

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 5th August 2015

The House met at 9.30 a.m.

*[The Deputy Speaker
(Hon. (Dr.) Laboso) in the Chair]*

PRAYERS

QUORUM

Hon. Deputy Speaker: We do not have quorum. Can we have the Quorum Bell rung?

(The Quorum Bell was rung)

(Several Hon. Members walked into the Chamber)

Order, Hon. Members! Please settle down. We are now properly constituted. We can begin our business.

PAPER LAID

Hon. Chepkong'a: Hon. Deputy Speaker, I beg to lay the following Paper on the Table of the House today, Wednesday, 5th August, 2015:-

Reports of the Departmental Committee on Justice and Legal Affairs on its consideration of two Bills:-

- 1) The Constitution of Kenya (Amendment) Bill, 2015. This is the Bill touching on the date of the next elections.
- 2) The Insolvency Bill, 2015.

I thank you.

Hon. Deputy Speaker: Let us move on to the next Order.

BILL

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

(Applause)

Hon. Ochieng: Thank you very much, Hon. Deputy Speaker. I am happy to have this Bill being read the Second Time this morning. The Bill we are reading for the Second Time this morning was first mooted---

Hon. Deputy Speaker: I know you have seen the approval of Hon. Members but let us follow the procedure. You should, first of all, move the Bill, Hon. David Ochieng. Let us follow that procedure.

Hon. Ochieng: Hon. Deputy Speaker, I beg to move that The Constitution of Kenya (Amendment) Bill be now read a Second Time.

The process of preparing this Bill started in January last year. This was done because I believe that most of the amendments that relate to the 2017 elections should be done early enough. In my opinion, they should be dispensed with by the end of this year.

The issue of elections' date in this country is neither new nor has it had a good history. Elections normally provide a good chance for renewal for the country. It provides a chance for the public - the electorate - to renew the mandate of leaders and probably make changes where they thought leaders fell short. Elections are also very important. Where elections' dates are clear, they promote predictability and certainty in terms of the way we are going to do our politics. Certainty of elections' dates further promotes economic and political stability. It helps those who plan to contest. Those who aspire to political office, those of us in Parliament today who aspire to run again and those of us who plan to retire are able to plan how to do this on time and do it at their own time.

As you would know, the history of elections' dates in this country has been chequered. For a long time, it used to be that the President would decide when the election could be held. It used to be the trump card - the wild card - that the President held against anybody else in the country because it was the President to decide when elections were to be done. That is why in 2010 when we were enacting a new Constitution, one of the things in the minds of Kenyans was to remove the power of deciding when elections are to be held from one individual and put it in the Constitution. It is also not very easy for Parliament to change the date of the second Tuesday of August in the election year, which is after every five years.

The Bill we are discussing this morning is not new; it was first brought before Parliament in 2011 by the late distinguished Hon. Mutula Kilonzo, the then Member of Parliament for Mbooni – may the Lord rest his soul in peace. The Bill as drafted by Hon. Mutula Kilonzo is the Bill we are discussing today; I did not change a comma or a full stop in it. It proposes that elections be done on the third Monday of December.

This Bill went through all the processes, including the Cabinet and public hearings. Were it not for the intervention of the courts, we would not be here today discussing this Bill because it would have passed that time. When the Bill was pending before the National Assembly, the courts decided that elections would be done in March 2013. So, the Bill was rendered nugatory. It will also be important to note that when this matter arose in court the court did not provide a very firm opinion on whether they thought that this should be a matter for the courts to decide.

The proposal I am making in this Bill is to move the date of the general election from the second Tuesday of August to the third Monday of December in the election year. The amendments affect the following Articles of the Constitution. Article 101(1) of the Constitution

which relates to the election of Members of Parliament, that is, the National Assembly and Senate; it affects Article 102---

(Loud consultations)

Hon. Deputy Speaker: Hon. Members, you all showed a lot of interest when Hon. Ochieng' started moving this Bill. Could you please give him time to move it? Listen carefully because it concerns all of us. Please, find some quiet place if you need to do anything else. I would advise that we listen carefully and support or otherwise depending on what you would want to do---

Hon. Ochieng: Thank you so much, Hon. Deputy Speaker. I agree with you absolutely. This Bill affects Article 101(1) of the Constitution which relates to the election of Members of Parliament; Article 136 which relates to the election of the President; Article 177(1) which relates to the election of members of the county assemblies; and Article 180 as it relates to the election of the county governor.

What was the basis of saying the elections should be done on the second Tuesday of August? This is very important because it is what we are changing. Why did we say then that elections should be done on the second Tuesday of August? There are a couple of reasons. I have been able to talk to the people who were involved in this process, including members of the Constitution of Kenya Review Commission (CKRC), members of the Committee of Experts (CoE), including their Chief Executive Officer (CEO), Mr. Ekuru Aukot and Mr. Otiende Amolo who was a member, so that I understand the basis of the second Tuesday of August. The reasons vary from the fact that we did not want to interfere with Christmas festivities in December to some very important reasons, including the fact that we needed to have elections in the middle of the year to avoid people travelling back and forth during elections. There was need to promote the fact that people should vote where they are. Those are the reasons we thought that the second Tuesday of August would be a good day.

In the last 20 to 30 years, elections have been held in September 1982, March 1988, but in 1992, 1997, 2002 and 2007 the elections were held in December. What are the reasons I am putting forward for the elections to be moved from the date of August to December? I want us to look at elections not only as a matter of the date or day of the election but as a period. Under the Constitution, election is an exercise that is done over time; it is not a single-day affair. It starts 60 days before the voting day and could end probably 100 days after the voting day.

Why do I say so? As you would know, 60 days before the date of the election, the Independent Electoral and Boundaries Commission is supposed to start the process. That means that even as Parliament we would stop sitting 60 days before the day of the election. If the next elections were to happen on the 8th of August, and based on the Constitution, seven days after that election the IEBC announces the results. Seven days after that, anybody who has a petition relating to the election of the President can go to court and the Supreme Court must hear and determine that case within 14 days. If the Supreme Court finds that the presidential election should be done afresh, it may decide that it must be done within 60 days.

If in the first election of the President none of the contenders gets more than 50 per cent plus one of the votes, then we must go for a run-off, which must be done in 30 days. There are very many things that are involved in elections. That is why I call it election period. In case the election is done in August, it could go through a run-off or a re-run that could go all the way to

December. Things could happen and these things are contemplated in the Constitution, like the President-elect dying before being sworn in. Elections must be done within 60 days when that happens. There are very many things that could happen after the elections. That is why it is important to understand why we are saying a December date is better for elections.

Within the new constitutional framework and under the Public Finance Management (PFM) Act, the Budget-making process is now an elaborate one that involves every Member of the National Assembly and the Senate. It is an elaborate process that starts in August and ends in September the following year. It is a whole-year process. However, the crucial months are February through September.

In February, we discuss the Budget Policy Statement (BPS) in this Assembly; in April, we receive the Budget Estimates and in June we must pass the Appropriations Bill after the Budget Statement is read before this Assembly. This year, we have had a serious challenge with not only the Division of Revenue Bill, but also with the County Allocation of Revenue Bill. So, the process could always spill over to the end of June. At the end of June, we must have done the Appropriations Bill or the Vote in Account. However, of importance is the fact that even after we have passed the Budget and the Appropriations Bill, the Government cannot raise any revenues until we pass the Finance Bill, which comes later in the year and must be passed by September.

If we are to hold elections in August, 2017, then by 8th of June, 2017, this Parliament will stand prorogued and yet the law is very clear that most of the Bills we are talking about must be passed by the end of June. What happens in the Budget-making process cannot be gainsaid. The Budget has to be done very keenly. If what we saw happening here last week and what we saw happening in this country last year, where figures can be sneaked into the Budget to benefit people, then you can be sure that if you rush the Budget-making process, especially in an election year, this country stands to lose a lot of money. That is why the Budget-making process is a very important process in this country and should not be interfered with by elections. That is why holding elections in December, when all these processes have been done, makes a lot of sense. In an election year, there are very many things to be looked at. In an election year, it is not only the Independent Electoral and Boundaries Commission (IEBC) that requires money. An election basically involves the whole bureaucracy of Government; it involves security, education and everybody else. That is why availability of money is very important.

Hon. Deputy Speaker, if we are going to conduct elections in August, you can imagine what will happen now that some Ministries have not got their money for this Financial Year because of the way the system works. So, if by August some Ministries have not got money and it is the date we are supposed to hold elections, it will be difficult for elections to be done because the Ministries that are supposed to do this do not have money.

The second reason, which is very important to me, and which I thought should have been looked at when we were fixing the date of elections is the education calendar. I have just given you the chronology of events or what should happen when elections are done. I have said that elections could start in August and end in December.

*[The Deputy Speaker (Hon. (Dr.) Laboso)
left the Chair]*

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

Hon. Temporary Deputy Speaker, if elections start in August and end in December and the Kenya Certificate of Secondary Examination (KCSE) starts in October and the Kenya Certificate of Primary Examination (KCPE) in November, there is very high likelihood that the examinations of that year would be severely undermined and the way students do the exams will be compromised. I have indicated this. Should there be a runoff, it will probably be done in early days of October when the KCSE starts. Should there be a court induced rerun, it will be done at the end of November and early December when we have the KCPE.

The fact that elections in that year would definitely interfere with examinations, cannot be gainsaid. I have heard some people saying that if we do elections in August, we will be done by September and, therefore, we will not reach the exam period. However, the timelines are very clear as I have indicated. Definitely, any elections conducted in August have the capacity of spilling over into November and December and definitely interfere with exams.

This country is known for one unique thing; we are known as a tourism country. We also know that tourism is one of our largest foreign exchange earners. The wildebeest migration has been called one of the wonders of the world. It happens between June and October, and this can be confirmed by the Tourism Board or the Wildlife Agency. There is July, August and September between June and October. So, if you are going to conduct elections in August during the middle of the wildebeest migration, you will be interfering with our tourism.

In the last two or three years alone, this Assembly has voted huge amounts of money to revamp the tourism sector. It has voted a lot of money to ensure our tourism sector picks up. It will not be good that every four years we have to vote money to revamp the tourism sector because of an election. That is why I say that an election in August is not only a rude date but is a date that interferes with the economic backbone of the country which is tourism. You do not want to revamp the sector after every four years.

Hon. Temporary Deputy Speaker, you know this and I have heard people say that we should have security to ensure people vote where they are but for the last five elections alone, you live in this country and you know, we have had people migrating; people moving back to the rural areas where they think they are safe because of security reasons.

The aftermath of the 2007 elections has shown that people do not still trust the security system of this country. Therefore, they would like to vote in their rural areas or homes where they think they are safe. An election in August would happen this way. People will register as voters wherever they are but when the elections time comes in August people will move to their rural areas with the concluding result that most of them will not cast their ballots. They will just be escorting people to the voting centres but they will not vote because most of them would have moved from where they took their voters' cards.

The right to cast your vote is a very important political right in this country. Anything, in my opinion, that would disenfranchise a Kenyan or makes a Kenyan not to vote wherever he or she is, is something we must avoid.

During the debate about the new Constitution what was considered and what must be considered going forward even as we discuss the election date is that fact that if we can make technology a centre of our elections so that people can vote wherever they are, we will do a good thing, but that is not where we are now. We are still at a level where people think that they must cast their physical vote and if they are going to vote in Ugenya they would rather be there and if they are going to vote in Kuresoi they would rather be there. They would not like to vote

elsewhere and yet they are voting for a Member of Parliament and a Governor of a county where they are not. So, security concerns are important and the fact that people will move from where they are to cast their votes elsewhere cannot be gainsaid and be wished away. That is why an election in August still remains, in my opinion, a very rude date.

When the hearings were done by the Committee of Hon. Abdikadir and that of Hon. Chepkong'a, one of the things that came out especially all over the country is that most pastoralists are looking for pasture in August because it is a dry season and they will not be able to cast their votes.

I was in Kitale last Saturday for the public hearings on this Bill. The people there told us that this is the time most of them are doing circumcision and, therefore, elections will disrupt their cultural activities. So, August, as much as it is a month in a year, does not commend itself very well for elections in this country.

This is the time when people are doing their top dressing and working very hard in the farms. Elections are not about the day of elections but it is a period. You want to give Kenyans a chance to listen to their leaders and listen to those who are campaigning but, if they are busy in the farms or busy doing other things that will interfere with their capacity to concentrate on the campaigns and that will undermine their choice. That also interferes with the way they are going to make those choices. That is why elections in December, when people have just harvested and are preparing for Christmas, is a better time for people to concentrate in listening to what politicians want to say.

For a long time in the United States of America (USA), elections were being held in the 34 states initially, before they became what they are today. The elections were being held in different dates over the 34 states but they finally decided to have elections done in a single day based on two basic things. It was based on the fact that in November the harvest would just have been over and the fact that in December the weather would be good; the storms would not have begun. They would begin sometime in January. So, they decided to conduct elections before when the weather is good. There are rains in most parts of this country in August and that would definitely interfere with elections.

I have heard people say why they think this Bill should not go through. One of the arguments I have heard is the lazy opinion and lame argument that Members of Parliament are once again trying to extend their term or they are trying to get more money from the public coffers. This is what happens most of the time for people who do not want to think, see or go beyond the obvious or people who do not want to think about what happens to the country. I am sure if most of the Members of this Assembly run again, they will get back. I am almost certain that I will win again the Ugenya seat. So I would not want to extend my term if I can win it in August. The point is that we cannot shy away from the good reasons I have given why elections should be done in December despite the fact that someone is going to think that we are going to extend our term.

I have also heard Members of this Assembly saying that this Bill was meant to help them recoup the months they are going to lose because elections are not going to be conducted in 2018. Nothing can be further from the truth. This Bill is not meant to give Members of Parliament more months. It is not meant to help Members of Parliament get more months or get more salaries. This is because for once I, Hon. David Ochieng knew that when I was elected in March, 2013, my term would be shorter and I would go for elections in August and serve a shorter term than five years. Even if elections are done in December, again I will still have done

a shorter term than five years. So, this Bill is not about having Members doing five years. In fact, I want to advise Members who think that this Bill is going to help them get more months in Parliament to talk to the administration of Parliament or the Parliamentary Service Commission (PSC). If they think they should be given money for five years that is not the business of this Bill.

