

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 31st July 2019

The House met at 2.30 p.m.

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

PRAYERS

MESSAGES

PASSAGE OF THE NATIONAL COHESION AND PEACE BUILDING BILL (SENATE BILL NO. 35 OF 2018)

Hon. Speaker: Hon. Members, pursuant to the provisions of Standing Order No.41, I wish to report to the House that I have received a Message from the Senate regarding the passage of the National Cohesion and Peace Building Bill (Senate Bill No. 35 of 2018).

Hon. Members, the Message reads in part, and I quote, “The Senate on Wednesday, 10th July 2019 considered and passed the said Bill with amendments”. The Senate now seeks the concurrence of the National Assembly on the said Bill in accordance with the provisions of Article 110(4) of the Constitution.

Hon. Members, the National Cohesion and Peace Building Bill (Senate Bill No. 35 of 2018) seeks to provide for establishment of the National Cohesion and Peace Building Commission; outlaw discrimination on ethnic grounds; provide for the establishment of an institutional framework for national cohesion and peace building; and, other relevant amendments.

Standing Order No.143(1) requires the Speaker to cause a Bill received from the Senate to be read a First Time upon conveyance of a Message from the Senate referring Bills to the National Assembly. Accordingly, I direct that the Bill be read a First Time at the next Sitting of this House.

Hon. Members, Paragraph (2) of Standing Order 143 provides thus:

“Following First Reading, the Speaker shall, within reasonable time, pronounce his or her opinion contemplated under Article 114(2) of the Constitution”.

The opinion envisioned under Standing Order 143(2) is a pronouncement, by the Speaker, as to whether a Bill originating in the Senate is a Money Bill in the terms of Article 114 of the Constitution. In this regard, I direct that after First Reading, the Bill be referred to the Parliamentary Budget Office (PBO) to offer advice that will enable the Hon. Speaker to form the opinion contemplated under Standing Order 143(2). Thereafter, I shall guide the House accordingly on how to proceed with the consideration of the said Bill.

I thank you Hon. Members.

Next Order.

PAPERS LAID

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Speaker. On behalf of the Hon. Leader of the Majority Party, I beg to lay the following Papers on the Table of the House:

Annual Report of the National Intelligence Service for the year ended 31st December, 2018.

The Reports of the Auditor-General and the Financial Statements in respect of the following constituencies for the year ended 30th June, 2018 and the certificates therein:

- (1) Ikolomani Constituency.
- (2) Mt. Elgon Constituency.
- (3) Malindi Constituency.
- (4) Garissa Township Constituency.
- (5) Bobasi Constituency.
- (6) Bomachoge Borabu Constituency.
- (7) Bomachoge Chache Constituency.
- (8) Bonchari Constituency.
- (9) Rongo Constituency.
- (10) Konoin Constituency.
- (11) Embakasi North Constituency.
- (12) Githunguri Constituency.
- (13) Kapenguria Constituency.
- (14) Turkana West Constituency.
- (15) Turkana North Constituency.
- (16) Loima Constituency.
- (17) Ainabkoi Constituency.
- (18) Turkana Central Constituency.
- (19) Marakwet East Constituency, and
- (20) Marakwet West Constituency.

I thank you Hon. Speaker.

Hon. Speaker: Next is the Report by the Chair of Budget and Appropriations Committee (BAC) or a representative from the said Committee. If not present, let us have the Chairperson, the Departmental Committee on Lands.

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Thank you Hon. Speaker, I beg to lay the following Papers on the Table of the House:

- (i) The Sectional Properties Bill (National Assembly Bill No. 23 of 2019).
- (ii) A Petition by the residents of Sabaki Ward, Magarini Constituency regarding dispossession of ancestral land.

I thank you, Hon. Speaker

Hon. Speaker: Let us have the leader of the delegation on Inter-Parliamentary Union (IPU) related meetings held in Doha from 6th to 10th April. Hon. Patrick Mariru.

Hon. Patrick Mariru (Laikipia West, JP): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House:

Report of the delegation to the 140th Assembly of the IPU and related meetings held in Doha State of Qatar from 6th to 10th April 2019.

I thank you, Hon. Speaker.

Hon. Speaker: Very well. For the second time, the Chair of Budget and Appropriations Committee. That Report is very important and I defer it to be tabled at whatever time the Chair of that Committee arrives.

Next Order!

Hon. Members, before we move to Questions allow me recognise the presence of, in the Speaker's Gallery and Public Gallery, students from the following institutions: Githunguri Township Primary School, Githunguri Constituency, Kiambu County; Ndege Primary School, Njoro Constituency, Nakuru County; Hekima Academy, Kuria West Constituency, Migori County and those from St. Mary's Primary School, Baringo Central Constituency, Baringo County. They are welcome to observe the proceedings of the National Assembly this afternoon.

ORDINARY QUESTIONS

Question No. 310/2019

MEASURES TO ADDRESS DELAYS IN INSPECTION OF GOODS AT THE PORT OF MOMBASA

Hon. Speaker: The first Question is by the Member for Kesses. You have another name and not just Dr. Mishra.

Hon. Swarup Mishra (Kesses, JP): Yes, Kiprop arap Chelule.

Hon. Speaker: Kiprop arap Chelule! Please proceed Hon. Mishra.

Hon. Swarup Mishra (Kesses, JP): Thank you, Hon. Speaker. I beg to ask Question No.310/2019 to the Cabinet Secretary for Industry, Trade and Cooperatives.

(i) Could the Cabinet Secretary state whether all inspection of goods agencies operating at the port of Mombasa possess the requisite expertise to carry out inspection of goods?

(ii) Why was the period for the mandatory inspection of goods recently increased from four (4) days to over four (4) weeks?

(iii) What measures are in place to ensure there are no inordinate delays in physical inspection of goods especially those belonging to blue-chip and multinational companies which also possess international recognised certification, such as C.E (*Conformite' Europeenne*) and F.D.A (Food and Drug Administration)?

Thank you, Hon. Speaker.

Hon. Speaker: The Question is referred to the Departmental Committee on Trade, Industry and Cooperatives. The Cabinet Secretary will be invited. Hon. Members, the next Question is by the Member for Matayos who has written to request deferment. I accept the request and therefore the Question is deferred.

Question No.355/2019

MEASURES TO POPULARISE ADULT EDUCATION IN THE COUNTIES

(Question is deferred)

Hon. Speaker: Next Question is by the nominated Member Nasri Sahal Ibrahim.

Question No.356/2019

MEASURES TO ADDRESS LONG DELAYS IN ACQUIRING GOVERNMENT DOCUMENTS

Hon. (Ms.) Nasri Ibrahim (Nominated, FORD-K): Thank you, Hon. Speaker. I rise to ask Question 356/2019 to the Cabinet Secretary for Interior and Coordination of National Government.

(i) Could the Cabinet Secretary explain why persons from Wajir, Garissa, Mandera and Lamu counties face challenges including selective issuance and long delays in acquiring important Government documents among them identification cards and passports?

(ii) What measures has the Ministry put in place to address the challenges and to facilitate issuance of important Government documents among them identification cards and passports to the persons from the affected counties?

Thank you, Hon. Speaker.

Hon. Speaker: The Question is referred to the Departmental Committee on Administration and National Security to invite the Cabinet Secretary. Last Question is by the Member for Suna West, Hon. Masara.

*Question No.357/2019*APPOINTMENT OF SUBSTANTIVE ASSISTANT COUNTY COMMISSIONERS IN SUNA WEST
CONSTITUENCY

Hon. Peter Masara (Suna West, Independent): Thank you, Hon. Speaker. Pursuant to Standing Order No. 42A (5), I rise to ask Question No.357/2019 and it is directed to the Cabinet Secretary for Interior and Coordination of National Government.

Could the Cabinet Secretary consider appointing substantive Assistant County Commissioners to the four newly established divisions in Suna West Constituency to enhance delivery of critical Government services to the public?

Thank you, Hon. Speaker.

Hon. Speaker: The Question is referred to the Departmental Committee on Administration and National Security to invite the CS to respond.

Hon. Members, further, let me introduce students and pupils from the following institutions: Kirigithu Secondary School, Kandara Constituency, Murang'a County; Mathakwaini Secondary School, Tetu Constituency, Nyeri County and Kipsanai Primary School, Keiyo South Constituency, Elgeyo Marakwet County. They are also welcome to observe proceedings.

Next Order!

MOTIONREPORT ON PROCUREMENT OF EXTERNAL AUDIT SERVICES FOR
OFFICE OF AUDITOR-GENERAL

THAT, this House adopts the Report of the Public Accounts Committee on Procurement of External Audit Services for the Office of the Auditor-General,

laid on the Table of the House on Thursday, 25th July 2019, and pursuant to the provisions of Article 226(4) of the Constitution and Section 43 of the Public Audit Act (No.35 of 2015), appoints M/s PKF Kenya to audit the accounts of the Office of the Auditor-General for the Financial Years 2014/15, 2015/16, 2016/17 and 2017/18.

(Hon. Opiyo Wandayi on 30.7.2019)

(Debate concluded on 30.7.2019)

Hon. Speaker: Hon. Members, debate on this Motion was concluded yesterday and what remained is for the Question to be put which I hereby do.

(Question put and agreed to)

The Chair, Budget and Appropriations Committee appears to have forgotten that the House sits at 2.30 p.m. and is making his way in at 2.48 p.m. Kindly, the Report you are to table is so important. I think we had agreed that you would table it at whatever time you arrive in the Chamber. Now that you have arrived not too late please go ahead.

PAPER LAID

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Speaker for your indulgence. In fact, I was waylaid on my way here at the gate by a group of Senators. They delayed me and that is why I am slightly late and my apologies to the House.

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

The Report of the Budget and Appropriations Committee on its consideration of the Division of Revenue Bill (Senate Bill No.13 of 2019).

Thank you.

Hon. Speaker: If the Member for Laikipia County could take her seat. You can sit next to the Leader of the Majority Party he is not harmful.

COMMUNICATION FROM THE CHAIR

CONSIDERATION OF PROPOSED AMENDMENTS TO THE REPORT ON THE INQUIRY INTO ALLOCATION OF LAND IN KAMITI ANMER FOREST

Hon. Members, before we proceed to the next Order being the Motion on the Report of the Departmental Committee on Lands on the Inquiry into the Allocation of Land in Kamiti Anmer Forest, I wish to issue the following guidance which relates to its consideration.

*(Hon. Omboko Milemba walked in the aisle
when the Speaker was on his feet)*

The Member for Emuhaya, just remain where you are.

As you are aware, debate on this Motion had been concluded and all that remained was putting of the Question. However, concerns were raised by Members regarding the difficulties that could be experienced by the relevant Government institutions in implementing the recommendations as currently contained in the Report.

In this regard, conscious that the House does not act in vain, I have since perused the Report and confirmed that there is need for the House to amend the recommendations so as to align it with our Standing Orders and the Forest Conservation and Management Act of 2016. I have also received proposed amendments from a Member of the Departmental Committee on Lands addressing this concern. A notice of the proposed amendments is in the Order Paper for your reference.

I, therefore, wish to invoke the provisions of Standing Order No.1 to allow for the amendment to be moved to the Report's recommendations. I wish to clarify that debate will only be reopened for purposes of addressing the concerns raised, and will not be fresh debate on the rest of the Report. Once the House concludes with the proposed amendment, I shall proceed to put the Question on the Motion. I also urge all Committees to be vigilant and ensure that their proceedings stay within the requirements of Standing Orders and the relevant laws.

I thank you, Hon. Members.

MOTIONS

INQUIRY INTO ALLOCATION OF LAND IN KAMITI ANMER FOREST

THAT, this House adopts the Report of the Departmental Committee on Lands on the Inquiry into a Complaint by Kamiti Anmer Forest Squatters Association regarding allocation of Land LR. No. 8390 in Kamiti Anmer Forest, laid on the Table of the House on Tuesday, 18th June 2019.

(Hon. (Ms.) Rachael Nyamai on 27.6.2019)

(Debate concluded on 23.7.2019)

Hon. Speaker: Member for Naivasha, Hon. Wanjiru Kihara. Proceed.

Hon. (Ms.) Jayne Kihara (Naivasha, JP): Hon. Speaker, I beg to move the following amendment to the Report of the Departmental Committee on Lands.

THAT, the Motion be amended by inserting the following words after the figure "2019"—

“subject to deletion of recommendation 1 on page 16 of the Report and substitution thereof with the following—

1. THAT, within sixty (60) days of adoption of this Report by the House and in furtherance to the provisions of section 34 of the Forest Conservation and Management Act, No. 34 of 2016 (regarding variation of boundaries or revocation of public forests), the Cabinet Secretary responsible for Forestry initiates the process of degazettment and excision of land L.R. No. 8390/Kamiti/Anmer from Kamiti Forest, measuring 169.7 hectares, for the purposes of settlement of the members of the Kamiti Forest Squatters Association, Kamiti Anmer Development Association, Muungano wa Kamiti Group and Kamiti Anmer Development Welfare Group.”

Hon. Speaker, this is a process that we have gone through for purposes of rectifying what has not been done and normalising it. I would like to ask the Member for Laikipia, Hon. Waruguru, to second the amendment.

Hon. Speaker: Member for Laikipia.

Hon. (Ms.) Catherine Waruguru (Laikipia CWR, JP): Hon. Speaker, I rise to second the amendment as tabled by the Departmental Committee on Lands that we delete recommendation referring to the CS for Lands and Physical Planning, the National Lands Commission (NLC) and the Kenya Forest Service in regard to the notice of 60 days. We want to believe for this process to be conducted harmoniously, we have to give them a bit of time. For that reason and for purposes of all stakeholders, we wish to delete that recommendation. I second.

Hon. Speaker: Order, Hon. Members! If all of us can go to our gadgets, you will see the proposed amendment.

Hon Members: Put the Question.

Hon. Speaker: Are Members aware of the amendment? They got it. Debate may only happen on the proposed amendment. Hon. Sakwa Bunyasi.

Hon. Sakwa Bunyasi (Nambale, ANC): Hon. Speaker, I think it will be useful if the Mover could indicate the import of the change. It is now before the House. We are going to discuss this. I think it is really important that the import of the change is explained.

Hon. Speaker: Hon. Sakwa Bunyasi, your quarrel is that the Member has not explained the import.

Hon. Sakwa Bunyasi (Nambale, ANC): Hon. Speaker, there is substitution. We have deleted something that was agreed and we have added something that is now, I think, more in line with the intent of the Mover on this. I am saying I think it will be useful for the House if the Mover could now explain that deletion and substitution.

Hon. Speaker: Hon. Jayne Kihara, would you be desirous of explaining briefly to Hon. Sakwa Bunyasi the import of your amendment?

Hon. (Ms.) Jayne Kihara (Naivasha, JP): Hon. Speaker, this is a report that was debated in this House. As the Departmental Committee on Lands, we involved all the stakeholders who wished to have degazettement of that part of the forest. In Kamiti, there are more human beings living there. Government funds have been used to build schools. There are homes and boreholes. So, in essence, it is just a matter of normalising and meeting the constitutional requirement.

Hon. Speaker: Hon. Members, I will read the proposed amendment in full so that its import may be understood because the Mover also does not appear to indicate so that Members can be clear on what it is. As I have explained in my Communication, it is merely to make it possible to be implemented by the relevant agencies of Government to whom the Report will be directed. Let me just put the Question on the proposed amendment. There is no debate. Hon. Members, you have requested that I put the Question.

(Question, that the words to be added be added, proposed)

Hon. Members, having adopted the amendments, what remains is for me to put the Question on the Motion as amended.

(Question, that the words to be added be added, put and agreed to)

(Question of the Motion as amended proposed)

(Question of the Motion as amended put and agreed to)

Resolved accordingly:

THAT, this House adopts the Report of the Departmental Committee on Lands on the Inquiry into a Complaint by Kamiti Anmer Forest Squatters Association regarding allocation of Land LR. No. 8390 in Kamiti Anmer Forest, laid on the Table of the House on Tuesday, 18th June 2019, subject to deletion of recommendation 1 on page 16 of the Report and substitution thereof with the following –

“1. THAT, within 60 days of adoption of this Report by the House and in furtherance to the provisions of section 34 of the Forest Conservation and Management Act No.34 of 2016 (regarding variation of boundaries or revocation of public forests), the Cabinet Secretary responsible for Forestry initiates the process of degazettement and excision of land L.R.No.8390/Kamiti/Anmer from Kamiti Forest, measuring 169.7 hectares, for the purposes of settlement of the members of the Kamiti Forest Squatters Association, Kamiti Anmer Development Association, Muungano wa Kamiti Group and Kamiti Anmer Development Welfare Group.”

