

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 27th September, 2007

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

Second Bi-Annual Report of the Monetary Policy Advisory Committee, March, 2007.

Report of the Controller and Auditor-General together with Appropriation Accounts, other Public Accounts and the Accounts of the Funds for the year 2005/2006 and Appendices, Volumes I, II and III.

*(By the Assistant Minister, Office
of the President (Mr. Kingi), on behalf
of the Minister for Finance)*

Annual Report and Accounts of the Ewaso Ng'iro North Development Authority for the year ended 30th June, 2005 and the certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of the Ewaso Ng'iro North Development Authority for the year ended 30th June, 2006 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Office of the
President (Mr. Kingi), on behalf of the Minister
for Regional Development Authorities)*

Annual Report and Accounts of Kenya National Trading Corporation Limited for the year ended 30th June, 2005, and the certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of the Kenya National Trading Corporation Limited for the year ended 30th June, 2006, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Office
of the President (Mr. Kingi), on behalf
of the Minister Trade and Industry)*

Annual Report and Accounts of Kenyatta National Hospital for the year ending 30th June, 2004, and the certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of Kenyatta National Hospital for the year ended 30th June, 2005, and the certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of Kenyatta National Hospital for the year ended 30th June, 2006, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Office
of the President (Mr. Kingi), on behalf
of the Minister for Health)*

Annual Report on the Abstracts of Accounts of the Municipal Council of Nakuru for the year ended 30th June, 2003, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Office
of the President (Mr. Kingi), on behalf
of the Minister for Local Government)*

The Report of the Joint Session of the Departmental Committee on the investigations into the conduct of the Artur Brothers and their Associates.

(By Mr. Kones)

The Report of the Select Committee investigating the closure of Kenya Cashewnut Factory in Kilifi in 1998.

(By Mr. Ojode)

Mr. Deputy Speaker: Next Order!

NOTICE OF MOTION

ADOPTION OF REPORT ON ARTUR BROTHERS AND THEIR ASSOCIATES

Mr. Kones: Mr. Deputy Speaker, Sir, on behalf of the Committee of the Joint Session of the Departmental Committees on Administration, National Security and Local Authorities and Administration of Justice and Legal Affairs, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Joint Session of the Parliamentary Committee on Administration, National Security and Local Authorities and Administration of Justice and Legal Affairs on the investigations into the conduct of the Artur Brothers and their Associates laid on the Table of the House on 27th Thursday, 2007.

Mr. Deputy Speaker: Next Order!

ORAL ANSWERS TO QUESTIONS

Question No.412

EVICION OF SMALL-SCALE TRADERS FROM SABATIA MARKET CENTRE

Mr. Deputy Speaker: Is Prof. Oniang'o not here? She is absent! Her Question is dropped!

(Question dropped)

Next Question by Mr. Karaba!

Capt. Nakitare: Given that I have full permission granted by the Chair, on behalf of Mr. Karaba, I would like---

Mr. Deputy Speaker: Order! Nobody has given me that information you are alluding to! I have not been informed that you will ask this Question on behalf of the hon. Member.

Capt. Nakitare: Mr. Deputy Speaker, Sir, I have just been informed by the Parliamentary attendants that you have been informed!

Mr. Deputy Speaker: I have not, but you may ask the Question!

Question No.473

MEASURES TO DISCOURAGE
USE OF WOOD FUEL TO DRY TEA

Capt. Nakitare, on behalf of **Mr. Karaba,** asked the Minister for Agriculture:-

- (a) whether he is aware that tea factories within Kirinyaga District continue to use wood fuel to dry raw tea; and,
- (b) what steps the Ministry is taking to discourage this trend.

The Assistant Minister for Agriculture (Mr. Muiruri): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that the tea factories in Kirinyaga District continue to use little amounts of wood fuel to dry tea.

(b) My Ministry does not intend to discourage this trend due to its cost-saving nature *vis-a-vis* furnace oil for drying tea. The cost of processing tea when using furnace oil is about Kshs12.34 per kilogramme of tea, while when using wood fuel it costs about Kshs3.88 per kilogramme. This reduces the cost of production by about Kshs8.46 per kilogramme of made tea.

It is expected that about Kshs190,357,709 will be saved nationally from this venture which will consequently be translated to enhance farmers' income. Due to the huge savings realised while using wood fuel, KTDA has been encouraging factories to acquire land and develop their own wood fuel plantations. All factories are growing, on average, 150,000 seedlings per year and issuing them to farmers free of charge for agro-forestry in their areas as part of corporate social responsibility initiatives.

Mr. Deputy Speaker: Just for the information of Capt. Nakitare, the people you should communicate with on matters of Questions are the Clerks-at-The-Table and not the office of the Serjeant-at-Arms. So, if you got the information from any member from the Serjeant-at-Arms Department, it is not the correct position. The correct position is that you should get information from the officers of the Clerk's Department.

Capt. Nakitare: Mr. Deputy Speaker, Sir, I wish to give my apologies. I may have been ambushed because I was told this when I was just walking in. However, in the absence of a written answer from the Ministry, I would like the Assistant Minister to tell us how long it takes a seedling to mature, so that it can be used as wood fuel to roast tea for export. He should take into consideration the fact that we are depleting our natural forests by encouraging the use of wood fuel.

Mr. Muiruri: Mr. Deputy Speaker, Sir, the most important thing is how much the farmer

is saving by using oil instead of wood fuel. The position is that there is a great saving of Kshs190 million, which goes back to the pockets of the tea farmers.

Capt. Nakitare: Mr. Deputy Speaker, Sir, the Assistant Minister is dwelling too much on how much we earn from the tea production as opposed to environmental degradation. I would like him to clarify what he means when he says that factories are growing 150,000 tree seedlings to be supplied to the farmers, so that they can grow those trees to be used to cure tea. We are not talking about money. We are talking about the environment.

Mr. Muiruri: Mr. Deputy Speaker, Sir, the conservation of the environment includes the planting of trees.

Question No.478

DEMARCATIION OF COMMON
BOUNDARY FOR NYANDARUA/
KIAMBAGA PLOT OWNERS

Mr. Deputy Speaker: Eng. Karue is not here! His Question is dropped!

(Question dropped)

That concludes Question Time!

POINT OF ORDER

DELAY IN RELEASE OF CDF MONEY
BY MINISTRY OF FINANCE

Mr. Ojaamong: On a point of order, Mr. Deputy Speaker, Sir. I rise to seek a Ministerial Statement from the Minister for Finance with regard to the Ministry's failure to release the CDF funds for this financial year.

Mr. Deputy Speaker, Sir, the deadline for the submission of the CDF project proposals to the National Management Committee is usually towards the end of February. Most hon. Members have already submitted their project proposals to the National Management Committee. To date, very few constituencies have been given funds. Majority of them have not been given funds.

I would like to know from the Minister for Finance why the Ministry is not funding these projects and whether the Government is broke, such that it cannot fund these projects this year. How many hon. Members have already submitted those project proposals? When does the Ministry intend to release the funds, if there are any, for those projects?

Mr. Deputy Speaker: The Vice-President and Minister for Home Affairs and the Leader of Government Business, you have heard the hon. Member!

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Deputy Speaker, Sir, the hon. Member did not clarify whether he is talking about 2006/2007 or 2007/2008 funds. Let me just get that clarification.

Mr. Ojaamong: Mr. Deputy Speaker, Sir, I am talking about this current financial year.

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Deputy Speaker, Sir, this Government is not broke. It has plenty of money according to the Budget. There will be an answer on Tuesday from the Minister for Finance on the release of the CDF funds.

Mr. Deputy Speaker: Thank you very much, Your Excellency! The Minister of State for Administration and National Security has a Statement to make.

MINISTERIAL STATEMENT**CANCELLATION OF ODM UHURU
PARK RALLY**

The Assistant Minister, Office of the President (Mr. Munya): Mr. Deputy Speaker, Sir, on 26th September, 2007, the hon. Member for Makadara, hon. Ndolo, rose on a point of order to request a Ministerial Statement from the Minister responsible for Internal Security concerning the cancellation of an Orange Democratic Movement rally, planned for Saturday, 29th September, 2007, at Uhuru Park.

The Party of National Unity (PNU), comprising several political parties will hold its National Delegates Conference at the Nyayo National Stadium on 29th and 30th September, 2007. The member parties of the PNU will hold their meetings at different venues within proximity to the main venue at Uhuru Park. A mutual agreement has been arrived at in the interest of peace, where the PNU will hold its meetings as scheduled, while the ODM will hold its meeting on 6th October, 2007, at the same venue, if they wish.

Thank you.

Mr. Ndolo: Mr. Deputy Speaker, Sir, I would like to thank the Assistant Minister for that Statement. However, we in the ODM applied to the Nairobi City Council and it gave us a permit. We also notified the police. I would like to ask the Assistant Minister, who is a very good friend of mine, if we can sit down in his office for a cup of tea and see how we can solve this problem amicably for the benefit of all these parties. I know that PNU is a new party and it wants to popularise itself, but definitely, ODM is also a party and we need to be respected. If the Assistant Minister is telling us that we should hold our meeting on 6th October, we do not disagree, but we should sit down as people of the same country, so that we can come to a proper conclusion.

Thank you.

The Assistant Minister, Office of the President (Mr. Munya): Mr. Deputy Speaker, Sir, I, obviously, welcome a cup of tea with Mr. Ndolo. He is my friend. I have no problem with socialising with him. We are socialising even now. He is welcome to my office. I also want to thank him and the other hon. Members of the ODM, who met with our security officers and agreed that they can have their meeting on a day other than Saturday, 29th September, 2007.

Mr. Deputy speaker, Sir, that is a very good development. We would like to encourage this kind of attitude so that we do not have unnecessary squabbles, fights and even violence that may mar the electioneering period. We would like to have a civilised campaign and voting period. This is the kind of arrangement that I think will work. A meeting is a meeting, whether it is held on a Saturday or another day.

COMMUNICATION FROM THE CHAIR**DEFERMENT OF COMMITTEE STAGE: THE
POLITICAL PARTIES BILL**

Mr. Deputy Speaker: Hon. Members, the next Order will be Committee of the whole House and I am informed by the Leader of Government Business that the Minister for Justice and Constitutional Affairs is not in the House. Therefore, we cannot go to the Committee of the whole House. I will just call the next Order and then we move on.

MOTION

APPROVAL OF DRAFT PRESIDENTIAL/
PARLIAMENTARY ELECTIONS
(AMENDMENT) REGULATIONS

THAT, pursuant to Section 34 of the National Assembly and Presidential Elections Act (Cap.7 Laws of Kenya) this House approves the Draft of Presidential and Parliamentary Elections (Amendment) Regulations 2007, laid on the Table of the House on Wednesday, 26th September, 2007.

Mr. Deputy Speaker: Similarly, the Minister is not here. Therefore, this Motion is deferred.

(Motion deferred)

Next Order!

POINT OF ORDER

PRIORITIZATION OF BUSINESS
BY HOUSE BUSINESS COMMITTEE

Mr. Ligale: On a point of order, Mr. Deputy Speaker, Sir. Orders No.7 and 8 were obviously prioritised by the House Business Committee. That House Business Committee is chaired by none other than the Leader of Government Business. The Minister for Justice and Constitutional Affairs is a Member of that Committee. Surely, they must have known that this is business they want to conduct. Why would they put this business on the Order Paper only for us to be taken round in circles?

Mr. Deputy Speaker: Mr. Ligale, you may have a point, but you are out of order because we have already gone to Order No.9.

Mr. Ligale: Mr. Deputy Speaker, Sir, that is the mood in this House.!

Mr. Deputy Speaker: It may be the mood of the House. However, this is not the first time that a Member of the Government has failed to show up and we deferred the Motion. It is not for me to say why this happens because I have no explanation as to why the Minister for Justice and Constitutional Affairs is not in the House. The Chair cannot conduct business when the Mover of the Motion is not in the House. I have already moved to Order No.9 and Mr. Muturi is on the Floor.

Maj. Madoka: On a point of order, Mr. Deputy Speaker, Sir. Have you seen the manner in which one of the hon. Members is dressed? I wonder whether it is in order to dress like that.

Mr. Deputy Speaker: Which hon. Member is that?

Maj. Madoka: Mr. Ndile!

Hon. Members: TIP! TIP! Shame!

Mr. Deputy Speaker: Mr. Ndile, you have heard and you can feel the mood of the House; that you are not properly dressed. Could you, please, go out, get properly dressed and come back?

(Mr. Ndile withdrew from the Chamber)

Mr. Muite: On a point of order, Mr. Deputy Speaker, Sir. Could we get some guidance from the Chair? How can this House record its extreme displeasure at the treatment it is getting from some of the Ministers?

(Applause)

This Political Parties Bill is a Bill that we are very much keen and passionate about because I know this is what will fund political parties. We have gone through the First and Second Readings. We just want to finish with the Third Reading. How can this House record its displeasure against the Minister for Justice and Constitutional Affairs? If she does not want to move it, could the *de jure* Leader of Government Business ask the Attorney-General to come and move this Bill, so that we can finish it?

Mr. Deputy Speaker: The Chair has said it again and again, that the Chair is here to conduct business as it is brought in by the House Business Committee. Certainly, you have a point that it is the House Business Committee that prioritised the Motions that are on the Order Paper. If the Mover is not here, the Chair is helpless. I do not know whether the Leader of Government Business has something to say about this.

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Deputy Speaker, Sir, my first duty is to make everybody happy. If by hon. Members uttering insults that I am a mere *de jure* Leader of Government Business will make them or Mr. Muite happy, that is fine with me!

Mr. Deputy Speaker, Sir, normally Question Time goes from about 2.30 p.m. to about 3.30 p.m. Naturally, both the Minister for Justice and Constitutional Affairs and the Attorney-General did expect that Question Time would go up to 3.30 p.m. I had spoken to the Minister for Justice and Constitutional Affairs at around 1.45 p.m. and drew her attention to the Order Paper. I expected her to be here after 3.00 p.m.

(Ms. Karua entered the Chamber)

She has just come in! However, I am quite happy to be known as the "*de jure*" and not the "*de facto*" Leader of Government Business.

Mr. Muite: Mr. Deputy Speaker, Sir, I withdraw and apologise to His Excellency the Vice-President. I did not intend any disrespect. It is just that sometimes we get confused. I do apologise.

Mr. Deputy Speaker: Very well. The Minister for Justice and Constitutional Affairs has come in. Perhaps, she may wish to know that we have just deferred Order No.7 and Order No.8 because the Mover was not here. Now that you have come, what do you have to say Madam Minister?

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Deputy Speaker, Sir, I apologise for the lateness. I did not know that Question Time would end this early. Traditionally, it ends at 3.30 p.m. My timing was wrong. But otherwise, I am ready to continue if the Chair considers to use his discretion to allow the two items to proceed.

Mr. Ogur: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order! Mr. Ogur, I am sure you would not want to take my position! The Minister has made a valid point. I had actually moved on to Order No.9. Now that she has come and apologised to the House, I will use my discretion under Standing Order No.1 and go back to Order No.7.

(Applause)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Deputy Speaker left the Chair]

IN THE COMMITTEE

*[The Temporary Deputy Chairman
(Mr. Sungu) took the Chair]*

THE POLITICAL PARTIES BILL

Clause 2

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 2 of the Bill be amended in the definition of "public officer" by inserting the words "but does not include a Member of Parliament or a councillor" immediately after the word "unpaid".

(Question of the amendment proposed)

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

The Temporary Deputy Chairman (Mr. Sungu): Hon. Members, the Departmental Committee has an amendment to this clause at page 600 of the Order Paper. Is that so, Mr. Muite? Do you have an amendment to Clause 2?

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, Mr. Syongo is moving the amendments on the Committee's behalf.

