

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 9th October, 2024

Afternoon Sitting

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

[The Speaker (Hon. Kingi) in the Chair]

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

The Speaker (Hon. Kingi): Clerk, do we have quorum?
Serjeant-at-Arms, kindly ring the Quorum Bell for 10 minutes.

(The Quorum Bell was rung)

Hon. Senators, we now have quorum. Clerk, you may proceed to call the first Order.

PETITIONS

BRANDING PUBLIC PROJECTS WITH IMAGES OF GOVERNORS AND MCAS

The Speaker (Hon. Kingi): Hon. Senators, I hereby report that a Petition has been submitted, through the Clerk, by Mr. Laban Omusundi regarding the matter of branding public projects with images of governors and Members of County Assemblies (MCAs) and branding of county vehicles.

As you are aware, under Article 119(1) of the Constitution-
“Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.”

Hon. Senators, the salient issues raised in this Petition are as follows-
THAT, county funded projects are emblazoned with portraits, images and names of governors and MCAs. This situation has been enabling political leaders in the counties

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to use publicly funded projects to promote and brand themselves for personal political gains without adequate checks and balances.

THAT Article 231(4) of the Constitution disallows the use of individual portraits on currency, but allows images that depict or symbolise Kenya or an aspect of Kenya. This principle should also be applied to public projects.

THAT the County Government vehicles have been used for personal purposes by political leaders and other county staff due to the lack of branding on these vehicles.

The Petitioner, therefore, prays that the Senate does the following-

(i) Amends the County Governments Act to provide a framework to disallow governors and MCAs to brand public projects with their names, images, or portraits.

(ii) Ensure that all public funded projects are branded as courtesy of Kenyan taxpayers.

(iii) Formulate a regulatory framework that will ensure Government vehicles are branded with colours of the national flag to make them easily identifiable.

Hon. Senators, pursuant to Standing Order No.238(1), I commit this Petition to the Standing Committee on Devolution and Intergovernmental Relations for consideration as the matter relates to the governance and management of county governments.

In terms of Standing Order No.238(2)(a), the Committee is required, in not more than 60 calendar days from the time of reading the prayer, which is today, to table its report in the Senate for consideration.

The Senate shall thereafter consider the report of the committee.

Thank you.

*(The Petition was committed to the Standing Committee
on Devolution and Intergovernmental Relations)*

Let us go to the next order.

(Sen. Cheruiyot consulted loudly)

Senate Majority Leader, you took part in amending the Standing Orders. Kindly proceed

PAPERS LAID

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, can I comment on the Petition?

I beg to lay the following Papers on the table of the Senate today, Wednesday, the 9th of October 2024-

BI-ANNUAL REPORT OF THE CAJ

Bi-Annual Report of the Commission on Administrative Justice (CAJ) for the period July - December, 2023.

REPORTS OF THE AUDITOR-GENERAL ON
FINANCIAL STATEMENTS OF VARIOUS ENTITIES

Report of the Auditor-General on financial statements of Karuri Level 4 Hospital - County Government of Kiambu for the year ended 30th June, 2023.

Report of the Auditor-General on financial statements of Kihara Level 4 Hospital - County Government of Kiambu for the year ended 30th June, 2023.

(Sen. Cheruiyot laid the documents on the Table)

The Speaker (Hon. Kingi): Let us move on to the next Order.

Sen. James Lomenen, proceed.

Sen. Lomenen, did you bow at the bar?

Sen. Lomenen: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): From the Chair, I saw you walking straight on.

(Sen. Lomenen spoke off record)

It is okay, Sen. Lomenen. Proceed, but next time abide by rules of procedure.

NOTICE OF MOTION

STRENGTHENING SUPPORT FOR PASTORALIST COMMUNITIES TO
COMBAT CATTLE RUSTLING AND MINIMISE LIVESTOCK LOSSES

Sen. Lomenen: Thank you, Mr. Speaker, Sir. I stand to give notice of the following Motion-

THAT AWARE THAT, the livestock sector plays a crucial role in the economic well-being and cultural identity of many communities, particularly in Arid and Semi-Arid (ASAL) regions of Kenya;

FURTHER AWARE THAT, cattle rustling has become a major hindrance to economic development, severely affecting pastoralist communities that heavily rely on livestock for their livelihood, leading to loss of life, destruction of property and displacement of families;

APPRECIATING THAT, over the years, various interventions have been introduced by both the National and county Governments, including security operations, disarmament initiatives and community peace-building efforts to curb

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the menace of cattle rustling and provision of livestock insurance to protect farmers in case of loss;

CONCERNED THAT, despite Government efforts, cattle rustling continues to thrive, driven by organized crime syndicates, political interference and cultural practices, which severely undermines the economic stability and social cohesion of affected communities, thereby contravening the right of pastoralists to acquire and own property as stated in Article 40(1) of the Constitution;

FURTHER CONCERNED THAT the lack of adequate legal frameworks, affordable and comprehensive insurance schemes for livestock and financial security for pastoralist communities has left many families vulnerable to poverty due to the theft of their livestock and the impacts of climate change, particularly drought, which aggravates these challenges;

NOW THEREFORE, the Senate urges the Ministry of Agriculture and Livestock Development to-

(1) Increase the budget allocation to the agricultural sector to at least 10 per cent of the national budget, in line with the Maputo Declaration of 2000 (reaffirmed by the Malabo Declaration of 2015),

(2) Create an enabling environment for providing affordable livestock insurance to pastoralists;

(3) Provide incentives to the private sector to deliver comprehensive and affordable livestock insurance; and,

(4) Implement measures to promote public awareness and encourage the uptake of livestock insurance.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Let us move on to the next Order. That is statements pursuant to Standing Order No.52(1).

Senator for Nandi County, proceed.

QUESTIONS AND STATEMENTS

STATEMENTS

COMPLETE SHUTDOWN OF MEDICAL SERVICES DUE TO HEALTH WORKERS' STRIKE IN NANDI COUNTY

Sen. Cherarkey: Thank you, Mr. Speaker, Sir, for your indulgence.

I rise pursuant to Standing Order No 52(1) to make a statement on an issue of general topical concern and national importance, namely; the complete shutdown of medical services in Nandi County due to the ongoing health workers' strike, starting from Kapsabet County Referral Hospital.

Nandi County is faced with a serious health crisis occasioned by the health workers that is currently ongoing, affecting in general all the health workers in the county as we speak. The County Government of Nandi has failed to address the issues affecting doctors, nurses, clinical officers and other health workers. These issues include

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harmonising promotion of staff, poor working conditions, non-remittance of statutory deductions, non-remittance on SACCO loans and union dues, yet they have been deducted on the pay slip and the lack of medical cover for staff.

Mr. Speaker, Sir, other issues by the health workers include the illegal mass sacking and staff removal from the payroll in an exercise that the Governor himself bloated the wage bill by illegal and irregular employment.

It should be noted that the Nandi County Public Service Board, under the patronage of Governor Sang, on 13th March, 2023 at Kaimosi Agricultural Training Centre conducted a verification exercise and headcount on staff whereby they verified the following from the staff: original and copies of national ID; appointment letters; pay slips and academic/professional certificates, including valid licenses. He issued them with letters in an event presided over by Governor Sang on 11th May 2023 after successful verification.

Mr. Speaker, Sir, Mr. Sang himself created the mess in the County Public Service Board (CPSB) by illegally and irregularly employing his cronies, siblings, political spin masters, campaign soloists, goons, radio callers and political masseurs whereby, they were all in the payroll and have been earning from the Nandi County coffers. The Governor now purports to deny that he knows nothing about it.

As I speak, with the ongoing strike in Nandi County, nothing is moving. From medical services, no development projects in almost all county roads, no clean water, no bursary allocation and no drugs in all hospitals, including the Kapsabet County Referral Hospital. The mortuary in Kapsabet has not been functional for over a year now and Kapsabet Referral Hospital is also on its deathbed.

No drugs in all hospitals, dispensaries and health care centres in Nandi County yet, the latest report of the Auditor-General shows there is massive spending on foreign travel by the county executive led by the Governor totaling over Kshs310 million in the Financial Year 2022/2023. This is very unfortunate.

Despite having received over Kshs60 billion through the sharable revenue allocated to Nandi County in seven years among other sources such as own source revenue and conditional grants, Governor Sang should take personal responsibility for the mess in Nandi County and be held liable as a Chef County Executive Officer in charge of the county and stop subjecting innocent workers to torture and joblessness and causing lack of service delivery to the people of Nandi, including, but not limited to complete shutdown of medical services.

I urge the Nandi County Assembly and MCAs to immediately table an impeachment motion on the governor on these glaring offences and violation of the Constitution and other laws, which I know we shall uphold at the Senate when that time comes.

The move by the County Assembly to form an *ad hoc* committee on the investigation of the departmental operations by County Executive Committee Members (CECM) is a smokescreen and diversionary tactic to absolve the Governor, the people of Nandi, in an overwhelming support that continues to affect service delivery.

In finality, if the MCAs do not impeach the Governor on these allegations, then the people of Nandi will start collecting signatures to remove him.

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The investigations of the fraud in the payroll should be handled by the Directorate of Criminal Investigations (DCI) headquarters, noting that during the interview in Nandi County, the County Criminal Investigations Officer (CCIO) stated that the Governor was not aware of this illegality yet investigations are still ongoing and up to now, no one has been arraigned in a court of law.

Mr. Speaker, Sir, looking at these offences by the Nandi County Assembly's MCAs, these are serious grounds to impeach the Governor. In finality, for health care services to be restored, roads to be fixed, wage bills to be sorted and development to be realised in Nandi County, Sang must go and must be impeached.

I thank you.

The Speaker (Hon. Kingi): Statement pursuant to Standing Order No. 53(1); Sen. Richard Onyonka, proceed.

OPERATIONALISATION OF SHA HEALTHCARE
INFRASTRUCTURE ON A UNIFIED PLATFORM

Sen. Onyonka: Thank you, Mr. Speaker, Sir, for giving me the opportunity.

I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Health regarding the Integrated Health Information Technology System (IHITS), Project of the Social Health Authority (SHA), which aims to digitise Kenya's health infrastructure by interconnecting patients, doctors, hospitals and health services on a unified platform.

The system is going to be worth over Kshs104 billion annually. It was awarded to a consortium comprising of Safaricom, Apeiro Limited and Convergence Network Solutions. In the statement, I would want the committee to-

(1) Explain the ownership model for the Integrated Health Information Technology System and state whether a national security system assessment was done considering that this system will connect our country's health infrastructure, including patients, doctors, hospitals, health products and health financing on this unified platform.

(2) Explain how a foreign entity was engaged to leverage the country's health system.

(3) Outline the distinct roles and responsibilities between the Ministry of Health, the SHA in the procurement and oversight of the IHITS system, specifying the monthly payment terms that have been agreed upon between the consortium and the Ministry of Health, SHA and whether these payments are linked to the performance matrixes or milestones achievable.

(4) Find out whether there is a detail-specific improvement in our healthcare delivery and patient outcomes expected by the Ministry of Health following the implementation of the IHITS system.

(5) Provide details of the consortium of Safaricom---

(Loud consultations)

The Speaker (Hon. Kingi): Order, hon. Senators. May Sen. Onyonka be heard in silence, please.

Sen. Onyonka: Thank you, Mr. Speaker, Sir.

(5) Provide the details of the consortium Safaricom Apeiro Limited and Convergence Network Systems and the roles of each partner in delivering the IHTS system consolidated fund, which will be used if premiums are inadequate to meet the contracted amounts.

(6) State the measures in place to mitigate delays during this rollout, especially in rural areas with limited infrastructure and indicate the contingencies or penalties in which the consortium, if it fails to deliver in time or to meet performance targets on what responsibilities they will hold.

(7) Provide us with the projected timeline for completing critical milestones, such as delivering the 7,000 tablets and 5,000 laptops, which they have promised to deliver.

Thank you.

The Speaker (Hon. Kingi): Sen. Haji Abdul, proceed.

FINANCIAL OPERATIONS OF CPSBS

Sen. Abdul Haji: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.53(1) to seek a statement from the Standing Committee on Finance and Budget regarding the financial operations of county public service boards.

In the statement, the committee should-

(1) Provide a list of county governments across all 47 counties that have appointed and designated secretaries of the county public service boards as accounting officers, pursuant to provisions of Section 148 of the Public Finance Management (PFM) Act.

(2) Disclose the total budgetary allocations to each County Public Service Board from Financial Year 2014/2015 to date and provide the respective approved budgets, including specific amounts allocated for each financial year.

(3) State the actual amounts disbursed to each county public service board for each financial year since 2014 across all 47 county governments.

(4) Outline any safeguards the National Treasury and Ministry of Economic Planning has established to ensure that the Controller of Budget (CoB) disburses funds on time to the county public service boards across all 47 county governments in accordance with the approved budget.

Thank you.

The Speaker (Hon. Kingi): What is your point of order? Certainly, it cannot be a point of order, Sen. Fatuma, unless you are seeking a clarification or intervention.

Sen. Dullo: Clarification, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Yes, you may proceed.

Sen. Dullo: Thank you, Mr. Speaker, Sir. I have had several statements on the Floor of this House; I think there are about seven or eight regarding matters of Isiolo County.

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Number one, the Governor of Isiolo County has completely refused to respond to the statements.

Number two, we have about three summonses before various committees of the House, which he has refused to honour. There is a summon before the Committee on Labour and Social Welfare. There was a summon before the Committee on Public Accounts, where he was charged and has refused to pay the fee. He has refused to honour summons from the Health Committee. He has decided to take the Committee on Health to court to prevent it from taking any action against him.

Mr. Speaker, Sir, on this particular statement I requested, we have a mortuary that has not been working for the last year. The Senate Committee on Health went to Isiolo to look at it. Today, our people are taking bodies to neighbouring Meru County. Hospitals in Meru County have refused to take bodies from Isiolo County.

There is a statement before the Committee on Devolution and Intergovernmental relations and he has refused to appear before the Committee. I have written to you regarding the same. All the hospitals in Isiolo County are closed down because the nurses, clinical officers and technical staff have put down their tools.

I have cried to this House and indicated that Isiolo County is bleeding. I need direction from you because this situation is unacceptable. If this happens, all the governors will be disrespectful to this House.

It is in the public domain that the Governor of Isiolo said that he would not appear before the Senate and nobody is taking him anywhere. I have a Motion before this House to stop the budget allocated to Isiolo County from being disbursed. I will move this Motion and indicate the mismanagement and irregularities in Isiolo County.

Mr. Speaker, Sir, kindly respond to my letter and give us direction on this matter because Isiolo County is shut down as far as service delivery is concerned.

Thank you.

The Speaker (Hon. Kingi): Thank you, Sen. Dullo. I will give my directions on the Isiolo matter on Monday before proceeding with the Kericho Governor impeachment.

Sen. Wakili Sigei, proceed.

WITHDRAWAL OF HEALTH SERVICE ALLOWANCE FOR BOMET COUNTY STAFF

Sen. Wakili Sigei: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.53(1) to request a statement from the Standing Committee on Labour and Social Welfare regarding the withdrawal of the Health Service Allowance for certain health sector staff in Bomet County.