This Bill is not about extending the term of Parliament and helping Hon. Members recoup the months they will lose. The courts in 2012 said it very clear that this Parliament will serve a shorter term. We, as Parliament, must agree with it, that our duty is to ensure that this Constitution is implemented and this Parliament is the one that will serve a shorter term. The presidency will also serve a shorter term---

(Loud consultations)

The Temporary Deputy Speaker (Hon. Cheboi): Order Members! Order Hon. Ochieng! Hon. Members, the consultations are a bit too loud and probably that is also to tell you, Hon. Ochieng, that concentration is becoming a little lower. So, probably you should be summarizing. I know you have a specific time, but when you have been in this House for some time you should note that. I can see Members beginning to lose concentration. So, you should be summarizing.

Hon. Ochieng: Hon. Temporary Deputy Speaker, I agree with you, but I think this is a very important constitutional matter that we cannot just wish away because of Members' concentration. I want to go to a very important matter. Some people have said that for this Bill to go through it must go through a referendum.

Hon. Temporary Deputy Speaker, this, again, could not be further from the truth. This is because the law is very clear in Article 255 on matters that would be required to go to a referendum. It says that where a Bill affects the term of office of the President, then such a Bill will have to go through a referendum.

Hon. Temporary Deputy Speaker, I want you to listen to me on this one. I believe that the term of the President as contemplated in Article 142 is not made in months. The abject of this Bill is that there will be four months and 10 days between second date of August and third Monday of December. So, the argument that this Bill requires a referendum is just a story. This is because one, if you look at Article 146(4) it will tell you what a term is and what it is not. If you look at Article 142, you will realise that the President's term starts from the day he is sworn in to the day the next President is sworn in. So, it is neither four nor five years. It is somewhere in between four and five years.

But, most important is Article 146(4) and I want to read it verbatim so that you understand what I am talking about. It says:-

“(4) If the Deputy President assumes office as President under Clause (2)(a), or a person is elected to the office of the President under Clause (2)(b), the Deputy President, or the person elected, shall be deemed for purposes of Article 142(2) –

- (a) to have served a full term as President if, at the date on which the person assumed office, more than two and a half years remain before the date of the next regularly scheduled election under Article 136(2)(a); or.
- (b) not to have served a term of office as President, in any other case.”

So, Hon. Temporary Deputy Speaker, anytime between two years, four months and below, cannot be assumed to be a term. Four months and 10 days cannot also be assumed to be a term to a level where someone would say that this would require a referendum. The court, again, did not pronounce itself from this but Article 102 of the Constitution contemplates that Parliament could extend its term by six months without a referendum. So, this, in my opinion, will not require a referendum.

Finally, another matter that I have heard Members talk about that is important to me is the consequences of this Bill on the Independent Electoral and Boundaries Commission (IEBC). When this Bill goes through the IEBC commissioners definitely will be affected because their term expires in November and the elections are done in December. This Parliament will deal with this matter whether we change the date or not but it is important to propose that once this Bill goes through we will either have to extend the term of the IEBC commissioners or also have to reduce their term by one-and-a-half years whichever Parliament thinks fit. I also believe that a couple of reforms will need to be done, to ensure that we deal with education standards of those who are going to vie, the two-thirds gender rule and to shorten negotiations, we may also need to deal with the voter register, party hopping and all this. It is Parliament's mandate to do this and we should not shy away from it.

Hon. Temporary Deputy Speaker, with those very many remarks, I now call upon Hon. Chepkong'a, the Chairman of the Departmental Committee on Justice and Legal Affairs in Parliament to second this Bill.

Thank you very much. I beg to Move.

The Temporary Deputy Speaker (Hon. Cheboi): Yes, Hon. Chepkong'a.

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, first and foremost, I would like to take this opportunity to thank Hon. David Ochieng who is a Member of the Departmental Committee on Justice and Legal Affairs.

I rise to second this very important Bill, and I expected Members to be listening to the Mover. Why? This is because it touches on their term. The Bill seeks to amend Article 101(1) which touches on the term of the Members of Parliament.

The Constitution states very clearly that the election of a Member of Parliament shall be held in the fifth year of the second Tuesday in August. Now, we are seeking to amend that, to read the third Monday in December of that particular year, which in this case is 2017. We also want to amend Article 136(2) of the Constitution of Kenya by deleting the words second Tuesday in August appearing in paragraph (a) which deals with the election of the President.

Hon. Temporary Deputy Speaker, all the other offices are tied to the election of the Members of Parliament. The one of the President and Members of County Assembly (MCAs), must all be held on the same day which is second August. That is what we are seeking an amendment on so that it is moved to 3rd December, 2017. It is very important that we note this. In Article 177 of the Constitution, the term of MCAs shall run for uninterrupted five years; that is for a fixed term of five years. What that means is that for the MCAs, their term will expire on 3rd March, 2018. It cannot be interrupted, except by an amendment of this House or by an order of court.

What we are seeking is to regularize an anomaly which occurred in the Constitution. Hon. Temporary Deputy Speaker, you know that when we passed this Constitution, we said 20 per cent required amendment. But at that time we all agreed, let us pass it and then we amend it. This is part of the 20 per cent that we are seeking to amend now.

I would like to raise a very important issue here. This Amendment Bill is a Constitutional Amendment. The Constitution is very clear on how a Constitutional Amendment Bill will be amended under Article 256. It states that:-

1. A Bill to amend this Constitution-
 - (a) may be introduced in either House of Parliament;
 - (b) may not address any other matter apart from consequential amendments to legislation arising from the Bill;
 - (c) shall not be called for second reading in either House within ninety days after the first reading of the Bill in that House; and
 - (d) shall have been passed by Parliament when each House of Parliament has passed the Bill, in both its Second and third readings, by not less than two-thirds of all the Members of that House.”

This Constitution is silent on whether a Constitutional Amendment Bill can be amended. The Constitution that we had up to 2010 had a very express provision that a Constitutional Amendment Bill cannot be amended. Therefore, I am seeking your ruling because we would like to make some proposals with respect to amend this Bill. We are seeking your ruling with regard to this matter as to whether a Constitutional Amendment Bill that has gone through the First and Second Readings after 90 days can be amended in the Third Reading like any other legislation.

The Constitution, as it is, does not expressly bar an amendment to the constitutional amendment Bill. We are seeking your ruling because we have other Bills that are coming. We have The Gender Bill and the Bill by Hon. Kaluma. We also have proposals to amend these Bills. The Constitution does not prohibit Members of Parliament from amending a constitutional amendment Bill in its Third Reading. In the old Constitution, it was clearly stated that an amendment Bill, which has gone through the First Reading, the Second Reading and is in the Third Reading must be passed in the form in which it has been brought to the House. It is either rejected or passed in that form.

Therefore, I am seeking an interpretation of this particular part of the Constitution. We need your ruling. I am seeking that you address yourself to this matter now or you can give your considered ruling.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Chepkong’a, I hear you. You have put it very right that in the previous Constitution, it was very clear that there would be no amendment of any constitutional issue at the Third Reading. I do not think we will move very quickly to address that. You will proceed in the manner that you are proceeding. You will second the Motion and thereafter, we will make that decision in due course. We are not at the Third Reading. We will give a good ruling on that one. So, proceed and finalise that bit. We can go to the ordinary Motion that we will be doing and then we will rule on that one.

Hon. Chepkong’a: Hon. Temporary Deputy Speaker, it is a requirement of the Constitution that since you are going to make a considered ruling on this matter, I just hope that we debate this matter and since it requires a two-thirds membership, then you defer the putting of the Question until we hold a *Kamukunji*, so that we can marshal sufficient Members to pass this important Bill. That is very important. We discussed that in the Committee and I am expressing the views of the Committee.

When this Bill came for the First Reading, it was committed to the Justice and Legal Affairs Committee which was required to conduct public hearings. The Committee invited the public through the *Daily Nation* and *The Standard* newspapers on 9th March, 2015 to make

public presentations on the Bill. We received memoranda from the Commission for the Implementation of the Constitution (CIC) and many others, which the Committee considered and has tabled its report today through which the Members can appraise themselves on what the members of the public commented on this Bill.

We proceeded further. We went beyond advertising and visited eight counties where we met the members of the public. We visited Kisumu, Trans Nzoia, Nyeri, Isiolo and Mombasa counties. We had a public hearing in this House with regard to Nairobi County. The response was overwhelming. When we went to Kisumu, unfortunately, we were not able to get any views with regard to this Bill because the members of the public who had come for the public hearing stated that they were there for purposes of the two-third gender amendment rule. So, they did not want to hear anything about the constitutional amendment with regard to Hon. Ochieng's Bill hence we did not get any views.

In other areas like Nairobi, Nyeri, Mombasa, Isiolo and Kitale, the members of the public were very responsive. With regard to the moving of the date from August to December, they noted about ten reasons.

The first reason was that it interferes with the Budget-making process. The Budget-making process runs from April to September. So, if we are going to have elections in August, it is going to interfere with the Budget-making process. So, they requested that that date be moved to December, so that we do not interfere with the Budget-making process.

The second thing that they noted is that it interferes with the schools calendar. Students and pupils prepare to sit for their exams in the month of September, October and they conclude in November. If we are going to have elections in August, there is going to be too much hue and cry all over the place. For example, when you visit Hon. Chris Wamalwa's constituency, you will have sirens all over the place on top of vehicles and the students will not be able to concentrate. They will all go to the road instead of reading. Therefore, this is uncondusive time to hold elections because it interferes with the schools calendar.

The third thing that the members of the public noted is that it interferes with tourism activities. August is the time when tourists flock to the Maasai Mara to witness the wildebeests' migration from "Uganda" to Kenya. We will interfere with a very major source of foreign earning. They said that this date must be moved because the wildebeests only migrate in August.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Chepkong'a, I know you have problems with your directions, but I would not allow you to have a problem also with the names. I am trying to wonder about these migrations from Uganda through Lake Victoria to Kenya. We really must be having a real wonder of the world going through the lake all the way. Or, you are talking about these birds called "Quails" that migrate in August? It is supposed to be December.

(Laughter)

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, I am sorry. It is just that I remembered one of the Presidential Candidates who was talking about the migration of birds from Uganda to Kisumu. I am talking about the migration of wildebeests from Tanzania to Kenya in the Maasai Mara. The tourist activities will be interfered with.

The fourth thing that they stated is that most of the voters will be disenfranchised. August is not a holiday month, but December is a holiday month. Most of the upcountry people who work in urban areas vote where they come from. For instance, many people who live and work

in Nairobi ordinarily take their holidays in December. To ask them to take their holidays in August will completely interfere with their calendar. They will stay in Nairobi because they do not want to spend twice in terms of going for their Christmas holidays and going to vote in August. Most of them will refuse to go to Ainapko to vote for me. So, I will lose sizeable voters who will stay in Nairobi because the August month is not conducive for them.

The fifth thing that was noted by the members of the public is that it interferes with pastoral and cultural activities.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Chepkong'a, I will not allow you to go towards that direction. You remember, the Mover mentioned all these things that you are saying. I do not want you to repeat yourself. Do not repeat what he has said. You have done very well. So, you will do better seconding the Motion and allowing the Members to have their minutes.

Hon. Chepkong'a: Thank you, Hon. Temporary Deputy Speaker for your direction. It is just that I was adding a different angle which Hon. Ochieng did not add. I am not talking about the Bukusu cultural activities. I will talk about the pastoral one, which I understand and which he never understood. The month of August is dry in most pastoral areas.

The Temporary Deputy Speaker (Hon. Cheboi): Did you say Hon. Ochieng did not understand that?

Hon. Chepkong'a: Yes.

The Temporary Deputy Speaker (Hon. Cheboi): I believe even the cultural one was also a bit of a problem. Anyway, proceed.

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, he has more affinity towards the cultural one. With regard to the pastoral circle, the month of August is very dry and most of the pastoralists will be taking their herd to areas where there is water and pasture. So, livestock would not be within the area where they ordinarily vote. I can see the pastoralists are, in fact, applauding this one.

The sixth reason is that this month is unsuitable because the weather conditions are not conducive for campaigns. This is a rainy season in some parts of the country. It will be very difficult to access voters in the very remote and rural parts of this country. They said that ordinarily the month of December is always dry. So, they prefer the month of December as opposed to the month of August. The other one is with respect to agricultural activities. The month of August is the month in which many people are harvesting and so they are taking leave to harvest.

With those remarks, I beg to second. I thank you.

(Question proposed)

The Temporary Deputy Speaker (Hon. Cheboi): I see a few Members who have pressed the intervention button. I do not know what is out of order. Hon. Memusi, the Member for Kajiado Central, what is it? Did you want to contribute?

Hon. Memusi: Thank you, Hon. Temporary Deputy Speaker. My point of order is that because of the interest that this Motion is going to draw, I request that we reduce the time from 10 to five minutes.

The Temporary Deputy Speaker (Hon. Cheboi): What did you say?

Hon. Memusi: I said we reduce the time from 10 to five minutes.

The Temporary Deputy Speaker (Hon. Cheboi): In my opinion, it is a fairly valid request because I can see we have 33 requests now. The House will make its decision one way or the other. If there is any other Member who wants to bring a different opinion, I will give him/her an opportunity. Let us dispose of the issue of the Member for Kajiado Central and then we can move on.

(Question, that debating time be reduced, put and agreed to)

Five minutes it is but let us hear Hon. Keter. What is it Hon. Keter?

Hon. Alfred Keter: I think it has been overtaken by events. However, I thought we should have done it for like three minutes. Five minutes are a lot. This is because we are discussing a subject that is---

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Keter, it is not overtaken by time. What we have done is to reduce the time from 10 to five minutes. If you wish to reduce it to three minutes, it is still up to the Members to decide. Of course, because this is a constitutional issue, I do not know whether we need to go that direction. However, I could still put the Question that touches on the reduction of time from five minutes to three minutes. I will proceed and put the Question for Members to make the decision. Hon. Keter has made a request that the time should be reduced from five minutes to three minutes. Members will make the decision.