The Temporary Deputy Chairman (Mr. Sungu): Proceed, Mr. Syongo!

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 2 of the Bill be amended by inserting the following new definition in the proper alphabetical sequence-

"Tribunal" means the Political Parties Disputes Tribunal established by Section 4A.

The amendment is found on page 600 of the Order Paper. The whole idea is that the Committee recommended that we have a Political Parties Disputes Tribunal. So, the idea is to include, in this particular section, the definition of the "Tribunal".

I beg to move.

The Temporary Deputy Chairman (Mr. Sungu): Madam Minister, the Departmental Committee's amendment relates to the definition of "Tribunal", while yours relates to the definition of "public officer".

(Question of the amendment proposed)

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, we do not object to it.

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

(Clause 2 as amended agreed to)

Clause 3

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 3(1) of the Bill be amended by deleting the words "and shall have operational autonomy" appearing immediately after the word "Commission".

This amendment arose from what hon.

[The Minister for Justice and Constitutional Affairs]

Members and the Electoral Commission of Kenya (ECK) had to say.

(Question of the amendment proposed)

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I beg to second the amendment.

The Temporary Deputy Chairman (Mr. Sungu): Mr. Syongo, the secondment is not necessary! I thought you wanted to object to the amendment!

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

Hon. Members, there is another amendment to Clause 3 by the Departmental Committee at page 600 of the Order Paper.

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 3 of the Bill be amended by inserting the following new subclause immediately after Subclause (3)-

(4) The Registrar shall be responsible for the arbitration of disputes between members of a political party.

Having accepted the idea of having a tribunal, this further amendment simply embraces the responsibility of arbitration and puts it, legitimately, on the Registrar, so that it can be within the ambit of the Registrar, as earlier stipulated

I beg to move.

(Question of the amendment proposed)

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, we have no objection.

(Question, that words to be inserted be inserted, put and agreed to)

(Clause 3 as amended agreed to)

(Clauses 4 and 5 agreed to)

Clause 6

The Temporary Deputy Chairman (Mr. Sungu): Hon. Members, the Minister and the

Departmental Committee do not have any amendments to this clause. However, there is a notice by Prof. Oniang'o to move an amendment to this clause.

Mr. Syongo: On a point of order, Mr. Temporary Deputy Chairman, Sir. We need your guidance. The Committee did recommend the insertion of New Clause 4A, which would come before Clause 6.

The Temporary Deputy Chairman (Mr. Sungu): Mr. Syongo, new clauses come at the end!

Mr. Syongo: I am much obliged, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Sungu): Hon. Members, in the absence of Prof. Oniang'o, her amendment is dropped.

(Amendment dropped)

(Clause 6 agreed to)

Clause 7

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 7 of the Bill be amended by inserting the words "the Kenya Police Force" immediately after the words "Armed Forces".

The purpose for this amendment is to include both the police and the armed forces officers as people who should not hold political office.

(Question of the amendment proposed)

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, the Committee supports the proposed amendment. It is very appropriate.

The Temporary Deputy Chairman (Mr. Sungu): Thank you.

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

(Clause 7 as amended agreed to)

Clause 8

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 8 of the Bill be amended:-

(a) in Subclause (1)(a) by deleting the words "under the National Assembly and Presidential Elections Act" appearing immediately after the word "Parliament" and substituting therefor the words "or councillor"

(b) in Subclause (2)(a) by inserting the words "or councillor" immediately after the word "Parliament".

The Temporary Deputy Chairman (Mr. Sungu): Ms. Karua, are you going to advance any reasons for that amendment?

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary

Deputy Chairman, Sir, these amendments were prompted by the discussions with hon. Members. We are also bringing in councillors as we had done earlier for hon. Members, as people who should not be excluded.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be
inserted in place thereof be
inserted, put and agreed to)*

(Clause 8 as amended agreed to)

Clause 9

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 9 of the Bill be amended:-

(a) in Subclause (2)(c) by deleting the words "the relevant local authority" and substituting therefor the words "the Minister responsible for Local Government" immediately before the word "if".

(b) in Subclause (3) by deleting the words "two or more political parties" and substituting therefor the words "more than one political party."

(c) in Subclause (4) by deleting the words appearing after paragraph (d) and substituting therefor the words "shall, notwithstanding the provisions of Subsection (2) or the provisions of any other law, be deemed to have resigned from the previous political party."

(d) by deleting Subclause (5) and replacing it with the following Subclause: "A person who by virtue of any written law is for the time being disqualified from being nominated for election as an elected Member of Parliament or a councillor shall not be eligible to become a member of a political party during the time he is so disqualified.

(e) in Subclause (7) by deleting the words "in a manner as to seriously impair the standing of the party" and substituting therefor the words "and after he has been afforded a fair opportunity to be heard"

(f) in Subclause (8) by deleting the word "fifteen" and substituting therefor the words "one hundred"

Mr. Temporary Deputy Chairman, Sir, here, we are just substituting the words "the relevant local authority" with the words "the Minister responsible for Local Government." It is a self-explanatory amendment.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

The Temporary Deputy Chairman (Mr. Sungu): Mr. Muturi, I understand you have another amendment to this clause. On which page is it?

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, it is on page 605!

The Temporary Deputy Chairman (Mr. Sungu): Proceed and move the amendment!

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 9 of the Bill be amended in Subclause (2) by inserting the words "14 days" immediately before the word "written".

Clause 9(2) reads as follows:-

"A Member of a political party who intends to resign from his party shall give a written notice prior to his resignation."

What I am saying is that the Member shall give "14 days" written notice. This amendment is also self-explanatory.

(Question of the amendment proposed)

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, we have no objection.

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

(Clause 9 as amended agreed to)

Clause 10

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 10 of the Bill be amended in Subclause (3) by deleting the word "may" and substituting therefor the word "shall".

On this particular amendment, if you refer to the original Bill, Clause 10(3) reads:-

"An application for registration under Subsection (2) may include a request for the registration of the emblem of the party to be used on ballot papers."

In order to avoid any complications towards elections, the amendment now makes it mandatory that, even as you apply for registration of your party, you shall include the emblem of the party, so that there is no confusion. That way, the Registrar may not allow you to register an emblem which may be in conflict with the emblem of another party or a trademark of a company under a different Act.

With those few remarks, I beg to move.

(Question of the amendment proposed)

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I support.

(Question, that the word to be left out be left out, put and agreed to)

(Question, that the word to be inserted in place thereof be inserted, put and agreed to)

(Clause 10 as amended agreed to)

Clause 11

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 11 of the Bill be amended in Subclause (4) by deleting the words "and every officer thereof each commit an offence" and substituting therefor the words "shall be deregistered".

The idea behind this amendment is to substitute the words "and every office thereof each commit an offence". This means that if a registered political party contravenes an order given under sub-section (2), that political party shall be de-registered. It makes it a responsibility of political parties to work in accordance with the law. If they contravene the law, they will just be deregistered.

The Temporary Deputy Chairman (Mr. Sungu): Hon. Members, only a short explanation is necessary!

(Question of the amendment proposed)

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I support the amendment. It strengthens the law.

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

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 11 as amended agreed to)

Clause 12

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 12 of the Bill be amended in paragraph (d) by inserting the words "or any other legal entity registered under any other law" at the end thereof.

One can register emblems and symbols under more than one Act. For example, the Trade Marks Act. In order to ensure that there is no confusion, that amendment takes care of the provisions as provided in different Acts, in consonance with the provisions of this particular proposed Bill.

(Question of the amendment proposed)

The Minister for Justice and Constitutional Affairs (Mr. Karua): Mr. Temporary Deputy Chairman, Sir, we have no objection.

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

(Clause 12 as amended agreed to)

(Mr. Okemo consulted loudly)

The Temporary Deputy Chairman (Mr. Sungu): Order, hon. Members! My very good friend, Mr. Okemo, the Chair wants to concentrate! So, no discussions, please!

(Clauses 13 and 14 agreed to)

Clause 15

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 15 of the Bill be amended:-

(a) in Subclause (1)(d) by deleting the words "reasonably require" appearing at the end of the paragraph and substituting therefor the word "prescribe".

(b) in Subclause (e) by deleting the words "the capital city of"

This amendment is a self-explanatory.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in
place thereof be inserted, put and agreed to)*

The Temporary Deputy Chairman (Mr. Sungu): Hon. Members, there is another amendment to Clause 15 by Prof. Oniang'o. But in her absence, we shall drop that amendment.

(Amendment dropped)

(Clause 15 as amended agreed to)

Clause 16

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 16 of the Bill be amended:

(a) In Subclause 3(b) by deleting the words "in writing direct" and substituting therefor the word "prescribe"

(b) In Subclause 6 by deleting the words "electoral proposals" and substituting therefor the word "candidates"

Temporary Deputy Chairman, Sir, this is meant to bring clarity.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be
inserted in place thereof be
inserted, put and agreed to)*

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 16 of the Bill be amended in Sub-clause (6) by inserting the words "or if it fails to participate at the next general election following its full registration, whichever is earlier" at the end thereof.

Mr. Temporary Deputy Chairman, Sir, the idea here is to provide, in addition to the amendment that has been proposed by the Minister, that if a party fails to participate at the next general election following its full registration, whichever is earlier, then, of course, this law does not apply.

(Question of the amendment proposed)

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I support because it further strengthens the legislation.

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

(Clause 16 as amended agreed to)

(Clause 17 agreed to)

Clause 18

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 18 of the Bill be amended in paragraph (e) by deleting the words "at least five per cent of the national vote" and substituting therefor the words "the election of at least one Member of Parliament or ten councillors."

Mr. Temporary Deputy Chairman, Sir, the whole idea of this amendment is essentially to delete or change the percentage of the threshold of the national vote that a party garners at an election, which is stipulated as, at least, five per cent. Instead of that, we want it to provide that for a party to draw from the proposed Fund, it should have had in the last general election, at least, one Member of Parliament or ten councillors.

(Question of the amendment proposed)

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, the whole object of this clause is to remove from the Registrar's roll political parties that fail to perform. What this amendment raises is whether a political party with only one Member of Parliament or just ten councillors deserves to be funded by the Exchequer and

to remain on our political parties register. Today, we have 300 political parties, but most of them are briefcase parties. This Bill is intended to sort out this mess and give us parties that have support.

Mr. Temporary Deputy Chairman, Sir, I would urge the Committee to withdraw this amendment because it does not strengthen the legislation, rather it weakens it.

I, therefore, beg to oppose.

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, with your indulgence, Clause 18(1) in the original Bill, at page 70, reads as follows:-

"The Registrar shall cancel the registration of a political party if satisfied that the political party-

(e) has not for each of the two previous general elections secured, at least, five per cent."

Mr. Temporary Deputy Chairman, Sir, the concern of the Committee is that if a political party does not garner, at least, five percent in the two previous general elections, but has actually succeeded to have one of its candidates elected a Member of Parliament or, at least, ten councillors elected as members of any given local authority--- We shall be disenfranchising those who have already been elected under the party ticket. All we are saying is that in those circumstances, there should be accommodation of a political party which has, at least, one Member in Parliament or, at least, ten members in the local authorities.

Mr. Temporary Deputy Chairman, Sir, I would like to request the Minister to reconsider her objection to that amendment.

The Temporary Deputy Chairman (Mr. Sungu): Mr. Syongo, your arguments are understood, but, please, make them short and precise.

Mr. Munya, do you want to respond?

The Assistant Minister, Office of the President (Mr. Munya): Mr. Temporary Deputy Chairman, Sir, I just wanted to---

(Ms. Abdalla consulted loudly)

The Temporary Deputy Chairman (Mr. Sungu): Order, Mr. Munya! I would like to discourage hon. Members from challenging the Chair. The Chair has eyes and it sees every hon. Member. It would like to give every hon. Member an opportunity and yours will come in time.

The Assistant Minister, Office of the President (Mr. Munya): Mr. Temporary Deputy Chairman, Sir, I was just saying that if you look through the Bill, you will see that measures have been put to encourage the reduction of multiplication of parties in the country and the growth of national parties, that is, parties that reflect our diversity. So, if we say here that a party only requires to have one Member in Parliament and ten councillors for it to be funded by the Exchequer, I think we will be going too far.

Mr. Temporary Deputy Chairman, Sir, when a party gets five per cent of the national vote, that is a good qualification for funding. We will be watering down the entire concept of funding political parties. This Bill is intended to reduce the number of parties in order to encourage our democratic institutions to grow and to encourage our country to grow as a democracy. The amendment proposed by the Committee will water down the whole concept.

Ms. Abdalla: Mr. Temporary Deputy Chairman, Sir, I wish to support that amendment. In the previous elections, some parties brought here over 16 Members of Parliament and the percentage of the national vote they got was less than five per cent. That is what we considered when assessing the idea of providing for five per cent of the national vote. For now, it will mean that a political party must garner a minimum of 700,000 votes. If it does not do so, then it risks

getting deregistered. That is the rationale with which we pushed for this amendment.

The Temporary Deputy Chairman (Mr. Sungu): Could I hear from the Chairman of the Departmental Committee on Administration of Justice and Legal Affairs?

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, I really would plead with hon. Members to support this amendment. We are talking about the threshold to qualify and not the amount. This is because the amount will be paid on the total votes cast for that political party in parliamentary and civic elections. But what is the threshold? To put it at five per cent is really to disqualify a lot of parties. If you look at Section 2 of our Constitution, it says:-

"Kenya shall be a multiparty democracy."

Mr. Temporary Deputy Chairman, Sir, so, the current Constitution does not suggest that you must have two or three dominant parties. It talks about multiparty democracy. Whether there will be two or three dominant parties, that is an issue of evolution and it depends on the unfolding scenarios in different countries.

Mr. Temporary Deputy Chairman, Sir, in some countries, they have gone through evolution - not through law or limitation - and two or three parties have emerged. In other countries, more than two parties have emerged, for example, Italy, Germany, and so on. So, let us not try to legislate. Let us give room for evolution. Let us not disqualify parties when they have Members of Parliament or ten councillors. That is the threshold. However, the amount that will be allocated to that party in terms of funding will depend on the total number of votes cast. It is a very good balance.

The Temporary Deputy Chairman (Mr. Sungu): Mr. Muite, could you, please, conclude?

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, the Committee collected the views of various people and stakeholders. This is the best compromise we could come up with. I, therefore, plead with hon. Members to support the amendment.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I think we have to focus on why we are having this Political Parties Bill. One of the problems is that we are having parties which are not meant to be parties. They are meant for commercial purposes. They are meant, now that people have an idea that funding is coming, to get a share from the Exchequer. If we do not want to move away from our comfort zones, then we shall not be able to nurture democracy and bring order.

Mr. Temporary Deputy Chairman, Sir, I want to say this: If a party is unable to make progress in terms of attracting members, let that party be out of our books. But I want to agree with the Mover that it would be unfair to disqualify those elected on that party's ticket, even if it is one person. I, therefore, with your leave, wish to propose an amendment to the amendment, by deleting the amendment proposed by Mr. Syongo and adding a proviso to the existing Clause 18(e) which should say:-

"Provided any person elected on the sponsorship of such a party shall continue to serve until the end of the term".

That way, we will not affect persons elected. If I got Mr. Syongo's argument, he is just saving the person already elected on that party which has been deregistered by the Registrar. Then we agree that any party that cannot get the threshold should retreat, re-organise itself and comes back when it is ready.

I beg to move that proposed amendment, if Mr. Temporary Deputy Chairman allows it.

The Temporary Deputy Chairman (Mr. Sungu): Order, Madam Minister! You are very convincing but you know very well that, under our Standing Orders, you cannot do a further amendment to delete without a written notice. You can only make an amendment to add to it but not to delete. I view it sympathetically, but I am afraid I cannot allow that.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary

Deputy Chairman, Sir, may I then conclude by saying that I oppose the amendment.

