

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 28<sup>th</sup> November, 2013

The House met at 2.30 p.m.

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

### PRAYERS

### PAPER LAID

The following Paper was laid on the Table:-

The National Construction Authority Regulations, 2013

*(By hon. A.B. Duale)*

**Hon. Speaker:** Hon. Members, the Paper laid by the Leader of Majority Party, being regulations of the National Construction Authority, is referred to the Departmental Committee on Transport, Public Works and Housing.

### STATEMENTS

**Hon. Abongotum:** Hon. Speaker, Sir, this is a Statement of the alleged increased insecurity---

**Hon. Speaker:** Sorry, hon. Abongotum. Hon. Shill had approached the Chair a little earlier expressing his inability to be present at this time until much later. But, I told him that we may not delay the reading out of the Statement until next week.

*(Statement deferred)*

Hon. Abongotum, I note that you have another Statement. You can now read the second Statement because the first one has been deferred.

### STATUS OF REFUGEE CAMPS IN THE COUNTRY

**Hon. Abongotum:** Hon. Speaker, Sir, this is a Statement on the status of refugee camps in the country, requested by hon. David Wafula Wekesa, hon. Member of Parliament of Saboti Constituency.

Hon. Speaker, the hon. Member is concerned about the free flow of refugees into the country which has exposed the country to security threats from the terrorists groups such as *Al Shabaab*.

The hon. Member wanted to be informed on the following:-

- (i) the exact number of refugees in Kenya, stating their nationalities;
- (ii) names and locations of all the camps in the country; and
- (iii) when the camps will be closed by the Government, especially the two main refugee camps; Dadaab and Kakuma.

Hon. Speaker, Sir, I wish to state the following: Kenya, being a signatory to various international instruments on refugees has been hosting and protecting refugees fleeing persecution in their countries of origin. The Government domesticated the provision of these international instruments into the Refugee Act, 2006 which is the guiding law on refugee matters in the country.

Hon. Speaker, Sir, as at 30<sup>th</sup> September, 2013, Kenya was host to a total of 592,219 refugees, out of which, 476,635 - almost 80 per cent - are Somalis from the Republic of Somalia.

The population has recently decreased because of some refugees returning to Somalia. The country has two major refugee camps, namely Dadaab and Kakuma. The Dadaab complex which hosts about 405,477 refugees, mainly from Somalia, has five small refugee camps; namely, Hagadera, Dagahaley, Ifo I, Ifo II and Kambios.

Hon. Speaker, Sir, Kakuma Refugee Camp which hosts about 125,803 refugees is located in Turkana County and it is home to refugees from Somalia, Ethiopia, South Sudan and the Great Lakes Region. There are also urban refugees who live in different towns. I wish to lay on the Table a matrix indicating the number of refugees in various camps and their country of origin.

Hon. Speaker, Sir, in an effort to ensure proper coordination and administration of refugee camps in the country, the Government has strengthened camp management by posting administrators who manage and coordinate provision of humanitarian services to refugees and ensure safety and security of the refugee camps. The Government has also engaged UNHCR and signed a security partnership project which provided logistical and financial support to police who are deployed to provide security in the camps.

However, despite the many efforts to manage the camps, the country faces many challenges which include insecurity. This remains the greatest challenge to refugee operation in Kenya. There is also environmental degradation. Due to the high numbers of refugees in the camps, the environment inside and around the camps has been badly destroyed.

Over the years, many refugees have settled in urban areas, and efforts by the Government to resettle them back to the camps have often been challenged in courts by Non-Governmental Organisations (NGOs).

The Government has taken a number of measures to mitigate these negative effects as follows:

- (i) Deployment of competent and experienced administrators to the camps;
- (ii) Security screening is conducted for all asylum seekers to ensure that criminals are prevented from securing asylum in Kenya;
- (iii) Verification of the camp population is conducted from time to time to apprehend the criminals disguising themselves as refugees; and
- (iv) Promotion of durable solution to the refugee menace, particularly repatriation of refugees to their countries of origin.

Hon. Speaker, the Government of Kenya, the Government of the Federal Republic of Somalia and the United High Commissioner for Refugees (UNHCR) are in the process

of drafting a tripartite agreement which will pave way for the formation of a tripartite commission to oversee the process of the return of the Somali refugees. The refugee camps will be closed as soon as the refugees return home in two years' time. However, the speed of the refugee return is highly dependent on the stability of the Federal Republic of Somalia.

I would like to state that it has taken quite some time for this Statement to be brought here, and that a lot of things have actually happened. The Cabinet Secretary has actually given instructions for the closure of all refugee camps. He is working very closely with the UNHCR to ensure that this is done in a very smooth way. So, the process of closing the refugee camps has started.

Thank you, hon. Speaker.

**Hon. Speaker:** Yes, hon. Wafula.

**Hon. Wekesa:** Thank you, hon. Speaker. Let me take this opportunity to thank the Chairman, hon. Kamama, who is my good friend. I am not afraid to say that he has been fighting with us in pursuit of this issue. However, on the Floor of this House, he has no option other than reading the Statement signed by the Cabinet Minister – a Statement which is insufficient and full of contradictions. In this Statement, the Cabinet Minister stated that the refugees would return to their countries in two years' time, indicating that they would mostly be of Somali origin, forgetting that in the matrix that he has attached to this Statement he has indicated that there are refugees from various countries.

I am looking at the last column of the table, where it is indicated "others". On the column of Dadaab Camp, he has indicated 11 refugees. On the second-last column, for Mombasa, he has indicated 70, totalling to 266 refugees. Here is a government which knows that we have about 266 refugees but it does not bother to establish their nationalities. We have been told that Kenyan youths of Somali origin might have registered as refugees because of lack of opportunities in Kenya. We need to be told the position of refugees in this country, and whether the Government knows what goes on in the refugee camps. We are not even sure whether as refugees join camps they are vetted, and by who. What is the Government's position in this process?

**Hon. Abongotum:** Hon. Speaker, I agree with the hon. Member that the refugee menace in this country is an issue that has to be addressed, as a matter of urgency. I have always said in various forums that we need to close the refugee camps because they have become kindergartens for terrorists. I have been reported saying this by several media houses.

On the issue of the 266 refugees, I want to state that this is---

**Hon. Speaker:** What is your point of order, hon. Okoth?

**Hon. Okoth:** Hon. Speaker, is the Chairman in order to use words like "kindergarten" for terrorism yet we know that Kenyan Somalis are fully Kenyans, and that such language can be construed to mean that our relatives and friends who live in those camps are terrorists.

**Hon. Speaker:** Hon. Okoth, I have switched you off because I realised that you were just engaging in some debate. That is not a point of order.

Proceed, hon. Kamama.

**Hon. Abongotum:** Hon. Speaker, I was saying that we have a lot of evidence to show that quite a number of terrorists are actually being trained in the refugee camps,

especially Dadaab and Kakuma. We will table the Report on the terrorist attack on West Gate Shopping Mall. So, that is something which is factual. It is not fiction.

Regarding the issue of the 266 refugees categorised as “others”, we know that people from many countries apply for political asylum. This is allowed in law, as long as such persons are not a threat to our security. On the issue of what goes on in the refugee camps, I want to state that for some time, our security officers have been complaining. Refugees are normally vetted by the UNHCR together with our security people before they go to the camps. When they go to the camps, we have certain restrictions by the UNHCR – that it is them who can manage them.

So, we want to work very closely with the UNHCR before we close those camps to ensure that there is a harmonised way of managing them. I want to remind hon. Members that about a month ago, a bomb exploded within Dadaab Refugee Camp. Firearms are even being smuggled into the refugee camps. So, the Cabinet Secretary has actually given instructions for the tripartite engagement to be expedited. He has also ordered the closure of the refugee camps but this is being done in an orderly manner. So, something is being done to address the situation.

Thank you, hon. Speaker.

**Hon. Speaker:** The Chairperson of the Departmental Committee on Agriculture, Livestock and Cooperatives, hon. Nooru. Hon. Outa, are you standing in for him? Are you are the one reading the Statement on behalf of the Chair?

**Hon. Outa:** Yes, hon. Speaker.

**Hon. Speaker:** Very well. Go ahead but when you are going to do such a wonderful job, it is advisable that you remember to carry the card.

**Hon. Outa:** Hon. Speaker, I will do that next time. I forgot my card at home.

**Hon. Speaker:** Proceed.

#### BAN ON USE OF GENETICALLY MODIFIED ORGANISMS IN THE COUNTRY

**Hon. Outa:** Thank you, hon. Speaker. I am here to give a Statement requested by the hon. Wilbur Ottichilo from the Chairperson of the Departmental Committee on Agriculture, Livestock and Cooperatives.

Hon. Speaker, Sir, on Tuesday 24<sup>th</sup> September 2013, the Member for Emuhaya, hon. Dr. Ottichilo rose on the Floor of the House and requested the Chairperson of the Departmental Committee on Agriculture, Livestock and Cooperatives to issue a Statement on the ban of the use of Genetically Modified Organisms (GMOs) in the country.

Hon. Speaker, Sir, the Committee summoned the Cabinet Secretary for Agriculture, Livestock and Cooperatives on Tuesday, 22<sup>nd</sup> October 2013 and Thursday, 24<sup>th</sup> October respectively to appear before it and answer the Member’s request. I wish to report to the House and give a detailed report on GMOs as follows:

Number one, the scientific data and information that informed the ban and number two, whether the National Biosafety Authority (NBA) and other relevant agencies were consulted prior to the ban pronouncement by the Government. On the scientific data and information, on 19<sup>th</sup> September, 2012, a publication on GMO maize was published in the scientific journal *Food and Chemical Toxicology* linking genetically

modified maize, NK603 with cancer and premature death in rats. Before that consultation, there were no consultations between the NBA or other relevant agencies.

On the impact of the ban on the activities of the NBA, GMO research activities and business in GMO product in the country one, is negative image in the international community and two, a show of inconsistency on the political goodwill considering that there already exists a clear policy, legal and constitutional framework for managing and regulating biotechnology and biosafety in Kenya. The performance of the NBA has been adversely affected due to misinterpretation of the ban and contravention of international conventions such as the Cartagena Protocol and World Trade Organisation (WTO) agreements. The ban could adversely affect realization of the Vision 2030 which identifies biotechnology as a tool for improving food production hence poverty eradication.

On the impact of research activities, there is delayed commercialization of genetically modified cotton which has already undergone field trials in Kenya and misinterpretation of the ban to mean the ban of all research activities and initiatives. The Government has invested heavily in biotechnology and biosafety in terms of infrastructure and human capacities in Kenyan universities and research institutions, and a number of projects some at advanced stages utilising GMO technology. This includes the insect resistant BT cotton ready for commercialization, Water Efficient Maize for Africa which we call WEMA, Virus Resistant Cassava for Africa (VIRCA), Africa Biofortified Sorghum (ABS), insect resistant sweet potato and biocassava plus.