This withdrawal has occurred on various dates throughout 2024. These allowances, which were duly budgeted for by the county and granted to the affected staff based on their appointment letters have been arbitrarily rescinded.

This has raised serious concerns about the criteria used to justify the withdrawal of these benefits. The action was taken without notice or any clear legal justification, raising broader concerns about the rights of health sector workers, the proper use of budget allocations and the fairness of remuneration practices.

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In the statement, the committee should-

(1) Clarify the specific legal and policy basis for the withdrawal of the Health Service Allowance for the affected health sector staff, clarifying the legal provisions, if any, support this action, and whether due process was followed.

(2) Explain the criteria used by the County Government of Bomet to selectively withdraw the health service allowances.

(3) Assess the implications of these withdrawals on the welfare of the affected staff, outlining plans in place by the county government to address the financial and morale-related impacts on these workers.

(4) Investigate whether and how these funds were reallocated, given that they were budgeted for in the county budget and outline the measures in place to ensure transparency in the management of these budgeted amounts.

LOSS OF DOCUMENTS FOR PRINTING TITLE DEEDS
BY THE GOVERNMENT PRINTER

Sen. Kavindu Muthama: Thank you, Mr. Speaker, Sir, for this opportunity.

I rise pursuant to Standing Order No.53(1) to seek a statement from the Standing Committee on Land, Environment and Natural Resources regarding the loss of security documents used to print title deeds by the Government Printer.

This incident poses a significant threat to the integrity of land ownership documents in our country and could potentially lead to widespread land fraud. The Ministry of Lands, Public Works, Housing and Urban Development must take immediate and decisive action to address this critical issue.

In the statement, the committee should-

(1) Explain the actions being taken to recover the stolen security papers used to print title deeds as well as the measures implemented to track and retrieve these documents and prevent their misuse for fraudulent purposes.

(2) Present a progress report on the investigation concerning the theft of the said documents, focusing on identifying the individuals and land cartels involved, along with the strategies implemented to strengthen security protocols at the Government Printer and other pertinent institutions to avert similar occurrences in the future.

(3) Outline the steps taken by the State Department for Lands and Physical Planning to raise public awareness about the risks associated with land fraud and the importance of verifying the authenticity of title deeds and all other documents related to land registration, including, but not limited to survey plans, mutation forms and deed plans.

(4) Appraise the Senate on the Ministry's long-term plans to leverage modern technology while implementing protocols to protect paper title deeds from damage, loss, or theft.

The Speaker (Hon. Kingi): Sen. Chimera, proceed.

CASES OF LIONS ROAMING ALONG MACKINON
ROAD IN KWALE COUNTY

Sen. Chimera: Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a statement from the Standing Committee on Land, Environment and Natural Resources concerning the reported cases of lions roaming along Mackinon Road in Kwale County.

In the statement, the Committee should-

(1) Determine the circumstances that allowed the lions to escape their natural habitats without the knowledge of Kenya Wildlife Service (KWS) officers.

(2) Assess the damage inflicted by these lions on the local community and clarify whether compensation has been provided to the affected individuals.

(3) State whether there are plans to involve local communities in conservation education programmes aimed at raising awareness about coexistence with wildlife and the importance of timely reporting of such incidents to prevent further damages, injuries and fatalities.

(4) Outline measures in place to mitigate human-wildlife conflict nationwide to ensure the safety of both communities and wildlife.

(5) Outline any measures in place to mitigate human-wildlife conflict nationwide to safeguard the safety of both the local communities and the wildlife.

The Speaker (Hon. Kingi): Next is Sen. Lomenen.

PERSISTENT POWER RATIONING
IN TURKANA COUNTY

Sen. Lomenen: Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a statement from the Standing Committee on Energy on persistent power blackouts and electricity rationing in Lodwar and other major towns in Turkana County. Despite being home to the Turkwel Gorge Hydroelectric Power Station, which generates 106 megawatts of electricity, major towns in Turkana County remain unconnected to the national grid and continue to rely on diesel generators for power.

Just last week, two key diesel generators failed in Lodwar Town, leading to severe electricity rationing with residents now receiving power for only four hours a day. This has crippled businesses, forced Government offices and Non-Governmental Organisations (NGOs) to cease operations and caused widespread disruption of businesses.

Towns like Lokitaung have been without power for months with no solution in sight, while Lokori and Lokichogio face similar challenges. The economic impact is devastating and essential services such as healthcare and education have been severely affected.

(Loud consultations)

Mr. Speaker, Sir, please protect me from the noise.

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The Speaker (Hon. Kingi): Sen. Shakila and Sen. Abdul Haji, let the Senator for Turkana be heard in silence.

Sen. Lomenen: Thank you, Mr. Speaker, Sir. In the statement, the Committee should-

(1) State steps being taken to connect Turkana's major towns, including Lodwar, Lokori, Kalokol, Kakuma and Lokochochio to the national power grid.

(2) Ascertain the progress made by the Rural Electrification and Renewable Energy Corporation (REREC) in expanding electricity infrastructure in Turkana and determine the state of stalled projects that were meant to increase electrification in the county.

(3) State any measures in place by Kenya Electricity Generating Company PLC (KenGen) to facilitate power supply from Turkwel Power Station to Turkana's towns, providing targeted intervention to alleviate the current power crisis.

(4) State long-term plans in place to improve Turkana's electricity infrastructure to ensure reliable, sustainable and affordable energy.

Mr. Speaker, Sir, I have another statement.

The Speaker (Hon. Kingi): Proceed to read the three Statements.

FAILURE TO CONTROL FLOODING
CAUSED BY RIVER KAWALASE

Sen. Lomenen: Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a statement from the Standing Committee on National Security, Defence and Foreign Relations regarding failure by both county and national governments to manage the flood control project on River Kawalase in Turkana County, leading to significant damage of property and displacement of residents in several villages.

Despite significant funds being allocated by the National Water Harvesting and Storage Authority (NWHSA) for the project which was initiated in 2021, recent heavy rains have caused failure of the gabions and other flood control measures, resulting in widespread devastation in Lower Town and nearby villages, including Mitakito Line, Laini Moja, Nabute, Natabuseo, Lokaparaparai and Kawalase. Failure of these structures has severely affected over 360 households, displaced families and caused significant property loss.

In the statement, the committee should-

(1) Determine the cause of the failure of the flood control project on River Kawalase, stating reasons for such failure and recommend measures to those responsible for negligence or malpractice noted.

(2) State steps being taken to provide immediate support and compensation to the affected families, including resettlement assistance to safer grounds.

(3) Outline any long-term flood management strategies that the county and national Government have put in place aimed at reassessing and reinforcing the current flood control structures to prevent further flooding incidents and disasters.

I have a final statement.

The Speaker (Hon. Kingi): Proceed.

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HEALTH AND ENVIRONMENTAL IMPACT OF OIL AND
NATURAL GAS EXPLORATION IN TURKANA COUNTY

Sen. Lomenen: Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a statement from the Standing Committee on Land, Environment and Natural Resources regarding health and environmental impact of exploration of oil and natural gas by Tullow Kenya BV in Block 10BB, 13T and 10BA in South Lokichar Basin in Turkana County.

Communities living near the drilling sites have expressed serious concerns regarding water contamination and environmental degradation caused by hazardous waste from the drilling activities, which have already resulted in death of numerous livestock and pose significant risks to human health. This is despite Environmental Impact Assessment (EIA) reports for the said projects outlining precautionary measures to be put in place to minimise any environmental impacts.

In the statement, the committee should-

(1) Explain the waste management protocols put in place by Tullow Kenya BV to prevent hazardous waste from contaminating water sources, soil and air around drilling sites, especially in Block 10BB, 13T and 10BA in South Lokichar Basin in Turkana County, clarifying whether these protocols were contained in the EIA reports relating to the projects and whether they are strictly adhered to.

(2) Disclose the findings of the environmental monitoring assessment conducted in Blocks 10BB, 13T and 10BA from 2019 to date, outlining any specific remedial action taken in response to those findings.

(3) Outline steps taken by Tullow Kenya BV to reverse the environmental damage caused by hazardous waste from its activities, particularly in Lomokamar and Angolemungin areas in Turkana County to prevent further damage.

(4) State whether Tullow Kenya BV has compensated individuals who have lost their livestock and suffered other damages because of its activity.

The Speaker (Hon. Kingi): Next is Sen. (Prof) Tom Ojienda.

Sen. (Prof.) Tom Odhiambo Ojienda, SC: Mr. Speaker, Sir, I have several statements, but I will begin with the first one.

INCREASED INSECURITY IN KISUMU COUNTY

I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations regarding increased cases of insecurity in Kisumu City County.

Mr. Speaker, Sir, there has been an upsurge in insecurity in Kisumu County driven by various factors such as inadequate street lighting, rising urban poverty, especially in informal settlements like Manyatta, Obunga, Nyalenda and Nyawita, among others, which suffer from poor infrastructure and inadequate services.

In the statement, the committee should-

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(1) State the measures the county government has put in place to strengthen community policing as provided for in Section 96 of the National Police Service (NPS) Act, particularly in informal settlements where insecurity is rampant.

(2) Provide timelines for the installation of street lights in high-crime areas and indicate how the county government will ensure that the street lights remain operational at all times;

(3) Outline the measures in place to ensure the county government upgrades security infrastructure, such as the installation of Closed-Circuit Television (CCTV) cameras in critical areas and improving police response.

(4) Provide details of any collaborations the county government has undertaken with national security agencies to address the rising crime and how Kisumu County is leveraging national security resources to address this issue comprehensively.

My second statement is on pending bills in Kisumu County.

ACCUMULATION OF PENDING BILLS IN KISUMU CITY COUNTY

Again, I rise pursuant to Standing Order No.53 (1) to seek a statement from the Standing Committee on Finance and Budget regarding the accumulation of pending bills in Kisumu County.

The delayed payments have severely affected contractors and suppliers and many have been forced to close down, relocate or face financial ruin. This has stifled the local economy as capital remains locked in unpaid Government debts reducing overall business activity in the region.

In the Statement, the committee should-

(1) State the total pending bills owed by Kisumu County for the Financial Year 2024/2025 breaking down the bills by categories under development and recurrent expenditure.

(2) Disclose the measures the county government has implemented to settle these bills and state the criteria in place for settling bills owed to contractors and service providers.

(3) Detail how the delay in settling pending bills has affected service delivery and the completion of ongoing projects outlining affected projects and services.

(4) List pending bills under dispute or subject to audit queries explaining how the county plans to address these issues.

(5) State the role of the National Treasury in supporting the county's effort in addressing the pending bills.

UTILISATION OF EMERGENCY FUNDS BY KISUMU COUNTY GOVERNMENT

I rise pursuant to Standing Order No.53(1) to seek a statement from the Standing Committee on Finance and Budget regarding the utilization of emergency funds by the Kisumu County Government.

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Mr. Speaker Sir, Section 110(1) of the Public Finance Management (PFM) Act provides that a county government executive committee may establish county government Emergency Fund which shall consist of monies from time to time appropriated to the county assembly to fund by an appropriation law.

Further, Section 110(2) of the PFM Act provides that the purpose of the Emergency Fund is to enable payments to be made in respect of a county when an urgent and unforeseen need for expenditure for which there is no specific legislative authority arises.

In the statement, the committee should-

(1) State the total amount of money allocated to the Kisumu County Emergency Fund since its inception and specify the criteria used to determine these allocations.

(2) Provide details on how the funds have been utilized to address various emergencies indicating the total amount spent on each.

(3) Confirm whether any grants or donations have been made to this Fund by external partners or donors and, if so, state the amounts and how they have been utilized.

(4) Provide a list of companies and entities that have benefited from the fund through tenders, including information on the ownership and establish whether the tenders were awarded competitively.

(5) State the measures in place to ensure that the fund is used exclusively for its intended purpose to guarantee accountability for its use.

Lastly, I have a statement on the delays in salary payment and non-remittance to statutory deductions in Kisumu County.

NON-PAYMENT AND POOR WORKING CONDITIONS OF STAFF IN KISUMU COUNTY

I rise pursuant to Standing Order No.53(1) to seek a statement from the Standing Committee on Labour and Social Welfare concerning chronic delays in payments of salaries, non-remittance of statutory deductions and poor working conditions of staff by the Kisumu County Government.

Apart from Kisumu County receiving disbursements from the National Treasury, the county also collects its Own-Source Revenue (OSR) that can be used to offset costs such as salaries and statutory obligations.

Given the importance of having a motivated and a fully functional human resource, it is absurd that the Kisumu County Government has not prioritized these payments and is seemingly neglecting its financial responsibilities.

Such malfeasance from the county government has led to a demotivated workforce with employees undergoing a lot of frustrations pegged to payments of house rents, school fees, food for their families, defaulting on loan payments and some being heavily penalized by banks while others have already been blacklisted by the Credit Reference Bureau (CRB) as a result of this non-payment of salary.

In the statement, the committee should-

(1) Explain any measures the county government has taken to address the chronic delays in payments of salaries, remittance of statutory deductions and poor working

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conditions, exacerbated by lack of appropriate tools and resources, of county government staff in contravention of Article 41 of the Constitution and Section 19 of the Employment Act.

(2) Provide details of the OSR Kisumu County has collected over the past three financial years and explain why this revenue has not been used to defray certain statutory deductions and other personal loan deductions promptly despite the provisions of the PFM Act and Section 60 of the County Governments Act, 2012.

(3) Outline the measures put in place by the county government to prevent further delays in salary payments and ensure timely remittance of statutory deductions even when national disbursements from the National Treasury are delayed.

(4) State whether the county has considered the legal implications of non-compliance with Sections 18 and 19(5) of the Employment Act, 2007, especially regarding delayed salary payments and failure to remit statutory deductions and explain any measures it has put in place to address such implications.

I thank you.

The Speaker (Hon. Kingi): Next Order.

Proceed, Majority Leader.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I was beginning to get worried. You know this is the season of “by way of” you cease to be. This is the Statement of the week.

BUSINESS FOR THE WEEK COMMENCING
MONDAY, 14TH OCTOBER, 2024

I rise pursuant to Standing Order No.57(1) to present to the House the business for the week that commence Monday, 14th October, 2024.

Colleagues Senators as you are aware, at the sitting of the Senate held yesterday Tuesday, 8th October, 2024, the Speaker communicated by way of Message, a resolution of the Kericho County Government on the proposed removal from office, by impeachment, of Hon. (Dr.) Eric Mutai, the Governor of Kericho County, following the defeat of a Motion for the establishment of a special committee pursuant to Section 33(3)(b) of the County Governments Act and Standing Order No.80 (1)(b)(i) of the Senate.

The Speaker gave direction that the hearing of the proposed removal from office, by impeachment, of the Governor of Kericho County will be held in plenary on Monday, 14th and Tuesday 15th October, 2024.

Senators, kindly note this so that you do not return to Nairobi City County on Tuesday and miss certain things. Accordingly, an Order Paper in this regard will be issued by the Clerk of the Senate to facilitate the hearing together with the timetable and programme of activities.

Similarly, hon. Senators, you will recall that this morning the Speaker of the Senate also communicated, by way of a Message, a resolution of the National Assembly on the proposed removal from office, by impeachment, of His Excellency Rigathi Gachagua, the Deputy President of the Republic of Kenya.