The Temporary Deputy Chairman (Mr. Sungu): Well! Hon. Members, the Chair cannot vote on this matter. Therefore, I am just going to put the Question.

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir---

The Temporary Deputy Chairman (Mr. Sungu): Mr. Syongo, I thought you have spoken twice on this amendment. Let us look at time, please! There are other amendments that are coming up!

(Question, that the words to be left out be left, put and negated)

The Temporary Deputy Chairman (Mr. Sungu): I will put the Question again.

Hon. Members: That is controversial!

The Temporary Deputy Chairman (Mr. Sungu): No controversy, please! I am going to put the Question again!

The Assistant Minister, Office of the President (Mr. Munya): You have been influenced!

The Temporary Deputy Chairman (Mr. Sungu): I will put the Question again. There is no influence on the Chair. I want you to withdraw that statement, please. Mr. Munya, please, withdraw that statement! The Chair has been very fair, indeed. You must respect that.

The Assistant Minister, Office of the President (Mr. Munya): Mr. Temporary Deputy Chairman, Sir, I withdraw.

The Temporary Deputy Chairman (Mr. Sungu): I am now going to put the Question. I am going to have both my ears on it!

(Question, that the words to be left out be left, put and negated)

(Clause 18 agreed to)

Clause 19

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir---

(Loud consultations)

The Temporary Deputy Chairman (Mr. Sungu): Order, hon. Members! Order! Order, Mr. Minister! Order Mr. Katuku! The Chair would like to listen to what is going on. You know very well that the Chair has very few hours of this. So, he needs to be aware of what is going on, so that he can do the job properly. Please, respect that!

Yes, Mr. Syongo!

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 19

Mr. Temporary Deputy Chairman, Sir, I think it is self-explanatory. We have already agreed that we are going to set up a tribunal to deal with all matters regarding political parties. The Minister is in agreement.

(Question of the amendment proposed)

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I support the amendment.

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

(Clause 19 deleted)

(Clauses 20 and 21 agreed to)

Clause 22

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 22 of the Bill be amended in Sub-clause (1) by deleting paragraph

(a) and substituting therefor the following new paragraph-

(a) "such funds as may be provided by Parliament"

Mr. Temporary Deputy Chairman, Sir, as it is now, the sources of the funds for political parties are-

"(a) such funds as may be provided by the Minister for Finance in the Annual Estimates."

Mr. Temporary Deputy Chairman, Sir, as you know, appropriation is the responsibility of Parliament. Therefore, that minor and self-explanatory amendment is to simply move the responsibility of appropriation from the Minister for Finance to Parliament, as provided for under the Constitution.

(Question of the amendment proposed)

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I oppose this amendment. It is true that appropriation is the work of Parliament. But the Minister for Finance is the one who balances the various needs of the various portfolios in this country. If we leave Parliament to set the limit for political parties, and then leave each other institution to set their own limits, there will be clashing of interest. The country has only envelope. All the people needing money from the Exchequer want to draw from that envelope. The purpose of the Ministry of Finance is to conduct the debate and balance the needs of the various interests groups. It is, therefore, not proper to take away a function of the Executive - the Ministry of Finance - and arrogate it to Parliament. It is decided on policy consideration. It goes against separation of powers. It will also bring confusion.

Mr. Temporary Deputy Chairman, Sir, I urge my colleagues in the Committee to reconsider this amendment.

I oppose it!

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I think there is a little misunderstanding here. You know that the Minister makes proposals. The Budget is a proposal to Parliament. Obviously, the Minister will propose the amount. But, ultimately, for it to be appropriated, Parliament has to approve. So, the whole idea really--- There is no contradiction, whatsoever! The Minister will definitely propose. But for it to be appropriated, Parliament must approve. Parliament approves every single Government expenditure.

So, Mr. Temporary Deputy Chairman, Sir, I would like to urge the Minister to consider that there is no contradiction, whatsoever, between what she is saying and what I am saying. We are

simply saying that, ultimately, Parliament has to approve the proposal by the Minister and I think she should be able to accept that!

The Temporary Deputy Chairman (Mr. Sungu): The question here is a matter of law. We know that Parliament approves all those Estimates and they go into the Consolidated Fund. After that, various Ministries and departments withdraw money from it. Now, are we putting the cat before the horse? Could somebody explain that?

Mr. Wambora: Mr. Temporary Deputy Chairman, Sir, I have worked at the Treasury. I have been a Deputy Director of Budget. I can assure you that what the Minister is saying is correct. Let the money be provided by the Minister for Finance. There is a bit of mis-interpretation of this clause. When you say "provided by Parliament", Parliament may take it literally and come to dictate allocation to various parties here. It will be polarised and politicised very much.

So, I also oppose the amendment.

Mr. Muturi: Thank you, Mr. Temporary Deputy Chairman, Sir. I rise to support what the Minister has said. A clear reading of the provision explains what the clause means. The clause reads in part:-

"The sources of the Fund are-

(a) such funds as may be provided by the Minister of Finance in the Annual Estimates---

The Minister will provide the funds through those annual estimates but Parliament will eventually approve them. I do not see why we are saying that Parliament is being given the first priority before the funds have been appropriated by the Ministry. I am persuaded that we should leave this clause as it is in the Bill.

Mr. Syongo: I withdraw!

(Applause)

The Temporary Deputy Chairman (Mr. Sungu): Order, Mr. Syongo! You must wait for the Chair to recognise you! I was going to come to you! Besides, I wanted that withdrawal recorded in the HANSARD. If you stand up and talk before being recognised, you might not be recorded in the HANSARD. Can you hear me? It is true!

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I simply want to state that I am convinced by those arguments.

I beg to withdraw the proposed amendment.

(Applause)

The Temporary Deputy Chairman (Mr. Sungu): In that case, the amendment to Clause 22 falls flat on its face! It has been withdrawn. We will move on to the main Bill.

(Amendment withdrawn)

(Clause 22 agreed to)

Clause 23

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 23 of the Bill be amended by:-

(a) In Subclause 3 (a) by deleting the words "twenty-five" and substituting therefor the word "fifteen"

(b) by deleting Sub-clause 3(b) and substituting therefor the following "eighty-five per cent shall be distributed proportionately by reference to the total number of votes secured at the last general election by each political party's presidential, parliamentary and civic candidates."

(c) by inserting the following new proviso immediately at the end of the Subclause (3) the words "Provided that where a presidential candidate is supported by more than one political party, only votes cast for parliamentary and civic candidates of the respective parties will be taken into account in calculating the amounts payable to the respective parties."

The Temporary Deputy Chairman (Mr. Sungu): There are quite number of amendments and I think we should do it subclause by subclause. There are also other amendments to that same clause and we will have to do them in a systematic order.

So, I want you to start with subclause (a), then you move to "b" and so on.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 23 of the Bill be amended-

(a) in Subclause 3(a) by deleting the words "twenty-five" and substituting therefor the word "fifteen"

We have borrowed this from the contributions of hon. Members and also of the relevant Departmental Committee. These are the thresholds for sharing out the fund.

(Question of the amendment proposed)

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

(Question, that the word to be inserted in place thereof be inserted, put and agreed to)

The Temporary Deputy Chairman (Mr. Sungu): We have an amendment to Clause 23. We should have started with it! However, nevertheless, we can go to it now. Mr. Syongo, move your amendment on page 603 at the bottom line. Move that particular item only!

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 23 of the Bill be amended-

(a) in Subclause (1) by deleting the word "ten" appearing in paragraph (f) and substituting therefor the words "twenty-five";

This refers to the provision under paragraph (f) where it is proposed in the original Bill that not more than 10 per cent of the allocation to a given political party may be used for administrative expenses of the party. We considered the cost of rents and other overheads and given that these are not of a fixed nature, they escalate. It was the considered opinion of the Committee that the threshold for administrative expenses for any given party be increased from 10 per cent to a maximum of a 25 per cent.

I beg to move.

The Temporary Deputy Chairman (Mr. Sungu): My understanding, Mr. Syongo, is that you are only moving the first part of the clause, Clause 23(a), at the bottom of page 603. Is that

correct?

Mr. Syongo: Yes!

(Question of the amendment proposed)

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I, reluctantly, support the amendment. The 25 per cent is too high for administrative expenses. That means that the party is not raising its own money, but I think it strikes some balance.

I support the amendment.

(Applause)

(Question, that the word to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 23(a) as amended agreed to)

Clause 23(b)(i)

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT, Clause 23 (b)(i) of the Bill be amended by- in Subclause (3)-

(i) by deleting the words "the monies allocated by Parliament under this section" and substituting therefor the words "The Fund";

(Question of the amendment proposed)

The Minister for Justice and Constitutional Affairs (Ms. Karua): I support!

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I am, sorry, this is a matter concerning the issue of language.

The Temporary Deputy Chairman (Mr. Sungu): Yes, Mr. Muturi, proceed!

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, the amendment is to replace the words "monies allocated by Parliament", and we want to say, "the Funds allocated by Parliament"; in Subclause 3(a).

The Temporary Deputy Chairman (Mr. Sungu): Mr. Muturi, I understand that we had, initially, withdrawn that amendment saying that the funds will come directly from Parliament! That was in the previous amendment. Is that not so?

Mr. Muturi: I beg your pardon, Mr. Temporary Deputy Speaker, Sir!

The Temporary Deputy Chairman (Mr. Sungu): Are you saying that or you are saying something else?

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I am saying that the proposal by hon. Syongo is to remove the word---

(Loud consultations)

The Temporary Deputy Chairman (Mr. Sungu): Mr. Muturi has the Floor; unless he wants to sit down, and I would give the chance to someone else! Madam Minister, could you please help?

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, just to help Mr. Muturi see that Subclause (3), when we say that; "the Funds shall be distributed as follows", it is clear that this is the Fund that is set up under this Act.

The Temporary Deputy Chairman So, Mr. Muturi, your concern is taken care of? We will now go back to Mr. Syongo's further amendment.

(Loud consultations)

The Temporary Deputy Chairman (Mr. Sungu): Order, hon. Members! Order, Madam Minister! We are making law here and we want to vote! It would be wrong if you were to vote without knowing what you are voting for.

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

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

Clause 23(b)

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 23(b) of the Bill be amended-

(b) by deleting Subclause 3(b) and substituting therefor the following "eighty-five per cent shall be distributed proportionately by reference to the total number of votes secured at the last general election by each political party's presidential, parliamentary and civic candidates."

This is to raise the threshold of the money to be distributed proportionately to 85 percent in line with the earlier amendment where we said that only 15 per cent shall be distributed equally.

(Question of the amendment proposed)

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

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 23(b) as amended agreed to)

The Temporary Deputy Chairman (Mr. Sungu): Mr. Syongo, the Committee's amendments on page 604, Subitem (ii) and Subclause (c) have been overtaken by events. Will you acknowledge that, so that we can proceed?

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, not quite, in the sense that, whereas we are in agreement with the Minister on the substantive amount to be distributed, the Departmental Committee had suggested that it be 80 per cent instead of 85 per cent, leaving 5 per cent to cater for the administrative expenses of those who will be managing the overall Fund. If I may use an analogy, in the case of the Constituencies Development Fund (CDF) there is a percentage left to manage the Fund.

The Temporary Deputy Chairman (Mr. Syongo): Madam Minister, what do you have to say?

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, this further amendment makes a lot of sense. It strengthens the clause in that there will be administrative expenses of the Fund.

The Temporary Deputy Chairman (Mr. Sungu): Order, Madam Minister! I want you to look at the Order Paper properly. Your very own amendment to Clause 23, if you look at it carefully, you have 25 per cent and then 15 per cent. Maybe, you can explain, so that the House can follow. As you know, we are making law and we do not want to make mistakes!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, if you recall the earlier amendment, we had amended the clause for the amount that gets distributed equally to political parties from 25 per cent to 15 per cent. We, therefore, left 85 per cent of the Fund. I have just now proposed that 85 per cent be distributed to the parties proportionately. Mr. Syongo is proposing a further amendment to my amendment, and with notice, so that the proportion distributed to the parties proportionately is reduced from 85 per cent to 80 per cent in order that we leave 5 per cent for the management of the Fund. I am saying that this is a welcome move that makes a lot of sense, which we actually ought to have included, and for which now I thank Mr. Syongo and the Departmental Committee for moving.

The Temporary Deputy Chairman (Mr. Sungu): Then Mr. Syongo, you have the Chair's permission to move a further amendment to Clause 23 (b) by the Minister at page 599 so that it can conform, otherwise it will run counter to what you are proposing now!

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I propose that we further amend the clause as proposed by the Minister.

The Temporary Deputy Chairman (Mr. Sungu): Could you refer to the percentages? You must do it yourself!

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I beg to move:

"THAT, there be a further amendment so that the amount distributed proportionately is reduced from 85 per cent to 80 per cent so that 5 per cent is set aside for the management of the Fund."

(Question of the further amendment proposed)

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I strongly support.

The Temporary Deputy Chairman (Mr. Sungu): In that case, I will ask Mr. Syongo to give us that written notice for record purposes.

(Loud consultations)

Order, hon. Members! I would like to appeal to hon. Members on the Floor! We are making intricate laws here and some of us may not be lawyers; we want to follow this thing. I want to, follow it word by word. So, please, give the Chair a chance to hear what is going on! There are very loud consultations!

(Mr. G.G. Kariuki consulted loudly)

Order, Mr. G.G. Kariuki! Let us do this thing together!

*(Question of the further amendment,
that the words to be left out
be left, put and agreed to)*

*(Question of the further amendment,
that the words to be inserted in place
thereof be inserted, put and agreed to)*

*(Clause 23(b) as further
amended agreed to)*

Clause 23(c)

The Temporary Deputy Chairman (Mr. Sungu): Mr. Syongo, you will come back to your amendment on page 604, part (c) only!

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 23 of the Bill be amended:

(c) by inserting the following new paragraph immediately after paragraph (b)-
(c) five per cent for the administration expenses of the Fund.

(Question the amendment proposed)

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I support, and it is self-explanatory. It is consequential upon the last amendment.

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

The Temporary Deputy Chairman (Mr. Sungu): Madam Minister, you have an amendment on page 600 to the same clause!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 23 of the Bill be amended:

(c) By inserting the following new proviso immediately at the end of Subclause (3) the word "Provided that where a presidential candidate is supported by more than one political party, only votes cast for parliamentary and civic candidates of the respective parties will be taken into account in calculating the amounts payable to the respective parties".

This is a proviso we are introducing to indicate that where a presidential candidate is supported by more than one political party, for purposes of funding of the parties that support that presidential candidate, only the votes cast for parliamentary and civic candidates of the respective parties will be taken into account in calculating the amounts payable to the respective parties.

(Question of the amendment proposed)

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I support.

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

(Clause 23(c) as amended agreed to)

Clause 23(d)

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 23 of the Bill be amended:-

(d) by inserting the following new subclause immediately after Subclause

(3)-

(4) No political party shall benefit _____ from the Fund if its registered national office bearers do not reflect at least a third of either gender.

The idea is really to take care of affirmative action and gender equity. I think it is a good proposal!

(Question of the amendment proposed)

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I welcome the amendment, and it is a surprise after what recently happened in this Parliament.

I support!

The Temporary Deputy Chairman (Mr. Sungu): Order, Madam Minister! Please, leave out extraneous matters! We are on the Political Parties Bill!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I am supporting it and saying that it is a welcome move. I have recalled what happened recently; so, it is even more welcome and I support it.

The Temporary Deputy Chairman (Mr. Sungu): Madam Minister, you want them to be your friends; do not make enemies of them!

(Laughter)

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

(Clause 23(d) as amended agreed to)

The Temporary Deputy Chairman (Mr. Sungu): I understand that there is a further amendment by Prof. Oniang'o at page 605 but since she is not there, it shall fall flat on its face.