Let us move to the next Order.

CONSIDERATION OF SENATE AMENDMENTS TO PUBLIC-PRIVATE
PARTNERSHIPS (AMENDMENT) BILL

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to move the following Motion:

THAT, the Senate amendments to the Public Private Partnerships (Amendment) Bill (National Assembly Bill No.52 of 2017) be now considered.

By way of introduction for Members to follow, this Bill was passed by the National Assembly on 31st July 2018 and, thereafter, conveyed to the Senate in accordance with the provisions of Article 110(4) of the Constitution. Subsequently, the Senate took long and passed it with amendments on Wednesday, 20th February 2019 after about seven months. The amendments were later sent to the Departmental Committee on Finance and National Planning of this House on 5th March 2019.

This Bill is important because it wants to amend the Public Private Partnerships Act of 2013 in order to recognise county governments as distinct entities that can contract for public private partnership projects. With the guidance, law and support of the National Treasury, a county government can enter into a public private partnership project. To achieve this, the Bill makes provisions for guidelines to be made by the Cabinet Secretary to facilitate the manner in which a county government may deal with public private partnership arrangement.

The National Assembly proposed further amendments to the Senate amendments to Clause 2. There are New Clauses 4A, 5A and 20 of the Bill. The Senate seeks the concurrence of the National Assembly with the Bill in accordance with the provisions of Article 112(1)(b) of the Constitution. I am aware that the Departmental Committee on Finance and National Planning considered the Senate amendments and the Schedule from the National Treasury in order to

relook at the proposed amendments from the Senate. I am happy that the Chair of the Departmental Committee on Finance and National Planning is here.

As the Mover of this Bill, I am agreeable to most of the amendments proposed by the Senate. I thank them for improving the Bill. For the first time, they have made some very good improvements. However, I do not agree with seven amendments relating to Clauses 2, 4, 5A and New Clauses 20 and 70A. I am aware that the Departmental Committee on Finance and National Planning has proposed further amendments to the Senate amendments. Let me give the House the highlights so that as we go to mediation, we know what the bone of contention is. Why do we disagree with the Senate amendments? Mediation is provided for in the Constitution.

Clause 2 of the Bill defines the term “transaction adviser”. The amendment intends to retain the definition as it is currently in the Public Private Partnerships Act of 2013, which allowed the contracting authority to appoint a transaction adviser and give a unit basis for hiring that adviser. However, we disagree with the Senate because it proposes to delete that definition and substitute it with something else which is not in line with the current existing Act. I will propose that New Clause 70A be amended to include the Cabinet in addition to the institutions listed below.

Looking at the justification proposed by the Committee, it considered the proposed Senate amendments to the Public Private Partnerships (Amendment) Bill and proposed further amendments. Looking at the Order Paper, the Departmental Committee on Finance and National Planning is proposing further amendments to Clauses 2 and 4A. With regard to Clause 4A, the intention is to have at least three private sector members in the Public Private Partnerships Committee that will be formed. This will enable the Committee to draw from critical project-related professionals, among them engineers, lawyers and accountants on that particular project. When that Committee is formed, there must be three persons who will come from the private sector. The Ministry of Transport, Public Works and Housing has the State Department of Infrastructure and Housing, both of which are headed by Principal Secretaries (PSs). It is important for both PSs to be members of the Committee.

The Senate amendments to the proposed New Clause 5A will be amended by inserting the words “before signing a project agreement” immediately after the word “maintain”. The reason or objective behind this is that the timing of public participation is crucial to the implementation of any large Government project. The public must be involved as stakeholders. This amendment intends to ensure that public participation is carried out before any project agreement is signed. That is why when the Government engages in big projects like the Standard Gauge Railway (SGR), the Port of Mombasa, roads or energy projects, there are a number of people who go to court and say that public participation has not been done. This is to make sure that before an agreement on public private partnership project is signed by the Government and other private entities, public participation must be exhaustively undertaken.

As I give an opportunity to the Chair of the Committee to second and give a chance to the rest, I received a letter on mediation. I received a letter from the Law Society of Kenya asking me to attend a mediation that they want to hold between the Senate and the National Assembly on Division of Revenue Bill.

Hon. Speaker, I have the letter here. They have already appointed a mediation committee from their side led by Mr. John Ohaga who is the appointed lead mediator. I really want to tell the Law Society of Kenya that they have not read the Constitution. Mediation belongs to Parliament between the two Houses. The LSK is neither a member of the National Assembly nor a member of the Senate.

Two, LSK has enjoined into the case of the governors in the Supreme Court. So, they are not coming with clean hands. They are part of the case of the people who have taken us to court and then they want to come back and mediate. Secondly, they have invited the Speaker of the National Assembly and the Speaker of the Senate. The Speakers of both Houses do not sit in mediation committees. They do not have a vote. Mr. Ojienda wrote to the Speaker of the Senate on the Finance Bill. Senior Counsel Ojienda should know that the Finance Bill has no business in the Senate. The LSK is embarrassing the lawyers who are in this House. If you are here, please go back, put your house in order and tell your Chair that he has no powers to write to the Leader of the Majority Party. They should tell us where they drew their powers to write to the Leader of the Majority Party who draws his powers from Article 108 of the Constitution. They can write to Senator Orengo and Senator Murkomen. However, my office is a constitutional one.

(Laughter)

The LSK cannot purport to write to invite me to a mediation in a hotel when the mediation which is provided for in the Constitution is for the Speaker to read the Members and submit them to the Senate. The LSK President, Mr. Gichuhi, leads a team. The Member for Mathare is here. Mr. John Ohaga, Mr. Allen Waiyaki, Hon. Lusaka Kenneth Makelo, Sheila and Peter Kimuyu are part of the mediation. At least, I am happy. I hope my Speaker is not here. Mr. George Ooko and Mr. Issa Mansur who is one of my lawyers are the members of the mediation committee. I will tell him that he has been embarrassed. There is also Steve Ogolla. They have formed a mediation committee and the only Member who is here is the Speaker of the Senate who does not have a vote. He cannot be a member of a mediation committee. Mediation is for the Members of the National Assembly and the Senate. The Member for Tharaka is a senior counsel. He should tell his membership that they are behaving like.... Even the guys who run cattle dips in my constituency and borehole association members are doing better than them.

(Laughter)

Lawyers are many here like the Member for Mathare and Hon. Shamalla. Please talk to them and tell them that I will give this letter to the Member for Tharaka with my copy and tell him that they must respect the Office of the Leader of the Majority Party. They should not allow our Speaker to be in a mediation.

Hon. Speaker, I beg to conclude and say that this Bill will go for mediation and the LSK has no business in this. As the leadership, we will elect some people, you will read their names and you will send them to the Senate. I ask Hon. Limo, the Chair of the Departmental Committee on Finance and National Planning, who will lead our mediation team to second.

Hon. Speaker: Before Hon. Limo seconds, allow me to recognise the presence, in the Speaker's Gallery, of students from Embakasi Girls High School, Embakasi South Constituency, Nairobi County; those from Kithianioni Secondary School, Machakos Town Constituency, Machakos County; Huruma Mixed School, Mathare Constituency, Nairobi County; Ndururuno High School, Mathare Constituency, Nairobi County; Gatondo Girls Secondary School, Mathira Constituency, Nyeri County and those from Gathaithi Primary School, Githunguri Constituency, Kiambu County. They are welcome to observe the proceedings of the National Assembly.

Hon. Members, it is good to put the record straight. Article 122(2)(a) of the Constitution is very clear that when dealing with matters of voting in either House of Parliament, the Speaker

has no vote. That is categorically stated. Therefore, in a matter that is before the House of Parliament, even if you were to invite the two Speakers, they will merely come and perch at the back, listen and enjoy the tea that you will provide or whatever other beverages that you will provide and finally walk out without uttering a word because we are excluded from the process which can result in a vote taking. So, it is not useful at all to invite us. The process of mediation is clearly provided for in Articles 112 and 113 of the Constitution. Our role is limited to announcing the names or appointing the Members to sit in a mediation committee. This is just to make the record straight so that a few others who may have forgotten to look at the Constitution can go and update themselves. Hon. Limo.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Speaker, thank you very much for giving me this opportunity to second the Senate amendments to the Public Private Partnerships (Amendment) Bill which was moved by the Leader of the Majority Party.

Our Committee considered these amendments and we made some decisions to support some of them. We will move amendments to some of them and reject some. This particular Bill intends to recognise the county governments as an entity in PPP contracts which previously was not in place because they are fairly new. During the Committee of the whole House, we will move several amendments. We considered some of the amendments as unnecessary, but we will move them because of the normal behaviour of the Senate. Currently, they make amendments to ensure that something happens. Some of the amendments are straightforward. Therefore, the Leader of the Majority Party has spoken about most of them. We will move the amendments to Clauses 2, 4A, 20 and 70A during the Committee of the whole House.

I do not wish to add a lot of information to this Bill. I want to support what the Leader of the Majority Party has said. Anybody in this country is at liberty to participate during the law-making process, including the LSK. Therefore, they should be coming during the public participation or stakeholders' consultations. They should not wait until when the Bill is in the final stages and they say that they want to come in. They do not have any opportunity in law. It is the same way they are trying to come in the Division of Revenue Bill stalemate which is clearly not their role at all, unless they want to do further public participation which they can do outside. They cannot summon the two Houses which are recognised in the Constitution.

I urge the Senators to be very clear in their minds that this House has a role to play as stipulated in Article 95 of the Constitution. They should also read Article 96 of the Constitution on the role of the Senate. If there are some Senators who wish to be in this upper House, then they should identify a constituency and contest with the current Member of Parliament. If they win, they will definitely come to this House. There is no need of sideshows.

With those few remarks, I second.

Thank you, Hon. Speaker.

(Hon. Wilson Sossion entered the Chamber)

Hon. Speaker: Let Hon. Wilson Sossion take his seat.

(Question proposed)

Is Hon. Oluoch desirous of making a contribution?

Hon. Members: Put the Question.

Hon. Speaker: Is it the mood of the House that I put the Question?

Hon. Members: Yes.

(Question put and negatived)

Hon. Speaker: Next Order.

BILL

Second Reading

THE INDEPENDENT ELECTORAL AND BOUNDARIES (AMENDMENT) (NO.3) BILL

Hon. Speaker: The Chairman, Departmental Committee on Justice and Legal Affairs. Hon. Members, this is also an important Bill. Pay attention to what the Chairman of the Departmental Committee on Justice and Legal Affairs has to say.

Hon. William Cheptumo (Baringo North, JP): Hon. Speaker, I beg to move that the Independent Electoral and Boundaries (Amendment) (No.3) Bill (National Assembly Bill) No.35 be now read a Second Time.

Hon. Speaker, I agree with you that this is a very important Bill. I request my colleagues to take time to listen and understand its essence. The Independent Electoral and Boundaries Commission (IEBC) is one of the constitutional commissions as provided for in Chapter 15 of the Constitution. According to the provisions of Article 250(1), IEBC and all constitutional commissions should have a minimum of three commissioners and a maximum of nine. The Constitution sets the minimum and maximum number of commissioners. Section 5 of the IEBC Act sets the number of members of the Commission at seven. I am giving this background because it is very important for us to know where we are and where we are going. Under Section 5 of the IEBC Act, the Commission ought to have seven commissioners: the chair and six other commissioners. Four of the commissioners have since left the Commission, so we now have three commissioners serving the Commission. This has caused a number of serious questions among Kenyans and various institutions, including this House. Can three out of seven commissioners enable the Commission to undertake its functions legally and constitutionally?

Article 88 of the Constitution and the provisions of the IEBC Act mandate the Commission to deal with very weighty issues like boundaries delimitation in the country, an issue that will be coming up very soon. The Commission oversees elections. Recently, we had a number of by-elections undertaken by the Commission. Currently, there is a discussion in the country about a referendum and, recently the same Commission okayed the *Punguza Mizigo* Initiative. The Commission undertakes serious issues that require us to consider whether the existence of three commissioners as opposed to seven is tenable under the circumstances. There is, therefore, urgent need to fill the vacancies of the four commissioners who have since left the Commission. But there is a legal challenge. There is no legal framework currently through which an initiative and a process can be initiated to fill the vacancies. The law requires that when there is a vacancy arising in the Commission, the President is supposed to declare the vacancies and thereafter a legal process of appointing commissioners is undertaken. That is the challenge I want to address.

The amendment Bill before us seeks to deal with the situation where we do not have a legal framework that can enable and facilitate the appointment of new commissioners to fill the

four vacancies that arose. That background is very critical so that Members can understand the essence of the Bill.

The principal object of the Bill, therefore, is to amend the First Schedule to the Independent Electoral and Boundaries Commission Act, No.9 of 2011 in order to establish a selection panel to oversee the filling of vacant positions in the office of the chairperson and members of the Commission.

I wish to inform the House and the country that the current First Schedule only applied to the recruitment of the current commissioners. You may recall that we had a select committee drawn from the Senate and the National Assembly which developed a mechanism through which we established and appointed the current commissioners. A Selection panel was established to do that business. I would like to refer Members to Section 6 of the Third Schedule of the IEBC Act. The selection panel that was put in place at that time - for purposes of clarity, allow me refer to the section. It provides for dissolution of the selection panel. The selection panel shall stand dissolved upon the requisite appointment being made under Paragraph 4. Now, Paragraph 4 talks about the appointment of the commissioners by the President. When the selection panel concluded its work, it recommended names to the President and commissioners were appointed and their names were approved by the House. That was the end.

As we sit here today and as I address this House and the nation, we do not have a selection panel in terms of provisions of the First Schedule, Section 6 of the Act. Under this Bill, it is proposed that the selection panel comprises four persons nominated by the Parliamentary Service Commission and seven other persons nominated by the Public Service Commission, the Ethics and Anti-Corruption Commission (EACC), the Law Society of Kenya (LSK), National Gender and Equality Commission (NGEC), the Attorney-General, the Kenya National Commission on Human Rights (KNCHR), and Interreligious Council of Kenya. It is expected that the eleven-member selection panel is representative of the cross section of Kenyan society and that it is of value, and that it will heavily discharge its core mandate of shortlisting suitable persons for appointment as commissioners by the President.

If you look at the current law, all the selection panel members were coming from religious organisations. There is a complete departure now arising from the amendment. We have given two slots to the religious organisations as opposed to the current situation where all the members of the selection panel are from the religious organisations.

Article 118(1), as members are aware, requires that we subject all our laws to public participation. This Bill equally went before the Kenyan people and an advertisement was made. We received comments and views both oral and written from various agencies and persons. I do not want to go to details but the recommendations of this Bill in terms of the decision of the Committee were informed by particular public participation.

Section 2(a) seeks to amend paragraph (1) of the First Schedule to the Independent Electoral and Boundaries Commission (IEBC) Act of 2011 by increasing the number of persons to be appointed to the selection panel for the recruitment of the commissioners from the current nine to 11. Currently, the law talks about nine members for the panel. We are proposing in this law to increase it from nine to 11.

We are of the considered opinion that increasing the number of persons appointed to the selection panel will give Parliament and indeed President more opportunities to nominate and appoint selection panel members who represent the various ethnic, religious and professional diversities. We felt that the current selection panel members are from one sector of our society - that is the religious groups only. All the nine currently are from religious groups. We felt this is

not wide in terms of representation. That is why we widened it to bring in some constitutional commissions which have legal mandate to deal with matters in our country.

Clause 2(b) of the Bill seeks to delete paragraph 2 of the First Schedule and provide for the new selection panel of 11 members to comprise – and members should listen to this because this is now the composition of the selection as proposed in this amendment– four persons being two men and two women nominated by the Parliamentary Service Commission. Hon. Speaker, this is the Commission that you chair. There will be one person nominated by the Public Service Commission. That Commission’s mandate as we are all aware will service the interests of the public service in our country. We will give them a chance to nominate one person. One person will be nominated by the EACC and one person by the LSK. Unfortunately, this afternoon, the society received some bit of criticism from the Leader of the Majority Party. I was tempted to raise a point of order but listening to him, he had a legal point. Even to envisage a situation where the Speaker will sit in a mediation team was far-fetched. I believe they will not let us down when they have a chance to give us one person to serve in the selection panel.