(Question, that debating time be further reduced, put and negatived)

You have five minutes. Let us start with the list. I can see the Member for Gatundu North is the first on the list.

Hon. Njenga: Thank you very much, Hon. Temporary Deputy Speaker. I have my five minutes. When we passed this Constitution in 2010 and promulgated it, we agreed that there was a 15 to 20 per cent error. However, we agreed to pass the Constitution and correct it later on. I agree that this Bill is one way in which we can correct that kind of error that we said was actually in the Constitution.

So, I call this Bill, which I support, a reconciliation Bill. It is like that one of Hon. Kaluma and others. If anyone uses the current Constitution, you can easily have Members of County Assembly (MCAs) having their elections and other people having their elections. By so doing, we will be losing the economies of scale of one large election where we could have six elections and spend about Kshs15 billion and Kshs17 billion. If we have two, we shall spend about Kshs30 billion. Therefore, this country, which is rotating around the vicious cycle of poverty, will save more than Kshs15 billion by having one election, which is double the amount that we saved when we did not go for a runoff for the presidency the other day. We can then put this money into the savings of Kenyans and make their livelihoods better. That is one of the reasons why I support this Bill. You know the political heat that goes with elections in Kenya. By the way, we need time to heal in order to bring in our social and economic lifestyles back to life. I would like to suggest that with one election in December, we will enjoy Christmas as we enjoy victory for those who would have won. If I win I will enjoy Christmas as well as the New Year and my victory. Those who lose will actually heal. The New Year will find us as one Kenya to go on with our lives.

The second Tuesday of August is the time when we are actually preparing for examinations for those who are doing the secondary and primary examinations. Those who are in university are also in the exam mode. We will actually interfere with our education and learning system. That would end up having a long-term effect. That is why I support the December election.

In December, we spend a lot on holidays by travelling to Kisumu, Nyeri, Gatundu and other places. If we were to do an “erection”, we would also save. I will go for Christmas as well vote. I am very sure that that way, I will save as an individual and as a country. We will be better off with a new Government or a new House.

Hon. Temporary Deputy Speaker, if MCAs go for their full term, then they will have to go to March, 2018. If we go by this, others will go to August, 2018. Therefore, December is halfway and everybody will be fairly treated. In any case, the same Constitution requires that we all get equity and fair treatment. That is why I support a December “erection”.

I look at the expected qualitative administration of a new government. The county governments---

The Temporary Deputy Speaker (Hon. Cheboi): Order! What is it Hon. Murungi. What is out of order? Are you testing these gadgets?

Hon. Murungi: Thank you, Hon. Temporary Deputy Speaker. I have really followed the Hon. Member keenly but there is a word I am not getting. I do not know what he is referring to. So, maybe he can avoid using that word.

The Temporary Deputy Speaker (Hon. Cheboi): I also do not want him to use that word frequently. Let us leave it at that.

(Laughter)

Hon. Njenga: Hon. Temporary Deputy Speaker, you know where I come from. Between December and August, we want the “erections” to be held in December.

(Laughter)

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Njenga, so that you can work well, probably you should state the other one and then you will be slipping into this one.

Hon. Njenga: I mean that one which brought us here and not that one which happens daily.

(Laughter)

The Temporary Deputy Speaker (Hon. Cheboi): By the way, you should be winding up now.

Hon. Njenga: The MCAs and the MPs should be treated equally. If this happens in December, then we will be halfway and equally treated. We should also enjoy the quality of our action---

The Temporary Deputy Speaker (Hon. Cheboi): Your time is over, Hon. Njenga. Have some 10 seconds to wind up.

Hon. Njenga: As I wind up, I want to say that man does not live on bread alone. We are Christians and others are Muslims. We do not live on bread alone. We cannot live on political “erections” and, therefore, we need---

(Laughter)

The Temporary Deputy Speaker (Hon. Cheboi): Let me give the chance to Hon. Pukose. So that I can balance between both sides, I will jump you Hon. Pukose and come back to you later on. So, let us start with the topmost on the left of the Speaker. That is Member for Balambala.

Hon. Aden: Thank you very much for giving me the opportunity to speak to this very important Bill.

I support this amendment Bill. It is one aimed at ensuring that the basic democratic right of Kenyans to vote, under Article 38 of the Constitution, is guaranteed and voting as a process is made to be as comfortable as possible to allow most Kenyans vote. For that to be achieved, the timing must be right. Kenyans must get an opportunity to exercise this basic right at a time when they are most comfortable to do so.

The month of August will come with a lot of disruptions especially in business compared to December. A time like this, which is in the middle of the year, businesses are in full operation unlike in December when many of the businesses close down for basic services. For instance industries close down for basic maintenance as employees are allowed to join their relatives and friends to go and celebrate their holidays. We saw what happened in March. Holding an election in August is going to be more disruptive to most of the businesses. Many people are at work during this time unlike December when many of the people will be free to enjoy their holidays and will have an opportunity to exercise their basic right.

I come from the pastoralist region in northern Kenya. August is one of the most difficult months for the pastoralist communities in northern Kenya. It is a time that we need to move with our cattle and camels to look for pasture and water from wherever it will be available. It is not going to be a good time to vote because most of them will be on the move. For us, making the date of election to be in August will deny many of these people their basic opportunity and a right to exercise their right to vote. There will be disruptions to the budget process. This will be very serious not only to the functioning of the Government but to our economy as a whole.

The Government is the largest spender and the one that controls the flow of cash into the economy. For that reason, if that process is in anyway disrupted it is going to impact, by and large, on the general economy. We do not want our elections to be a disruption to the economy, but we want them to be in a smooth time when Kenyans can exercise their basic right to vote. The best time will be in December.

Hon. Temporary Deputy Speaker, I do not want to repeat the issue of disruptions to education because my colleagues, who have spoken before, have hammered on this issue very much. But the other very serious issue is the disruption to the high tourist season. For instance there is the issue Hon. Chepkong’ a referred to. This is the time that we have the highest in-flow of tourist in this country. If this were to be made the election time, we all know most western countries put travel advisories around the election time in any country in Africa. So this will disrupt our economy and have serious impact. This amendment is good for Kenyans and for our democracy. The challenge is, once we pass and play our constitutional duty to give Kenyans an

opportunity to have the best of times in terms of voting, the onus is going to rest with the electoral body, that is, the Independent Electoral and Boundaries Commission (IEBC).

The IEBC must start to prepare now and not at the end of 2016 or mid-2017. Kenyans want to have an electronic voting process and not the one that aborted last time. I want to take this opportunity to say this. Let it be known by the body that has been given the constitutional mandate to do our elections that it needs to start preparing early enough.

The Bill is good. We, as a House, have not extended our time beyond what the Constitution allows. Indeed, if we were to follow the Constitution, then elections will be held sometime in 2018 and not in 2017. What we are saying is that we want it to happen in 2017. However, let it happen when it is most conducive for most Kenyans - that is in December.

With those few remarks---

The Temporary Deputy Speaker (Hon. Cheboi): Let us have Dr. Pukose, the Member for Endebess.

Hon. (Dr.) Pukose: Thank you, Hon. Temporary Deputy Speaker for allowing me to contribute to this Bill.

First, I want to thank Hon. David Ochieng for coming up with this Bill. I think it is good for the country. The aim of this constitutional amendment is to bring harmonization. On the county assemblies, we are saying that Members of the MCAs should be there for five years. When you count five years since the MCAs were elected, it puts it at March, 2018. When you say that election of Members of Parliament will be held on 2nd August of the fifth year, it means, we will have elections in August for Members of Parliament together with the President, the Governors and the rest, but the MCAs will be elected in March, 2018. This constitutional amendment brings harmonization because it brings back election date of MCAs from 2018 and forwards the date for election of Members of Parliament.

The second thing that this constitutional amendment does is to look at the various events, including educational system in this country. Presently, our teachers have had two awards, both in the High Court and the Court of Appeal on issues to do with salary. It is high time the Government looked into ways of paying teachers instead of moving from the Court of Appeal to the Supreme Court. I would urge this House not to pass any Supplementary Bill that comes to this House if it does not contain the money for teachers. We have taken our teachers for a ride for a long time.

The third issue that needs to be considered is this. We have heard of *Okoa Kenya* and other things on referendum. This is the time they need to think seriously. When we were amending the new Constitution one thing that came up was that 20 per cent of this Constitution has issues. When shall we bring the constitutional amendments? We should start thinking as Parliament that when we go into those elections, we can have the seventh---

The Temporary Deputy Speaker (Hon. Cheboi): You have two minutes honorable Member.

Hon. (Dr.) Pukose: Yes, I know.

The Temporary Deputy Speaker (Hon. Cheboi): You still have the two minutes but before you finalise, I see quite a number of Members seeking intervention. What is out of order Hon. Leader of the Majority Party?

Hon. A.B. Duale: Hon. Temporary Speaker, I can ask after he finishes his two minutes.

The Temporary Deputy Speaker (Hon. Cheboi): Well, but you can do it now.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I am sure Hon. Chepkong'a asked you to do a communication on whether this Bill can be amended. But on the same, I would like you to make it very clear whether this constitutional amendment Bill is subject to a referendum under Article 251(1) of the Constitution. Hon. Temporary Deputy Speaker, Article 251(1) talks about subjecting it to a referendum.

I am saying this because by extending the date of elections, it will also touch on the date of election of the President, Governor and others. The term of the President has been extended. It is clear that the President was elected in 2013 and the President's term was to end on the second Tuesday of August, 2017. This position was even affirmed by the court in the case of John Harun Mwau and three others versus the Attorney-General and two others in 2012 consolidated together in Petition 65, Petition 123 and Petition 185 of 2011. The effect of this proposed Bill would be to push the term of the President from 2nd August 2017 to December of the same year. The court in the above matter clearly stated that:-

“Any Bill whose effect could be to increase the term of the President could in accordance with Article 255 (1) require a referendum.”

Later in the afternoon, I will be ready to provide the proceedings of the court. So, I really want the Speaker to make it very clear to the country whether this constitutional Bill will be subjected to a referendum.

The Temporary Deputy Speaker (Hon. Cheboi): Okay.

Hon. A.B. Duale: Two, we want to bring to the attention of the House that amending Article 101 of the Constitution and others as proposed in this Bill will also not resolve the uncertainty created by Article 177 (4) of the Constitution, which seems to guarantee Members of the County Assemblies (MCAs) a five year term. I want Members to listen to me. Even though the High Court in the above quoted case refers to the next election being on 27th August, the provisions of Article 177(4) were not canvassed before the same court. We are concerned that the matter may be litigated upon too close to the election date. So, this issue and litigation will drag until we reach too close to the election, thus causing unnecessary uncertainty.

This Bill proposes to the Attorney-General to seek an advisory opinion on the matters from the Supreme Court. Finally, I will support the passage of this Bill because I will get an extra four months as the Member for Garissa Township, and I will have to finish my five year term. I have no problem with it. This Bill fundamentally affects the composition of the Independent Electoral and Boundaries Commission (IEBC). I hope Hon. Ochieng is here. We agreed with him last night that he must make it very clear. The passage of this Bill will precipitate the amendment of the IEBC Act and the Constitution to extend their term between six to eight months because, with the passage of this Bill, then we will not have IEBC commissioners in office because their term is coming to an end in November, 2017. So, I really want the Speaker to explicitly discuss this matter in his communication.

The Temporary Deputy Speaker (Hon. Cheboi): Okay. I can see three other Members who have pressed the intervention button. I do not know--- Hon. (Dr.) Pukose, you are perfectly okay. You will have your two minutes to finalise but, if the Members want to speak specifically to this one, it will be perfect. I see three Members whom I would give an opportunity in one minute to state what they have. We will start with Hon. Kaluma.

Hon. Kaluma: Hon. Temporary Deputy Speaker, I thank the Leader of the Majority Party for raising the issue. However, I want to say that matters that are subjected to a referendum are clearly stipulated under Article 255 of the Constitution. My view is that such a matter does

not require a ruling from the Speaker. In terms of the interpretation of the Constitution when something is so clear, we do not delve into parliamentary time to require the Speaker to make decisions. My view on this is that if the Chair was to be directed to the said Article 255 of the Constitution, then the matter of the election date is not a matter that is subject to a referendum.

Lastly, let me comment on this issue of term in office. You know the perception that will be built out there. It will be that Members of Parliament, having been elected on a shorter term on their own choice - and we say that choices have consequences - are seeking to extend their term. They will add a dimension - because they are people who do not respect our national leadership - that we are seeking to earn more pay. For purposes of clarity, let me tell the people of Kenya the following: The fact that the date of the elections could be before the date we were elected - in a manner that eats into our time - does not eat into our pay. The people of Kenya will still pay the Members of Parliament and MCAs for five years. However, that is not what we are debating here. Unfortunately, that money will be coming without service, but it is the doctrine of legitimate expectations. That money will come and anybody who wants to debate it with that thinking should get that out. Our money is already in the pocket. We are thinking of the good of the country.

The Temporary Deputy Speaker (Hon. Cheboi): Okay. You have finished your minute. Order, Hon. Kaluma! Let us have the Hon. Member for Kiminini. You have one minute only.

Hon. Wakhungu: Thank you, Hon. Temporary Deputy Speaker. First and foremost, I want to thank the Leader of the Majority Party for bringing this aspect. Maybe, it should be expunged because you are referring to Article 251 of the Constitution which talks about the removal of commissioners as opposed to Article 255. Initially, you referred to Article 251 of the Constitution, but the issue here is about Article 255. It is very clear on matters that we can go for a referendum. I know that there is an indication of the change of the term of the President, which is under that Article and which should go through a referendum. However, going as per the description of a term, when you look at Article 177 of the Constitution which talks about the county assemblies, it is expressed clearly that a term will be five years. So, in this case, the amendment that is being brought here is going to be less than five years. So, to me, it is not an issue that should be a referendum matter. Again going to IEBC, we know very well that the term of the commissioners is coming to an end. The IEBC Act says that it should not be renewable. Again, we are in limbo. This House needs to decide how we are going to treat the issue of IEBC because the two are mutually inter-twined. The moment its time is extended, IEBC must look at how we are going to harmonise that issue for public---

The Temporary Deputy Speaker (Hon. Cheboi): Okay. Member for Kiminini, your time is up. Lastly, I will give two other Members. That is Hon. Kangogo, Member for Marakwet East. Speak on this one because I see there are only--- I can see two Members are--- Hold on!