(Dr. Ojiambo stood up in her place)

Order, Dr. Ojiambo! It is not procedural for you to move this amendment unless you have written permission from her! If it is an amendment by the Departmental Committee, then any hon. Member of that Committee may move amendments on behalf of that Committee, as per the Standing Orders. So, that amendment falls flat on its face!

(Amendment dropped)

(Clause 23 as amended agreed to)

Clause 24

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 24 of the Bill be amended in Subclause (3) by deleting the words "one million" wherever they appear and substituting therefor the words "five million". It is to increase the contribution by individual members to political parties per year from Kshs1 million to Kshs5 million. That is in response to the contribution by members.

(Question of the amendment proposed)

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

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 24 as amended agreed to)

Clause 25

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 25 of the Bill be amended-

(a) in Subclause (1) by deleting the words "twenty-one" and substituting therefor the word "ninety";

(b) in Subclause (2) by deleting the word "forty" and substituting therefor the word "ninety".

Mr. Temporary Deputy Chairman, Sir, the original provision requires that within 21 days before an election, a party shall submit to the Registrar a statement of its assets and liabilities in a prescribed form. We consider that 21 days prior to an election is a very short period of time and, in case of any problems, there will be no opportunity to appeal, in order to allow that party to participate in an election. We have, therefore, recommended that the period be increased to 90 days, so that there is sufficient room for any appeals or amendments to allow a political party to participate in an election.

I beg to move.

(Question of the amendment proposed)

The Minister for Justice and Constitutional Affairs (Ms. Karua): I support.

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be
inserted in place thereof be
inserted, put and agreed to)*

(Clause 25 amended agreed to)

(Loud consultations)

The Temporary Deputy Chairman (Mr. Sungu): Order, hon. Members! Order, hon. Members! Order! Order! There shall be order on the Floor of the House! Those who want to consult loudly can give us some peace! Otherwise, the Chair wants to follow this. We are making law here and if we make a mistake, we will be the laughing stock of the rest of the world. So, please, listen carefully!

So, there is no amendment proposed to Clause 25---

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, there is an amendment on page 604 relating to Clause 25(2).

The Temporary Deputy Chairman (Mr. Sungu): Mr. Syongo, I would like to advise you that because there is no other amendment by any other person, we have put all of them together. So, Clause 25 has been passed.

(Clause 25 agreed to)

Now, we are on Clause 26. There is no amendment on that.

(Clause 26 agreed to)

Clause 27

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 27(1) of the Bill be amended by inserting the following proviso at the end thereof-

"Provided that the Registrar may at any time request the Director of Internal Audit to carry out an audit of the accounts of a political party".

This is to insert a proviso that allows the Registrar of Political Parties to request the Director of Internal Audit to carry out an audit on the accounts of a political party. This is necessary because, for the first time, political parties will be funded from the Exchequer.

I beg to move.

(Question of the amendment proposed)

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I just want to understand from the Minister why it is proposed that this audit will be carried out by the Director of Internal Audit as opposed to the Controller and Auditor-General. If you look at the original Bill, it had provided for the Controller and Auditor-General. I thought that, perhaps, it should actually be the Controller and Auditor-General to give it even more independence.

(Ms. Karua interjected)

The Temporary Deputy Chairman (Mr. Sungu): Order! Order! There will be no exchanges!

Proceed!

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I am just wondering whether it will not be good for us to provide that those accounts of every political party shall be audited by the Controller and Auditor-General and then forwarded to Parliament and the Registrar.

The Temporary Deputy Chairman (Mr. Sungu): Madam Minister, do you have a response?

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, this is to carry out an audit of the accounts of all political parties. We should remember here that political parties are essentially private entities. Other than for good reason where the Registrar may have some reasons and ask for an audit to be carried out by the Director of Internal Audit--- This is not the same way as auditing Government funds. It is in that light that those accounts should be audited by the Director of Internal Audit.

(Loud consultations)

The Temporary Deputy Chairman (Mr. Sungu): Thank you, Madam Minister.

Order, hon. Members! I would like to urge hon. Members from that corner that--- I will not hesitate to send somebody out very quickly because I want to hear what is going on! I want to hear, but there are loud consultations on that side! Please, respect the Chair's advice! I will not hesitate to send somebody out!

Ms. Abdalla: Mr. Temporary Deputy Chairman, Sir, that corner there, of NARC-Kenya Legal Advisor, is the one that is making noise!

The Temporary Deputy Chairman (Mr. Sungu): Order! Order! Order! You are not allowed to comment on the Chair's advice!

Ms. Abdalla: But we are not hearing!

The Temporary Deputy Chairman (Mr. Sungu): Order! I am only concerned with hon. Members of Parliament and not NARC or any other party.

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

(Clause 27 as amended agreed to)

Clause 28

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary

Deputy Chairman, Sir, I beg to move:-

THAT, Clause 28(1)(e) of the Bill be amended by deleting the words "require with respect of the foregoing or other matters" and substituting therefor the word "prescribe".

This is, again, to bring clarity.

(Question of the amendment proposed)

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

(Question, that the word to be inserted in place thereof be inserted, put and agreed to)

(Clause 28 as amended agreed to)

(Clauses 29, 30, 31, 32, 33, 34, 35 and 36 agreed to)

Clause 37

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 37 of the Bill be amended by inserting the following new subclause immediately after subclause (8)-

(9) Every original party shall be accorded an opportunity to comply with section 23(4) of this Act within three years of the enactment of this Act.

Mr. Temporary Deputy Chairman, Sir, Clause 37 primarily deals with transitional arrangements. There are political parties already in existence. The rationale is to give every political party, already in existence, an opportunity to comply with Section 23(4) of this Bill. The period during which the existing political parties would be required to comply is specified as three years. This is in order that there is a smooth transition. The law can take effect in such a way that it does not injure any of the existing political parties.

I beg to move.

(Question of the amendment proposed)

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I oppose this amendment. I would seek the understanding of hon. Members. If you look at Clause 37, it is proposed to give existing political parties 180 days to comply. In other words, this is six months.

Mr. Temporary Deputy Chairman, Sir, if we give political parties three years as proposed by Mr. Syongo, we will go dangerously close to the next general elections with parties not putting their houses in order and, therefore, raising temperatures and bringing problems during the election period.

Mr. Temporary Deputy Chairman, Sir, remember that funding of political parties is based on compliance. It, therefore, also means that the fund will be un-operational for three good years. Only close to the elections, shall the money be available for nurturing democracy. Let us allow six

months. It is envisaged that this law should be operational early next year, so that by June or September of the same year, political parties will have started to grow and democracy nurtured in preparedness for the general elections. It is in this light that I would request Mr. Syongo to reconsider this amendment and let Clause 37 stay as it is.

I beg to oppose.

Ms. Abdalla: Mr. Temporary Deputy Chairman, Sir, I beg to support the Minister. That amendment was to take into account the fears of some hon. Members who felt that the time was not enough. However, if there is little objection when we are proposing amendment to Section 23(4), I think the Minister has some point.

The Temporary Deputy Chairman (Mr. Sungu): Is this now a Committee decision? Let me hear from, Mr. Ahenda.

Mr. Ahenda: Mr. Temporary Deputy Chairman, Sir, I support the Minister. She is very cooperative, I do not think we should push her.

(Laughter)

The Temporary Deputy Chairman (Mr. Sungu): Could I hear from Mr. Syongo?

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, the argument put forward by the Minister makes a lot of sense. Given our financial calendar, I beg to withdraw my amendment.

(Applause)

(Amendment withdrawn)

(Clause 37 agreed to)

Part II A

The Temporary Deputy Chairman (Mr. Sungu): Hon. Members, let us be clear on this so that we understand what is going on. We are on page 601 of the Order Paper. There is a new Part IIA which includes clauses 4(a), 4(b), 4(c), 4(d), 4(e), 4(f) and 4(g). Are we together?

Hon. Members: Yes! Yes!

The Temporary Deputy Chairman (Mr. Sungu): The proposed amendments are by the Committee.

Mr. Syongo, please, proceed!

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new Part immediately after Part II:-

PART IIA - POLITICAL PARTIES DISPUTES TRIBUNAL

Establishment of

Tribunal 4A.(1) There is established a Tribunal to be known as the Political Parties Disputes Tribunal.

(2) The Tribunal shall consist of the following members appointed by the Chief Justice, subject to approval by Parliament-

(a) a chairman who shall be a person qualified to be appointed a judge of

the High Court;

- (b) two other members of high moral standing and integrity, one of whom shall be an advocate of the High Court of Kenya of five years standing.
- (3) A person shall not be qualified to be appointed as a member of the Tribunal if that person is a member of the public service or takes an active part in the activities of a political party.
- (4) A member of the Tribunal shall hold office for a term of five years and shall be eligible for appointment for a further term of five years.

Purpose of Tribunal 4B. The Tribunal shall determine-

- (a) disputes between members of a political party;
- (b) disputes between political parties forming a coalition; or,
- (c) appeals from decisions of the Registrar under this Act.

Determination of Disputes 4C.(1) The Tribunal shall determine any disputes before it expeditiously, but in any case, shall determine a dispute within a period of three months from the date the dispute is lodged.

(2) The decision of the Tribunal shall be final.

Rules of

Procedure of

Tribunal 4D. The Chief Justice shall make rules to regulate the procedure of the Tribunal.

Removal of

member Tribunal 4E.(1) The Chief Justice may remove a member of the Tribunal if the member-

- (a) becomes an undischarged bankrupt;
- (b) is convicted of a criminal offence;
- (c) is incapacitated by reason of prolonged physical or mental illness from performing duties; or,
- (d) is otherwise unable or unfit to discharge the functions of his office.

Secretary to

Tribunal 4F. The Attorney-General shall designate an officer to be the secretary to the Tribunal.

Expenses of

Tribunal 4G.(1) The members of the Tribunal shall be paid such allowances and be reimbursed such expenses as shall be determined by the Chief Justice.

- (2) The expenses of the Tribunal, including the allowances of the members of the Tribunal shall be paid by the Government.

Mr. Temporary Deputy Chairman, Sir, the reason that this is necessary is, we have agreed that we set up a tribunal to deal with disputes within political parties as well as between political parties. The tribunal will be set up by the Chief Justice. It will also help to reduce the burden on the High Court as was provided for before. It is a proposal that we have discussed exhaustively. I know the Minister of Justice and Constitutional Affairs agrees with the proposed amendment.

(Question of the amendment proposed)

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I suppose this is consequential to the earlier amendment we accepted of introducing the tribunal. It is well thought out and laid out. We should make it part of this Bill

I beg to support.

Capt. Nakitare: Mr. Temporary Deputy Chairman, Sir, I support this amendment. With experience from the courts, cases that have been pending in courts, especially election cases, warrant this tribunal to be independent of any other cases. It can then deal specifically with political parties.

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Temporary Deputy Chairman, Sir, I also want to support this amendment given the experience we have had in this country with regard to disputes among political parties. It is a very important amendment.

I beg to support.

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

(Part IIA as amended agreed to)

Clause 5A

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after clause 5-

5A. Where two or more political parties resolve to form a coalition before or after an election, the instruments of the coalition agreement shall be deposited with the Registrar for the purposes of arbitration between the coalition parties.

Mr. Temporary Deputy Chairman, Sir, the rationale for this is that coalition is now reality in our country. We, therefore, want arrangement to provide stability for our country. The new clause stipulates the arrangement under which the instruments of any coalition shall be deposited with the Registrar for purposes of facilitating arbitration between members of any post or pre-election coalition arrangement.

(Question of the amendment proposed)

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, this is an interesting clause as we head to the general election. It means that when parties form a coalition, they must have instruments of coalition, which will be deposited with the Registrar of Political Parties. Basically, what we are saying is that all disputes of a political nature move to the Registrar of Political Parties. So, it is, basically, saying that we all have to be very careful about what we promise one another.

I beg to support.

(Applause)

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I also want to support this new clause. They say: This is becoming wiser after the fact. I am sure this is trying to address the problems brought about by the "Memorandum of Understanding (MoU)." Since we are now just about to get

into others, I think it is a very welcome development that people know whom they want to go to bed with so that they do not find themselves with strange bedfellows.

I beg to support.

The Assistant Minister, Office of the President (Mr. Munya): Mr. Temporary Deputy Chairman, Sir, even though I would want to support this new clause, which I think is very important, the trouble is that we have not amended our other laws that relate to the management of our political parties. So, sometimes what we call coalitions are not really coalitions in this House. So, we will bring even more confusion in the law when we introduce an amendment that recognises coalitions, when in law there are really no coalitions. Hon. Members may be elected under one party and when they come to this House, they are recognised as a single party, but we will have provisions of the law treating them as being in coalitions. So, we are putting ourselves in a big mess because there are other laws that we need to amend to comply with this provision.

Thank you.

Mr. Temporary Deputy Chairman (Mr. Sungu): I will allow just short comments because we do not want to go back to the original debate.

Please, proceed, Mr. Tarus!

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Temporary Deputy Chairman, Sir, I want to support this new clause for the basic reason that it makes the agreements public to the Kenyan people. It will also ensure that people avoid mischief by talking about issues that were not agreed upon. So, it is very important that this proposal is supported.

Thank you.

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

(Schedule agreed to)

(Title agreed to)

Clause 1

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 1 of the Bill be amended by deleting the words "on such day as the President may by notice in the Gazette appoint" and substituting therefor the words "not later than ninety days from the date of its enactment."

Mr. Temporary Deputy Chairman, Sir, the idea, really, is to give some definite time when this Act comes into effect. I think we have had several cases where it is left open in terms of gazettelement and so on. Now that we are going for the general election, maybe, it can lapse. The idea is, therefore, to be specific. It is done in good faith and there is no malice whatsoever. Obviously, there is no disrespect intended by that amendment.

I beg to move.

(Question of the amendment proposed)

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to oppose this amendment. It may be true that there have been difficulties in a case or two where an Act is coming into operation by the hand of a Minister, but there have been many other successes. I operationalised the Water Act. Other Ministers have operationalised other Acts. A difficulty in one or two places cannot cause a departure from a

tradition.

In this case, the law proposes that it comes into effect on a date that the President appoints. There is no record of failure by the institution of the Presidency to activate any law in this country. We, therefore, cannot equate the President to a Minister and propose an amendment to this law. I urge the Committee to reconsider the amendment because the institution of the Presidency has never failed to activate a law. Let us leave it as it is unless we have a new constitutional dispensation. Let us not equate the power---

(Loud consultations)

The Temporary Deputy Chairman (Mr. Sungu): Order, Madam Minister! Order, hon. Members! That corner there, led by the Deputy Whip, I will be most reluctant to send the Deputy Whip out of this House! I would like to follow this debate. If you are not interested, please, just give us peace! I cannot follow proceedings and arguments and make decisions here if the consultations are so loud. Please, respect the Chair! Any senior hon. Member can sit here and should be respected. I think it is an affront of the Chair if this loud consultations go on despite my advice otherwise!

Proceed, Madam Minister!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, just to conclude, I am, therefore, saying that since the institution of the Presidency has never failed to activate laws, I would urge the Committee to withdraw this amendment and let the clause remain as it is.

I beg to oppose.

Mr. Syongo: Mr. Temporary Deputy Chairman, Sir, with that assurance, I beg to withdrawn the amendment.

(Amendment withdrawn)

(Clause I agreed to)

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Political Parties Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Mr. Deputy Speaker in the Chair]

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE POLITICAL PARTIES BILL

Mr. Sungu: Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole House

has considered The Political Parties Bill and approved the same with amendments.

(Loud consultations)

Mr. Deputy Speaker: Order, there! Please, let us finish this process without interruption. Continue, Madam Minister!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Energy (Mr. Murungi) seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Deputy Speaker, Sir, I beg to move that The Political Parties Bill be now read a Third Time.