Noting the role of the LSK in matters of law, it can give us a very useful contribution on that. One person will be nominated by the National Gender and Equality Commission that deals with matters of gender. It is going to help us have one person. One person will be nominated by the Attorney-General. There is already an amendment to that, and I will move it later. Then there will be one person nominated by the KNCHR and one person will be nominated by the Interreligious Council of Kenya. We felt later that we needed to increase that from one to two having reduced the 11 they had. I will move an amendment on that later.

The IEBC, while supporting the amendment when they appeared before my Committee, felt that the allocation of only one slot to the religious sector may make the sector feel under-represented and we agreed. We will be requesting for two slots from that group to be members of the panel and reduce one from the institutions there.

The Committee observed, therefore, that the selection panel for the first appointment of commissioners upon commencement of Section 5 of the IEBC Act of 2011 consists of the following... I have said before that all these members currently serving and those who left are from the religious groups. It is important for Members to appreciate that four persons, two men and two women will be nominated by the Parliamentary Service Commission. In the current panel, at least the Parliamentary Service Commission was allowed to nominate four. We retained that particular position in our amendment. There will be one person nominated by the Kenya Conference of Catholic Bishops; one person nominated by the National Council of Churches of Kenya; one person nominated by the Supreme Council of Kenya Muslims; the National Muslim Leaders Forum; one person nominated by the Evangelical Alliance of Kenya and one person nominated by the Hindu Council of Kenya.

Hon. Speaker, you will realise that apart from the four by the Parliamentary Service Commission, all the rest, under the current law, were religious leaders. We want to depart from that and give them two slots and share the remaining with the other institutions I mentioned.

We noted that there is need to review the composition of the selection panel in order to reduce...I do not need to repeat that.

We are pleading with the House to pass the amendment to that proposed section 2. Section 2(c) of the Bill seeks to delete paragraph 1(3) of the First Schedule and provide for a seven days’ timeline within which nominating bodies shall submit names for filling of vacancies to the office of the chairperson and members of the Commission. The current law as it is does not give a timeframe to the selection panel members within which to forward the names. If the

President declares vacancies available, they are supposed to forward names within a timeframe. The current law is open-ended. What we have done in this amendment is to provide for seven days so that if a vacancy is declared today, they will have seven days within which to forward the name of the person to sit in the selection panel. That is for clarity purposes and also to save on time otherwise, we will have an open-ended timeframe. Somebody can take a month and there will be no conclusion. This is important noting that we have had only three commissioners for over a year. I think it is becoming a bit unfair and untenable in the circumstances. So, we have said it will be seven days, within which those institutions should forward the names.

As I said earlier, there currently exists four vacancies and we have three commissioners.

(Hon. Speaker consulted with Hon. Abdulswamad Nassir)

Hon. Speaker, I want you to hear this, as you finish with the Chairman of the Public Investments Committee (PIC). I know the House hears but, I want the Speaker to hear. Though the Hon. Speaker does not have ears, he can hear. Hon. Speaker, I was so envious that I want to make a very important observation. It is important because you are the head of this House. I do not want this House to be accused, one day, of having left a lacuna in law for so long. This issue has two dimensions. It is both political and legal. Others will deal with the political issues, including you and all of us, but the legal issues will be addressed by this House. What we have today, under your leadership, so that the House is not seen to be part of the problem, we want to be seen to be part of the solution to the situation arising at the IEBC. That is why I call upon my colleagues today, to rise to the occasion and be counted as a House that shall be able to pass a law that will put in place the legal mechanism and framework of the selection panel. The duty of declaring vacancies available is not for you, it is not for me. It is not for this House, it is for another person. That will be dealt with at that level. Therefore, I plead with my colleagues that we pass this amendment law so that we are counted.

Finally, Clause 2 of the Bill seeks to amend Paragraph 16 of the First Schedule by substituting the words “the Parliamentary Service Commission” and “the Clerks of Parliament”. All we want to say is that it is the Parliamentary Service Commission (PSC). This is because secretarial services will be provided by the Office of the Clerk. We do not want to rule over members of that issue. We just say this will be done by the PSC.

As I conclude, I want to appeal again and tell Members this is our time to rise to the occasion and pass this law. I beg to move and request Hon. Shamalla, who is a Member of the Committee, to second this Bill.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. Before Hon. Jennifer Shamalla seconds, allow me to recognise the presence of more guests who have visited us from various institutions as outlined: students of Kagio Boys High School from Mwea Constituency, Kirinyaga County; students of Nduru Girls High School from South Mugirango Constituency, Kisii County; students of Milimani Primary School from Naivasha Constituency, Nakuru County; students of Kiptilit Primary School from Baringo Central Constituency, Baringo County; and, students of Conquerors Maua Primary from Igembe South Constituency, Meru County.

Proceed, Hon. Jennifer Shamalla.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Speaker. I rise to second the Bill. Indeed, I cannot add more than what our Chair has said. Indeed, it is extremely important that the lacuna in this Act is addressed as soon as possible. The onus is on this House.

As our Chair said, there is the political aspect and the legal aspect, which is the legislative aspect. We cannot afford to have this lacuna. I do not want to belabour that point.

With these few remarks, I second.

(Hon. David ole Sankok bowed in his place)

Hon. Speaker: Is nominee 001 standing or sitting?

Hon. Members, even as I propose this Motion, it is fair to appreciate what I said; that, maybe, we needed to have many of us pay attention to what the Mover was saying. As we know, the IEBC as established, more particularly under Article 88(4) thereof, has an enormous responsibility. It is not limited to dispute resolution among political parties but, they are also supposed to do continuous voter registration and continuous voter education. Certainly, I have not seen them trying to educate the voters. Maybe, it is because the voters only vote for two people. Maybe, they need to go further. It is this House which must rise to the occasion and make sure that that body is reconstituted at least in the manner proposed or in whichever other manner that the House may find appropriate.

More importantly, knowing that the process of putting in place the Commission has for a long time been left to some bodies out there which have no duty or obligation. I think the point that the Committee is trying to make is the one of now putting responsibility on constitutional bodies, State organs, to nominate persons to sit in the selection panel. I think that is an important aspect about which we would want to hear as many opinions as possible, whether this is a good idea or it should be left to those other bodies that sometimes congregate on Sundays, others on Fridays and sometimes others in workshops and in such like places. Will those be the ones to give you people to carry out such enormous functions of the IEBC as contained in Article 88, more particularly Clause 4?

(Question proposed)

I imagine that I can follow the order as established. This is a Member I was cracking a joke with earlier on because he has two interesting names, Hon. Mutua Barasa.

Hon. Didmus Barasa (Kimilili, JP): Thank you Hon. Speaker for giving me an opportunity to contribute to the Motion. I want to make it clear that I support the amendments.

The integrity of any electoral process cannot be overemphasised. We have lived in this country where we are told by a few individuals that winning an election is one thing but being announced the winner by the IEBC is the second thing. It is important that the IEBC undergoes reforms. Certain amendments are part of the reforms that this House should support. Even as I support, I would want the Committee to go beyond what they have done today because we have witnessed scenarios where whenever we approach a general election, because some people either fear the elections or they are not prepared for them, they hold the IEBC hostage.

They employ all manner of tactics to curtail the efforts of the electoral body to conduct a free, fair and credible election. That includes buying a few commissioners to resign at a critical stage of the electoral cycle. I will see if it will be possible, whether I can bring amendments so that it is not possible for an IEBC Commissioner to resign from his or her position at least one year to a general election. If an IEBC Commissioner resigns, then such resignation should be suspended to a further date.

I want to appreciate the reasoning of the Committee and its Chairperson, especially in coming up with a selection panel, so that the appointment of IEBC Commissioners will not rest on the shoulders of an individual or an organisation. We are going to tap into the intelligence of different people drawn from various institutions to give this country, IEBC commissioners, who will reflect the integrity that Kenyans expect from the electoral body. It is important that all of us understand that the integrity of the electoral process has got a lot to do with the individuals' credibility and integrity. Going forward, we will explore bringing more amendments to this Bill, so that if the IEBC Chairperson fails to announce the person whom Kenyans have voted and given the mandate to lead the country, he is punished severely to discourage such acts. This will help us move away from the notion that in this country, it is not Kenyans who decide who becomes the leader of their country. We talk of things like "the system." being responsible. I wonder what this "system" is.

So, we must ensure that we insulate the IEBC from manipulation by people that I may call "criminal gangs". If you want to manipulate a constitutional body like the IEBC, you are a criminal. We must insulate the IEBC from manipulation of the so called "system" and anything else. I want this House to debate this matter soberly. We do not want to pass laws that serve the interests of certain people. We should pass laws that are going to ensure that this country will go through an electoral process that is verifiable. It should be a process that will give a true reflection of what Kenyans would have spoken through the ballot.

With those few remarks, I support.

Hon. Speaker: Hon. Wamalwa.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Speaker. I rise to support the Independent Electoral and Boundaries (Amendment) (No.3) Bill. As you had clearly put it, Article 88 of the Constitution is clear in terms of the core business of the IEBC, that is, to conduct elections, referendum, and continuously register voters. I listened carefully about the selection panel. We know that the current Chairperson of IEBC and the current commissioners came to office through a selection panel. Unfortunately, the selection panel, upon the appointment of IEBC Commissioners, got dissolved. I am happy to note that in the current proposal, the selection panel will stay forever, so that in case of a situation of a vacancy arising, that selection panel will be available to conduct interviews. The IEBC is an important body. It cannot be a walk in walk out institution. It is not a toilet. We are aware that some of the IEBC Commissioners who were there walked out of IEBC, then four months down the line they came back with their handbags as if IEBC is a toilet. That cannot be entertained. If you do not report to duty, you must be replaced.

The Independent Electoral and Boundaries Commission plays an important role as far as elections are concerned and representing the sovereignty of the people. How I wish that IEBC appointments were based on the Inter-Parties Parliamentary Group (IPPG) model that was there before. If the National Building Bridges Initiative (BBI) will have a referendum, these are some of the things that some of us will propose. That, IEBC should go the IPPG way as it was initially.

When it comes to the general election, the big players are the political parties. It is important for the political parties to be given a position when it comes to nominating these commissioners. I know there is the issue of the Parliamentary Service Commission that is supposed to nominate four of them. I wish we had clarified this. It might bring confusion and abuse. We have talked about the issue of gender, that we must have two males and two females. In this Parliament, we have the Majority and the Minority side. So, Hon. Speaker, my humble submission is – because you are the Chairperson of the PSC – of the four, you clarify in terms of

gender. I request that you also clarify in terms of the Majority and the Minority. That will be important. It will play a critical role. The Committee Chairperson only mentioned the issue of the two males and two females. We have political parties under the current system of governance, the presidential system. If possible, if you will allow, when we go to the Committee of the whole House, we can amend the Bill for purposes of clarity. If we leave a loophole, then we have rogue PSC Commissioners coming on board – I am not saying that you are rogue, Hon. Speaker. You are the Chairperson – they might decide, because there is no clarity, to pick all the IEBC Commissioners from the either the Majority side or from the Minority side.

On the church, I know an amendment has been done. In the previous provisions, we had more provisions for the church because we have trust and faith that the church will not be biased in terms of interviews. Now, we have given them two slots yet we have many faith-based organisations in this country. For example, we have National Council of Churches of Kenya - NCCK, Kenya Conference of Catholic Bishops, the Pentecostal Churches and the Muslims. My wish was that because we have, at least four major ones, they should have had four slots. The moment you give them two, there will be a scramble and it will bring divisions. Where the majority of Members here come from, they have trust in the church. Churches may have committed mistakes here and there, but we know they are people of God. Most of the time, whatever they put across, they have a consensus. The issue of bias when you have religious institutions is minimal. I am questioning other commissions like the Ethics and Anti-Corruption Commission (EACC). What is it coming to do? There is a provision that the EACC has to nominate someone. Why? Theirs is to focus heavily on matters of corruption and economic crimes. When it comes to issue like elections, I do not think they should be there. They already have a role when it comes to Chapter Six of the Constitution on Leadership and Integrity. So, on the EACC, as we move on, I shall propose an amendment to remove them. They should not be given a slot. I do not see their connection and why they should be given a slot in the selection panel to nominate IEBC Commissioners.

On the Public Service Commission, I support them. In many other commissions, we have seen the Public Service Commission selecting commissioners. Personally, I would not have had a problem if the selection panel were to be replaced by the Public Service Commission and nominees from the Parliamentary Service Commission because when it comes to the general elections, the players are the people who come to this House.

On the Attorney-General, he is the chief legal adviser of the Government. I do not see value in him being there. I listened carefully when the Chairperson of the Departmental Committee on Justice and Legal Affairs was moving. I expected him to say something to justify why he is there. I am not for that. With the Law Society of Kenya it is okay. I support them being there. But on EACC and the Attorney-General, I am not convinced about them. As we move on, I will be able to bring amendments.

I am happy about the seven days. It is very good. Immediately you clear, you quickly forward, but there is a critical issue that has not been addressed. When it comes to the selection panel, there is a ranking of position one, two and three. I remember in the last selection panel, there were some allegations that a member from the Maasai Community was number one. We are told that they can decide who to go. How I wish we could have put in a clause that once ranking is done from number one to three, we should not leave any loophole or discretion. Whoever becomes number one should be the chair of that selection panel, the way it happened with the Judicial Service Commission. Once they forward, the President had no discretion to decide whether it is number one, two or three. There were critical players in this game.

Otherwise, I support the Committee. They have done a very good job. As we move forward and since the *Punguza Mizigo* Initiative and the Building Bridges Initiative (BBI) are going on, very soon, the immediate likely assignment the IEBC is supposed to do is to conduct a referendum. Hon. Junet says that we should oppose the *Punguza Mizigo* because we cannot reduce representation all over the world. You cannot turn counties into constituencies. That is completely out of order. You cannot claim that wards are supposed to remain yet constituencies have to be converted to wards. It is important for us to look at the Bill that has gone through wide consultation. It is a Bill that has gone through public participation and all-inclusive consultation like the BBI, which is composed of both the Opposition and the Government sides. We want Bills which are all inclusive, so that we do not have a headache if the referendum will be there. I am not saying it will be there, but if it will be, why not? Some of us want the parliamentary system, so that Cabinet Secretaries come from the House. We do not want Cabinet secretaries who do not respect Parliament.

I know I have talked too much. I support the Bill and we are going to bring some amendments when it comes to the Committee of the whole House. I support.

Hon. Speaker: Very well, obviously, Hon. Wamalwa is alluding to something which is a very old cliché, that there has always been a struggle where the citizens have always argued that there cannot be taxation without representation. That is why in the 2010 Constitution, the country saw it fit to dedicate a whole chapter; Chapter 7 of the Constitution, to deal with representation of the people. So, when you say that the great people of Turkana will be represented by two Members in this Chamber, then why is it that people have been yearning for more representation? I believe that is the point Hon. Wamalwa was alluding to.

Member for Tharaka, your county would have two Members if certain proposals were carried through.

Hon. George Gitonga (Tharaka, DP): Thank you, Hon. Speaker. I am 100 per cent sure that although Tharaka Nithi only has three Members of Parliament, it would not be comfortable for them to have two Members whatsoever. In fact, it has more than three, it also has a woman representative.

I rise to support the Bill on the amendment of the IEBC Act. It is important that we streamline the working of the IEBC. It is not certain how the affairs of the IEBC are being run especially by three commissioners. Initially, we had nine commissioners. There was an amendment to their Act and they became seven. After that, there were resignations and eventually three remained. Questions were asked as to whether three commissioners would run an independent commission. The commissioners initially were not sure of this and they agreed that they do not properly constitute the IEBC. Later on, they changed their position in accordance with Article 250 and said that a commission can be run by three commissioners. Good enough, that may be the legal position, but when it comes to actual discharge of important duties, especially of an independent commission akin to that of the IEBC, it is important that we relook at this and ensure that at all times, we have a sufficient number of commissioners to discharge their mandate as per the Constitution and the Act. They should ensure that the services needed in the country are given. It is important that we look into this Act and amend it, so that we can come up with the selection panel. The law should provide that the selection panel remains standing. The idea of the selection panel coming to an end after a recruitment is not suitable for the country. That is why we are in the problem we are in. We do have three commissioners and we are not able to select four or more to sit with the three to discharge their duties. Therefore, the proposed amendment is in line with the thinking of the people of Kenya.

