of" and substituting therefor the expression "by".

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed –

Debate arising;

Question put and negatived.

Clause 4 - Motion- Rescinding of decision

Rising in his place, the Member for Garissa Township (Hon. Aden Duale) moved *"THAT, pursuant to provisions of Standing Order 49, the Committee of the whole House rescinds its decision on Clause 4"*

Question put and agreed to;

Decision to negative Clause 4 rescinded

Clause 4 - agreed to

Clause 5 - agreed to

Clause 6 - amendment proposed –

THAT, clause 6 of the Bill be amended —

- (i) in sub clause (5) by deleting the words "the National Assembly and the Senate" and substituting therefor the term "Parliament."
- (ii) by inserting the following new clause immediately after clause (5) —

"(5A) Parliament shall adopt the report submitted under subsection (5) within twenty one days."

- (iii) by deleting sub clause (6) and substituting therefor the following new sub clause.

"(6) The Commission shall implement the recommendations of the adopted audit report within a period of thirty days and submit its implementation report to Parliament."

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed –

Debate arising;

Question put and negatived.

Clauses 7 and 8 - agreed to

Clause 9 - amendment proposed -

THAT, the Bill be amended by deleting clause 9 and substituting therefor the following new section —

"9. The Election Act, 2011 is amended by deleting Section 28 and substituting therefor the following new section—

"28. (1) A political party that nominates a person for an election under this Act shall submit to the Commission a membership list of the party—

- (a) in the case of a general election, at least ninety days before the date of the election; and
- (b) in the case of a by-election, at least forty-five days before the date of the by-election."

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed -

Debate arising;

Proposed amendment withdrawn;

Further amendment proposed -

THAT, the Bill be amended by deleting clause 9.

(Hon. Johana Ng'eno)

Question of the amendment proposed -

Debate arising;

Question put and negatived.

Clause 9 - agreed to

Clause 10 - amendment proposed -

THAT, clause 10 of the Bill be amended in paragraph (a) by deleting the proposed new subsection (2) and substituting therefore the following subsection—

- "(2)(a)** The Commission shall, upon the request of a political party, conduct and supervise the nomination of candidates by the political party for presidential, parliamentary or county elections in accordance with Article 88 of the Constitution.
- (b)** A political party shall publish a list of the counties, constituencies and wards in which it has requested the Commission to conduct and supervise the nomination of its candidates in two newspapers of national circulation at least fourteen days before the date of its party primary.
- (c)** Despite paragraph (a), the Commission shall conduct and supervise the nomination of candidates in a county, constituency or ward not included in the list published under paragraph (b) upon the request of a majority of candidates contesting in the party primary in that county, constituency or ward."

(Hon. John Waiganjo)

Question of the amendment proposed –

Debate arising;

Proposed amendment withdrawn;

Further Amendment Proposed

THAT, clause 10 of the Bill be amended—

- (a) by deleting the word “selected” appearing immediately before the words “who have been” and substituting thereof the word “nominated”;
- (b) by deleting the words “sixty” appearing immediately before the words “at least” and substituting thereof the word “ninety”;

(Hon. Johana Ng’eno)

Question of the amendment proposed –

Debate arising;

Proposed amendment withdrawn;

Further amendment proposed –

THAT, clause 10 of the Bill be amended in paragraph (b) —

- (a) in the proposed subsection (2B) by deleting the words “twenty one” appearing immediately after the words “at least” and substituting therefor the words “forty five”;
- (b) by inserting the following new subsection immediately after the proposed subsection (2B)—

“(2Ba) For purposes of settling disputes that may arise from a party primary, a political party shall hold its party primary at least fourteen days before the nomination day.”

(Hon. Irungu Kang’ata)

Question of the amendment proposed –

Debate arising;

Question put and negatived.

Further amendment proposed –

THAT, clause 10 of the Bill be amended by deleting the proposed new sub section (2D) and substituting thereof the following new section—

“(2D) A candidate for a presidential, parliamentary or county election shall be nominated in accordance with the rules of the political party.”