The Minister for Energy (Mr. Murungi) seconded.

(Question proposed)

Mr. Deputy Speaker: Mr. Githae, you have been on your feet many times. Now, I give you the opportunity to give your comments.

The Assistant Minister for Transport (Mr. Githae): Mr. Deputy Speaker, Sir, I just want to take this opportunity to thank the Minister for Justice and Constitutional Affairs and her team for a job well-done. This is a milestone in the history of political parties in Kenya. For the first time, we now have an Act of Parliament that will deal with matters relating to political parties. It has always been a shame that our political parties are registered under the Societies Act which deals with funeral committees and such like associations. It is also a pointer that where there is co-operation between the Ministry and the Departmental Committee, a lot can be achieved.

With those few remarks, I beg to support.

The Minister for Energy (Mr. Murungi): Mr. Deputy Speaker, Sir, I also want to thank the Minister and the Members of this House for supporting this very important Bill. Our political parties are in a mess and they have been so since 1992 when multipartism was introduced. We have been fighting for this law since 1994. So, it is a very happy day for us to finally provide a sound legal framework for management of political business in this country through political parties.

With those few remarks, I beg to support.

Mr. Ligale: Mr. Deputy Speaker, Sir, I would like to thank the Minister and the Departmental Committee. The way we have contributed at the Committee Stage in this House this afternoon has indicated that where there is goodwill on both sides, a lot can be achieved. I congratulate both the Minister and the Committee for a good job well-done. With the assent by the President, I hope we shall put the mess we had in this country behind us and look forward to some order in our political systems.

With those few remarks, I beg to support.

Ms. Abdalla: Mr. Deputy Speaker, Sir, I wish to add my voice in congratulating the Minister and the Committee for having achieved a milestone in organizing our political parties. I wish to note that this Bill is the first process of engendering political parties which has been a big headache for all political parties. That makes me very happy. That nomadism amendment that was

brought in the Statute Law (Miscellaneous Amendments) Bill, will go a long way in making Kenyans have real ownership and membership of political parties.

The Minister for Information and Communications (Mr. Kagwe): Mr. Deputy Speaker, Sir, I also wish to congratulate the Committee, the Minister and this House for passing this Bill. My hope and prayer is that this Bill will enable us to move from what can be considered today as "interest groups" to real political parties. We hope that the amounts that we have allocated will be used to build manifestos, visions and ideals that can be used in terms of selling parties to Kenyans on the basis of ideologies rather than on the basis of interest groups and chieftaincies.

Mr. Syongo: Mr. Deputy Speaker, Sir, may I add my voice in congratulating the Minister and the Committee. On behalf of the Committee, I want to thank and commend the Minister for Justice and Constitutional Affairs. This is one example, in my case, the very fast one since I came to this House, where there has been collaboration and goodwill between the Minister and the Committee. I want to suggest that, that should be the way forward.

Finally, I would like to say that political parties are the pillars of democracy of our country and those who are in power and administer authority over all our citizens are there in accordance to our Constitution by virtue of being members of political parties. Therefore, I want to commend the House for passing this particular Bill. I look forward to its enactment so that it can bring stability to our political system.

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Deputy Speaker, Sir, mine is to congratulate the Minister and both sides of the House for passing this Bill. For a long time, it has been difficult to build political parties because parties have always been bank-rolled by individuals. This is, indeed, a good initiative for the Kenyan people. Now people can build parties and ensure that democracy survives in this country forever.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Deputy Speaker, Sir, I want to thank hon. Members and the Committee. I also want to indicate that although we never sat down with the Committee to discuss the amendments, we were able to communicate through the report that was brought here. I want to state that the amendments proposed by the Committee were all very useful amendments, even where we did not agree with them. I want to underscore that co-operation is nurtured by the intention of hon. Members across the board to strengthen and build the country and not partisan interests, interests of power-brokers or cartels.

I want to say that the Political Parties Bill is an example of a Bill where all hon. Members across the board have considered the interests of the country and not partisan interest.

I beg to support and thank all the hon. Members and the Committee.

Mr. Deputy Speaker: Very well, hon. Members! I thank you for that contribution and I now want to put the Question.

*(Mr. Wanjala stood at his place
when the Chair was on its feet)*

Order, Mr. Wanjala! Mr. Wanjala, I expect you to apologise to the Chair!

(Mr. Wanjala bowed to the Chair)

Very well! You may be seated now!

(Question put and agreed to)

(The Bill was accordingly read)

the Third Time and passed)

MOTIONS

APPROVAL OF DRAFT PRESIDENTIAL/ PARLIAMENTARY ELECTIONS (AMENDMENT) REGULATIONS

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to Section 34 of the National Assembly and Presidential Elections Act (Cap.7, Laws of Kenya), this House approves the draft of Presidential and Parliamentary Elections (Amendment) Regulations 2007, laid on the Table of the House on Wednesday 26th September, 2007.

Mr. Deputy Speaker, Sir, the House will recall that this is a routine matter that is done every five years. But during this term, this is the second time it is happening. Just before the referendum, my Ministry once again tabled, on behalf of the Electoral Commission of Kenya (ECK), rules that had been prepared by them for the referendum. This time round, the draft rules that we have laid before this House, are the rules prepared by ECK pursuant to Section 34 of the National Assembly and Presidential Elections Act to enable the conducting of the General Elections this year.

The rules that are laid before the House normally lapse after the elections in respect of which they are laid. So, for us to proceed to the next General Elections, we require to approve these rules so that ECK may have a legal basis of conducting the elections. If you look at the rules, there is not much new that has been introduced. One of the very good things the rules are introducing is accreditation of the media to cover the counting process, both at the polling stations and the tallying stations.

[The Deputy Speaker left the Chair]

*[The Temporary Deputy Speaker
(Mr. Sungu) took the Chair]*

Mr. Temporary Deputy Speaker, Sir, we know that the media only gains access to the polling and tallying stations after the results have been announced. Transparency of our elections will be enhanced by the media being able to cover the elections at all stages as accredited observers and to announce to Kenyans and the world what is happening blow-by-blow. This will assure all the parties and participants that the conduct of the elections is totally transparent.

Mr. Temporary Deputy Speaker, Sir, if the hon. Members care to look at the rules that were laid before the 2002 elections, they will notice that Rule 14 is very close to what was there. It says:

"Where a date has been appointed for holding of an election, and it is impossible to conduct the elections as a result of natural disasters or other emergencies, the Electoral Commission of Kenya (ECK) may postpone the election and shall in respect of the area, or areas concerned, appoint another date for the holding of the postponed election."

this rarely happens. However, it is normally put there, so that in case of a natural disaster, which prevents the conduct of elections, the ECK and their returning officers are able to step in. We know that since Independence, elections have never failed to go on. However, in one or two

polling stations, there can be circumstances that make it impossible to conduct elections on that particular day.

Mr. Temporary Deputy Speaker, Sir, another interesting and good proposal that has been given by the ECK is on the proposed Rule No.14, which says that the ECK may specify dates for the nomination of candidates by each political party taking part in parliamentary elections which shall not be less than 21 days before the date fixed by that notice for the holding of parliamentary elections. If I may pause there on 14(A), we notice that we now have 130 registered political parties. Is it possible, if say 20 of them are participating in elections to carry out their nominations on the same day and noting that we use schools and other public places as the polling centres? This gives the ECK the leeway to set, if need be, different dates on which different parties may conduct their nominations for purposes of orderly conduct of those nominations.

Mr. Temporary Deputy Speaker, Sir, in Rule No.14(B), it requires the political parties to submit a complete list of nominated candidates for election to the ECK, five days before the nomination day, but puts a proviso that in exceptional circumstances such as the death or defection of a nominated candidate, the person will be allowed to substitute a new name. This again enhances democracy. In the past, we have known of political parties that remove, by some very dubious means, a candidate who has been validly nominated and substitute a candidate who has not been nominated just on the eve of polling. This requirement ensures that where a party is substituting, the ECK can ask for what reasons the substitution is being done. All these are new things.

Mr. Temporary Deputy Speaker, Sir, there are regulations also requiring that if any polling station returns ballots that exceed the registered number of voters in that polling station, all those should be rejected. We have known in the past of polling stations that have voted in excess of the registered voters some to the tune of 110 or 116 which has been the most extreme. It may not be in many stations, but this puts on notice those who intend to interfere with the elections that you do so, at your own peril. This is because if the number of ballots cast exceeds the number of registered voters, then immediately there will be a question mark on that polling station.

Mr. Temporary Deputy Speaker, Sir, in a nutshell, without attempting to explain every rule because these are rules of the ECK and not of my Ministry, they are well thought out. They enhance democracy. They are an improvement of the previous electoral rules. I urge Members to support them, so that we approve them expeditiously and allow the ECK to get ready for the next general election.

I beg to move.

The Assistant Minister for Transport (Mr. Githae): Mr. Temporary Deputy Speaker, I rise to second the Motion.

Mr. Temporary Deputy Speaker, Sir, these rules are from the ECK. They have not been prepared by the Ministry, but by the ECK. I have read them. I am impressed by the improvements that have been made by the ECK. Three rules have actually impressed me.

Mr. Temporary Deputy Speaker, Sir, one, is orderly nomination of candidates because that is where the danger has been. However, with these rules it will be possible for the ECK to now give different dates to various political parties within which they should do their nomination. This will enhance democracy.

Mr. Temporary Deputy Speaker, Sir, I am also impressed by this rule giving the ECK power to postpone or defer an election where an act of God occurs. We have had cases where some polling stations have been affected by floods and impassable roads. So, this now gives the ECK power to defer these elections to a suitable date. We know that in 1997, elections were postponed. However, at that time, the ECK did not have this power. So, I think this is very good foresight on behalf of the ECK.

Mr. Temporary Deputy Speaker, Sir, the other very important rule and which I was very eager to find whether it is still there or not, is the counting of votes at the polling station. Most of the rigging of elections used to take place after polling and before counting. That is where vehicles would take the longest route and break down on the way. In the process, stamped ballot papers were substituted. We have had cases in my constituency where before this rule came into place, ballot boxes moved from Baricho to Thika and then to Kerugoya, a distance of more than 200 kilometres. The purpose of all these movements was to enable rigging. So, I am glad that this rule is still there.

Mr. Temporary Deputy Speaker, Sir, another very important rule is that political parties must give notice to the ECK five days before the actual nomination date. This is to prevent political parties issuing double nomination certificates to candidates or issuing certificates to one or two people. We have had cases where a political party has issued a certificate to its candidate and during the night another one is also issued with the same. This only confuses candidates and it does not enhance democracy. So, this is a very important rule.

Mr. Temporary Deputy Speaker, Sir, time has now come for us to enhance democracy for the ECK to take charge of the elections. They should not allow any candidate to be abused, particularly the women. The ECK must give our women candidates protection, so that they are not abused or harassed and so that they can carry on with their campaigns peacefully. This will also ensure that when somebody is defeated, he is defeated fairly and squarely and does not say that he was defeated because rival candidates occasioned violence to him or to his campaigners.

Mr. Temporary Deputy Speaker, Sir, these are very good rules and I support them. I request this House to support them.

I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Mr. Sungu): Hon. Members, once adopted, these Regulations will become the Rules of the Electoral Commission of Kenya. You are allowed to move amendments to them, as we move on, in the usual manner. There is no Committee on this.

Mr. Muturi!

Mr. Muturi: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to say a few words about the Rules that have been laid before the House and, indeed, the proposed amendments.

I want to go to the specific areas because even as we say that they are very good rules, we must ensure that they are actually good, because we may pass them and find that implementing them will be very difficult, because they do not make any sense. I would like the Minister to listen, so that she can make the necessary corrections. For instance, if you look at the arrangement of clauses on page 1, Clause 7 purports to want to amend Regulation 13B. It reads as follows:-

"7. Regulation 13B of the principal Regulations is amended by inserting the words "before the returning officer" immediately after the word "him" in the third line".

If you look at Regulation 13B of the principal Regulations, you will see that there are only three lines, and that there is no word "him" on the third line. I took the liberty of looking for the principal Regulations. I am looking at them, so that we can understand. Let me just read through, so that the Minister can see what I am saying. It reads as follows:-

"A candidate whose nomination papers have been delivered to the returning officer may, before the close of nominations, by notice in writing, signed by him, and presented to the returning officer, withdraw his candidature."

The word "him", which is the only one in that paragraph, is on the second line, and the

reference to "third line" will not make sense. Unfortunately, I am going to be incapacitated, because I was going to make references to the principal Regulations. I would want to ask the Minister to look for it. It is just a question of tidying it up.

Mr. Temporary Deputy Speaker, Sir, I am quite satisfied with the proposal to amend Regulation 31--- Before I go to Regulation 31, there is the proposed amendment to Regulation 19B, on page three of the proposed amendment Regulations, which reads as follows:-

"A returning officer may extend the hours of nomination at the constituency where nominations have been interrupted and shall, where nominations started late, extend the hours of nominations by the amount of time which was lost in so starting late".

My take on this is that, whereas it is something that is logical, it requires a very strict person, because it can render itself to abuse by some returning officers, who might, through influence or intimidation, be---

The Minister for Justice and Constitutional Affairs (Ms. Karua): On a point of information, Mr. Temporary Deputy Speaker, Sir. I thank the hon. Member for accepting information.

I want to read to him how it would read, so that he can see that it makes sense. It reads as follows:-

"A candidate whose nomination papers have been delivered to the returning officer, may, before the close of nominations, by notice in writing, signed by him before the returning officer---"

Mr. Temporary Deputy Speaker, Sir, we are now adding the words "signed by him before the returning officer". So, the candidate withdrawing has to, physically, appear and sign the withdrawal letter in the presence of the returning officer. That is what is intended, so that I do not bring your withdrawal, not in your presence, and claim that you withdrew. I hope it makes sense.

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, I was not disputing the substance of the amendment. The proposed amendment makes reference to the word "him" in the third line. The word "him" appears in the second line. That is the point I was trying to draw the Minister's attention to.

*[The Temporary Deputy Speaker
(Mr. Sungu) left the Chair]*

[Mr. Deputy Speaker resumed the Chair]

So, I was saying that this thing of extending the time for nominations where the exercise may have started late, requires very strict adherence and observance, because some returning officers could very well be intimidated by certain candidates and extend the hours of nomination even though they may not have started late. Nevertheless, the amendment is welcome. We hope that the Electoral Commission of Kenya will be able to administer it well.

Mr. Deputy Speaker, Sir, the other one I want to highlight is the proposed amendment to Regulation 31(4) of the principal Regulations. This one deals with people who go to polling stations with the Oath of Secrecy Forms and purport to want to assist illiterate or blind voters. We have seen situations where people have become professionals. So, what the ECK is doing is welcome. Previously, this Regulation read as follows:-

"The following shall apply with respect to a person who assists an elector under these Regulations-

(b) The person is only required to make one oath of secrecy even if he assists more than one elector".

You can see that even if he assisted one elector, previously he was required to only produce one Oath of Secrecy Form. The ECK is now saying that before he assists an elector, he will--- This is a very good thing, so that we do not have people at a polling station pretending to want to assist everybody, including people who are literate, because they want to coerce them. We have seen this happen in the past.

Mr. Deputy Speaker, Sir, there is a proposed amendment on page 4, which proposes to delete Regulation 33(2). The proposed amendment reads as follows:-

"Regulation 33 of the principal Regulations is amended by deleting sub-regulation (2)".

Sub-regulation (2) of the principal Regulations provides as follows:-

"If a person representing himself to be a particular elector applies for a ballot paper and produces an elector's card purporting it to be issued in his name, which has not been stamped under Regulation 29(1)(e), and either some other person has already been issued with a ballot paper in the name of that elector, and the person so applying produces satisfactory evidence of his identity as that elector, or the presiding officer is satisfied that the person duly applied for registration as an elector and was qualified for registration, but that his name was omitted from the register of electors by mistake, the presiding officer may allow that person to vote but shall record a statement of the particulars of the case".

