

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 4<sup>th</sup> April, 2017

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

**Hon. Speaker:** There is no quorum. Can the Quorum Bell be rung?

*(The Quorum Bell was rung)*

Hon. Members, we have quorum now. Let us commence our business.

### COMMUNICATION FROM THE CHAIR

#### DELEGATION FROM PARLIAMENT OF ZIMBABWE

Hon. Members, I am pleased to introduce to you a visiting delegation of Members of the Portfolio Committee on Finance and Economic Development from the Parliament of the Republic of Zimbabwe. The delegation is seated at the Speaker's Gallery and comprises of the following:

- |   |   |                            |
|---|---|----------------------------|
| (i) Hon. David Chapfika, MP             | - | Leader of the Delegation;  |
| (ii) Hon. Felix T. Mhona, MP            | - | Member;                    |
| (iii) Hon. Francis G. Mukwangwariwa, MP | - | Member;                    |
| (iv) Hon. Washington Musvaire, MP       | - | Member;                    |
| (v) Hon. Terence Mukupe, MP             | - | Member;                    |
| (vi) Hon. Tapiwa Mashakada, MP          | - | Member;                    |
| (vii) Hon. Dorcas Sibanda, MP           | - | Member;                    |
| (viii) Hon. Tose W. Sansole, MP         | - | Member; and,               |
| (ix) Mr. Christian Ratsakatika          | - | Principal Committee Clerk. |

Hon. Members, the delegation is in the country to share experiences and exchange ideas with their counterparts in the Departmental Committee on Finance, Planning and Trade; the Budget and Appropriations Committee and the Public Investments Committee (PIC), on an array of issues relating to planning and economic development.

On my own behalf and that of the House, I wish to welcome them to the National Assembly and wish them fruitful engagements during their stay in the country.

Thank you.

*(Hon. Members shook hands)*

The Members making your way in, please, take your seats. You will shake hands later. It is good to finish business first.

## MESSAGE

### APPOINTMENT OF SENATORS TO MEDIATION COMMITTEE

Hon. Members, pursuant to the provisions of Standing Order No.41, I wish to report to the House that I am in receipt of correspondence from the Senate dated 31<sup>st</sup> March 2017, conveying that the Senate has appointed the following Senators to represent the Senate in the Mediation Committee to consider the Division of Revenue Bill (National Assembly Bill No. 2 of 2017):

- (i) Sen. Billow Kerrow, MP;
- (ii) Sen. Mutula Kilonzo Junior, MP;
- (iii) Sen. (Dr.) Agnes Zani, MP;
- (iv) Sen. Beatrice Elachi, MP; and,
- (v) Sen. Mutahi Kagwe, MP.

Hon. Members, you will recall that on Tuesday, 28<sup>th</sup> March 2017, the National Assembly negated all the Senate Amendments to the Division of Revenue Bill (National Assembly Bill No.2 of 2017), effectively committing the Bill to a Mediation Committee in terms of Article 112 (2)(b) of the Constitution. Subsequently, I appointed five Members to represent the National Assembly in the Mediation Committee and conveyed the National Assembly's decision to the Senate. With the appointment of the five Senators, the Mediation Committee is now fully constituted and may commence the process of attempting to develop an agreed version of the Bill in accordance with the provisions of Article 113 of the Constitution.

Hon. Members, you will also agree with me that the Division of Revenue Bill is critical to the process of vertical sharing of revenue between the two levels of Government. Indeed, Article 218 of the Constitution provides that the Bill ought to be passed at least two months before the end of the subsisting financial year. I, therefore, implore upon the Mediation Committee to expeditiously consider the contested sections of the Bill and submit the mediated version of the Bill to both Houses of Parliament within the timelines contemplated under Article 113(3) of the Constitution.

I thank you.

## PETITION

### LAND DISPUTE BETWEEN KENGEN AND RESIDENTS OF MASINGA

**Hon. Speaker:** Member for Masinga.

**Hon. Mbai:** Thank you, Hon. Speaker, for giving me this opportunity to present a Petition on behalf of the people of Masinga Constituency.

I, the undersigned, on behalf of the concerned residents of Masinga Constituency, draw the attention of the House to the following:

THAT, land is an important factor of production that sustains livelihoods of many households in Kenya, and access to it is a key facilitator of economic empowerment for rural communities in the country;

THAT, residents of Kivaa and Kyangosi villages settled in Kamburu area way back in 1946, long before the construction of Kamburu Dam commenced in 1975;

THAT, thereafter, public social amenities were establishment to serve the residents of the said regions, among them being Kyangosi and Masaku primary schools that were constructed in 1971 and 1972, respectively;

THAT, in 1985, Masinga region was also declared an adjudication section, but the residents of Kyangosi Village of the said section were not issued with allotment letters because the region was not surveyed;

THAT, in 1996, Kivaa area was declared an adjudication section and occupants of the land were given allotment letters for their respective plots;

THAT, since then, the population in Kivaa and Masinga areas has grown exponentially to about 3,000 people presently;

THAT, in 2005, the Kenya Electricity Generating Company (KenGen) allegedly acquired parts of the land occupied by residents and subsequently obtained a title deed, thereby occasioning a boundary dispute between it and the area residents.

THAT, if the uncertainties related to the boundary dispute remain unresolved, residents of Kivaa and Kyangosi stand the risk of losing the only land known to them as home, including the public institutions that are established on that land.

THAT, despite attempts to have the matter resolved by the County Government of Machakos, all efforts have yielded no results.

THAT, the matter in respect of which this Petition is raised is not pending before any court of law or constitutional body.

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Lands:

- (i) investigates the circumstances under which KenGen acquired land belonging to residents of Kivaa and Kyangosi and had a title deed issued in the name of the disputed area;
- (ii) intervenes through the relevant Government agencies to ensure that the land reverts to its original occupants; and,
- (iii) makes any other order or direction that it may deem fit in mitigating the case.

And your Petitioners will ever pray.

**Hon. Speaker:** The Petition is referred to the Departmental Committee on Lands which should report to the House within the stipulated timelines.

Hon. Members, before we proceed to the next Order, allow me to recognize the presence, in the Speaker's Gallery and in the Public Gallery, respectively, of pupils and students from the following institutions:

Utumishi Academy from Gilgil Constituency, Nakuru County; St. Scholastica Kimumu School from Moiben Constituency, Uasin Gishu County; African Inland Church (AIC), Biribiriet Secondary School from Cherangany Constituency; Trans Nzoia County; St Theresa Tartar Secondary School from Kapenguria Constituency, Pokot County; Kabianga University from Belgut Constituency, Kericho County and, St Marys' Primary School from Dujis Constituency, Garissa County.

They are all welcome to observe the proceedings of the National Assembly.

**Hon. Gikaria:** On a point of order, Hon. Speaker.

**Hon. Speaker:** What is it Hon. Member for Nakuru Town East?

**Hon. Gikaria:** Thank you, Hon. Speaker. I raised this matter two weeks ago with the Hon. Deputy Speaker regarding a petition I had done for a primary school in my constituency. A member of the relevant Committee rose and stated that the Committee would be tabling the report in a week's time. To date, that report has not been tabled. The matter is about land belonging to a primary school which has been grabbed.

*(Some Hon. Members stood between the Speaker and the Member on the Floor)*

**Hon. Speaker:** Order Members! Please, read Standing Order No. 103. What are you doing? You cannot block my view!

Hon. David Gikaria you said that you brought a petition two years ago or is it two months ago? When did you bring the petition?

**Hon. Gikaria:** Hon. Speaker, it is about six months ago. The Petition is about grabbed land and the 60 days are over. I have been waiting all this while. In fact, I was invited to the Committee. I raised the matter three weeks ago with the Deputy Speaker and one of the members of the Committee said that the report was ready. He promised that the report would be tabled in a week's time, but that has not happened.

**Hon. Speaker:** Did you say one of the members of the Committee, but whose name you do not know? I was not on the Chair and so, I would not know which Member you are talking about.

**Hon. Gikaria:** Hon. Speaker, I cannot remember who it was.

**Hon. Speaker:** Well, you better approach the Clerk-at-the-Table to give details about that Petition, but be mindful that delay defeats equity. You should also not sit on your tights for too long. Let it be checked by the clerks for presentation.

Hon. Members, I can see many Members have pressed interventions. Member for Tongaren, what is your intervention? The Member is asleep, not desiring to say anything. Member for Kitutu Chache South! The Member is asleep.

Hon. Members, many of you seem to have forgotten towards the tail end of the 11<sup>th</sup> Parliament which buttons to press. There are several of you who have pressed interventions. Member for Igembe North, what is your intervention?

**Hon. M'uthari:** Thank you, Hon. Speaker. I seek direction from you. Some seven months ago, I raised a Petition here on behalf of a certain Mr. Mbaabu who has suffered for a long time under the hands of the military. The report on his Petition has not been prepared.

**Hon. Speaker:** Which committee was considering the Petition?

**Hon. M'uthari:** The Departmental Committee on Defence and Foreign Relations. Nothing has been done about the case. I presented the Petition about seven months ago.

**Hon. Speaker:** The Committee has only 60 days within which to consider the petition. At the expiry of 60 days, you should have raised this matter. Any report from the Committee? Where is the Chairman or the Vice-Chairman? I saw Hon. Shill. Let us have Hon. Onyonka.

**Hon. Onyonka:** Thank you, Hon. Speaker. As a member of the Departmental Committee on Defence and Foreign Relations, I will hold brief for the Chairman. I undertake to deliver the message to him as soon as possible. So, most likely, tomorrow he will be in the House and he should articulate the position of that petition. However, we discussed the matter and I think the report is being compiled.

**Hon. Speaker:** Very well. Member for Igembe North, you can raise the issue again tomorrow. Member for Imenti South, what is your intervention?

**Hon. Murungi:** Thank you, Hon. Speaker. You have made a very clear ruling about petitions. I presented a Petition to the Committee on Transport, Public Works and Housing.

*(Loud consultations)*

**Hon. Speaker:** Order Members! The consultations are too loud.

**Hon. Murungi:** Hon. Speaker, you made a clear ruling that petitions, according to the Standing Orders, should take only 60 days to be dispensed with. However, we are suffering because we present petitions and go to the committees to present our respective cases there, but the committees take more than five months to bring reports to this House.

I presented a Petition on behalf of my constituents concerning a road called Nkubu-Mikumbune. I have been keenly following the Petition up to the Clerk's Office. I have not seen the Chairman of the Departmental Committee on Transport, Public Works and Housing for the last two weeks. They have been promising me that they would present the report here. We now need you to rescue us from this.

**Hon. Speaker:** Hon. Kathuri, you said you have not seen the Chairman of the Committee. He is here. Hon. Maina Kamanda.

**Hon. Murungi:** Yes, he has just sneaked in. He should respond to this issue once and for all. We are answerable to the constituents and we are entering a critical stage. It is through petitions that we are able to present the sentiments of our constituents. One of the ways through which we can represent our constituents is through Petitions.

**Hon. Speaker:** Hon. Kamanda.

**Hon. Kamanda:** Hon. Speaker, I can recall the Hon. Member came to our Committee. To the best of my knowledge, we have executed all Petitions. I need him to apprise me now. I can tell you he attended and interviewed the officers. Now, I do not know what he is referring to.

**Hon. Speaker:** Hon. Kathuri, I think you need to approach the Chairperson and remind him which particular Petition you are referring to. Indeed, I know that the Departmental Committee on Transport, Public Works and Housing is one of the Committees which have been processing Petitions expeditiously. But, there may be need for you to consult the Chairperson so that you can agree on what may have resulted from that Petition.

If you read Standing Order No.227, the results vary. Some of those Petitions do not necessarily require a Report to the House. They may require a Report to be filed with the Petitioner. But, if it is one which you filed personally, then, perhaps, you need to approach the Chairperson so that you can agree. Hon. Members, could the approach of 6<sup>th</sup> April 2016 be causing anxiety. I think for what you have not done in the last four years, you are unlikely to achieve it in the next two days.

Member for Juja.

**Hon. Francis Waititu:** Thank you, Hon. Speaker for giving me a chance. This is about the Petition which has been brought today. You will remember there was a heated debate in this House about schools not having title deeds. You gave a ruling and asked the Chair of the Departmental Committee on Education, Research and Technology to follow up that matter closely. Today, I have more than eight primary schools in Juja which do not have title deeds. I am requesting you to follow-up with the Chairs of the Departmental Committee on Education, Research and Technology and the Departmental Committee on Lands. Definitely, schools should have title deeds.

**Hon. Speaker:** I will tell you one thing for free; I am unlikely to follow up that matter because I have no interest. So, follow up with the Chairs of the Departmental Committee on Education, Research and Technology and the Departmental Committee on Lands, yourself. That is the way to go.

Member for Tongaren.

**Hon. (Dr.) Simiyu:** Thank you, Hon. Speaker. Mine is not about Petitions but about the Order Paper. Last week on Thursday, before we broke off, the Election-Related Regulations were tabled and you ruled that anybody with amendments should place them, at least, 24 hours before this Sitting. I dutifully did that but I do not see them on the Order Paper. I have my copies which are duly stamped as received.

**Hon. Speaker:** Just check with the Clerks-at-the-Table so that an appropriate direction can be issued. Member for Mathioya, what is your request?

**Hon. Wambugu:** Thank you, Hon. Speaker. I had pressed the intervention button when Hon. Kathuri was accusing our Committee which is very effective of not handling his issue. I wanted to advise him, although the Chair has accordingly done that. All the same, we have a Committee on Implementation which is also supposed to help us in following up some of the resolutions made in this House. I am lost for words because I do not know the work of that Committee and we hear very little about them. They never reply to anything and do not tell us the progress of some of the things which are discussed in this House.

Thank you, Hon. Speaker.

**Hon. Speaker:** Well, if you want to know the functions of the Committee on Implementation, just look at the Standing Orders. It will be very easy if you just want to know. You said “we.” I do not know who else you were referring to. Maybe, it is the people of Mathioya. I have not heard any other person claiming that they do not know the work of that Committee. You can approach the Clerk’s Office to get progress reports. That Committee has filed a number of Reports which I am aware of, or you can check them in Room No.8.

Next Order!

## PAPERS LAID

**Hon. Speaker:** The Leader of the Majority Party.

**Hon. A.B. Duale:** Hon. Speaker, with your permission, the school you have mentioned is from my constituency, Garissa Township. Dujis was my former constituency in the 10<sup>th</sup> Parliament. Hon. Speaker, I beg to lay the following Papers on the Table of the House, today:

The Fourth Quarterly Report of the Ethics and Anti-Corruption Commission covering the Period 1<sup>st</sup> October to 31<sup>st</sup> December, 2016.

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund for Matayos Constituency for the year ended 30<sup>th</sup> June 2015 and the certificate therein.

The Hague Conventions plus their Memoranda as indicated below:

- (a) The 15<sup>th</sup> November 1965 Hague Convention on Service Abroad of Judicial and Extrajudicial Documents on Civil and Commercial Matters (Hague Service Convention);
- (b) The 18<sup>th</sup> March 1970 Hague Convention on Taking Evidence Abroad in Civil or Commercial Matters (Hague Evidence Convention).
- (c) The Hague Convention of 5<sup>th</sup> October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents, the (Apostille Convention).
- (d) The Hague Convention of 25<sup>th</sup> October 1980 on International Access to Justice.