Hon. Speaker, the impact of the ban of GMOs will also affect our business in Kenya and that will be denying Kenyans and the region as a whole an opportunity to access food during times of emergencies since Kenya is a major transit corridor for food aid destined for the greater horn of the African region.

Number two, uncertainty over continued access of food supplements containing GMO ingredients such as corn, soya blended for vulnerable and special needs people who use them due to health reasons including school feeding programmes, loss of business and revenue as the transit of GMO foodstuffs are rerouted to other alternative ports such as Kismayu and Dar es Salaam. Due to the ban, the additional humanitarian food aid sources such as from United States Agency for Development (USAID) and World Food Programme (WFP) are no longer tenable since the alternative sources of the non-GMO products are more expensive. Food importers are unable to source for cheaper and available products as a result of the ban, for example, GMOs from South Africa.

Hon. Speaker, the Committee observes and made the following recommendations: There are policies and measures taken to assure and ensure safety of GMOs in Kenya and that is the policy that is in place since 2006. Number two, the Committee suggested that there is established an authority for policy implementation under the Biosafety Act among others -National Biosafety Authority established in 2009. Number three, regulation is in place for enabling environmental release, import and export transit. That is the answer.

**Hon. Speaker:** Hon. Ottichilo.

**Hon. (Dr.) Ottichilo:** Thank you, hon. Speaker. I want to take this opportunity to thank the Committee for a very elaborate answer. Also, I want to take this opportunity to thank the Ministry for being honest and reanalyzing this issue without any bias. Members of this House, you have heard what the impact of the ban is on the economy of

this country particularly, the food security of this country. In particular, it is going to impact on Vision 2030. We have set out in vision 2030 that we are going to use bio technology as our mainstream method for food production. With the ban, that is not going to be realized.

Let me go for clarification now. It is clear from the Statement that the Ministry misadvised the Cabinet to ban GMO without proper investigation, and without proper consultation with the competent authority, which is the National Bio-Safety Authority (NBA). Therefore, the Cabinet made a wrong decision and further, the decision of the Cabinet was not gazetted. After follow up, the Ministry of Education, Science and Technology which is the competent Ministry under which NBA falls, asked the Attorney-General to clarify whether the ban was official or not. Up to today, the Attorney General has not responded. My question therefore, is, is the ban on or it is a hoax? So, that is the answer I would like to hear from the Committee, or what decisions should be made, before I can ask any further questions.

**Hon. Speaker:** Hon. Outa, as the Member for Nyando, you are also an active Member of the Committee.

**Hon. Outa:** Thank you, hon. Speaker. These are the observations that the Committee made. What we are trying to do now is to seek more information from the relevant agencies. We are seeking a meeting with the Attorney-General to be able to advise us whether the ban is on or not. I would like to plead with the hon. Member to give us time, to seek the advice of the Attorney General and then we will give this House a very conclusive Statement on that.

**Hon. Speaker:** Hon. Ottichilo

**Hon. (Dr.) Ottichilo:** So, hon. Speaker, I will need your advice on whether we should defer this Statement until advice from the Attorney-General is sought and given, so that we can know the way forward on this issue.

**Hon. Speaker:** Given the various issues that you have raised, some of which touch on the legality of the purported ban and the fact that there is still awaited communication from the Attorney-General, I would assent to your request that further clarification on this matter be deferred until the Committee has an occasion to interact with the Attorney-General and all other agencies involved in this saga.

**Hon. (Dr.) Ottichilo:** Thank you, hon. Speaker Sir.

**Hon. (Ms.) Abdalla:** Thank you, hon. Speaker. I just wanted to raise a point for your intervention. There is a lot of noise coming from outside. The Constitution has delegated the management of noise to the county governments. I was happy with that because the national Government will work in peace. But now that it has come near our working environment, would you be able to help us eradicate that noise, especially because it is about FIFA world cup. As you know, we have not even qualified for the African Cup. If you need some help, you could ask the Member for Nairobi to assist us in this matter because I am not able to concentrate.

**Hon. Speaker:** I thought the rules passed regarding pollution were supposed to address some of these issues. As you know, it is a function that is devolved; perhaps, there are people who should be addressing the rules in the context of devolution. As you know, there are some who are called guardian angel, guarding defenders of devolution and such like things. Because that is a matter of pollution which is devolved, they should be dealing with it while it is happening out there. For now, I think we have to make do

with that cacophony. The Chairperson of the Departmental Committee on Energy, Communication and Information, hon. Kamau.

**Hon. Kamau:** Thank you hon. Speaker Sir. The Committee has designated one of its Members, hon. (Eng) Rege, to answer this question on behalf of the Committee.

**Hon. Speaker:** Hon. (Eng) Rege.

#### TELECOMMUNICATION SERVICES COVERAGE IN GALOLE CONSTITUENCY

**Hon. (Eng) Rege:** Thank you, hon. Speaker. Hon. Dukisha requested for a Statement regarding telecommunication services coverage in Galole Constituency. With your permission, I wish to give the response on behalf of the Committee.

The geographical coverage by mobile telephone operators is mainly based on operators' commitment in their respective licences regarding infrastructure rollout, a factor that is mainly driven by commercial consideration in liberalized market such as Kenya. The mobile network land coverage is yet to reach all corners of the country, with national estimate of mobile land coverage being at about 34.5 per cent, implying that a large section of the country, which is about 65.5 per cent still has no communication network. It is expected, therefore, that the Universal Service Fund (USF), which is yet to be established, will address all these issues. The Committee resolved that the response satisfied the Member's request.

Thank you, hon. Speaker.

**Hon. Speaker:** Hon. Dukicha

**Hon. Dukicha:** Thank you, hon. Speaker Sir. First and foremost, I would like to tell the hon. Member, through your indulgence, that my names are not Dukisha, my names are hon. Abdi Hassan Dukicha, not Dukisha.

I take this early opportunity to thank the Chairperson of the Committee on Energy, Information and Communication for responding to my Statement request. But I am not satisfied with the answer; it is generally academic. The Cabinet Secretary says geographical coverage is based on operators' commitments and is driven by commercial consideration. What criteria has been used by these operators to determine the so called, "commercial consideration"? That is the first question.

To my knowledge, these areas are commercially viable, as they hold a weekly livestock market between Kitui County and Tana River County with an estimated amount of about Kshs 3 million and Kshs 4 million changing hands in a week. In the second response, the Cabinet Secretary alleges that only 34.5 per cent of the country has so far been covered, but fails to state clearly when the areas of Waldena, Chifiri, Haroresa and Ingile are going to receive this essential service.

Hon. Speaker, Sir, being a technician, I am not satisfied with this response. I am a telephone technician by profession; I am not a lawyer or an accountant. I am not anything else. Since I came to this House, I have written about 10 letters requesting that my area be connected to the telecommunication infrastructure. The area is only about 123 kilometres away because the headquarters of Tana River which is Hola has telecommunication infrastructure.

**Hon. Speaker:** Hon. Dukicha, can you complete your exhibition.

**Hon. Dukicha:** Hon. Speaker, Sir, my exhibition is that we only need two microwaves. My area will be covered fully if they install two microwaves in my

constituency. I have not asked for underground cables, fibre optic cables or aerial cables to be connected to that area but I have requested for two microwaves.

Thank you, hon. Speaker, Sir. I want my request to be considered and the House to support me on this.

*(Applause)*

**Hon. Speaker:** Hon. Members, of course, the Member does not expect any response from the Committee. By the very nature of the role you play, you are at liberty to raise any matter concerning the people that you represent. However, the system that we have is one in which the many issues that you have raised, hon. Dukicha, cannot possibly be addressed by the Committee here in the plenary. This is unless you are asking other people. You are putting an argument that the areas you have mentioned, in your view, are commercially viable. So, you can imagine how difficult it will be for your colleagues here in the Committee to determine against statements by the companies that they think they may not be commercially viable. I would like to suggest that it is good because the people you represent have heard that you really believe and honestly so, even if possibly mistaken that the areas are commercially viable. You have done well because your people have heard. But please go ahead and do the other thing. Make proposals as to how you can compel those companies to now move into your area. You can only do so through legislative proposals.

Hon. Dukicha, you have said that you are a technician but hon. (Eng.) Rege is an expert. Maybe, let us hear him advance his position.

**Hon. (Eng.) Rege:** Thank you very much, hon. Speaker, Sir. The criteria used in selecting the landmass areas that network operators select are based on commercial viability, just as I have said earlier on. However, it is just like when you rollout power network, some places which are more than 15 kilometres away from the national grid use solar system. This is the same case with the GSM network.

The GSM network or microwaves which the hon. Member is referring to are provided on line of site. This means that if the constituency neighbouring his constituency is on line of site with his constituency, it could be done in that manner. Or, we could also use fibre optic which is also done manually all the way from the neighbouring constituencies up to his constituency. Those are possibilities which could be used. We can even use a VSAT network. But as I have said, all these are commercially analyzed first before the network operators reach those places. With your permission, we request the hon. Member to come to our Committee so that we explain to him further actions that we can take to ensure that his constituency is covered in the near future.

Hon. Speaker, Sir, I apologise for the mispronunciation of hon. Abdi “Dukicha” as “Dukisha”.

**Hon. Speaker:** Very well. So that we can make progress, hon. Dukicha, go to the Committee and discuss the matter further.

**Hon. Dukicha:** Thank you, hon. Speaker, Sir. At least, I can see some light at the end of the tunnel.

*(Laughter)*



**Hon. Speaker:** Very well. The Chairperson, Departmental Committee on Education, Research and Technology, respond to Statement No.098. Could we have the Vice-Chairperson or a Member of the Committee?

#### DELAYED RELEASE OF KCSE CERTIFICATES BY KNEC

**Hon. Melly:** Thank you, hon. Speaker, Sir. Pursuant to Standing Order No.44 (2)(c), hon. (Ms.) Florence Mutua, the County Woman Representative of Busia requested for a Statement regarding the delay by the Kenya National Examinations Council (KNEC) in releasing the Kenya Certificate of Secondary Education (KCSE) certificates to students in the country, particularly in Busia County.

The Statement is to address the following questions: why the KNEC is holding onto certificates of students nationally, including those of Kolanya Boys Secondary School, Mudinka Boys School, Budokomi Secondary School and Lwanya Girls Secondary School and when they plan to release these certificates. Two, how KNEC is planning to compensate the students and parents for the loss of opportunities as a result of the failure by the institution to release the certificates in good time.

I wish to respond to the issues raised as follows: The KNEC started embossing KCSE candidates' photographs on the certificates in 2010. This was aimed at curbing the rising cases of forgery of certificates.