Hon. Bowen: Thank you, Hon. Temporary Deputy Speaker. I wanted to contribute, but my point has already been discussed by Hon. Wamalwa. The current term of Parliament, going by the Constitution, expires in August. We will not have finished five years by then. So, extending the election date to December will still be within the five years. It will not be subject to referendum. But it seems, again, that it is at this point that we need to appreciate that this country also needs---

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Bowen, I did not want you to delve into the Bill. I want you to speak to this specific issue which has been raised by the Leader of the Majority Party, and I think that you have finalised that bit.

Hon. Bowen: That is why, Hon. Temporary Deputy Speaker, without contradicting the court's ruling, extending the election date to December will still be within the five years of the current Parliament.

The Temporary Deputy Speaker (Hon. Cheboi): Okay. Let us have Hon. Sakaja for one minute and then we will come back to the debate.

Hon. Sakaja: Hon. Temporary Deputy Speaker, I want to thank the Leader of the Majority Party for bringing up this issue because it is a matter that we must deal with. This Bill cannot be amended. It is true that Article 255 talks about matters that can go to a referendum, including the term of office of a president. If you look at Article 142 of the Constitution, it determines the term of the office of a president. It reads:-

“The President shall hold office for a term beginning on the date on which the President was sworn in, and ending when the person next elected President in accordance with Article 136 (2) is sworn in.”

It says August in the fifth year. So, in effect, by changing the month, you have actually changed the term of office of the President and on that, we must get a ruling. That will require a referendum so that we can get clarity on that.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Members, I wanted to give an opportunity to Members to speak on this, so that they can enrich the debate and eventually the ruling by the Speaker. I can see two more Members who wanted to speak on this one, but I am not going to give them a chance now. I can see Hon. Wanyonyi who wants to speak to it. Probably, I will give Hon. Wanyonyi one minute and he will be the last one. Then I will come back to you. We will look at gender at the right time.

Hon. F.K. Wanyonyi: Hon. Temporary Deputy Speaker, I just want to correct the impression created by the Leader of the Majority by mentioning the Commission. We know that in November, the term of the current Commission will have ended. Because they know that they are leaving, they are supposed to have prepared other commissioners. In any case, there is technical staff at IEBC to carry out the elections. That should not affect our date.

The Temporary Deputy Speaker (Hon. Cheboi): Okay. Whatever the Leader of the Majority has requested will be amalgamated with what Hon. Chepkong'a did and a ruling will be given. So, proceed, Hon. (Dr.) Pukose. You have your two minutes.

Hon. (Dr.) Pukose: Thank you, Hon. Temporary Deputy Speaker. I was talking on the issue of the referendum. We should not be worried about going for a referendum. It is high time to think of holding a referendum. Even as we go into the next elections, do we have issues that we need to amend? In other countries like the United States of America (USA), whenever they carry out elections, they also hold a referendum.

I would like to talk about IEBC. When we move the election date to December, we should also think about bringing an amendment to the IEBC Act, so that the term of the commissioners is also extended. We should also ensure that the terms of the commissioners are staggered, so that they do not just end abruptly at the same time. We should have some commissioners retiring early and others continuing.

Lastly, in Endebess Constituency - and I know my people are watching - August is very rainy and the terrain is very difficult. Being a hardship area, it will be very difficult for us to conduct elections in the month of August.

With those few remarks, I suggest that we conduct elections in December. I support this amendment.

The Temporary Deputy Speaker (Hon. Cheboi): Very well. To get the spice of the other gender, we will give the only one who is among the top 10, and that is Hon. Chidzuga. I have given you the microphone, unless it is not working.

Hon. (Ms.) Chidzuga: Shukrani, Mhe. Naibu Spika wa Muda. Nasimama kuunga mkono Mswada huu kuhusu kubadilisha tarehe ya uchaguzi. Bunge hili linatunga sheria na ni lazima tufahamu kwamba sheria inakata mbele na nyuma kama msumeno. Kwa hivyo, haiwezekani tuliunda sheria ambayo inasema kwamba MCAs na kila anayechaguliwa, awe ni Mbunge, Seneta au Rais, atatumikia kipindi cha miaka mitano na leo, tunataka kuibadilisha. Kwa nini leo iwe hao watu watatu watapunguziwa muda wao na MCAs waachiwe muda wao? Mswada huu unatuletea uwiano ili tuweze kuweka hali ya uchaguzi iwe sawa kwa kila mtu.

Pili, ikiwa tutakuwa na uchaguzi katika mwezi wa nane, kwanza, tutakuwa tumeadhiri elimu ya watoto wetu. Mwezi wa nane ni wakati ambapo watoto wetu katika Darasa la Nane wanajitayarisha kwa mthani wa mwigo. Wale ambao wako katika Kidato cha Nne pia wako katika hali ya matayarisho ya mthani wa mwisho. Ikiwa uchaguzi utafanyika Agosti, tutayaharibu maisha ya watoto wetu ambao ni viongozi wetu wa baadaye. Tutaingilia mambo ya masomo yao. Uchaguzi ukifanywa, sio mwisho wa siasa. Baada ya uchaguzi, inachukua karibu miezi mitatu kwa nchi kuwa na utulivu wa hali ya kawaida.

Kwa hivyo, ni vizuri uchaguzi ufanyike katika mwezi wa kumi ma mbili. Kwa mfano, kwetu pwani, kuna wengi ambao walichukua kura zao katika sehemu za bara kwa sababu bara ndiyo kwao. Decemba huwa wamejipanga kurudi kwao ili wapige kura. Huo ndio wakati ambao wanaweza kupata ruhusa ya kurudi katika maeneo yao na waweze kupigiwa au kupiga kura.

Kwa hivyo, naunga mkono pendekezo kwamba uchaguzi ufanywe mwezi wa Desemba. Hii haimaanishi kwamba Wabunge watakuwa wameongezewa mshahara. Kusema ukweli, tulichaguliwa na sheria inayosema tutatumika kwa miaka mitano. Kwa hivyo, tukitumika mpaka mwezi wa nane, inamaanisha hata haki yetu itakuwa imekiukwa. Je, kwani hiyo haki ni ya wale wako kule nje na siyo sisi katika Bunge hili? Kwa hivyo, tunataka kuleta uwiano kupitia huu Mswada wa Mhe. Ochieng. Namuunga mkono na kumpongeza. Ameleta Mswada ambao utaleta uwiano kwa kila mtu.

Mwisho, inatakikana ifahamike kwa wananchi vizuri. Kuna wenzetu huko nje ambao hupata vipesa vyao sijui kutoka wapi na kazi yao ni kuwadanganya wananchi kwamba Wabunge wanataka kujiongezea muda. Tafadhali wale wanaowafadhili watu hao, waangalie vile wanavyowafadhili wasiwe wakawa ni wale ambao wanaoleta uchochezi katika nchi hii na kuifanya isiwe na utulivu.

Tunahitaji utulivu ili utalii wetu ufufuke, biashara zetu ziendeleo na hili Bunge liwe na wakati wa kutosha kutengeneza makadirio ya matumizi ya nchi hii. Ikiwa uchaguzi utafanyika katika Agosti, hatutakuwa na muda wa kutengeneza mipangilio na makadirio ya matumizi ya nchi hii. Hii inamaanisha kuwa tutakuwa tumeufungua mlango kwa wale mapapa ambao wanataka kula pesa za Mkenya wapate nafasi ya kufanya hivyo. Hali hiyo italeta janga kubwa katika uchumi wa Kenya.

Naunga mkono Mswada huu na kusema kwamba uchaguzi ufanywe katika mwezi wa 12.

Hon. Kemei: Thank you, Hon. Temporary Deputy Speaker. I will be extremely brief on two issues, so that I can give a chance to my colleagues to speak on this matter.

When I was in the Communication School, I was told that if you speak for seven minutes, for the first two minutes, people will listen to you. For the second two minutes, they will grumble and for the last one minute, they will be opposing what you are saying.

I have two points in support of holding elections in December. Point number one is that in the circumstances of 2010 and in the wisdom at that point in time, the people of this country chose August as the election date. We broke away from tradition. Having re-looked at the matter, we, as Kenyans, are saying that December is a better election date and we should take the date back to a time when we have traditionally held elections. As you know, traditions are matters that bring people together. They are matters that harness the collective psyche of the people. Therefore, pushing the date back to December will give our people the tradition that they are so much used to, back.

Finally, most of us believe in the God Almighty. Most of us pray on Friday, Saturday and Sunday. If we hold elections on a Monday, we will have said our prayers on Friday, Saturday and Sunday. Then we surrender to the God Almighty, wait for the verdict of the people and say: "Let thy will be done."

The Temporary Deputy Speaker (Hon. Cheboi): Let us have the Member for Ugunja.

Hon. Wandayi: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to this important Bill.

At the outset, I oppose this proposed Bill. This is one of the most unpopular Bills that one can ever think of in this country. The question of the election date is such an important matter that it cannot be treated casually. The Constitution is very clear that elections will be held on a specific date in the month of August, in the fifth year of every term of Parliament.

It is also important for us to think of the matter of conflict of interest. Even if the reasons advanced were correct, the fact that current Members of Parliament would be beneficiaries of this proposed amendment makes it untenable for the people of Kenya to accept such a proposal. I would have been happier if this proposal was meant to take effect in the life of the next Parliament, where current Members would not be the beneficiaries.

The third issue is the matter of the current Government. The Government here refers to the Executive, the Judiciary and the Legislature. Kenyans are already fatigued with the current Government. They want to get rid of the current Government at the earliest possible opportunity. Kenyans would not want to give the current Government an extra day in office. This Government includes the Legislature, which we are a part of. Therefore, for us to sit here and pretend that we are doing something which is going to be beneficial to Kenyans without seeking their mandate would be defeatist.

I also subscribe to the view that if you want to change the election date, which in effect changes the term of the President, you need the views of the people. The people of Kenya need to speak to this matter, and the only way is through a referendum. I see us getting into murky waters if we continue in this manner. Otherwise, the issues advanced of the budgetary cycle are issues which can be sorted out through amendments to the various Acts of Parliament. We cannot be held hostage by the budgetary cycle. We can change the cycle and make the budget in February. What makes it difficult for us to make the budget in February in an election year? The same applies to the matter of education. That can also be addressed in a manner that is proactive.

Finally, there is the issue of the Independent Electoral and Boundaries Commission (IEBC). My view is that when we are debating this matter; let us divorce ourselves from the matter of IEBC. That issue can be addressed separately in a manner that is consistent with the Constitution and the wishes of the people of Kenya.

With those few remarks, I oppose the Bill.

The Temporary Deputy Speaker (Hon. Cheboi): Very well. Before I give an opportunity to the next speaker, I want to take this opportunity to introduce pupils and teachers of Sigor Boarding Primary School from Chepalungu Constituency, Bomet County. I can see their Member of Parliament, Hon. Savimbi is here. He is present as he always is in the House. I will give an opportunity to Hon. M'ruaki. Hon. M'ruaki, if you do not mind, let me give Hon. Bii only a minute. I am exercising Standing Order No.1. Just one minute, Hon. Savimbi.

Hon. Bii: It is great of you, Hon. Temporary Deputy Speaker, to give me this opportunity.

First, I want to salute the pupils and teachers from Sigor Boarding Primary School and tell them that they are welcome. This is where we make the laws of this country.

I also want to join my colleagues who have supported this Bill. I am one of them. It is a long-standing tradition that we have been practising in this country. It will be very odd if elections are not held during the month of December, especially because of very important activities like examinations. We do not like to interfere with our children during exams.

Secondly, there is the issue of the budgetary allocation.

The Temporary Deputy Speaker (Hon. Cheboi): That should be the last one. You have already taken more than a minute. I only gave you a minute and you have now used a minute and fifteen seconds. Finish up.

Hon. Bii: I respect you, Hon. Temporary Deputy Speaker. I only want to touch on the budgetary allocation. If the election is held in August, it is going to affect the development of this country.

The Temporary Deputy Speaker (Hon. Cheboi): Thank you very much. Let us have Hon. M'ruaki. Thank you for your indulgence, Hon. M'ruaki. That was kind of you.

Hon. M'uthari: Thank you, Hon. Temporary Deputy Speaker. At the outset, I would like to support this Bill.

It has been a tradition in Kenya, for the last several years, to have the election date in December. Even the framers of this Constitution did not take this into consideration. It should have been taken into consideration from the word go.

We also have the issue of the budgetary cycle for our country. Our budget cycle is not only for Kenya. When you look at the East African Community (EAC), which we are part of, the budget is read at almost the same time across the East African countries. Changing the election date will affect other member states. We have to be cognizant of the fact that we belong to this community.

With regard to our education sector, it is within the month of August when many students are very busy preparing for their exams. It is better that we consider these facts and shift the election date. All in all, many aspects of the lives of the people of Kenya will be disrupted.

There is also the question of tourists. The month of August is a high season for tourists. When we have the election period at that time, it creates a mood of insecurity, a lot of noise and uncertainty. Having the election date in the month of August will be very disruptive.

Within the Constitution, the term of office of the President, Members of the National Assembly, Members of the County Assembly and governors is clearly stated as five years. Five years do not end in August, given the fact that we held our election in March, 2013.

Even if the people have highlighted issues to do with a referendum, it is important that we also look at other issues surrounding the election date and then do what is right for the Kenyan people. Let us shift the election date to December.

I thank Hon. Ochieng'. The Bill is important because it looks at the various facts that surround the livelihood of the Kenyan people. Changing the election date will be helpful in harmonizing all these issues.