We should always have a standing selection panel so that as soon as a vacancy arises within the IEBC, it is filled immediately and the workings of the IEBC continue unhindered.

I am happy with the proposals we have made and I have to point out that the Law Society of Kenya is one of the proposed members of the selection panel. I know the Leader of the Majority Party has cast aspersions on that society simply because he received a letter that he possibly did not read entirely. The function of the Law Society of Kenya includes advising everybody; the country, citizens, the Government and even aiding the courts on matters relating to the law. A lot of law is involved in IEBC work, in the persons who are supposed to be selected so that they can interpret this law from time to time and ensure that it is complied with. That member of the selection panel is supposed to fill that gap.

The Leader of the Majority Party has also given me the letter, which he asked me to return to sender. He told me the sender is the President of the Law Society of Kenya, but I believe he had not read it. This letter is from the secretary and the CEO of the Law Society of Kenya. The Law Society of Kenya is inviting certain persons interested in the Supreme Court Advisory Opinion No.3 of 2019. The letter is saying that it has already convened two meetings, invited people of interest to attend, so that it can mediate or arbitrate or whichever way, negotiate and reconcile the parties regarding the difference the National Assembly has with the Senate. No mediators and arbitrators have been appointed because what the Leader of the Majority Party read were people who attended the meetings. I think the Leader of the Majority Party is not happy with the fact that the Law Society of Kenya is involved in the advisory opinion in the Supreme Court. I was in the Supreme Court this morning and the Law Society of Kenya was clear that they are in these proceedings as *amicus curiae*. The work is to be on both sides, to listen and advise in a neutral manner and to advise the governors. They are the ones who have sought their opinion. They also need to advise the Senate, which is on their side, and the National Assembly, which is named as the respondent. As far as I am concerned, the Law Society of Kenya has not invoked Article 112 or Article 113.

Hon. Speaker: Hon. Murugara, it may well be that you want to advise the Leader of the Majority Party, but this is about the proposed amendment to the IEBC Act. The reason I allowed you is because I thought you were trying to justify why your Committee has recommended that the LSK be involved in the selection panel.

Hon. George Gitonga (Tharaka, JP): Thank you. I stand guided, Hon. Speaker. I was trying to justify that, in fact, the tirade we got from the Leader of the Majority Party may not have been factually correct. I stand guided. The reason the LSK has been included is as I have said, that we have to give advice both to the Government and the people of Kenya as far as the law is concerned.

As I support the Bill, which I think we should pass, it is important that we have a properly constituted IEBC for purposes of moving forward and discharging the very important functions which we have enumerated under Article 88 of the Constitution. There is talk of a referendum coming up and yet we do not have any referendum Act in this country. There is no such statute. If we are to have a referendum, which law would we invoke? This is the work the IEBC is supposed to get into including having a statute that we can use for a referendum that is publicly initiated, or parliamentary initiated, or initiated through a process like the one of *Punguza Mizigo*.

With those remarks, Hon. Speaker, I support. Let us move as a House and fill in the lacuna that has existed as far as this law is concerned and come up with a law that can guide the country when it comes to matters election. Matters election are emotive in this country. We

know that there have been various conflicts and disputes regarding elections. Therefore, it is important that we have an IEBC with credible commissioners who will be trusted by everyone in the country. This is why we have said that while the other selection panel was composed of majorly religious leaders, let us have just two or three of them. The rest of the membership should be from other important bodies.

With those remarks, I support.

Hon. Speaker: Member for Emuhaya.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Speaker. I wish to support this Bill from the outset. We need to constitute a full IEBC that can carry out its mandate. We also need to divorce Parliament from legal work and the politics that we do. Parliament should never stand in the way of what we should be doing, especially creation of a legal framework, like the Mover of the Bill indicated, so that we seem to be contributing to the absence of IEBC *per se*.

Currently as constituted, the IEBC meets its minimum threshold of three members, but with three commissioners, it cannot carry out its mandate properly especially the elaborate mandate that is put down in the Constitution under Article 88. Voter education includes continuous, massive processes that may not be carried by the IEBC as is constituted today. Remember there is also the issue of voter registration. As constituted today, the IEBC is a lame duck in a way. Kenyans cast aspersions and doubts on its ability to perform. As we go through the many processes of by-elections, Kenyans look at the commission as a lame duck. Therefore, I fully support this amendment.

I want the Committee to listen to only two things, which, later on, when we get to the Committee of the whole House, we will consider as amendments to the Bill. The panel we are going to constitute, though the earlier panel was *ad hoc* and, therefore, remained dissolved after carrying out its duty, must have a timeframe. Yes, it will carry out its duties and continue monitoring the events at the IEBC, so that when commissioners walk in and walk out, the panel will be available to replace them. But upon expiry of the term of the IEBC, that panel should also remain dissolved. This will bring fresh minds and make the panel dynamic.

I would also wish that the Committee relooks at the people who have been given the mandate to nominate the panellists. The EACC's mandate will be specifically to look at the data and credentials of the people nominated to the panel and those who the panel will nominate. It may not have a serious ground to be one of the bodies to nominate people to this particular commission. I notice with severe realisation that possibly this is a slot that should have gone to the workers of Kenya. They are very important people when elections are carried out. Their voice should be heard. Maybe we shall be making this amendment, not limited to a particular group of workers, but the holistic understanding of the workers of Kenya. I am sure my colleagues will also be making their suggestions on this in order to bring in groups that are serious stakeholders on the same.

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

*[The Temporary Deputy Speaker
(Hon. (Ms.) Jessica Mbalu) took the Chair]*

This is a good law at this particular time. The reason religious groups have many members on this panel is because we make this law during times of crisis. And during crisis

periods, we tend not to trust each other on both divides. Therefore, we take the burden of trust to the religious leaders. I am very happy with the Chairman that he is bringing this law at a time when the temperatures are fairly fair, so that we can make a credible law and have people who can do this work in a very fair atmosphere. Therefore, I fully support the reduction of the number of religious leaders nominated to the panel, though two is quite a few. Possibly at the Committee of the whole House, we should give them an extra slot because there are many religious groups in this country. Some of them tend to take the quick mantle immediately this comes up and then the small ones tend to be left out.

Hon. Speaker, without much ado, I support this Bill. Thank you for the chance.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Thank you, Member for Emuhaya. Before your intervention Member for Saku, Hon. Members, join me in welcoming, at the Public Gallery, visitors from MCK Maua School, Igembe South, Meru County, students from Olenkanae Primary School, Narok West, Narok Country, and pupils from Oloibormurt Primary School, Narok West, Narok County. Join me in welcoming, at the Speaker's Gallery, pupils from Baringo South Constituency in Baringo County. They are all welcome to observe the proceedings of the National Assembly. There is an intervention by Hon. Rasso.

Hon. Ali Rasso (Saku, JP): Thank you, Hon. Temporary Deputy Speaker. I wanted to raise an intervention on the matter of dressing in the House where one Member who belongs to a certain profession... Luckily, he has already left the Chamber before you picked him up. So, I rest my case.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Who was this Hon. Member? It could be Hon. Junet or yourself. It is good to mention the Member. Now that he is not here... Hon. Members, in matters dress code, you are guided by the provisions of our Standing Orders. Let us have the Member for Suna East.

Hon. Junet Nuh (Suna East, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to contribute to this Bill.

First, I thank the Departmental Committee on Justice and Legal Affairs for the efforts they have made to address this important issue. On the same line, I oppose the Bill completely. I do not think the issues contained in the Bill are likely to address the challenges this country once addressed in form of electoral reforms.

If you look at the provisions that have been made in the Bill in terms of the bodies that are supposed to nominate the committee that is supposed to come up with the names of commissioners, the only body that I have faith in as a person, and I think many Kenyans believe in, is the Parliamentary Service Commission (PSC). I do not think these other organisations such as the Public Service Commission (PSC), the Ethics and Anti-Corruption Commission (EACC), the Law Society of Kenya (LSK) and the National Gender and Equality Commission (NGEC) Kenyans may have faith in them. Some Kenyans do not and this is the beginning of divisions again.

You are saying one person nominated by the Interreligious Council of Kenya (ICK). These religious people are the ones who gave us the commissioners we have now. What new thing do you think they will bring which they did not bring last time when they were the ones chairing that body that was nominating people?

So, we cannot repeat one mistake after the other and expect different results. My view is that the major stakeholders in an electoral process are political parties. Those are the people on whose behalf an electoral body should conduct an election. Elections are not for religious organisations or the EACC. They are going to do elections for politicians who are contesting for

offices. So, I can agree with the P SC because they deal with politicians in Parliament when they are elected. So, they can have a role to play. These other commissions do not have any role to play in our politics. These are independent commissions under Chapter 15 of our Constitution, but some of them are quasi Government.

If you look at the Executive Order No.1 of the President that was released immediately after the elections, all these commissions are placed under certain ministries in terms of helping them execute their mandate. Some have been put under the Ministry of Education and others at the Ministry of Justice at the State Law office. Some have been put under the Ministry of Water depending on their functions. They are independent, but part of Government at the same time.

So, it is my considered opinion that we can do better than this. This is one organisation in which we have not got right for some time. We have had a new commission for each election. The commission that conducted elections in 2002 did not do the 2007 elections. The one that did the 2007 elections did not do the 2013 elections and so is the one that did the 2017 elections.

So, we must get it right this time round. Even if we are going to spend more time and interrogate the matter, we better get it right. We should not be in a hurry just to pick people from commissions. Who told you we have faith in the EACC or the LSK? Who is the LSK? I am not a lawyer and I do not understand what the LSK does in Kenya. It is only lawyers who know what they are doing. So, when you are talking about the LSK, the EACC and the Public Service Commission to nominate people to conduct elections, I do not have faith in those people and I am speaking on behalf of the people who elected me. I am carrying the sovereign authority from the people who have vested that in me. This is one issue that this country must get right this time.

They must get it right in the sense that there must be proper consultation, interrogation and we must have a proper Commission that Kenyans will have faith in and accept the manner they conduct elections. Look at the commission that was given to us by religious organisations, four members have run away and only three have remained. What is the problem? We did it in a hurry. These commissioners came into office barely eight months to the elections. We should have taken our time.

These bodies are all over the world and are not peculiar to our country. We have electoral bodies that conduct elections all over the world. Let us look at the best practice. There are countries that conduct better elections than us and there are those that we conduct better elections than. I am not saying that we do not conduct proper elections, but there are countries doing better than us and there are countries that we are doing better than. We must look at the best practise because these bodies are all over the world, so that we can see which one can do a good job for this country.

Some of the reasons Kenyans fight all the time is because of electoral disputes. Some people feel that elections were not properly conducted and others feel that they were properly conducted. We must abide by what the electoral commission has done, but it is also true that in the process of putting in place that body, we must do our best to have faith and confidence of the population. If you constitute this Commission in a manner that some Kenyans do not have faith in it, that will be the beginning of the problem.

Elections are just the end result, but what puts confidence in the minds of Kenyans is the process of identifying the people to conduct the elections. Once we get that right, the election will be done in a day. People will not be concerned about who conducts the elections. It is like devolution. I have been telling my colleagues that if devolution works the way it is required in the Constitution and every Kenyans gets their resources at the grassroots, they will not care who

will be the President of Kenya. Their issues will be sorted at the village level. They will not be concerned even if a disabled man like Hon.001 becomes the President. They will say halleluiah, he is a good man and after all, he knows how to speak. He has not told me he is contesting to be President. So, I am just assuming, but at one time, he talked about 2042. So, we will pray for him to reach that time. This Bill is timely, but I do not believe it has been done in a manner that will build faith and confidence in the hearts of Kenyans in having a proper electoral body.

I had requested the Chairman to stay a bit, but I think he has gone out shortly and will be coming back. It is my suggestion that we withdraw this Bill and do more consultation on how to have proper means and ways of coming up with an electoral body for this country.

To conclude, this body is so important that it dictates the future of our country. We have been having disputes for so long. We need to get out of that line. For our country to prosper, we must move away from electoral disputes.

With those few remarks, I urge the Chairman to withdraw this Bill. Let us have proper consultation and come up with a way forward. My view is that we should allow political parties to nominate people to this House to be vetted for suitability and give them the mandate to come up with a proper electoral body.

Hon. Temporary Deputy Speaker, I oppose.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The Member for Suna East, Hon. Junet Sheikh, is on record opposing. Nominated Member, Hon. Sankok David 001.

Hon. David ole Sankok (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. From the outset, just like my colleague, the Member for Suna East, I oppose the Bill. In the same breath, I urge the Chairman to withdraw it, so that we can hold further consultation. The member for Suna East said that I am disabled. I am a person living with disability and I have ability beyond disability. Again, I did not say I will contest for the presidency in 2042, but 2032.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): They say you are more able than disabled.

Hon. David ole Sankok (Nominated, JP): A person living with disability and not a disabled person. When you say a disabled person, then you have taken disability to be more than the person. So, you say a person with disability.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The Member for Suna East has heard for himself. Carry on.

Hon. David ole Sankok (Nominated, JP): We have ability beyond disability. By the way, my performance in school might have been better than yours, but your performance of running in the field would have been better than mine. So, you were disabled in the classroom and I was disabled in the field.

I oppose this Bill. This is an electoral process which involves Members of Parliament, Senators, governors and Members of County Assemblies (MCAs). These are the people who will be put to test. Why should we bring independent commissions, which have not settled to know their proper duties? They are not aware of the electoral process and are not affected directly by the end result of the electoral process. The selection panel should be an oversight authority to the IEBC. It will not only be terminated after the selection of commissioners, but will be there in case commissioners resign like the ones who resigned.

I believe with more consultation, the selection panel can become an oversight authority that will discipline the IEBC commissioners in case they mess up. Again, why should we have a representation of the EACC? For sure, what will they be doing in the selection panel? Already, the Bill has forgotten a whole constituency in the selection panel and even in the nominees to be

sent to the President and eventually to this House. They have forgotten a constituency called persons with disability; the 6.5 million of them.

In 2017, only 1.5 million registered as voters against the potential 2.6 million because of lack of accessibility to the IEBC offices and voting centres. So, most of them did not register. Some of them are visually impaired and others are deaf. We do not have sign language interpreters in polling or registration stations. We do not have information in braille for the visually impaired. That is why instead of registering the 2.6 million potential voters with disability, we ended up registering 1.5 million only. Only 800,000 of them voted in the last elections. This is probably because of lack of accessibility to polling stations.

This Bill does not mention anything about them. It mentions about the EACC, who I do not know what they will be doing at the selection panel and the National Gender and Equality Commission. I join Hon. Junet in saying that we should do more consultation.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. ole Sankok, there is an intervention. Member for Nambale, do you have an intervention?

Hon. Sakwa Bunyasi (Nambale, ANC): Sorry, I wanted to add my name to the request queue, so that I can contribute.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Member for Nambale, you know which button to use.

Hon. Sakwa Bunyasi (Nambale, ANC): Usually, I try all methods possible.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): You are trying to catch my eye. Order! You know the best way to do so is by pressing the right button. Nominated Member, please, carry on.

Hon. David ole Sankok (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker that is healthy interruption. There is also the Kenya Human Rights Commission (KHRC). Surely, in case of any dispute in the electoral process, we will run to some of these commissions. Now, they are the ones selecting commissioners. They are bound to have conflict of interest in case we call upon them to audit. On elections day, we have people overseeing the process and KHRC is one of them. The Law Society of Kenya is another.

We should not have such commissions in the selection panel. We should retract and rethink about this Bill and more public participation should be carried out. For instance, we should have the Council of Governors (CoG) and the caucus of MCAs nominating a representative and the bicameral parliament, which has four slots. So, the electoral process can be satisfactory to those who will be seeking elective posts.