**Hon. Speaker:** There is a point of order from hon. Millie Odhiambo-Mabona.

**Hon. (Ms.) Odhiambo-Mabona:** On a point of order, hon. Speaker. I know that whenever a Statement is raised, it becomes the property of the House. I also know that the practice is that when a Member who has requested for a Statement is not there, it should not be read. I am not too sure whether hon. Mutua is in the House. I have not seen her.

**Hon. Speaker:** The Member for Busia County, hon. Ms. Florence Mutua.

**Hon. (Ms.) Odhiambo-Mabona:** She is not in the House, hon. Speaker.

**Hon. Speaker:** Where is she? Perhaps, you may know.

**Hon. Melly:** Hon. Speaker, the Member has been interested in this issue all the time. I do not know where she is now.

**Hon. Speaker:** Hon. Melly, I am informed that the hon. Member is away in Brussels on Parliamentary business. Therefore, it is only fair that we defer the Statement.

The Chairperson of the Departmental Committee on Education, Research and Technology, once again. Is the Member who sought the Statement present? Hon. Kamoti Mwamkale, is he present? Does anybody know where he is? I may not always know who it is that I have approved to be absent. Some may be absent without leave of the Chair. I do not recall approving this Member's travel anywhere.

Hon. Melly, once again, you may not make this Statement because the Member is reportedly at The Hague. He is attending the Assembly of State Parties, I am informed. He is with the Departmental Committee on Justice and Legal Affairs. For the convenience of the House and at the request of hon. Ms. Amina Abdalla, could we first of all ascertain that the people who requested them are present?

#### LOGGING OF KIAMURIUKI FOREST BY KENYA FOREST SERVICE

**Hon. (Ms.) Abdalla:** Hon. Speaker, at least, the Member for Chuka/Igambang'ombe is here. I am not sure about hon. Chanzu. I can read the one requested by the Member for Chuka/Igambang'ombe.

**Hon. Speaker:** Very well.

**Hon. (Ms.) Abdalla:** Hon. Speaker, the Member for Chuka/Igambang'ombe, hon. Muthomi Njuki sought a Statement regarding the logging of Kiamuriuki Forest in Chuka by the Kenya Forest Service (KFS). He was concerned that 35 acres of land at Kiamuriuki Forest were allocated to four loggers at a cost of Kshs8 million to clear all the trees on the land within a week. This has been, in his opinion, without the involvement of the sub-county and the clearance from National Environment Management Authority (NEMA). He then requested a Statement and I wish to read the response which we received after consultation with the Director of the Kenya Forest Service in a meeting held on 19<sup>th</sup> November, 2013.

Hon. Speaker, harvesting of tree forest plantations in Chuka Forest Station mainly Kiang'ondu 1E and Kiang'ondu ID and Kiamuriuki IE was authorized by the KFS in October, 2013. The area allocated to five prequalified saw millers was 10.72 hectares which is equivalent to 26.5 acres and comprised the four major exotic tree species namely, grevillea, pine, cypress and eucalyptus which were roughly 9 million and ready for harvesting.

Hon. Speaker, the important phrases to note here is that they are majorly exotic species and they are ready for harvest. Two, the purpose of the harvest was to replace the exotic species with indigenous species through enrichment planting. This is different from the allegation made by the Member that it is clearing. Enrichment planting means that they will plant in the spots where they have removed the trees. The KFS told us that this activity entails replacing exotic species with the indigenous ones. The Forest Officer in charge of the area was instructed to ensure that the area was replanted immediately.

The Member wanted to know why the local community was not involved. The key prerequisite for prequalification of saw millers as per the Forests (Participation in Sustainable Forest Management) Rules, 2009 include that the saw miller must have machinery with a minimum recovery of 35 per cent, logging equipment, trained personnel, proof of financial capacity and tax compliance which is the basis on which the saw millers are allocated the plantations.

One of the four beneficiaries is the Mount Kenya East Conservation Association which is a community forest association that is currently involved in the preparation of the forest management plan for Chuka Forest Station. It is expected that the members of the community will be involved through such associations so that they are able to comply with the public procurement requirement of being registered saw millers.

On the issue of why Environmental Impact Assessment (EIA) was not done, on 4<sup>th</sup> July, 2013 NEMA under the KFS following an out of court settlement agreed on a schedule to undertake a constituency based EIA covering major forests ecosystems in Kenya. Apparently, these EIAs are currently being prepared and are expected to be concluded by December, 2013. A copy of the agreement between NEMA and KFS is attached.

Hon. Speaker, in line with the agreement with NEMA the Service is also in the process of procuring a consultancy for carrying out an EIA for plantation management in other forests such as Cherangany and Aberdares. The process of preparing a management

plan for Chuka Forest Station is at an advanced stage and is being prepared by stakeholders. However, an approved management plan for Mount Kenya Forest Ecosystem is ready and a copy is attached. Arising from complaints by members of the community on the harvesting of the earmarked forest, the Service has suspended the activity awaiting further consultation to resolve the matter which seems to be of a political nature. The Service will also further streamline the channels of communication to avoid any misunderstanding with stakeholders and misrepresentation of facts. As indicated above, the Forest Officer in charge of the area was instructed to ensure that the area is replanted with indigenous species immediately. The Service will carry out enrichment planting to replace the exotic species with the appropriate indigenous tree species. It will also ensure that indigenous tree species in the sub-compartment are not cleared.

Thank you.

**Hon. Njuki:** Hon. Speaker, let me first and foremost thank the Chairperson of the Committee for having at least achieved one very important aim of ensuring that the logging is suspended and of course getting the Statement.

From the outset, I want to note some anomalies in this Report because I have tangible evidence from the licence that I was given. The acreage in question is not what is indicated here. In actual fact, it is 15.72 hectares.

Hon. Speaker, from my knowledge in Botany and Zoology, it is not possible to plant small seedlings in between tall trees in the forest. So, there is no way the KFS will convince this House that it is possible for them to cut very long trees and replace them with small seedlings. It is common knowledge and even a Standard One pupil knows that competition for light cannot allow those seedlings to grow. So, a total clearance is done so that replacement is done. Actually, the licence talks of clearance of acreage and not cutting of selective trees.

On the issue of logging without the NEMA Report, according to the Environmental Management and Conservation Act, 1989, an EIA has to be done first and given to those that are licensed to log the forest. This was, therefore, a fraudulent allocation because it did not have an EIA that will show the impact of clearing the 25 acres. This is a lot of forest land to be cleared in a place where at the moment rivers are drying up. The water streams that have intakes in the same forest are rebelling because the levels are down. Some are shifting to different rivers because the others have dried up.

I would say that the *status quo* of stopping the forest from being logged until an amicable solution has been reached, should be maintained and the first condition should be an environmental impact assessment which should come from a different party and not the Forest Department itself or the Kenya Forest Service. Lastly, there is confusion in this country at the moment in relation to resources that belong to the national Government. The county governments lay claim on forests. According to the Constitution, that function was not devolved and therefore there is no county government that can lay claim on any forest. Forests belong to the Government of Kenya. When the Kenya Forest Service allows governors to authorise logging, we are actually bending the law and that should be discouraged at all levels.

I want to stop there and thank the Committee. I hope the *status quo* will remain. Logging should not take place at Kiamuriuki Forest.

**Hon. Speaker:** Hon. Amina, you wish to respond further?

**Hon. (Ms.) Abdalla:** Thank you, hon. Speaker, Sir. I just want to respond to the last statement that was made by the Member, regarding the role of the county governments. I have been hearing a lot of murmurs from the counties and especially from their godfathers in the other House that the central Government has been giving out licences to clear forests. It seems that there has not been an appreciation that forests are still under the purview of the national Government and it is KFS' responsibility to give those licences. There is no role now for county governments to manage these resources.

Secondly, I am concerned that the Member for Chuka/Igambang'ombe has put in a condition for a requirement of the EIA for the lifting of that suspension. I really wish he had come to the meeting; it was made very clear to us that there is an agreement between KFS and NEMA that no EIAs should take place for clearing of plantation forests. I just want to note that, given the response we have received, the EIA requirement has been waived following the out of court settlement. The reality is that an EIA should have been done when establishing the forest and not when harvesting the forest which the Government has invested in for many years.

Thank you, hon. Speaker, Sir.

**Hon. Speaker:** Hon. Timothy Wanyonyi.

**Hon. Wetangula:** Thank you, hon. Speaker, Sir. I was expecting to get a Statement from the Vice-Chair of the Committee on Education, Research and Technology, but I have not seen it on the Order Paper, although he had promised he would give it to me today. He has given me a copy of it but I wanted him to present so that I can interrogate it. The copy has not been officially presented on the Floor of this House.

**Hon. Speaker:** Sorry, hon. Wanyonyi, could you repeat.

**Hon. Wetangula:** Hon. Speaker, Sir, I was saying the Vice-Chair of the Committee on Education, Research and Technology had promised that he was going to give my Statement today and looking on the Order Paper, It is not listed. When he was just walking out, he gave me the copy and said that maybe I should seek direction from you, whether he will present it some other time.

**Hon. Speaker:** Now, you are saying he has walked out?

**Hon. Wetangula:** He has just walked out.

**Hon. Speaker:** But he has left you with a copy of the Statement?

**Hon. Wetangula:** He has dropped the copy here on my desk.

**Hon. Speaker:** Is that hon. Kibiwott Melly?

**Hon. Wetangula:** Yes, hon. Speaker, Sir.

**Hon. Speaker:** How can he possibly deal with it that way? Perhaps, he intends that you study it so that on Wednesday morning, when he reads it, you will have prepared sufficient issues for clarification. I would be sympathetic to have it read out, even though it is not on the Order Paper, but if the author has walked out, it is going to be very tricky. Is there a Member of that Committee who would wish to read the Statement? Hon. Ken Okoth, are you a Member of that Committee? I can see you nodding but I am wondering, are you a Member of that Committee? Hon. Ken Okoth may not be heard from where he is sitting.

**Hon. Okoth:** I have got the microphone now.

**Hon. Speaker:** You are not a Member of that Committee, or are you?

**Hon. Okoth:** I am a Member of the Committee on Education, Research and Technology.

**Hon. Speaker:** Would you like to read the Statement for hon. Wanyonyi?

**Hon. Okoth:** I would be happy to do that.

**Hon. Speaker:** Will you be able to respond to any other issues that he may wish to raise?

**Hon. Okoth:** Yes, because I participated in it.

**Hon. Speaker:** Very well, for the convenience of the House.

#### INTERFERENCE DURING LEARNING AT HIGHRIDGE GIRLS SECONDARY SCHOOL

**Hon. Okoth:** On behalf of the Committee on Education, Research and Technology, I wish to respond to a matter raised by the hon. Member concerning interference during learning at the Highridge Girls Secondary School. The Departmental Committee on Education, Research and Technology met on 26<sup>th</sup> November, 2013 to discuss the issue.