(Hon. Peter Kaluma)

Question of the amendment proposed –

Debate arising;

Proposed amendment withdrawn;

Further amendment proposed –

THAT, clause 10 of the Bill be amended—

- (i) in sub-clause (2) by inserting the expression “(4)’ appearing immediately after the words “Article 88.”
- (ii) in the proposed new sub section (2D) by deleting the word “selected” and substituting therefor the word “nominated.”
- (iii) by inserting the following new sub section immediately after the proposed new sub section (2D) —

“(2E) without prejudice to section (2D) a political party may elect to rely on the Register of Voters in conducting the nominations.

(2F) Where the Commission receives multiple requests under subsection 2, the Commission shall conduct and supervise the nomination of candidates for presidential, parliamentary or county elections for all the requesting political parties—

- (a) on the same day;
- (b) in the same polling centres; and
- (c) in different polling streams for each participating political party.”

- (iv) by inserting the following new sub section immediately after sub section (2E) —

“(2F) Parliament shall appropriate monies for the effective implementation of this section.”

- (v) by inserting the following new section immediately after section 31—

“**31A.** Each political party shall ensure that not more than two-thirds of the persons contesting are of the same gender.”

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed –

Debate arising;

Proposed amendment withdrawn;

Further amendment proposed -

THAT, the Bill be amended in Clause 10(b) by inserting the following new subsections immediately after the proposed new subsection (2D) —

“(2E) Notwithstanding subsection (2D), where the Commission supervises the nomination of candidates by the political party under subsection (2), a candidate for

a presidential, parliamentary or county election shall be selected by persons whose names appear on the Register of Voters."

"(2F) Subject to subsection (2), the Secretariat of the Commission shall be responsible for conducting and supervising the nomination of candidates by the political party for presidential, parliamentary or county elections in accordance with Article 88 of the Constitution.

"(2G) The day that political parties conduct party nominations shall be a Public Holiday.

(Hon. Ferdinand Waititu)

Question of the amendment proposed –

Debate arising;

Question put and negatived.

Further amendment proposed -

THAT, the Bill be amended in Clause 10(b) by inserting the following new subsection immediately after the proposed new subsection (2D) —

"(2E) Despite subsection (2D), where the Commission supervises the nomination of candidates by the political party under subsection (2), a candidate for a presidential, parliamentary or county election shall be selected by persons whose names appear on the Register of Voters."

(Hon. David Gikaria)

Question of the amendment proposed –

Debate arising;

Proposed amendment withdrawn;

Clause 10 - agreed to

Clause 11 - agreed to

Clause 12 - amendment proposed –

THAT, clause 12 of the Bill be amended by—

- (i) renumbering the existing provision as sub clause (1);
- (ii) inserting the following new sub clause immediately after sub clause (1)

"(2) The party list referred to subsection (1) shall be signed by the national chairperson, the secretary general and the organising secretary of the political party."

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed –

Debate arising;

Question put and negatived.

Further amendment proposed –

THAT, the Bill be amended in clause 12—

(a) by renumbering the existing provision as subsection (1);

(b) by inserting the following new subsection immediately after sub-section (1) —

“(2) The part list submitted pursuant to subsection (1) shall be accompanied by minutes approving the same and shall be signed by the person or persons expressly authorized by the constitution or rules of the relevant political party.

(Hon. T.J. Kajwang’)

Question of the amendment proposed –

Debate arising;

Question put and negatived.

Clause 12 - agreed to

Clause 13 - amendment proposed –

THAT, clause 13 of the Bill be amended in the proposed new clause 38A by deleting the word “five hundred” and substituting therefor the word “seven hundred.”

(Chairman of the Departmental Committee on Justice and Legal Affair)

Question of the amendment proposed –

Debate arising;

Question put and negatived.

Clause 13 - agreed to

Clause 14 - amendment proposed –

THAT, clause 14 of the Bill be amended—

- (i) in paragraph (ii) by deleting the words “county women representative to the National Assembly” appearing immediately before the words “Senator and” and substituting therefor the words “county member of the National Assembly” ;
- (ii) in paragraph (iii) by deleting the words “county women representative to the National Assembly” appearing immediately before the words “Senator and” and substituting therefor the words “county member of the National Assembly” ; and
- (iii) in sub clause (1B) by deleting the words “county women representative to the National Assembly” appearing immediately before the words “Senator and” and substituting therefor the words “county member of the National Assembly”.