- (e) The 19<sup>th</sup> October 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children.
- (f) The 23<sup>rd</sup> November 2007 Hague Convention on the International Recovery of Child Support and other forms of Family Maintenance; and,
- (g) The 25<sup>th</sup> October 1980 Convention on the Civil Aspects of the International Child Abduction.

**Hon. Speaker:** The documents in respect of Parental Responsibility and Measures for the Protection of Children are referred to the Departmental Committee on Labour and Social Welfare for consideration. The Chairperson, Departmental Committee on Justice and Legal Affairs.

**Hon. Chepkong'a:** Hon. Speaker, I beg to lay the following Paper on the Table of the House:

The Report of the Departmental Committee on Justice and Legal Affairs on its Consideration of the Election Laws (Amendment) Bill, 2017.

This is in regard to the Bill which you withdrew last week to allow us to file our Report. In the process, we have received serious objections from one of the Commissioners of the Judicial Service Commission (JSC). As you know, the proposed amendments originated from the Judiciary. We are very surprised because the Chief Justice (CJ) forwarded those amendments to us and then one Commissioner, Prof. Ojienda, wrote to us 10 pages in objection.

We do not know who to believe between those two. One institution says that we should pass a Bill. We came here and made proposals to this House. The next thing we know is that someone is opposing the same proposals which have emanated from the Judiciary. This is one of those situations in which people should not confuse us.

I beg to lay the Paper.

**Hon. Speaker:** Let us move to the next Order.

## PROCEDURAL MOTION

### REDUCTION OF PUBLICATION PERIOD OF A BILL

**Hon. Speaker:** Let us have the Chairperson of the Budget and Appropriations Committee.

**Hon. Musyimi:** Hon. Speaker, I beg to move the following Motion:

THAT, pursuant to the provisions of Standing Order 120, this House resolves to reduce the publication period of the Appropriation Bill (National Assembly Bill No. 15 of 2017), from seven (7) to five (5) days.

I bring this matter before this honourable House for very obvious reasons. As a House, we have already adopted the Report that was tabled by my Committee. I might also add that this honourable House is aware that on Thursday last week, the Cabinet Secretary for the National Treasury came to this Chamber and gave us, among other things, the Budget highlights.

Given the fact that we will have elections shortly, it is absolutely crucial that we conclude the matter of budget-making for the 2017/2018 Financial Year. Therefore, with those reasons that are obvious and without wasting too much time, I beg to move and request my senior colleague, who is not senior in years but in other ways, to kindly second - the Hon. Member for the great people of Garissa Township.

**Hon. A.B. Duale:** Hon. Speaker, protect me from Hon. Wamalwa. We know he has received Hon. Onyonka who moved from the Orange Democratic Movement (ODM) to Jubilee and then from Jubilee to ODM and again to FORD-Kenya.

Hon. Speaker, I beg to second. This Procedural Motion is straightforward. The law allows us to do this with the consent of the House. Because of the timelines and since we are going on recess as per the Calendar of the House on Thursday so that we can prepare ourselves for the daunting task of party primaries for those of us who will go through that system, we realized that it is good that we finish with the Appropriation Bill.

I want to thank the Parliamentary Budget Office and the Budget and Appropriations Committee for working extra time and publishing the Bill over the weekend so that we can reduce the publication period from seven days to five days. This will allow the House to consider the Second Reading of this Bill. It is important to all of us. The budget for the Parliamentary Service Commission is contained in this Bill. The Executive and the Judiciary both draw their money from the Bill. We are a serious House.

On that note, I want to go on record that there are five critical Bills that this House dealt with close to one year ago, and which are lying in the Senate. I hope they are watching me and listening. They are: The Petroleum and Exploration Bill, the Energy Bill, the Health Bill, the Roads Bill, the Physical Planning Bill and above all, the Land Index Bill. I want to ask the leadership of the Senate and the Speaker of the Senate to help us by dealing with that matter before they go on recess. We will also deal with the matter of the Division of Revenue Bill that concerns the amount of money we give to counties. It is straightforward.

I beg to second the reduction of publication period of the Appropriation Bill, 2017.

*(Question proposed)*

**Hon. Members:** Put the Question!

**Hon. Speaker:** Is that the mood of the House?

**Hon. Members:** Yes!

*(Question put and agreed to)*

**Hon. Speaker:** Hon. Members, before we move to the next Order, allow me to recognize the presence of members of the Executive Committee of the Curriculum Support Programme, led by their Chairman Mr. Ahmed, who are seated in the Speaker's Gallery. They are welcome to observe the proceedings of the National Assembly.

*(Applause)*

Let us move to the next Order.

## BILL

### *Second Reading*

#### THE OFFICE OF THE ATTORNEY GENERAL (AMENDMENT) BILL



*(Hon. Chepkong'a on 29.3.2017)*

*(Debate concluded on 29.3.2017 – Afternoon Sitting)*

**Hon. Speaker:** Debate on this Bill was concluded. What remains is for me to put the Question.

*(Question put and agreed to)*

*(The Bill was read a Second Time and committed  
to a Committee of the whole House tomorrow)*

Let us move to the next Order.

### *First Readings*

#### THE APPROPRIATION BILL

#### THE EQUALISATION FUND APPROPRIATION BILL

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

### MOTION

#### APPROVAL OF ELECTIONS-RELATED REGULATIONS

**Hon. Speaker:** Before Hon. Cheptumo moves that Motion, I want to know the position regarding the issue raised by Hon. Eseli. Hon. Eseli indicated that he had lodged his proposed amendments.

It has been confirmed that they were taken to the Legal Department which has been looking at them. Therefore, the delay in having them circulated cannot be blamed on him. Therefore, as we get the opinion on them, I will allow Hon. Cheptumo to move the Motion and be seconded. In the meantime, Hon. Eseli's proposed amendments will be circulated.

Proceed.

**Hon. Cheptumo:** Hon. Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Elections-related Regulations laid on the Table of the House on Wednesday, March 29, 2017, and pursuant to the provisions of sections 44(6) and 109(3) of the Elections Act, 2011, approves the following Elections-related Regulations:-

- (i) The Draft Elections (*Technology*) Regulations, 2017;
- (ii) The Draft Elections (*Registration of Voters*) (Amendment) Regulations, 2017;
- (iii) The Draft Elections (*Voter Education*) Regulations, 2017;
- (iv) The Draft Elections (*General*) (Amendment) Regulations, 2017; and

(v) The Draft Elections (*Party Primaries and Party Lists*) Regulations, 2017.

Hon. Speaker, we have five sets of regulations. I want to thank Hon. Eseli for having time to file some amendments as you directed. They will be addressed as per your directions.

In exercise of powers conferred by Section 44(5) and Section 109 of Elections Act, 2011, the Independent Electoral and Boundaries Commission (IEBC) is required to make the Draft Elections (Technology) Regulations, 2017. These are regulations that are supposed to focus on the usage of technology in our elections. The Committee on Delegated Legislation is mandated under our Standing Orders to scrutinize regulations which are brought before the House. As we do so as a Committee, we are guided by the provisions of the Constitution, the relevant Act under which the Regulations are made and any other written law.

The Draft Elections (Technology) Regulations, as I said earlier, are provided for under Section 44(5) of the Elections Act. The purpose of these regulations is to establish a regulatory framework governing the use of elections technology as required by Section 44(5) and Section 109 of the Elections Act.

The Committee deliberated on the Regulations with the Commission at sittings held on 31<sup>st</sup> January 2017, 13<sup>th</sup> and 14<sup>th</sup> of February 2017 and finally on 14<sup>th</sup> March 2017. It should be noted that the regulations-making process is through delegated authority by the National Assembly and cannot be taken away by the delegator. The role of the Committee, therefore, in the scrutiny of Regulations, is to ensure that they conform to the Constitution of Kenya, the Statutory Instruments Act, the National Assembly Standing Orders and other legal relevant laws, rules and regulations in force in Kenya before reporting to the House.

The unique thing about these Regulations - unlike other regulations - is that they have to be approved in a draft form by this House and thereafter published by the Commission. That tells you that they are very important because the House has to approve them first before they are published by the Commission.

The Draft Regulations (Technology) Regulations were first submitted to the House and immediately committed to the Committee for scrutiny and report to the House. After deliberation with the IEBC, amendments were agreed on and a new document incorporating them dated 27<sup>th</sup> February 2017 was produced by the IEBC and finally submitted to the House for approval.

As I have said, the Regulations *inter alia* require the IEBC to regularly update existing technology and acquire new electronic technology with a view to enhancing integrity, efficiency and transparency of the election process; carry out timely testing of election technology before the election process and conduct a regular audit of election technology to ensure its credibility; put in place mechanisms to ensure availability, accuracy, integrity and confidentiality and that data is retained for a period of three years after the declaration of results; publish on its official website details of any telecommunication network service provider to be used in the elections and, finally, conduct continuous training on elections technology for staff and stakeholders within sufficient time before an election day.

That is the basis or foundation on which these Regulations on technology were established. It is very important for Members to understand that background. The scrutiny of the Regulations was guided by Section 44(5) and Section 109 of the Elections Act, the Constitution of Kenya and National Assembly Standing Order No.210.

Upon scrutiny, the Committee is satisfied that the Regulations conform to the Constitution, the Elections Act, 2011, the Statutory Instruments Act, 2013 and the National

Assembly Standing Orders and recommends to the House to approve them for publication by IEBC.

Standing Order No.210 (5) provides that:

“The Clerk shall submit the resolution under paragraph 4(b)(i) to the relevant State department or the authority that published the statutory instrument.”

Section 109(3) and (4) of the Elections Act, 2011 as amended, however, provides as follows:

“The power to make regulations shall be exercised only after a draft of the proposed regulations has been approved by the National Assembly.”

That is very important. It is only after we approve these Regulations that, indeed, the Commission shall publish them and they come into force.

Following recommendations of the Joint Parliamentary Committee on Matters Relating to IEBC, the Elections Law (Amendment) Act of 2016 was enacted on 20<sup>th</sup> September 2016. It provides for several amendments including those of use of elections technology in the conduct of elections.

In exercise of powers conferred by Section 44(5) and Section 109 of the Elections Act that is required, the IEBC made regulations on technology, the purpose for which I have stated.

It is, therefore, our recommendation, as a Committee, that we are satisfied that the Regulations are consistent with the Constitution, other relevant written laws and our Standing Orders. We recommend to the House to approve these Draft Elections (Technology) Regulations, 2017 so that they are published by the IEBC.

Allow me now to turn to the next set of regulations, the Draft Elections (Registration of Voters) (Amendment) Regulations, 2017. Again, in exercise of powers conferred by Section 109 (1) of the Elections Act, 2011 as amended in 2016, IEBC was required to make Draft Elections (Voter Registration) (Amendment) Registrations, 2017 and effect them before the 2017 General Election.

Again, the same principles apply. We are guided by the same sets of law - our Constitution, the relevant Act of Parliament which is the IEBC Act, our Standing Orders and other relevant written laws.

I do not want to take Members through the same process again. I just want to briefly say that it is important for Members to understand that Section 109(3) of the Elections Act as amended requires IEBC to come up with regulations to ensure the integrity of the voter register by providing for revision of the voter register through removal of names of persons who do not meet qualifications of being a registered voter so that, if a person registered does not meet the requirements of being a registered voter, then IEBC is supposed to remove those names. It is meant to provide for registration of Kenyan prisoners in Kenya prisons as voters and lay down procedure for the inspection and verification of the register of voters to avoid disenfranchisement. Finally, provide for the availing of the register of voters in polling stations for purposes of verification of biometric data.

Having gone through the regulations and having discussed the same with IEBC, we are satisfied as a Committee that these Regulations conform with the Constitution, the IEBC Act, our Standing Orders and other relevant written laws. The Committee, therefore, recommends that the House approves the final draft of the Elections (Registration of Voters) (Amendment) Regulations, 2017 for publication by the regulation-making authority.

Allow me to refer now to the third set of regulations, that is the Draft Elections (Voter Education) Regulations, 2017. The principles are the same. We applied the principles that these

Regulations must be consistent with the Constitution, the IEBC Act which is the parent Act, and any other written law. It is important for Members to take note of the legislative context and policy background of the Regulations. Article 88(4)(g) of the Constitution requires IEBC to conduct and supervise voter education. The current Elections (Voter Education) Regulations of 2012 contemplate the establishment of national, sub-national and constituency voter education committee. The regulations also require the Commission to assign staff as voter educators but do not make provision for voter education.

According to IEBC, the Elections (Voter Education) Regulations, 2012 had proved difficult to implement. The purpose of these new Regulations is to substitute and revoke the existing regulations. The new Regulations propose to implement Article 88(4) of the Constitution; create an environment for objective and effective voter education for all Kenyans; ensure efficient coordination of voter education for purposes of harmonisation of the content of the voter education materials; provide framework for monitoring and evaluation of the voter programmes and promote effective and efficient use of resources that are set aside for voter education.

Following the enactment of the Election Laws (Amendment) Bill No. 36 of 2016, and the Election Laws (Amendment) No. 1 of 2017, a number of significant reforms have been introduced in the electoral process. They include the use of technology, regulations and requirements that only party registered members shall vote in party primaries. Without again taking Members to all those, as I have said earlier, the principle of going through regulations is basically the same. I wish, therefore, to say that we are satisfied as a Committee that these Regulations conform to the Constitution; they are not inconsistent with the relevant Act - the IEBC Act or the Elections Act. They are not inconsistent with our Standing Orders. The Committee recommends that the House approves the Draft Elections (Voter Education) Regulations, 2017 for publication by the regulation-making authority.

Allow me to go to the fourth and second last set of regulations. That is the Draft Elections (General) (Amendment) Regulations, 2017. As I had mentioned earlier, in exercise of powers conferred by Section 109(1) of the Elections Act as amended by the Election Laws (Amendment) Act No. 36 of 2016 and Election Laws (Amendment) No. 1 of 2017, IEBC is required to make the Elections (General) (Amendment) Regulations and effect them before the 2017 General Election. The purpose of these Regulations is to align - and this is very important because we are introducing new amendments - the Elections (Amendment) Regulations, 2012, the already existing Regulations with the Election Laws (Amendment) Act No. 36 of 2016 and the Election Laws (Amendment) Act No. 1 of 2017.

The existing Regulations of 2012 should, therefore, now be realigned with amendments of those Acts of Parliament as I have mentioned. The Regulations provide for the general conduct of elections which include nomination of candidates, polling, counting and declaration of results. They seek to enhance efficiency, integrity in nomination and voting process by prescribing outlining measures. The scrutiny of the regulations was guided, as I have said earlier, by the Constitution and the Statutory Instruments Act, the Standing Orders, the Elections Regulations of 2012 and other relevant written laws as I have said.

I wish again to confirm to the House that we are satisfied that the objective of these regulations were to provide, in a summary form, the structure for free and fair elections, elaborate tools of the returning officers, submission of party membership lists and party lists, identification of voters using complimentary mechanisms and transmission of results. The over-reaching objectives of the Regulations are to provide mechanisms for free and fair elections and

afford every Kenyan qualified to be voter an opportunity to vote and ensure the election officials and Kenyans as a whole uphold the principles of integrity as contemplated under Chapter 6 of the Constitution.