On Monday, 20<sup>th</sup> October 2013, hon. Timothy Wanyonyi had raised a concern regarding interference during learning at Highridge Girls Secondary School as a result of members of the public parking in the school compound. In addition, the Committee undertook an inspection visit on Thursday, 31<sup>st</sup> October 2013---

**Hon. Speaker:** Sorry, hon. Okoth. I can see hon. Members walking out and I just want to make this announcement. We know that we have passed very many Bills beyond the Second Reading, kindly note that Members intending to move amendments to various Bills are advised to submit their proposed amendments to the Clerk's Office by 12.00 noon on Monday, 2<sup>nd</sup> December, 2013.

All Bills that have gone beyond Second Reading which are awaiting Committee of the whole House, any Member desirous of proposing amendments thereto is advised to act in the manner directed. Submit your amendments by Monday 12.00 noon on 2<sup>nd</sup> December, 2013 so that they can be included on the Order Paper for other Members to see what it is that you intend to move amendments to.

You may proceed, hon. Okoth.

**Hon. Okoth:** Our Committee undertook an inspection visit on Thursday, 31<sup>st</sup> October, 2013 to assess the situation and to listen to the concerns from the school management during which we learnt that the matter in question relates to an alleged contract entered between the defunct City Council of Nairobi and the proprietor of Diamond Plaza, for shoppers of the plaza to park in the school compound. Noting that the school has since this year been transformed to a girls' boarding school, the situation has posed several challenges foremost being insecurity. The Statement is signed by the Cabinet Secretary for Education.

Highridge Girls Boarding School is a public girls boarding secondary school registered on 16<sup>th</sup> June, 2013 and there is a number for that registration. It is located in Westlands District, adjacent to the United Nations Offices in Highridge. The school was hived off from Highridge Primary School to cater for the ever increasing demand for girls' boarding schools in Nairobi.

Before Highridge Girls Boarding Secondary School was established, the management of the primary school represented by S. W. Kariuki, on 5<sup>th</sup> September, 2012

recommended Leo Investment to hire school facilities for the purpose of Leo Investments' customers parking their vehicles, given the proximity of this school's land and Leo Investments business premises.

The contract was for one year commencing from 5<sup>th</sup> September, 2012 and ending on 5<sup>th</sup> September, 2013. The cost of hire was put at Kshs50,000 per year for playground by the clubs. Leo Investments paid Kshs50,000 on 7<sup>th</sup> September, 2012, to an officer of the City Education Department, one Mr. Mwanthi. On several occasions, the Board of Governors of Highridge Secondary School complained to the authorities that the utilization of the school grounds as a parking yard is detrimental to learning as the customers who frequent this place often conduct themselves badly including smoking *bhangi* and consuming alcohol openly in the school; dump used condoms, empty beer cans, paper plates and food remains in the compound; urinate and dump faeces in the school compound; entertain strange and suspicious looking persons; cause environmental degradation through driving cars in the school fields and theft of school property, for example, computers were stolen at the school. There is also harassment of school guards by security men of Leo Investments amongst others.

On 12<sup>th</sup> November, 2012, the BOG resolved not to allow any parking in the school compound. On 3<sup>rd</sup> December, 2012, the management of Diamond Plaza, which is a property of Leo Investments sued the school and enjoined the City Council and the Highridge Primary School. As a result, the Diamond Plaza lawyers obtained a temporary injunction allowing their customers to continue parking in the school compound. Even after the expiry of the contract, Diamond Plaza customers continued to park in the school compound visiting the hazard described above to the school. In view of this, it is the prayer of the school management of Highridge that the contract be discontinued and not renewed and the customers be barred from parking in the school compound.

With regard to recommendations, Section 36(1) of the Basic Education Act, 2012, provides that no pupils shall be subjected to torture, cruel, inhuman or degrading treatment in any manner, whether physical or psychological. Further, the Constitution of Kenya, 2010, Article 53(d) provides the rights of the child to protection from abuse, neglect and harmful cultural practices, inhuman treatment and hazardous or exploitative labour. Article 43(b) of the Constitution also grants a person the right to reasonable standards of sanitation. It is clear that the parking deal contravenes all the above provisions and in the interest of the child, which is paramount, the parking should be closed and the Highridge management utilizes the land for school purposes. This is signed by Prof. Jacob Kaimenyi, Cabinet Secretary for Education, Science and Technology.

**Hon. Wetangula:** Hon. Speaker, Sir, I wish to thank the Committee for that Statement, although it has taken quite some time before responding. However, the quick action they took including visiting the school, and they saw for themselves the concerns that I had raised, is commendable. The owner of Diamond Plaza feels untouchable. On several occasions, he has vandalised the school gates and entered the school to park the cars forcefully. Security should be provided for the school to make sure that this man does not interfere with learning in the school. This is a girls' school and you can imagine, as mentioned in the Statement, what goes on in the school. It is rather embarrassing and insecure for those girls when these people park right outside the dormitory.

I wish the Committee could clarify the action they are going to take against, especially the people who signed the contract. It looks like the contract was signed corruptly and not properly done.

**Hon. Speaker:** Hon. Shebesh, this being in Nairobi, I am sure that is the reason you would want to seek clarification.

**Hon. (Ms.) Shebesh:** Hon. Speaker, Sir, I also want to thank the Committee for responding to that issue that has been urgent. This issue has made the headmistress of this school a fugitive. She is threatened because of fighting for the rights of her students. In Nairobi, we have untouchables as the Member for Westlands has said. I would like the Committee, which has done a very good job, to go further and ask that the headmistress stops being intimidated. If she needs to be given security, she should be given. We need to know why Mr. Chatur, the owner of Diamond Plaza, who is even given police protection, is more important than the children of Highridge Secondary School. For how long will he connive with the Nairobi County Government to defraud Highridge Secondary School?

**Hon. Okoth:** Hon. Speaker, Sir, again because it is in Nairobi and I am in the Education, Research and Technology Committee, I just wanted to provide some information beyond what I read on the Statement from the Cabinet Secretary. In the Committee, many issues came up. First, it was obvious that the process by which the permission to use the City Council grounds as a parking on Friday, Saturday and Sunday night was granted in a boarding school, was not legitimate. It involved a lot of corruption. That is the conclusion that the Committee reached. I hope that at some point we will discuss that and there will be a more comprehensive report. This raises the question of how many City Council schools are using their land as parking facilities. It is not just this school. What exposure is it bringing to our children when school facilities are being used for commercial gain? It is not clear whether the money earned from it is for the benefit of the children.

The issues of threats and violence in the case of Highridge and the stress to the teachers, violence to the staff of Highridge School was noted and not debated. It was clear that, that has been happening. Again, it is a question of what is going to happen now with the Inspector General of Police and the leaders of Police in Nairobi, especially the OCPD, Westlands. What can they do to make sure that their officers are not being used to protect the high and mighty? They should serve the regular citizens. The Committee also discussed the issue of putting together a recommendation for the Ethics and Anti-Corruption Commission to find out under what process the Kshs50,000 was paid. To whom was it paid? The receipts that were issued apparently were not legitimate receipts.

The final issue that came up in our Committee was the question of how the owners of Leo Investments and Diamond Plaza have used a court injunction. This was explained to us and there was an initial court injunction in December, 2012 against the school, compelling the school to keep its gate open for 14 days. This was subsequent to the same injunction renewed to last for almost another 12 months. We were informed that the injunction that compelled the head teacher and her staff to keep the school gates open for people to park in the school lapses on 3<sup>rd</sup> December, which will be Tuesday next week. What measures can the Nairobi County Government take to make sure that from 3<sup>rd</sup> December, 2013, nobody parks on the school property? If they do, the cars should be cramped. What information is there to the public that parking in that school is illegal?

How do we deal with the owners of Leo Investments who insist that they are untouchable? This is a plea that the Committee came up with unanimously because that is how we work in the Committee. There are no party issues. We put the interest of the children first. So, you find that Highridge Secondary School is a tenant of Highridge Primary School, which authorized this parking. But we have been told this is happening in many places in the country where secondary schools are built but they do not get allocated their own land, or sub-division undertaken so that they can have their own titles. So, they do not have control over their schools.

Hon. Speaker, Sir, it has been said that the threat is the owner of Leo Investments, who has told people he has got the papers and he is in the process of actually getting the land, which Highridge Secondary School does not have a title for. I hope this will not happen and together we will reach resolutions in support of this Committee, the children and generally schools in Kenya. With the support of the Cabinet Secretary, those schools will get their own land.

I know this will be a great accomplishment by the Jubilee Government. All of us, hon. Members of Parliament, should stand up for our children and our school committees.

Thank you.

**Hon. Speaker:** Very well. That shows that the Committee has borrowed something that was very commonly used in the 10<sup>th</sup> Parliament - responsibility or power sharing. I think you have really done well, as a committee.

I wish other Committees can also do the same. You can see the Chair was not there; there was hon. Kibiwott and hon. Ken Okoth, and they have done really very well.

**Hon. (Ms.) Odhiambo-Mabona:** On a point of order, hon. Speaker, Sir.

**Hon. Speaker:** There is nothing out of order in that, hon. (Ms.) Millie-Odhiambo.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, hon. Speaker, Sir. I really want to agree with you that they have done a commendable job. But I cannot help but feel horrified listening to this story, especially touching on students and young girls. You know that we are within the period of 16 days of activism against gender-based violence.

That one aside, other than what the Committee has said, honestly, can they not do more? Why can they not demand that Mr. Chatur or whatever the name is, appears before them? Honestly, it is a girls' school and people are parking their cars there! I am just sitting here and horrified. I do not care whether there are titles or not, and I do not care what the law says. This is a place where I am willing to break the law to protect children. I know that the law is on our side; honestly the Committee needs to do something.

I know they have done a lot, but if you look at the statement the Cabinet Secretary has given, he finishes with "they should." I think the Cabinet Secretary needs to give a very clear directive, which is: "get out of here." It is just a directive. I do not care whether it is the county government, the first thing is about protecting children.

**Hon. Speaker:** Very Well. Hon. Members, we are past the exhibition hour. Hon. Simba, really you should hold on. Let us hear from hon. Abdalla. She had a Statement to give. We are well past the hour of exhibition. The hour of Statements should not be the hour for exhibition.

**Hon. (Ms.) Abdalla:** Hon. Speaker, Sir, I know most of them are rising on points of order to tell hon. (Ms.) Odhiambo-Mabona not to break the law. But they need to understand that she is a child rights expert and getting agitated is part of her job description.



Hon. Speaker, Sir, I have a Statement that was requested by hon. Yusuf Chanzu, the hon. Member of Parliament for Vihiga Constituency. His question was on the rampant corrupt practices that have marred the recruitment of Kenya Forest Service (KFS) officers at various stations in the country.

**Hon. Abongotum:** On a point of order, hon. Speaker. You know we are law makers and when we legislate, we should not be prepared to break the law. What hon. (Ms.) Odhiambo-Mabona has said is not good for this country. She said that she is prepared to break the law to further any cause. She should actually withdraw and apologize. This is because we cannot make the law and break it.