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Following the defeat of a Motion for the establishment of a special committee pursuant to Article 145(3B) of the Constitution, the Speaker gave directions that the hearing of the proposed removal from office, by impeachment, of the Deputy President of the Republic of Kenya would be held in plenary on Wednesday, 16th October and Thursday, 17th October, 2024.

Mr. Speaker, Sir, remember, you gave further clarifications that should there be a need to extend beyond the two days after realisation of the bundle of documents that we have to interact with, you will give further guidance. Therefore, we await your guidance.

This will be an extremely busy week. Consequently, a Procedural Motion for the alteration of the Calendar and the meeting dates and times for Wednesday, 16th October, and Thursday, 17th October has been listed on the Order Paper at Order No.8. You are about to consider to allow for the hearing to be taken within the stipulated times.

Out of abundance of caution and how the Motion is drafted, we will not leave this Chamber until we conclude the business listed on that particular day. Those who have been here long enough know that there is nothing unusual in an impeachment process. A times we have left here as late as 3.00 a.m.

That is why we are providing the Procedural Motion in the way and format that it did. This is so that we do not run into the kind of challenges faced the last time we had an impeachment Motion. It will be an extremely busy four days. It will be the first time in history for Senate to consider two impeachments in a week.

It will be a very consequential week for the Senate, the people of Kericho and the Republic of Kenya. I earlier mentioned that you be cautious even in your weekend and it appeared like a joke. I want to reiterate for my colleagues because there is a lot before us and you never know what might happen.

The Speaker (Hon. Kingi): Majority Leader, can you stick to your Statement?

The Senate Majority Leader (Sen. Cheruiyot): It is in my Statement, Mr. Speaker, Sir. I am reading it off.

The Speaker (Hon. Kingi): Are you questioning the Chair?

The Senate Majority Leader (Sen. Cheruiyot): Not the Chair. It is in my Statement that even Sen. Hezena needs to be careful of where she goes this weekend.

At its meeting held on Tuesday, 8th October, 2024, the Senate Business Committee (SBC) approved the next set of Questions to be scheduled in the Order Paper for Wednesday, 16th October, 2024. However, given our schedule for the aforementioned hearings, we will reschedule the Questions to Wednesday, 23rd October, 2024.

The summary are questions to the Cabinet Secretary for Energy and Petroleum by Sen. (Dr.) Oburu Odinga and Sen. Shakila Abdalla; a question to the Cabinet Secretary for Interior and National Administration by Sen. James Murango; Sen. Daniel Maanzo; Question No.79 by Joe Nyotu, Question No.84 by Sen. Agnes Kavindu.

There is a further Question to the Cabinet Secretary for Energy and Petroleum by Sen. Recha Murgor; Question to the Cabinet Secretary for Interior and National Administration by Sen. Kathuri Murungi, and two questions by Sen. (Prof.) Ojienda, and a further two questions by Sen. Murango. Those questions shall be considered on Wednesday, 23rd October, 2024.

With those many remarks, I beg to lay this Statement on the Table of the Senate.

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I thank you.

(Sen. Cheruiyot laid the document on the Table)

The Speaker (Hon. Kingi): Next Order.

PROCEDURAL MOTION

ALTERATION OF THE MEETING HOURS OF THE SENATE FOR 16TH AND 17TH OCTOBER 2024

Sen. Tabitha Keroche: Mr. Speaker, Sir, I would like to move the following Procedural Motion on alteration of the hours of meeting for Wednesday, 16th October, 2024, and Thursday, 17th October, 2024-

THAT, notwithstanding the Resolutions of the Senate made pursuant to Standing Order No.32 on 15th February, 2024; 26th June, 2024; 19th August, 2024; and 17th September, 2024; on the approval of the Senate Calendar (Regular Sessions) for the Third Session, 2024, the Senate resolves –

i) Pursuant to Standing Order No.34(4)(b) and notwithstanding the provisions of Standing Order No.34(1) to commence its sittings for Wednesday, 16th October, 2024, (morning sitting), at 9.00 a.m.;

ii) Pursuant to Standing Order No.34(4)(b) to hold a sitting on Thursday, 17th October 2024 starting at 9.00 a.m. to 1.00 p.m.; and

iii) Pursuant to Standing Order No.34(4)(a) to extend its sitting time for Wednesday, 16th October, 2024 and Thursday, 17th October 2024 (afternoon Sittings) until conclusion of Business listed in the Order Papers of the day.

Mr. Speaker, Sir, I request the Minority Leader, Sen. Madzayo, to second.

The Senate Minority Leader (Sen. Madzayo): Thank you, Mr. Speaker, Sir. I second.

(Question proposed)

The Speaker (Hon. Kingi): Now, the Floor is open.

This is a Procedural Motion. With your concurrence, you may allow me to put the question. The voting is by voice, so that we dispense with this Motion.

I will now proceed to put the question.

(Question put and agreed to)

The Speaker (Hon. Kingi): Now, hon. Senators, this resolution you just passed will have meaning if by 9.00 a.m. we have a quorum in the Chamber. There will be no point in passing such a resolution, and then the bell rings for 10 minutes, another 10 minutes, and then we start at 9.30 a.m., which is the regular time we always start.

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So, let this resolution then make us be in the Chamber at 9.00 a.m., so that we do not have to ring the Quorum bell. If you do that, I believe that the two days will be adequate to cover the hearing on this particular matter.

Next order, please.

(The Clerk-at-the-Table consulted with the Speaker)

Now, hon. Members, for the convenience of the House, allow me to invoke Standing Order No.45 to re-arrange the sequence of today's Order Paper, and we move to prosecute Order No.18. Thereafter, we will resume the normal flow as contained in today's Order Paper.

Clerk, proceed to call that Order.

BILL

Second Reading

THE ELECTION OFFENCES (AMENDMENT) (NO.2) BILL (SENATE BILLS NO.28 OF 2024)

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Speaker, Sir. I beg to Move that the Electoral Offences (Amendment)(No.2) Bill (Senate Bills No.28 of 2024), be now read a Second Time.

This is the third in the series of the so-called National Dialogue Committee (NADCO) Bills. I have reminded Senators many times that we must remain true to our call.

We had a very difficult time as a country in 2023, and when we went to the NADCO negotiations, there were many things that we agreed on. Sen. Okong'o Omogeni from the Minority Side represented his side of the Azimio la Umoja Coalition. I believe he will have a thing or two to say as he seconds this Bill because it was part of the deliberations. He knows very well the presentations and the submissions that Kenyans made to us for close to a month at the Bomas of Kenya. They felt that certain things were not right in this country and they wanted us to address the same.

Therefore, we came up with about nine Bills, three of which we have since dispensed with as a House. We have six more, including a Constitutional Amendment Bill that is before the Standing Committee on Justice and Legal Affairs and Human Rights.

I do not see the Chairperson of that Committee here now, but last week, at the Senate Business Committee (SBC), he had promised us that, very soon the JLAC will be bringing a report to this House on what we think of the Constitutional Amendment Bill that was produced by the NADCO team. There are very interesting provisions there, including for the Senate.

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I have since seen that our colleague, Sen. Cherarkey, has done another Constitutional Amendment Bill, and some of the provisions borrowed from the NADCO Report. That is a conversation that we are going to have.

Today's Bill, The Elections Offences (Amendment) (No.2) Bill (Senate Bills No.28 of 2024) principal object is to amend Section 6 of the Election Offences Act of 2016 that we passed in this House about eight years ago.

There was a very interesting debate at that particular time. If you have seen some of the snippets from the debates and the things that were said at that particular time contained in some of the very interesting old videos of the Senate. It was a very heated exchange in this House. One of the things I have challenged the Clerk of the Senate to do is to come up with a digital library. The generation of Sen. Oketch Gicheru does not believe anymore in ink and paper. They are keener on listening and watching.

Therefore, we must keep a video library, and make it digitally available, so that when Sen. Oketch or Sen. Lemaletian takes a break from their manoeuvres on *TikTok*, they can listen into debates that were done five or 10 years ago, and that will interest them.

I would have included Sen. Methu in that list, but given his latest looks, I do not think that he qualifies to be with his age mates in that particular regard. He is young at heart, but I am not sure about that face.

So, in 2016, when this Election Offences Act was passed in this House, it was a very heated debate. We kept on reminding each other of one of the cardinal rules of law-making. It was the first time I had these words by the then-Senator for Bungoma and now the Speaker of the National Assembly, that as you pass laws, please think of that law in the hand of your worst enemy and you on the receiving end. Many times, we pass laws here and you imagine that because maybe I am a legislator, I can easily get away with these things, but you never know; you will not be a legislator for life. You will not be in power forever. There are days you will be an ordinary citizen.

The prevailing theme at that time was that it is important that as we pass legislation, we understand that as political leaders, we are practitioners in the political space. As we passed the electoral offences law, it was important we remind ourselves that what obtains at that particular time may not be necessarily true.

We have seen the topsy-turvy nature of our politics, that the people who you necessarily do not greet today may be your best friends tomorrow. Many people are getting to learn that in this particular session. However, those who have been around for a while know that is the norm in politics.

[The Speaker (Hon. Kingi) left the Chair]

[The Temporary Speaker (Sen. Mumma) in the Chair]

Madam Temporary Speaker, I do note the change of Chair. Therefore, the Bill has two clauses; Clause 1 and Clause 2. It is a very straightforward Bill and I know Sen. Omogeni, you remember quite well why we had to distinguish it from the other Elections

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Offences (Amendment) (No.2) Bill (Senate Bills No.28 of 2024). We wanted to speak specifically to offences and that is why we kept it separate from the other Bill.

Clause 1, is the Short Title of the Bill and Clause 2 provides –

“that it shall be an offence for members of staff of the Independent Electoral and Boundaries Commission (IEBC) to conduct or hold an election in an ungazetted polling station.”

You remember the very big dispute we had in the 2017 Petition, Raila Odinga versus Uhuru Kenyatta, about un-gazetted polling stations and the debate about it. It was at that time that we insisted on the need for an entire gazettement of polling stations and it being prominently displayed.

Further, the Clause creates offences for members of staff of the Commission who unreasonably delay in declaring elections results or knowingly alter declared election results. You know the dispute that we have had and there is a history to this. Those that have seen the sunshine more times than I, like Sen. (Dr.) Oburu, will tell you the journey that the country has travelled. It was not unusual back in the days of KANU and the *mlolongo* system as the legend has it - for me, it is legend but for people like Sen. (Dr.) Oburu, this is the kind of life that they lived through - that you would go to an election and you know the way they conducted the election at that time.

If it was Senator so and so, your agent would hold your picture and people would queue behind. Many times, because the returning officer was the district commissioner, they would declare the result that the powers that be wanted. It did not matter how many people you had on your queue. Many a times, we heard that the short queue was declared to be longer and the longer queue shorter.

Madam Temporary Speaker, with the advent of the new Constitution, while we thought we had slain the dragon of electoral malpractices, that ghost has refused to die. It is not unusual after an election, to find an electoral official taking an inordinately long time before making a declaration, despite the fact that all results have come in and all polling stations have been declared. However, for one reason or the other, they are just taking long in making a declaration.

In fact, there are many elections - the last one or two elections - where you find that the results were declared days after and there was no justifiable reason the same cannot be done. I look forward to a time where we will be living in a country where elections can be held in the morning, the results are declared in the evening and the following day, people are back to work like nothing happened.

There are more mature democracies that have such practices and people believe and trust the electoral systems. Part of achieving that level of belief in our electoral system and conduct, include tightening the noose with provisions such as what is provided in this particular Bill.

When an electoral official alters the results for whatever reason, either they have been induced or they do not like the candidate that has won, it must be punishable. The punishment must be punitive, so that the will of the people is always respected. This is to ensure that we do not have people killing each other or feeling like it does not matter how you vote or it is them who count that matter. I do not think that is what Kenyans wanted

when they queued up on the 27th August, 2010 and bequeathed themselves the new Constitution. Therefore, that is part of the amendment.

The provision set out under Clause 2 is crucial because it helps in upholding the credibility of our electoral processes by specifying that only designated polling stations may be used to conduct or hold an election and will not only help prevent potential manipulation or irregularities, but will also fortify democratic principles of free and fair elections, ultimately fostering public trust in the electoral systems.

Ultimately, if you also tamper with election outcome that is likely to undermine the will of the people and erode the legitimacy of democratically elected leaders, then there is an imposition of the offence, so that we ensure that such electoral officials are punished and we also ensure that people trust that the people that are in office were legitimately elected.

Madam Temporary Speaker, this is just a clean-up. Like I had told you, you remember, this was still at the time where there were disputes about how elections were carried out, who made a declaration here or there and whether it was rightfully done or not. I believe that this is an extremely important piece of legislation, which I want colleagues Senators to support, so that we can conclude on this conversation and ensure that we tighten the noose in terms of belief in our electoral processes.

I wish to state that the integrity of the electoral process is fundamental to the proper functioning of a democratic society. I urge Senators to support this Bill and make any further additions. However, remember there is a cardinal rule that we agreed on, on how we are going to treat these so-called National Dialogue Committee (NADCO) Bills. Therefore, even by amendments, they have to be negotiated in a bipartisan way. You need the nod of yours truly, Sen. Madzayo and the team that he leads to concur, because there is a long rigorous way which we arrived at these Bills.

Sen. Omogeni knows that we worked long and hard, deep into the night sometimes, to agree on some of these provisions. Nonetheless, as a legislature, we have the full authority and the final say in terms of any piece of legislation that takes the full force of law. We are the final body. Therefore, it is not to gag Members in any way, but just to remind them of a cardinal principle that a good turn deserves another, and when you reach an agreement, it is always important to honour it.

Madam Temporary Speaker, with those many remarks, I beg to move and request my colleague who served with me in the NADCO team, the Senator for Nyamira, Sen. Omogeni, Senior Counsel, to second.

I thank you.

The Temporary Speaker (Sen. Mumma): Proceed, Sen. Omogeni.

Sen. Omogeni: Thank you, Madam Temporary Speaker. I rise to second this very important Bill that is trying to strengthen the way we deal with those people who want to manipulate elections.

When we sat at the NADCO, it was very clear that the intention of the people of Kenya is that we should have free and fair elections that are not manipulated either by the candidates or by members of staff of IEBC.

Kenyans also want those who are tasked with the running of our elections to take full responsibility for any manipulation or any interference in either the counting or the

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tallying of votes that are received by candidates. That is the only way we can ensure that elections truly reflect the free will of the people. There are many jurisdictions where elections are closed and the results are known almost at the close of the hour.

In 2021, I was privileged to be invited by the Secretary General of the Commonwealth, Ms. Patricia Scotland, to be an observer on behalf of Kenya in the Bahamas. The elections in the Bahamas closed at 6.00 p.m. By the time we were going back to our respective hotels at 9.00 p.m., the new Prime Minister who was taking over from the outgoing Prime Minister was on television. The results were out within a record four hours. However, in Kenya you would be lucky to know your presidential candidate within 48 hours. This idea of keeping people in anxiety and waiting restless in our tallying centres is not fair.