I wonder why the Electoral Commission of Kenya (ECK) wants to delete this particular regulation. Some Kenyans could very well find themselves in a lot of trouble. If you go and you are told that your name is not in the register and, actually, you applied and you have a voter's and identity card and everything is tallying--- I think what the previous regulation provided for is superior. I urge the Minister not to delete it, but retain it. It could be a saving clause.

During the Referendum, I, personally, had problems because I was told that I was not in the voter's register. I was purported to have died some years back. The old regulation is the one that saved and rescued me. I, therefore, believe that it could help. I took the liberty to raise that because I think it is important that we understand what the ECK proposes to do.

Mr. Deputy Speaker, Sir, with those few remarks, and subject to those reservations which, I think, the Minister will address, I beg to support.

Mr. Muite: Mr. Deputy Speaker, Sir, I support these Rules. I have gone through them. I really have got nothing useful to add because they are satisfactory. The only small point, which is important and which I would like to make is: Of course, we need to harmonise the Rules with the other laws, including the Constitution. For example, you will remember the Bill which we have just passed here, the Political Parties Bill, we inserted a proviso to Section 23 to the effect that, in calculating the money payable to a political party we said:-

"Provided where a presidential candidate is supported by more than one political party, only votes cast for parliamentary and civic candidates of the respective parties will be taken into account in calculating the amounts payable to the respective parties."

You will recollect that, that was an amendment to Clause 23, which was moved by the Minister for Justice and Constitutional Affairs. We supported it and we still do. But when you read this proviso, it accepts that a political party does not need to have its own presidential candidate. More than one party can agree to support one presidential candidate. That is why we are having this proviso. Where several parties have agreed amongst themselves to have a joint presidential candidate, then, in calculating the amounts to be paid to those respective parties, the presidential vote will not be taken into account. That accepts the principle that a party is not obligated to sponsor its own presidential candidate. A party can share the sponsoring of a presidential

candidate.

Mr. Deputy Speaker, Sir, therefore, there might be need, somewhere along the road, for the Minister or the Attorney-General to clarify the correct reading of the Constitution. That is because there has been some confusion. There are people who read the Constitution as being obligatory on a political party; that it must sponsor a presidential candidate. There may be need to clarify that, that is not the correct position. That is not the correct reading or interpretation of the Constitution. Where several parties share one presidential candidates, then each of those parties, for the purposes of the Constitution is, indeed, sponsoring that joint candidate as its candidate. It is necessary to remove that confusion by an authoritative statement from the Minister or from the Attorney-General that, indeed, that is the situation. That way, we will not end up with a situation where some people read the Constitution as obligating each party to sponsor its own presidential candidate. We now have Clause 23 in the Political Parties Bill, which we have just enacted into law, which accepts that, in fact, a party does not have to individually sponsor its own candidate. Mr. Deputy Speaker, Sir, subject to clarification at a more appropriate time, I beg to fully support the Rules that have been tabled, so that they can now have the force of law.

I beg to support.

Mr. Deputy Speaker: Is there any hon. Member who wishes to contribute to the Motion?
Yes, Mr. Sungu!

Mr. Sungu: Mr. Deputy Speaker, Sir, I also rise to support this Motion. It is right and proper that these Rules be brought before Parliament to be approved. The only unfortunate thing is that the Minister has only given us the amendments, but not the principle Act. Therefore, it is very difficult to fathom some of the amendments, their meanings and effects.

Mr. Deputy Speaker, Sir, some of us have had the advantage of seeing the initial draft of the Regulations. In that initial draft which was submitted to Parliament, we noted the question of party symbols, which has become a question of priority in this country. Some of our principal parties have problems and conflicts in terms of those symbols. That should have come out very clearly in these Rules. I noted that in the original draft that was brought to Parliament, the question of what should be contained in a party symbol was made very clear. It is unfortunate that without the original Rules, it is difficult to propose an amendment. I believe that we could make amendments before adopting these Rules.

Mr. Deputy Speaker, Sir, secondly, a number of issues have been raised. In the past, it has been very difficult to ensure that candidates are given enough time to do the nominations. I can see that some of these amendments are very right and proper. We are going to be given a minimum of five days before the nomination date to submit the list by parties. That should get rid of some of the confusion that arises out of the party nomination exercise.

I only wish that the ECK was in a position to help some of the parties to do their nominations. Party nominations often tend to be very chaotic because of lack of finances, security and most parties want the most popular candidates. There is also a lot of agitation by wananchi particularly in some electoral areas. It becomes virtually impossible to even organise a fair nomination process. I hope that with time, and particularly now that we have passed the Political Parties Bill, the ECK may be in a position to help parties do their nominations.

Mr. Deputy Speaker, Sir, I do not want to go too much into this. But I think, overall, apart from the question of party symbols, these amendments to the Rules will serve to enhance the democratic process in this country. They will ensure that the electoral process is fair and transparent, as opposed to other nations in Africa. These Rules will ensure that we have fair elections that can stand the test of time.

With those few remarks, I beg to support.

Mr. Deputy Speaker: Any hon. Member interested in contributing to this Motion? I see

none! I will, therefore, put the Question, which is that the Mover be now called upon to reply!

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

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Deputy Speaker, Sir, I wish to begin by thanking hon. Members who have contributed to this Motion. I agree with them that, indeed, the Rules are designed to enhance transparency and raise the standards during the elections.

I want to agree with Mr. Muturi that there is a typographical mistake on Rule 7. It should read:-

"Regulation 13(B) of the Principal Regulations is amended by inserting the words "before the returning officer" immediately after the word "him" in the second line."

It should not be in "the third line". That word appears in the second line of the Principle Rules. It is a typographical error. I seek that it reads "the second line" and not "the third line". That is Rule 7, which is seeking an amendment to Regulation 13(B).

Mr. Chairman, Sir, with regard to Draft Rule No.15, this is designed, as hon. Muturi stated, to remove the opportunity of those who actually flout electoral rules by interfering with voters and colluding with them to pretend to be illiterate for purposes of influencing them at the polling stations. If you look at Draft Rule No.15(d), it clearly states:-

"The person shall assist only one elector at that election".

So, you cannot be a professional marker for all electors coming to the polling station. I am sure that the Electoral Commission of Kenya (ECK) is responding to complaints from the various political parties and politicians.

Mr. Chairman, Sir, I think that Rule 33(2), which---

Mr. Deputy Speaker (Mr. Musila): Please, address me appropriately as Mr. Deputy Speaker, Sir.

The Minister for Justice and Constitutional Affairs (Ms. Karua): I am sorry, Mr. Deputy Speaker, Sir. It is just that we have come from the Committee of the whole House and the word "Chairman" has remained. However, I beg your pardon.

On page 4, Rule No.16, the reason why we are deleting Regulation 33(2) of the principal Regulations is quite clear. There are situations where a person comes with an elector's card claiming to be ex. When you go to the register, you will find that the said ex has already voted. This is the situation that is being catered for here. It states thus:-

"If a person presenting himself to be a particular elector applies for a ballot paper and produces an elector's card purporting to be issued in his name, which has not been stamped as required under Regulation 29(1)(e) and either---

So, the card has not been stamped and yet he says that he is ex.

"---but either some other person has already been issued with a ballot paper in the name of that elector---

It means that there is more than one person carrying the same name.

"and the person so applying produces satisfactory evidence of his identity as that elector---

So, this is a case of multiple persons under one name. It further says:

"--- or the presiding officer is satisfied that the person duly applied for registration

as an elector and was qualified for registration, but his name was omitted from the register by mistake."

Mr. Deputy Speaker, Sir, when the presiding officer is given this, it is when they do a handwritten list. If you go to the handwritten list, you may find that on the printed list, the same names have already voted. So, this is curing the nuisance of multiple voting, which is the one that brings voting beyond the number of registered voters. That is why it has been deleted to be in accord with preventing multiple voting by individuals.

Mr. Deputy Speaker, Sir, I do not think any other issue has been raised other than the issue raised by hon. Muite about Section 5(3)(a) of the Constitution, which says:-

"Each political party taking part in the general election shall nominate one candidate for President in such manner as may be prescribed by or under an Act of Parliament."

This has nothing to do with the rules, but the way I understand this particular section, it is only saying that each political party can only nominate one candidate; not two or three. However, it does not prevent ten political parties nominating the very same candidates for the Presidency. So, this is a section that clarification can also come from the Attorney-General, but on a plain reading of the section, it only provides that the Presidential slot is only one, unlike the parliamentary slot. So, each party can only nominate one candidate for the presidency. It cannot prevent a group of parties, like the Party of National Unity (PNU) from nominating the incumbent as their sole presidential candidate.

Mr. Deputy Speaker, Sir, with those many remarks, I beg to move that the rules be approved. I, once again thank, hon. Members for their valued contribution.

(Applause)

(Question put and agreed to)

ADOPTION OF FIFTEENTH PIC REPORT

Mr. Muturi: Mr. Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, this House adopts the Fifteenth Report of the Public Investments Committee (PIC) on the Accounts of State Corporations (2007), laid on the Table of the House on Thursday, 9th August, 2007.

Mr. Deputy Speaker, Sir, the PIC, as is well known, is established under the provisions of Standing Order No.148 of the rules of this House. Its mandate is clearly spelt out there and I do not need to repeat that. The functions of the PIC are clearly spelt out under Standing Order 148(5).

The PIC comprised the following:-

The hon. J.B.N. Muturi, MP, Chairman

The hon. Atanasi Wafula Wamunyinyi, MP

Dr. The hon. Sammy Rutto, MP

The hon. Jimmy Angwenyi, MP

The hon. Peter G. Munya, MP

The hon. P.K.M. Sang, MP

The hon. Geoffrey Gachara Muchiri, MP

The hon. Gitau Kabogo, MP

The hon. Hussein Maalim Mohammed, MP

The hon. Ali Bahari, MP

Dr. The hon. Abdullahi Ali, MP

Mr. Deputy Speaker, Sir, the hon. Messrs. Moses Cheboi, George Khaniri and Wycliffe Oparanya were appointed to the PIC in April, 2007 to compile the 16th Report of the Committee. They also contributed to the preparation of this 15th Report.

Messrs. Peter G. Munya, Geoffrey Gachara Muchiri and Hussein Maalim Mohammed ceased being members of the Committee on 15th November, 2006, upon their appointment as Assistant Ministers of Government.

Mr. Deputy Speaker, Sir, the PIC held a total of 62 sittings, in which it closely examined 85 Reports from the Controller and Auditor-General on 32 State corporations. The PIC, in its work, endeavoured to reduce the backlog, which is still there and growing, by examining two or more of the said Reports in some corporations, particularly those that are considered strategic and mainly involved in commercial activities. To this end, the PIC managed to bring to date the following corporations:-

1. The Kenya Medical Research Institute (KEMRI)
2. The National Hospital Insurance Fund (NHIF)
3. The Capital Markets Authority (CMA)
4. The Kenya Reinsurance Corporation
5. The Kenya Airports Authority (KAA)
6. The Investments Promotion Centre (IPC) [Kenya Investments Authority (KIA)]
7. The Agricultural Finance Corporation (AFC)
8. The Kenya Tourist Board (KTB)
9. The Tea Board of Kenya (TBK)
10. The Higher Education Loans Board (HELB); and,
11. Safaricom Limited.

The Committee is scheduled to table its 16th Report before this House in the course of next week. It will bring to a total of five reports that this Committee has finalised in this Ninth Parliament, on the accounts of various State corporations. Further, the Committee will have examined a total of 233 Reports of the Controller and Auditor-General in respect of 91 State corporations. The House will note that, contrary to the common practice, this Report is not accompanied by the implementation status of the previous report. That is due to the fact that, by the time of the going to the Press, the Treasury was yet to submit its memorandum on the implementation status of the 14th Report. Owing to the exigencies of time, the Committee found it prudent to table this Report and table the Treasury Memorandum on the implementation status of the 14th Report, together with the next Report. As at yesterday, the Treasury was yet to forward the said memorandum.

Mr. Deputy Speaker, Sir, having said that, we examined so many reports and dealt with a total of 32 corporations. I do not wish to bore Members with the evidence given with respect to the accounts of every State corporation by the Controller and Auditor-General. That evidence is available. It is in the HANSARD. It is available in the Parliament Library for anybody to see. The deliberations of the Committee are also recorded on the HANSARD and they are also available. Therefore, I will just take one or two State corporations just to highlight some of the issues that the Committee examined.

In executing its mandate, the Committee considered, among others, Note 17 which was titled: "Intangible Assets", and Note 25, which was titled: "Related Party Transactions", as reflected on the financial statements of Safaricom Limited. That led to the examination of matters related to the shareholding of the company as a consequence.

The Committee examined at length the matter of shareholding of Safaricom. The Committee took evidence from, amongst others, Mr. Joseph Kinyua, the Permanent Secretary - Treasury, Mrs. Esther Koimett, the Investment Secretary - Ministry of Finance, Mr. Bitange Ndemo, Permanent Secretary - Ministry of Information and Communications, Mr. Michael Joseph,

Chief Executive - Safaricom Limited, Mr. Lays Baille, Finance Manager - Safaricom Limited, Mr. John Waweru, Director-General of Communications Commission of Kenya, Mr. Sammy Kirui, Chief Executive Officer - Telkom Kenya Limited and the Registrar of Companies represented by Mrs. Jade Joram. From the evidence adduced, it was clear to the Committee as follows:-

That, there had been an Information Communication Technology (ICT) policy developed in the country way back in 1997 prior to the enactment of the Communications Commission of Kenya (CCK) Act of 1998, which split the former Kenya Posts and Telecommunication Corporation (KPTC) into three entities namely: Telkom Kenya, Postal Corporation of Kenya and CCK. That policy endured on and was in place even in 1999. By the time Safaricom Limited was formed, whose precursor was a company called Shamora Limited, the policy was that anybody investing in the ICT sector in this country could not hold more than 30 per cent equity within the sector. It, therefore, follows that, by the time of its inception - that is from the evidence that was given - Telkom Kenya, on behalf of the Government of Kenya, owned 70 per cent of Safaricom. The remaining 30 per cent was owned by Vodafone Kenya Limited on behalf of Vodafone PLC. The Committee found out that contrary to what is in the public domain, the company has more than two shareholders. The third shareholder is a shadow firm known as Mobitelea Ventures Limited registered in the Island of Guernsey, and whose directors are also obscure. They are shown as Mercator Nominees and Mercator Trustees.

Mr. Deputy Speaker, Sir, according to a Mr. Gavin Darby, who is the Chief Executive Officer of the Vodafone PLC in charge of the Americas, Africa, China and India, the questionable firm owned 10 per cent of Safaricom by the year 2002. That shareholding was reduced to five per cent in the year 2003, when Vodafone PLC bought back part of that shareholding from Mobitelea Ventures Limited. That is shown by a letter written to the Committee on 29th January this year by Vodafone Chief Executive Officer, Mr. Gavin Derby, when he was required to appear before the Committee. I shall be referring to that letter later.

For the purposes of the formation of Safaricom Limited, there was a shareholders agreement signed between Telkom Kenya Limited and its predecessor KPTC and between themselves and Vodafone PLC. That agreement was signed on 25th January, 1999. At page 20 of that agreement - and copies of that agreement are available in the library--- It is stamped "confidential". It reads:-

"The parties recognised that KPTC and Vodafone Kenya Limited shareholding percentage was shown to be at 70/30" The agreement is dated 25th January, 1999. That date is important for us to understand some of the issues that have been vexing the minds of many Kenyans. It would appear, therefore, that the policy was amended to accommodate Mobitelea Ventures at some point. The Committee noted that there were some discrepancies on the dates provided by the various persons on the time when Telkom Kenya's shareholding at Safaricom reduced from 70 per cent to 60 per cent. The Director General of CCK alluded to a time before 30th June, 1999. The Permanent Secretary, Treasury, Mr. Joseph Kinyua, in his own words and evidence before the Committee - in a letter that he wrote to the Committee - alluded or made reference to a date of 5th October, 1999.