With those few remarks, I support the Bill.

The Temporary Deputy Speaker (Hon. Cheboi): In my list, Hon. Gikaria is at the top, but I have to balance both sides of the debate. Therefore, I will give an opportunity to Hon. Sane, and then come back to you, Hon. Gikaria.

Hon. Sane: Thank you, Hon. Temporary Deputy Speaker. At the outset, I would like to say we have a problem with the term of the 11th Parliament, but we have no problem with the election date. The intention of the Constitution was clear in fixing the date. It failed short of defining what a political term is. One problem we have with the Constitution is that, in as much as it is good, it is so much detailed and over-done to the extent where it has stipulated on administrative issues.

When the elected Members of Parliament have a charter with the electorate – that is an unwritten contract – that they are going to serve a complete term which is an entitlement to both the voters and the representatives, any attempt to interrupt a political term is tantamount to denying the sovereign will of the people of this country which is superior to any other law, including the Constitution. An interruption of a political term is only known under imperial presidency. With the Constitution of Kenya, 2010, the democratic will of the people must be fully exercised. Under imperial presidency, there was the proroguing of Parliament to suit the whims of one person - the dictator - thus leading to snap elections. It is unfair to the 11th Parliament to have an incomplete term. It is equally unfair to the people because they will be denied representation and service delivery for the remaining part of the term.

Hon. Temporary Deputy Speaker, just like all other laws - except for divine laws - man-made laws have mistakes, misgivings and shortcomings. It is only fair that they are constantly amended to suit the times and correct anomalies therein. The intention of this Bill is to correct that oversight and not defining the term, the 11th Parliament or any other term. It is in order to deliberate on this matter. It does not necessarily need a referendum. It is a win for all. Both the electorate and their representatives will not lose.

With those few remarks, I support the Motion.

The Temporary Deputy Speaker (Hon. Cheboi): Very well. It could be perfect if we could be saving time like that. Member for Nakuru Town East.

Hon. Gikaria: Thank you, Hon. Temporary Deputy Speaker, for giving this opportunity to contribute to this Motion. Most of the hon. Members who have spoken, including the Mover of this amendment, have given clear reasons for bringing the amendment. I do not want to dwell on the reasons as indicated.

Hon. Temporary Deputy Speaker, the fundamental aspect of any election is to make sure that as many people as possible, exercise their constitutional right to elect their respective leaders in the six categories, as indicated under the Elections Act. If we have 40 million Kenyans and those who are eligible to go for an election are 20 million, the fact that the date will reduce the number of Kenyans to exercise their constitutional right, I think Hon. Ochieng had all the reasons to bring this amendment. At first, I was not agreeing with him but yesterday, I engaged him and he made it very clear for me. He came to our Committee. We were talking about some other issues and we had an opportunity to talk to him. It is important for us to give an opportunity to as many Kenyans as possible. One of the issues he raised is that as per our

traditions, some communities will be denied an opportunity to exercise their constitutional right. That is because they have traditional issues they undertake during that period. He was specific about the Luhyas initiation process. It is important for us to think about that. He was very categorical that the drafters of the Constitution – and he gave an example of America and why they chose the date and month of November – traditionally, set aside that day because harvesting was a major activity in America. They chose that come November, they will have been through with harvesting and were free and everybody can get an opportunity to vote.

Hon. Duale has raised some fundamental constitutional issues we need to look at. First, is on the Independent Electoral and Boundaries Commission (IEBC). If the Constitution says that we cannot extend its term, then that will be a problem. That is because moving the elections to December will mean that the IEBC will be out of office by November. We will not have picked another team to carry out elections.

On the principle regarding the figures and the number of people, I will agree with Hon. Ochieng that we should support this amendment, and, again, that notwithstanding, go with what Hon. Duale has said.

Hon. Temporary Deputy Speaker, in your opinion, you will give a ruling regarding this issue. This Bill was brought to your Office through the Legal Department and you have approved that it be brought to the Floor of the House for purposes of hon. Members to decide. But again, I wonder what decision you are going to give, which you have already given. By the time you approved this Bill to come to the Floor of the House, you were convinced that there were no constitutional matters. Of course, you have read Article 255 of the Constitution, which indicates the items that should go for a referendum.

With those few remarks, I support the amendment but, of course, taking into consideration the constitutional issues that were raised by Hon. Duale, particularly on IEBC.

The Temporary Deputy Speaker (Hon. Cheboi): Very well. I hear shouts of gender, but I want you to see my difficulty in considering that. We have 26 requests and the top-most of the other gender is Hon. Janet Wanyama of Trans Nzoia County at No. 10, Hon. Fatuma at No. 17, Hon. Wambui at No. 19 and Hon. Regina at No. 24. Those are the requests made and it makes it very difficult for me to help. Let me give the opportunity to Hon. Wanyama, and go back to my list.

Hon. (Ms.) Wanyama.

An hon. Member: She is not present.

The Temporary Deputy Speaker (Hon. Cheboi): In her absence, I will proceed with my list. I will now give the Floor to Hon. Onyura.

Hon. Onyura: Thank you, Hon. Temporary Deputy Speaker. I rise to support this amendment to the Constitution of Kenya (Amendment) Bill. I wish to thank my friend and neighbour, Member for Ugenya, for bringing this amendment.

Hon. Temporary Deputy Speaker, if we settle on this date as proposed in the Bill, we will be creating certainty and predictability that is needed. As it stands now, it is not very clear. There is a bit of contradiction. When the Constitution talks about the fifth year, which year are we referring to? Is it January to December or from the time of the event, which in this case is the elections? Therefore, the fifth year will be after March, 2018.

Hon. Temporary Deputy Speaker, I also agree with what the Mover has mentioned; that when we are looking at the elections, let us not just look at the date. In this case, let us not just look at the 4th Tuesday date. No! There is a whole process that goes with it. For example,

Parliament would have to be dissolved, perhaps, at the beginning of June. That, in itself, has certain very serious implications when it comes to the budget making process. We need to look at that as well. Let us not ignore it.

I agree that there are certain unique patterns and ways that we, as Kenyans, have in our lives. It is a certain rhythm of our lives which affects activities like the school calendar. I have just talked about the budget-making calendar and even the way we organize some other aspects of our social lives. You will find that a majority of us Kenyans tend to push our holidays. We look at December as a month of holidays and relaxation. That is the time many people visit their rural homes. As we have come to realize, some people wish to vote in their rural homes. It may be said that they can as well go there during August. There are some things we may be taking for granted because of the way ordinary Kenyans budget and organize their lives. They would like to concentrate, maybe, on school issues and agriculture for most part of the year and then, if they are travelling to their rural homes, they are able to do that in December. For many ordinary Kenyans, even just raising fare for themselves and the spouse is not an easy thing. So, we really need to take this into account; that we have adopted certain patterns and rhythm of doing things. Let us not ignore it.

The other thing which has been mentioned is that some of these things may have to go to a referendum. I see nothing wrong with that. All we need to do is just increase the list of things that *Okoa Kenya* should be doing and include them in the referendum. From what has been said here, I think it will be received well. I have no fear about that.

With that, I support this Bill.

The Temporary Deputy Speaker (Hon. Cheboi): Okay. Very well! Hon. Gumbo is top on the list, but I will go to the right side of the Hon. Temporary Deputy Speaker before coming back to him. I will pick the Hon. Member for Narok South.

Hon. ole Lemein: Thank you for giving me this opportunity, Hon. Temporary Deputy Speaker. I rise to support this Amendment Bill. Of course, it has been enumerated by Members that the August date has a lot of challenges and, on top of everything, is the tourism activities. I have heard the Seconder of the Bill talk about the migration in a particular area. When we look at the economy of this country, it is supported by tourism activities. If it gets affected, it will then mean, over and above my county being economically affected, the rest of this country will be affected. That is because tourism plays a major role as far as the economy of this country is concerned.

The same month has a number of economic activities as enumerated by the earlier speakers. Pastoral areas are dry while we have harvesting activities in the rest of the country.

There is also the budget-making process. It is going to be affected immensely if the date is not moved from the month of August to December.

To save time, I support.

The Temporary Deputy Speaker (Hon. Cheboi): Well. Let us have the Member for Rarieda Constituency.

Hon. (Eng.) Gumbo: Thank you for giving me this opportunity, Hon. Temporary Deputy Speaker. My colleagues have spoken about the impracticability of holding elections in August. I tend to agree with most of them. But, even as we think about extending the dates to December - and which looks good and has been traditional - I would wish we also look at the implications with regard to the existing Independent Electoral and Boundaries Commission (IEBC). Election dates are normally very emotive issues. The appointment of electoral commissioners is equally

an emotive issue. I am just worried if there will be sufficient time and the political implications if we were to, for example, have commissioners in office by then. So, even as we will be going to the Third Reading - hoping that this House will be able to pass this Bill in the Second Reading and approve it to the Third Reading - I would request my good friend Hon. David Ochieng to look at the political implications with regard to what it will mean. That is if we will have new commissioners who will hardly be in office for six months conducting elections.

Hon. Temporary Deputy Speaker, you being who you are - a lawyer by training - you know that elections are more of a political process than a legal one. So, I think those implications need to be put on the table.

I also feel that the issues that were raised by the Leader of the Majority Party should not be dismissed before-hand. We need wider consultations. Most importantly, there are the implications of Article 117 of the Constitution. I would think that in so far as this proposed amendment seeks to harmonize that, I think it is a good amendment. But let us exercise our minds to the wider implications. Let us not concentrate only on the legal, but also the political and social implications so that we do not get into a process which will cure one thing, while opening a new set of wounds and opening points of confrontations. I can tell you for a fact that the appointment of IEBC commissioners is always a very big political process and all the major political players in the country will have to exercise their minds to that. I would personally be very uncomfortable with new commissioners conducting the 2017 elections. So, even as we debate this important proposed amendment, let us also seriously think about the implications.

It may be good to say that we can extend the terms of the current commissioners, but how is the issue going to be? What are the implications? What about the vested interests that will definitely rear their heads when we start considering the issue of extending the terms of the current commissioners? What if we went the route of appointing new commissioners? As it stands, I would request that we give deep thoughts to the implications of this amendment in totality, before we decide. It is a good thing on paper and I would personally prefer an election date in December, but what are the implications. We need to look at the wider picture before we eventually agree to go in that direction as a House.

I thank you.

The Temporary Deputy Speaker (Hon. Cheboi): Very well. Let us have the Member for South Imenti Constituency.

Hon. Murungi: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to give my input to this Bill. The concerns raised by my colleagues are valid. This is an opportunity for the ruling coalition and the minority side to sit down with various stakeholders in the election process. That is because the issue of the Independent Electoral and Boundaries Commission (IEBC) is being discussed even out of this House. Our colleagues in the Coalition for Reforms and Democracy (CORD) are discussing how the IEBC can be reformed before the next elections. So, as we discuss this Bill, we should not fear that the IEBC might fail because the term of office of the commissioners will be ending in November. There is still enough ground to move the election date from August to December. So, we have an opportunity to sit down as a country and engage further even out of this House, so that we can come up with the right system to use in 2017.

I support the December date because of the national exams which are usually held from October to December in every year. If we held our elections in August 2017, my fear is that we might affect learning. That is because most of the polling stations that we use are located in

primary and secondary schools. We will be traversing the constituencies looking for votes and that will be disruptive to many things. This will be my second election and I know what happened last time. If we have the 'election' mode in August--- My colleague is trying to interrupt me! I do not think I am going the route he was going when he was contributing.

The Temporary Deputy Speaker (Hon. Cheboi): It is easier to criticize the players in the stadium when you are in the stands yourself. I realize the feeling is mutual.

Hon. Murungi: Hon. Temporary Deputy Speaker, let me use the term "voting date". I also have a problem with that word. There are a lot of activities during the campaign period. We need to change the voting date to December.

We also have the seventh wonder of the world, the migration of wildebeest from Serengeti National Park in Tanzania to Maasai Mara National Park in Kenya. That is during their breeding. Most of the people do not know why the migration takes place. The migration takes place because the animals go to breed in Serengeti. That is the right time for tourists to visit this country. My colleague is crying because tourism will be affected if we hold elections in August. He is a big stakeholder in the tourism sector and the area he represents in Parliament benefits from tourism. He also feels that we should move the date to December so that we do not interrupt tourism activities.

Other reasons have been given, including the fact that Kenyans are able to travel during the December holidays to vote, and the budget-making process. All those are valid reasons why we should move the date. On the issue of IEBC, both sides of the political divide should seize this opportunity to address the concerns which are being raised by our colleagues from the CORD Coalition.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Cheboi): Member for Kwanza.

Hon. F.K. Wanyonyi: Hon. Temporary Deputy Speaker, I stand to support the amendment for very many reasons. First, we want a representative election. Having elections in August, as has been said by many Members, interferes with the mobility of the people. People do not stay where they vote. It may be good for Nairobi, Mombasa and other urban areas. However, we have people who work in Mombasa or Kisumu going to North Eastern, for instance. How do you expect those people to move in the middle of the year? That is something that shows August is not a very good time for elections.

Two, as a Luhya, I am not going to abandon our tradition. Every August, we have initiation ceremonies of our boys into adulthood. An election in August is definitely going to interfere with that exercise.

Thirdly, August is a rainy season in Western Kenya and the rest of the country. The logistics of moving ballot boxes during that period are difficult, particularly given the inaccessibility of the roads in the rural areas. We are not so developed like Europe and elsewhere. It would take the whole day to get supervisors to polling stations. It is just not convenient for us to have elections in August.

The other reason is that for us in the North Rift, August is the time we start preparing our farms. Election is not just an event. It takes about six months to have a good election. The campaign period will interfere with planting which is done in March and weeding which is done in April and May. The election will interfere with farming activities. Therefore, August is a wrong month.

The other thing is that this country has a very bad reputation during elections. Wildebeest migration, as someone said, is from the month of August. Tourists will not come and yet, tourism is very important to our economy. The election activities will affect tourism and deny us foreign exchange.