Madam Temporary Speaker, I have a personal experience where elections are conducted on a Tuesday, and you will never be handed a certificate to come back to Nairobi as a Member of Parliament (MP) or a Senator till the third day. There is this fear among candidates that if you get out of a polling station, your results will be altered and the certificates of the winner be given to another. It is totally inhuman. You have to stay in a tallying centre for two nights until you get your results or certificate the third day.

We cannot justify why we should be treated in such an inhuman way by the officials running our elections. With the technology and enhanced staff of the Independent Electoral and Boundaries Commission (IEBC), we should know our results in real time. What makes it worse, we are among the few countries in the world where we do six elections in one. So, you have to wait for the tallying of the presidential results, and then go to the governor, Senator, Member of Parliament (MP), Women Representative and finally, the Member of the County Assembly (MCA). It is now going to be worse because we also made proposals to allow the presidential elections to be tallied first. You can imagine how contentious presidential results can be.

If we do not create this offence of unreasonably delaying results, people can wait even up to four days. These are very progressive proposals. When the new Commissioners of IEBC are recruited, we challenge them to have this on top on the agenda. When His Excellency Hakaide Hichilema was being elected as president, we were in Zambia as observers. I was there with the then Speaker, Hon. Ken Lusaka. I was pleasantly surprised that their results are released in a much quicker time than in Kenya.

I urge colleagues to support this very progressive amendment. This is for our own good as politicians. Sen. (Dr.) Khalwale, you know how long it takes for you to get your results as a Senator. I am sure nobody gets his results on the same night the voting ends. You will be lucky to get them the following two nights. I do not know the experience from Nakuru, but it takes a very long time. Kenyans who appeared before us at National Dialogue Committee (NADCO) are not impressed at all. The aspiration and wishes of Kenyans are that the results should be done in real time.

The other offence we are trying to address is alteration of results. I was privileged to handle the Rt. Hon. Raila Odinga's election petition in 2013. There is this defence that election officials always put in their responses. They will tell you that this was an unintentional mistake in transmitting results from Form A to B. A candidate may have scored 200 in Form A, but when the tallying is happening, the results will be exchanged

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with another candidate in Form B. When the officials come to court, they will say that it was an unintentional mistake and not deliberate. You cannot joke with somebody's votes. If I have garnered 400 votes at the polling station, I expect the same votes to be protected and preserved to the tallying centre, be it for an MP or a Senatorial candidate.

This offence is going to make it punitive for any official working with IEBC to make any alteration. The results that you announce in Form A, must be reflected in Form B and C. It will no longer be an excuse to tell us that the mistake was not deliberate, and that it was unintentional. Now, if you do not transmit the results as they were announced at the polling station, this proposed amendment is making it an offence. We have seen it in many elections.

In 2013, I represented Hon. Richard Tongi in an election petition for Nyaribari Chache Constituency against Hon. Chris Bichage. The contention in that election was from Bobaracho Polling Station, where there was a lot of manipulation on the results that were garnered at the polling station and those transmitted to the tallying centre.

When we argued in court, there were two versions; the one that was declared at the polling station and the one that was declared at the tallying centre. The interesting aspect in that case was that if you were to rely on the results that were declared at the polling station, Hon. Richard Tongi was to be the winner. If you took the one that was declared at the tallying centre, Hon. Chris Bichage was to be the winner. You can imagine the kind of doubt you create as to who is a winner in this context.

The judge had no option other than nullify that election because of the doubt that was created. The votes that were garnered by the two candidates from that polling station was materially affecting the outcome of the election simply because of a mistake of a scrupulous official from IEBC. The tragedy is that no criminal sanctions were taken against the officer who was involved.

This proposed amendment is going to make it an offence for anybody who makes any alteration on the outcome of any results, either deliberate or undeliberate. As a country, this is the only way we can make the lucky Kenyans who have been tasked to manage our electoral processes in this country conducts elections with integrity. This will ensure that elections truly reflect the will of the people. It will not be easy to impeach or overturn an election petition. We waste a lot of time as a country going to court, then the electoral court overturns an election and you go back to the people. It is very expensive to the candidates and the country and does not leave a lot of credibility on our elections.

Finally, there is the offence of conducting elections in un-gazetted polling stations. This was a very contentious issue during Hon. Raila Odinga versus Hon. Uhuru Kenyatta elections, where it was alleged that in several areas, in some parts of this country, including North-Eastern Kenya, the electoral officials decided to convert - I do not know whether to say convert or create polling stations and say that they were trying to take care of nomads. However, the law is very clear. It says a polling station must be gazetted. Madam Temporary Speaker, Sen. (Dr.) Khalwale knows that. A polling station must clearly be gazetted.

So, this particular amendment is making it a serious offense for any electoral official to conduct elections in un-gazetted polling stations. If we have gazetted Girigiri Primary School as the polling station of Bosamaro Ward in West Mugirango, nobody has

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got powers to move that polling station, for example, to Tinga Market. It must be at that polling station. Whether we are pastoralists or farmers, there needs to be certainty as to where a vote will be cast. If you have observers, you must know where they are going to be stationed and observe the elections.

You have the officials who are delivering electoral materials. They must know with certainty where they will deliver those materials. Some are dropped from choppers. This again is making it clear that our polling stations must be known, there must be certainty and there should be no doubt as to where one will vote.

Madam Temporary Speaker, I have done many election petitions. I was the first lawyer to petition the Supreme Court successfully in the case of Peter Gatirau Munya versus Kilemi Mwiria. The issues we are addressing here featured very prominently, all the way from the High Court, Court of Appeal, to the Supreme Court.

I remember Hon. Kilemi Mwiria questioning why a polling station that was closest to the polling centre was the last one to deliver election results, because of the same thing we are trying to cure here - unreasonable delay. I, therefore, urge my colleagues to support this Bill. This was a bipartisan Bill and we took views from Kenyans.

This Bill was not meant to serve either the United Democratic Alliance (UDA) Coalition or the Azimio Coalition. It is an attempt to do some clean up around how we conduct our elections, to make them more efficient, to build trust from Kenyans and to ensure that the will of the people is truly reflected in our elections.

With those remarks, Madam Temporary Speaker, I beg to second.

(Question proposed)

The Temporary Speaker (Sen. Mumma): Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Thank you, Madam Temporary Speaker. I rise to speak in support of this amendment and I do so with nostalgia. This is because I remember that as stated in the statement of objects and reasons on the memorandum of this Bill, the principal object of this Bill is to amend Section 6 of the Election Offences Act, 2016.

Why with nostalgia? It is because I remember when we enacted this Act. It was the industry of a joint committee of both the Senate and the National Assembly in 2016. I sat in that committee and I remember we pitched in a hotel for almost two weeks. Our chairs were Hon. James Orengo and Hon. Kiraitu Murungi. Those were the co-chairs and we did a very good job.

That it has served us well, but again exposed the need for us to make further amendments, because it is true---

(Loud consultations)

The Temporary Speaker (Sen. Mumma): Sen. Tobiko and team, can you consult in low tone, please?

Sen. (Dr.) Khalwale: Madam Temporary Speaker, thank you. It is true what the late former Vice-President of Kenya, Michael Kijana Wamalwa, told the country; that

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even in the best of ideas, there is always time and room for those ideas to yield ground to better ideas. I, therefore, support these amendments and insist that, never should we allow the outcome of any election in this country to be decided by the people who count votes and announce the results. The outcome must be decided by the people who vote.

I can speak with a degree of authority. I was looking at the book by the Hon. Millie Odhiambo about rigging or being rigged out, and in a way, I was thinking about myself because I have gone through it all. I remember I won an election fairly and squarely in 2007 and because of lack of this kind of scrutiny, I was returned to a by-election. The grounds were that a brother of my opponent sat in a corner in a polling station and was recording what he thought was the result, while IEBC was doing its work.

So, when we went to court, I was a respondent and IEBC were co-respondents. The court just decided to agree with the person who was taking some funny notes in a corner. I was returned to an election. I remember Dr. Oburu Odinga, the former Prime Minister, hon. Raila Odinga, his deputy, hon. Musalia Mudavadi, Minister then, Hon. Oparanya, Minister then, Dr. Otuoma, Minister then, Hon. Ababu and Minister then, Prof. Anyang' -Nyongo' all converged in Ikolomani, just to teach me a lesson. It was very exciting that when we defeated them, we now widened the margin.

So, we have to continue tightening these things, but then, what a shame. I know that you, Madam Temporary Speaker, are experienced in these things. I have seen elections in Ghana and you will see an election official carrying results on their heads, in a carton, going to some central place where they return those forms and nothing happens to them and people believe in the outcome.

What is wrong with our country that even with this Act that we made in 2016, we still must tighten and tighten even further? There is something wrong about our very integrity as individuals who conduct elections and as individuals who present our names as candidates. We do not believe in anything, so much so, that I am yet to meet a single person who lost an election and says that he lost an election. They always say, "*kura yangu ilibiwa.*" I have never understood.

Therefore, the amendments must ensure that, as the courts decided, elections end at the polling station. I support this because this is a march towards tightening that ending to truly end at polling stations.

Madam Temporary Speaker, what do I mean? The Independent Electoral and Boundaries Commission (IEBC) has structured most of the polling stations, so that around 500 people vote at a stream, presided over by a presiding officer. So how does it come to pass in this country that counting 500 votes can take two or three days? I have never understood.

I have even done an exercise of, supposing I was a presiding officer, and there were three candidates, and they have all benefited from these 500 voters. So, I direct someone to hold the votes for Candidate One, Candidate Two, and Candidate Three — the process of dishing out which candidate got which votes should not take more than 30 minutes. Then, the actual counting should not take more than five minutes because to count from one up to 500, you do not need hours.

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So, you will find counting has been done, and the election officials in the polling station will keep on sitting there until 1.00 a.m., 2.00 a.m., or 3.00 a.m. By that time, all agents have become fatigued, they are asleep and now the people who count the votes start deciding the outcome.

I want to find an innovative way where we can demand, by law, that announcement by a presiding officer should be within a particular time frame. At the county election, I normally get my results after four days.

So, when you ask the county returning officer, he tells you, 'I am still tallying.' They will move from that point to this point. I remember when I lost my election, which was very surprising. It is difficult for me to lose an election in Kakamega and the Speaker knows this. When I lost the election in 2017, I was so surprised, and I decided to create my own IEBC.

In 2022, I created my own tallying centre, fully-fledged. Within eight hours of voting, I already knew the outcome of my election. However, I had to wait four days for the returning officer to say that I was the winner. This was with a lot of experience, and I believe Sen. Oketch Gicheru has this experience too. He ran into similar turbulent clouds. Colleagues, you had better take this as your own experience and set up your own tallying centre.

When they discover that you have got your tallying centre, they then respect you. Since for every polling station, you have a result, for every constituent, you have a result, they become cautious.

I remember in Likuyani Constituency, in 2022, a whopping 6,000 votes had been removed. We just called the returning officer and told him: "Look, even if you must steal, we know we have won. We can leave you these 6,000 votes and we shall still win". This amendment to the law is crucial.

Clause 6(d) speaks to the offence of wilfully preventing any person from voting at the polling station, at which they know or have reasonable cause to believe such a person is entitled to vote.

This is a common problem. If you go to a populous polling station like Khayega in Shinyalu, Malinya in Ikolomani, or Muliro Gardens in Lurambi, if you are popular there, you will find women who do not know how to read and write, probably ten of them, sometimes more. They have been sitting there since 6.00 a.m., but have been told they will not vote for some strange reason. So, this offence that has been put there is to put in check some presiding officers who become rogue. You talk to the police, they look this side. Those kinds of things must be addressed.

Before I end, there was a bad experience in Kakamega and Mombasa counties in 2022 when IEBC postponed an election. The governor's election was just postponed in Mombasa and Kakamega. It did not make sense to us; how would you postpone an election?

People have gone to vote, but they find the election is not taking place, and some people get so disgusted that they go back home without voting. Therefore, that affects the other five elections since you only postponed one election.

We should make it impossible for IEBC to postpone any election for any reason, unless it is a question of disaster. If it is a disaster, how can a disaster affect only one election out of six? If there is a storm, it should affect all the six.

There is also this offence of a presiding officer or an official wilfully rejecting or refusing to count any ballot paper, which they know or have reasonable cause to believe is validly cast or any candidate in accordance with the provisions of such written law.

This one is curing something, which actually happens in every election. I know you are going to be a candidate, not under affirmative action, but a straight candidate. You better take this one seriously. The ballot is cast, and so the votes for Sen. Mumma being counted, then the presiding officer refuses to admit that votes are yours.

Now, when you are new in the process, and you think you are winning, when they put aside six or ten votes, you do not take it seriously because you are excited. What you do not know is that if this thing is being repeated, like in Kakamega where, I have got 2,000 polling stations, if they knock out ten slowly like that, you are talking about losing 20,000 votes that had been cast in your favour.

So, I love this amendment, and I want to congratulate Sen. Cheruiyot, Hon. Kimani Ichung'wa and His Excellency Kalonzo Musyoka, because they were the ones who were the co-chairs for the national dialogue that has birthed these amendments.

I support.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Mumma): Sen. Faki, proceed.

Sen. Faki: Asante, Bi. Spika wa muda kwa kunipa fursa hii kuchangia Mswada wa marekebisho ya Sheria ya makosa ya uchaguzi.

Sheria hii na marekebisho haya yamekuja kupitia kwa ile Kamati ya *National Dialogue Committee (NADCO)*. Kwenye Bunge letu la Seneti iliwakilishwa na Sen. Cheruiyot ambaye ni Kiongozi wa Wengi na vile vile Sen. Omogeni ambaye aliwakilisha upande wa wachache.

Ni muhimu kwamba sheria zetu za uchaguzi zipigwe msasa mara kwa mara, kwa sababu, kuna mambo yanayoibuka katika uchaguzi ambayo mengine labda hayakuweza kuangaziwa katika sheria iliyoundwa.

Bi. Spika wa Muda, haifai kuwa na vituo gushi vya uchaguzi ambapo unaambiwa matokeo yanatoka katika kituo fulani ambacho hakiko kwenye orodha. Hivyo basi, Sheria hii itaharamisha matokeo ya vituo vyovyote ambavyo haviko katika orodha ya vituo vya kufanyia uchaguzi.

Swala la pili linahusu wale wanaosimamia uchaguzi.

(Loud consultations)

Bi. Spika wa Muda, kuna mabarobaro wawili hapa wanaocheka kwa sauti. Naomba wacheke wa sauti ya chini kwa sababu mzee anazungumza. Kwa hivyo, ni muhimu kunisikiliza.

The Temporary Speaker (Sen. Mumma): Senators, please consult in low tones. Let us not disrupt.

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Sen. Faki: Bi. Spika wa Muda, wale wanaosimamia uchaguzi lazima sheria iwaangazie. Kukiwa na ukiukaji wa sheria wakati wa uchaguzi, ni muhimu wanaohusika wapelekwe mahakamani na kushtakiwa kwa makosa hayo.