One of the functions of the IEBC is to review boundaries. Those whose boundaries will be affected are Members of Parliament, MCAs, Senators and governors. If they are not satisfied, they have any doubt or do not trust the particular selection panel and the commissioners, then we will repeat what we have been witnessing as post-election violence after every electoral process. Kenyans are very peaceful before an election. We live together as brothers and sisters. We share salt and accommodation. We love one another and there is no country in the world that is so peaceful and democratic than Kenya. I can say that without fear of contradiction. Unlike our neighbours who have been having a lot of civil wars, Kenya has had four Heads of State. Two of them are alive and in retirement and living in Kenya peacefully. They have handed over power through a democratic process, but simply because of the IEBC commissioners whom we do not trust, as Hon. Junet has said, those who witnessed or managed the 2007 general elections did not manage the 2013 elections. Those who managed the 2013 elections did not manage the 2017 elections and the ones who managed the 2017 are the ones we are discussing. In 2022, they will

not be there. If we have a credible selection panel in place that all Kenyans trust, especially from the political class who will be affected directly that will fine. If the political class is satisfied, I can assure you that they will also be contented with the outcome. Kenya will be peaceful before and after elections.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): You said you are opposing. Hon. Members, in the normal manner and as is the tradition of the National Assembly, I take the opportunity to welcome pupils who are seated at the Public Gallery. They are from the Achievers Academy, in Sotik Constituency, Bomet County. Secondly, we have pupils from AIC Kaptich Primary School from Mosop Constituency, Nandi County. We also have pupils in the Speaker's Gallery from Kabarnet SDA Academy from Baringo Central Constituency, Baringo County. The last ones are from Ruby Kraft Primary School from Karachuonyo Constituency in Homa Bay County. The pupils from the four schools are welcome to the National Assembly to observe the proceedings of the Assembly. *Karibuni.*

Next is the Member for Saku.

Hon. Ali Rasso (Saku, JP): Thank you, Hon. Temporary Deputy Speaker. I support the Bill on the basis that we must start somewhere in making laws for this country. Also, we must improve on the existing laws. My clear understanding of the Bill before the House on the IEBC is that it is about improving on the existing law. I take cognisance of the issues that have been raised by Hon. Junet. He raised fundamental issues. If we say that the IEBC should be apolitical and should not take sides during an electoral contestation and we go further to argue that it must have political representation, then, of course, we are shooting ourselves on the foot on the grounds that IEBC becomes a political instrument for the parties of the time or of the day.

Hon. Temporary Deputy Speaker, IEBC is an important constitutional commission. It is through the functions of the IEBC that we are gathered in this august Assembly. It is because of the work it has done. Article 88(4) of the Constitution clearly outlays the responsibilities of the IEBC. In my reading of the Constitution, the IEBC is there because of Article 250(1). The Constitution says that each commission shall consist of, at least, three, but not more than nine members. Had this Article not been put in our Constitution, the IEBC should not be in existence. We should be asking ourselves how we conduct by-elections and other elections that are going to come about.

Issues have been raised. I want to add my voice on the same, particularly in terms of the panel of those we think we can give responsibility to nominate commissioners or sit in the nominating panel. As it were, this is just the Second Reading of this Bill. If we must negotiate or think through what has been suggested by the Departmental Committee on Justice and Legal Affairs, then we should give our proposals during the Committee of the whole House. Some of the fundamental issues that this Bill has attempted to cure are about timeliness. Today, four commissioners are missing. It is almost going to a year and no attempt is being made to replace them because there is no law in place that binds anybody, including this august House, on how they should be replaced. The President will do the final nomination before approval by this House, but the law does not give clear guideline on the point when the President will do that. The nominating panel is not in place. It has to be constituted. At what time will it be constituted?

I thank the Committee for coming up with that. The object of this Bill is to give legal backing to the matter of nomination of the selection panel. I just want to say one final thing which I believe the Committee can have a good listen to and think over. As opposed to having an IEBC of seven members being nominated at the same time, we can have a commission of three and four that overlap each other. In that case, if anything happens when one commission's time

lapses, the Commission will continue to be active. As it were, the idea of having one swoop of nomination of commissioners to an extent that if all of them resign at once, because they have been nominated as a group, then this country faces a constitutional crisis is not good.

Finally, I strongly believe that as the representative of the people of Saku, if we must have a good IEBC, we must begin to think apolitically. So long as the political parties have their hands in the Commission, we will always blame the wrong people for the wrong things in our elections.

I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. The Member for Kwanza is next on my request list, Hon. Wanyonyi Kevin.

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): Thank you for the opportunity, Hon. Temporary Deputy Speaker. I am looking at it very critically. The eyes of my constituency and the whole country are on me. The Amendment Bill No.35 of 2019 is very important.

We take things so lightly. Of course, we are serious in this House, but we are casually talking about the amendment of this Bill. Out there, there are pending by-elections, some of which are very unfortunate because of recent times. We should be serious, take the bull by the horns and make corrections where we are supposed to. Hon. Junet said something out of the blue which I quite agree with. We need to take this very seriously and come up with a permanent selection board to oversee the commissioners. A year has passed with only three IEBC Commissioners in place. What next if we are to have a by-election? It is very unfortunate. We are leaders. All eyes are focused on this House to come up with solutions. A year has gone by without commissioners. They are supposed to be seven or at most nine, but they are three. What are we doing?

I have been ambushed because I was not prepared for this Bill. We need to have a *kamukunji* and brainstorm the issue of elections and the IEBC. As it is, the stability of this country and the integrity of the forthcoming elections will depend on what we say here. Therefore, I believe and pray that the rest of the Members will go by what we suggest. Let us even have a *kamukunji* and go through this. Let us take our time, spend two or three days, look at it and exchange views. If we think we should have the NCKK and the LSK coming in, let us look at it exhaustively and agree. When we leave these things pending and God knows tomorrow we have elections, what will happen? People kill each other in this country because we did not do a good job.

At the end of it all, we should have a permanent selection committee that deals with any vacancy that arises out of death or anything else. Four commissioners resigned. I do not know where they went. They want to come back through the back door. We have refused because they resigned for a reason. Some of them had very legitimate reasons. We should have a permanent selection committee to fill the gap. We need to have a *kamukunji* and invite the Senators. We need to talk and find the best way forward. Will we have political parties forwarding the names? We can do that. Can religious leaders do that? The bodies are there. We have Catholics and Protestants. They can do so. If it is the best way of doing it, let us do that. Can the LSK assist us? We can do that. Let us exhaust that option before we start debating whether we should pass this Amendment Bill or not.

With those few remarks, I am opposed to this Amendment Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): For the Members who have just walked in, we are on Order No.11 on the Independent Electoral and Boundaries Commission (Amendment) No.3 Bill (National Assembly Bill No.35 of 2019).

I now give the Floor to the Member for Sirisia, Hon. Waluke.

Hon. John Waluke (Sirisia, JP): Hon. Temporary Deputy Speaker, from the outset, I oppose this Bill. We need to say enough is enough in this country. Elections have caused deaths of innocent children who were not supposed to die. Because of bad governance, elections and people with interests, we lost so many people in 2007 and partly in 2017. We will not impress some people by saying that we need to increase the selection panel from nine to 11 yet we are talking about reducing the wage bill. I suggest that we look for the four commissioners who resigned to add to those who are already there instead of wasting time and money which is not helping this country.

Most of the commissioners we select are lawyers.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order, Hon. Member for Sirisia. Just be seated. There is a point of order by the Member for Ndaragwa, Hon. Jeremiah Kioni. Hon. Jeremiah Kioni, prosecute your point of order.

Hon. Jeremiah Kioni (Ndaragwa, JP): Mine is just a quick one. I would like to ask the Member to remove the thing that is in his mouth. It may make it easier for us to hear what he is saying. He is chewing and speaking at the same time.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): What is out of order?

Hon. Jeremiah Kioni (Ndaragwa, JP): It is not in order. The Member has heard. I do not think he is in order to speak to us...

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): You need to speak to the Speaker. I must rule on whether it is a point of order.

Hon. Jeremiah Kioni (Ndaragwa, JP): Hon. Temporary Deputy Speaker, I do not think it is in order for us to make contributions on the Floor while we are also eating. Chewing is eating.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Member for Sirisia, you have been addressed by the Member for Ndaragwa. He wants to hear you well.

Hon. John Waluke (Sirisia, JP): Hon. Temporary Deputy Speaker, he just wanted to interfere with my contribution. Now I am better. Maybe it is my tongue.

Hon. Temporary Deputy Speaker, I am opposing this Bill because we have lost so many Kenyans. People have interests in the IEBC. Every time we have elections, we nominate new commissioners to the IEBC. This country has a finance problem. To the *Punguza Mizigo*, we need to limit the number of the commissioners and the selection panel. For example, the Committee has proposed to increase the number of the selection panel from nine to 11 without giving a proper reason.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Member for Sirisia, we have an intervention again by the Member for Baringo North. As a procedure of the House, I will give him an opportunity to prosecute what is out of order.

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Speaker, what is before the House is the Independent Electoral and Boundaries (Amendment) Bill which seeks to establish a selection panel. The Member is talking about reducing the number of commissioners which is completely not an issue in the Bill. Is he in order to mislead the House that we are discussing the reduction of the number of the commissioners? What is before the House is the number of the selection panel, but not the commissioners.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): You are asking whether he is in order to debate the wrong information. Did you want to give him the information?

Hon. John Waluke (Sirisia, JP): It was a point of information, but it is not good information because I said that he has proposed to increase the number of the selection panel from nine to 11 and it is written here. I said he should give a proper reason why he proposed to increase the number of the selection panel.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. If that is what you have observed, the Chair has heard you. Hon. Members, let us debate from an informed point. Carry on.

Hon. John Waluke (Sirisia, JP): That is what we are debating on, Hon. Temporary Deputy Speaker.

As I finish, we need to make sure that the people we nominate from the church, as the Committee has proposed, are people the country has confidence in. We need to have confidence in the Commission because it is for the election of the people. I was a victim. I won the election in 2007, but I did not come to Parliament. The Judiciary has changed a little bit because of the Constitution of Kenya 2010. If you filed a petition before, it could take even five years. My petition took five years just because of theft. Some commissioners collude with relatives. We are not here to allow anybody with interest to be nominated to the IEBC.

With those few remarks, I oppose the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Hon. Members, this is a House of debate. The next Member on my request list is the Member for Ndhiwa, Hon. Martin Owino. Take the Floor.

Hon. Martin Owino (Ndhiwa, ODM): Thank you so much, Hon. Temporary Deputy Speaker. I really appreciate this time so that I can add my voice to this Bill. First of all, I want to thank the Chair for a lot of work which he has put into this Bill. This is a timely Bill. However, with due respect to the Chair, we have to do things rightly. For the past 20 years, electoral process has brought a lot of pain to the society in this country. In the last election, I lost a lot of people through brutal death in my constituency. Some people became jobless because companies slumped, the economy went down and many were disabled. The rivalry and enmity scaled up. If it were not for the wisdom of the President and Hon. Raila, we would still be on that path because of the mismanaged election.

The Bill is timely. In the previous one, we put a lot of religious leaders to be in charge. When an election is bashed, it is politicians who are mostly affected because they represent people. When they are affected, they come to us for various reasons. So, we are the stakeholders in this Bill. I am happy with one point that the Parliamentary Service Commission is involved because this is an umbrella for all of us. If you go further, civil servants have conflicts. If they are involved in selection and then later on, things go wrong and they are involved again, you still have a mess in your hands. The reason the Members are opposing the composition which the Committee has put forward is that we may not get much out of the current status. Some will be easily influenced because they are within the system. There is a quote which was said by Mr. Larry Sabato that: "Every election is determined by the people who show up." Most of our elections are determined by the people who run them, which is quite the opposite.

The reason we are posing this to the Chair is that the Bill needs substantive negotiations and deliberations. Let me put it this way: You cannot squeeze lemon and expect to get orange juice. From the word go, if we do not get it right, for example, if we do the nomination in the wrong way, we will end up with the selection in the wrong way. We will appoint the wrong people and the election will be botched. That will affect the Judiciary. It will affect the Legislature because of representation and governance, which is the Executive. Therefore, we will

have a problem. As I was going through the Bill, I saw that many countries have tried. Those who come from an authoritarian regime cannot accept any public servant to be in that body because they were oppressing them. So, they use the multiparty broad-based selection which is a different kind of area. For example, if you go to Romania, legislators appoint the chair of the electoral commission because they know what it is if elections go wrong. In Australia, the chair of the electoral commission is the executive officer because sometimes it needs a hands-on operation. For example, in one of the committees in this House, we talked about wrong procurement by the executive director without the chair knowing what was going on.

We need to withdraw this Bill and rethink it properly including the roles of the people. In this set up, we have the secretariat doing their own things and the chair blaming them for what goes on. So, there is nobody totally in charge. With that kind of operation, obviously, we cannot get the best. In other set ups, the legal fraternity is very key and should be maintained, but we also have to look at logistics. We should not just have commissioners - they should have specific skills. Most elections fail because of logistical issues. Management skills and candidates who merit ought to be considered.

After the selection, I do not know how we are going to appoint people who can maintain integrity under pressure. That is what has been lacking in all the elections. People who get compromised and swayed affect the outcome of elections.

I respect what the Committee has put forward for us, but I appeal that we relook at the Bill because it is very critical for the country. I know we cannot overhaul what you have done for us, but if it is withdrawn, we can rethink it and do it better.

With those remarks, I oppose.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Nominated Member, Hon. Godfrey Osotsi.

Hon. Godfrey Osotsi (Nominated, ANC): Hon. Temporary Deputy Speaker, thank you for giving me an opportunity to contribute to this Bill. From the outset, I join my colleagues in opposing it and urge that we consider withdrawing it. I am saying this because we have three Bills before the House which have gone through the First Reading, namely, a Bill by Hon. Jude Njomo, one by Hon. Kioni and a third one. These three Bills seek to do the same thing, to solve the lacuna in law on appointment of commissioners when a vacancy arises. This brings to light two issues. The first one is on the clear interest in resolving the problem of appointment of commissioners, especially subsequent appointments. The second one is how we handle legislation in this House. There must be a problem somewhere, maybe in the Legal Department of Parliament, because we cannot have three Bills with the same content coming to the House at different times. This is what we call over-legislation. So, there is a problem somewhere, but most importantly, I object to the Bill because elections are key in the country.

As Members have said, people have died because of elections. As representatives of the people, we need to find a solution. The solution cannot be found through half measures or coming up with piecemeal legislations. We need to sit down, look at the issues around elections and come up with proper legislation to deal with the problem of elections once and for all.

After the 2007 General Elections, we brought Justice Kriegler who did a very wonderful report. More than 60 per cent of what was recommended in the Report has not been implemented. Most of the issues raised in it are solutions to the problem we have in elections management. Why can we not start from there? I challenge the Chair of the Departmental Committee on Justice and Legal Affairs that it is not proper for him to bring an Amendment Bill

to the IEBC Act by only highlighting one issue when we have many others that we need to look at.

On the selection panel, I join my colleagues who have opposed its composition. It is composed of a nominee from the LSK, the PSC and the Attorney-General. Elections in the world have become electronic. Even at the IEBC, one of the problems we had was electronic transmission of results. We cannot have people selected to manage our elections who do not have an understanding of electronic management of elections. I expected that one of the people to be considered for appointment to the selection panel is an individual who understands ICT and electronic management of elections. We expected to see the Institute of Certified Engineers or a professional body representing people who understand issues to do with IT. They are not represented here. So, we are going to end up with the same problem we had in 2017 where the focus was on one junior officer at the IEBC handling computers. That is a problem that needs to be addressed here. Otherwise, one of the challenges we have in the country is that in every legislation, there is the inclusion of a person from the LSK. We have other professional bodies in the country that are ignored like the engineers who have a wide understanding of technology. We even have policy experts who should also be involved. But if in every legislation that we bring into the House we are talking about lawyers and the PSC, we will be moving in the wrong direction.

One of the amendments that the Committee should have considered, and I am glad Hon. Kioni has included this in his Amendment Bill, is the review of boundaries. Article 89(2) of the Constitution provides that the IEBC will review the names and boundaries of constituencies at intervals of not less than eight years and not more than 12 years. There are challenges and obstacles that need to be resolved to make it happen. For example, from next month starting tomorrow, the IEBC will start the process of boundaries review by coming up with a preliminary report. Have we provided funds for this exercise? What has been done so far? Have we looked at the relevant documentation to support this? The answer is no. We need to deal with obstacles. Otherwise, this process will become a major election issue as we head to elections.

I oppose this Amendment Bill on the basis that we need to have a comprehensive election management regime by looking at all the relevant laws that will support an efficient, free and fair election. At the same time, I ask the committee that was appointed by the former Prime Minister and the President, the Building Bridges Initiative, to hurry up because they are delaying Kenyans. They need to bring a report. One of the issues that have been identified in the nine-point agenda is the issue of elections. They should bring their report, so that we can look at it and work on the issue of elections once and for all.