As a country, as you are aware, we have always been speaking about and calling for fair and free transparent elections. This is what IEBC is trying to do; to create the environment necessary for free and fair transparent elections. You can only do that through the enabling legislation and regulations. It is for this House to enable and empower the Commission by passing these Regulations and they are able to undertake those regulations in a transparent manner as we have always desired.

I, therefore, say that the Committee recommends to the House the approval of these final Draft Elections (General) (Amendment) Regulations of 2017 for publication by the regulation-making authority.

Finally, I will move to the draft regulations on party primaries and party lists. In exercise of powers conferred by Sections 27(2)(b), 34 (b), 6(b) and 109 of the Elections Act 2011---

**Hon. Midiwo:** On a point of order, Hon. Speaker.

**Hon. Speaker:** There is a point of order from the Member for Gem.

**Hon. Midiwo:** Thank you, Hon. Speaker. Sorry to interrupt the Chair of the Committee on Delegated Legislation when he was on a roll. I think he glossed over something which I think Members need to hear about. He keeps referring to Regulations of 2012. There are many things which were suggested in 2012 and there are a lot of things being spoken out there like Certificate of Good Conduct and things like Ethics and Anti-Corruption Commission. Can he explain so that the country can be clear? That is because many people are interested in this so that we can know that some of the things which we are looking at and which are not here stand as they were in 2012.

**Hon. Speaker:** Hon. Cheptumo, would you wish to comment on that?

**Hon. Cheptumo:** Hon. Speaker, I think what the Member is raising is, indeed, valid, but I think it will form the substantive debate of these Regulations. There are the principal Regulations of 2012 contained in various regulations touching on various aspects of the election process. What IEBC has recommended are amendments on certain sections of the principal regulations? Therefore, I think as we move on to debate now, we should have the principal Regulations next to our amendments and see the areas that Members feel---

Hon. Speaker, you realise that our role as a Committee is only limited to what has been presented to us or the House by the Commission to enable us approve these amendments as proposed by the Commission.

As I said earlier, the process of amending these regulations is the function and the business of the Commission. I think my colleague and senior Member can allow that I finish moving and then in the debate of the fourth part of the regulations, they can raise those issues and then we can canvass them as a House. That is exactly why you gave us time last week for Members to have time to go through this, look at the amendments, reflect on the principal Regulations of 2012 and propose amendments, if they think they should be considered.

Hon. Speaker, if you allow me to proceed, then I think what is raised by Hon. Midiwo should be canvassed well in the debate of the regulations.

**Hon. Speaker:** Hon. Cheptumo, if you looked at the principal Regulations, perhaps, you may have seen what they provide and then compare in relation to the proposed ones; if there is a linkage. I think it is just what the honourable Member and, perhaps, the Members would want to hear.

**Hon. Cheptumo:** I can do that, Hon. Speaker, as we continue because I do not want to mislead the House. I want to be very sure because he is talking about Certificate of Good Conduct and so on. I do not want to make a very firm commitment as to what the principal Regulations of 2012 are all about regarding that particular issue and what we have here. Maybe, as we discuss, I can always, within a very short time, be able to look at that. I think that is a big concern to not only Hon. Midiwo, but even to me and, indeed, to Members of the House. What he is asking is fundamental. I do not want to give the true position now but I can check as we debate the regulations.

**Hon. Speaker:** I can see the Member for Kiminini wants to raise an issue.

**Hon. Wakhungu:** Thank you, Hon. Speaker. We are raising this because we want to appreciate what the Chairman is saying. The issue of the 10 agencies including the Commission for University Education, Higher Education Loans Board (HELB) and the Ethics and Anti-Corruption Commission (EACC) coming together has been in the media. Why such regulations are put under a Committee is for the Committee to look at them, scrutinise them and highlight them for Members. I appreciate what the honourable Member is doing but, unfortunately, we have been listening and we have not heard him highlight those key issues. He has just been brushing through. What Hon. Midiwo was saying is that, if it is possible, he should just highlight. This is because you did the work as a Committee. You are more knowledgeable particularly in that area. That is why this work is put at the committee level so that you can come here and inform this House and it debates objectively. We want you to bring it out. It should not just be an issue of saying: "It is in conformity with the Constitution," without highlighting on these critical issues, particularly these 10 agencies that came together. You know it can only be implemented if the Regulations are passed. Where are they hidden? I have gone through this document. Unfortunately, I have not seen the critical areas highlighted. So, just highlight to help the Members catch up.

**Hon. Cheptumo:** Hon. Speaker, let me be clearer. This issue of the various agencies coming together actually came much later. In fact, already our debate and discussion on this issue had been done. I can inform the House that---

*(Several Hon. Members walked out of the Chamber)*

**Hon. Speaker:** Hon. Members, maybe those who are withdrawing are the ones who are not participating in the primaries because what we are embarking on now are regulations to deal with party primaries and others in the electoral processes. I can see some Members who have no interest in those ones. I think the majority of the House appears not to be aware that this is what is being debated and yet, we stayed this last week so that Members can debate and consider the proposed regulations, what your own Committee has said about them and where they are recommending that you approve and, maybe, propose amendments. I am happy that Hon. Eseli has gone through them. I have been taken through his proposed amendments. I am sure when he raises them; Members will see that he has gone through the regulations.

However, I can see the majority of the House is busy doing other things that have got nothing to do with elections.

Proceed, Hon. Cheptumo.

**Hon. Cheptumo:** Hon. Speaker, I was clarifying that it was recently when those various agencies actually came together and we were making certain proposals. Those proposals can only be retained and entertained by IEBC. That discussion about the various agencies coming

together actually was ongoing much after we had done our work with IEBC. I think it is very important for Members to know that those recommendations by those agencies are not part of these Regulations. In any event, if there are any amendments along the lines proposed by those agencies, they will still have to come to this House. So, I think there should be no cause for alarm.

My colleague is satisfied that I proceed because I said this discussion among the various agencies which came together came after we had our discussions with IEBC. I think there are still further discussions among the agencies with a view to making recommendations to IEBC. If they do so, they will finally have to come to this House. I can confirm to this House that those discussions are not part of what is contained in our amendments. That I can confirm to the House.

**Hon. Speaker:** I think that is fine.

**Hon. Cheptumo:** I have a responsibility to be honest to this House. Let me now turn to the last Regulations. I think this is even the most serious. All the rest are serious but this is on primaries. Let me now turn to the regulations on party primaries and party lists.

In exercise of powers conferred by Sections 27(2)(b), 34(6)(b) and 109 of the Elections Act 2011 as amended in the year 2016 and 2017 and Article 84 (4) of the Constitution, IEBC is required to make regulations on party primaries and party lists. The making of those regulations is premised on the Elections Act No.24 of 2011 as amended vide Elections Laws (Amendment) (No. 36) of 2016 and Elections Laws (Amendment) (No. 1) of 2016. So, as a House, you need to appreciate that some of the regulations we are dealing with, which are also in force, date back to 2011 and 2012 and they are being now amended or realigned with the amendments of our laws.

The purpose of these Regulations is to provide for the conduct of party primaries and preparation of party nomination rules and procedure, code of conduct and communication of such information to the parties. The Regulations also provide for the composition, role and functions of party elections both in the conduct of party primaries and the manner of submission of names of nominated candidates to the Commission. Section 109(3) of the Elections Act 2011 as amended requires Independent Electoral and Boundaries Commission to first submit the draft Regulations to the National Assembly. This is being done now by the Commission and that is what we are dealing with here. The IEBC submitted these Regulations and we have been able to go through them as a Committee. There have been several meetings between the Committee and the Commission. It is important for me to mention because that is my duty that what we looked into is the standard set by our Standing Orders. We have gone through them and ensured that these Regulations are consistent with the Constitution and the relevant written laws and we were satisfied that the law was complied with. Article 88(4) (d) of the Constitution of Kenya requires us to regulate the process as I had said earlier.

Article 88(4)(d) says:

“The Commission is responsible for the 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—

(d) the regulation of the process by which parties nominate candidates for elections.”

Section 27(2) (a) and (b) of the Elections Act states that the Commission, by notice in the Gazette issues regulations prescribing guidelines to be complied with, a process by which

political parties nominate candidates for nomination in accordance with Article 84(4)(d) of the Constitution, failure to which the rules shall become void.

It is, therefore, mandatory and a requirement by the Constitution that these Regulations are passed and should also be approved first before they are applied by the Commission.

Following the enactment of the Elections Law (Amendment) No.36 of 2016 in the Elections Law (Amendment) No.1 of 2017, Section 27 (2)(b) and Section 34(6) (b) of the Act require IEBC to prescribe regulations and guidelines for the conduct of party primaries and preparation of party lists. Therefore, without taking Members through what I have done in terms of our requirements, I want to confirm to the House that we are satisfied that these Regulations conform with the Constitution and relevant written laws and we recommend to the House to approve these Regulations so that the IEBC can publish and apply the Regulations in the 2017 elections in August.

I ask Hon. Mutava to second. I thank you, Hon. Speaker, for giving me the opportunity to move this Motion. I want to thank my colleagues for having time through the weekend to go through this. I believe our debate is going to inform the amendments that we will bring to add value to these Regulations.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Mutava Musyimi

**Hon. Musyimi:** I thank you, Hon. Speaker. I wish to thank my honourable colleague for that very learned and able elucidation of the Motion.

I beg to second.

*(Question proposed)*

**Hon. Speaker:** Hon. Wamalwa.

**Hon. Wakhungu:** Thank you, Hon. Speaker. Much as I rise to support these Regulations, it is unfortunate that they have come at the wrong time when people are preparing for party primaries. I do not think we will have enough time to look at them critically.

I would like to thank the Committee under the chairmanship of Hon. Cheptumo for what they have done. Unfortunately, we have heard of the 10 agencies in the Press. We have seen Mr. Matiang'i being on record talking about issues of degrees and the Commission for University Education (CUE) coming in. They are going to work round the clock for purposes of IEBC to scrutinize party members or people who are going for those positions. It is, therefore, important for Kenyans to know that whatever those agencies have been doing is not part and parcel of these Regulations. It is also important to note what Hon. Cheptumo has said. He has said that in case those 10 agencies come up with regulations, it is their responsibility to have them passed by this Parliament. If at all Parliament will not have time to pass them, it is good to note that they will be null and void. When it comes to party primaries---

**Hon. Speaker:** Hon. Wamalwa, without taking your time - and we will give you more time - I think we should just repeat for everybody to hear. No person other than Parliament has power or authority to make provision having the force of law throughout Kenya. That is found in Article 94 of the Constitution. So, everybody should know they can say what they want to say to just excite themselves and their admirers.

Proceed, Hon. Wamalwa.

**Hon. Wakhungu:** Thank you, Hon. Speaker. I also want to repeat. I am hoping that the Cabinet Secretary in charge of the Ministry of Education, Science and Technology, Mr.



Matiang'i, is listening because he has been on record saying that he is going to work round the clock to look for fake degrees and all sorts of thing so that those people will not be allowed to contest. It is good to know that the Regulations that we are passing today as required by the law, must be passed by this Parliament. Hon. Cheptumo who is a lawyer for many years and can qualify to be a judge of the Supreme Court has made it clear that the purported 10 agencies coming together to come up with those Regulations are null and void. So, whatever they are doing, for them to be implemented, they must come to the Floor of this House.

Hon. Speaker, I was looking at the regulations particularly touching on party primaries and party lists. One of the critical ones is that a person who qualifies to be a member of the elections board must be a member of the political party. It is very unfortunate because we have seen members of party elections board who are not members of those particular parties. The reason is that maybe the Registrar of Political Parties (RPP) has not been keeping the records.

In Ford Kenya, we have seen some people who are members of the party, but when they try to check with the RPP, they find that their names have been snatched and they appear in Jubilee records. That has been a big worry. It is important that the RPP moves with speed and cleans that register. How the Jubilee Party has managed to get the names of those members, we do not know. We also do not know the magic that the smart card is doing.

I have been a member of Ford Kenya since my days at the university. Recently, I saw my name in Jubilee. How it went there, I do not know. But I moved with speed and transferred my name back to my political party. So, it is important because this can be a basis for someone to appeal if they lose by saying the board members were not members of the political party. This is one of the regulations I have seen here.

Something important that I thought I should mention because the Chairman did not bring it out clearly, is that we have seen many presidential candidates. Last time, Hon. Martha Karua was a presidential candidate but she lost. Many Kenyans said they really needed her brain in this Parliament. There was the issue of whether they are allowed to be in the party lists for purposes of them being nominated. We have seen many good presidential candidates and we do not want them to get wasted. I would wish that we have clarity, so that in the event these people do not make it in one way or another, they can find themselves, on priority basis, in the party lists. This should not be at the discretion of IEBC.

Hon. Wangamati is here because he was nominated by Ford Kenya in the category of the elderly persons. So, it is, indeed, important to give leeway to political parties. We have seen many people going to court because of nominations.

Hon. Ichung'wah has been on record with his friend the nominated senator from Nakuru, Sen. Njoroge that he went to court because they wanted to kick him out of the list. We need a lot of clarity. He has been on record saying that he is a nominee of the High Court. I think that is what Hon. Ichung'wah has been saying. When it comes to these regulations, we need a bit of clarity so that we do not have these issues.

Another issue is who is allowed to participate in the party primaries. When the Elections Act was passed, it was very clear that only members of a given party can participate in the party primaries. From next week parties are holding their primaries but up to now, the IEBC has not supplied comprehensive party membership lists to the respective political parties so that during nominations you do not see people from a different political party participating in a primary of a different political party. The danger is that a member of Jubilee may participate and nominate a weak candidate to beat the Ford Kenya candidate especially in Trans Nzoia. We are worried.

We call upon the RPP to move with speed and supply the membership lists to the respective political parties, so that when anybody votes during the primaries, he or she can go through the lists and can be identified with ease.

Hon. Speaker, as we speak, they say they do not want to be held responsible, but they are the custodians of the membership lists of political parties. Even our competitors Jubilee, with due respect, say they will not use the smart cards. Is that party primary going to be genuine, legal or it can be challenged in a court of law? This is why we need clear regulations. We need advice from Hon. Cheptumo who had time to scrutinise them. As we said, these regulations are very important and they can be a recipe for chaos if we do not pay a lot of attention.

I was also looking at the regulations when it comes to use of technology. Technology is very critical. We have talked about the BVR and voter identification gadgets and the challenge of results transmission. We know a lot of rigging takes place during results transmission. If you look at the regulations, you will find that there is the use of the word “complementary”. Is the complementary aspect technologically-based or is it analogue? This is what we want to hear from Hon. Cheptumo. We have critical challenges in terms of results transmission.

We know, for instance, that in the last general elections, Tiaty Constituency had almost 18,000 registered voters, but the presidential votes were excess or even doubling to 52,000. We do not want these issues to happen again when it comes to August 2017. These regulations must be clear so that we can avoid the chaos that will be there.

I wish Members were here, but I know they are busy with the primaries. We are few here, and my humble request is that you give us more time because we want to continue reading. I know the Standing Orders say once you contribute you cannot contribute again, but you can contribute again through another Member. We have been very busy. We have been moving up and down. For heaven’s sake, we have not had time to go through them. You can see these documents are bulky and you cannot manage. We are busy people.

*(Laughter)*

My humble request is that let us not rush. Let us give it time so that we allow the amendments so that we can have free and fair elections.

Hon. Speaker, I thank you.