Haiwezekani msimamizi wa uchaguzi akatae kuhesabu kura halali iliyopigwa na mwananchi wa Kenya. Haiwezekani msimamizi wa uchaguzi kutangaza mtu aliyeshindwa kuwa mshindi bila kuchukuliwa hatua yoyote kwa mujibu wa sheria. Kwa hivyo, sheria hii itasaidia kuwachukulia hatua watakaopeleka matokeo yasiyo sawa wakati wa uchaguzi nchini Kenya.

Kwa hayo maswala mawili, naunga mkono marekebisho ya Sheria ya Makosa ya Uchaguzi.

The Temporary Speaker (Sen. Mumma): Proceed, Sen. Eddy.

(Sen. Methu spoke off record)

Order, Sen. Methu.

(Sen. Joe Nyutu and Sen. Methu consulted loudly)

The Temporary Speaker (Sen. Mumma): Sen. Nyutu and Sen. Methu, please. You are not in a marketplace.

Sen. Oketch Gicheru: Madam Temporary Speaker, I think Sen. Methu seems to be unsettled today.

The Temporary Speaker (Sen. Mumma): Sen. Eddy, please make your contribution.

Sen. Oketch Gicheru: Madam Temporary Speaker, this is an important progress from the NADCO conversations. It is also a beacon of hope in the country because every year that we have gone to elections, we have come out more bruised as a nation than before.

Therefore, I congratulate members of the NADCO, starting with the Co-Chairs, who midwived production of the documents that led to informing pieces of legislation that we are going to see in this House, especially with regards to elections, electoral processes and electoral bodies. This is one of them.

I support this Bill because one of the issues that we face as a country is that commissions that run elections seem to be above the law in the sense that offences that commissioners make sometimes are reduced to mere mistakes. However costly they are to the country, they are not held accountable in the eyes of the nation.

In 2007, I was a young man in Form Two at Friends School Kamusinga. We experienced chaos and resultant deaths after those elections. If you can remember, there was an envelope that eventually went to the International Criminal Court (ICC). When eventually the names were revealed, there were police officers, politicians and public servants who were held accountable. However, there was nobody from the commission then that was the referee of the elections who was held accountable.

Fast forward, in 2013, we had a presidential election that was also contested. Even appearing in court, commissioners always go scot-free. Therefore, we must support this Bill.

The Bill has attempted to look at those offences by members and staffers of the commission. I like the way they are specific. For instance, if you look at the issue of documentation of elections under Clause 6(a), it states that-

“A member of the Commission, staff or other person having any duty to perform pursuant to any written law relating to any election who makes, in any record, return or other document which they are required to keep or make under such written law, an entry which they know or have reasonable cause to believe to be false, or do not believe to be true.”

This is one of the most radically looked at documentation. We know that elections forms, starting with Form A, to Form B, to Form C, that are used to declare elections at presidential level and the other ones used at constituency levels are highly regarded and they have very clear security features. We have seen several instances where those documents are doctored.

Electoral officials have so much power that doctoring sometimes escapes the mind of the nation because of the bulkiness of our elections. You can imagine that at a presidential level, we deal with over 46,000 polling stations. Sometimes if these things are not well documented, then we may have a problem.

I do not want to belabour all the sections and offences that have been listed here, but I want to make three quick comments. I will submit several amendments to this Bill. It is one thing to look at offences committed during the running of an election, but it is another thing to look at offences through the entire process of an election.

If you can remember the 2017 presidential election that was nullified by the court, it was based on electoral process. In my humble view, this Bill seeks to sort three issues but also leaves three things that I want to talk about.

This Bill seeks to solve unreasonable delays and doctoring of election results. That is well captured in Clause 6. If you read from (a) to (m), it is well captured.

Secondly, it also seeks to sort the issue of alteration of results, if I were to summarize what I am seeing from this Bill, which is why I am supporting it. Thirdly, it can essentially help us to correct ungazetted polling stations, which sometimes are also featured in a number of our election results. You end up having some ghost polling stations like what happened in Migori County in 2017 General Elections.

Madam Temporary Speaker, if you followed that nullification, there were, variably so, a number of polling stations that came to the Supreme Court as un-gazetted, and non-existing that were used to vary that election. The fact that this Bill can solve those three issues, is a big step for the country.

However, this Bill must also explore the entirety of an election process, which does not start on the voting day. Election starts becoming a fraud when we start to conduct voter registration. We have seen a number of disenfranchised voters. Even now, there are young people in this country, who would wish to be registered voters, but cannot because the registration process and the issuance of Identification (ID) cards have been separated.

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As a country, we should choose to believe that it is an offence if you are turning 18 years old and cannot get the voters card as you also acquire you ID. It should be an offence. In fact, the issue of voter's card is something that this Bill should help us question. If you have an ID card that is genuine, why then do you need a voter's card? Our law says that at 18 years old you should get an ID card and you are also a viable voter.

Why then must this issue of voter's card be prohibitive for young people to vote? We must explore an amendment that I am bringing to this House on making sure that young people in this country can get their IDs or voter's card on time or use their IDs as their voter's card. I will be exploring that.

Second issue that is important in the registration process, is being able to clean our registers on time. At any given time, we must have a duration under which the commissioners must clean the register. If it is not cleaned, it will be like we have seen in a number of elections where a register is not hygiene to conduct an election, such that we do not know which voters are in the register *vis-a-vis* those that are viable to vote.

The alteration of results happened because of the issue of voter registers that the commission is being paid to take care of. This is something that should happen on a rolling basis. Mass voter registration should not happen when we are almost going for elections. Commissioners want to run around yet sometimes the audit of the voter register is not done properly.

On this issue of registration, there are a number of offences that the Commission has done in this country. I do not want to go into details but I will be pushing amendments on the registration of voters that have not been captured well in the offence that I am seeing here. The second offence which is very important is the role of the Commission *vis-a-vis* that of the secretariat in terms of looking at procurement as a process.

Madam Temporary Speaker, if we do not solve the issue of procurement violations on election materials, even if you hold an officer who is sitting on the day of election on some offences, the election will have been rigged a long time ago if there is no hygiene in our procurement processes. There are a number of violations, that I believe we must explore. I will be pushing those specific amendments on what constitutes offences of procurement in nature.

Some procurement of election materials start way before the election year starts. There are a number of indices that have been seen and by the time an election comes in place---

If you were to reflect on the election that we had in 2017 that was nullified by the Supreme Court and then juxtapose it with the election that happened in 2022, you will find that the filth of those electoral processes happened at procurement.

These includes the laws that our Commission ends up signing with vendors abroad. It is extremely critical to hold them accountable as an offence. For instance, if as a Commissioner or staffer of the Commission, you find a vendor and procure an electronic system that is supposed to deliver an election and then in that contract, you do not protect the country's data such that institutions such as Smartmatic have more rights on the data in the system than Kenyans, signing such agreements is tantamount to an

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offence. This is because it opens the country to serious procurement problems that if not addressed, compromises elections.

I will be pushing some serious amendments on procurement processes. Last issue that I want to talk about today because of pressure of time is on audit of elections. It is very critical that we look at the active element of offences during the time that election is being carried out. The Election Offences Act of 2016, that we are trying to amend, has seriously negated holding the Commission to account on the basis of auditing an election.

At what point should that election be audited? Offences should be put on every single audit trail so that you can show the country what the elections audit should look like at the time of the election, just before results are given out without proper audit, after the results have been announced for all candidates at the local and national level and more importantly, after the gazettelement of those results.

If the audit query is not examined as an offence, then it becomes very difficult to hold individuals who are running our electoral processes to account.

This is a good Bill. It is a good start that will help us look at unreasonable delays in elections, alteration of results, and unregulated polling stations as means of fraud. However, there are larger questions in our electoral processes.

As I support this Bill, I will be pushing forward for the amendment of this proposal to see whether we can make sure that our elections have proper measure of integrity through such kind of pieces of legislation.

Therefore, I support and will do so further with amendments.

I thank you.

The Temporary Speaker (Sen. Mumma): Sen. Okenyuri proceed.

Sen. Okenyuri: Thank you, Madam Temporary Speaker, for granting me this opportunity. I wish to support this amendment that came as a product of the National Dialogue Committee (NADCO) talks that happened. I was privileged to be in the first bipartisan joint committee that was trying to solve issues that we were facing as a country.

I am happy to see the product from the second team that went and looked at some of these issues and came with this legislative proposal. If you look at the amendment that has been sponsored by the Senate Minority and Majority Leader, we have made huge progress. Looking at elections in Kenya and Africa, we have come a very long way. Most of the experiences we have had was consistent agitation and refusal to accept election results.

Once the opposition or any other party that has lost refuses to accept election results, you would definitely know that we will plunge into endless war or court processes. We end up wasting a lot of resources in court which we would have rather combined forces with the person who has won elections to work for the country or at level you have been elected to serve people.

When I look at some of the proposals that have been made in this amendment, I think we are making good progress especially when we come down to the staff and members of the Commission because this is where it matters most.

Sometimes I say elections are won on the material day of voting. This is where you have to get your supporters cast a vote in your favor and people take advantage of

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those processes. I remember approaching a polling station and some of the electoral staff were reaching out to me and telling me this is how people in this polling station vote.

Little did they know that I had whoever I was voting for at the back of my mind. I imagine then that if that can happen to someone who is informed like me, what about other people who might not have that benefit? What would happen would be very absurd. We would have election officials influencing or taking advantage of people that they know cannot make certain decisions at that point.

These offences have been noted by this proposal. The punishments being meted will go a long way in stopping such crafty officials and members of staff of the Commission trying to tamper with the general result of elections.

Madam Temporary Speaker, in Africa, elections are seen as a do-or-die matter. It is in Kenya where politics is a means to attainment of wealth. That is why right now, most people want to pursue politics. They think it is a shortcut to being rich and achieving whatever you may want to meet.

If we make very clear and strict laws, we will motivate these people who want to aspire for political leadership to serve and not more on what they will achieve. This is the reason why in other countries, people fight to an extent where there is no election in which the winner will be allowed to work on their own other than on power-sharing agreements.

Madam Temporary Speaker, we have had power-sharing agreements and you have seen the effects. If I should give my views as a private citizen, I would say that those are some of the worst leadership experiments we would want to engage in.

In respect for the rule of law, such proposals would be very good. We as Kenyans need to have a culture of respecting the rule of law. That needs to begin with us in political leadership so that if you go to polls today and you lose an election, be very open-minded in accepting so that we can move forward.

Additionally, if you are challenging the whole result, let it be within the law. If we are looking at the form 34As at the polling station, let it be that you had agents who had those forms duly signed. When disputing that in court, you will not be doctoring documents and coming to dispute using that.

I am saying that because we have most candidates who lose the election and when they file Petitions to court, the evidence is not sufficient and you see what we eventually get into. Finally, politics should be one way that we can transform the lives of people. Leave alone the interest of an individual, the larger interest should be towards bettering the lives of the people we have had an opportunity to represent.

I fully support this amendment. I know we will keep planning as we advance because we experience new challenge and as a result of those challenges, we think about new remedies to address such challenges. The law is not very fixed. We will keep getting amendments to suit citizens as it well applies to them.

Thank you, I support this proposal.

The Temporary Speaker (Sen. Mumma): Proceed, Sen. M. Kajwang’.

Sen. M. Kajwang’: Madam Temporary Speaker, I also rise to support The Election Offences (Amendment) Bill that is before the House. It is important to reflect

that this is one of the outcomes of the National Dialogue Committee which was established at some point in the history of this country to stabilize the political situation.

I would like to hail those who participated as rapporteurs, as chairs, as members of the National Dialogue Committee and even those who presented memoranda to that very important committee.

We are now starting to see the outcome of the work they did in the form of various amendment laws. We are also seeing that result in the pacification of politics. I hope that we shall find an equilibrium where our politics is no longer highly charged, tribal or partisan. We will find an equilibrium where politicians will be speaking for the good of the country.

Madam Temporary Speaker, the amendments to the Election Offences Act are straightforward and they are subject of a negotiated and a long drawn process. However, it is my view that the various pieces of legislation relating to elections in this country need a complete overhaul. In fact, I believe that we need to perhaps redefine our electoral system so that it reflects the unique characteristics of our nation, our history and emerging and contemporary trends.

Let me give a few examples of where we need to change our election laws. I have said it before that rigging of elections begins at the point of registration of voters. It is not rocket science and I wonder why we the political class cannot just accept that once you have a national identity card that then should be the instrument that you use on the voters day.

The qualification to get an identity card is the same qualification to get a voter's card. In my 10 years in this House and in elective politics, I have always wondered why that matter does not feature very strongly in our conversations around empowering the young people and transforming our electoral system.

Madam Temporary Speaker, right now you will find there are certain areas which until the last election, there has been no effort to recruit the newly acquired citizens to become voters and then we will have a stampede a few months to elections. We will have very expensive campaigns a few months to elections to onboard the young people as voters.

Madam Temporary Speaker, how I wish we try to come up with a national consensus on various matters. We could come up with a consensus that the National Identification Card (ID) is sufficient for our young people and for our citizens to participate in the voting exercise.

Secondly, it would be important for purposes of national security and sovereignty to ring-fence our elections from foreign influence. When I looked at the process of tallying election results at the Bomas of Kenya, I have always asked myself, what is the role and place of diplomats, ambassadors, and high commissioners at the tallying centre?

In the last election at the Bomas of Kenya, the American Ambassador was very visible. Her fingerprints were all over the place. The Ambassador of the United Kingdom (UK) was all over the place. When we asked why, we were told that the U.S.A. and the UK governments were providing technical support to the electoral system and the electoral process.

If there is one exercise that we must completely ring-fence and keep away foreign influence, it is in our elections. I read somewhere today that if news can be fake, then history can also be fake. The history of Africa is replete with rigged elections, assassinated leaders and *coup d'états* engineered by the West.

I am a Pan-Africanist, and I believe that there are those forces out there, out of Africa, that believe Africa should never be fully independent and never self-determine its direction. We need a law that says that when it comes to the infrastructure, the systems, the processes, and everything to do with our electoral system, we shall make it home-grown. We have no shortage of skills whether in technology.

The other day, the Cabinet Secretary for National Treasury and Economic Planning was here telling us about e-Citizen, developed by locals. It is handling billions of shillings daily or monthly basis. If we can trust our young people to build a system of that nature, why can we not trust them to build an electoral system so that we do not have to go to foreign countries to get that technology?

Even when it comes to capacity building, it should not go beyond our electoral officers making tours to those countries to see how they do it. We should not have a situation where you have a foreign-funded organization offering technical and capacity building for our electoral officials and our electoral systems.

I believe that even if it is just coming from ordinary revenue or specified fund, our electoral system should not be subject to multilateral or bilateral agreements. It should be home-grown because if we do so, we rid our electoral system of foreign influence. If you have read about the history of Africa and not the fake version of African history, the West always has an interest in electoral outcomes because whoever becomes the president of a country, sometimes influences the kind of relationships that country has with the West.

We have seen interference in electoral systems in the Democratic Republic of Congo. Even in Kenya, I am convinced that there has been undue foreign influence in our electoral systems. So, that is part of what we need to look at in a complete and comprehensive overhaul of our election laws.

The Senators in this House have to spend a lot of money to get elected. Why? We have an electoral system that has put the responsibility for trust in and responsibility of ensuring the accuracy of results on the candidate rather than the Commission itself.