*(Loud consultations)*

**Hon. Speaker:** Order, hon. Members! The hon. Abongotum is at liberty to say what he is saying, and hon. (Ms.) Odhiambo-Mabona is also equally entitled to say what she has said, but of course, there are consequences. We are not the ones who will deal with the consequences.

Therefore, hon. (Ms.) Odhiambo-Mabona is encouraged to do what she has threatened to do, but obviously, she has to bear the consequences.

Let us allow hon. (Ms.) Abdalla to complete her Statement and then I will allow you to say what you want to say.

#### RECRUITMENT OF KENYA FOREST SERVICE OFFICERS

**Hon. (Ms.) Abdalla:** Hon. Speaker, Sir, the Statement was on the rampant corrupt practices that have marred the recruitment of the Kenya Forest Officers at various stations in the country. He wanted to know the steps taken to curb the use of fake certificates during the recruitment of KFS officers. He wanted also to know the steps being taken to regularize the recruitment process of the KFS offices across the country.

On 19<sup>th</sup> November, the Committee had a meeting with the Director of KFS and the response, as presented and agreed at the meeting, reads as follows:-

During the period 25<sup>th</sup> July to 8<sup>th</sup> November, 2013, the KFS undertook an internal exercise to identify suitable forest rangers among the 2,300 constable rangers for promotion to the rank of corporal and sergeant. The criteria for promotion were clearly indicated in an internal advertisement circulated among the staff in July, 2013.

The KFS was carrying out an exercise to promote forest rangers, who were inherited from the Forest Department, all of whom are in the same rank of constable. The importance of the exercise was to establish a chain of command of this cadre of disciplined non-uniformed staff.

The mandatory requirement was paramilitary training certificates obtained by rangers who had been trained at the KFS School, Londiani, the Administration Police Training College, Embakasi, and the Kenya Wildlife Service Training School in Manyani and Naivasha. However, the KFS is unaware of any fake certificates presented by the rangers purported to have come from the above training institutions.

The KFS promotions were conducted as per the Constitution of Kenya, under the KFS human capital and policy manual. Any irregularities noted in the process were dealt with urgently and in compliance with the best human resource management practices.

Thank you.

**Hon. Chanzu:** Thank you, hon. Speaker, Sir. I want to thank the Chairperson of the Departmental Committee on Environment and Natural Resources for the Statement given. But I want to say that I raised this matter out of the concern that was expressed by some of the people working in KFS. Some of them were not willing to give their identity for obvious reasons. But there is some kind of cover up. I am told there were promotions for the lower cadre, and those who were to be promoted were paying about Kshs50,000 for the low cadre and Kshs100,000 to Kshs150,000 for the upper cadre.

Hon. Speaker, Sir, because of the approach we have given to this issue, it is for the Committee and the Chair to ask the relevant departments--- Conduct further quiet investigations because information is available.

I am grateful about the Statement, but the information is available and it is happening all over the country. It is not only at the KFS, but this will help to unearth some of the ills that are going on in promotions in some of the sectors in this country.

**Hon. (Ms.) Abdalla:** Hon. Speaker, we had discussions with the head of the Kenya Forest Service about the fake certificates. The supplementary information we got is that, yes there were murmurs about fake certificates, and what they did was that they changed the recruitment process from being an internal exercise that used to be done by the Security Department to include more persons, so that they opened up the process. The challenge that the Director has is that there are murmurs but nobody is willing to give information as to who has a fake document.

On the issue of bribery, hon. Chanzu could not make it to the meeting but he subsequently told us about the issue. The Director also confessed that they heard such murmurs, and that they hoped that they had curtailed it by broadening the recruitment team. He told us that if they get actual reports, they will act on them. As it is now, it is just murmurs, and nobody is willing to come forward with a specific case.

**Hon. Speaker:** Yes, hon. Rachael Nyamai.

**Hon. (Ms.) Nyamai:** Hon. Speaker, I would like to remind the Committee on Justice and Legal Affairs that as much as I understand that it is sometimes difficult to get Statement requests responded to by the relevant Ministries, I requested a Statement on 1<sup>st</sup> August, 2013 concerning a police station which is inside my constituency. I was hoping that as I say this, the Member for Galole, hon. Dukicha, would be here. I would like to inform the House that Kitui South Constituency has been invaded by Somalis and people from Galole---

**Hon. Speaker:** Hon. Rachael Nyamai---

**Hon. (Ms.) Nyamai:** Hon. Speaker, I withdraw those remarks. I kindly request you to allow me to continue.

**Hon. Speaker:** Hon. Rachael Nyamai, you are reminding the Committee that you sought a Statement.

**Hon. (Ms.) Nyamai:** Hon. Speaker, I sought the Statement, and it is disturbing.

**Hon. Speaker:** Hon. Nyokabi, can you give an indication as to when you are going to respond?

**Hon. (Ms.) Nyokabi:** Hon. Speaker, on behalf of the Justice and Legal Affairs Committee, let me assure this House that, using our Statement tracker, we are going to respond to all the Statement requests before we go on recess. So, we will respond to all the Statement requests in the next one week. I know that a few Statement requests have

been pending. We also have Bills. As we finish with the Bills, we will deal with all the Statement requests, even if it will mean giving an indication as to where we have reached in terms of looking for information.

Thank you.

**Hon. Speaker:** Yes, Leader of Majority Party.

**Hon. A.B. Duale:** Hon. Speaker, you heard hon. Rachael Nyamai say that Somalis have invaded her constituency. I want to confirm that Somalis are not in that constituency.

#### BUSINESS FOR THE WEEK COMMENCING 3<sup>RD</sup> TO 5<sup>TH</sup> DECEMBER, 2013

Hon. Speaker, pursuant to Standing Order 44(2)(a), on behalf of the House Business Committee, I rise to give the Statement regarding the business that will appear before the House in the week beginning Tuesday, 3<sup>rd</sup> December, 2013.

The House Business Committee met on Tuesday this week, at the rise of the House to give priority of the business of the House this week and next week. Next week on Tuesday, the House is expected to consider the Memorandum of His Excellency the President on the Kenya Information and Communications (Amendment) Bill – a Bill which the President refused to assent to. The House will also consider the Media Council Bill, 2013 in the Committee of the whole House. I want to make it very clear that in the event that this House decides to disagree with the President's Memorandum, the required number is two-thirds of the House or 232 Members. So, if anybody wants to disagree with the President, he may use the weekend that is coming to make sure that he marshals a two-thirds majority in the House.

Hon. Speaker, it is also important to note that the Kenya Information and Communications (Amendment) Bill, 2013, which has been returned to the National Assembly by the President; and the Media Council Bill have a constitutional deadline of 5<sup>th</sup> December, 2013. It is also important to note that the House is expected to go on recess at the end of the year, in accordance with the Parliamentary Calendar, that is on 5<sup>th</sup> December, 2013. Therefore, the House is obligated to consider and pass the two Bills before we break for recess.

I am aware that the Departmental Committee on Energy, Communication and Information met today to consider the Presidential Memorandum on the Kenya Information and Communications (Amendment) Bill, 2013. Therefore, I wish to urge the Committee and the House to present their desired position on the amendments as directed by the Speaker, before Monday at midday in readiness for the Committee of whole House on Tuesday.

The House Business Committee has also prioritised debate to a Motion on the approval of appointment of the Members of the Parliamentary Service Commission (PSC). It is important for hon. Members to know that these positions are creation of the Constitution, Article 127(d). It will, therefore, be unconstitutional for us to leave the positions vacant for nearly nine months after the inauguration of the 11<sup>th</sup> Parliament. The nominees, together with other PSC Commissioners, will be the advocates of the welfare of Members of Parliament and the Commission's staff. Therefore, I urge the hon. Members to be present in the House on Tuesday to dispense with these urgent matters.

Hon. Speaker, I further wish to notify hon. Members that in the event of the

business scheduled on today's Order Paper not being considered, then it follows that the scheduled Bills will proceed to the Second Reading. The Bills include the Statute Law (Miscellaneous Amendments) Bill, 2013, and the National Police Service (Amendment) Bill, 2013. The House will, next week consider the Value Added Tax (Amendment) Bill, 2013.

Finally, the House Business Committee will meet on Tuesday, 3<sup>rd</sup> December, 2013 at the rise of the House to consider business for the rest of the week.

I wish to lay the Statement on the Table of the House.

*(Hon. A.B. Duale laid the document on the Table)*

**Hon. Speaker:** Yes, hon. Gumbo.

**Hon. (Eng.) Gumbo:** Hon. Speaker, last week, I requested the Leader of Majority Party to help in tracking the position of the regulations governing the National Construction Authority Act and the Engineers Registration Act. He gave an undertaking to give a report on the same today. I was just wondering if he did so, and if he is ready with the Report.

**Hon. A.B. Duale:** Hon. Speaker, I want to confirm that this is the price you pay when you do not come to the House early. I have tabled those regulations, which have been referred to the concerned committee

**Hon. (Eng.) Gumbo:** Hon. Speaker, I render my apologies. I was held up somewhere.

**Hon. Speaker:** Hon. Simba Arati, you have an intervention.

**Hon. Simba:** Hon. Speaker, I was just concerned about the Statement that we have got from the Departmental Committee on Education, Research and Technology. With your indulgence, I request that we turn it into a report to allow the House to debate it because the person called "Chatur" is a dangerous man.

**Hon. Speaker:** Hon. Simba Arati, do not go that route. We are well past that Statement. Hon. Amina, what is your intervention?

**Hon. (Ms.) Abdalla:** Hon. Speaker, I was just concerned that we had agreed with the Leader of Majority Party to say something about the direction on the Wildlife Conservation and Management Bill because the Order Paper does not have any of the over 200 amendments that are being moved by us.

**Hon. Speaker:** I am addressing that. That communication has been relayed.

**Hon. (Ms.) Abdalla:** Thank you, hon. Speaker. Once you deal with that, I will take my leave.

**Hon. Speaker:** Hon. Members, this is to give direction as to what is going to happen. For the convenience of the House, given that debate on Truth, Justice and Reconciliation (Amendment) Bill was concluded but the Question not put, it is directed that the business appearing as Order No.9 is dealt with before we go to business No.8. Then hon. Members, when we get to Order No.8, what appears in part "(i)" the Insurance (Motor Vehicle Third Party Risks (Amendment) Bill, National Assembly Bill No.6 of 2013 is taken out. The Chairperson is on parliamentary business in Europe and all amendments have not been received. Business appearing in part "(iii)" thereof being the Wildlife Conservation and Management Bill, National Assembly Bill No.21 of 2013, not all amendments have been received. It therefore means that any amendments proposed

will be submitted to the Clerk by noon, Monday 2<sup>nd</sup>. Any Member desiring to make amendments to those two Bills is still at liberty to do so by Monday at noon. It means therefore, when we get to the business in Order No.8, you will proceed to deal with the business indicated in part “(ii)” being the Election Campaign Financing Bill, National Assembly Bill No.14 of 2013. It is accordingly so ordered and, therefore, we move to business appearing as Order No.9 and I put the Question.