**Hon. Speaker:** I suppose that as you say you are busy people. But an even busier person, the Secretary-General of your party, had occasion to read through and propose very serious amendments. We agreed last week to adjourn debate so that Members could have time during the weekend. You are expected to read. Hon. Wamalwa, when you defend members as busy people, you should know that they represent people and are also supposed to make sure that the laws they pass here address issues of concern to the people of Kenya. Let us see how far we will push on with the debate. I think there are some Members who are ready.

Hon. Ngeno.

**Hon. Kipyegon:** Thank you, Hon. Speaker. I wish to also take this opportunity to contribute to these regulations. One reason we must be very careful with these regulations is that they are coming in the evening, when the day is almost over. That is, when the elections are just around the corner.

**Hon. Speaker:** It is just 4.00 p.m.

**Hon. Kipyegon:** Hon. Speaker, not the literal time that we have, but on matters of elections. We are approaching elections and most of the parties are conducting their nominations

as early as next week. These regulations should have come at a time when people are sober and many Members are here. You must realise that most members here are either those who have been assured of direct nominations or those who are not going for nominations at all. Otherwise, you will never see faces of most of the members going for nominations in this House until probably after May.

The reason these regulations may not be scrutinized properly is because people are really busy. Most of them do not care whether we have these regulations or not because they are counting their days in this House.

Therefore, the Chair of the Committee should have made these regulations or liaised with the IEBC and all the concerned agencies to bring these regulations a month earlier so that we have a serious look at them, make amendments and make them work.

**Hon. Speaker:** Hon. Members, there is no need of continuing to lament. You have been amending the Elections Laws Act. Last year, you amended the Elections Laws Act (Act No.36 of 2016), and this year you amended the Elections Laws Act (Act No.1 of 2017). In those amendments, you gave the IEBC authority to come up with regulations. If you passed amendments this year, you should be blaming yourselves because you are the ones who kept on shifting goal posts by amending the Elections Act. The regulations have been made on the authority of the Elections Act (Act No.24 of 2011).

Therefore, Hon. Ngeno, proceed bearing that fact in mind.

**Hon. Kipyegon:** Hon. Speaker, I stand guided, but members are not to blame. Ours is to wait until the regulations, or amendments to Bills are brought to the House and debate. However, we must question the timing. I do not think it was my responsibility to prompt the IEBC to bring these regulations to the House. I am saying this because if you look at the proposals they have made, especially---

**Hon. Onyonka:** On a point of order, Hon. Speaker.

**Hon. Speaker:** Hon. Onyonka, what is your point of order?

**Hon. Onyonka:** Thank you, Hon. Speaker. Hon. Ngeno, with due respect, knows that he is my friend and colleague. These regulations have been brought at this time for the simple reason that the Elections Laws Act was recently amended in this House. As a result of the tight timelines, we are left with no time other than now to approve these regulations.

Secondly, if these regulations are not passed by this House now, we will have many people filing petitions with the elections courts, arguing that even as at the time when the elections were taking place we did not have a legal framework under which the elections could be done.

I stand to be corrected by my brother, Hon. Cheptumo, who is the Chair of the Justice and Legal Affairs Committee. Therefore, my feeling is that we just start and finalise the process of approving these regulations for the purpose of the forthcoming elections. Everything has been rushed for the simple reason that our legislation programme has been the issue.

**Hon. Speaker:** Hon. Ngeno, please continue.

**Hon. Kipyegon:** Thank you, Hon. Speaker. I stand corrected if I am wrong, but if one looks at the regulations that have been proposed, he or she will realise that some of the provisions contained therein clash with the amendments that we recently made to the Elections Laws Act.

One of the amendments, which is a subject of litigation in court says that party lists should be forwarded to the IEBC 120 days before the election date. That was a subject of contestation because it was preventing people from party hopping.

However, if you look at the regulations on party primaries and party lists, you will see that the first item talks about submission of party nomination rules, whose deadline is Thursday, 2<sup>nd</sup> March. This is gone. The second item talks about submission of party membership lists, whose deadline lapsed on 19<sup>th</sup> March, 2017.

According to the amendment that we passed recently, which is also a subject of litigation in court, 120 days is not supposed to be 8<sup>th</sup> April. I do not know on what basis the IEBC came up with these regulations, bearing in mind the fact that we recently passed a law which talks about 8<sup>th</sup> April. I wish Hon. Cheptumo could read through it and propose an appropriate amendment, bearing in mind that this matter is pending before court. We do not know what judgement the court will come up with and we cannot pre-empt the outcome of the court process. We can also not sit here and wait for the court to make their judgement.

I would also remind the Chair that there is the issue of independent candidates. As per the Constitution, they should not belong to any political party three months to election. There are too many members who try secure to nomination in one party or the other. By the time they make their minds to go independent, they have to resign from the parties. This is the case and yet the deadline is 8<sup>th</sup>. However, if you look at the proposal by the IEBC, you will realise that they are giving independent candidates only one day to submit their symbols, among other things. The people who made these regulations should understand that we are human beings and, therefore, we are prone to be victims of delays. I hope we will amend these regulations to allow independent candidates, at least, one week or two weeks to submit their symbols and other things to the IEBC.

I also want to comment on how to anchor these regulations in the Constitution. There are some provisions of these regulations which must be amended to align them with Articles 38, 84 and 85 of the Constitution which talk about freedom to run for elective post on any party ticket, or make any political choice. This is to ensure that we do not infringe on Kenyans' right to make choices concerning their politics.

Lastly, I would like to comment on the issue of people who are trying to make regulations outside this House. We are considering these regulations because in most cases we delegate the function of making regulations to other Government agencies. We are looking at these regulations because they will affect our country. I am grateful to the Chair for bringing these regulations. We will look at them but we must, as you said, make everybody know that any regulations that have to do with elections must be approved by this House to ensure that people do not threaten others by telling them that they cannot be this or that. We will agree to regulations which will help this country move forward.

As we approach the general elections, I urge Kenyans to ensure that we remain peaceful. Elections come and go, but as Kenyans, we remain. What we are seeing happening in the field is unacceptable. Let no Kenyan dies because of elections. Let us approve these regulations to allow Kenyans to have peaceful party nominations. I know that most members approach party nominations as if it is a matter of life and death. It is a do or die in---

**Hon. Speaker:** Hon. Ngeno, I am adding you one minute because part of your time was taken up by other members.

**Hon. Kipyegon:** Thank you, Hon. Speaker for adding me one minute based on that consideration.

Lately, we have seen many bad things happening at political rallies. I would like to urge Kenyans that that elections are not about shedding blood. Election is just competition. We must compete freely and fairly. If you are defeated, please, go and look after your goats and cows.

You will try again after five years. If you win, just come to this House and make laws, or go to your County Assembly, or whichever county government office and carry out the functions that the Constitution has assigned to that office. Let us not kill each other because of political competition.

I urge our brothers in the Jubilee and NASA political coalitions to ensure that we handle our politics properly. We are brothers and we will remain brothers even after the general elections.

**Hon. Speaker:** Thank you, Hon. Ngeno. That includes our sisters.

You have the Floor, Hon. Midiwo.

**Hon. Midiwo:** Thank you, Hon. Speaker. I get very worried when I am mentally uncomfortable with a law that is about to be passed by this House. I am scared that we are about to pass regulations which may mud an already muddled field in this election period.

Hon. Speaker, the matter is before us. You gave us time to read but the people you were giving time to read actually do not have their minds here. This is because many of these people could be very well on their way out next Thursday. So, it is normal but the country must stay together and the integrity of our electioneering process must be safeguarded.

I thought that this Committee would have, at least, recommended, them being part of this House, that we deal with these issues after the party primaries in May. When we come back on 8<sup>th</sup> May, 2017 we will still have eight months to go. If you look at what happened in the last elections, you will find that we passed these regulations like a month to the election.

In the last Parliament, we were fewer than the Members in this House today. However, the proposals from the IEBC would have barred nearly 90 per cent of this House from contesting the elections and yet members simply walked out. It was, I think, less than 10 of us present. I remember that day we debated until midnight. I plead with the House and the Chair that we do not rush this. Nothing will go wrong if we do not rush but something can go wrong if we rush. Many things which we promised we would improve on may not be improved.

Hon. Speaker, we can talk about party nominations, but I am worried because I said here that the last amendments to the Elections Act were full of errors. I said people would regret. How nice it is to watch the same people who were saying, “His Excellency amesema. Baba amesema.” We now realise that the thing has serious flaws. We now have an opportunity to mitigate. For example, there is a clause that says that political parties shall conduct their nominations using the register of its members deposited with the Registrar of Political Parties.

Hon. Speaker, even the register that the Registrar has, many people who check their names find that they are in some briefcase parties. So, we are trying to do something which we really do not have capacity to do. However, the big thing that this House needs to address itself to is this: why should the Registrar of Political Parties be the custodian of political parties’ affairs? These political parties need to be managed by their own constitutions. Indeed, they have constitutions, which is a requirement of law. They also have their own regulations.

However, when we say that they should do it according to that register with the Registrar of Political Parties, we are making the Registrar of Political Parties do work which is not constitutionally hers. We need to revise that because we now know that we have made a mistake. Since that law has issues, we need to withdraw it and recognise the fact that some of the laws that we passed are bound to make the process muddier. We need to do things differently.

It is important to note that IEBC cannot use regulations which have not been passed here. However, many a times we pass very bad laws that even make the work of IEBC very difficult. So, I plead with the Chairman that we do not conclude this debate today. We should leave a

window for this debate so that we can come back with proper amendments. There are people in this House who are experienced. They have seen how bad regulations make electioneering very messy.

Hon. Speaker, the members of the Committee are not even here. It is only the Chairman who is present. Some of the things we want to address here are those which make even the State know that it cannot imagine laws. Some of the political parties are asking members to get a certificate of good conduct. I know of a member who tried getting the certificate of good conduct, but he was denied because he has a court case; it is not that he is guilty of something. Incomplete court processes cannot bar people from being interested in politics. However, that is the situation that we have. Fortunately, this is being done by political parties! It is unfortunate they do not realise that those things are unconstitutional. It is good to stay within the law.

With regard to the issue of requiring aspirants to have a degree, we went out of our way to suspend or expel those things from the law, but the talk out there is of imagined intentions to implement laws which are not there. When we fought here in December, we did not even have Christmas because we were so vicious at each other. It was uncalled for. One man called Aden Duale – he is not present today - is sometimes very smart. He wanted to pass bad law. So, he went and put a caveat in law that says that the degree requirement is suspended until 2022. He knew very well he was buying loyalty of troops who do not have degrees. So, we were fighting over unrelated issues and people nearly killed each other.

On that day, I saw a Member from my party go through the back door. Later I asked him why he was running away and he said that he was told his colleagues had guns. It really should not get to that point. We can soberly debate and come up with a simple law that can make electioneering simple and do what Hon. Ngeno has proposed.

It is not the end of the world. However, I know that in a House of 349 Members and all up for re-election, if there were no nominations next week, they would all be here because this matter is important for our country. So, it is good that the Committee has raised the issue, but for orderliness, let us not rush it. Let us not do it today or any soon. Let us go on recess and after people lose or win, they will calm down and read this material. I would love to read this but I do not understand why mere regulations that say do not do this or that can be bigger than a Bible. As you know, the devil is usually in the detail. I must confess, I have fears. I have not read these regulations because I may be jobless next week if I keep staying here. As I finish, I want to go and protect my territory because there are some people who have shown up with illicit money. I want to tell my people that it is not about money but the quality of leadership. They will not know this unless I tell them.

I hope the Chairman can agree with us that we should debate and postpone passing of these regulations until when we come back from recess. If you allow me just a second, in this country there has been a lot of noise because during the last elections, we said people who are interested in contesting for Presidency should not contest for any other seat. We have seasoned politicians out there. We were led well by former President Kibaki while he was still the Member for Othaya. You saw the clamour of having MPs to resign for people who were outside. We should cure this because it disrupted the order of political parties in the country. As long as we have senior politicians outside the political mainstream, we will always have noise. What we have witnessed in the last four years is painful. People out there think we are enjoying but we cannot be politicking every year and all the time. I think we should cure this. I plead with you Chairman.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Member for Turkana Central, you have the Floor.

**Hon. Nakara:** Thank you, Hon. Speaker for giving me an opportunity to contribute on these regulations. I have read some of them and they may encourage fair and peaceful elections. On the issue of communication in polling stations, there are negative and positive aspects. If we allow communication to take place between the agents, election officials and aspirants, it will cause a lot of problems. We need to discourage it and there should be no communication inside polling stations. This is because some aspirants will feel that those speaking to the election officials are bribing them or saying something against them. These regulations must be changed so that we leave communication to take place outside the polling stations.

During the election process, an aspirant may pass by to see what is going on in the polling station. Sometimes, the election officials embarrass that aspirant by telling him/her to get out of that place or otherwise they will call the police officers. This completely discourages them yet an aspirant has freedom to pass by and see what is going on. I appeal to the Chairman to include an amendment in these regulations which will allow aspirants to pass by the polling stations to see what is going on so that the elections will be free and fair. It does not look good when one is chased away by the elections officials before the electorate.

Another issue is the attached forms. They must be filled by a person who has gone to school because if you miss a sentence, you miss nominations. On education, we need to give minimum requirements which will enable one to fill these forms because some of them are very complicated. I want to encourage the Chairman to give minimum education requirements for aspiring candidates. For example, just like Parliament, we expect the MCAs to debate Bills and Motions in an organised manner using proper language so that even the electorate can see that they elected people who represent them well.

By looking at the volume of these regulations, you may think they are suspicious but mostly there are just forms to be filled. I want to ask the Chairman to come up with a smaller volume which will encourage us to read them. We need the regulations to be separated from the forms so that it will be easy for members to read.

Finally, I am happy about the way the regulations have been laid out. I want to encourage discipline to be exercised in political parties' primaries. If we do not do it well at the primaries level, the elections may not be free and fair. All political parties holding their primaries should make sure they use the right channels and treat everybody well. I saw nominations which took place in my area. We called them "kangaroo nominations" because Jubilee aspirants selected 10 people each and took them to a bush and did nominations even before the party had decided on the dates and venue. They went ahead to do nominations in a wrong and insecure place and many candidates were not happy with that.

We want political parties to assure all aspirants whether they will win or lose that the nominations will be free and fair. Even though one loses, he/she will have failed honourably and accept the results. By doing so, this will make them to accept failure. Finally, another painful thing which we will experience very soon is that after nominations, some candidates who will have lost will be in this House for the remaining three months knowing that they will not be coming back. This will be tormenting and discouraging. I wish we can have a Regulation whereby if one fails nominations, they go back home rather than coming back to Parliament for three months waiting for elections to be held. It is tormenting to know that one will be going home after being in this House for three months.

We expect elders like Midiwo, who have experience in this issue to make sure that nominations are held towards the end of the term so that when one loses they go home rather

than come back here and be called former Members or Senators. It is shameful to come back and be called a former Member and yet you are still sitting on this honourable seat. In future, we need to look into this otherwise, for those who will lose nominations and come back here we will need to prepare psychologists and counsellors to help them go through the remaining months in this House.

With those few remarks, I support.

**Hon. Speaker:** I am just doing this because there is something I am waiting to hear. Hon. Eseli has proposed amendments. I have allowed them because it is our department which delayed in bringing them up. They are being worked on, Hon. Eseli. I did not want you to contribute because I want you to first move the amendment. I believe Hon. Eseli will bear with me so that we hear the Member for South Mugirango who has looked at the amendment.