You have heard previously when petitions have been taken to the Supreme Court on presidential election results where the Independent Electoral and Boundaries Commission (IEBC) which is mandated to ensure trust Accuracy and integrity of results, referring to returns of agents of candidates.

We should not be investing in agents in elections if we have an independent electoral body that is of the highest integrity and credibility. It is a very expensive undertaking.

You can imagine that before the election day or three days before the elections, all of us here as Senators, when you are organizing your campaigns, you need to call your agents to a central place to train them. You have to give them the oath of secrecy and keep them together so that they are not poached by your opponents.

On election day, they have to be at the polling station. They have to be at the tallying centre at night. They have to sit for three, or four days waiting for the results to come out. Meanwhile, you are maintaining them, paying them allowances, giving them airtime, taking care of their food and accommodation. Election day expenses of a Senator in this House are on average Kshs10 million if one decides to deploy agents properly.

Of course, some of us sometimes find you do not have strong opposition, and then you decide to just ride on existing systems. Where the situation is tight, a Senator will be required to have Kshs10 million for the three days, pre and post-election. If you multiply that by the 47 counties, we are looking at an enterprise that spends billions that could have been put to better use. I have just spoken about the position of the Senator, I have not spoken about the Woman Representative, Governor and President.

In the American system, it is estimated that political campaigns that were about eight years ago, were costing 16 billion U.S. dollars. 16 billion on politics, and that was more than the budget of half the American states. If you look at our expenses when it comes to elections, it is money that could have been directed to other places, but we spend it because we have no trust. This is because we have an electoral body that has not demonstrated integrity.

Madam Temporary Speaker, we need to also look at the other laws that relate to spending on elections. However, we can reduce that expenditure if we build institutions, technologies, systems, processes, and an infrastructure that inspires trust.

It should be enough for a candidate to present themselves on election day, make sure that people vote, and trust that the IEBC officials and the security officials that are there will be able to provide a result that reflects the voice of the people. Yet we never trust them.

When you see policemen in that hall, you feel that they have been sent by the state to rig you out. When you see IEBC officials, the default mode is that they are going to rig you out. The fear is that they are going to be bribed by your opponent so that they can declare the wrong results. As a result, our polling stations have become battlegrounds, where each candidate has two agents, five security people and five mobilizers. It is against the election laws, but it is something that happens. That is why sometimes it takes too long for results to come out of polling stations.

Interestingly also, when the tallying has been done at that polling station, candidates insist that they must be part of that entourage that transmits the results to the constituency tallying centre, and to the county tallying centre. That is a system that is broken and we have time for us to change it.

Many of the countries that we look up to, what we are calling modern democracies, for example, America are holding their elections on the 4th of November. They do not have the same system of fast past the post that they are imposing on us.

Elections in France is a two-round election for the Legislature. You only win in the first round if you get 50 per cent, but otherwise, if you do not get 50 per cent, even as a member of the legislature, you have to go for the second round.

Look at South Africa, proportional representation. Look at the United Kingdom, we are talking of a Westminster style of democracy. Where did we get this mongrel of first past the post where elections have become ethnic census? This is where we sit down

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and say that, “we the Abasuba, Luo or the Kikuyu are many, and so we are going to take the next election.”

In the last conversation, there was the Building Bridges Initiative. It was bastardized, it was shot down in the courts of law for lack of public participation but there were some interesting proposals.

I recall a proposal that came from the Governor of Kisumu, who is currently the Orange Democratic Movement (ODM) interim party leader. He had a proposal that we cannot take these Western systems in their entirety. Let us try and build a home-grown solution where it is not a winner-take-all approach, first pass the post or an alliance of tribes.

Our election has been an alliance of tribes. It has been described in many words. There have been share-holding structures and all sorts of conversations and nomenclature to our politics. It is wrong because it pits communities and tribes against each other. Our politics becomes a game of chess where the antagonists are one tribe versus the other.

We must rethink our electoral system, but this is going to take a very radical rethink, because when it suits those in power, then they are in no rush to change it. It is only when it does not suit them that they want to change it. This conversation has been there from Independence and this is the conversation that brought the dichotomy between KADU and KANU. It was never settled because we opted for a broad-based government at Independence, the way we have opted for a broad-based government today. As a result, two years later, Jaramogi Oginga Odinga was kicked out.

They say history repeats itself. I do not know which one comes first, as fast or as tragedy, but history truly repeats itself. The things we saw in 1965 have come back to haunt us in the year 2024. The things we saw post-independence because of flawed politics of ethnicity, have come back to haunt us today.

As I conclude, I want to encourage the House that Parliament has a responsibility to scrutinise the report of the Independent Electoral and Boundaries Commission (IEBC). That report should never be limited to mundane bureaucratic matters. I have gone to the IEBC website. Recently, in my usual visits to my county, I like going to a polling station and telling my people that in this polling station, you gave me 90 per cent of the vote and I want to thank you for that.

In the past, the IEBC had a portal, where you could go, click, zoom and go all the way granular to a polling station. You could tell the presidential, gubernatorial, senatorial and the constituency results at that point in time.

Madam Temporary Speaker, that stopped happening, and yet we are advancing more. We are more capable of manipulating big data. Ten years ago, the IEBC had that portal. Today, ten years later, when artificial intelligence, big data, data warehouses have advanced, we do not have that visibility.

Today, if you are to ask how many votes you got across your respective counties, you cannot get it unless you go and look at that declaration form. We must push the IEBC to be transparent and accountable to the people of Kenya. The results of elections should not be held as a secret. We are not running a cult. We are running an open, free and fair electoral system.

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Madam Temporary Speaker, while I support this amendment to the Election Offences Act, I believe that a complete overhaul is necessary along the lines that Sen. (Dr.) Khalwale had mentioned earlier. In 2016, when we were in this House in the 11th Parliament, there was a crisis prior to that election and there was a bipartisan approach committee. We called it the Windsor Committee, led by Sen. James Orengo and Sen. Kiraitu Murungi, that gave us the minimum reforms that were necessary then. I believe that we have enough time not to go for minimum reforms, but we have enough time to go for comprehensive reforms.

I support and pray that the other National Dialogue Committee (NADCO) Bills will find their way to the House for quick enactment.

Thank you, Madam Temporary Speaker.

Sen. Joe Nyutu: Thank you, Madam Temporary Speaker. I also rise to make my contribution to this Elections Offences (Amendment) (No.2) Bill (Senate Bills No.28 of 2024).

We have a responsibility as Members of this House to identify the problems that our people have and to make the necessary legislation.

In this country, most of the problems that we have are related to elections. Every time we are going for elections, everybody gets scared of what is going to happen during and after the elections. This is because we do not believe in our systems, especially the electoral system. That is why I think it is very important that we come up with ideas that can help improve on this particular situation.

This Bill could not have come at a better time. We know that in our history, the very many differences that we have had, have come either just before the elections or after the elections. Why is this so? It is because many people do not trust the system.

Looking at this particular Bill and noting that under the Memorandum on Objects and Reasons as given by the Majority Leader and the Minority Leader; that we will create offences for members and staff of the commission who unreasonably delay in declaring results or knowingly alter declared election results. I think the first step towards solving the very many problems that we have with our electoral system is making it a responsibility of the individual officer of IEBC.

When we see the IEBC as an institution for offences committed by members or staff of the IEBC, then it does not become incumbent upon a member when they are executing their duties to take the necessary or the due diligence and care. That is why when we make it mandatory through this Bill, that whoever commits an electoral offence in the execution of their duties as officers or staff of IEBC will face the music, then I believe we shall be beginning to get somewhere.

This delay in declaring election results is what caused us the problems that we had in 2007. Anybody that watched the events that were happening at the KICC could tell that the delay in announcing the results, especially from the then Juja Constituency and Tharaka Nithi Constituency led to the build-up of the tension that was there in the country, leading to post-election violence of 2007. That is why this Bill needs to be supported by anyone who wishes Kenya well.

Looking at offences by members and staff of the Commission, especially Section 6(a) where we will make a law so that nobody makes an entry which they have enough reason to believe that it is not true.

This is something very important because when cheating or stealing in an election happens, it is done by altering the figures. For instance, you will find that somebody has 21 votes in a particular polling station, but then a rogue IEBC official or officer adds a zero, making it 210. If that is done repeatedly in several other polling stations, then of course they alter the overall result of an election and that is why this should be supported.

Madam Temporary Speaker we have assisted voters. Even in this House, when a Senator fails to cast their vote electronically, of course we jokingly call them assisted voters. These are voters going to the polling stations, who might not know how to read or write. Therefore, they are assisted by the officers of IEBC.

This is another avenue through which stealing of votes occurs. For instance, you as the officer or the staff that is mandated with the responsibility of guiding such an assisted voter; you then guide them to mark in the spaces that are not those of their preferred candidate whom they came to vote for.

We also have a problem in this country and it is not just about elections. It is about people faking disability and that is why I am excited about Section 6(c) that when you do not have reasonable cause to believe that somebody is visually impaired or has a disability; if you allow them to vote in a way that is only specified for people living with such disability, then they will be held accountable for that. This is something that we should discourage as a society. Nobody prefers living with a disability. When somebody pretends to be a person living with disability in order for them to gain some advantage or favour, then such a person and anyone assisting them should face the law. That is what progressive societies do.

Madam Temporary Speaker, there was one election where the Rt. Hon. Raila Amolo Odinga went to Kibera Polling Station to cast his vote and a presiding officer told him that he did not appear in the register of voters. I can see that Sen. Beth Syengo has raised her antenna. I may not remember which election it was. This caused a lot of panic and tension. It was not reasonable to do that because such an officer ought to have known.

I am referring to Clause 6(d) which states that if an officer willfully prevents any person from voting at a polling station where such a person is entitled to vote, action should be taken against them. Such an officer should have known that the Rt. Hon. Raila Amolo Odinga was registered in that polling station regardless of what the register said. We are amending this law to make officers use reasonable judgement because everybody has their brains.

Madam Temporary Speaker, when an election that is very close, two or three votes could mean a lot. That is why Clause 6(e) and (f) should be supported. That where somebody refuses to count any ballot paper or count a vote they are not supposed to, then action should be taken against them. This is because even one vote can make a difference.

In conclusion, no officer should be allowed to omit anything in breach of their official duty. Everybody should do their duty. That is why people are paid salaries.

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Unless people know that there is a consequence for a certain action, they are not going to be serious about anything. We must cure the problems that emanate from mismanaged elections.

Madam Temporary Speaker, with those very few remarks, I support the Bill. I thank you.

The Temporary Speaker (Sen. Mumma): I call the mover to reply?

(Sen. Thang'wa spoke off record)

You have not pressed, you are not there. There is no one on the dashboard.

(The Clerk-at-the Table consulted with the Temporary Speaker)

Okay. Proceed, Sen. Thangwá.

Sen. Thangwá: Thank you very much, Madam Temporary Speaker, for the opportunity to contribute to the Elections Offences (Amendment) (No.2) Bill (Senate Bills No.28 of 2024). I support this Bill because it is addressing issues that some of us have gone through. Of course, we would want it to be amended, so that we can seal the loopholes. As many have said, the Bill is supposed to cure the unreasonable delays in announcement of election results.

Although it is talking about the general election, I remember there was a delay in announcement of results of party nominations in 2017 in Kiambu County. The results of the governor and women representative were announced, but the results of the senator had to take about three days. That was the period where the returning officers were cooking the results. If this law was to be applied in the political parties when doing their nominations, it can cure a lot of irregularities that arise.

The law is also talking about returning officers who tally results of unguarded polling stations. It has also been discussed that no one should interfere with the results, whether it is the returning officer or any other person. Looking at this law and what it is trying to cure, we are going to bring more amendments to it. It has been said here that the election is a process. We do not want to just look at the issue of counting the votes, tallying and announcing the results. We need to look at the process itself from the campaign period.

I have a Bill that is coming. I will see whether it can fit as an amendment in the amendment Bill that has been moved here. My Bill is called the Anti-Campaign Lies Law. What am I talking about? There has been many lies against candidates when people are trying to campaign. They lie to the voter, who will not vote according to the way they understand their candidate, but how they were lied to.

The Anti-Campaign Lies Law also talks about lying on promises, policies and manifestos. This is something that we need to look at as a Parliament. That we should not allow people to stand and lie to the voter because they make decisions based on what they have been told, yet once someone gets in office, they change. This is an amendment that we need to bring into this law.

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Madam Temporary Speaker, I can give an example of 2017 campaign of the gubernatorial seat in Kiambu County, where the former governor, Hon. William Kabogo was campaigning against the former governor, Hon. Waititu Baba Yao. It was said that the governor in Kiambu County had said nasty things about women. By that, Hon. William Kabogo lost his seat, but nobody was able to prove whether he had said what was purported. Since we do not have a law that talks about the anti-campaign lies law, he could not go anywhere. We call it propaganda and people think it is okay.

Madam Temporary Speaker, there is another example. The Cabinet Secretary for Mining, Blue Economy and Maritime Affairs, the former Governor of Mombasa County, Hon. Ali Hassan Joho, is on record saying that he will never work with H.E. Hon. Dr. William Samoei Ruto. He called the President a thief and said that he cannot work with him. Many people never voted for H.E. Hon. Dr. William Samoei Ruto because they believe in Hon. Ali Hassan Joho. However, today, he is in Government. He is working under the same President that he said he would never work with. They lied to the voters, who did not make the right decision. The voters of Mombasa never voted for H.E. Hon. Dr. William Samoei Ruto because they believed in what was said by the then governor, Hon. Ali Hassan Joho. I am trying to say---

Sen. Oketch Gicheru: On a point of Order, Madam, Temporary Speaker.

The Temporary Speaker (Sen. Mumma): What is your point of order, Sen. Oketch Gicheru?

Sen. Oketch Gicheru: Madam Temporary Speaker, I rise under Standing Order No.105 as read together with Standing Order No.101 on content of speech. The content of speech of the Senator for Kiambu has provoked the word, 'they lied to the people'. This is discussing the person of Hon. Joho, who is the Cabinet Secretary for Mining and Blue Economy in the country.

Madam Temporary Speaker, there is duality in that statement. Firstly, there is the statement of facts issues from the Standing Order. More importantly, it is discussing the persona of Hon. Joho, that the Senator for Kiambu is mischaracterizing and prosecuting the persona of the Cabinet Secretary in this House without a substantive motion.

That is out of order and he should withdraw, apologize to Cabinet Secretary Joho, vehemently so, and if possible, if he must speak the kind of language he has put on the character of the Cabinet Secretary, then it has to be through a substantive Motion.

The Temporary Speaker (Sen. Mumma): Sen. Eddy, you have made your point on your point of order. Sen. Karungo, do you want to substantiate at a later time or withdraw?

Sen. Thang'wa: Madam Temporary Speaker, this is what we are trying to cure, the truth. I have nothing to apologize about because it is in the public domain. If you want me to substantiate---

The Temporary Speaker (Sen. Mumma): Sen. Karungo, please, substantiate your statement by Monday, when we have a Special Sitting.