## **BILL**

### *Second Reading*

#### THE TRUTH, JUSTICE AND RECONCILIATION (AMENDMENT) BILL

*(Hon. (Ms.) Kanyua on 27.11.2013)*

*(Resumption of Debate interrupted on 28.11.2013)*

*(Question put and agreed to)*

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

## **COMMITTEE OF THE WHOLE HOUSE**

*(Order for Committee read)*

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

### **IN THE COMMITTEE**

*[The Temporary Deputy Chairman  
(Hon. Kajwang') took the Chair]*

#### THE ELECTION CAMPAIGN FINANCING BILL

*(Clause 2 agreed to)*

**The Temporary Deputy Chairman** (Hon. Kajwang'): Order, hon. Members. Those who are walking or standing, resume your seats so that we can get into this business. I want to plead with you Members not to walk out when we are in the Committee of the whole House because this is where the real business is and today we are considering a Bill which will concern each one of you, if you did not look at the Order Paper. So, do not come at a point that you are going to cry, so to speak, that business proceeded in your absence. I really want to persuade you that you are walking

out at your own peril, but because you have chosen to walk out anyway, we will proceed with the business as it appears.

Members, this is Committee of the whole House to consider the Election Campaign Financing Bill, National Assembly Bill No.14 of 2013. It has gone through the Second Reading. We have debated it. It has matured. It has also gone through Committee participation. The Committees have done their report which is before the House. Members, I think you have satisfied yourselves with the contents of that report. Today, there are several amendments that have been proposed by the Committee which appear on the Order Paper, as you can see. There are also proposals by Private Members on amendments, both on new clauses and replacements here and there. So, we are going to proceed with them.

Hon. Eng. Gumbo and hon. Mwaura, both of you have proposed amendments here and there. You need to work with us very closely because there are some amendments that have been proposed by the Committee which you are either converging or diverging from and you should let us know at what point you are doing so because when the amendments, for example, by the Committee Chair are taken, you would want to know whether yours have been taken care of or they can still be prosecuted further. So, you need to be very vigilant so that we do not bypass you.

Hon. Members, this is how we will go. Thank you very much.

### *Clause 3*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 3 be amended in sub clause (1) by—

(a) deleting the words “campaign expenditure committees” in paragraph (a) and substituting thereof the words “authorised persons under this Act”;

(b) inserting the words “and authorised persons” immediately after the word “committees” in paragraph (b);

(c) inserting the words “set limits and” immediately before the word “verify” in paragraph (d);

(d) by deleting paragraph (h) and substituting thereof the following new paragraphs—

“(h) provide and enforce a framework for the regulation of media coverage;

(i) perform such other functions as may be necessary for the purposes of this Act”.

The Committee deliberated on this matter and decided that we do not need campaign expenditure committees especially where the candidate is an individual. So, that is the clause that we propose as indicated on the Order Paper. The reasoning behind it is really that we have authorised persons, so that the candidate is one of the authorised persons. The party committee is another authorised person and we will come to that when we come to the definition of “authorised person”.

Thank you, hon. Temporary Deputy Chairman.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): I appreciate your comments, but take these Members through slowly; unpackage what you are talking about. They all may not have been at the committee. When you say that we are deleting the words “campaign expenditure committee” and substituting therefor the words “authorized persons under this Act”, what are you doing, so that Members understand really the background of your amendment? That is how I want us to move on.

**Hon. (Ms.) Kanyua:** Thank you, hon. Temporary Deputy Chairman, Sir. When the Committee looked at this matter, there was controversy around a candidate forming an expenditure committee. A number of people were going to determine how the candidate would spend their money. The experience of most Members is that our committees, and even committee Members, are not the most honest. Sometimes a committee can actually mess up a candidate thoroughly. It was felt that a candidate would be the one to comply with the provisions of this Act.

Therefore, we removed the “campaign expenditure committees”. When we come to Clause 6, we will explain in details who the authorized persons are. So far, just in terms of explaining the deletion of Clause 3, the authorized persons would be a candidate, an agent of the candidate, a political party financing committee and a referendum campaign financing committee. This particular amendment is also helpful because it caters for independent candidates as well. What the Bill had done earlier was to separate party candidates from independent candidates. What we have in the Bill, and what we have in the amendments like the one we are proposing in Clause 3, is a candidate or an agent of the candidate, a political party campaign financing committee or a referendum campaign financing committee serving as authorized persons to be able to comply with the rules and regulations as will be set out in the Election Campaign Financing Bill that we are passing today.

I do hope that this clarifies a bit, and assures Members that we are not going to have any candidate required to set up a committee to report to Independent Electoral and Boundaries Commission (IEBC), or to make any disclosures of campaign financing matters; but if a Member does wish to appoint an agent or a candidate wishes to appoint an agent, then that is catered for in the authorized persons clause.

Thank you, Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Members, the reason we are going slowly is that you are stakeholders in this process because all of you are politicians. So, this is affecting you directly. Actually, you are the consumers. You will blame no one, and everybody will blame you if you pass laws which you do not reflect upon. That seems to be understood.

Hon. Abongotum, is this by mistake or you have an intervention? But before you respond I will propose the Question.

Yes, Ms. Ghati

**Hon. (Ms) Ghati:** On a point of order, hon. Temporary Deputy Chairman, Sir. I think it is an intervention. This is very important and the last time we discussed it was last week. Some of us might not be having--- I wanted to suggest that the Vice Chair of the Committee talks about it; she is able to kind of read it again, so that we see how it appears in the Bill, and so that we are able to follow closely.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order! I take it that you have the Bill with you or, you should have the Bill with you. I have mine with me. Copies are available where they should be, according to your Standing Orders. This is how we will go through it. When we come to Committee of the whole House, it is advisable that you come with your Bills. But, I will sympathize with you, hon. (Ms) Ghati and ask you to move to the Member for Ugenya. Your colleague from Mbita has donated a copy. Please, go through it as we are going through this.

Hon. Member for Ugenya, I see a point of order but I am not seeing your request. If you want to reach me, please just press those buttons. Member for Ugenya, proceed.

**Hon. Ochieng:** Hon. Temporary Deputy Chairman, Sir, I want to support my Vice Chair on the proposed amendment. As she has ably explained, what this law seeks to do is to regulate the way politicians or would be politicians, will basically mobilize and use their money. The proposal---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Bring the microphone nearer to your mouth.

**Hon. Ochieng:** It is the Member for Muhoroni.

**The Temporary Deputy Chairman** (Hon. Kajwang’): There is somewhere you can press to increase the volume of your microphone. Member for Muhoroni, I am being kind not to ask you to be in order.

**Hon. Ochieng:** Hon. Temporary Deputy Chairman, Sir, as I said, I will support my Vice Chair on this. The laws we make must be in tune with their circumstances, and written in such a way that most of the monies politicians use in Kenya to campaign are not raised from people. It is money from individuals’ own savings and individuals’ own hard work. It will be very hard to ask someone like me to put together a committee to look at how I will spend the money I have raised. I have not gone to the public to look for money to campaign. I am now being asked to put together a committee to look at how I used my own money.

In fact, I was going to persuade my Chair, if she allows it, that instead of even having that clause remaining in Bill we do away with it, because it does not make much sense. I was going to persuade her to possibly consider just doing away with the whole of part “a”. It now reads that the IEBC shall keep a register of authorized persons under the Act. I do not think that looks like a very good function of the Commission. It is just a matter of appeal; it must not go, but my own feeling is that if it remains, it looks superfluous to me. But I agree with the principle of the proposal made, that we do away with the expenditure committees. I support.

**Hon. Njagagua:** Thank you, hon. Temporary Deputy Chairman, Sir. I have risen on intervention to support what hon. (Ms) Ghati was saying; with your wisdom, you were able to respond to it. Supporting what the Chair said, you have advised on how we can get these Bills. I think there is no need of these committees. We have conducted campaigns before, and we have won parliamentary seats. Why should somebody come to work as a safety guard on how you are going to spend your money? If you are going to have a ceiling on how much money I am going to spend, then I am going to put my money together, then use it on the ceiling, and I will know how to spend it, lawfully though. Thank you.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Well, I thank you for those interventions. If you want to effectively change what the Chair is proposing, you



need to move a further amendment or lobby the Chair to have a different view. As it is now, we have to discuss it the way I am seeing it on the Order Paper. Members, as it is now, we have to discuss it the way I am seeing it on the Order Paper. Do I take it that there is consensus here?

*(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 3 as amended agreed to)*

#### *Clause 4*

**Hon. (Ms.) Kanyua:** Thank you, hon. Temporary Deputy Chairman, Sir. We thank you for this opportunity.

I beg to move:-

THAT, Clause 4 be amended in subclause (2) by inserting the words “obtain a warrant and” immediately after the words “reasonable time”.

The amendment by the Committee is to the extent of requiring that before any search is done by the Commission, a search warrant is obtained from the High Court as is, indeed, required by the Constitution. The Commission had put in the Bill, in the earlier draft, that for purposes of investigations and compliance, the Commission be authorized at any reasonable time to enter into any premises and search them. However, the Committee, in supporting the amendment to obtain a warrant, feels strongly that the Commission will have to follow the Constitution. Before searching any premises, a search warrant must be obtained. So, the words “obtain a warrant” are included in Clause 4(2). That is the amendment by the Committee.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Vice Chair, you may reiterate that, that is a constitutional provision. The Constitution now says that you cannot enter somebody’s premises without a warrant. So, the amendment complies with the Constitution.

**Hon. (Ms.) Amolo:** Thank you, hon. Temporary Deputy Chairman, Sir. I rise to support the amendment that we obtain a warrant anytime someone wants to do a search.

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

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman Sir, I beg to move:-  
THAT, clause 4 be amended in subclause (3), by—

(a) deleting the words “any person” appearing immediately after the word “request”;

(b) inserting the words “and the Commission shall cite the provision of this Act under which the request is being made” immediately after the word “Act”.

The amendment that I am proposing is to be found at Clause 4(3). It says that the Commission may request “any person”. Politics is a very hazardous business. What if that “any person” is your opponent? My view is that this “any person” be deleted so that the clause reads that the Commission may request information relating to party nomination expenses, election campaign expenses of a candidate, political party or referendum committee that is reasonably required in respect of the functions of the Commission under this Act.

The import of that amendment is to eliminate mischief and also avoid exposing the candidate to unnecessary hazards.