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed –

Debate arising;

Question put and negatived.

Clause 14 - Further amendment proposed –

THAT, clause 14 of the Bill be amended-

- (a) in the proposed new sub-section (1A)-
 - (i) by deleting the word "President" appearing in paragraph (ii);
 - (ii) in paragraph (iii) by deleting the words "the collated results for the election of the President to the national tallying centre and" appearing immediately after the words "prescribed form"
- (b) in the proposed new sub-section (1C)-
 - (i) by inserting the words "through the constituency returning officer appointed under sub-section (1A)" immediately after the word "Commission" appearing in the opening paragraph;
 - (ii) by inserting the following new paragraph immediately before paragraph (a)-
 - (aa) allow each willing presidential candidate to establish and maintain a presidential candidate national tallying centre with a known electronic and physical address;
 - (iii) by inserting the words "presidential candidate national tallying centre" immediately after the words "constituency tallying centre" appearing in paragraph (a).

(Hon. George Oner)

Question of the amendment proposed –

Debate arising;

Proposed amendment withdrawn;

Further amendment proposed -

THAT, the Bill be amended in Clause 14 by inserting the following new subsection immediately after the proposed new subsection (1D) —

"(1E) Any person being a returning officer appointed under this section or member of the Commission under this Act who willfully utters or otherwise misrepresents election results as announced and declared pursuant to subsections (1A) and (1B) commits an offence and shall be liable on conviction to a custodial sentence of twenty years."

(Hon. T.J. Kajwang')

Question of the amendment proposed –

Debate arising;

Proposed amendment withdrawn;

Clause 14 - agreed to

Clause 15 - agreed to

Clause 16 - amendment proposed –

THAT, the Bill be amended by deleting clause 16 and substituting therefor the following new clause 16A. —

16. Section 43 of the Elections Act, 2011 is amended—

(a) by deleting subsections (1), (2), (3) and (4);

(b) by deleting subsection (5) and substituting therefor the following new subsection —

“(5) A public officer who intends to contest an election under this Act shall resign or otherwise exit from public office—

(a) in the case of a general election, at least eight months before the date of the general election; or

(b) in the case of a by-election, within seven days of the declaration of a vacancy.”

(c) by inserting the following new subsection immediately after subsection (5)

“(5A) A person who fails to comply with the provisions of sub section (5) is disqualified from participating in the election.”

(c) in sub section (6) by deleting paragraph (b)

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed –

Debate arising;

Proposed amendment withdrawn;

Clause 16 - agreed to

Clause 17 - amendment proposed –

THAT, clause 17 of the Bill be amended in the proposed new section 44—

(a) by deleting the word “integrated” appearing in subsection (1);

(b) in subsection (4) by deleting the words “at least eight months before such elections” appearing in paragraph (a);

(c) in subsection (6) by deleting the words “from the date of commencement of this section” and substituting therefor the words “after the new commissioners assume office” appearing in paragraph (a);

(d) in subsection (7) by deleting the words “at least eight months before the general election” and substituting therefor the words “timely for the general election” appearing in paragraph (b).

(Leader of the Majority Party)

Question of the amendment proposed –

Debate arising;

Proposed amendment withdrawn

Clause 17 - agreed to

Clause 18 - amendment proposed –

THAT, clause 18 of the Bill be amended —

- (i) in sub clause (1) of the proposed new section 55 B by deleting paragraph (a) and substituting therefor the following—

“(a) there is outright and widespread violence, disorder and the breakdown of law and order that makes it impossible to conduct the election; ”

- (ii) by deleting paragraph (c)

- (iii) in sub clause (2) by deleting the words “the earliest practicable time” appearing immediately before the words “shall be held at” and substituting therefor the words “within thirty days or any such other date as the court may direct.”

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed –

Debate arising;

Proposed amendment withdrawn;

Further amendment proposed –

THAT, clause 18 of the Bill be amended by deleting the proposed new section 55B.
(Hon. Peter Kaluma)

Question of the amendment proposed –

Debate arising;

Proposed amendment withdrawn;

Clause 18 - agreed to

Clauses 19 and 20 - agreed to

Clause 21 - amendment proposed

THAT, the Bill be amended by deleting clause 21 and substituting thereof the following of new clause —

Deletion of Section 87 of No. 24 of 2011. **21.** The Elections Act, 2011 is amended by deleting section 87.