**Hon. Nyamweya:** Thank you, Hon. Speaker, for giving me a chance to contribute to this very important amendment to the regulations. I want to remind the Chair that we have party leadership in this country which must manage party primaries. We cannot have regulations brought to this House stating that it is the responsibility of the IEBC and not the party leadership. This country will be led by politicians and not by the IEBC. Let us be very clear. Where are we as a country? If you clearly read through the amendment that you have brought here, it shows that if we do not pass this amendment, the IEBC will come up with regulations on how we shall conduct the elections. It is as if someone is threatening you with a gun saying that he or she will shoot you if you do not say “Yes” or “No”. Parliament is being asked to say “Yes” or “No” to the IEBC. As a Parliament and the people who represent the country, we should not accept this.

If you look at the amendments being tabled, you will find that one of them states that we should remove the party membership and go universal. Parties should elect the people they want, the IEBC must declare the winner and when it does so, we should accept it. The party leadership in all parties be it Jubilee, ODM or the Kenya National Congress (KNC), which I belong to, must be held accountable so that we do not bring chaos to this country. I plead with the Committee because if we are not careful, there will be chaos in this country when we have primary elections to choose the flag-bearers for the coming elections. The party leadership must come out strongly on this.

We had chaos in Migori and everybody knows it. Guns were drawn. There was chaos and violence. This is not what we want in the country. We want a disciplined country and an organised system. We should not allow Parliament to be a rubberstamp used by parties that cannot manage their primaries to pass laws to insulate themselves. They do not want to take responsibility.

Each party in this country, be it Jubilee, ODM, the Wiper Democratic Movement, the KNC or the Amani National Congress should take responsibility for the nominations. It is an internal affair. They should give us their candidates for the positions of governor, president and MCA. It should not be the way we want to treat the issues. If we take this direction, we will put this country in a very precarious situation. We will bring anarchy to the Republic of Kenya. We have to refer to the rules. I do not like the fact that if we do not pass these rules, the IEBC will come up with regulations to pass what they want.

The Chair, Hon. William, with tremendous respect, can see how many parliamentarians are here. People have gone home because they do not believe they will come back. People are campaigning and have moved to other parties because they do not believe nominations will be fair. It is very important for the National Assembly to be clear and help this country to move forward. We must reject what is wrong and accept what is fair for this country. I urge the party



leadership to declare what they want. Let them declare whoever they want to give the ticket to during the nominations. But the National Assembly should never be used to say who will be given the ticket because that is what they want to do.

Worse still, they want to use the IEBC such that whoever the IEBC declares as the winner shall be the nominated candidate. The IEBC should supervise elections of this country if there will be disputes. This can even go beyond the elections. The disputes can go to the tribunal and then to court. They will taint the image of the IEBC. Do we want to pass an Act in this House, as the National Assembly, that the IEBC be involved in primary elections? With all due respect, I urge my colleagues to reject any Act that will allow the IEBC to participate in party primaries. Let parties choose who they want. We are headed to the elections. If you find that they were unfair in party primaries, how will you trust them to preside over our elections for the country? Those are the very critical issues that we must ask ourselves.

Let us not be selfish. This country will remain. Kenya will remain even if all of us in this House die. I urge the Members of Parliament who are here today to sober up and know that the country will remain. We know we are going for elections. For the Jubilee Alliance Party, it is a do or die. They want the President to be elected and there is nothing wrong with that. They have that ambition.

I also want to be a governor and there is nothing wrong with that. More important, let us pass what is good for this country. Let us not pass what is good for the moment or for the time being. Let us not please any group of people, whether they are in power now or they are in the Opposition. I urge members to look at the regulations we want to pass today. It is a dangerous thing for us to pass. It is unfortunate that there are very few members here today to debate this. If they knew the implications it has on them, especially those who are preparing for primaries, they would have attended this sitting of the National Assembly today so that they reject these regulations because they are against what they want to do and what they believe is correct and true. God will bear us witness.

I have just looked at the amendment being tabled. If you look at it, you will find that we are not serious. The leadership must take responsibility. Any party can give a direct nomination if they so wish, but the country remains. The Clause I do not like at all states that whoever the IEBC declares the winner becomes the candidate. Of course, the case will go to court and the country has a right to go to court. If they go to court while we are going for elections, what happens if it is found that the person the IEBC declared as a winner did not actually win? What happens to this country? How do we trust them to be in charge of our election process? Let us leave them to handle our election process.

Hon. Speaker, I am sure you are aware of this. They are not even prepared for the national elections. They have not bought the equipment required for this country to conduct the General Elections. Let us give them time to prepare for the national elections for Kenyans so that we get the next President fairly elected and when they declare the winner, both sides accept whoever has won did so fairly. This country needs to be united but it cannot be united if we pass this kind of regulations being proposed by my good friend William. I wish these regulations are withdrawn so that they are debated much later and not now because they do not help the country to come together and they are not realistic.

With those few remarks, I oppose these amendments.  
Thank you, Hon. Speaker.

**Hon. Speaker:** Except to inform you that the amendments will come from Hon. Eseli. These regulations are proposed by the IEBC pursuant to the provisions of the Elections Act

which you passed here. You gave them power to come with these regulations addressing the various sectors. You gave the IEBC the authority, as recently as January this year, to come up with regulations. They have come up with them and it is up to you to look at them, reject or approve them. So, it is not Hon. Cheptumo who has come up with these regulations. Hon. Manson Nyamweya, I expect that by now, before you go to assume the other office I hear you want to, you know this because you are an experienced Member. It is you who gave the IEBC the authority to come up with the Regulations.

Let us hear the Member for Tongaren who has amendments that he wishes to propose.

**Hon. (Dr.) Simiyu:** Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Cheptumo, what do you want to say?

**Hon. Cheptumo:** Hon. Speaker, I want to agree with your direction that all these regulations are submitted to the House pursuant to the powers given to the IEBC. It is important when my colleagues are giving their concerns to refer to the specific sections. It will really help us to deal with them. When they raise a particular issue of concern in the Regulations, they should refer to a specific section of the regulation and the regulation because we have five sets. This will make it easy for me as the Chair to take notes and capture the issues raised. It is good for any member who will be contributing to refer to particular sections of the regulations so that I am able to deal with them.

**Hon. Speaker:** It is obvious that members are contributing from general understanding of regulations. They have not read the regulations or what your Committee has said about each proposed regulation. But since this is a House of debate, members can get away with those kind of contributions.

Yes, Hon. Eseli.

**Hon. (Dr.) Simiyu:** Thank you, Hon. Speaker. As many of my colleagues have said, these are voluminous regulations and, indeed, it was difficult for many people to go through them. In fact, I only managed to go through two sets and not the whole lot. I only managed the one on technology and the general amendments.

I get a feeling that the presentation of these regulations at this time for us to debate was deliberate in the sense they expect us to guillotine and pass them as a block and in the process create some problems which will open the same IEBC to litigation at a time they least need it. At this time, we do not want to engage---

**Hon. Speaker:** Hon. Eseli, I would like you to, first, proceed with your proposed amendments because that will not deny you the opportunity to contribute to the main debate.

**Hon. (Dr.) Simiyu:** I was laying the ground for bringing in the amendments.

**Hon. Speaker:** Okay.

**Hon. (Dr.) Simiyu:** Hon. Speaker, I start with amendments to the Draft Elections (Technology) Regulations, 2017. For those who have the regulations, if they look at Part III, Regulation No.9 on page 15, they will find a clear discrepancy in the sense that it says:

“The Commission shall issue a public notice specifying date, time and place the testing of the equipment and invite stakeholders to attend.”

In 9(2), they go on to say; “the Commission may publish the information.” If it “shall issue a public notice,” why is it that “it may publish the information?” Why are they testing it? I want to delete the word “may” and substitute it with the word “shall” in Regulation No.9(2) because if we stick with the word “may”, we are giving the Commission a leeway to play mischief in the sense that they may or not publish whatever they find. That is not good for transparency and for elections where people want everything to be transparent.

Hon. Speaker, I would like some guidance. I do not know whether to move an amendment one by one or move all the amendments.

Hon. Speaker, I beg to move:

THAT, Regulation 9 of the Draft Elections (Technology) Regulations, 2017, be amended in sub-regulation (2) by deleting the words “the Commission may publish” and substituting therefor the words “the Commission shall publish”

Hon. Speaker, I would like to seek your guidance. I do not know whether to move each amendment individually or move them all.

**Hon. Speaker:** We even have another technical issue that may become difficult. It will be better for you to move one after the other because they are scattered. We have not even circulated them because of the delays that happened. So, members may not know what they are voting on.

More importantly, since we are in plenary and not in Committee of the whole House, once you move any of the amendments, obviously, you will need to be seconded then I will propose the Question for the amendment, but I may not put the Question. I see that technical hitch given the numbers that are here. It is going to be that difficult and it may be the reason debate on this Motion may have to be adjourned at that point. I also feel that, indeed, what you are saying is also important and maybe a larger audience would have been more appropriate. I have allowed you to move the amendments so that once you are seconded, we may not proceed beyond there. But, at least, I wanted you to be on record so that even if we do not proceed, you will be the one to take the Floor first. I believe you have some serious proposals which you have put forward.

**Hon. (Dr.) Simiyu:** Thank you, Hon. Speaker. Indeed, I had already moved to amendment Regulation 9 in sub-section (2) of the Draft Elections (Technology) Regulations, 2017, by deleting the words “the commission may publish” and substituting therefor with the words “the Commission shall publish.” I ask the Member for Luanda to second.

**Hon. Speaker:** Hon. Omulele, you have the Floor.

**Hon. Omulele:** I second, Hon. Speaker.

*(Question of the first part of the amendment,  
that the words to be left out be left out, proposed)*

**Hon. Speaker:** Hon. Ababu, do you want to speak to the amendment?

**Hon. Ababu:** Thank you, Hon. Speaker. I intended to speak to the main Motion. I have an issue with this amendment because I believe these regulations have been processed and considered at length by the author, who is the agency responsible for the management of the elections. I believe they have similarly gone through due consideration by the Committee that oversees the Commission in respect of generation of this kind of regulations.

As an attorney, I know there is a world of difference between “shall” and “may”. I would definitely want to know why the Member for Tongaren has issues with the language of “may”, which I believe affords the Commission a bit of latitude in the publication. Why and how would he want us to tie it to “shall” which is mandatory? My concern is that you may deny the Commission some legal room that may be necessary administratively to effectively execute that mandate. I have a problem with that amendment.

**Hon. Speaker:** Hon. Sakaja, you have the Floor.

**Hon. Sakaja:** Thank you, Hon. Speaker. I would like to contribute to this amendment. When you look at it on the surface, there is not much to split hairs about because it is talking about end-to-end testing of technology. It says that the Commission shall issue a notice to specify time, place and testing. Clause 9(1) states; “and public notice shall be issued.” Regardless of 9(2), 9(1) already has said that the Commission shall issue a public notice. What 9(2) says is that the Commission may use its discretion to decide on which method to use in issuing notice. So, the Commission may decide to publish the information on its website or through electronic or print media, or posting it outside its offices, or through any other accessible medium. I do not think there is anything to split hairs about. I, however, support Hon. Eseli’s amendment. In fact, I would propose that we change from “may” to “shall” and in 9(2)(c), we say “and” after the semi-colon. This is so, so that they can use all those methods. If you just post it on your website, not all stakeholders will be able to access your website. If you choose to use option 4 which is, “through other accessible medium” and which is not specified---

*(Hon. King’ola consulted loudly)*

**Hon. Speaker:** The Member for Mavoko, you have just walked in and you cannot let people listen to what is being said!

**Hon. Sakaja:** He is extremely loud, Hon. Speaker. Hon. Eseli should just go further and say “and” so that they are compelled to put it on their website, in the newspapers, outside their offices and in any other medium. It should not be “either or”. I support. I would have moved a further amendment to the amendment.

**Hon. Speaker:** Hon. Onyonka, are you willing to contribute to this amendment?

**Hon. Onyonka:** Hon. Speaker, I was not intending to contribute to the amendment. I only wanted to say that there could be certain outstanding issues with regard to the rules which have been brought to this House. I want to agree with my brother, Ababu Namwamba because if you look at the draft report, you will find that it was adopted unanimously. We need to be a little bit more cautious even when there are outstanding issues. We should consult with the Chairman of the Committee, who is a very good friend of ours. We need to ensure that these rules and regulations are passed in this House for the elections to be seen to be free and fair.

Finally, this has really taken long in coming. These rules are actually---

**Hon. Speaker:** Hon. Onyonka, I thought you are doing your second term. We are contributing to the amendment by Hon. Eseli.

**Hon. Onyonka:** My apologies, Hon. Speaker.

**Hon. Speaker:** Even the members who have put their requests, please, note that fact.

**Hon. Onyonka:** I stand corrected.

**Hon. Speaker:** The debate on the main Motion stands but we need to dispose of the amendment proposed by Hon. Eseli. The Member for Nakuru Town East, do you want to contribute to the amendment?

**Hon. Gikaria:** Thank you, Hon. Speaker. The subtitle of the amendment is about transparency. Regarding whether to publish or not, I did not understand whether the four options given will be used or is it that the information must be published? Because we want transparency it will be important to compel the Commission to publish the information.

I support his amendment.

**Hon. Speaker:** The Member for Mavoko, are you on this?

**Hon. King'ola:** Thank you, Hon. Speaker. I was waiting to contribute on the main Motion.

**Hon. Speaker:** No! The rules are that when there is a proposed amendment, you deal with the amendment then you go back to the main Motion.

**Hon. King'ola:** Hon. Speaker, with your permission, Hon. (Dr.) Eseli is a Member I respect very much. He is a senior and ranking member in NASA. I want to imagine---

**Hon. Speaker:** It is not about that. Have you looked at the proposed amendment?

**Hon. King'ola:** I want to imagine the amendment must be very good.

**Hon. Speaker:** You have not looked at the amendment and now you start talking about other things which are unknown; NASA. What is that in this House?

**Hon. King'ola:** I support it.

**Hon. Speaker:** What do you support? Are you supporting what you have not seen?

**Hon. King'ola:** What he has written and read is good, Hon. Speaker.

**Hon. Speaker:** I do not see any other Member desiring to contribute to the proposed amendment but I am not able to put the Question on the amendment because we are in the plenary and not in the Committee.

In the plenary, the rules are that there must be quorum for a Question to be put or a decision to be made. Therefore, for purposes of being tidy, I have to stand down this business until tomorrow afternoon so that Hon. Eseli, who has a raft of proposals, and any other Member desirous of contributing to the proposed amendment, can explain to the House his proposals. After that the House can vote on them. So, we stand down the business of this Motion and move to the next one. Hon. Eseli, make sure that you are in the House tomorrow as usual.

*(Putting of the Question deferred)*

Next Order!

## **BILL**

### *Second Reading*

#### **THE APPROPRIATION BILL**

**Hon. Musyimi:** Hon. Speaker, I beg to move that the Appropriation Bill (National Assembly Bill No.15 of 2017) be now read a Second Time.

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

*[The Temporary Deputy Speaker  
(Hon. Omulele) took the Chair]*

Hon. Members will be aware of the contents of this Bill and the Report before this Bill, which we have discussed. In the interest of clarity, let me just rehearse the contents of this Bill.