With those few remarks, I oppose. I ask that this Bill be withdrawn.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let me hear the Member for Kitui County.

Hon. (Ms.) Irene Kasalu (Kitui CWR, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to add my voice to this Amendment Bill. I oppose the Bill. The election process is a very critical exercise for every country. It is very important to have it based on the best practice that can be trusted by all the people. The principal aim of this Bill is to introduce a selection panel. While I feel it is very important to have it as there is always need to improve and fill vacuum in our existing laws, its introduction alone cannot heal the electoral problems in this country. I feel there is need for more consultations to find out exactly what ails the electoral system in this country and come up with a legal framework and hence substantial amendments that will bring a seamless and trustworthy electoral process.

As my colleague has said, there are issues like boundary reviews, water-tight election results transmission and many other obstacles that need to be looked at. That is why I feel this amendment is not well thought out and needs not be passed. Hence, it should be withdrawn.

With those remarks, I oppose.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let me hear the Member for Igembe North, Hon. Maoka Maore.

Hon. Maoka Maore (Igembe North, JP): Thank you, Hon. Temporary Deputy Speaker. I was just getting restless about the chorus of opposing voices on a Bill that is very clear, and which seeks to address a national crisis. It behoves leaders to understand when there is an attempt to address a crisis and when it is time to engage in talk. I want to plead with those who are saying they are opposing to think through what they are saying.

The Departmental Committee on Justice and Legal Affairs has made an attempt to tell us that we are having a crisis; that in case you wake up tomorrow and one of those commissioners decides to quit, you have a crisis. That is what is only being addressed. That we need a mechanism on which to replace the quorum of at least seven commissioners. You are not invited to overhaul the electoral process or electoral law. We need to praise the Committee and its Chair for having seen that vision and brought this idea to the House. It is upon Members at the Committee stage to bring amendments with a view to bring agencies, organisations and individuals they want on board, but they should not attempt to say that they are throwing away this initiative. We should not fear to legislate, or legislate out of fear. Those are two bad ideas.

I have been a participant in the last six elections. As Members have said, there is no electoral body which has presided over two elections. Chesoni did 1992 and Kivuitu came in. If you follow that sequence, you find that every time there is a complaint about a referee, even the ones you are going to appoint for the 2022 general elections will not preside over the next one because people do not feel comfortable about a referee who has not announced them the winner. That is exactly what we are invited to do. Let us try to stem a crisis when we are staring at it. Even if you bring the initiative of the BBI or *Punguza Mizigo* or the boundaries commission, you cannot have three commissioners to deal with the boundary review issues and three others to run the election when they are not there.

I want to ask my colleagues that we navigate over these murky waters. We have a responsibility as leaders. We are here to legislate and not to run away from legislation or to wish a withdrawal of an initiative. Let us amend the initiative. Let us tighten it up. Let us bring on board the ideas we have. We have the numbers and the brains to discern upon civilised discourse on what is right for this country. At the moment, what is not right is to assume that we are having no problem at the IEBC. It is a crisis. This is a Bill that should have come earlier to address this crisis. Now that it has come, let us, as a House, reflect and treat this matter with the urgency it deserves. The only way to do it is to learn how to go through a challenge like this one. When you have a challenge, if you swim downstream, you are doing nothing because even a corpse can do it. So, you swim upstream. This is one such moment. I want to ask Members to recollect themselves to think of how we should get out of the crisis and not to run away or postpone it. We should not wish it away because any attempt to oppose this initiative is wishing it away. Members have choreographed “I oppose, I oppose” even without knowing the details of what they are opposing.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. You support. Member for Mogotio, Hon. Kamuren.

Hon. Daniel Tuitoek (Mogotio, JP): Thank you, Hon. Temporary Deputy Speaker. I stand to oppose the Amendment Bill. First of all, elections in Kenya have brought a lot of violence and great suspicion on IEBC. As my colleague has just said, we have lots of suspicion on the referees who conduct general elections every five years. We have never got it right. Even the IEBC commissioners resigned halfway through the last elections. It was a sad affair. Credible elections in Kenya is key to getting the right leaders to lead this nation.

Having the right men and women in the selection panel is very important. The panel should be agreed upon by a wide consensus of society. I also believe that every year we get new members of the panel that also may be a problem. We may need to think about staggering the membership of the panel, so that, at least, we have half the team serving at a given time. As we limit, let us say they serve for five years, but they should serve slightly beyond that, so that they can have institutional memory of the previous actions of the panel.

There was the argument that maybe not all institutions or interested parties may be included through this particular amendment. It may also be necessary to see whether political parties can also be considered to have at least one or two members, especially the key political parties with parliamentary representation. Those could be allowed to nominate a member to the panel. We do not need to have the 11 commissioners as such. I remember the 1997 Inter-Parties Parliamentary Group panel had around 29 persons. There was a lot of suspicion at that time due to the fact that every interested party felt that they needed to be represented in those panels. I think we saw a bit of a harmony in the election of 2002. There was a bit of consensus and the election of 2002 went on very smoothly. So, I think a broad-based representation in the panel is very important. Therefore, the amendments should be instituted after wide consultations.

I, therefore, support the withdrawal of this Bill to allow for more exhaustive consultations. I beg to oppose.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Member for Mukurweini, Hon. Kiai Githiaka.

Hon. Anthony Kiai (Mukurweini, JP): Thank you, Hon. Temporary Deputy Speaker. I stand to support the Bill.

The main principle of this Bill is to amend the First Schedule of the IEBC Act so that we can establish a selection panel to oversee the filling of vacant positions in the Commission. The current panel did its work. After that, it was done with the work. What we are aiming to do by amending this Act is to have a panel that is there all the time and ensure that, in case of any vacancy in the IEBC, it is always filled up as quickly as possible.

You will realise that the Constitution of Kenya provides that the quorum for any commission is three, but then the enabling legislation in so far as the IEBC is concerned says that it is supposed to be five commissioners. What happens in this situation is that the Constitution will always prevail. When the IEBC appeared before the Departmental Committee on Justice and Legal Affairs, it agreed with the Committee's position that they can only do so much, but do not carry out the mandated work completely and in totality. Why is that the case? It is because, as three commissioners, all they can do is administrative matters. They cannot engage in policy matters. We have critical issues that are before the IEBC, and one of them is to manage the electoral process in this country, especially the general election. They also have other critical functions to carry out like the intended forthcoming referendum. In a situation where there are three commissioners in office, as much as we are saying that it can carry out some functions, it cannot be able to effectively carry out its mandate.

*[The Temporary Deputy Speaker
(Hon. (Ms.) Jessica Mbalu) left the Chair]*

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

We are aware of the situation that has obtained in this country about the validity or otherwise of having three commissioners sitting in the office. We have seen, every year, how the process managed by the IEBC will obtain in the next five years. It would generate either calmness or a lot of heat in the country. The main aim of this amendment Bill is to ensure that the political temperatures in this country will always remain calm; and that political temperatures in this country will not escalate into what we have seen previously. It sometimes results to deaths of innocent citizens.

In the panel that is intended, we have tried to look for fairness and wide distribution in so far as selection of the members is concerned. It is to reflect the face of Kenya. You will agree with me that the IEBC is supposed to be apolitical; it is supposed to be non-partisan. The reason why we cannot have a panel to include members of political parties is to ensure that the non-partisan position of IEBC is maintained. It is not only that. If we were to do that, which political party do we select the panelists from? Is it from Orange Democratic Movement (ODM) or Jubilee Party? Political parties change as fast as a lightning strike, every other year we hold elections in this country. Today you have the National Super Alliance (NASA) and tomorrow you have the Coalition for Reforms and Democracy (CORD). We change every other day. Therefore, we cannot tell how the political landscape will be tomorrow in terms of political parties. As a member of the Departmental Committee on Justice and Legal Affairs, it is something that we really sat down about, deliberated on and thought through. We need to cure this violent cycle that occurs every five years. Members may be saying that we need to sit down and discuss this issue and that we need to be more inclusive. But we must start somewhere. We are saying that, as the Committee involved in the legal affairs of this Parliament, we have set the ground. We have set the starting point. We have a starting point. We can now discuss the other issues that flow from there.

So, it is my humble submission that the malaise that has been affecting each election cycle after every five years will be cured. It needs to be cured so that, going forward, elections in this country will not be seen as a matter of life and death.

I support.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Let us have Hon. Okuome Adipo, Member for Karachuonyo.

Hon. Adipo Okuome (Karachuonyo, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. The election system in Kenya has given the country a very bad and hard time in each election year. We need to be very careful when we are handling an issue that is connected with elections. I acknowledge that the Committee did a good job. There is no question about that. But it is the question of handling the election system in piecemeal that is my concern. We need to handle the election system in total, at one time. That is so that we can marry each bit of it with the other. That, in my opinion, will be the only solution. I say this knowing that, from the year 2013, Kenya has never been peaceful during election time. By the end of each election, we remain to bury our dead; people mourn everywhere; some

remain with no homes to go to and some sleep in the streets, just because of the election. Why should we be a country that begins to count our deaths even before the election because we know for sure that the election will leave us with deaths? Because of that, I would say that we look at the election system, the panel they have proposed here, the actual members of the commission and even the system we should use. For example, could we use a biometric system in the elections? We have tried this manual system. We know what happened. It was a failure. We have tried a mixture of manual and electronic systems. We know what happened. So, we need to go a little further.

We need consultations with countries that have been successful in conducting elections. The Committee can visit those countries and borrow ideas from them. This is a serious issue. So, when I talk of opposing it, it is not really opposing *per se*. This Bill can be withdrawn for the purpose of making it look into all our problems in elections. One thing the Committee has proposed, and which is good and I support it, is leaving the political parties out of the selection panel. This is a good effort in trying to give the IEBC Commission its independence as the Constitution provides.

I do not oppose this Bill in total, but I support part of it. I am proposing that it be withdrawn, so that the Committee can widen its net to catch all the problems that we have in the electoral cycle, from the beginning up to the end. After working on the Bill, we can face the elections feeling happy and hopeful as a country. With that, we will do well. If you can recall in the year 2003, for the first time in the history of our country, Kenya was reported to be the most optimistic country. That it looked into its future with happiness and believed everything would be well. That was because the elections in that year were good and there were no problems. I wish we can have that kind of situation in Kenya again, so that we can be a country that will be proud of itself.

I wish to ask for the withdrawal of this Bill to make it better and pass it when it is comprehensive than the way it is.

Thank you.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Hulufu Oda.

Hon. Hassan Hulufu (Isiolo North, KPP): Thank you Hon. Temporary Deputy Speaker. I stand to support this proposed amendment Bill. This is an amendment that ought to have come earlier than today. As we debate it, as a nation, we should be cognizant of the fact that we are sitting on a potential crisis. Today, the IEBC has only three commissioners. That is the minimum acceptable number as per our Constitution. We know that the IEBC is one of the constitutional commissions according to Chapter 15 of the Constitution. One of the objects of having those 10 commissions, along with two independent offices, among many other things, is to protect the sovereignty of the people. If you look at the 10 commissions, the one with a difficult task of protecting sovereignty is the IEBC because of its mandate of supervising elections.

The IEBC is required to be independent from direction and control from any authority or person. That is part of the reasons why Members are opposing this Bill. They fear that, because of the composition of the selection panel, the appointment of commissioners may be skewed in favour of, probably, a particular political party. Therefore, the IEBC may not be that independent. Personally, I have those fears. However, I know we will have an opportunity to propose amendments to what is being proposed at a later stage. For that reason, I support this amendment Bill.

Today, what has helped us is the provision of Article 250 in our Constitution, which requires independent commissions to have a minimum of three commissioners and a maximum

of nine commissioners. That is what has helped the three commissioners who were left to run the IEBC and carry out administrative duties. They have expressed their constraints in terms of looking at policy issues. However, at the time we had the four commissioners resigning – we are Kenyans and we have to be frank with ourselves – most of those resignations were triggered politically to cripple the IEBC. Before the handshake, if we are true to ourselves, we are aware that our own Departmental Committee on Justice and Legal Affairs had been asking those commissioners whether truly, they were able to execute their mandates and whether it was prudent for them to consider resigning so that the IEBC Commission could be reconstituted. We are living in this kind of situation.

There have not been election results that have not been contested from the time we started multiparty politics in the year 1992. We all desire an IEBC that is going to be fair, impartial and independent. Personally, even though I am supporting this proposed amendment Bill, I am not comfortable with the suggestion on the composition of the selection panel. We are all aware that the current IEBC commissioners were selected during a difficult time when there was a lot of tension in the country.

The religious agencies nominated some panelists that helped us to inject some aspects of trust in the electoral process. Therefore, suggesting that we limit the number of slots for the faith-based agencies from the current five to two is something that I am not comfortable with. I am sure that, probably, we shall have an opportunity to debate that at a later stage of this Bill. If we trust religious agencies during national crisis, there is no reason why we should water down their participation in the selection of future IEBC Commissioners. You never know! Even though there is no tension today – and thanks to His Excellency the President and the Rt. Hon. Former Prime Minister, Raila Odinga for the handshake that has stabilised the country - we never know what the future portends. Therefore, we cannot imagine that because there is no crisis, we can water down the role of the religious agencies. I am comfortable with how we used to nominate the selection panels previously.

The other thing that has not been factored in the old Act and which we need to support is the aspect of timelines in terms of how the nominating bodies can submit their nominees and the timeframes within which the vacancies in the IEBC Commission can be filled. I would like to particularly thank the three sitting commissioners for staying put. It is the courage of the IEBC Chairperson, Chebukati and Commissioners Abdi Guliye and Boya Molu that has helped us to avoid crisis. You can imagine where we can be if one of them decides to resign today or – God forbid – if anything happens to one of them and we have less than three commissioners. I particularly want to pray for them so that, until we find a solution to this potential crisis, God keeps them well.

I, therefore, want to support this amendment Bill. On the issues that I am not comfortable with, we shall try to see how best we can have them amended at a later stage.

Thank you.

The Temporary Deputy Speaker (Hon. Patrick Mariru): We shall now have Hon. Oduor Ombaka, Member for Siaya County.

Hon. (Dr.) Christine Ombaka (Siaya CWR, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I am not going to say whether I support or oppose this Bill. I believe that consultations on this Bill have not been adequately done considering the fact that I belong to the Constitutional Implementation Oversight Committee that is currently discussing this matter. Yesterday, when we met, we were talking about the selection panel. We have not completed our discussions on that to make any recommendations. I believe

that there are many individuals, even in this House, that are interested in making some amendments to this. Before the Justice and Legal Affairs Committee comes up with this Bill in this House, it would be necessary for them to consult with Constitutional Implementation Oversight Committee and other individuals. Then we can collapse all these good ideas and discuss them in this House in one big go, so that we can come up with what is necessary for this country. What I oppose is the discussion of this Bill in this House as at now before having consultations with those other bodies. What I support is the content. So, I think the two are very important knowing what we support and what we do not support.

I support the discussion and the issues being raised in the Bill, but I only oppose the premature nature in which it has come to the House without consulting other people who are concerned with it. Otherwise, elections in this country have never been impressive because they have only led to violence and unnecessary deaths, and people showing how they hate each other. A country that is supposed to be united and is constantly preaching peace, love and unity is always at war every five years. I think we all know the consequences of war, the hate that we have on tribal lines when it comes to elections and we all wish that this country would stop that. Whatever we decide in this House should be consultative. I only wish to encourage the House to withdraw this Bill right now, because we have not adequately addressed issues that other people have. My Committee, CIOC, has quite some good ideas. I have already seen that there is going to be some contradictions if we do not collapse this together, or we do not discuss the matter in a unified manner.

You are suggesting increasing the commissioners to 11. I do not think that is the case with CIOC. I think they have reduced the number and much more. So, there will be a big blunder if we do not consult. I am only encouraging consultation first before we come to the House to discuss this particular Bill. Otherwise, I support what JLAC has done by bringing it to the House. But I oppose its presentation in this House at this time before consultations are done with the other bodies that are concerned.

Thank you for giving me the opportunity.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Mabonga Mwambu.