Last but not least, there is the question of IEBC Commissioners. As the Opposition, we are saying that we are going to change the commissioners. Those who are going to be interviewed, vetted and appointed will do the work. The IEBC technical staff members are there to work on the programmes. So, when we get new commissioners, a month is enough for them to help us have credible elections.

The last peaceful election we had was in 1997, when we had inter-party commissioners. For example, from FORD(K) Kenya, we had our own commissioners. KANU had its own commissioners and the elections were very peaceful. I am in talks with my lawyers to help me prepare amendments so that IEBC commissioners are nominated by political parties, so that they can represent their interests. We are now having complaints, for example, from the CORD Coalition to which I belong, that the commissioners are biased. That is why we have had bad elections in the past. In 1997, we had peaceful elections because of the inter-party commissioners. We went home cheering the results of the elections. Therefore, I support these amendments. Let us not cheat ourselves that August is not good for elections in this country.

With those few remarks, I support. Thank you.

The Temporary Deputy Speaker (Hon. Cheboi): The Member for Nandi Hills.

Hon. Alfred Keter: Thank you, Hon. Temporary Deputy Speaker. I rise to support the amendments. I take this opportunity to thank Hon. Ochieng for doing this country a great service by bringing this Bill.

[The Temporary Deputy Speaker (Hon. Cheboi) left the Chair]

[The Temporary Deputy Speaker (Hon. (Ms.) Shebesh) took the Chair]

We are used to holding elections in December. If we were to hold elections in August, many activities, such as examinations, will be affected. August is the wrong time in our calendar of elections. Generally, when you affect the time of examinations, it will, in most cases, interfere with the results in a way.

Hon. Temporary Deputy Speaker, I know this has been raised. There are some constitutional issues that have been raised by Members, particularly by the Leader of the Majority Party, which require interpretation. When you look at Article 142 which has provisions on the term of office of the president, one of the items that must be subjected to a referendum is an amendment that affects the term of the President. In my interpretation, when you amend only Article 136(2) which talks about presidential election being done at the same time as that of Members of Parliament, which is the second Tuesday of August as it is in the current Constitution, there are many other issues which are more important to go the referendum way. The big issue we are raising on the date of election is that it will affect the budget-making process, which is a very fundamental issue. Between the months of June to August, that is when Kenyans participate in public hearings and issues to do with the budget making process. If you were to combine the pros and cons of having an election in December and having one in August, then we will end up supporting the December elections.

Let us leave the interpretation to go to the relevant authorities, but I do not think it will affect anything. We really want to support Hon. Ochieng because members of the public in our constituencies have been urging us to amend the Constitution so that they have elections when they really feel it is the right time. The right time for elections in Kenya is December because it has been the tradition. It is so easy to do an election and even move round campaigning. It is easier towards December than August, when it is a rainy season and visibility and movement in our roads is poor. We want to see an election that is going to be felt by members of the public that it is free and fair. If the roads are not clear, then it might delay the election process.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Member for Bondo, Gideon Ochanda.

Hon. Ogolla: Thank you, Hon. Temporary Deputy Speaker. One burden I am trying to offload is the term of the President. I know the Speaker is going to make a ruling on this but in my view, the President's term ends when the next President is elected, regardless of the date of the election. In my view, in case we have, for example, a re-run, the president can stay in office much more days than we are talking about. The President does not have an actual date of when his term ends in the Constitution.

The next thing that is important to me is this: I am trying to look at the interruptive consequences of the elections being in August or December. This is exactly where this House must do either a lot of research or some serious thinking. There have been discussions of the interruptive consequences, when elections are done in August. There are some that can be managed particularly when we are talking about two things, amending Article 177(4) and taking MCAs elections to 3rd March 2018. That is very easy to bring down than talking of taking August to either 12th or 13th December.

The other disruptive consequence of the August date is the budget-making process. Definitely, this is something that must be looked into keenly in terms of budgetary provisions in the Constitution, and to what extent, if at all we are to do elections in August, the process could be disrupted. If we look at the flipside of it in terms of elections in December, the interruptive consequences are a little lesser, apart from the big burden of the place of the IEBC. I want to remind the House that, sometimes, it is critical at this level to think of elections in 2007 and the ones in 2013. In 2007, we had new commissioners in place and in the 2013 elections; there was a kind of indecision where there was tug of war between the technical staff and commissioners. There has been this justification that some of us are trying to bring in an argument that, so long as we have the technical staff in a commission, then the commissioners cannot interfere much. That is exactly what happened in 2007 and 2013.

Right now there are issues that are beholding a Committee of the House where the technical people advised against other things, but the commissioners did the reverse. Those are some of the things that we really need to look at when we are talking about December. Definitely, we either have to have a new Commission in place or extend the term of the old Commission. If we have a new Commission in place, I am fairly bothered as a person. It cannot do much. They will either interrupt the logistical processes of the technical people in the commission or they will chose to ignore, as we have realized, their advice. That has happened before. In my view, there is an extent to which the current Commission, as much as they have been bashed here and there, has an element of continuity. They are aware of the consequences that they might get into if they are still in office. In my view, the Commission's time being

extended or having a new commission would be one of the determining factors in this process of the days that we are talking about. Beyond that, when we are talking about the Commission and the date, we need to consult more widely than this House. There are many more players out there who need to participate in this process than what some of the Members are thinking about.

Thank you.

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

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Before I give the Member for Ruaraka, what is your point of order, Hon. Simba Arati?

Hon. Simba: Thank you, Hon. Temporary Deputy Speaker. Given that this is a House of order, I realize that we do not have a quorum. Will I be in order to ask that we attain the quorum first?

(Loud consultations)

We have no quorum. I have seen it. I know it will be noise all over, but it is important for us to debate and follow the rules. If, indeed, we are amending laws here, we need to follow ours.

(Loud consultations)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Let me get it from the clerks.

*(The Temporary Deputy Speaker (Hon. (Ms.) Shebesh)
consulted the Clerks-at-the-Table)*

I order the Quorum Bell be rung.

(The Quorum Bell was rung)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, please take your seats.

I now give the Floor to the Member for Ruaraka.

Hon. Kajwang': Hon. Temporary Deputy Speaker, before we were disturbed by the party leader of unidentified party. I needed to say a few things very fast because, I do not seem to have the time. I want to speak about just three things if you may allow. One, I want to disabuse people of the fact that there is need for a referendum in this matter. We have looked at the Constitution and inspected it thoroughly. The Constitution is very clear on what the term of the President is. The term of President is not a period of years or months; it is the block or the regular period of time that a person is in office from when he is elected to when the next person comes to power. So, it might well be that President Uhuru can be there for five years and three months or for four months less or even for six months as in a situation of emergency or war. He could even be there for seven years, but that is just one term; so, the question of one term attached to five years is not constitutionally sound.

Two, there is nothing here that requires the Speaker to decide, I have listened to many people asking the Speaker to decide on something, there is nothing completely for the Speaker to decide. The Speaker is only called upon to approve a Motion. Once a Private Member's Motion

has been approved and is before the House, it is *functus officio*, if anybody wants an interpretation of the Constitution there is an advisory opinion. He can file a petition in the Supreme Court for an advisory opinion on what the Constitution says. So, all that discussion which went on about what the Speaker should ventilate on is nothing in my view; it was time which we could have used on other more productive issues.

I want to congratulate the Member for Ugenya for bringing this Motion; this is because it shows that there is a problem in our constitutional order. There are things which we need to look at deeply as politicians as we prepare the country for democratic elections in the future. I want to say that the question of when elections are to be held, in my view, is not as serious as the components of it. I think that dates are dates. Every husband of a pregnant wife knows that they will have a baby in nine months. But, which other husband has the money when the child is finally born; they all still run to look for napkins and money to pay the clinic. So, for me I am not really persuaded by the question of which date it should or should not be.

I think that the issue that we should be concerning ourselves with here is that, are we prepared to lead this country to the next level of democracy. Now, we are talking here as Members of National Assembly; we should know that there are other players in the political field; there are stakeholders in this issue who equally have a stake in it. There is, for example, the Senate and people out there. I do not know who brought this time down, but it is impossible to say anything within three minutes. Anyway, there are religious leaders and people of different persuasions out there. This is political engineering, and it is simplistic to think that because we can change it by way of parliamentary initiative, we can quickly decide an issue of monumental proportions such as this one.

I think that what we need to have is political will. President Uhuru, is the President of Kenya and Members of Jubilee should know that they are leading a ruling class which will determine the future of this country. When retired President Moi was faced with this problem, he composed Inter-Parties Parliamentary Group (IPPG), in very difficult circumstances. When retired President Kibaki was faced with this he created---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I will give you one minute.

Hon. Kajwang': Yes, just in one minute, when retired President Kibaki was faced with this he created a conference which resulted in the promulgation of the new Constitution. We are saying that we should sit down as the political class of this country, led by President Uhuru himself and talk about a national conference---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): What is out of order Hon. Alice Wahome?

Hon. (Ms.) Wahome: On a point of order, Hon. Temporary Deputy Speaker. I have heard the Hon. Member saying that President Uhuru should know that he is the President of Kenya. The point of order here is, is the Member suggesting that the President has in any forum or situation said that he is not the President of the Republic of Kenya. We need a clarification because that insinuation is not correct.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Go ahead.

Hon. Kajwang': Member for Kiharu, knows very well that she is just delaying what I wanted to say.

Hon. Members: Kandara

Hon. Kajwang': Kandara sorry, my apologies.

Hon. Temporary Deputy Speaker, the Member for Kandara is just wasting my time. She knows very well that she is just delaying what I wanted to say. From morning to evening, we should be discussing how we can have a national conference in which we will determine hard questions of the day. One of them is this election date, for example, but there are issues that we need to sit together and not think about politics of expediency. This will not help us. We are wasting time which we should use productively for the people of this country.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Ali Wario, Member for Bura.

Hon. Wario: Mhe. Naibu Spika wa Muda, nakushukuru kwa kunipa fursa hii. Kwanza kabisa, nimesimama kuunga mkono Mswada huu. Kifungu cha 94(1) na (3) kinapeana wajibu wa utunzi na urekebishaji wa sheria kwa Bunge la taifa. Wale wenye dhana kwamba Wabunge wana nia ya kujiongezea muda na wanataka kuzua pesa, hii ni dhana isiyokuwa na msingi wa kisheria. Tuna wajibu. Wakitusifu au watutusi, tuna wajibu wa kuirekebisha sheria.

Swala nyeti ni, je, Mswada ulioko mbele yetu, unataka kura ya maoni? Kifungu cha 255 ni wazi kuhusu ni nini kinachofaa kupigiwa kura ya maoni na ni nini hakifai. Kwa hivyo, Kifungu 259 kinatupa sisi fursa ya kutunga sheria kama hii ili kuweka wazi siku ya uchaguzi itakuwa lini ndio Wakenya waweze kujipanga kimbele.

(Loud consultations)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, please, those who are walking out, do it with decorum. Those who are in, please, lower your consultations. Hon. Kaluma, please, lower your consultations.

Hon. Wario: Asante sana Naibu Spika wa Muda. Kifungu 136 kinazungumza kuhusu kuchaguliwa kwa Rais. Kifungu cha 102 kinazungumza kuhusu kuchaguliwa kwa Wabunge na Kifungu cha 77 kinazungumza kuhusu kuchaguliwa kwa mbunge wa ugatuzi. Huu uchaguzi ulifanywa siku moja. Ni vipi MCA atakuwa na miaka mitano kamili na Rais kipindi chake hakiko wazi? Kipindi cha Wabunge hakiko wazi na Katiba inazungumza juu ya katikati ya miaka mitano. Ili turekebisha tatizo kama hili, ni vizuri tuje na sheria kama hii ili tuweze kutatua wasiwasi ulioko kisheria.

Kwa nini tuna wasiwasi juu ya uchaguzi kufanyika mwezi wa Agosti? Kwanza, mimi ninawakilisha watu wengi ambao wanaishi katika mbinu ya maisha ya ufugaji. Wakati wa ukame, hawa watu wanahama kutoka sehemu moja kuelekea sehemu nyingine kutafuta malisho na maji. Huu ni wakati mgumu kwa wafugaji. Utakapoleta uchaguzi katika Agosti, wengi wa wafugaji hawataweza kupiga kura. Hiyo itatuadhiri sisi kama watu wanaopigania viti.

Bajeti ya taifa siku hizi ni mchakato ambao unaanza katika mwezi wa pili, unainuka katika mwezi wa nne na unaelekea kuisha katika mwezi wa tisa. Unapoweka uchaguzi Agosti, utavuruga mchakato wa Bajeti ya taifa. Pia, watoto wetu wako shuleni. Muhula unaanza Agosti na unamalizika na mitihani ya kitaifa. Katika eneo langu, waalimu wengi ndio *presiding officers*. Je, ni vipi wale waalimu watawacha shule waende wakafanye kazi ya uchaguzi?

Kwa minajili ya hizi vurugu, ninasimama kuunga mkono sheria hii ili tulete mwongozo kwa taifa la Kenya. Najua kuwa baada ya Mswada huu kupita, tutatukanwa. Kwa wanaotusifu na wanaotutukana, wajibu wa kutunga sheria ni wetu.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Before I give the Floor to the next speaker, let me recognise in the Public Gallery, pupils of the Lower Chule Primary School in South Imenti Constituency, Meru County.

I now give the Floor to Hon. Fatuma Ibrahim, Member for Wajir.

Hon. (Ms.) F.I. Ali: Thank you, Hon. Temporary Deputy Speaker. I stand to support the Bill. This is relatively a straight forward amendment. It is a simple matter of changing the date from August to December. I commend Hon. Ochieng for fast-tracking this kind of amendment. We are used to last minute amendments which cause a lot of confusion.

Last week, I was in Nyeri and Isiolo counties for public hearings and overwhelmingly, Kenyans said that the December date, which is being proposed, is the most appropriate and ideal date. About 90 per cent of them sought to support moving the election date from August to December. They also deliberated on the likely extension of some few months of Parliament's life, and said that that is not substantive for them. They said that what is important for them is that August is not appropriate because of a number of activities that take place in that month. Farmers in Nyeri said that August is a very busy month for them. That is when they harvest their crops and prepare to sell them. The pastoralists in Isiolo said that August is the harshest and the most complicated month for them. It is a draught period when animals are far away from most of the urban areas.