The Bill seeks to authorise the issuance and appropriation of a total of Kshs1,266,794,262,462 out of the Consolidated Fund for public services and purposes for the financial year starting 1<sup>st</sup> July, 2017 and ending 30<sup>th</sup> June, 2018.

In addition to that, this Bill also seeks to give authority for the application of a total of Kshs366,590,397,909 as Appropriations-In-Aid (AIA) for the same period. Let me also mention that the combined amount from both the Consolidated Fund and A-in-A is just a little over Kshs1.6 trillion. This excludes the allocation of Kshs699.2 billion under the CFS which is a direct charge; Kshs7.7 billion meant for the Equalisation Fund shall be appropriated separately as well as the proposed allocation of Kshs323.76 billion for transfer to the county governments, assuming that we shall agree in the Mediation Committee to go that route.

Hon. Temporary Deputy Speaker, these are basically the contents in this Bill and I do not really have much to add because we have had plenty of opportunity to debate this matter. It is now my pleasure to request Hon. Katoo ole Metito, the Member for the great people of Kajiado South and my boss in position, not in years, to kindly second this Bill.

**Hon. Katoo:** Thank you, Hon. Temporary Deputy Speaker. I rise to second the Appropriation Bill (National Assembly Bill No.15 of 2017). The Appropriations Bill has two columns. One is for Recurrent Expenditure and the other one is for Development Expenditure.

Let me talk about the national Government money. We have county governments, the Legislature and the Judiciary, each being independent and interdependent of each other. I will briefly rush through some votes of the Central Government on development.

The first one is Vote D63 on education and Kshs6.292 billion has been allocated to it without mentioning the AIA of Kshs114 million. This goes both in primary and secondary education. I think the focus of the Jubilee administration is to see secondary education becoming affordable or becoming free beginning 2018, notwithstanding the fact that primary education is free. We want it to be of quality. I believe that in this Budget there will be need for an increase of primary school teachers in order to have a lesser ratio of pupils to one teacher; probably a ratio of 1:40 per class, therefore, making primary education to be of good quality. The Jubilee administration is also trying to make secondary education affordable.

However, most importantly, because of this issue of drought, we need to reintroduce the School Feeding Programme in both our primary and secondary schools. That will bring down the cost of education, especially in secondary schools because the money which goes to food will now be reduced from the burden of parents. Therefore, the Government needs to reconsider the reintroduction of the School Feeding Programme, especially in boarding schools.

Still on education, we need to have quality. We now have the curriculum support officers. Actually, their national representatives were in the Speaker's Chambers this afternoon and we also have quality assurance officers for purposes of monitoring and keeping the standards that are required in schools. I think they need to be facilitated mostly at the district level. We need to make them mobile. We need to have a good budget for them to follow up the need for quality assurance and standards in our education sector.

Down to Vote D1064, the Jubilee administration had come with a promise in its manifesto of having Technical Training Institutes (TTIs) in each and every constituency. I think this being the last Budget for the Jubilee administration in their first term it will be good to ensure that all those constituencies that do not have those TTIs are included in this Budget.

Finally, there is need to fund research in our universities so that they can offer market-oriented courses because that is a requirement now. If we want to eradicate the problem of unemployment, then we need to adequately fund our universities to enable them do research. If we do that, we will have market-oriented courses.

Vote D1152 is about the energy sector. I think this administration is doing quite well in diversification of our energy be it electricity, solar or exploration of coal which is going on in

Kitui County. I think what is required now is to boost the numbers that the Jubilee administration has already done more than ten times what has been done since Independence. Together with the Last Mile Programme, we need to provide enough transformers not only to public institutions like schools, community boreholes and health facilities but also to target the common mwananchi in areas where these long lines have been put by the Rural Electrification Authority (REA). There is need for provision of adequate transformers on the ground.

I will now move to Vote D1161. This is to do with agriculture. Although this is a devolved function, we need, as the national Government, to come up with policies that diversify our agriculture with respect to ensuring that there is food security in this country.

Irrigation is a function of the national Government that needs to be supported a lot. We need to come up with investments and innovations. We are an agriculture-based economy and I think a lot of money needs to be put in research on agriculture, especially now that we have a lot of drought. Rain-fed agriculture can no longer be reliable. Therefore, there is need for irrigated agriculture. We have to fund it.

Hon. Temporary Deputy Speaker, in the subsector of livestock, which is facing a lot of challenges right now because of the drought, there needs to be adequate off take programmes. We also need to operationalise the Kenya Meat Commission (KMC) to reclaim our position in the global market; that is both in Africa and in the European Union. Maybe we need to operationalise the local abattoirs that are in counties that are in Arid and Semi-Arid Lands (ASAL). We really need to give them enough funds to be able to have that livestock off take at the grassroots level or in the sub-county level. Since it is a devolved function, in partnership with counties, we need to think of a permanent livestock insurance scheme because of this drought. Rainfall is failing all the time. We need to think of what we can do for that sector.

The President has just ordered for a release of one million bags of maize from tomorrow in order to cushion the citizens from the high cost of maize floor. Possibly, the prize will come down from Kshs150 to Kshs115 per 2kg packet.

Most importantly, I can see there is also an Executive order to release Kshs1.2 billion for the *miraa* sector. The livestock industry seems to be forgotten too much and it contributes about 12 per cent of our Gross Domestic Product (GDP). A lot needs to be done to revive it.

Finally, on commissions, when we were debating the Budget before we talked of the Appropriation Bill, I talked a lot about the need to streamline our commissions, make them lean and efficient, but a lot of money has been given to them from D1252.

Let me talk about D2031, which talks about the Independent Electoral and Boundaries Commission (IEBC). The Motion has been turned down on regulations to operationalise the Elections Act, but the IEBC, in the new Act, knows that every polling station needs to have not more than 700 voters. They have been given a budget and it is high time they operationalised it. We saw the IEBC registering over 3 million voters, but they have not come up with new polling stations. Right now, we should be having new polling stations. Since they have been given a budget of Kshs45 million, it is good for the IEBC to operationalise that Act and ensure that every polling station does not have more than 700 voters. Therefore, they should create several streams or independent polling stations.

With those few remarks, I beg to second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Ababu Namwamba, you have the Floor.

**Hon. Ababu:** Thank you, Hon. Temporary Deputy Speaker. I want to support the Appropriation Bill and say that even as we look at the allocation of funds for various sectors of our economy, we want to interrogate exactly how effective these funds have been. This is a very unique Budget. It is the last Budget of the 11<sup>th</sup> Parliament. It is also a Budget that has come at a rather queer moment being read several months before due date or the start of the fiscal cycle. We know that even though we deliberate this, the fiscal cycle of this country remains the same running from July.

I just want to express myself on a number of items in the Bill and especially funds that have been allocated to sectors such as agriculture. It has long been said that agriculture is the backbone of the economy of this country and one would expect that since a budget is also a tool for planning and directing resources in areas where you ensure that we answer to the needs of the nation and the needs of our people, it is important to disaggregate the funds that we are sending to the agricultural sector and ask ourselves whether, indeed, we are achieving much in not only strengthening that sector, but also ensuring that this country is food secure. A lot of money has been spent previously and even in this Budget. In sectors like irrigation, for instance, there have been major projects like the Galana Kulalu Project. It would be important even as we seek to put more money in such projects, to see whether those projects, indeed, are of any value and are answering to the needs of the nation.

I am a very strong proponent of irrigation agriculture. My land of Budalangi today is a big beneficiary of investment in irrigation. Land that previously would be flood wasteland has been transformed into irrigated agricultural productive land. Today, I am counting about 2000 acres of land that has been transformed from what used to be wasteland to productive land. This Friday, I will be presiding over the ground breaking for another irrigation scheme, the Sisenye Irrigation Scheme, which is a new scheme, which goes to demonstrate that if well targeted, funds in the agricultural sector or in a subsector like irrigation can be very useful.

However, we want to see funds being appropriated in a manner that answers to real need. We have had efforts to provide fertiliser and farm inputs because the cost of farm inputs in this country remains one of the greatest challenges to our farmers which pushes up the cost of production and contributes to the scenario we are in today where the cost of *unga*, sugar and wheat flour has ripped through the roof. Even as we allocate more funds for agriculture, we need to really ensure that the money is going to the right places and is being properly utilised and is answering to our food security needs. I really want to applaud the investment that has deliberately been put in irrigation agriculture over the years because representing people who have benefited and continue to benefit from irrigated agriculture, I can testify to that.

I am also happy to see the kind of support that has been extended to sub-sectors like *miraa* farmers. I was happy to see the Executive order that has just been released that will enable *miraa* farmers to access Kshs1.2 billion which will cushion them from the difficulties this subsector has suffered over the last few years since the ban of the export of *miraa* in some lucrative markets. This is like an affirmative measure. You want to see this kind of affirmative measure extended to other sectors of agriculture. Sugarcane farmers in the western belt, running from Busia all the way to Migori and Trans-Mara, have been facing and continue to face horrible challenges over the years. In fact, sugarcane farming has become a poverty enterprise and a lot of our sugarcane farmers are locked into a kind of vicious poverty cycle. If there was a sector



that needed a marshal plan, kind of boost or support similar to what Government has extended to *miraa* farmers, it would be the sugarcane farmers in the sugar growing western belt.

While I celebrate and I am happy that *miraa* farmers received Kshs1 billion the other year and are about to receive another Kshs1.2 billion, I ask myself: What do farmers who grow sugarcane in this country need to do to access the kind of support and relief that is extended to farmers such as these? That is the whole essence of equity and running a budget in a manner that is just and fair to all sectors and citizens of this country. I, therefore, want to challenge the Jubilee Government that the same way you have treated *miraa* farmers, we want to see a similar relief extended to our sugarcane farmers and other sectors. It is very disappointing to see the kind of state our sugarcane farmers are in.

I am happy the IEBC has been given funds so that they can effectively prepare to deliver free, fair and credible elections. I want to hope that the Commission can now settle down and give confidence to all political parties and all of us who are players in this game as we move towards 8<sup>th</sup> August. It will be important for the Commission to give that confidence that it is ready and prepared. Logistically, it should start demonstrating that it can deliver a credible election. It is not just about free and fair elections. The elections must be credible. Credibility must be seen in the preparations, right from the logistical preparations for the elections. Of course, we are aware that the IEBC will be conducting a mock election in June. Even as they prepare to do that, we want assurance that the resources that are being given to the IEBC will be deployed in such a manner that we can have an election that is satisfactory for all players. Ours is perhaps one of the most expensive elections per capita in the world. As we pump colossal sums of money into elections, we want assurance that the money is well spent.

We prepare to see how the Government is going to finance this Budget. It is a big Budget. We hope that the kind of relief that has been suggested, such as lowering the cost of *unga* and basic commodities, can actually be delivered, which means that the Budget has to go beyond merely talking the talk, but walk the walk of giving relief.

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Ababu, have you completed? You have a minute to complete.

**Hon. Ababu:** Thank you, Hon. Temporary Deputy Speaker. I appreciate your magnanimity, my learned senior. Often, we have seen the Government providing, in the budgetary estimates, relief such as the ones that were announced by the CS, that should ideally result in lowering the cost of basic commodities such as *unga*, sugar and wheat flour, but you do not see those benefits percolating down to the ordinary Kenyan. I just want to urge the Government to go beyond the talk and, indeed, walk the walk of seeing these reliefs reach the ordinary persons, so that when they are in Kibra, Budalang'i or Kinango, they can walk to that kiosk next door and find the cost of *unga* actually having come down.

I support, Hon. Temporary Deputy Speaker. Thank you.

**The Temporary Deputy Speaker** (Hon. Omulele): We will give the opportunity to Hon. Gikaria, the Member for Nakuru Town East.

**Hon. Gikaria:** Thank you, Hon. Temporary Deputy Speaker. I was still looking at the Appropriation Bill. That notwithstanding, it is important for us to support the Bill just before we go for recess and allocate money to the biggest spending sector, namely, the Public Service.

It is high time Parliament and the country started looking at the Constitution. The Constitution generally is a very good document, but there are some Articles which need to be looked at keenly. As a country and in a bipartisan manner, we should try and look at the Constitution. This is a very important Bill for the country.

Parliament is supposed to critically look at the Bill and scrutinise what has been allocated under the Bill and give a meaningful judgment because of the concentration. I am not saying that whatever we are contributing is not productive, but if you look at the concentration of every Member that is supposed to be giving their input towards the Bill, it is something that is very important. Therefore, we need to look at the Constitution and ask ourselves whether having the elections in August is reasonable. It will happen in another five years. What will happen? Do we again go through the same scenario? If it was to happen in December, we would have gone through the normal budget process without going through it during an electioneering period like this one and not having enough representation. So, it is important for us as a country to look at the Constitution and see when we are supposed to hold elections. Of course, Hon. David Ochieng from Ugenya had tried to bring a Bill to that effect, which did not go through. But it is important so that we can have all the information that we require for this.

Secondly, we should look at the Public Service, which is the biggest spender. As the Chair has rightly put it, there will be an economic slowdown because of the electioneering period. It will affect the first quarter of the financial year, which is very crucial for the Government in terms of revenue collection. If you look at the first quarter, which starts in July, you will find that most of the issues that are done towards the end of a financial year normally experience slowdown in terms of Government spending and the economy is affected in one way or the other. Therefore, having elections in the first quarter when the Government is supposed to be collecting money to cater for this Budget, it affects. It is, therefore, important for us to look at these issues critically as Parliament.

Without much ado, I am a Member of the Departmental Committee on Administration and National Security, and when the Ministry brought their budgetary provisions before us, we were concerned about a few issues regarding the Ministry of Interior and Coordination of National Government and the work it is supposed to do. When we have elections, they are supposed to have enough money to deploy enough police officers and security agencies to manage elections in a free and fair manner. Before, during and after the elections, we need to have some order in this country. We needed enough money within the Ministry of Interior and Coordination of National Government, so that they can take care of the elections.

Looking at Item Vote R1021, under the Ministry of Interior and Coordination of National Government on population management, it is good to note that the issuance of identity cards (IDs) has become a problem in this country. When we were interrogating the directors on these matters, they required a lot of money to acquire new technology for the new generation IDs. They had requested for some amount of money which they were never given. Again, we are still at the point where we cannot issue ID cards to our young people who require them, not only for voting purposes, but also for other important duties in this country. So, under this Ministry, we thought there are issues that we needed to look at, particularly on matters that will assist the country.

On Vote R1023 on correctional services, we need to improve our prisons to be seen as correctional facilities and not as punishment places.

If you go out there, you will be very surprised to hear of huge debts that the Prisons Service owes suppliers. Hon. Jakoyo is my friend, but he is interfering. He is a very good friend of mine, and I appreciate.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. Omulele): We shall now have Hon. Midiwo.

**Hon. Midiwo:** Thank you, Hon. Temporary Deputy Speaker. I would like to make brief comments as I support. Generally, I do not like opposing the Chair of the Budget and Appropriations Committee because he is my good friend. He is a man I have admired for many years. However, it cannot go without comment when the Whip of the Jubilee Coalition talks about so many things that the Jubilee Coalition is going to do with this Budget. Is it not too late to make promises you cannot keep, including saying that you want to improve prison services, like my friend, Hon. Gikaria, said? We do to create opportunity for money to go somewhere. I want to encourage everybody in this House to support the Jubilee Budget for the 2017/2018 Financial Year because they will not have an opportunity to implement it since we are sending them home on elections day. Hopefully, the next Government will not make the same mistakes.