Sen. Thang'wa: Yes, and I hope that when I substantiate, you will allow us play a clip or a video of the said Cabinet Secretary.

The Temporary Speaker (Sen. Mumma): Sen. Karungo, please, proceed for now.

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Sen. Thang'wa: I will do that, Madam Temporary Speaker.

(Sen. Oketch Gicheru spoke off record)

The Temporary Speaker (Sen. Mumma): Sen. Eddy, what is your point of order? He has not even spoken.

Just speak from where you are.

Sen. Oketch Gicheru: Madam Temporary Speaker, I stood under Standing Order Nos.101 and 105. The Senator for Kiambu has responded to Standing Order No.105, where he says that he can substantiate, but that substantiation is an allegation that is tantamount to discussing the character of the Cabinet Secretary. Under Standing Order No.101, he cannot discuss the Cabinet Secretary without a substantive Motion.

The Temporary Speaker (Sen. Mumma): That decision can only be made once he substantiates.

Sen. Thang'wa: Madam Temporary Speaker, I would say that Sen. Eddy has a red tie.

(Sen. Oketch Gicheru spoke off record)

The Temporary Speaker (Sen. Mumma): Order, Sen. Eddy. He has not continued to discuss the Cabinet Secretary.

Sen. Karungo, you will substantiate on Monday and proceed with your statement.

Sen. Thang'wa: Thank you, Madam Temporary Speaker, I will do so. We can always substantiate the truth and we will do that.

I am trying to say that this law is only talking about the voting, how to vote, where to vote, the tallying, the counting of votes and then, projecting the votes to the country to know the results. That is why I am saying that the issue is not about counting the votes.

We were all voted for and that is why we are all here. The votes were counted and announced. It was said that so-and-so won. We even went to the court and it was ruled that so-and-so won. The issue is not about that, but it is about the process of how we got there. That is what we should cure.

Madam Temporary Speaker, I said that there is a lot of misinformation and false statements in political campaigns. That kind of misinformation, misleads the voter about the candidate, policies and the election process. I remember and I like giving this example, and I also hope that Sen. Eddy will not start when I give this example. During the Moi era, people were being lied to and were told that, if you do not want Moi, put X where his name is. It was said all over, but you know, by putting an 'X' next to a person, that is a mark to vote for someone. That is how people are winning elections, by misleading people. They would tell the voters that if they wanted to vote for someone, they put a right, and if they did not want them, they put 'X'. So again, you destroy the vote.

This is what we are talking about when it comes to misleading people when they are making a decision. We need to protect the voters' rights. The example I have just

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given here is in line with the amendment proposed to penalise false statements that may influence voters' behaviour.

I was voted for. I said I would stand with my people and listen to them. I liked what Sen. M. Kajwang said the other day. He is on record saying that maybe we should also make it easy for the citizens of this country to recall us from the Parliament. We should make it easy for the public to impeach a Senator and impeach a Member of Parliament. We have made it easy for them to impeach governors, the President and the Deputy President. By the way, we never knew you could remove a Deputy President. Now we have seen. It is a drill, and maybe what is coming is bigger than that.

What I am trying to say here is that now we know that it is easier to impeach a Deputy President, a President, a Governor and a Deputy Governor. Nonetheless, why is it so hard to remove an MP? Why is it so hard to remove a Senator? I stand with Sen. M. Kajwang' when he says that he will bring a law that will make easy it for the public, to remove the MPs, the Senators and the MCAs.

(Sen. Methu combed his beard)

The Temporary Speaker (Sen. Mumma): Order! Sen. Methu, this is not a dressing room.

Sen. Thang'wa: When we were voted for, we said we were going to listen to our people. Are we listening to them? Our people told us not to pass the Finance Bill. They even come to the streets, but we still pass it.

This Bill is an issue of not just votes. We also need to protect or make it an election offence when you lie to the people so they can vote for you. Lying to the people to vote for you, you are voted under pretence. This is conman ship and against the law.

As I support this Bill with the amendment, I want to give an example. In 2010, during the general election of the United Kingdom, there was a candidate named Phil Wallace of the Labour Party who was found guilty of false information following Section 106 of the UK Representation of the People's Act. What was his problem or what was his issue? Why was his election nullified? It was nullified because he lied against his opponent, Eli Watkins. How did he lie? He said, 'If you vote for this man, he is an extremist. He is following Muslims. If you vote for him, he will run away from the constituency and live in another constituency.' the law protects against this.

Mr. Watkins went to court and said: How did you know I am going to move? How did you know I was an extremist? The court listened to the case, and his election was nullified, and he was barred from running for the next three years.

We need to clean our electoral system and electoral processes and protect the integrity of the vote and the people who vote for us.

I will support this Bill, and I will bring more amendments to it.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Mumma): Sen. Mungatana, proceed.

Sen. Mungatana, MGH: Madam Temporary Speaker, I would like to say at the onset that there are many good provisions in this amendment Bill, and I support it. However, we need to improve on some of the provisions in these proposed amendments.

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I do not believe that these improvements would be outside the purview of the NADCO agreements, but they would clarify what we mean or is meant to mean within this amendment Bill. I am looking at the proposed New Clause 38A and New Clause 39 that deal with declarations of results but they are not very clear. The Committee of the Whole will need to put some clarity into this.

New Clause 39 talks about determination and declaration of results. It states that the Commission shall determine, declare, and publish the results of an election immediately after the close of the polling and results declared at the polling station shall be final. It goes on to say in New Clause 39(4) that for purposes of a presidential election, the commission shall tally, announce, and declare presidential results before tallying, announcing, and declaring results for other elective positions.

We need to improve this. If tallying has been done for the other positions but the presidential tally has not been done, why should we delay the constituency returning officer by putting this requirement that we need to have presidential results first declared?

I do not think this is a useful kind of legislation because it tends to try and manage the actual intelligence, or micromanage what constituency and county returning officer should do. Why should we wait for tallying of results of presidential candidates before we announce results of a Member of Parliament (MP) or Member of the County Assembly (MCA)? Why should we tie those together?

An MCA does his or her own campaigns and the ballot box is separate. If they are done with counting and tallying, why should we delay the announcement if presidential results are a lot more yet we have finished with this one? Why not just remove this particular provision which seeks to micromanage constituency returning officers?

Madam Temporary Speaker, I want to use this opportunity to give notice that this and others that I have seen need to be improved. Therefore, I will be bringing those improvements or further amendments to this Bill.

I am looking at Clause 23, which deals with amendments to do with the procurement process for the technology to be used during counting. There are good provisions that have set out the kind of technology. I am happy to see that even the intellectual property rights of the technology that we are going to use during elections shall now, by law, vest in the Commission. So, the issue of having to access the servers, I do not know from which country or outside Kenya, has been dealt with by law and I think this is a good improvement in our system. However, there is something lacking in this provision.

We need to have, by law, a requirement that the IEBC will have to do a trial run of the process. We have the political parties' forum where all political parties have registered members. We need to have a trial run so that everybody can say that we went through the process.

The Independent Electoral and Boundaries Commission (IEBC) took us through the process. How a person is supposed to vote, how the tallying and transmission of results is supposed to be done, and how we will also have verification if we need to, so that, every political party signs to it and have fidelity to the law and to the reflection of the will of the people.

Madam Temporary Speaker, we need to put this provision somewhere, that a trial run must be done, so that political parties and all those who intend to run as independents can have a look. The problem in this country has been the integrity of the system of electioneering. I have had the fortune of observing elections in other countries on behalf of the Pan-African Parliament, (PAP) which this Senate graciously sent me to.

I have seen equivalent of IEBC officials who register people prior to the elections. They see the whole system. There is no hiding the system. Days before the elections, members of political parties and officials are taken through the system again. They are told if they had issues in the previous trial run, they should now see what has been improved, so that they can agree with them when they declare these results as a reflection of the will of the people. We have to get a system that has all the integrity requirements and the goodwill of political parties together with those who intend to run for elections as independents.

On the question of evaluation of elections, I generally support this, but we must look at the cost element. We must not make elections so expensive to conduct, and even more so during evaluation after electioneering process.

For the sake of predictability, we need the firms that will be evaluating to be known in advance and be put on the list as service providers to that effect and that there is some indication in terms of the cost.

This is because the cost of elections in Kenya has been so expensive. Even right now, when we fund IEBC, we are always told there are debts to pay. To date, there are suppliers who have not been paid for services rendered. We need to be careful about exaggerating the cost of elections to include evaluation by putting it in the law, without looking at the costing. IEBC should be directed through law or regulations, that those who will provide this service must be known in time together with the kind of quotation they will bring, so that we are happy to spend that money at a reasonable cost.

Madam Temporary Speaker, I am happy about the requirement in this law that says that three months before the election, we must have all the polling stations gazetted. This is a good one.

In some instances, in counties as huge as Tana River, the latitude to open polling stations has been abused in the electioneering process. This is because some polling stations are introduced very near to the election. When you are campaigning and the candidates are on the campaign trail, you are told there is this other new polling station that has been gazetted.

As a candidate, you have not planned for those polling stations and the distances are so huge. It makes a lot of sense to state that three months before the general election, all the polling stations must be gazetted. We must know them, so that those who are intent on campaigning for various positions can be clear. We have to create some predictability around electioneering. I am very happy about that proposed amendment.

Mr. Temporary Speaker, Sir, there has been some problems and I am very glad that Clause 22 has captured this challenge. People have gone to court to say that electronically transmitted results are not true. They have created uncertainties around the country especially when it comes to presidential elections. It is very clear through this law that the verified and declared results in every polling station shall prevail. Those

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physical results shall prevail if there are any doubts about the electronically transmitted results.

I also think that this law should create some consequences for those of us who are candidates and refuse to accept results. This is something that we need to deal with. If I run for the Senate seat and refuse the results yet my political party participated in the trial run that I am suggesting; signed against the fact that this system owned by IEBC is correct and good, and then after that, I disparage the results to say IEBC was compromised--- We must have some consequences against candidates like those.

In Kiswahili, there is a saying that says, *asiyekubali kushindwa, sio mshindani*. It creates a lot of tension when a gubernatorial or a presidential candidate says the results are fake. It is not right. If we have gotten the electronic system proper, signed to it as political parties and as independent candidates; challenge us with specificity if you come back to tell us that I do not accept those results. Say there is a fake result in polling station ABCD but not causing tension around the country. When people are in election mode, there is already a lot of tension.

I am glad that this law has attempted to deal with various issues. However, we also need to bring in some matters here that will bind candidates who are not being honest with themselves and with the system of electioneering that we chose as a nation.

I will go back to the evaluation report. The evaluation report has given a framework under Clause 87A. It has listed that the audit must include the review of the legal framework. It has said that there will be a review of the role of the media, the role of civil society, voting procedures on election day and many things. However, it does not say what we do with this report. It is like an exercise in futility. It is like writing a thesis and then leaving it at the university library.

I was to propose that a proper way of dealing with this audit must be found. That should include sending to the various agencies for action, so that if there was a fraud, for example, it was found by that report that there were exaggerated costs in the electioneering process for the procurement of certain goods, then people must bear the consequences. If they say that the information technology was compromised, and what we were shown is not what happened during the election, then there must be consequences.

So, it is not enough to say that we should review and carry out an audit of what happened in the elections. The audit must be followed by action within a time limit of six months. Consequences must revisit those who mismanaged the elections and those who committed crimes in the election period. That way, we would create certainty. Officials who are charged with this sacred job will not mess up with the people of Kenya, wherever they are voting, and whatever it is that they are doing.

So, I will be proposing amendments to buttress this provision so that this evaluation can go somewhere. It should not be like a thesis in the university. I will also be proposing a change on some of these provisions to provide for a trial run for the technology, so that the people of Kenya can have confidence in the integrity of the election process. On the whole, this is a very good improvement of the election laws that we have.

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Mr. Temporary Speaker, Sir, the election laws must continue to be changed and improved. They must continue to be fertilized, so that we can have elections that have integrity in this country. We do not want a situation where when people have tension when going for elections. We should be like other countries.

The other day I was in Tanzania and you would not even know that there are going to be elections the following year. If it was Kenya, it would be a very different scenario. Even in South Africa, it is not like here because they have kept on continually improving the integrity of their election system. We need these laws and to keep doing it, evaluating and improving until we get it right in this country.

I beg to support.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. Mungatana

I now call upon Sen. Chararkey, to make his contributions.

Sen. Cherarkey: Mr. Temporary Speaker, Sir, from the onset, I want to support with reservations the Elections Offences (Amendment)(No.2) Bill (Senate Bills No.28 of 2024).

If there is any aspect in this Parliament, and in this Republic of Kenya that we have over-legislated, and we continue to over legislate is the issue of elections laws in this country. We have amended the Election Act until we do not know the original Election Act of 2011. Therefore, it shows our mistrust of the value system of accountability and transparency and the ability to trust institutions as a country. You no longer know the identity of the Election Law or Act as it was assented to by President Mwai Kibaki in 2011.

For us who grew up in rural areas, and maybe you also, you used to go to school with “Mungu Shoes” which means barefooted. We used to have shorts with so many patches; *inapigwa viraka* until the original short that you are wearing changes the color. I think that is what happened with the election laws. We no longer have the original identity of what the election laws were. It has been changed through the character.

In the last Session when I chaired the Justice and Legal Affairs Committee (JLAC), we tried to amend, review and delete the elections laws that we have in this country. It behooves that, the issue with our elections is the deficit of trust. It is not about lack of laws or the institutions that we have like IEBC.

You are aware today as we talk, Banissa, Magarini and other county assemblies are yet to elect their Members of Parliament, which continues to challenge the validity of existence of Parliament as constituted. This is not only on the issue of gender, but in terms of representation. They are yet to do their elections in order to be represented either in the county assembly, the Senate or in the National Assembly. It is not because of lack of laws but deficit of trust in our institutions.

I am happy that this Bill essentially wants to clean-up the elections laws and the Elections Act. I think it is a clean-up but others are reactionary. Others want to water it down because of political rights. I have seen the deletion of recalled clause based on the decisions of the courts in the Wambui case. Additionally, in the Katiba Institute Case, Section 45 and 48 of the Elections Act, the parent Act has been deleted based on a court's decision yet, we should be reviewing it.

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There are many factors and safeguards that this Constitution has put on State officers. One is the impeachment process, two is the vote of no confidence, three is the censure Motion, four is the recall. These are safeguards that the Constitution has provided to checkmate the elected officials or State officers within the structure.

Therefore, when you see this Bill trying to delete a section, purportedly that it was based on Wambui case or Katiba Institute case that was being decided, we are undermining the right of recall, which is a constitutional matter given as a safeguard. Therefore, I found the drafters being mischievous.

We will be creating political demigods because if you are an elected MP or a Member of County Assembly (MCA) and you know you cannot be recalled, that can be a face of impunity. Like governors, the president and the deputy president can suffer the fate of a censure motion including the cabinet secretaries, through vote of no confidence. Also impeachment proceedings can be instituted against governors, the deputy president or the president.

I am happy with Section 6 and therefore I do not agree with the deletion of Sections 45 and 48 of the principal Elections Act, because it does not come in good faith. I am also happy that there is an amendment to allow the Commission to open and access the voters' register, verify and confirm the voter's details. Therefore, this will apply at all times, except during elections, by-election, general election or a referendum.