*(Question of the amendment proposed)*

**Hon. Baiya:** Thank you, hon. Temporary Deputy Chairman, Sir. The intention by hon. Gumbo is not being achieved by what he is seeking to do, that is deleting the words “any person”. This is because all that is required is to indicate specifically, but the information will have to come to a person. The way the amendment is worded makes it incumbent upon whoever has information--- This information includes evidence. That is the way it is. However, the way he is putting it, it will become ambiguous and will not make it obligatory for a person to give the information. That amendment will, therefore, not improve it, but will make the law ambiguous.

I, therefore, oppose that amendment. I want to persuade my colleague to leave it the way it is.

**Hon. (Ms.) Ghati:** Thank you, hon. Temporary Deputy Chairman, Sir. I rise in support of my colleague. Personally, I feel that we are making a request, and are not putting any responsibility on any person. I propose that the Member leaves it the way it is because we are talking about--- This is because if we delete that, we will just leave it bare. We are now putting it like we are asking whoever is responsible--- Someone has to bear responsibility. I would like to propose that the Member for Rarieda reconsiders this amendment. So, I beg to differ with him on his amendment.

**Hon. (Ms.) Kanyua:** Thank you, hon. Temporary Deputy Chairman, Sir. We have seen the amendment proposed by hon. (Eng.) Gumbo. One of the things we regret a bit as a Committee is that we did not have those amendments in time. We spent a lot of time, as a Committee, going through this Bill. It became a bit difficult for us to accommodate them. That is really the position.

However, looking at what the Member is proposing, first the deletion of the words “any person”, I do not think that I have a lot of difficulties with that.

**The Temporary Deputy Chairman** (Hon. Kajwang’): No, we are just dealing with paragraph (a).

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, Sir, I think “any person” might remain but we will be asking for his indulgence because the Committee

did not have enough time to interrogate some of the amendments that he has introduced today.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Member for Rarieda, can you persuade hon. Members to carry your amendment?

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, Sir, I think I have tried to explain this. If you leave this amendment as it is, and I persuade hon. Baiya and hon. (Ms.) Ghati that politics is--- Today, there is somebody who stands to benefit if the hon. Member stops being a Member for Githunguri. This is the mischief I am trying to eliminate. Just think about it. It makes it unlimited. They can ask for this information from anybody; that is people who like you and people who do not like you. What does that do to the candidate? In my view, it is too hazardous to leave it that way and I persuade the hon. Members to let this amendment pass.

I am an engineer and I do not have a legal mind. So, the drafting may not be correct. What I am saying in this amendment is that if you look at subclause (3) it says at the end of the amendment that a political party or referendum committee that is required-- - This is just to allow fulfillment of a particular provision of that law. That is the only thing I am trying to explain here.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Members, we are discussing hon. Eng. Gumbo’s amendment on the Order Paper at Page 483. We are now looking at paragraph (b) of his amendment. So, let me propose the Question.

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I am afraid I am not going to support this particular one for the principal reason that the IEBC has to follow many laws. Already, there have been a lot of efforts to codify the electoral laws into a small set of laws, for example the Elections Act and the Political Parties Act. I fear that it is not only this particular Act that will affect matters of the Commission as envisaged. There are issues in Chapter 6 on integrity and leadership that will capture some of the matters affected by this particular Act. So, we will have difficulty confining the IEBC to only this Act, yet it is clear in other provisions of the law that the IEBC will have to follow many laws, including this one.

So, I do not support the amendment and I urge the Member to drop it; in any case the IEBC will always follow the law. There is no possibility of the Commission carrying out its tasks without following the law or regulations passed by this House. So, instead of having a controversy around this matter, let him withdraw it as we move to the other amendments, where we are able to accommodate them, we will do so.

**The Temporary Deputy Chairman** (Hon. Kajwang’): As a matter of positive approach to the law, all legal authorities are expected to follow the law; every action will be based on some set of laws or the Constitution. That is the underlying presumption, of course, they always do not follow the law at some point. I do not want to express myself in such a way that persuades or dissuades any Member here.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, much as I do not want to escalate debate on this matter, I wish the Chairperson of the Committee could listen to me. She has just said that the IEBC always follows the law. I want to tell you that they do not. We have a law which we enacted in this Parliament which states that the tallying centre for a constituency should be the constituency headquarters. In Rarieda, they did not do it there. I even wrote to them and they told me that if I wanted I could go to court.

What I am trying to do is just to make it more specific. I would have been happier if the Chairperson had told me what part of this law it is offending. As an engineer, we are trained to be elaborate and explain things in detail, so that everybody, including those who are not sharp, can understand. I am only saying that when they come to you for that information, let them tell you that they have this information, and part of the law which requires us to get this information is this one. How is it offending the law? I do not see that.

**Hon. Sakaja:** Hon. Temporary Deputy Chairman, I want to agree with and support the amendment by hon. Eng. Gumbo. Based on experience, at least from the perspective of a political party, a lot of times when dealing with the IEBC, or other similar institutions, you might find cases where there is mischief in respect to what they want to get as a political party. I am happy that we passed the earlier one because a person who is not authorized might give information that is not necessary. On this one, we need to be very clear that if it is a matter to do with this law and they want to get information or correspondence from a political party, it will be good for them to quote under which provision they will be seeking the information, just to make things neat, and so that the response is given in the right manner. For that reason, I support.

I disagree a bit with hon. Makali. This is because all other laws under which other institutions work--- Already, they should be empowered to do that. If they want to come and get information pursuant to Chapter 6 or any other law on integrity or financial propriety then that law should empower them. If those laws do not empower them to take such action, then there must be good reason why those other laws do not give them the mandate or authority to take action. For that particular reason, I would like to support the further amendment by hon. Eng. Gumbo.

**Hon. (Dr.) Nyikal:** Hon. Temporary Deputy Speaker, I also wish to support hon. (Eng.) Gumbo on the request that when somebody is asking for information after the elections--- We know what elections are. We know the amount of witch-hunting that is in elections. All systems are used, including the legal system. There are times when requests are made and things done just to delay issues, so that timelines pass. So, you would want from the outset to know exactly under which law such people will be asking for information. I support the amendment.

**Hon. (Ms.) Odhiambo-Mabona:** Hon. Temporary Deputy Speaker, I also wish to support. In doing so, I want to tell the House that we need to put a very light yoke on us, because we know that our election machinery is still nascent. The institutions we have are nascent; they are still growing. When we put onerous burdens on ourselves, we end up shooting ourselves in the foot. So, let us have a more open system and not an onerous one. I support hon. (Eng.) Gumbo.

**Hon. (Ms.) Mbalu:** Hon. Temporary Deputy Speaker, I rise to support hon. (Eng.) Gumbo on this. It is important for us to have a law that governs and protects us. With insertion of “the Commission”, at least, we now know where they will seek any information. It is important to cite this. I support.

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, for purposes of accommodating what the Members are saying about being cautious with the Commission, I hope that as we go along as a country, implementation will take place. That it is not happening is no reason for us not to be optimistic with the law. I urge that we drop the word “shall” and use the word “may” so that in the event that there are other

contradictory provisions of the law then the Commission's hands will not be completely tied. We need to sort of put a limit to how far and which law they can use in these matters. We could change the word "shall" to "may" in a further amendment to hon. (Eng.) Gumbo's amendment and then allow it to pass.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Is that substantive, or does it negate the purpose of your amendment?

**Hon. (Eng.) Gumbo:** I think since she comes from Nyeri and I come from Siaya, there is no harm in meeting in Nakuru. I accept her suggestion.

**The Temporary Deputy Chairman** (Hon. Kajwang'): All right; if you are meeting in Nakuru can I also bring you to Nairobi? Let me provide a few words and the subclause will read as follows. "The Commission may request information relating to the party nomination expenses and election campaign expenses of a candidate, a political party or referendum committee that is reasonably required in respect of the functions of the Commission under this Act and the Commission shall cite---" Let us get these beautiful legislative words. "Provided that always the Commission may cite the provision of the Act under which the request is made" instead of "being made". So, for purposes of the HANSARD, it will read, therefore, that "Provided always that the Commission may cite the provision of the Act under which the request is made." Are Members comfortable with that?

**Hon. Members:** Yes.

**The Temporary Deputy Chairman** (Hon. Kajwang'): All right, since there have been further amendments, I will now put the Question.

Hon. Sakaja.

**Hon. Sakaja:** Hon. Temporary Deputy Chairman, from my understanding of this, I am really insisting. Even in the last election, before we had such a law, the kind of correspondence that came from the Independent Electoral and Boundaries Commission was what sometimes you might get from other institutions. When you say that the IEBC may cite, then we might as well not have had the provision by hon. Gumbo because it totally waters it down. If the amendment was to cure probable mischief, when there is a request that is mischievous, they will not cite it. So, we should rather just totally not have the entire amendment. If we compel the IEBC, when they are requesting for information to state that this is pursuant to this section of this law, then it may make things better. So, I would like us to consider that as well. Hon. Gumbo might have been too quick to accept that change.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Okay.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I seem to be swinging like a pendulum here, looking at it in the way hon. Sakaja has put it. If you put "it may" then the provision will have no meaning at all. I would request and plead with the Chair of the Committee on Justice and Legal Affairs that it actually does not offend the law at all; it just safeguards the request for the information.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Okay, in the next two or so interventions we will have, please try to tell us what mischief the "may" or "shall" will result to. Just limit it to that, so that we get going. But Chair of the Committee on Justice and Legal Affairs, I want you to be the last to speak on this.

Hon. Member for Kibra, take the Floor.

**Hon. Okoth:** Thank you, hon. Temporary Deputy Chairman, Sir. I actually rise up to speak on mischief. I concur with the position taken by hon. Sakaja, that you really require the IEBC to tell us what it is they are demanding and under what law. On the types of mischief, I have to be creative because I sometimes have a mischievous mind; it would involve things like when you want to bog down somebody with his or her team as they campaign. You request for so much information that they have to go and prepare a 900-page affidavit in two days instead of campaigning; and it may cost them a lot of money getting all that put together. It is very easy to do that. I have been in the United States of America (USA) where these types of requests come up and the reporting deadlines are very clear and strict but you actually have to state on what basis you are being asked for extra information beyond what is clearly provided for in routine reporting.

**The Temporary Deputy Chairman (Hon. Kajwang’):** Thank you.

Yes, hon. (Dr.) Pukose.

**Hon. (Dr.) Pukose:** Thank you, hon. Temporary Deputy Chairman. I want to take the same position as hon. Sakaja, in that as we make this law, we should be able to compel the IEBC to state under which law they are able to request what they are requesting. This is because they are made up of lawyers and whenever we have appeals, they set up their own tribunal and they are able to prosecute our appeals. We have seen many cases before that have happened like that. It is good for them to give us the clear laws under which they operate. So the word “shall,” should be retained.