When the CS for the National Treasury was making his Budget Policy Statement, he said so many things I had never seen before.

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Midiwo, there is a point of order from Hon. Irea.

**Hon. Midiwo:** He has just walked in.

**The Temporary Deputy Speaker** (Hon. Omulele): Yes, I noticed that Hon. Gideon Irea just walked in and found Hon. Midiwo on his feet. Hon. Irea, are you saying that there is something that is out of order? Please, tell us what it is.

**Hon. Irea:** Thank you, Hon. Temporary Deputy Speaker. I have heard Hon. Midiwo criticise the way the Budget Policy Statement was presented by the CS for the National Treasury. So far, the Opposition has nothing to offer to this country. They are not telling us who their shadow CS for the National Treasury will be or who their presidential flag bearer will be. Why do they criticise when they do not even have a presidential flagbearer?

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Gideon Irea, what is out of order?

**Hon. Irea:** It is the way he is criticising the way the CS presented his Budget Statement without offering a solution.

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Gideon Irea, does your feeling that the Jubilee Government has been criticised by Hon. Midiwo make him to be out of order? You are the one who is out of order.

Proceed, Hon. Midiwo.

**Hon. Midiwo:** Thank you, Hon. Speaker. People have to get *bonga* points now because the ground is shaky for many of us, including myself. However, I am an old guard. I am not looking for *bonga* points.

On what Hon. Irea has said, all we are saying is that you cannot promise populist things that you cannot implement. Not so long ago, there was the usual rhetoric about putting one million acres of land under irrigation by this time. You now hear that the Government is about to import maize from Brazil. From this Budget, we are going to import maize from Brazil. If you hear about containers coming from South America, you would be foolish not to think about drugs. I have personally been here long enough to know that in the last four years, we have failed to implement our national budgets in accordance with our rhetoric. Where are the laptops that we promised Standard One pupils? Where is the Kshs34 billion that was allocated to the project?

Last week, the CS for the National Treasury came here and said something about a matter I sought to address in this House recently, which caused a lot of debate. I want Hon. Gikaria to listen. The CS said that he had slapped the betting companies with a 50 per cent tax on gross betting collections, but he made no mention of regulations. Taxation is just one of the issues

contained in my Bill. Where on earth do people get taxed 50 per cent? I saw the CS for Sports, Culture and the Arts, Mr. Wario, speak in Murang'a yesterday. The media gave him so much coverage. Even today's *Daily Nation* has a story about him. He said that the 50 per cent tax on gross betting collections will be given to his Ministry to promote sporting activities. I became very curious because some officials of his Ministry were recently taken to court for embezzling funds which were meant for the national Olympic team. He was there, saying that the money that will be realised from taxation of the gross betting collections will be administered by his Ministry.

On the day the CS made that speech, I said that there was more than meets the eye. I now know better having been involved so much in this matter. One day, I must bring proper regulations to regulate the betting industry, if I will still be around. We must make sure that we take care of the betting industry. It is not about money. Slapping a 50 per cent tax on gross betting collections basically means you are going after somebody in the industry. Maybe, somebody is calling the operators of the betting companies to go and see him. Where on earth is somebody taxed 50 per cent on gross income? Some of the betting companies are not making money at all. Some of them are connected to senior politicians. They may wish to push out the companies that are making money. That is why you should not make a proposal that looks like a piece of wood that has been cut off a tree trunk. It is baseless. Where are the regulations? Why would we not have carried the regulations first?

Secondly, the Chinese cannot rule anything. The Chinese running this industry are killing Kenyan children. They could be behind this thing. It could be that they are seeing somebody to ensure that they kill the betting companies that abide by the existing regulations, so that they push Kenyans to gamble outside the laid down procedures. That way, you unconstitutionally kill the industry as it is today. My friend has challenged me. I am only saying that you cannot do populist things. If you tax me 50 per cent, my business will collapse. It is interesting that the CS for Sports, Culture and the Arts is the one who commented yet betting is under the Ministry of Interior and Coordination of National Government. It is very curious. Some people are creating a scenario where they can make money. Fifty per cent of what I estimated to be the quantum of the gross collections I saw published in today's newspapers is about Kshs50 billion. How sad? Why would somebody think that Kenyans and Members of Parliament are stupid? Where are the regulations? Why did the CS not take the opportunity to import some provisions of my Bill and make them law? He can do so through the Budget Statement Policy.

Hon. Speaker, I said I will not say much, but you do not know what else is in the estimated Kshs2.6 trillion that is just cooked up for people to open up avenues of making money. I was very curious when I was watching news yesterday at 1.00p.m. and in the evening. Why is my friend, Michael Kamau, at home and Mr. Wario is not home? These are people who have stolen from this system. Why is he still in office? The Jubilee Government cannot take pride in keeping somebody with questionable credentials in office. What happened during Kenya at 50 celebrations cannot be forgotten. So, I know my friend, Gikaria, is being hurt about this one and I am not going to say why. However, we are back to square one.

I can tell you no economy that wants to move forward makes tax proposals that kill businesses. I was here when the National Treasury wanted to kill Keroche Industries. I was a Member of the Departmental Committee of Finance, Planning and Trade and we dealt with the matter for 10 years. I asked them why they wanted to kill a local industry. The National Treasury mandarins also wanted to kill Mastermind Tobacco because international companies were paying money. You cannot do budgeting like that! You cannot make empty promises. In this Budget,

there is money going to the Standard Gauge Railway (SGR) and yet Kenyans are dying in Baringo and northern parts of this country which are dry. Why can we not put our monies where we need them? When there is drought, even God expects us to take care of the people who are disenfranchised.

Lastly, the IEBC is being given a lot of money and we support that. I saw Mr. Chebukati talking carelessly not knowing that, that is what sent the former Commission home. Fortunately, somebody is trying to sort out the Chickengate scandal. We must have free, fair and credible elections in this country. It is the only way we shall restore confidence in our electioneering process. There is no other way of doing this. This House, through the Chairman of Budget and Appropriations Committee, has given them a lot of money. We have also given a lot of money to the National Intelligence Service (NIS).

Can I just have one minute, Hon. Temporary Deputy Speaker? We give a lot of money to the NIS incrementally, but look at it! When something is good, you need to praise it. There are no more terror attacks in our country. I am sure the possibility is still there, but the NIS must continue to do what they are supposed to do with the money that we give them. I am appalled that only---

**The Temporary Deputy Speaker** (Hon. Omulele): I will allow you an extra minute.

**Hon. Midiwo:** Yes, that is my job. My job is to attack you people. You are a dysfunctional Government. I have no other role. The road sector has been given only Kshs50 billion and yet they keep telling us in rallies that they are doing 7,000 kilometres of road. The other day, *Baba* said that the Government talks of 7,000 kilometres of road like it is from here to Rome. So, if you put it in your mind, you can see that somebody thinks that the Kenyan electorate is asleep, silly and stupid. I hope Kenyans know that this trend is off-track and we must put it back on track where Hon. Raila and Hon. Kibaki left it. I support my friend Hon. Mutava.

**The Temporary Deputy Speaker** (Hon. Omulele): Very well. Let us have Hon. Gideon Irea.

**Hon. Members:** He has just come in.

**Hon. Irea:** Hon. Temporary Deputy Speaker, protect me from my fellow colleagues.

**The Temporary Deputy Speaker** (Hon. Omulele): Yes Members. I hear you but you know the way we operate. We usually have an opportunity for people on either side of the House and at the moment he is the only one on this side who has shown interest. You will have your say on this Hon. Manson and Hon. Makau. Hon. Gideon Irea, proceed.

**Hon. Irea:** Thank you, Hon. Temporary Deputy Speaker. I rise to support. The Cabinet Secretary (CS) for the National Treasury said that betting companies will be paying a 50 per cent tax from what they collect and that was a good move. Previously, in this country the Government used to take a seven per cent tax from the betting companies which did not spend a lot of money here. Last year, I saw betting companies funding the English Premier League and other projects outside this country instead of ploughing it back in this country.

I will not have a problem if the betting companies are owned by people in this country. There is no betting company owned by someone from Kisumu or Nyanza Province neither by people from Meru County. The 50 per cent tax should remain in this country. The Jubilee Government promises to give computers to schools and some have already received them. This is a good move because children will learn computers from an early age in primary school. I can attest that the Jubilee Government has tarmacked roads because in my constituency the road from Kithirune-Kariene-Kaguma will be launched by His Excellency the President within the

next 30 days. Mate Road which connects from Embu to Meru Town is being tarmacked. Therefore, it is true when the CS came here and said that the Jubilee Government is tarmacking roads. The removal of import tax on maize is a good move.

**Hon. Mulu:** On a point of order.

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Makali Mulu, what is out of order?

**Hon. Mulu:** On a point of order, Hon. Temporary Deputy Speaker. In terms of relevance, is the Member discussing the Appropriation Bill or the Finance Bill? According to the Order Paper, we are discussing the Appropriations Bill but he seems to be discussing the Finance Bill.

**The Temporary Deputy Speaker** (Hon. Omulele): It is true Hon. Gideon you seem to be discussing the Finance Bill but this is the Appropriation Bill.

**Hon. Irea:** Both Bills have a very thin line which divides them.

**The Temporary Deputy Speaker** (Hon. Omulele): There is a thin line. All right. Proceed.

**Hon. Irea:** The CS, National Treasury is well informed of what is happening. By looking at the amount of money people are paying for various commodities, you will see the Government is well informed. Criticising the Jubilee Government is not good because money passed in the Budget goes to the respective ministries. Many institutions have improved their services.

Therefore, I support. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Omulele): Very well, Hon. Gideon Mwiti. What you have said is correct. If a Member feels that the Government is not doing the correct thing or a certain Member is not correct in his or her opinion, this is the Chamber to say as you have now done. They are not out of order when they seem to have a different opinion from yours on what the Government is doing. Let us now have Hon. Manson.

**Hon. Nyamweya:** Thank you, Hon. Temporary Deputy Speaker. I support this Bill because the Jubilee Alliance Party will not be in power come August 2017.

I have looked at the Appropriation Bill. The money available for the Government to use is Kshs1.2 trillion. You are aware that we had a Budget of Kshs2.6 trillion. When you look at the supply and the appropriation-in-aid (A-in-A), we are extremely short of the money promised in the Budget read by the Cabinet Secretary for the National Treasury in terms of the activities they want to carry out. They fall far short of what will be done in this country in all the sectors except the Independent Electoral and Boundaries Commission (IEBC). I have looked through the figures. The figures which tally with what we heard in the Budget Estimates are those of the IEBC. All the other sectors have been affected. The amount has drastically reduced. I have checked.

When you look at the Budget Estimates, the Appropriation Bill and the A-in-A - which is revenue generated by various organisations excluding donor funding - when you put it together, you find that we fall short of what was in the Budget. I have tremendous respect for my Chair of the Budget and Appropriations Committee. This Budget is not adding up. When you look at the figures which are in the Budget Estimates and what we have as the Appropriation Bill, which is the true position the country is in, it falls far short. The only institution they promised to give funds to the IEBC.

There has been talk of infrastructure, especially roads. I have looked at the money available for roads in this country. What is available for roads is Kshs81 million while the A-in-A is Kshs53 million. This money will be used after July. It will not be used before July. The message should be very clear to Kenyans.

**Hon. Okoth:** On a point of information, Hon. Temporary Deputy Speaker.

**Hon. Nyamweya:** Hon. Temporary Deputy Speaker, as I continue to contribute---

**The Temporary Deputy Speaker** (Hon. Omulele): Are you willing to be informed?

**Hon. Nyamweya:** No. It is very clear. Hon. Temporary Deputy Speaker, I am reading what is in Clause 1 of the Appropriation Bill which states that this Act may be cited as the Appropriation Act, 2017 shall come into force on 1<sup>st</sup> July, 2017.

**Hon. Okoth:** On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Okoth, Member for Kibra, what is out of order?

**Hon. Okoth:** Hon. Nyamweya is not putting it on record correctly. Clause 2 which he is not quoting states in part that this Bill shall be deemed to have been appropriated as from 1<sup>st</sup> July 2016, for the services and purposes specified in the schedule. While this comes into action in July 2017, it could be used to pay for things that were already spent a few months ago even last year. That is all I wanted to inform him but since he did not want information, I wanted to put it on record that I do not think he is reading it properly. He might be misleading the House.

**The Temporary Deputy Speaker** (Hon. Omulele): Very well. Let us have Hon. Nyamweya.

**Hon. Nyamweya:** Hon. Temporary Deputy Speaker, I have a lot of regard for the Member for Kibra and I wish that he wins the Kibra seat. I hope he wins the nomination ticket. What he is talking about is the first charge after the Budget is read. This money will pay what has been spent in 2016. That always happens in any budget. All outstanding bills which have been incurred in 2016 shall be paid by the Budget for 2017. That happens every day, you should know. So, I do not know what he is informing me or what is out of order.

Hon. Temporary Deputy Speaker, if we add that again, the amount for bills incurred in 2016 will be first charged in the 2017/2018 Budget and the amount they have shown us as available creates a very bad scenario for the country. It creates a scenario where, I am not sure whether they will pay even salaries because we have the national debt which must be paid first.

There is a serious challenge when I look at Appropriation Bills. But, my main concern is in infrastructure because the Jubilee leadership has been going round, have come to Kisii and even made some people to defect to Jubilee Party believing that they are going to get money for roads. The Appropriation Bill gives us a clear picture of where we are. We may not have included the funds for county governments. The county governments are separate and independent from what we are discussing today. But, what worries me in the Appropriation Bill is in the Ministry of Health. A lot of money has been given to the Ministry of Health for development in Appropriation Bills yet this is a devolved function. But as we move forward, we may pass this and I have said that we will support it because Jubilee will not be in power come August 2017. There is much to be done by the next Government when it takes the leadership so that we always have a realistic Budget.

We should do a comparative analysis of this Appropriation Bill with that of the previous year on how much money was collected and how it was used. We cannot all the time, and I stated this when the Budget was read, have an Appropriation Bill giving us estimates for only this year alone. They should give us the Appropriation Bill for 2016 to see how each ministry was allocated funds and how the funds were spent. Without comparison, it does not give us a clear purpose or clear picture where we are headed to and what is happening in the country.

I will support this Bill, but I have a challenge. When you look at the Appropriation Bill and look at the national debt, pay the pending bills first--- We pray for the country to go through

peaceful and fair elections and have enough funds allocated to the Independent Electoral and Boundaries Commission (IEBC) to conduct free and fair elections so that the winner accepts the results.

I support this Bill as it is, but I have a challenge on the Appropriation Bill in relation to the Budget Estimates. We also need to be clear where we are and where we are going and what we need to do.

With those few remarks, I support. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Omulele): We shall now have the Member for Kitui Central.

**Hon. Mulu:** *(Spoke off record)*

**The Temporary Deputy Speaker** (Hon. Omulele): Very well. I will then give the opportunity to Hon. Patrick Makau, Member for Mavoko.

**Hon. King'ola:** Thank you, Hon. Temporary Deputy Speaker. It is my opinion, at a time when the House struggles with quorum, that it be first come, first talk basis. However, first, I want to comment on this Appropriation Bill which is a replica of the main Budget Statement.