They also said that if the date of August is retained, there will be a likelihood of them not turning up for voting in the next general election in 2017. That is very crucial for most of the candidates and Kenyans who will be seeking votes. Kenyans also said that August is a short holiday for schools and colleges, and does not give adequate time for people to participate in the elections. The campaign mood affects the calendar of the students and pupils who sit for their examinations in October and November. This will interfere with serious moments of our students' life.

Some of the governors whom we met said that their five year strategic plans are likely to be fulfilled by December, 2017. They said the August date, which is in the Constitution, is in the middle of their five year plan. This means that it will not help them to fulfill their five year plans. The date of December might walk them towards the finalisation of their five year terms. Generally, the mood of the people in the constituencies whom we visited is that December is the most ideal time for elections to happen.

I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): The Member for Kathiani, Hon. Robert Mbui.

Hon. Mbui: Thank you, Hon. Temporary Deputy Speaker. I rise to support this amendment to the Constitution. I thank Hon. Ochieng for bringing it up. In his submissions, he pointed out that this Bill was presented and prepared by the late, Hon. Senator Mutula Kilonzo, who was our Secretary-General. So, I also want to thank him posthumously.

Members have spoken about this issue and have said that we realise that our Constitution has problems. That is one of the reasons why we are coming up with amendments. When we were passing this Constitution, I do not know where people got figures, but they were saying that 80 per cent of it is okay and 20 per cent is not. I believe there are some issues that need to be addressed. With knowledge that there were going to be amendments, amendment clauses were put in the Constitution.

When we find that there are mistakes in the Constitution, it is important that we try and correct them. We need to be told what informed the second Tuesday of August every fifth year after the election. However, ideally from my perspective, it was also an issue of ensuring that there would be no anxiety. This is because in the previous years, whenever there were elections, people never knew the actual date. So, there was a lot of anxiety and question marks. The President actually held that date very close to his chest. So, the idea of giving a date in the Constitution was to ease this anxiety. There is no really major problem between one date and another, as long as it is clearly defined and stipulated in the Constitution. I support the third Monday of every fifth year in December, so that we can also know the date in advance and prepare for it.

The December date is also a traditional date. As a country, we were used to doing elections in December. It is important to retain some of the traditions that never had a problem. As we were amending the Constitution, we were not to change everything. We needed to be careful about what to change and some things that did not have a problem did not need to be changed. Maintaining the elections in December has no problem. We have realised problems that have been stated by other speakers here; if we retain the election date of August it will affect the Budget-making process.

Maybe what was not coming out clearly at the point of making this was that this new Parliament was going to be one that would make Budgets unlike the Parliaments before it. The Budget-making process takes a number of months. We know that Parliament will be dissolved 60 days before the actual date of election. That means that it will be dissolved some time in June, which is the time when the Budget is actually read. Before that, we would expect two to three months when Members will be deliberating on the issues of the Budget. Remember if it is an election year, then we will have absence of Members because even though the actual electioneering period is about two months, we spend much time in the constituencies during the Budget-making process. So, this will definitely affect the Budget; it will, therefore, not be a very convenient date.

We have talked about the examinations calendar. I also think that is important to note, because teachers will be affected. Remember that during the time of campaigns there is a lot of noise, because people have speakers on their vehicles and go around talking. There are all these campaign rallies that are held all over. There are people who do caravans with very loud systems. This will also affect the preparation of our candidates for the examination; do not forget that the month of August will have a very low turnover. This will be because most people will still be at work. December is the time when people go on recess and a lot of people take their leave at that time. So, the turnout will be higher and, therefore, the results of the election will be more authentic. Every time we have elections, we have people who are not comfortable with the results. So, if the number is low, then the results will actually be highly challenged. I believe that the December date will be better on that basis.

Finally, the length of our term would be short. We will have run for about four years and two months if we do not make this change. I support the Bill on those grounds.

Thank you for the opportunity.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Member for Narok West, Hon. Patrick ole Ntutu.

Hon. ole Ntutu: Thank you, hon. Temporary Deputy Speaker for also giving me this opportunity to contribute to this Motion. I thank my good friend, Hon. Ochieng for really finding

it wise to bring this amendment early enough, so that it can give the country time to discuss and digest the consequences of this amendment.

I totally support this Bill. The proposal is to move the date of the general election from the second Tuesday of August to the third Monday of December in the election year. I am one of those who said no to this Constitution. The reason was that there was a number of issues that we thought it was wise to amend or discuss before we passed the new Constitution. Most of us who were in the United Republican Party (URP) actually opposed the entire document. The reason was what we are going through this time. Look at the number of articles that we are going to change. We have Article 101 on the election of Members of Parliament (MPs), Article 102 on terms of MPs, Article 136 (1) on the election of the President, Article 177 (1) on the election of Members of the County Assemblies (MCAs) and Article 180 (1) on the election of the county governors. Look at all that. That is why we were saying that this Constitution needed to be amended before it was passed. Because the country at that time was in the mood of changing the Constitution, let us now do what is needful. I hope the entire country now sees the reason why we wanted all these things to be looked into.

The Budget cycle in our country is interfered with because as MPs, we have initiated so many projects in our constituencies. This timeframe will affect at least two years. In two years probably most of us will have started secondary schools which will have students in forms one, two and three. However, because we will not have funds, it will affect the development that we have started. The Budget process in this country is an elaborate one, which spans over six months. Once you interfere with it, you interfere with two years ahead.

The other issue is the national examination calendar, the Kenya Certificate for Primary Education (KCPE) and the Kenya Certificate for Secondary Education (KCSE) examinations. We all know that our children, particularly those in Form Four, normally start their exams around 21st or 22nd October. When a presidential candidate will not have got 50 plus one of the votes, then it will mean that in the next three months we will have a run-off. Where are we going to be as a country? We all know that once this country is in an election mood, everything is interfered with.

The other issue I want to discuss is that of the peak tourism time. I represent a constituency where everything depends on tourism like the Maasai Mara National Reserve, which is the eighth wonder of the world. July, August, September and October is when we expect tourists. So, the moment you say that elections will be held in August, it will mean that we will lose a lot of money because most of the time the tourists will not be able to go to Maasai Mara National Reserve.

The other issue is the pastoralists. In this country, we have about 85 constituencies which have pastoralist communities. The moment you say that the elections will be done in August, most of this time our pastoralist communities are actually going out of their constituencies because of the dry spell. That will bring a big problem in terms of voting which, will mean that unless you want to give us a different timeframe, our people will not vote at that particular time.

Thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Let us have Member for Dagoretti North.

Hon. Simba: I rise to oppose the amendment. I know that I may not be very popular with my colleagues. I indicate that most of us who come from urban areas like Nairobi, Mombasa and Mavoko--- Most of the people who vote in these areas are residents who happen to be there for

the whole year. If we push this election to December, all these people will have to travel upcountry because of the festive season. What will happen is that these people will miss the important exercise in this country, which is the elections.

Talking of examinations, in August there are no examinations; it is actually holiday time. If it is about campaigns and moving around with loudspeakers, examinations are held in November and December. I will not wait to be in office an extra day and another four months. That will not help me.

Hon. Temporary Deputy Speaker, I have heard other speakers talk about circumcision and other forms of initiation conducted upcountry during this month. The month during which a lot of the initiation is done is December. Let us not be selfish, especially now that we do not want this Jubilee Government to be in office an extra day because of its practices; it is bad. Therefore, we want to have the elections even tomorrow. We do not want to be in a fix because of a very unpopular regime.

(Loud consultations)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): What is your point of order, Hon. Kamama?

Hon. Abongotum: On a point of order, Hon. Temporary Deputy Speaker. Is my good friend, the Member for Dagoretti West, in order to insinuate, or rather inform Members, that Jubilee Government is performing poorly when we know that even President Obama agreed that this is the best Government? He went ahead to castigate the Opposition? Is he in order?

Hon. Simba: Hon. Temporary Deputy Speaker, listening is a gift. He knows that this system of Jubilee Government is a failed one. I, therefore, have no business answering him.

However, I want to put it clearly that we have no business as Parliament to---

Hon. (Dr.) Pukose: On a point of order, hon. Temporary Deputy Speaker.

Hon. Simba: Hon. Temporary Deputy Speaker, I hope you will add me the minutes they are taking away from me.

Hon. (Dr.) Pukose: I am on a point of order, Hon. Simba Arati.

Is the Member in order to say that the Jubilee Government is failing? Could he, please, substantiate or else withdraw that remark and apologise?

Hon. Simba: Hon. Temporary Deputy Speaker, I want to repeat that listening is a gift. May I indicate that, indeed, for us to be seen to change the date of election to December is greed of the highest order.

An hon. Member: On a point of information, hon. Temporary Deputy Speaker.

Hon. Simba: I do not need to be informed; I am informed enough. It is high time we respected the law because, indeed, we are the ones who make laws. I stand here to oppose the amendment. I urge my colleagues who have this country at heart to oppose this amendment, so that we can see prosperity in our country.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to the Member for Othaya, Hon. Mary Wambui.

Hon. (Ms.) Munene: Thank you, hon. Temporary Deputy Speaker for giving me this opportunity to support this Bill. I am very sorry that my colleague is opposing this Bill. Kenyans need to know that we are supporting this Bill because August is a difficult month. It is in August when our children prepare to go for examinations. We need them to be ready to face examinations. As one of our colleagues said, during campaigns we make a lot of noise. We go

round making noise while students are in school revising for examinations. As a result, they are unable to concentrate on their studies.

We know that if we go to elections in August, we will not be ready in terms of the Budget. We discuss the Budget in June. We, therefore, do not want this country to come to a standstill because of the election. In August there are many things that happen. Again, we are changing this at the right time, that is the term in office for Members is five years. We are not amending this because of money; rather it is because of the rights of our people. We want to be through with the Budget by the time we go for elections. We cannot say that we are not going to hold elections in December. Traditionally, we go for elections in December. The purpose of this amendment is to set a date for elections; we want to determine when to have elections after five years instead of going round and round in circles.

We are the ones who make laws. We are the Members of Parliament. We need to support this Bill. I know that all my colleagues, including Hon. Simba Arati, are going to support this Bill. He knows about his rights because he also has got children.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to the Member for Homabay, Hon. Kaluma.

Hon. Kaluma: Thank you, hon. Temporary Deputy Speaker, for this opportunity to talk about this important matter. There is a worry that this will affect the term of the President, which is a matter that requires a referendum under Article 255(1)(f) of the Constitution. May I disabuse my colleagues in the House of that belief; really that is not so. The term of the President has specific definition under the Constitution under Article 142. What it says is that time is the period when the President will sit until a new President is elected into office. So, it is not cast in law in terms of the period during which the President will sit. So, until a new President is elected and sworn in, the President will be serving a term in office; it is not about the number of terms, but a term in office. So, if we hold elections in March, 2018 and we held them in December last time, there will be nothing unconstitutional requiring a referendum of the type we see in neighbouring countries, which would have been untoward.

Article 142 imports the provisions of Article 136(2)(b), which defines the term of a Member of Parliament. May I agree with my fellow legislators, who have spoken to the effect that the presidential term is tied to the term of Parliament. I think that is what was worrying people, whether this will affect the presidential term and, therefore, will subject the process to a referendum.

Hon. Temporary Deputy Speaker, for Members of Parliament, the term is said, under Article 136(2), to be the time the next general election is held. So, it is not cast in stone in terms of the period in the manner we have the term of Members of County Assembly (MCAs) under Article 177(4). By the way, for the MCAs it is a clear five year term. May I disabuse you of the thinking that because MCAs must serve for five years, the President must also serve for two years. This country has been talking about the need to stagger elections. The impropriety of running six elections at a polling station for our Kenyan citizenry at one time has been an issue. There have been questions: Do we separate the elections for the county governments and MCAs from the elections for the national Government led by the President and Members of Parliament? This is an opportunity created by the Constitution, and it is something we may be thinking about. So, we will be in office until the next general election.

Hon. Temporary Deputy Speaker, beautiful things have been said about this Bill. If you consider the education cycle and what happens in the middle of the year when we also have

election fever, in fact, it is true that we will be wasting the entire election year if elections are held in August. This is because we know that under the Constitution the latest this Parliament, or any Parliament, will be sitting is 8th of June – I know it can be even earlier. The election fever will be catching this country well before January. After the elections we will approach Christmas preparations.

Hon. Temporary Deputy Speaker, so, we have the academic calendar and the Budget cycle. There are good reasons to support this amendment. Let me end this on what Hon. Kajwang' submitted before this House. Whatever we say, as Members of Parliament, is that this is strictly not a legal or legislative issue. This is a matter that is overly political. Whether we like it or not, this is a matter where the political leadership of the country, led by the President Uhuru Kenyatta and the opposition leadership led by the former Prime Minister, Hon. Raila Amolo Odinga, will have to give directions on. Let me join other Members, therefore, that with those reservations and as we await communication from those great men of our country outside there, we think of how we can stagger our elections.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Your time was up. Hon. Deputy Leader of the Majority Party.

Hon. (Dr.) Shaban: Thank you, Hon. Temporary Deputy Speaker. As I look at this constitutional amendment, there are some things which have come up that are of major concern. I know there was a task force which came up with Hon. Mutula Kilonzo Constitution (Amendment) Bill. I was part of it but there were some concerns that we had and we have them even now. Even today, I still have the same concerns. Because people say that you look at the letter and the spirit of the law, it is important for us to look at what the letter says in terms of when the elections will be held in this country. It is quite clear that when we talk of the fifth year, essentially we are trying to change the terms of parliamentarians, the President and the governors to be four years even in future. Let us not just look at this coming election. Let us look at future elections also and see whether we have maintained the five years, because there is a contradiction in the term of the Members of the County Assemblies (MCAs) and parliamentarians, considering that is what the presidential and governors terms are tied to. We need to think without emotion whether this is what will serve our purpose.