Hon. Mwambu Mabongah (Bumula, Independent): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to give my views on this amendment Bill. First and foremost, I wish to oppose this amendment. Elections are very critical in this country. As you have heard from other Members, every five years we have a lot of destruction of property and even loss of lives. One thing we ought to do as a House, before we even get into the selection panel of the commissioners of that important body is to understand that everything may revolve around selection because selection is the foundation. If we get the selection wrong, we are going to have a very bad election and wrong results. The results are death and destruction. You have heard from one Member of JLAC saying that there is a crisis. Another one admits that there is no crisis. As far as I am concerned, there is no crisis at the moment. I would urge the Committee to withdraw this Bill and have a proper consensus with all the stakeholders. You have heard some people saying that they are waiting for the report from the Building Bridges Initiative (BBI) so that their views are co-opted. You have heard from the Member who has just spoken. That means that with all these dissenting voices from Members and other professional bodies, if they come together, we are likely to solve the problem that we are having. I am not concerned about the numbers the way they are suggesting. It is about the quality of men and women who will sit on that panel and secure the image of this country. After every five years, Kenya is painted badly outside there and it is our sole responsibility. Of course, it is a collective

responsibility that we give room to other ideas and listen to other voices that are coming up with very proper suggestions that can be incorporated in this amendment and ensure that, at the end of the day, come 2022, we have space between now and that time and we can definitely come up with proper suggestions that will build this nation.

The other thing that we need to look into is this: It is important that the Committee has done its bit. They have brought it to the Floor of the House. Let them also be open. The way we are making suggestions, it does not mean that we have not understood. We know what we are talking about. All these voices are raising concerns because some of us probably may have just seen it on the screens. But some of us have witnessed it happen even under our feet. So, we have a sole responsibility as a House to ensure that what we are passing in this House has a lasting solution even to generations to come. One thing we need to ask ourselves is this: What could have happened if all commissioners that time, when the President was waiting for the results, resigned? That would be crisis. That is why I want to stand here and congratulate the three men who have held on to ensure that this country moves on. Sometimes, we see the opposite and the negative side of a person. But those men have kept this country going. So, for us to ensure that we appreciate what they are doing, let us analyse the challenges and the existing gaps in the Commission so that we can come up with something that will secure the destiny and respect for the country.

With those few remarks, I oppose.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Wambugu Ngunjiri.

Hon. Ngunjiri Wambugu (Nyeri Town, JP): Thank you very much, Hon. Temporary Deputy Speaker. I rise to support this Bill. This House is for making laws. This House is for legislating. It is where we solve national issues, national problems and national crisis. I want to believe that the people who have been elected in this House have been elected to pre-empt crisis. Right now, IEBC has three commissioners. God forbid if something happens to anyone of them. Then we would admit that we have a crisis. When I hear my colleagues say that we do not have crisis, it is true we do not. But I ask myself: Are we going to wait until we have a crisis to actually do something about IEBC? This Bill has been brought. We all do not have to agree with it. But the advantage we have in this House is that we can accept it, reject it or amend it.

I want to suggest that those who believe that there are things that are not in this Bill and should be in this Bill should now start thinking about the amendments we should be discussing. Saying that we need to throw this Bill out and start all over again at a time when we are very alive to what happened just two years ago, when we had issues about the chairperson and how you transit from one chairperson to another; when we have seen conflict between the chairperson and the secretariat; this Bill gives suggestions on how to solve the very real experiences that we saw and that could have led this country into conflict.

It is true that IEBC is the body that determines how our elections are run, the legitimacy of those elections and the people who are elected. We are in this House because of that body. It is our responsibility. We have to make sure that we are introducing a process. We must run away from the issue of thinking about people who are in certain positions and focus on fixing the processes. When I look and read through this Bill, what I am seeing are suggestions of processes that get us people. We are depending on the quality of the people. But if we do not have a process that actually defines how we get that quality of people, then we have a problem. I see a situation where we are being told when we start the process of selecting new people; how we transition from a chairperson, in case he or she is unavailable, to an acting chairperson during elections and how we ensure there is no conflict between the Commission and the secretariat.

These are all very real things that we have all lived through. Every person who is in this House experienced them as recently as two years ago.

I would suggest very strongly that it is our responsibility as this House to fix this Bill rather than to throw it out. We can amend that which we are not happy with. The other committees that have suggestions... I have heard some mention that they have suggestions that could better this Bill. They need to bring those amendments to this Bill. It would be a big disservice to this nation if we were to say that we need to throw this Bill out and start all over again. So, I strongly support this Bill.

Thank you.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Oluoch, Member for Mathare.

Hon. Anthony Oluoch (Mathare, ODM): Thank you very much, Hon. Temporary Deputy Speaker. Let me begin at the very outset by saying that my contribution to this Bill is informed by my participation and membership in the CIOC. I would have been happy if, perhaps, a few things were resolved and, maybe, this could still be done.

Where we have committees that have concurrent jurisdiction, and on this matter of the IEBC, both the Departmental Committee on Justice and Legal Affairs and CIOC have been running parallel, inviting the very same team - the commissioners. The commissioners and other commissions have appeared to give input on this very same Bill. We have had situations before where this House has said committees should sit jointly. That is one other opening or possibility that could have happened on a matter that is so broad and as emotive as the conduct of elections. I would be happy if this matter can be resolved.

I have heard my good friend Hon. Ngunjiri Wambugu - and I think he has just walked out - say that this Bill is capable of being amended. But, respectfully, I want to draw his attention and that of the House to the fact that this House has said before that where you want to bring an amendment, you have to restrict yourself so as not to alter the basic character and foundation of the Bill. You cannot go and look for other provisions that were not subject of the basic Bill so that you bring them as amendments. So, I would like to suggest that the crux of the matter is this: The issue about the IEBC does not lend itself to a single-issue amendment to the Elections Act. The IEBC is one of those commissions that are required to work throughout the year even after every election. Other than running the general elections, the IEBC is required to run by-elections. The IEBC is required to conduct our referendum. The IEBC is required to do continuous voter registration. The IEBC is required to do many other things which it is constitutionally mandated to do.

But we all know that immediately following the general elections, there were issues that were never resolved. There were issues that were raised in both petitions that were filed about the management of the elections and about the role of the Commission *vis-à-vis* the role of the secretariat. Then immediately after the second elections of October, there was the resignation of four commissioners. So, there are other issues other than the selection panel that also lend credence to themselves to not having a single amendment to a Bill that is being brought here, when we can deal with all of them. There are issues about quorum. There are issues about whether to reduce the number of commissioners from nine to seven or indeed to five. There are issues to do with the secretariat and whether we should overhaul it and have a totally new one.

So, I would like to respectfully submit that this Bill would better have been done justice if we had a joint select committee of the two committees that have concurrent jurisdiction. This is why, among other things, the CIOC is currently considering this Bill. On the issue of the

selection panel, it is suggesting that we have nine members. But more importantly, it is recommending that we keep Parliament off the process of the selection panel, and there is a very good reason for that. It is that IEBC will have commissioners who will be required to be non-partisan, independent and away from the influence of the main actors in the election. As Members of Parliament, we are interested and we are partisan. The Constitution and the Leadership and Integrity Act require that we declare conflict where we have interest. The best practice would be that where we have interest in the outcome of something, we stay away from it.

The second reason is in the instance where there was a Motion and recommendations by PAC for the removal of Commissioners. There was a ruling by the Speaker which stated as follows... These were contributions which were mainly made by Hon. Kaluma, and which I agreed with largely. I was initially not persuaded but, eventually, I saw the logic. This House cannot sit as a judge in its own cause. We are appointing a selection panel which will appoint commissioners. We will again sit to consider the persons who have been selected before they are appointed. I think there is conflict there. The matter would best be served if Members of Parliament would stay away from the process in terms of getting the selection panel and wait until the commissioners are nominated so that we can eventually have our say before the appointments are made. For this reason, I very reluctantly want to suggest that the Mover of this Bill, the Chair of Departmental Committee on Justice and Legal Affairs, steps down this Bill or withdraws it so that we have a more comprehensive and consultative approach to this; a wider approach to amend the Elections Act and deal with the issues of IEBC as opposed to the issue of the selection panel alone.

Lastly, I want to address the issue of the crisis. There has been a crisis for while over a year now. There has been a court ruling and back and forth decisions whether or not three IEBC commissioners can conduct the business of IEBC. Eventually, the commissioners somehow prevailed and they have conducted part of the business of IEBC. If we have waited for over one year, we can wait for another three months so that we have a process where we can take on board not only the views of the Bill that is pending before the CIOC, but also other initiatives out there. There is the *Punguza Mizigo* Initiative which has tinkered with some provisions that touch on elections. They have even reduced the number of electoral positions that we will be dealing with. How will those be dealt with when it is possible that we will tinker with the Constitution and the Elections Act in the manner in which we conduct our elections? So, I want to suggest that this Bill in its current form is not tenable. This Bill requires that we step it down and have the widest consultations possible before we can have an elections law that everybody has confidence in. I very reluctantly suggest that the Bill be stepped down.

I thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Shall we have Hon. Musimba Patrick?

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): I thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. From the outset, I want to highlight the importance of elections in this country and especially the electoral processes that we experienced in 2007, 2013 and 2017. It has become pretty momentous to note that lives and livelihoods of Kenyans are greatly affected by elections. What we seek when we have elections is to have a seamless form that leaves Kenya as a going concern and does not portend any sort of anxiety in the populace, in Kenyans, investors and the people who have key things that are going on in the country.

As to the selection panel that we are discussing and in the form that we are discussing it, I would simply highlight the fact that we, as politicians, cannot run away from our duty. First and foremost, we must have confidence in the people we have, who are ultimately going to preside over the elections that come forth. Therefore, the selection panel that will emanate from this process needs to be beyond reproach like Caesar's wife. It must be of utmost integrity. We must question every single element that we have put in this Bill, including the body that will nominate members of the panel – the Parliamentary Service Commission. What is their background? The PSC is formed by the Members of this House. They remain commissioners and have done an extremely good job in guiding one huge arm of the Government. The PSC and the committees of this House also vet the selection panel and the Cabinet Secretaries This is a very big job as to how we keep our economy going.

Religious people are major stakeholders in terms of peace building and keeping the momentum of elections in this nation. As Parliament, we ought to completely take charge of the selection process of the IEBC Commissioners. Why do I say so? We have seen what the past looked like. We come in and say that we have white smoke. This is where we have been, even in terms of the EACC in the big fight against corruption. This is a big issue for the progress of this nation. But how was it sorted out? The minute we had Wabukala as Chair and we have since transited to the new CEO, we are seeing waters which are coming, although nobody is saying that this is a fight which must be fought. Coming to elections, political parties are major stakeholders. Why are we not involving them and yet political parties can come up with names to represent them, like it happened in 1997 during the Inter-Parties Parliamentary Group initiative?

I have not seen a body that brings together all the political parties, which are major stakeholders. There is no nominee from them. These are gaps which must be filled. While I accept that all Bills come to this House and we have to go through them, there is a danger that once we get to the point of putting the Question... For instance, if this Bill is shot down because it does not have a majority support, the question as to how do deal with it will linger. The next attempt to have it passed will be after six months. As the previous speaker has said, we have always considered Bills in the Committee of the whole House even when we do not oppose them.

The process is left to the Speaker or whoever is presiding over the Committee of the whole House to determine which clauses are negating the Bill and its formation and language. This will send a tremor to the nation as to where we are in terms of the selection panel. My take is that, as we move forward, the PSC has to take the foothold of considering all the political parties to say that we will draw those four nominees after consultations have taken place within every political party in the country, and party representatives have met with the CMB. We are very lucky to have had our Speaker, Hon. Muturi, as a previous chair of CMB. This body has guided many initiatives and ensured that we had the voice of the political parties as major stakeholders.

We should not just leave it as a blank cheque. Nominees like the one from the Office of the Attorney-General will look into the legal aspects, while other experts will look into other issues. However, all those people are subjected to clearances prior to them being considered by each of those bodies. This is because as regards paragraph 4 (b) to (f), all the nominees are automatic members of the panel and, therefore, are not subject to vetting to ensure that they meet the threshold of Chapter Six of the Constitution. We only presume. There is no mechanism for Parliament to vet the nominees prior to submission to the President.

This remains a big gap which we need to look into. As we consider those names, we have to ask ourselves whether the term of the current chair and the two commissioners who have stuck on and saved the by-elections has lapsed. We would have had a crisis if all the commissioners had stepped aside. So, what happens to them? The transition clause is in place. The next vacancy of chairperson or commissioner is when it falls due. It will be superseded by events of this Bill once it is enacted into law. We must come again retrospectively and look at it. I have heard about the CIOC. I think there is nothing which stops it from coming up with their own joint mechanism of recommending.

On the issue of whether to expand the membership from nine to 11 commissioners, the spirit in this House is clear, especially now that we have issues to do with resources. We have always said that the membership of commissions needs to be reduced, and that they should be made part-time commissions. Nothing in this Bill is suggesting that. We are trying to accommodate as many people, but we are not providing for a minimum number. We should provide for a minimum number. All our commissions need to have a uniform number. There must be a rationale for expanding the membership of the selection panel to 11. There must be a proper justification within the Bill as to that extent.

Hon. Temporary Deputy Speaker, what is more emotive is if a nation cannot look at itself in the mirror to decide whether we have permanency of the people who will consider our commissioners, and especially our independent commissions and whether those independent commissions have the benefit of having permanency so that they have institutional knowledge. This is because we have seen, time and again, that the executive of the commission gets to override the commissioners.

So, I support that this Bill continues in its current form. But I need to urge this House not to run away from its obligations of taking forth the challenges to ensure that we own the selection panel.

Thank you.

The Temporary Deputy Speaker (Hon. Patrick Mariru): We shall have Hon. Lomenen. Member for Turkana South.

Hon. James Lomenen (Turkana South, JP): Thank you, Hon. Temporary Deputy Speaker for this opportunity. I support the Bill as it has come at the right time. This is the only House mandated by the Constitution to make laws. All the laws that we have in Kenya and other countries are made in Parliament. That is our role and we should refrain from unknown fears. This House is well constituted. We have all the categories of interest groups, lawyers and religious people. It is a House that has quality personalities that are supposed to make laws. We cannot make laws outside this House. This Bill is very important. We only need to mobilise ourselves, propose amendments and come up with a good content that will remain as a legacy. We make laws for posterity. We also bring amendments that take care of a certain problem. It might be a crisis or a problem that was experienced before. In Kenya, we experience problems during elections and people lose their lives. Commissioners are sons and daughters of people and some have lost their jobs due to mismanagement, suspicion or not meeting the interests of some people. We are in this House to cater for various interests and protect Kenyans of all categories wherever they are.

The reason I am saying this Bill has come at the right time is because we are not supposed to make laws during crisis, but when we are sober and rightly in the House. I want to argue that this is the right time we are supposed to make laws in this House and, especially, this one of IEBC. That is because issues between those in opposition and Government are always

hot. From my observation, we are sober. We can agree and disagree without the hot feelings. This Bill is timely because by-elections are ongoing. We have lost some political leaders. Life is uncertain and so, we are supposed to make laws which will ensure that elections continue without any problems.

When the four commissioners resigned, as MPs, we realised that there was a problem because we had not made a law to take care of such a situation. Everybody, including the President, the Speaker and MPs, were all in a dilemma. This is the right time to solve this. There are representatives from organisations who have been proposed to be members of the selection panel. For example, the Parliamentary Service Commission representative will vet the nominees because to work in PSC, one must have been vetted. Also, the LSK representative is already vetted and respected. Religious representatives are respected people in the churches. They are the ones who advise us and talk with God and, therefore, we have to trust them. If we do not trust them, who will we trust?

On the representation from NGEK, this is an issue we have been struggling with because we need to be gender sensitive. They should be there so as to represent special groups and women. This has not been done before. Also, there will be a person nominated by the Attorney-General who is respected because he advises the Government. The members of the selection panel are people we respect because they work in existing offices which are not there for just three or five years. There is also a representative from the Public Service Commission. Most public officers are interviewed while being employed and we respect this process.

So, I respect the Committee for having come up with this Bill. They did the right thing. They have brought a good idea. Everything we see in this world is a manifestation of ideas. This idea is good and, therefore, we should enrich and make it better. We should not rubbish it as if they did nothing. It is good we enrich it because it has originated from us and not from anywhere else. We have to support, encourage and own it because it is ours. There is an idea that political parties should be included. We have very many political parties, for example, Sisi Kwa Sisi Party. Therefore, we cannot include them here because how will we cater for the interests of all the political parties?