(Hon. Peter Kaluma)

Question of the amendment proposed –

Debate arising;

Proposed amendment withdrawn;

Clause 21 - agreed to

Clauses 22, 23, 24, 25, 26, 27, 28, 29 and 30 - agreed to

Clause 31 - amendment proposed –

THAT the Bill be amended in clause 31 in the proposed new section 5 by inserting the following new subsection immediately after subsection (2) —

“(2A) The Chairperson and members of the Commission shall serve on a part-time basis.”

(Hon. David Ochieng)

Question of the amendment proposed –

Debate arising;

Question put and negatived.

Clauses 31 and 32 - agreed to

Clause 33 - amendment proposed –

THAT, the Bill be amended in clause 33 in the proposed new section 7A by deleting the words “and Chapter Six of the Constitution” appearing in paragraph (c) and substituting therefor the words “of the Constitution”.

(Hon. David Gikaria)

Question of the amendment proposed –

Debate arising;

Proposed amendment withdrawn;

Clause 33 - agreed to

Clauses 34, 35, 36 and 37 - agreed to

Clause 38 - amendment proposed –

THAT, clause 38 of the Bill be amended in paragraph (1) —

(a) by deleting sub paragraph (2) and substituting therefor the following new sub paragraph—

“(2) For the purpose of the first appointment of commissioners upon the commencement of section 5, the selection panel shall consist of —

- (i) two persons, being one man and one woman, nominated by the majority party or coalition of parties in the National Assembly;
- (ii) two persons, being one man and one woman, nominated by the minority party or coalition of parties in the National Assembly;
- (iii) one person nominated by the Judicial Service Commission;
- (iv) one person nominated by the Gender and Equality Commission;
- (v) one person nominated by the Commission on Administrative Justice;
- (vi) one person nominated by the Kenya National Commission on Human rights; and
- (vii) one person nominated by the Association of Professional Societies of East Africa.

(b) by deleting sub paragraph (4) by and substituting therefor the following new sub paragraph—

“(4) After conducting interviews under subparagraph (2), the selection panel shall select one person qualified to be appointed as chairperson and six persons qualified to be appointed as members of the Commission and shall forward the names to the President for appointment as the chairperson and members of the Commission.

(Hon. Peter Kaluma)

Question of the amendment proposed –

Debate arising;

Proposed amendment withdrawn;

Further amendment proposed –

THAT, clause 38 of the Bill be amended—

- (a) by deleting the opening statement of subparagraph (2) and substituting therefor the following new opening statement—

“(2) Within seven days after the commencement of this Act, the nominating bodies and organizations listed hereinafter shall appoint and forward their nominees to the Clerk of the National Assembly for appointment by the President as the selection panel, that is—
- (b) by inserting the following new subparagraph immediately after sub-paragraph (f)—

“(g) upon swearing into office of the new commissioners the term of the current commissioners will be deemed to have lapsed.”

(Leader of the Majority Party)

Question of the amendment proposed –

Debate arising;

Proposed amendment withdrawn;

Further amendment proposed –

THAT, paragraph (1) of the First Schedule is amended in subparagraph 2(a) by inserting the words “in consultation with the leader of the majority party and the leader of the minority party of the National Assembly” immediately after the words “Parliamentary Service Commission.”

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed –

Debate arising;

Proposed amendment withdrawn;

Further amendment proposed –

THAT, clause 38 of the Bill be amended in paragraph 3(4) of the First Schedule by—

- (a) deleting the words “ two persons” appearing immediately after the words “shall select” and substituting therefor the words “one person”;
- (b) deleting the words “ nine persons” appearing immediately after the words “chairperson and” and substituting therefor the words “six persons”;
- (c) deleting the words “ of one person for appointment as the chairperson and six persons for appointment as members” and substituting therefor the words “as the chairperson and six persons as members”.

(Hon. T.J. Kajwang')

Question of the amendment proposed –

Debate arising;

Proposed amendment withdrawn;

Clause 38 - agreed to

Clauses 39 and 40 - agreed to

Clause 41 - amendment proposed –

THAT, the Bill be amended by deleting Clause 41.