I agree that the month of August is very complicated if we get a presidential runoff in this country; we will get into confusing the examination period with election time because we shall still be in a campaign mood. By the time our children are supposed to be gearing towards doing examinations they will be so destabilised. It will be difficult for them to do examinations without feeling that fever. It takes time for people to really catch up at a time when they are supposed to be at the climax of planning to do their exams. That is the time when they will be highly destabilised. The reality is with us and it is up to us to face that reality. I know sometimes politics is about selfishness, but as we are looking at it, who are we serving? We are serving a society which has to be taken into consideration when you are considering all these.

Everybody has talked about the arid and semi-arid lands (ASALs) where at this particular time is a drought season. It is very difficult for people in the arid areas, especially the pastoralists, to be involved because they will be busy running around looking for pasture for their livestock.

The other issue that comes into mind is that of the Budget cycle, which will be affected completely. We will run into a constitutional budgetary mess because of having an election in August. I think the December date would make sense, but I would only agree to it if we are

specific that the presidential and parliamentarians' terms, which are tied together, are precisely five years. I agree that we might have to stagger what happens at the county government and national elections in future. However, that will be in future. What is of concern now is: When are we going to have the general elections? I am asking you to look at it holistically and without emotions. If we really have a problem, we might have to go to the Supreme Court for them to give us a way forward instead of fighting over dates. It is not about us but about Kenya. We really have to look at this. I beg to oppose.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Abdul Dawood.

Hon. Dawood: Thank you, Hon. Temporary Deputy Speaker. I stand to oppose this Bill in the sense that the August date, which is proposed in the Constitution, is the right date. A lot of arguments have been advanced about the December date, when we are talking about the exams. The December date interferes with the festivities and a lot of things because when you campaign, you do not just do it in the last three weeks to the elections. You start campaigning about six months earlier. So, you will already be affecting the national exams, which will be held in November or earlier. So, if we talk about students, we do not help them. We have festivities in December like Christmas. When we are in a campaign mood, nobody celebrates. Everybody is on tenterhooks doing politics and that does not augur well, because you do not have the spirit of the festivities. Everything is just political. We said that politics starts a long time before the elections. The whole year from January to December, we will just be politicking and doing nothing else.

The other thing is about the term limit of the MCAs. It is specific in the Constitution that they serve a five-year term, but there is nothing to say how long a Member of Parliament (MP), the President or the governor will serve. It should be specified that we serve for five years whether it is upto March 2018 or August 2017. It should be specific that all the political leaders will be chosen for a term of five years and nothing less or more, so that we can have definite dates which we know of when we are going for elections. We could even have a snap election. Something could happen and we go for an election and we do not know how long that will last.

So, Hon. Temporary Deputy Speaker, I oppose this amendment. I like the Speaker's ruling in the morning that we will have a ruling from him saying whether we can amend the Bill in at the Committee Stage. That communication will come at a later date. Hon. Simba Arati was saying that we are opposing because of many other things. This is not a matter of us getting more money or being paid for four months. Somebody made a suggestion that we should be paid in lieu of the four months, but that is neither here nor there, because it can be challenged in a court of law. The MCAs have five years, which is in the Constitution, and then we are talking about them going to elections in December, which date will shorten their term. Anybody can challenge if they are paid early for the rest of the months, which they were supposed to serve. Why would people be paid for a period which they have not served?

Hon. Temporary Deputy Speaker, with those few remarks, I wish to oppose this Bill unless there are amendments to it, which will be allowed in the Committee Stage.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Member of Parliament for Kimilili, Hon. Suleiman Murunga.

Hon. Kasuti: Thank you, Hon. Temporary Deputy Speaker. I would like to thank the Mover of this Bill. It is in public knowledge that if the current Parliament serves up to August,

Members will not have served their period of five years. Therefore, it is necessary that we carry out the amendment, especially as the Member of Wundanyi and the Hon. Leader of the Majority Party have said.

If the amendment is specifically for this Parliament, then it is okay. We should look into the future and amend the Constitution accordingly, so that the period that is set out in the Constitution of five years, and the dates are set out properly, so that we do not have to do piecemeal amendments every now and then. At the time we were passing the Constitution, people said that some parts of the Constitution were okay while others were to be amended as we went along. So, this is part of the Constitution that we need to amend, so that we align everything in accordance with what we want the Constitution to achieve.

With those few remarks, I support the amendment.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to the Member for Kandara, Hon. Alice Wahome.

Hon. (Ms.) Wahome: Thank you, Hon. Temporary Deputy Speaker. I support this Bill. I have three points in support.

I have looked at the Bill and the Mover addressed himself to Article 136. This Parliament has a duty to remove the contradictions that are very glaring in the Constitution.

Article 136(2) provides that an election of the President shall be held on the second Tuesday together with the election of Members of Parliament. It goes further to talk of every fifth year. That could be four years and one day. When it says in the fifth year, this Article does not say that it shall be at the end of the fifth year. Automatically that then reduces the term of Members of Parliament and the term of the President to four years. Was that the intention of the Kenyan public when they voted for the Constitution? All Kenyans know that we elect a President, Members of President and Senators for five years. So, this article lacks clarity and is not specific. I have a concern because it states that the election of the President will be with that of Members of Parliament. It is for this House to look into that and see how clarity can be achieved.

Article 177 specifically provides for a term of five years for members of the county assembly. A county assembly is elected for a term of five years. Why is that specific provision lacking in Article 136? Was there an intention by the Committee of Experts (CoE), or a deliberate move, to reduce the presidential term to four years. That is what it is. If we read that, we will see that Article 177 provides that Members shall be elected on the second Tuesday, being the second Tuesday in August in the fifth year.

I am in support of the parliamentary and the presidential terms of five years, because that is what Kenyans wanted. That is what they intended when they promulgated the Constitution. Any article that purports to reduce that term can be interpreted, or construed, either by a court of law or by any person, to mean that the term of this Parliament or the term of the President is four years; it is be our duty to re-align it.

It becomes very serious in relation to Article 259. I do not know if Hon. Ochieng' referred to that, but when it comes to calculating time, Article 259(5)(c) provides that the period ends at the beginning of the date of the relevant year. That simply means that the term will end at the end of the four years. If we went to elections on the second week of August, then terms would begin on the following day of those four years. In short, we are not even looking at extending this term to December. We need to give clarity to the Constitution and provide a specific provision that is similar to the one in Article 177, which clearly provides that the term of

Parliament and that of the President is five years and not “in the fifth year”. “In the fifth year” cannot mean five years. Those are two expressions, namely “in the fifth year” and “a term is five years”. So, in the fifth year, for me, could be four years and one day. Kenyans must know that they risk having a President for a term of four years.

Hon. ole Kenta: Thank you, Hon. Temporary Deputy Speaker. I would like to join my colleagues who have supported the Bill. I support it. I believe that no law should operate in a vacuum. We made the Constitution to serve us. The issues that have been raised by the Members here are pertinent and make sense. August is not a convenient month and I support that.

We have spoken about the issue of our academic term, tourism and the budgetary cycles, and these are very important issues. When you look at the economic aspect, the Budget takes us through the year and we cannot even avail money to the IEBC for elections before September or October. So, it is important that we look at the ways of raising money. If it is going to inconvenience the Kenyan people, then it is important that we move the election date to December.

The activists in our midst would think that Members of the National Assembly would like to extend their term. I would like to say that our term should be five years. If we looked at it properly, we should be operating as Members of Parliament up to March. However, that is not really important. It might be more costly to take the August date because we will not be ready; we will destroy our economy and we will not have a fair election. Why? We have raised the issue of the availability of the Kenyan people, for example the pastoralists. If the pastoralists cannot take part in the elections in August, you disenfranchise them by saying that we must have it in this month.

Whereas there is the issue of the presidential term, it is not cast in stone. If it is a matter of going for a referendum, we shall go for it. But I believe that this is the right time for us to decide these questions once and for all.

Lastly, maybe this should be the shortest parliamentary term, but from the next Parliament, if it starts in December, the next MPs will have their five years. We must think rationally and in a way that is going to cater for the needs and the requirements of all the Kenyans.

I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Rachel Ameso.

Hon. (Ms.) Amolo: Thank you, Hon. Temporary Deputy Speaker. I stand to support this Bill. I also take this opportunity to thank Hon. David Ochieng’ for bringing it up at this right time.

As fellow Members of Parliament have narrated, December will be the right time for holding elections. In the past, we have held elections in December, because of various reasons in our country. The month of August, as it has been said, is a very important time because that is when as parents, we are preparing our children for the exams that take place in October and November. It is not only the Form Four or Form Six students who will be preparing for examinations at that time; even diploma and university students, that is the time when they prepare to finish their final exams in the year. It is very crucial that we look into it, so that we all agree that December will be the right time for us, as Kenyans, to hold our elections.

The other issue is on the safety of our children. As parents, or women in this country, we believe in taking care of our children. In August, most children are very busy with exams. If we

hold elections in August, most of our children will be all over the place. It is very risky because when vehicles are moving and there is a lot of noise, it is not easy to take care of children. However, in December it is easy to take care of our children because they are in our houses; so, we are able to ensure the safety of our children and prevent them from running all over and following voters who are run left, right and centre. December will be the right time to hold elections.

A lot has been said about our term of office. I listened to my sister, Hon. Alice, and she has come up with a very nice point about the “fifth year”. When is this “fifth year”? We need to determine when it starts and ends. She has raised a very important issue and when we will be moving amendments, we will look at it. Even if we hold elections in December, as Members of Parliament, we will still be within the term of five years. I do not see any issue of us having to be paid in lieu of notice. I do not agree with that. That will be part of our term; we will be within the five years. We are still within the term of office of Members of Parliament, governors and also the President.

With regard to the Members of County Assemblies (MCAs), it is not really an issue. Let us hold our elections in December. We can look at the term of office of the MCAs. If one does not complete their term before the date, then they may have to be paid in lieu of notice - the three months that will be remaining. That is not the real issue at this moment.

I to support that we hold elections in December.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, it is now time for the Mover to reply.

Hon. Ochieng’: Thank you very much, Hon. Temporary Deputy Speaker. I would like to donate one minute to each of Hon. Gunga, Hon. Mwamkale, Hon. Ichung’wah and Hon. Wesley Korir.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Repeat those names again. Who did you start with?

Hon. Ochieng’: Hon. Gunga, then Hon. Mwamkale, who is seated here, then Hon. Ichung’wah and finally Hon. Wesley Korir.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Gunga.

Hon. Chea: Thank you, Hon. Temporary Deputy Speaker. I would also like to thank Hon. Ochieng for donating one minute to me. I want to support this Bill. In my view, once this Bill has been passed, it is going to bring clarity. It will determine a certain issue in elections. It is a national issue. People should not look at it as if the election date is changed, or is meant to be self-serving. I also want to believe that once the election date is moved to December, this will provide ample opportunity for political parties to prepare and voters to cast their votes. I want to believe my minute is spent.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Ichung’wah.

Hon. Ichung’wah: Thank you, Hon. Temporary Deputy Speaker. I want to thank Hon. Ochieng for this Bill and for donating one minute to me.

The question of election as it has been said by many hon. members is not about Members of parliament; it is about this country and its future. If we are to hold elections in August, we will, in 2017, definitely interfere with the Budget process. Therefore, we are doing this for posterity and to ensure that there is consistency in the electioneering cycle and the Budget cycle

of this country. This is because we may not have the funds and resources to fund the elections in 2017.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Mwamkale

Hon. Mwamkale: Thank you, Hon. Temporary Deputy Speaker. I would like to thank my colleague for donating time to me.

We should appreciate that our Constitution did not come from heaven. There are several errors. What Hon. Ochieng is doing is rectify those errors. I appreciate that our term should not be less than 5 years. As the 11th Parliament, we will be remembered for compromising part of our term to rectify the Constitution. By December, we will not have served our term but we are sacrificing that, so that those who will come later will not have that problem. Kenyans should support us and acknowledge that what we are doing is sacrificing.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Mover, did you donate a minute to Wesley Korir?

Hon. Ochieng: Yes, Hon. Temporary Deputy Speaker.

Hon. Korir: Thank you, Hon. Temporary Deputy Speaker. I would also like to thank the Mover for giving me an opportunity to contribute to this Bill. I support the Bill and the amendment. It has come to our knowledge that this Constitution needs serious amendments. We need to constitute a body, as a country, to look into our Constitution. It is a challenge to the President and the Executive that they need to help us constitute a body that will look into our Constitution. Such a body will tell us the amendments we need to do. Those that need to go to the referendum should go, and those that can be passed by this House need to be passed. There are many contradictions. County assemblies are working in a very confused manner. We need to introduce many amendments to remove what is confusing in this Constitution.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Mover.

Hon. Ochieng: Thank you, Hon. Temporary Deputy Speaker. I would like to thank all those who have contributed to this Bill; those who have supported and those who have opposed, as it is in the spirit of debate.

The Bill has brought to the Floor some of the issues we need to discuss as a country. I am happy that in discussing this Bill, what has come out is the fact that we need to sit down as a country and deal with minimum reforms we require to ensure that we go to the elections next time prepared, and in a manner that will meet the standards required by the country. I was appalled by the misreading of the law and the judgment of the Court. Allow me to read a paragraph by the court on whether an amendment to the Constitution affecting the term of the President can be proposed and effected without a referendum: The court said, "In view of our finding in the first issue, we do not think it is necessary to express our view on the Bill". So, the court has never expressed itself at all on whether a Bill like this one will require a referendum. It is upon this Parliament, and the public, to look at the reasons I have given for this Bill which are very valid, and make a decision.

Hon. H.K. Njuguna: On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Kimani Njuguna, what is your point of order?

Hon. H.K. Njuguna: Hon. Temporary Deputy Speaker, I rise under Standing Order Nos. 53 (3) and 72 (2), to request the Chair to defer putting of the Question on Second Reading of this Bill to a later date to be determined by the House Business Committee (HBC)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Kimani Njuguna, I think you are quite in order.

ADJOURNMENT

Hon. Members, the time being 1p.m., this House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 1.00 p.m.