I think the bodies mentioned here are the ones we respect. They have dignity and integrity and that is why most of them are independent. We want the panel to be respected because members have dignity and integrity. This law is being amended so that we do not run into a crisis because of fear. I support this Bill because Kenyans are tired of shedding blood every time there are elections. They are tired of replacing commissioners every time when a certain party loses elections. They are tired of this and we want this body to be filling vacancies arising in IEBC so that elections can continue with dignity and integrity.

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

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Maero Member for Butula.

Hon. Joseph Oyula (Butula, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to also add my voice to this important Bill. It is timely because it has made the House realise that there is a gap somewhere which needs to be filled. We are all aware that some IEBC Commissioners resigned some years back and their positions have remained vacant and there has been no panel to recruit new commissioners. That is why this Bill is timely because we need a selection panel that will look into the vacancies or overall recruitment of IEBC Commissioners.

The only observation I have is the criteria through which the nominees will be selected. I think the Bill needs to go further and look into that. We have proposed organisations which will select the nominees. The criteria they are required to use should also be brought out and how they will be vetted - whether by this House or by whatever group they will come up with. It is important that we make it very clear. We know we have gone through many problems during elections and our people have died. This has all been because of bringing people into a system which cannot make a good decision and stand by it.

So, I suggest that the Committee looks further into this and comes up with criteria that will be used to nominate the panel. I think that needs to be done. The committees that are concerned with this can work together to come up with a clean Bill. As I have said, this Bill is timely because we have to move forward. We should not go behind. Let us use all the means that are available to this House to ensure that the IEBC Commissioners or the panel that will nominate the members of the IEBC is in place.

Thank you for giving me the chance.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Jeremiah Kioni.

Hon. Jeremiah Kioni (Ndaragwa, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this Bill or debate. As I do so, I think I need to say, at the outset, that the Committee that I chair, the Constitutional Implementation Oversight Committee, has a similar Bill on IEBC. Of course, we will seek for guidance going forward as to what we will do with it because it is also coming for Second Reading, perhaps, next week. That helps me to contribute to this debate by saying that it is important we allow ourselves into this debate. It is crucial for Members of Parliament to make sure that... Like others have said, instead of being dismissive of this work that has been done by the Departmental Committee on Justice and Legal Affairs... I think there are other two attempts to try and get the IEBC or our electoral process in some form and order. It is important that we engage in the debate in a sober manner knowing very well that one of the reasons why we had difficulties in 2017 is because we allowed ourselves into that debate and constituting the IEBC too late in the day. We were trying to put commissioners into office less than eight months before the elections took place - really even outside the advice that we had been given by Kriegler that we should always try and make sure that commissioners are in office at least 24 months before the date of elections. So, this is a very important debate that we should have.

I see quite a number of Members of Parliament have been caught by surprise, but it is good that they get surprised now than get surprised when we are just a few months before elections. This is because now we have an opportunity to discuss the Bill and even the issues that have been raised by Members and agree on them. One of the key things about this country when we approach elections is the mistrust and suspicion. It is not just among us. You also see it in the United States of America. When elections are nearing, we see the same kind of behaviour with the Democrats and the Republicans and it is already showing in the manner that Trump and others are behaving. So, it is important that we allow ourselves into this debate. As we do so, it is always good to note that even after having condemned IEBC in the manner that we did and very many people going to court and filing petitions... Over 300 petitions were filed, but only less than five of them were successful for the reason that we may not be able to see it as politicians. But those they contracted like auditors to go and audit the work they did have really given them a good report. We were with this Commission in India recently to observe the electoral system in India and you could see the kind of reception that they were being given and the respect that was being accorded to them. I do not want to start here to heap praise on our IEBC Commissioners,

but I think it is good to give them credit where it is due. They did a good job. We had issues with it and we were not quite happy. A section of us or many of us may not have been very happy with the results, but they still helped us to stabilise the country and we are where we are because of what they did and we are moving on as a country.

It is important to reflect on what Members are saying. There is need for more consultations and public participation. My experience with these Bills is that you advertise, put notifications in the newspapers and even use other means to try and get public participation, but the level of public participation that I witness at different times is really worrying. I am not sure that we will get much from the public even if we are to extend the period of time for them to contribute to this Bill. There is a tendency for us to wait until it is too late and then we start saying that we have been left out.

The fact is that elections in this country will always be emotive at least for the foreseeable future. It is important that we discuss these issues now. I thank the Departmental Committee on Justice and Legal Affairs and the other Committees, including my Committee, which has come up with this initiative for starting the debate this early where we have time to agree and disagree until we get a workable solution.

Those of us who thought that we needed to send the commissioners home in total need to appreciate that the procedure of sending them home is in the Constitution. There is no shortcut. These are constitutional officers and you cannot send any commissioner home by just declaring it from a platform or podium of one nature or the other. There is a procedure in the Constitution. If there is anybody who would want us to do the same, he will still have to follow that procedure. It is important that we make sure that we give the IEBC the constitutional and legal mandate that is required. I have mentioned that those who audited the work that was done by the IEBC in 2017 returned very good reports. Those reports have been brought to this House.

It is important to also read the spirit of the Constitution. When talking about constitutional commissions, we started with nine members. The reason why we started with nine members in a commission is because we were trying to have that elusive regional balance where we thought that it will only work if one of our own is in it. We have seen that, that is not the way it will work. It cannot work that way. It is important that we start trusting the persons that we put into those commissions. The spirit of the Constitution is to move from nine and head towards three commissioners and three who are part-timers. It is not to go towards nine, 11 and beyond. In any case, you cannot go beyond nine because of the constitutional limit. That is the issue of the panel that we have before us.

Outside the panel, we also have the issue of the boundaries. We also need to make sure that the IEBC is able to commence on the issue of boundary delimitation that is supposed to be done as provided in the Constitution. There is more than just the panel. We need to give them a mandate. We need to amend the law so that they can undertake the second boundary review. As we do this, it is important to put the panel in place.

Recall what happened in 2017. We had to bring political players together in some *ad hoc* select committee of the Senate and the National Assembly to try and hammer out an agreement. I do not want to say it but it is what it is. The Parliament of that time had failed to enact the law in good time. It is important to appreciate that we in the 12th Parliament are seizing the moment that is availed to us by making sure that the law that needs to be in place is in place. We now have the Aukot attempt outside there. Some of these attempts and many others will come forward as long as we, seated here in Parliament, do not do what is expected of us in good time.

As I conclude, I want to commend Departmental Committee on Justice and Legal Affairs for this attempt. It is important that we inform the process. If we have issues, let us bring amendments to the Floor of the House. If we are also allowed to table our Bills, we will do it and, at the end of the day, we will see what is best for this country because that is why we were given that mandate by Kenyans to come and help pass laws. Let us look for selection panelists outside the political sphere. Politicians will not agree on who can be a mediator between them for the reason that we are competing for the same thing.

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

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Shabbir Ahmed.

Hon. Shakeel Shabbir (Kisumu East, Independent): Thank you, Hon. Temporary Deputy Speaker. There is an adage which says that there is no permanent solution for a temporary problem. Likewise, there is no temporary solution for a permanent problem. The IEBC is an institution which needs permanency. These hit-and-run adoptions, directions, motions and proposals are but temporary.

Nowhere in the world have we been humiliated more than by the IEBC. The Chairman of the defunct Electoral Commission of Kenya (ECK) once said that he had no idea who had won the elections. We are treated as a joke abroad. This same IEBC that we are trying to regulate and sort out has been involved in a lot of corruption in the chicken gate scandal and yet, we have forgotten why that happened. Those who bribed in Britain went to jail and came out after seven or five years. But ours are still sitting around and going from one court case to the other. We have the IEBC as a very bad name. As I said, the proposals that have been put forward now are short term solutions to long term problems. I was looking at India the other day. One billion people voted, but I have not yet heard any problems in respect of their electoral commission like we had here. Our IEBC is politically motivated, financially controlled and manipulated by every single politician who feels that he has the quality to do that.

Our IEBC is not institutionalised. There is no real division of roles between the board and the secretariat. The Chairman wants to be the secretariat and those who are in the Secretariat want the position of the Chairman. The issue basically is that nobody knows what he is doing. As a result, systems are set up and taken over from other organisations. The Cambridge Analytica system was adopted. We have had other issues where the IEBC has gone ahead in short term to buy things which were then thrown away and were never used. As we are looking at the IEBC, we need to see how we will institutionalise them and give them independence not only financially, but also from the Executive control. Who will run the Commission? They should be in the same status as the Judiciary which has its problems. The IEBC must also aim to be independent. I am sorry because the motions and proposals which I see from the Departmental Committee on Justice and Legal Affairs are not the solutions, but a temporary band-aid.

Right now, the IEBC has three commissioners. The irony and joke of the commissioners who resigned is that

(Hon. Benjamin Washiali consulted loudly)

Hon. Temporary Deputy Speaker, help me. I cannot concentrate because my friends are a bit loud.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Whip of the Majority Party. You can continue with the consultations but at a lower tone so that Hon. Shabbir has space.

Hon. Shakeel Shabbir (Kisumu East, Independent): Thank you very much Hon. Temporary Deputy Speaker.

The IEBC needs to be sorted out because it requires permanency. The same IEBC we are talking about is going to conduct the coming census, a referendum and thereafter an election and yet, four commissioners resigned but are still being paid. They have shown that they lack integrity. If they resigned, let us be done with them. Integrity must be seen to exist at the IEBC. Like Caesar's wife, commissioners of the IEBC must be beyond reproach. However, they are not. We find it a joke the way IEBC conducts elections in relation to other countries. Their electoral bodies are sharp and effective. Ours has been long wounded, personally directed and has a number of commissioners with different agendas. Even the temporary solution the Departmental Committee on Justice and Legal Affairs has put forward is not going to work. It is going to be difficult and it is going to involve a lot of work, but I suggest that all necessary Committees and those involved in the running of Parliament have a say and see what we can come up with.

The Kriegler Report was very clear. If I had a say – but I do not – I would have IEBC Commissioners appointed from amongst people who are not residents of this country. Even if we have to bring people like Kriegler, let us have an IEBC that cannot be manipulated – one that cannot be threatened or told what to do. That is the only time *wananchi* will vote for whomever they feel is appropriate.

With those remarks, I oppose the short-term approach and plead with the Departmental Committee on Justice and Legal Affairs and other Committees to kindly relook at this Bill and come up with a long-term proposal for a long-term solution.

Thank you very much, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Let us have Hon. Ochanda.

Hon. Gideon Ochanda (Bondo, ODM): Thank you, Hon. Temporary Deputy Speaker. I want to make my contribution very short because of the request that I have.

Where we are at the moment, elections are a matter of life and death in the country. If we are not careful on issues of elections, we are going to burn the country in future. There are many efforts, but there are no guarantees that they will work. But the efforts made through this House, I am convinced, can work. That is exactly why we need to take this thing seriously. The role of IEBC in the elections is so critical that we cannot downplay it. I like this Bill not because of the details or so many other things, but because of the process that it has started. It has started this debate. This debate is very useful. This is the right time for it to happen. If we do not do it now and we move towards the date of election, people will lose objectivity, sobriety and we are going to behave like a Parliament that ignored or did not see some of these small things that we are taking about.

The next thing that we need to do is to give the selection panel an additional mandate. Let us audit the electoral process and the last two elections to see exactly where problems are particularly with Independent Electoral and Boundaries Commission because that is a big issue in this country. If we do not fix it, we are doomed. I propose that we quickly look at this. We have been reminded that next year, we are going to be doing something that is going to be very emotive in this country, and it is this IEBC that is supposed to do it. That is redrawing our constituencies after the census. It is going to be a very emotive thing. It needs to be brought to the fore as we talk about these issues about IEBC. The earlier we bring all these things together and start looking at them at this time, the better for this country.

Thank you.

Hon. Benjamin Washiali (Mumias East, JP): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): What is out of order, Hon. Washiali?

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Temporary Deputy Speaker. I rise on Standing Order 95. I have been sitting here patiently and listening to Members debate. Of course, they have contributed on both sides. There are those for and those against it. I am still aware that under the Committee of the whole House, those against will have an opportunity to amend the Bill. That is why I am requesting that you call upon the Mover to reply.

The Temporary Deputy Speaker (Hon. Patrick Mariru): I cannot make that decision. The House will decide.

(Question, that the Mover be now called upon to reply, put and negatived)

The Temporary Deputy Speaker (Hon. Patrick Mariru): In that case, Hon. Ngugi will contribute.

Hon. Joseph Nduati (Gatanga, JP): Thank you, Hon. Temporary Deputy Speaker. I am not going to take a lot of time, Majority Whip. I am going to take one minute as you pleaded with me.

The Temporary Deputy Speaker (Hon. Patrick Mariru): We have six minutes to 7.00 p.m.

Hon. Joseph Nduati (Gatanga, JP): I will take one minute so that Hon. Wamuchomba can take the rest.

At the outset, I support. At least, it provides for comprehensive criteria of selecting the commissioners. Again, the Bill has involved so many people. I have seen many Government bodies. The Attorney-General will be there, professional bodies and religious organisations which, of course, will be very representative of this country.

The Bill is also very clear on timelines from the time when the President is supposed to act. Within seven days, there are certain things he is supposed to do. That is good. Again, the Bill provides how a vacancy that arises is to be filled or when the time of a chairperson is almost ending. Since elections are almost near - we are now two years down the line - I propose that we take this matter seriously. Otherwise, when we get to the third year, we might not be able to deal with this matter, as my colleagues have said.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Chachu Ganya.

Hon. Chachu Ganya (North Horr, FAP): Hon. Temporary Deputy Speaker, thank you for giving me this opportunity. I stand to support this Bill. This is just an amendment for us to have a selection panel that is going to basically select commissioners for IEBC. We have a gap in the law and it is important that we do the necessary amendments. If there is need for more amendments in the future, we will appreciate that. There is no reason why we should oppose this amendment at this particular juncture just because we feel everybody must be brought on board. It is a process and, through public participation, I am sure other views will be heard.

In the interest of time, I support the Bill.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Wamuchomba.

Hon. (Ms.) Gathoni Wamuchomba (Kiambu CWR, JP): Thank you, Hon. Temporary Deputy Speaker. Indeed, I have waited to contribute to this amazing Bill. The constitutional debate and the amendments to the IEBC Act cannot come up at a better time than now, when everybody is busy preparing for many other national issues that concern elections, referendum, the national census and other processes that come after such kind of national issues are tackled. I am more concerned about what will happen after census. I am aware that we are going to have census in this country. We may have a situation where we need to review constituency boundaries. For that matter, we need a sober and well constituted IEBC that is going to do what the citizens of this country expect. More specifically, I speak for my County of Kiambu where we have constituencies that have many voters who feel that they need to be taken care of by making sure that the boundaries are reconsidered. We cannot trust people to reconsider our boundaries if they are not people of great integrity and people who have been through this national House. For that, I do support this Bill.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): There being no other interest from Members to speak to this Bill, I will now call upon the Mover to reply. You have 15 minutes but, as you know; we have only one minute to 7 p.m. If you are not able to conclude within the one minute, you will still have the remainder of the time. The Floor is yours now.

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Speaker, I want, first of all, to thank Members for their contributions. There are those who supported and there are those who opposed. That is in order. This is a House of debate and the House will finally have the last say.

Certain issues have been raised. Allow me to respond to about two or three. One is the fact that there are other proposals with the CIOC and in Hon. Jude Njomo's Bill and many others. That is in order. This Bill before the House went through the normal process and so, it cannot be stopped just because there are other proposals in other proposed amendments. Therefore, this Bill is rightly before the House. It has gone through public participation. We got views from the public which informed the decision of the Committee.

I think there is a big concern and fear, listening to Members that we are dealing with the commissioners of IEBC. We are merely dealing with the selection panel to shortlist and interview potential commissioners. That is the function we are dealing with here. The qualifications of the commissioners will be decided by the selection panel. So, Hon. Temporary Deputy Speaker, I beg to reply.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Very well, Chair. You did very well within limited time. That is fine. We will defer putting the Question on this particular item until subsequent time.

(Putting of the Question deferred)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Members, the time being 7.00 p.m., this House stands adjourned until Thursday, 1st August 2019, at 2.30 p.m.

The House rose at 7.00 p.m.