Mr. Gavin Darby, in his letter of 29 January, 2007, talks about the year 2000, Minutes of Telkom (Kenya) Ltd Board---

The Minister of State for Administration and National Security (Mr. Michuki): On a point of order, Mr. Deputy Speaker, Sir. I feel, in some respect, hon. Muturi has mixed his facts.

Mr. Deputy Speaker: Sorry?

The Minister of State for Administration and National Security (Mr. Michuki): Mr. Deputy Speaker, Sir, he got some of his facts incorrect. For example, I want to point out that the holding of shares in the information and telecommunications technology sector in Kenya by foreigners, whichever foreigner wishes to invest in Kenya and---

Mr. Deputy Speaker: Is that a point of order?

The Minister of State for Administration and National Security (Mr. Michuki): Mr. Deputy Speaker, Sir, this is a very fundamental point.

Mr. Deputy Speaker: Is it a point of order or a point of argument?

The Minister of State for Administration and National Security (Mr. Michuki): It is a point of order in the sense that 30 per cent was supposed to be given to locals. It is not like foreigners were to own 30 per cent. I was in that Ministry and I understand these things!

Mr. Deputy Speaker: Order, Mr. Michuki! That is a point of information, which I believe should you have asked---

The Minister of State for Administration and National Security (Mr. Michuki): It is a point of order.

Mr. Deputy Speaker: No! No! It is a point of information. You could have asked the Chair of PIC, if he needed the information.

So, be that as it may, Mr. Muturi, you may proceed!

Mr. Muturi: Mr. Deputy Speaker, Sir, in fact, quite unfortunately, the policy he is referring to, 30 per cent of shares to locals, is the current one and not the one that applied at that time.

We have all the policy documents that were availed to the Committee. We have prepared this Report and if we want to discuss it from a point of information, I think it is important that we read this Report and make corrections. If, indeed, anyone feels that they have issues that they want to raise, they can move amendments to our Report and observations.

I have deliberately decided to sequence these things for avoidance of doubt. At that time, the policy was 30 per cent shares to foreigners and 70 per cent to locals. The shareholding was reduced later to 60 per cent locals and 40 per cent to foreigners. It was progressively--- In fact, at the time hon. Michuki was the Minister and soon after he left, it was reduced to what he is referring to. I quite agree that he is referring to the current position. However, that is not what obtained at that time. The shareholders agreement was provided to us by the management of Telkom (Kenya) Limited and the management of Safaricom Limited. In fact, I came with it. There are several copies of the Report and anybody can go and read it, and they will see that what I am saying is correct.

[Mr. Deputy Speaker left the Chair]

*[(The Temporary Deputy Speaker
(Mr. M'Mukindia) took the Chair]*

Mr. Temporary Deputy Speaker, Sir, several witnesses that appeared before us and those that wrote letters to us, like Mr. Gavin Darby made references to various dates purporting to be the dates when the shareholding changed hands. The minutes of the Board of Telkom Kenya Limited of 27th September, 1999, shows that the Board sat and approved the reduction of shares. However, the minutes indicate that this was subject to request coming from Vodafone plc through Vodafone (Kenya) Limited. That is what is in the minutes of the Board of Directors of Telkom (Kenya) Limited. I will be reading the names of the people who were in attendance on that day. This poses the question: How can the Government not know the date and the process that led to this reduction? Why is there confusion on the dates by senior officers of the same Government? What led to the reduction of Telkom (Kenya) Ltd. shareholding in Safaricom?

In the meeting of 27th September, 1999, the Board discussed a matter of shareholding. Those present were as follows:-

Mr. Wilson Ndolo Ayah, Mr. Augustine K. Cheserem, Mr. N.P. Manji, Mr. K.K. Cherogony, Eng. J. Waweru; and I hear he is the current Director General of CCK; Mr. B.A.

Waiyaki and Mr. George Mitine.

Those are the members who were present on that day, 27th September, 1999. They discussed the Board Paper No.42 of 1999. That is when they approved that it was okay. From the blues, this Paper did not explain anything but it was decided that the shareholding would be reduced from 70 per cent to 60 per cent and increased from 30 per cent to 40 per cent subject to a written request being received from Vodafone plc. That is what the minutes of the Board say. They were produced and they are available for anybody to check.

Mr. Temporary Deputy Speaker, Sir, none of the witnesses, who appeared before the Committee, could ascertain whether Vodafone plc ever wrote to Telkom (Kenya) Ltd. asking for increase of their shareholding in Safaricom because no evidence of it was ever produced before the Committee. In the absence of such a letter or evidence, Telkom's Chief Executive could only guess that--- And these are his words. They are in the HANSARD - they may have. Otherwise, I do not know how or what on earth influenced the Board to make this kind of decision. The current management of Telkom (Kenya) Ltd. was unable to justify the need to reduce Telkom shareholding in Safaricom from 70 per cent to 60 per cent. The fact that the management could not confirm whether Telkom (Kenya) Ltd. was paid anything in return for the 10 per cent shareholding irregularly ceded to Vodafone plc and in turn ceded to Mobitelea Ventures Limited.

In his evidence to the Committee, the Chief Executive, Mr. Kirui, attempted to mislead the Committee on a possible consideration having been made to Telkom (Kenya) Ltd. for those shares. However, when we challenged him to produce the evidence, again, he was unable to provide any. In the absence of any evidence, the excuse given for the reduction of Telkom (Kenya) Ltd. shareholding in Safaricom that it was necessary to raise funds for expansion of the company's network was obviously invalid since the Government had not indicated its inability to directly raise the funds. The question which vexed the Committee's mind was: Who is Mobitelea Ventures? The information provided to the Committee by Mr. Gavin Darby through his letter of 29th January 2007, and addressed to the Committee, conveyed in part that:

"M/s Mobitelea Ventures was identified through a competitive process as a local partner of Vodafone Group for the advisory role it played in local business practices and protocol challenges associated with investing in Kenya. "

Mr. Temporary Deputy Speaker, Sir, it is obvious that this is absolute insincerity and misrepresentation of the truth since Mobitelea Ventures Ltd is ostensibly not based and does not operate in Kenya. Furthermore, the Committee found out that the shareholding agreement between Telkom (Kenya) Ltd. and Vodafone (Kenya) Ltd was signed on 25th January, 1999, long before Vodafone plc came by Mobitelea Ventures Limited.

The Committee got evidence that Mobitelea Limited was registered in Guernsey Island on 18th June, 1999. This was, clearly, five months after a shareholders' agreement between Vodafone plc and Vodafone (Kenya) Ltd had been entered into. It is, therefore, strange that a company that was registered more than five months after the shareholders' agreement was identified as a local partner of Vodafone Group to play an advisory role on local business practices and protocol challenges associated with investing in Kenya. But by the time they were identifying them, they had already entered into a shareholders' agreement.

(Mr. Muchuki moved to the Dispatch Box)

I hope it is not another argument!

The Minister of State for Administration and National Security (Mr. Michuki): On a point of order, Mr. Temporary Deputy Speaker, Sir. I rise on a point of order because I think that the facts that are being presented here are disorderly. First of all, there are two companies here:

There is Vodafone PLC and another company he has mentioned, called Vodafone Kenya and it is they who have invested as foreign companies. This Government, which found the situation created by KANU when it was in power cannot be expected to explain who owns shares in Vodafone PLC.

The Temporary Deputy Speaker (Mr. M'Mukindia): Mr. Minister, you are out of order! That is not a point of order but a point of argument.

An hon. Member: *Hajui* what a point of order is!

Capt. Nakitare: On a point of order, Mr. Temporary Deputy Speaker, Sir. Am I in order, with due respect, to challenge the Minister that for us who were not here at that time be given time to listen to debate on this document without interruption?

The Temporary Deputy Speaker (Mr. M'Mukindia): Very well! I agree with you!

Continue, Mr. Muturi!

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, I am not in any way asking the Government to explain. I am giving the facts as they were presented to the Committee. In fact, the Government could very well say that, that is the mess it inherited and that could suffice. But I must present the facts as they were presented to us.

I have stated that the investor is Vodafone PLC through Vodafone Kenya Limited (VKL). So, I do not see what is messy or disorderly about saying that. I thought it was as clear as the sun rises from the East and sets in the West; it does not require a lot of explanation. If I could just explain, and I will not take long; I want to give the facts as they were explained to us. It is for that reason that I have taken the liberty to have them documented. I hope the intention was not to confuse me!

The Temporary Deputy Speaker (Mr. M'Mukindia): I think you should not be distracted by anybody. You should continue along that line. As I said, that was a point of argument and not a point of order.

So, please, continue!

(Mr. Wamunyinyi refilled Mr. Muturi's glass of water)

Mr. Wamunyinyi, you are also disturbing Mr. Muturi!

Mr. Wamunyinyi: I am just serving him, Mr. Temporary Deputy Speaker, Sir.

(Laughter)

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, I had reached a point at which the Committee was asking about the logic of the explanations given by the various witnesses. I was at the point where I was saying that the company's official, Mr. Gavin Darby, in his letter, which I am just about to read out, talks of Mobitelea Ventures, which was registered in the Island of Quernsey on 18th June, 1999. The original shareholders' agreement had been signed on 25th January, 1999, and Vodafone PLC, through their Chief Executive Officer (CEO), told the Committee that this company called Mobitelea was identified and given these shares because of the valued advisory role it played on local business practices and protocol challenges associated with investing in Kenya.

Mr. Kajwang: On a point of order, Mr. Temporary Deputy Speaker, Sir. Those business practices and protocols are so complicated. How did they understand them so that we can get them? I am not getting the role that this company is playing. Those are very big words! Could he explain them?

The Temporary Deputy Speaker (Mr. M'Mukindia): Mr. Kajwang, that is not a point of

order, obviously! However, maybe the point should be taken that Mr. Muturi should be simpler in his language. That is what Mr. Kajwang is saying!

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, perhaps, so that I do not use words which are not mine, let me read, for the benefit of the House, the letter written to us by Mr. Gavin Darby, CEO, Vodafone, Americas/Africa/China/India.

An hon. Member: What?

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, he is the CEO of Vodafone in charge of the Americas, Africa, China and India.

An hon. Member: Very senior man!

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, a very senior man. The letter is dating 29th January, 2007. It is written to the Clerk of the National Assembly, Clerk's Chambers.

"Your invitation to attend the Public Investments Committee (PIC) meeting of 30th January, 2007, has been passed to me but I regret that Vodafone is unable to attend on this occasion. I thought that it would be helpful to describe the shareholding structure of Safaricom and Vodafone Kenya Limited (VKL) and the development of that structure. In 2000, VKL acquired---

It is important to note that it is in 2000 and not 25th January, 1999. He is saying:-

"In 2000, VKL acquired 40 per cent of Safaricom following a competitive process. Vodafone invested US\$20 million for its 40 per cent and paid another US\$22 million for its portion of the licence fee of US\$55 million. At that time, the VKL was 100 per cent owned by Vodafone Group and its only asset was the 40 per cent share in Safaricom. When Vodafone makes investments in new territories, it is not uncommon that it works alongside a partner, who typically gives advice on local business practices and protocols and various challenges associated with investing in a new market. Vodafone's chosen partner in Kenya was Mobitelea, a company resident in Quernsey Island."

It is important to note that Vodafone's chosen partner here in Kenya was Mobitelea, a company resident in Quernsey Island. He continues:-

"In return for its valued advice, Vodafone offered Mobitelea the opportunity to acquire 25 per cent of VKL (after VKL had acquired Safaricom) at a price based on the same price that VKL paid for its investment in Safaricom. This transaction was completed for cash in 2002, and Vodafone's economic interest in Safaricom remained at 30 per cent (75 per cent of VKL which owned 40 per cent of Safaricom) until a year later, when Vodafone bought back 12.5 per cent of VKL from Mobitelea at a fair market value for cash".

An hon. Member: How much?

Mr. Muturi: It is not indicated, Mr. Temporary Deputy Speaker, Sir.

"Since that time, Vodafone's economic interest in Safaricom has been 35 per cent, which translates to 87.5 per cent of VKL, which in turn owns 30 per cent of Safaricom.

"As the owner of 12.5 per cent of Vodafone Kenya Limited (VKL), Mobitelea is a financial investor only, and does not sit on the Board of Vodafone Kenya Limited (VKL) nor does it vote on operational or investment decisions of that company. It has no influence in any way over Safaricom. It is just a financial investor. The economic interest of Vodafone in Safaricom has been disclosed in the Vodafone Group accounts each year, since the initial investment. Vodafone would prefer to be in a position to make a comprehensive disclosure, but having taken legal advice, it could be in breach of a duty of confidentiality were it to discuss Mobitelea further.

Yours faithfully,

Mr. Gavin Darby".

Mr. Temporary Deputy Speaker, Sir, clearly, from this letter, one can see that the tenor of it and the upshot is to completely water down the shareholders' agreement of 25th January, 1999. The Committee was concerned that the 10 per cent was given to that shadowy company for free. It was public funds! Whether we call it divestiture of sorts--- Even when the Government divests, it gets something in return. But for that deal, there was absolutely no return!

Mr. Temporary Deputy Speaker, Sir, the economists will argue about that. But further information shows that, upon registration of Mobitelea Ventures* on 18th June, 1999, its real owners are Mercator---

The Minister for Finance (Mr. Kimunya): On a point of order, Mr. Temporary Deputy Speaker, Sir. Hon. Muturi has just read to us a very detailed letter showing how Mobitelea and Vodafone were all developed into that partnership, and how they paid the cash. He has also told us how VKL paid for its 40 per cent shareholding. Is he in order to mislead this House that the Government gave out ten per cent of the shares in Safaricom for free, when he, himself, has acknowledged that Vodafone paid US\$22 million for 40 per cent shares out of US\$55 million, which translates exactly to 40 per cent? That is what the Committee was told. He has not given us any other information to the contrary. Is he in order to mislead the House that there was another 10 per cent that was given by the Government for free? That has not come out from his discussions so far?

The Temporary Deputy Speaker (Mr. M'Mukindia): Mr. Muturi, before you answer that, I think you need to clarify on that issue. I think that is a very valid point because it is not clear how your conclusions were borne out of your explanations.

Mr. Muturi: Sorry, Mr. Temporary Deputy speaker, Sir, we have not yet reached the conclusions. We are still in the middle.

But, Mr. Temporary Deputy Speaker, Sir, more importantly, I am very sure that the Minister for Finance has in his possession this original shareholders agreement, which gave VKL 30 per cent equity in Safaricom.

(Mr. Muturi waved a document)

Mr. Temporary Deputy Speaker, Sir, this is the agreement! Unless the Minister has not read it--- I believe he has read this document. It cannot be with Telkom (K) Ltd and Safaricom, but not with the Treasury!

The Minister of State for Administration and National Security (Mr. Michuki): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Mr. Muturi to forget what he said earlier from his notes? He said that Vodafone PLC paid US\$22 million for its portion of the investment in Safaricom. They also paid, I think, another US\$20 million. I might be transposing figures, but that money was for their portion of the licence. Now, if they decided to get rid of their 10 per cent shareholding within Safaricom, how does one say that it was acquired, in the first place, freely, when, in fact, it is within their own right to give away their dollars to another person?

The Temporary Deputy Speaker (Mr. M'Mukindia): Very well! Mr. Muturi, I think that is a very valid question. Again, if, indeed, they paid for 40 per cent shareholding at the very beginning, they can dispose of their 40 per cent in any way they wanted. You have to show us that they did not acquire 40 per cent but 30 per cent shareholding.