It is a high time as a country that we encourage many young people who are yet to register as voters to use this opportunity to register, so that their voice can be heard. As you are aware, the United Nations Declaration on Civil and Political Rights and even the 1948 United Declaration on Human Rights, one of the rights is the right to vote and another right is to participate in political rights as envisaged in Article 38 of the Constitution of Kenya.

Additionally, the international instruments are provided for in Article 2(6) of the Constitution, which emphasizes on that need. Therefore, that access gives impetus. It gives the right to vote, the right to participate in an election and the right to register as a voter which is the import that the Constitution envisaged from Article 80, 87, 88 thereabouts.

Mr. Temporary Speaker, Sir, there is the issue of deletion of Section 22 of the Principal Act. There are people who should be celebrating today. We said that you do not need to go to school to be a leader. Section 22 had proposed that you needed to have a degree, apart from the other requirements, if you wanted to run for a seat as a Member of Parliament (MP) in the National Assembly or Senate. We had postponed that requirement in two elections. One of the requirements was that you should have a degree from a recognized university if you wanted to be an MP or Member of the County Assembly (MCA). This section has been deleted.

In the Katiba Institute case, I proposed to delete Section 22 of the principal Act. One of the reasons was that before you run for a seat, there were minimum requirements like you must be a Kenyan and registered voter. The people who should celebrate the most tonight is the MCAs and MPs because we have removed educational requirements. You only need to convince the voters why they need to elect you. You should also know

how to speak Swahili, English or sign language as provided by law. You should also have an Identity Card (ID).

This is for people who are arguing that Parliament had intention of locking out any other potential people to become elected MPs or MCAs. If today we pass this proposal, it will mean there will be no need of educational requirements except to know how to read and write and to either speak in Swahili or English or sign language because those are national languages.

This came from the National Dialogue Committee (NADCO). It will be up to the wisdom of voters now that everybody can run so long as you are not alien. The educational requirement has been removed and this is a significant milestone. I have many friends who have a reason why they did not go to school, but can make good MCAs, Senators and MPs. This is the biggest milestone and I support. I believe leadership should not be based on your educational background. Education is good. I say this without fear of contradiction.

While I support this, it behooves you--- I am also learned. I am not saying there is no place of education in leadership. Education will give you the ability, capacity and competency to grapple with issues of wide range. However, other people say that leadership is sometimes about wisdom and experience. So, education is part and parcel of leadership.

God was gracious enough that the Generation Z and many others of our age went to school. I am not saying that people should not go to school. They should, but we are avoiding to be discriminative against the Constitution of the Republic of Kenya as was the case of Hon. Wambui. She was the former Member of Parliament of Othaya Constituency after the late H.E. Mwai Kibaki retired. That was the precedent of reviewing Section 22 of the Principal Act.

I know a number of MCAs have been calling us. When the NADCO Report was being done, most MCAs and a number of MPs were worried of this provision. This will also assist us with the issue of fake academic documents. As elections approach, you will find some people going to manufacture fake academic documents and degrees, including people who wanted to run for serious seats other than MCA and MP positions. I hope that the manufacturing of fake academic documents will come to a stop now that it will not be needed. I encourage colleagues in the leadership to make progress. Personally, I am in school and I am not confessing that I am more learned than other people here. However, as leaders, if you need to grow or run for governorship, presidency or deputy presidency, you must have a degree. That is a constitutional provision.

Mr. Temporary Speaker, Sir, I saw that as significant where we no longer need academic requirements. On the fourth issue on the gazetted names of political parties, there is Section 33 in the principal Act. If we introduce Section 33A, we need to know who will run for an election and we need to know who is running with a party and an independent candidate. This is important so that the voters will be well versed.

When you look at the introduction of Clause 38A, by amending Section 38 of the principal Act, the Commission shall appoint a place or a polling station for each electoral area and which must be gazetted; and I agree it should be published. Sometimes, they

usually say, per polling station or centre, although they use classrooms because we usually primary schools.

There are places like Nairobi and other places where there is a huge population and the IEBC will be given the leeway to increase the number of polling stations to allow efficiency. This is because, sometimes, some votes will have challenges of sicknesses, disabled, expectant and others are sickly and they will be given priority. We would not want the scenario of the *githeri man* where a man will queue with githeri and get a Head of State commendation, while some people who have worked for this country have never seen such a commendation.

Mr. Temporary Speaker, Sir, we want to reduce and ensure that we give that latitude to the IEBC and it should be gazetted. We also need to have a timeline on when it can be gazetted. With new Clause 39, the Commission shall determine, declare and publish results of elections immediately after the close of polling results; shall be declared at the polling station and it will be final. This issue has been canvassed in the court of law for the longest time possible. The law has always said that the results declared at the polling station shall be final.

I am happy that the new Section 39 that is being introduced declares that the polling station shall be final. This is so that we avoid stuffing of ballot papers. If you move from one polling station, like from St. Francis Girls Secondary Cheptarit polling station in Mosoriot to Ndaptabwa Primary School, you know during elections, Satan is always active. He is always perambulating and gallivanting.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Cherarkey, could you please approach the Chair for a moment. You will go back to conclude.

*(Sen. Cherarkey consulted with the Temporary Speaker
(Sen. Wakili Sigei)*

Sen. Cherarkey: Thank you, Mr. Temporary Speaker, Sir, for those guided directions. Those were general comments. I will now delve into serious issues on election offences.

I was saying that when you are moving election results from one polling station to another, there can be stuffing of ballot papers. For example, you could be taking them from Keumbu to Siongiroi and I was saying that Satan is always active during the elections period, that night and even, during nominations. Satan is always perambulating and gallivanting at that time.

That is why it ties up when you look at Section 6 of the Election Offences Act, 2016. This section talks about conducts or holds an election in a gazetted polling station. It ties up with what I was saying that IEBC must gazette and give free way. It also ties up with my earlier submissions where I have said in areas like cities like Nairobi, you will find there is a lot of population and the voters are many. These are challenges and this should be gazetted. If you are found in an ungazetted place, it becomes a serious issue. This is a serious offence, this is how rigging happens. The worst for any country is to get the wrong leaders in leadership.

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If today you have ungazetted polling stations all over, rigging happens, and ballot papers are stuffed. The worst thing that happens to a country is to have the wrong person in a seat because they will not serve.

Mr. Temporary Speaker, Sir, on the issue of knowingly or intentionally interfering, altering, or intentionally causing another person to interfere or alter declared results--- Also, causing another person to interfere or alter declared results. We did it in 2007, and we knew the consequences when people declared themselves winners, which is unfortunate and must be punished.

This is why, in my opening remarks, which I will repeat, the challenge we have in this country is not a lack of institutions; it is a lack or deficit of trust and belief in independent institutions. For example, if another person interferes or alters declared results or intentionally interferes with the results, it is a serious electoral offence. We know it can even plunge the country into chaos. Imagine if we had two presidential candidates running almost concurrently. If we were respecting the IEBC because if we have that trust, it becomes easy for another person to interfere or declare results.

When you look at the amendment of Section 6, the report's upshot—which I want to run through in quick succession so that I can conclude with this part—is a return to keeping the amendment under written law. What we need to do is vet the staff that are there in polling stations.

Section 6 -

“(b) permits any person whom they know or have reasonable cause to believe to be able to read or write to vote in the manner provided for persons unable to read or write”

Some people are disabled, and others are old and cannot read and write. We need an amendment so that we do not disenfranchise this kind of voter. They are common in our villages, and they might want to vote for Sen. Wakili Sigei, Sen. Tabitha Mutinda, or Sen. Cherarkey, but they can only express it, so how do we ensure that their vote is secure?

Mr. Temporary Speaker, Sir, Clause 6(c) of the Bill –

“permits any person whom they know or have reasonable cause to believe not to be visually impaired or a person with disability to vote in the manner provided for persons who are visually impaired or persons with disability, as the case may be.”

These are PwDs. We need to work with disability organisations.

Clause 6(d)

“Wilfully prevents any person from voting at the polling station at which they know or have reasonable cause to believe such person is entitled to vote.

(e) wilfully rejects or refuses to count any ballot paper which they know or have reasonable cause to believe is validly cast for any candidate in accordance with the provisions of such written law.”

The process is clear when a ballot paper is being displayed. When you tick outside the box, does it invalidate that ballot paper? We need a ruling because, sometimes, there are more rejected ballot papers than valid ballot papers or invalid ones; how do you classify when people tick two boxes or put an X or a tick?

Mr. Temporary Speaker, Sir, Section 6(f) –

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“(f) wilfully counts any ballot paper as being cast for any candidate which they know or have reasonable cause to believe was not validly cast for that candidate.”

This is normally a problem. The problem happens when there is a contest on whether the ballot paper is valid or not. Sometimes, people tick outside the box, others put X, and others draw cows. Somebody can draw a cow.

There is a new song by Trio Mio called “*Nimekumark*”; some people can say “*nimekumark*”. The issue should be whether a mark qualifies to give it a valid vote.

Then Clause 5: These are just errors on which we need to agree. I need a minute to conclude. This is bribery and it should be punished alongside other election offences.

With those very many remarks, I support. We need to review the electoral offences, so that we can increase more catalogue and punish people in the electoral process. Invalid elections cause instability in the country.

I thank you, Mr. Temporary Speaker, sir.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Munyi Mundigi?

Sen. Munyi Mundigi: Asante, Bw. Spika wa Muda. Naunga mkono Mswada wa marekebisho ya Sheria za Uchaguzi uliowasilishwa na Kiongozi wa Walio Wengi Bungeni, Sen. Cheruiyot. Ni kauli mbiu yangu kwamba maswala yanayohusiana na uchaguzi yafanyiwe marekebisho mara kwa mara ili kuwiana na mabadiliko ya kiteknolojia.

Katika vituo vingi vya uchaguzi, huwa kuna shida. Hivyo basi, naomba Tume ya *Independent Electoral and Boundaries Commission* (IEBC) ipewe fedha ili iweke mitambo na teknolojia inayotakikana katika vituo hivi. Mara kwa mara, tumeona matatizo kama vile ukosefu wa umeme na vifaa vya kuhifadhia makaratasi ya kupiga kura katika vituo kadha wa kadha vya upigaji kura.

Wakati mwingine, mvua ikinyesha magari ya kusafirisha masandaku ya kura yanakosekana. Hivyo basi, naunga mkono mchakato wa marekebisho ya sheria za uchaguzi.

Vile vile, naunga mkono marekebisho ya sheria ya kuondoa kiwango cha masomo ya cheti cha shahada kwa wagombeaji uchaguzi kwa nyadhifa ya Members of the County Assembly (MCAs), Seneta, Women Representatives na Members of Parliament (MPs). Hatusemi elimu ni mbaya. Tunajua ya kwamba elimu bora ni msingi wa maisha wa vijana wetu. Lakini, tumeona wafanyibiashara wengi wakarimu wakisaidia watu mashinani. Japo haiwezekani, ningetamani sana pia kama kigezo cha gavana kuwa na elimu ya shahada kingeondolewa. Wapo watu wengi wanao ujuzi na hekima kama Mfalme Sulemani wa Biblia.

Vile vile, naunga mkono pia mapendekezo ya kuwalipa wafanyikazi wa muda wanaojiriwa kufanikisha uchaguzi kama vile madereva. Wengi wao mpaka sasa hawajalipwa. Hili ni jambo la aibu sana. Changamoto kubwa imekuwa katika mchakato wa kutoa kandarasi ya kutoa huduma hizi. Marekebisho haya yatuzuia mambo mengi kwenda mrama.

Asante, Bw. Spika wa Muda.

The Temporary Speaker (Sen. Wakili Sigei): Now, that there is no other Senator who is willing to contribute to this Bill, I ask the Senate Majority Leader to reply.

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The Senate Majority Leader (Sen. Cheruiyot): I appreciate the contribution of all of our colleagues who have taken time to speak on this very important Bill. It is important because we are the practitioners. We are the political players. I observed this when we were moving the Bill. Many times in the excitement of passing laws, we occasionally pass laws here, which when applied in the field, we ask ourselves who passed them. What was the thought process that went into this thing?

Therefore, each colleague who has spoken, including those who are proposing further amendments, please, go on to make proposals on how to make our electoral process neater. I propose further, that even as we consider further amending this Bill, there can be a way to apply the same high standards of poll credibility we are trying to set up in our general elections, in our party elections as well.

Mr. Temporary Speaker, Sir, we can have members of a political party participate, do the nominations and meet certain standards. Party discipline is an important democratic credential, which is heavily lacking in our political culture.

I wish it was possible for us to ensure that the threshold for which we set is in line with the manifesto and aspirations of a political party such that when you elect a Member of County Assembly (MCA), Member of Parliament (MP), a Senator, a Governor, President, Deputy President, you are able to hold them to account in line with the ideals and the values of that political party.

When they sign, they will know for a fact that I belong to the United Democratic Alliance (UDA) Party, and we are of this shade in terms of our economics, our social political culture, religious pluralism, and so on and so forth. This will ensure we do not have to get to levels of impeaching leaders. A party organ on its own can choose to deregister you for advancing certain courses that are not in line with the views and the ideals of the political party that you belong to.

It is unfortunate, that up to date we have been unable to organise our politics in such a way that people respect the values of the political parties that they are elected on. The easiest way to do that is to ensure that the same high standards we are setting for returning officers, in terms of election declaration, and polling stations- where voting is done- can be replicated.

This will ensure that even at the smallest level of a political party, we can successfully organise ourselves and the party can even bar you. We can say to a certain person that we know you are interested in running in our political party, but because of your public pronouncements on this matter, or that other thing that you have done, please be in the know that we shall not be accepting nomination papers from you and let it be known.

Even members of the public will appreciate and know that the person cannot run on a particular ticket, despite the fact that it may be the general or popular political party in a certain region or location. That is the day we shall begin to see hygiene in our politics; something that we are desperately yearning for and so badly need in our politics.

Therefore, as we do all this business of cleaning up our political cycle, I laud the National Dialogue Committee (NADCO) Bills, which are aimed at ensuring that eventually they become law, including the Bill that we debated yesterday on the independence of the Office of the Registrar of Political Parties.

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Today, we are talking about electoral offences. Tomorrow, there is another amendment also that we hope will help us clean up our political space and ensure that eventually when all is said and done, we go to the 2027 general election with a better and cleaner political space.

I want to appreciate our colleagues who spoke. I hope that they can bring the amendments. I will be quick to remind them-like I have observed-that this is a bipartisan Bill negotiated at great pains with our colleagues from the Minority Side. Therefore, we will have to caucus and agree if there are any changes to be made.

With those very many remarks, I beg to reply.

Further, in accordance with Standing Order No.66(3), I request that we defer the putting of the question until a later date.

I thank you.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Senate Majority Leader. Pursuant to Standing Order No.66(3), putting of the question with regards to the Bill is deferred to the next sitting of this House.

(Putting of the Question on the Bill deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Wakili Sigei): Hon. Senators, it is now 6.30 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until Monday, 14th October, 2024, at 9.00 a.m.

The Senate rose at 6.30 p.m.