However, I have seen that very little money was allocated to the Export Promotion Council (EPC) of this country.

I had an opportunity of attending a workshop. We realised Kenya is exporting goods and services worth Kshs600 billion and importing goods and services worth Kshs1.6 trillion. When you look at that you realise that however much money we put in agriculture, livestock or other sectors of the economy, unless we have a policy on countervailing, we will be doing injustice to this country. I will give you an example. When the Government tendered the Standard Gauge Railway (SGR), the China Government won. In the details of the tender, the Chinese Government said cement that we use on the SGR will be imported from China. It also said that the nuts and bolts and the steel would all come from China. What has that one done to Kenya? It has killed the cement industry in this country. It has killed the Numerical Machining Complex that produces bolts and nuts. It has killed the steel factories in this country. How I wish this Government provides direction, either through legislation or a policy, on how we should protect our local investors and local entrepreneurs.

Looking at this Bill, D1063 is about primary and secondary education. D1064 is about vocational and technical training. D1065 is about universities. We are churning out a lot of professionals and if there are no jobs for them we will have so many learned people without jobs. How I wish the Cabinet Secretary (CS) for the National Treasury would provide a way forward on how we are going to protect the Kenyan entrepreneur and investor in terms of killing the guerrilla marketing tactics by the First World. For example, we produce paper at Kshs30. The same paper will be sold by China at Kshs20. That will kill the RIVATEX of this country, the East African Packaging Industries and others. We should come up with a policy that will protect our industries. If we do not do that, even if we allocate as much money as possible, it will be a vicious circle. We will never move forward in terms of production and even in terms of funding this big budget. We know that Kshs2.6 trillion is not a mean budget. As a country, we need to re-think our strategy.

Lastly, about IEBC, it is a lot of money that we have given them. I wondered why the Chairman of IEBC was expressing unhappiness when the Opposition said that it would establish its own tallying centre. I thought it is a burden relieved from the IEBC. We only want to make a comparison of what they have and what we have. Kenyans are yearning for a credible election. They should not complain. The Chairman should also be careful about what he says. Since the



Chairman of the Budget and Appropriations Committee does not want us to speak a lot, I rest my case.

I support at the Appropriation Bill.

**The Temporary Deputy Speaker** (Hon. Omulele): Very well. Hon. Okoth, I will give you one minute.

**Hon. Okoth:** Thank you, Hon. Speaker. I respect the request by the Budget and Appropriations Committee that we need to do something on the Equalisation Bill. So, I will be very brief in my contribution.

First, Hon. Makau has mentioned something about protecting our industry. I support that. We have seen disconcert when it comes to how much money we are raising, how many jobs we are creating and also the co-ordination between Ministries.

I think we really need to follow through on the audit of the Constitution and see where we can reduce the costs. If you look at the cost of the commissions, the costs of representation and things like that, maybe we can do with smaller governments to make things less expensive.

However, I think in terms of protecting the industries and the jobs, we have to balance. Recently, the Cabinet Secretary (CS) for Environment threatened to ban the use of plastic bags in Kenya when it is a much more useful approach to go with reducing, reusing and recycling. That will create more jobs of young people who can be taxed rather than shutting down the few existing factory jobs in the plastic sector and the follow up jobs.

I specifically wanted to comment on the money for education and the Teachers' Service Commission (TSC). I know we allocated and now we are appropriating. This issue is very dear to me. I am the Member of Parliament for the TSC in Upper Hill in Kibra Constituency and the TSC is not getting the amount of money they need. I am pretty sure they are not pushing enough because the shortage of teachers in this country is about 80,000 and we are replacing and hiring at about just 5,000 per year. So, we are short-changing the children in basic education, primary and secondary school and some of the technical colleges. It needs to go on record that we need to look into it and see how we will, as a country, make sure we have a proper teaching force that is well remunerated and which has the right student-teacher ratio for quality education so that it will not be what people say in Kiswahili "*bora elimu*". It must be what people really want "*elimu bora*". That must be a focus on funding our teaching core and making sure that the teacher core is professionalised, well-motivated and adequate in numbers so that the student-teacher ratios go down and we get value for the money we are getting. It will also reduce the strife in this sector and the industrial relations. I know the unions have already sounded a warning bell about that issue. So, it will call upon us as leadership.

My last point is on the issue of the Kenya National Commission on Human Rights (KNCHR). Again, when we budgeted, it came from the Justice and Legal Affairs Committee to the Budget and Appropriations Committee. I think that is a very sensitive commission and the Bill of Rights in our Constitution and the job of the KNCHR is to make sure the freedoms and rights of Kenyans are promoted and protected widely.

There are extrajudicial killings of poor youths in slums of Nairobi by the police, in places like Eastleigh and Kibra day in, day out. We need to get a robust commission that can hold government and State agents accountable. We really need to fund them. It is Kshs450 million this year, but it is something to be thought about. We really need to make sure that, that commission has the resources to respond to human rights violations, to prevent, train, build capacity and engage from the north to the south of Kenya, from the east to the west and in urban centres, especially where a lot of young people are in poverty.

Being poor is criminal in this country. A poor criminal in this country is going to get 10 or 12 bullets in his or her body on live television and on twitter, but a rich thief in this country is probably going to run for office and be elected governor or senator. It is really a shame. The Budget should reflect our priorities.

With those few remarks, I support and appreciate the Chair for his guidance to let us go on the next business.

**The Temporary Deputy Speaker** (Hon. Omulele): Let us have the Mover to reply before we move to the next Order.

**Hon. Musyimi:** Thank you, Hon. Temporary Deputy Speaker. I thank Hon. Members for all the points they have made. We have listened very carefully. These matters are in the HANSARD and, definitely, the Parliamentary Budget Office will pick them so that they can guide us as we think about the next Budget. This is because I have no doubt that we will be in Government, never mind what is being said. Definitely, if there are mistakes that may have been done or areas that needed emphasis, particularly this issue of agriculture has come over and over again. Many other issues have been articulated very carefully.

I am glad we have conducted the socio-economic audit because most of these issues are captured there. We have created a Government that we need to constantly look at and ask ourselves whether we need to perhaps rethink some of the structures that we created.

With those few remarks and with a lot of appreciation to the contributions, I beg to move.

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Members, for obvious reasons, we will not put the Question at this time. We shall deal with the next business in the next Order.

*(Putting of the Question deferred)*

## BILL

### *Second Reading*

#### THE EQUALISATION FUND APPROPRIATION BILL

**Hon. Musyimi:** Hon. Temporary Deputy Speaker, I beg to move that the Equalisation Fund Appropriation Bill, National Assembly Bill No.12 of 2017 be read a Second Time.

The Equalisation Fund is established under Article 204 of the Constitution and this particular Article provides that a half per cent of all the revenues collected by the national Government each year, calculated on the basis of the most recently audited accounts, be made available especially to the marginalised areas. These areas are determined by the Commission on Revenue Authority (CRA). This Authority is obligated by law to determine, publish and also regularly review the policy that it used to determine the criteria of these marginalised areas. I am happy to say that this policy was approved by Parliament in December 2014 and has a policy that will govern financial years 2014/2015, 2015/2016 and this year ending June 2017.

The areas identified by CRA at that time were 14 counties beginning with Turkana, Mandera, Wajir, Marsabit, Samburu, Pokot, Tana River, Narok, Kwale, Garissa, Kilifi, Taita Taveta, Isiolo and Lamu. All in all, Kshs12.4 billion is being appropriated. The money for this financial year is Kshs6.6 billion and the amount brought forward, reflected a balance of Kshs6.4 billion totalling to Kshs12.4 billion. Of that money, using the framework that we used in

National Government Constituencies Development Fund (NG-CDF), about Kshs600 million will go towards operating the Fund and will cover the administrative and other operational costs leaving a balance of about Kshs11.8 billion to go directly to development work.

I am happy to say that the necessary public participation was conducted as is required by law. I am also happy to report that with the public participation, the areas identified, the sectors to benefit in this Fund is water, which is about 48 per cent of the present allocation and road projects taking about 30 per cent, health taking 16 per cent, energy 2 per cent and education projects just shy of 2 per cent. The law also requires that this policy is reviewed regularly by the CRA. I am happy to report that this morning we had a meeting, and I am happy to say that you were present; where we gave our feedback on how that criteria was set and we commend the new commissioners that have been appointed and sworn in, as is normally the case. I have no doubt that as they look at the criteria, they will take into account some of the things we said and no doubt other views expressed by other stakeholders.

With those few remarks, I wish to request the Member for the great people of Kitui Central and a very key Member of the Committee, Hon. Makali Mulu, to kindly second this Bill. I thank you.

**Hon. Mulu:** Thank you, Hon. Temporary Deputy Speaker. Let me use this time to second this important Bill, the Equalisation Fund Appropriation Bill.

This is a very important Bill because this Fund was created by the Constitution since 2010, as the Chair has said. In the contributions that I have made to this House relating to budgets, I have always said that it is unfortunate that these funds have not been utilised. Today, I am a happy person. Even though it has come late as we are just winding up the 11<sup>th</sup> Parliament, I am happy we now have a framework of how the money can be used.

Looking at the Equalisation Fund, I like the proposal where we are saying that we need to review the so-called marginalisation policy. Therefore, in terms of targeting, we should target the right places. Currently, the targeting is at county level. That is why you realise that everybody who has read through these 14 counties always ends up asking the question: How comes Ukambani counties like Machakos, Makueni, Kitui and even Kajiado are missing from this important list?

That is why, as we move forward towards reviewing this important policy on marginalisation, we must appreciate and accept, as Kenyans, that there is no county in this country which does not have pockets of marginalised areas. Every county you move to, there is one or two areas which you can say are really marginalised. The sole purpose of this Fund is to make sure that areas which had been left behind in terms of development can catch up with other areas. It is important that the policy is done in such a way that we can target the whole country other than looking at the county level, but target areas which we think are marginalised. That way, we will bring balanced development to all our areas.

We need to note that the years we have lost without implementing the Fund is what I will call delayed implementation. If this framework was in place immediately after 2010, we would have already done about five years of implementation. As I speak, we have lost about five years of implementation which means that the same areas have remained marginalised because nothing has changed in terms of additional funding. Therefore, as we move forward, it is important for the secretariat which has been created to oversee the implementation of this Fund to take this work very seriously. We can see a situation where implementation is done the same way we do with the NG-CDF, so that every year, resources allocated to the Equalisation Fund are utilised the same year and we do not have any delays. In that case, we will help areas which are quite

marginalised to catch up with the rest of the country. This is quite important. I am happy we have this Bill, which has been brought to the House.

As I second, one of the challenges we have as a country is ensuring that we get value for money. I would urge my colleagues, Members of Parliament, to make sure that they seriously supervise implementation of projects like water projects, roads and others. If we do not supervise implementation, we will continue channeling a lot of resources to programmes, but we hardly realise the expected outputs or outcomes. The Members have a list of all the projects and they should make sure that implementation is tracked seriously so that the projects are implemented immediately, so that next year, more projects are implemented. That will uplift the standards of living for our people.

With these remarks, I second this Bill. Thank you.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Omulele): I can see interest from Hon. Manson Nyamweya.

**Hon. Nyamweya:** Thank you, Hon. Temporary Deputy Speaker, for allowing me to contribute to this extremely important Bill. It is important in the sense that for the first time since Independence, this is just a campaign gimmick.

It is indicated that marginalised areas will receive funds for water, health facilities, roads and electricity. If these funds are going to be available at all, the first question is whether they will be available through the national Government or the county governments. We have to be very clear as to who will be in charge of the funds. Who will ensure implementation of the programmes? We need to be aware. Of course, the biggest share should go to the devolved units under the governors. However, the way the Bill is drafted is wanting. Normally, the last page describes the purpose of the Bill, but that explanation is missing in this Bill. What is it intended to achieve? The intended purpose of a Bill is normally indicated. What is the purpose of this particular Bill? That page is missing.

Again, who is going to be in charge? They have not told us whether it is the governors or the national Government? They have just brought the Bill without specifying those issues clearly. From where I sit and from my analysis, this issue should be handled by the county governments. The funds should be channeled to county governments. This is going to be like the Kshs34 billion or Kshs10 billion we were told the other day would be channeled to constituencies through education projects which have not yet been implemented. I see this as good news, but it is meant for campaigns. It is meant to hoodwink people in the marginalised areas to believe that they have been considered for water, health and road projects. Specifically, roads are crucial because you cannot do anything without motorable roads. Roads save time. If a road is good, you move faster and reduce the time you take to reach your destination. You also minimise the costs of motor vehicle repairs. It makes things work faster.

The Bill, of course, touches on all the areas that, if implemented, the programmes will make people in the marginalised areas feel that they are part and parcel of this country. However, without a clear indication as to which Government agency will implement which programme, it does not make sense, especially bearing in mind that we are talking about implementing projects in the counties where funds are managed by the governors. The funds for these programmes have not been given to governors. There is no clear indication as to which Ministries the funds will be availed through.

The Appropriation Bills will be debated tomorrow. The funds have been provided for in the Appropriation Bills under the care of the national Government, but which agencies? I request the Budget and Appropriations Committee to tell us who are going to administer these funds? Will they be under the national Government or county governments? If these questions are not answered, we cannot debate it. I have looked at the page on which the purpose of a Bill is normally indicated, but it is missing. The Collection Fund Appropriation Bill, 2017 makes provisions for sanction. We have so far spent some money from this Fund. It means that the money has been used. They are saying that the money was used to facilitate the withdrawal of funds from the Equalization Fund, in line with Article 204(3) of the Constitution.

Hon. Temporary Deputy Speaker, I do not come from those areas and may not know whether it is true this money has been used as they have clearly said in the Memorandum of Objects and Reasons. The money has already been used, but the question is whether Kshs280 million has been used for roads, Kshs10 million for health facilities and Kshs95 million for education in Garissa, Isiolo, Kilifi, Kwale. We do not want to be a rubber stamp National Assembly that just sits to pass things.

**The Temporary Deputy Speaker** (Hon. Omulele): Very well, Hon. Manson, time is not too good for us. I will allow you to say a few words.

**Hon. Nyamweya:** This money has been used. They are telling the House to pass money that has been used and yet there is no evidence it has been used.

With those few remarks, I oppose it. Thank you.

**The Temporary Deputy Speaker** (Hon. Omulele): Let us have Hon. Ken Okoth, the Member for Kibra.

**Hon. Okoth:** Given the fact that the money has already been used on paper and we cannot see some of the roads, I will also oppose. As Hon. Nyamweya has said, we are very serious people and we should not be used as rubber stamps. So, I oppose.

**The Temporary Deputy Speaker** (Hon. Omulele): Very well, the Mover to reply.

**Hon. Musyimi:** Hon. Temporary Deputy Speaker, I am amazed by your magnanimity and leadership, but through you, I want to thank the Members for their contribution and tell them that the matters are in the HANSARD. This is the first time this Fund is being rolled out and there is plenty to learn, which I hope will be captured in the socio-economic audit when we debate it on the Floor of the House.

I beg to move.

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Omulele): The time being 6.30 p.m., this House stands adjourned until tomorrow, Wednesday, 5<sup>th</sup> April 2017 at 9.30 a.m.

The House rose at 6.30.p.m.