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, it must be noted that this is the case they presented. It is in this letter. This is their evidence to the Committee.

Mr. Temporary Deputy Speaker, Sir, let us not wish away this very important issue; that

they were looking for a local partner! Before they made a decision to invest, which must have been sometimes earlier than 25th January, 1999--- That is because this shareholders agreement was entered into on 24th January, 1999. You can see clearly that this letter does not acknowledge what is contained in the shareholders agreement. They were to own 30 per cent of Safaricom and Telkom (K) Ltd, on behalf of the Government of Kenya, was to own 70 per cent. That is in the shareholders agreement! It was entered into on 25th January, 1999!

Mr. Temporary Deputy Speaker, Sir, I have also explained that the Board of Directors of Telkom (K) Ltd, on 27th September, 1999, from the "blues" and in the minutes---

The Minister of State for Administration and National Security (Mr. Michuki): From the "blues"?

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, I hate to be disrupted by my good friend, hon. Michuki.

Mr. Temporary Deputy Speaker, Sir, the thing just appears in the minutes, that the Board approves that the shareholding can go down from 70 per cent to 60 per cent, subject to a written request being received from Vodafone PLC. On that day, they were discussing Board Paper No.56 of

1999. It had nothing to do with the shareholdings in Safaricom!

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, Mr. Muturi! Will that be illegal? Again, let us state facts! The Board has powers and it made a decision. What is the impropriety of that decision?

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, fortunately, I have been in this Committee long enough. I invite you to look at the Act that creates Telkom (K) Ltd and the State Corporations Act. They are required, once they have made a decision of that nature, to seek the approval from the parent Ministry. The parent Minister would, in turn, also get the final approval from the Treasury. But, all those things were never done! That is where I was driving to. All these things were never done. They appeared before us and we told them: "Fine, for you to take this position, the Board has said that it can approve although nobody has asked it to reduce from 70 per cent to 60 per cent, but you must obtain a written request from Vodafone." We have asked for those written requests. The Permanent Secretary, Treasury, alluded to a date of 5th, October. We told him to produce that letter, if there was any, but he was unable to do so. He later came back and said that there was nothing. We asked the Investments Secretary, who is still the Investments Secretary today, whether she was aware of any request. She too said there was none. We asked Mr. Kirui of Telkom (K) whether there was any request, he said there was none. I am saying: "Fine, the Board may have said that they could reduce the percentages subject to receiving a written request." We asked to see that written request. If it was there, did they pass that decision to the parent Ministry to be given approval? That is the way it is under the law. They are required to do that. We asked them whether they got the Treasury approval, but they did not!

I appreciate that the current Government may not quite understand what Mr. Kajwang was asking me to explain about these protocol challenges. You can see they are inviting their chosen partner, whom they came by in the year 2000, by which time, they had already entered into the agreement with Mobitelea Ventures. That is their local partner, but resident in Guernsey!

Mr. Temporary Deputy Speaker, Sir, according to evidence, the real owners are behind two nominee firms, namely, M/s. Mercator Nominees and M/s. Mercator Trustees Ltd, who, in turn, are owned by M/s. Anson Ltd and Cabot Ltd, both registered as the directors in the tiny islands of Anguilla and Antigua.

An hon. Member: Where?

Mr. Muturi: The tiny islands of Anguilla and Antigua.

Mr Temporary Deputy Speaker, Sir, these are the owners. They were advising Vodafone

PLC on local business challenges and protocols in Kenya.

The Assistant Minister for Transport (Mr. Githae): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for hon. Muturi to mislead this House by saying that the chosen local partner was not in existence? Since this was a company, it must have had its officials. Therefore, the people who assisted the company are its officials. The company could have been formed afterwards, but there must have been officials. A company cannot assist, it is the officials who assist.

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, fortunately, Mr. Njeru Githae has been listening to me. I have said that evidence availed to the Committee was that Mobitelea Ventures was first registered on 18th, June, 1999. The point I am trying to make is that for these investors, Vodafone PLC, to have agreed to invest so much of their dollars in Kenya, they required this advice on the challenges and the protocols. That was before 25th, January, 1999. That is when they were being advised; if they were advised, at all.

The letter by Gavin Darby says that they came by these people in the year 2000. Unfortunately, when writing this letter, they forgot that they had entered into the agreement at the beginning of the year 1999. So, they ought to have been advised if, indeed, they required to be advised, on any business protocols. That is the point the Committee was really agonizing over. How were they advising?

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, Mr. Muturi! If the shareholders agreement was signed in January and these people were seeking advice, surely, they must have had advice beforehand. The fact that they are owned by other companies elsewhere means that there were certain principles involved, even though the agreement itself may have come back.

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, that is not the law. It is not the law! If Mobitelea Ventures was registered on 18th, June, 1999, and there were other people who were advising Vodafone, then Gavin Darby should have told us that they were being advised by so and so, who later became Mobitelea Ventures. If, indeed, they were advised, then in this letter, they should have told us that before 25th, January, 1999, before they appended their signatures on the shareholders agreement, they were being advised by Mr. so-and-so. Some of these people may be very short, but, nevertheless, if they were advising, it should be said that these are the people who were advising on local business protocols.

Let me try to move on. As you have heard, even Mobitelea Ventures itself is owned by nominees and trustees, who are also in term---

The Minister for Finance (Mr. Kimunya): On a point of order, Mr. Temporary Deputy Speaker, Sir. I had raised a point of order on an allegation that Mr. Muturi made that the Government gave away 10 per cent of the shares of Safaricom for free. So far, we have not heard him either confirm or withdraw that allegation.

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, I have said that the law, unless the Minister for Finance is now saying that, that is not the law, requires that if Telkom (K) Ltd. was to cede 10 per cent as provided for in the shareholders agreement, then they needed to get the Board's approval. We assume that the Board's approval is there. They also needed to get the parent Ministry's approval and thirdly, and more importantly, the Treasury's approval.

(Applause)

They ceded the 10 per cent without the approvals!

The Temporary Deputy Speaker (Mr. M'Mukindia): Mr. Muturi, I think there are two issues here. One is whether the right procedure was followed and two, whether it was given for

free. The Minister says it may have been unprocedural, but it was not for free. I, therefore, think that his point of order is valid.

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, 70 per cent equity must have had some value, and so is the 30 per cent. Likewise, 60 per cent and 40 per cent have some values. The point we are making is that when you moved from 70 per cent to 60 per cent without following the laid down procedures, you ceded whatever value that was given to the 10 per cent to this person; whether it was Mobitelea Ventures through Vodafone or whatever method that was used, we are saying that was done unprocedurally. It must have had a value!

Mr. Temporary Deputy Speaker, Sir, you can see how voluminous this shareholding is. They could not have been appending their signatures and giving themselves 70 per cent and 30 per cent, if that percentage was worth nothing. It must have been worth something. That is all we are saying!

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, hon. Muturi confirmed to us that Vodafone (K) paid US\$22 million out of US\$55 million for the licence. US\$22 million out of US\$55 is 40 per cent and they got their 40 per cent. I think that is basic mathematics. Hon. Muturi has also said that the Government gave away its 10 per cent shareholding for free, yet the same figures that he has given - and he was given by the Committee - is that Vodafone (K) paid US\$ 22 million out of a licence fee of US\$55 million, which means that they paid for 40 per cent. We would like to understand, first of all, whether Vodafone (K) paid for its shares. In terms of other issues and allegations, whether they paid, that is a different issue. But I just wanted to clarify that issue; whether the Government gave away its shares for free.

Mr. Sungu: On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. M'Mukindia): Order! We are on another point of order! Let us deal with one first! Mr. Muturi, clear it very quickly.

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, as you well know, this is a Report. If the Minister keeps on interrupting me--- The Minister is at liberty to wait so that at an appropriate time he will come and explain his bit. In fact, I am willing to assist him by giving him this letter from M/s Gavin Darby. Let him try to reconcile it with the provisions of the shareholders' agreement. More importantly---

The Temporary Deputy Speaker (Mr. M'Mukindia): Mr. Muturi, you understand that this matter is going to be in the public domain. It is important that you make it very clear. Do your documents show that the Government actually gave away 10 per cent shareholding? Basically, that is the question! If, indeed, that is the case, I have no problem. But if you do not prove that and this matter goes to the public domain and then you come back tomorrow and apologise to the House, it will be too late! So, please, would you kindly---

Mr. Sungu: On a point of information, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, Mr. Sungu! Let Mr. Muturi deal with this matter and finalise it.

Mr. Sungu: On a point of information, Mr. Temporary Deputy Speaker, Sir. I would like to draw the attention of the House to the fact that this is a Committee of this House. It is charged with the responsibility of investigating on behalf of the House. So, they have facts!

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, Mr. Sungu! We know the responsibility of Committees! What exactly are you trying to tell Mr. Muturi? What new information are you giving him so that it can help him?

Mr. Sungu: Mr. Temporary Deputy Speaker, Sir, I wanted to remind the Chairman of the Public Investments Committee (PIC) that his Committee is a Committee of this House, which is charged with the responsibility of investigating these matters on our behalf and interviewing the officials involved. I have served in that Committee and I know that we get evidence. Therefore,

they must have evidence from relevant quarters!

The Temporary Deputy Speaker (Mr. M'Mukindia): Order! That is not new information!

Mr. Sungu: He was forgetting that!

The Temporary Deputy Speaker (Mr. M'Mukindia): That is not helpful!

Yes, Mr. Githae!

The Assistant Minister for Transport (Mr. Githae): On a point of order, Mr. Temporary Deputy Speaker, Sir. This matter can be disposed of very quickly if hon. Muturi could do two things. One, he could tell us from the shareholders' agreement of 70/30 per cent, this was the price, and when it was reduced to 60/40 per cent this was the price. If we could know that when the shareholders' agreement was 70/30 per cent, it is the same price at 60/40 per cent, then we can say that the Government gave out 10 per cent shareholding free of charge. So, what I am asking Mr. Muturi is: What was the price under the 70/30 per cent and 60/40 per cent shareholding?

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, I think the Government is wasting my time. It was not the business of the Committee to go into issues beyond what was in the shareholders' agreement. The shareholders' agreement does not tell us 70 per cent is worth so many millions or billions and 30 per cent is worth so much. The issue of 60/40 per cent shareholding was introduced long after this shareholders' agreement. It is no wonder that the figure of US\$55 million that is being quoted by M/s Gavin Darby, and which the Government is quite comfortable with, fits in within their explanation of the latter day arrangement of 60/40 per cent shareholding. We are just being taken in circles by the Government!

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, Mr. Muturi! If, indeed, the documents do not show those prices, then there is no way you can come to the conclusion that any shareholding was given away for free by the same argument. Therefore, I would ask you, please, to withdraw that remark.

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, what I cannot withdraw is what is in this document. Seventy per cent on 24th January, 1999, later changed to 60 per cent---

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, Mr. Muturi! I have not asked you to withdraw what is in the document, but your conclusion that 10 per cent of the shareholding was given for free.

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, you cannot tell me to withdraw even before I have concluded! You are telling me to withdraw from putting across the argument. By the time I finish, it will be clear to all and sundry that---

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, Mr. Muturi! Then you should never have concluded in the first place! You should have left that until the end. Please, it is a matter of importance; that when you make such a major statement, really, you must have gone through the arguments to reach there. You have not reached there yet. So, on the basis of the information that we have as of now, that is not correct!

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, I cannot withdraw because it is the truth! The truth of the matter is that we have not been told by anybody why the shareholding was reduced from 70 per cent to 60 per cent. If we have not been told why that happened, what are we supposed to do? Does it require any form of ingenuity really?

The Temporary Deputy Speaker (Mr. M'Mukindia): Yes, it does! Very much so!

Order, Mr. Muturi! You know our procedures here! You are not helping this House and the country. Please, do it in a very systematic way. You will come to your conclusion either today or the day after, but that conclusion is not valid as of now! That is what I have a problem with.

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, can I say the following?

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, Mr. Muturi! It is not

important whether it is true or not!

Mr. Wamunyinyi: Let him say what he wants to say!

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, Mr. Wamunyinyi! Whether it is true or not, as of now, that argument does not validate what you are saying. So, please, let us do it in a very systematic way so that we do not waste any more time. Continue and conclude at the end!

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, the point I am making is this, and I do not know why I really have to repeat it: When it was 70 per cent shareholding, the parties knew what it is they owned. Those who owned 70 per cent shareholding knew what was their worth. Similarly, those who owned 30 per cent shareholding knew the same. One party, contrary to what is in the shareholders agreement, Article 12.3, on transfer of shares--- It reads:

"If a shareholder (transferor) wishes to sell any or all of his shareholding in a company - it is called sale shares - such transferor shall give a notice in writing to the other parties who are shareholders to that effect setting out the number of sale shares to be sold, the transfer price of the sale shares and the identity of any person who has offered to purchase the sale shares together with all the terms and conditions of the offer."

Mr. Temporary Deputy Speaker, Sir, Telkom (K) either gave, sold or whatever terminology I can use, their 10 per cent. M/s Gavin Darby in his letter is telling us that this company called Mobitelea Ventures Limited bought the shares for cash. Even in Article 12.3 of the shareholders agreement, the identity of those people was never disclosed by Vodafone PLC. It was mandatory, in terms of that Article, for them to say, we are assuming that---

The Minister for Finance (Mr. Kimunya): On a point of order, Mr. Temporary Deputy Speaker, Sir.

Mr. Muturi: The Minister should wait! This is a young man who does not---

The Minister for Finance (Mr. Kimunya): On a point of order, Mr. Temporary Deputy Speaker, Sir. As you have rightly said, this is a matter of great importance to this nation and it is important that we get the truth. The assumption was that the Committee has gone through this and we have no doubt in terms of the competence of the Committee. So, it is important that the Committee tells us the facts as they are.

What Mr. Muturi, on behalf of the Committee, is telling us is that in January there was a shareholders agreement that referred to a 70 per cent and a 30 per cent. In September, 1999, there was a consummation of the partnership between Vodafone Kenya and Telkom Kenya at which point, money changed hands. There was a 40 per cent discussed in the board. The ownership of Safaricom Limited was only concluded when Vodafone Kenya paid for their shares in Safaricom Limited and not when the shareholders agreement was drafted. There was no shareholding until Vodafone Kenya had paid for their shares. What Mr. Muturi has told us is that when Vodafone Kenya paid for its shares, they paid US\$20 million and Kshs22 million out of US\$55 million which works out to 40 per cent.

The point of order that I had raised was that Mr. Muturi said here that the Committee found out that the Government gave out 10 per cent of the shares for free. That is the point that I am making. Unless there is evidence to show that the Government gave out the shares for free, then that allegation should be withdrawn or substantiated.

The Temporary Deputy Speaker (Mr. M'Mukindia): I think the facts as of now, according to Mr. Muturi's statement are incorrect. For that reason, he is out of order. As for the procedure not being followed, that is a different matter. Otherwise, the statement that 10 per cent of shares was given out for free and the facts as shown there, do not support that.

Mr. Wamunyinyi: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Motion on this Report by the Public Investments Committee (PIC) is very important. We are discussing matters that are important and of great interest to Kenyans. So, I want to draw your attention to the fact that there is no quorum at this moment.

QUORUM

The Temporary Deputy Speaker (Mr. M'Mukindia): Very well, there is no quorum. May the Division Bell be rung.

(The Division Bell was rung)

ADJOURNMENT

The Temporary Deputy Speaker (Mr. M'Mukindia): Order, hon. Members! Switch off the Division Bell. We have now come to the end of business for today. Therefore, this House is adjourned until Tuesday 2nd October, 2007 at 2.30 p.m.

The House adjourned at 6.30 p.m.