(Hon. Abdullahi Diriye)

Proposed amendment dropped in the absence of the Mover

Further amendment proposed –

THAT, the Bill be amended by deleting Clause 41 and substituting therefor the following clause—

Amendment of
section 16 of
Cap. 107.

41. Section 16 of the Registration of Persons Act is amended by inserting the following new paragraph immediately after paragraph (d)—

"(da) prescribing a mechanism for verifying of the status of Kenyans listed in the refugee database for purposes registering and issuing them with identity cards;"

(Hon. (Dr.) Mohamed Duale)

Proposed amendment dropped in the absence of the Mover

Clause 41 - agreed to

NEW CLAUSES

New Clause 8A proposed -

THAT the Bill be amended by inserting the following new clause immediately after clause 8—

Insertion of
new section
20A in No.
24 of 2011.

8A. The Elections Act, 2011 is amended by inserting the following new section immediately after section 21—

Promotional,
advertisement and
campaign
material.

20A. The Commission shall, by notice published in the *Gazette*, prescribe the period within which an aspirant or candidate in presidential, parliamentary or county elections may produce or distribute promotional, advertisement or campaign material.

(Hon. Alice Wahome)

Question of the amendment proposed –

Debate arising;

Proposed amendment withdrawn;

New Clause 11A proposed –

THAT, the Bill be amended by inserting the following new clause immediately after clause 11-

11A. Section 34 of the Elections Act, 2011 is amended by inserting the following new subsection immediately after subsection (2) —

Amendment of
section 34 of
No.24 of 2011.

(2A) The party list referred to under subsection (2) shall be of equal gender representation consisting of-

- (a) four persons representing the youth;
- (b) four persons representing persons with disabilities; and
- (c) four persons representing ethnic minorities, marginalized groups and workers.

(Hon. Isaac Mwaura)

Question of the amendment proposed –

Debate arising;

Question put and negatived.

New Clause 37A proposed –

THAT, the Independent Electoral and Boundaries Commission Act, 2011 by inserting the following new clause immediately after section 37—

Transition.

37A. The chairperson and members of the Commission holding office immediately before the commencement of this Act shall be paid negotiated dues to facilitate a dignified transition.

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed –

Debate arising;

Proposed amendment withdrawn;

Clause 2 - amendment proposed –

THAT, clause 2 of the Bill be amended in the definition of the term “biometric” by inserting the words “capture of any of the following” immediately after the word “means.”

(Chairman of the Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed –

Debate arising;

Proposed amendment withdrawn;

Further amendment proposed –

THAT, clause 2 of the Bill be amended—

- (a) in the definition of the words “integrated electronic electoral system” by deleting the word “integrated”;
- (b) by inserting the following new definition in proper alphabetical sequence —

“Party primaries” means the day a political party conducts its internal elections for candidates that will be the party’s flagbearer for any election.

(Leader of Majority Party)

Question of the amendment proposed –

Debate arising;

Proposed amendment withdrawn.

Clause 2 - agreed to

Title - agreed to

Clause 1 - amendment proposed –

THAT the Bill be amended in clause 1 by inserting the following words immediately after the expression "2016" "and shall come into force upon publication."

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed –

Debate arising;

Question put and negatived.

Clause 1 - agreed to

Bill to be reported **without amendments.**

12. **HOUSE RESUMED** - the Third Chairperson in the Chair

The Kenya Regiment (Territorial Force) (Repeal) Bill (National Assembly Bill No. 39 of 2015)

Bill reported without amendments;

Motion made and Question proposed –

THAT, the House do agree with the Committee in the said report

(The Leader of the Majority Party)

Question put and agreed to;

Motion made and Question proposed –

THAT, the Kenya Regiment (Territorial Force) (Repeal) Bill (National Assembly Bill No. 39 of 2015) be now read a Third Time.

(The Leader of the Majority Party)

Debate arising;

Question put and agreed to;

Bill read a Third time and **passed**.

And the time being thirty minutes past O'clock, the Third Chairperson interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

13. HOUSE ROSE - at thirty minutes past Six O'clock
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M E M O R A N D U M

The Speaker will take the Chair today
Thursday, September 01, 2016 at 6.45 p.m.

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