**The Temporary Deputy Chairman (Hon. Kajwang’):** Hon. Baiya, take the Floor.

**Hon. Baiya:** Thank you, hon. Temporary Deputy Chairman. I also agree that we either have “shall” or remove the clause altogether because the word “may” does not make it obligatory to get what you want. If you actually put “may” as we are saying for IEBC, they will not enforce at all. I want, therefore, to support hon. (Eng.) Gumbo this time round.

**The Temporary Deputy Chairman (Hon. Kajwang’):** Member for Seme, can you be very brief on this.

**Hon. (Prof.) Nyikal:** Yes, very brief. I see a situation where you are out there and a person asks for information and you reply, “The law says may which means I do not have to.” Then what do you need the law for?

**The Temporary Deputy Chairman (Hon. Kajwang’):** Before the Chair of the Committee on Justice and Legal Affairs speaks, Member for Kibwezi East, you may take the Floor.

**Hon. (Ms.) Mbalu:** Thank you, hon. Temporary Deputy Chairman. I want to support this. Looking at the meaning of the words “may” and “shall,” “may” means optional and “shall” is a must. So I support “shall”.

**The Temporary Deputy Chairman (Hon. Kajwang’):** Chair of the Committee on Justice and Legal Affairs, do you want to reconsider your position on this.

**Hon. (Ms.) Kanyua:** Well, I think there are two issues. One, which is very important to all Members, is that when we pass laws, we do not pass them to be broken. If they are broken, that is done out there and usually when passing them, we are assuming that implementation will happen. So, let us have some trust in the Commission, even though I understand what you are saying about the past.

We can pass laws from where we are sitting. We do not pass them because we suffered in the last election, but because we want to move forward as a country. It is very worrying to bind the IEBC only to this law. As I said earlier, there are many other Acts that apply to this matter that are under discussion today. So the only way to look at it is by use of the word “may.” It will give the IEBC the guidance that they require. They will not just go after any information unless it is authorized by law. Since we do not know what the other laws say, allow the other laws, if need be, to also apply.

The other way of curing that issue, we should require the IEBC to follow provisions of the laws and not just this particular law. Provisions of the law whichever they may be, whether it is the Constitution or other existing Acts of Parliament---

I would like to ask hon. (Eng.) Gumbo not to bind the IEBC to only this Act, but really to provide that the Commission shall cite the provisions of the law under which the request is made, and not just this law.

**The Temporary Deputy Chairman** (Hon. Kajwang’): I think now we can bridge the difference. So, meet in Nakuru and not in Nairobi. This is because the Chair of the Committee on Justice and Legal Affairs seems to accept in principle that the Commission needs to have an obligation to apply the law. But she is also saying that the provision which the Commission may be citing may be in this law or any other written law. So, I think the provision we are picking is that it must be under some law, either the Constitution or any other written law. The Commission should say which law it is that they are invoking.

Therefore, shall I amend? I think we will not be very fastidious about the procedure here because you remember Chair of the Committee on Justice and Legal Affairs had proposed a further amendment and now she is proposing another further amendment. Just so that we move quickly, can we give this text as agreeable text, “Provided always that the Commission shall cite the provision of the written law under which the request is made.”

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

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

*(Clause 4 as amended agreed to)*

*Clause 5*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 5 be deleted and replaced with the following new clause—

Election campaign  
financing rules.

5. The Commission shall make rules to regulate election campaign  
financing—

(a) in the case of a general election, at least twelve months before the election; and

(b) in the case of a by-election or referendum, at such time as the Commission may determine.

The clause relates to party campaign expenditure rules. The Committee proposes that, that be deleted. In its place, we have the new part. We also wanted to tidy up the whole section. The two parts, namely, (a) and (b), will now have the title: “Administration and Campaign Financing”. Under that title in Clause 5, we will have a provision that will be to the extent of providing for election campaign financing rules. The Commission, under this new clause, shall make rules to regulate election campaign financing - and this is very important to the Members. The Committee spent a lot of time on it. It says that in the case of a general election, at least, 12 months before the election, and in the case of a by-election or a referendum, at such time as the Commission may determine. This is again because by-elections and referenda are not predictable. They arise on case-by-case basis. In the case of a general election whose date and period are set in the Constitution, the campaign financing rules will allow candidates and parties to prepare in good time. They will be developed by the Commission, at least, 12 months before the election. That will give everybody sufficient time to be aware of the financing rules and ensure compliance. So, 12 months is the period proposed in the new Clause 5.

So, the Committee proposes a deletion of the existing Clause 5 and the inclusion of a new Clause 5 to take care of the matters that I have mentioned.

**The Temporary Deputy Chairman** (Hon. Kajwang’): That is straightforward.

*(Question of the amendment proposed)*

**Hon. Mwaura:** Hon. Temporary Deputy Chairman, Sir, I agree with the new proposal because it makes the Commission to be in charge of putting in place regulations rather than the political parties. I also think that paragraph (b) needs also to be qualified. The date for the referendum or a by-election is well known because there is a timeline that is given between the time a seat is declared vacant and when an election is supposed to be held. In the case of a referendum, it is known when the actual referendum is supposed to take place. We need to qualify that, so that also this is not subject to abuse. You may find a situation where the Commission may declare the regulations when, maybe, the disadvantaged people are already on the ground.

**The Temporary Deputy Chairman** (Hon. Kajwang’): I take that as a contribution because I did not hear you propose any further amendment.

**Hon. Sakaja:** Hon. Temporary Deputy Chairman, Sir, I would like to support the amendment, especially because of the issue of the Party Campaign Expenditure Rules. They should not be so divergent from party to party as was in the previous clause. Even with the addition of this clause, I would like to get the feelings of the Members through you. If the Commission makes rules to regulate election campaign financing 12 months before the election, it will be much safer if we make it clear that such rules must be approved by Parliament. In as much as there might be approval later on, on the limits, some of the rules might be inconveniencing or too tedious. This House, with the mandate to legislate, should be part of the process of the final approval of whichever rules are set by the Commission. That then comes much earlier than the 12 months. Otherwise, if we



give the Commission the power to unilaterally come up with the Election Campaign Financing Rules, we will not be sure the direction we will head. We might find rules that are really inconveniencing not only to political parties, but even to Members who will be campaigning. I would like to be informed on that.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Member, you have not put in your card and you are already on your feet. As you try to find out where your card is, so that you can put in your request, you may also want to consider the effects of the Statutory Instruments Act on the regulations, and also Cap.2. Some of those rules will be laid on the Table and become enforceable. However, you may want to know. I do not know if they are approved by virtue of the Statutory Instruments Act; that is, perhaps, what I want to hear from you.

**Hon. Baiya:** Thank you, hon. Temporary Deputy Chairman, Sir, for elaborating on what I was going to say. Under the Statutory Instruments Act, it is obligatory for any regulation-making authority to ensure that the regulations come to Parliament. Now, we already have a Committee on Delegated Legislation, which filters whichever regulations have been tabled and where there are issues, the Committee flags them and brings them to the attention of the House. Already, that is taken care of and it does not need to be provided for in a specific legislation. The Statutory Instruments Act takes care of all the regulations.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Chair, can we allow you the last word on this.

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, Sir, I would also be of the same opinion. Thankfully, the Member who raised it has no amendment. So, we are just discussing as a matter of good measure. There is no amendment on the matter. If the issue is taken care of in the Statutory Instruments Act, in terms of the normal way of passing rules and regulations that is provided for in other laws then we proceed as proposed by the Committee.

**Hon. Mwaura:** Hon. Temporary Deputy Chairman, Sir---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Mwaura, why do you want to rise for the second time on the same thing?

**Hon. Mwaura:** Hon. Temporary Deputy Chairman, Sir, because I did not have a proposal for amendment.

Hon. Temporary Deputy Chair, Sir, I beg to move:-

THAT, the proposed Clause 5(b) be amended by deleting the words appearing immediately after the words “at such time as the Commission may determine” and replacing them with “at least two months before the due date of the by-election or referendum”.

**Hon. (Ms.) Nyasuna:** Hon. Temporary Deputy Chairman, Sir, I just want to speak to hon. Mwaura’s proposal. I see where he is coming from.

The fact that by-elections are so unpredictable and the fact that, for example, we have had several by-elections this time round, like the one we are going to have at Lunga Lunga on 2<sup>nd</sup>---

**The Temporary Deputy Chairman** (Hon. Kajwang’): I do not think we are going to have any by-election in Lunga Lunga now.

**Hon. (Ms.) Nyasuna:** The one that we were going to have, that is what I am talking about. I do not think it is even two months since that seat was declared vacant.

I think to limit the time might be a bit tricky for the Commission, particularly when you are talking about by-elections and telling them to make regulations within a given period. I think we need to really give them a chance to determine time, based on the urgency and how the by-elections arise.

Therefore, I agree with the Committee on that one.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Very well. I do not see hon. Mwaura prosecuting this very strenuously.

*(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 5 as amended agreed to)*

#### *Clause 6*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, clause 6 be amended—

(a) by deleting the words “Expenditure committees” in the marginal notes and substituting therefore the words “Authorized persons”;

(b) by deleting subclause (1) and substituting therefor the following new subclauses –

“(1) For purposes of regulating election campaign financing during the expenditure period, the authorized persons shall be—

(a) a candidate;

(b) an agent of the candidate;

(c) political party campaign financing committee; and

(d) referendum campaign financing committee.

(1A) The political party campaign financing committee referred to in subsection (1)(c) shall consist of persons nominated by the governing body of that political party, three of whom shall be signatories to the party campaign financing account.

(1B) The referendum campaign financing committee referred to in subsection (1)(d) shall consist of persons nominated by the referendum committee established under section 51(1) of the Elections Act, three of whom shall be signatories to the referendum campaign financing account.

(1C) A candidate, a political party or a referendum campaign financing committee shall, as soon as reasonable, notify the Commission of any changes in the authorized persons, the membership of the committee or in the details of such persons or such members”;

(c) in sub-clause (2), by—

(i) deleting the word “committees” and substituting therefor the words “authorized persons”;

(ii) deleting the word “three” in paragraph (a) and substituting therefor the word “eight”;

(d) by deleting sub-clause (3) and substituting therefor the following new sub-clause—

“(3) Each of the authorized persons referred to in subsection (1) shall open a campaign financing account and shall submit details of that account to the Commission at the time of registration under subsection (2)”;

(e) by deleting sub-clause (4) and substituting therefor the following new sub-clause—

“(4) There shall be deposited into the campaign financing account referred to in subsection (3)—

(a) contributions by a candidate;

(b) contributions by a political party;

(c) contributions received from any other lawful source”;

(f) by deleting sub-clauses (5), (6) and (7).

*(Question of the amendment proposed)*

**Hon. (Ms.) Kanyua:** Thank you, hon. Temporary Deputy Chairman. On Clause 6, the Committee starts by proposing an amendment on the marginal notes. Instead of the words, “Expenditure committees”, we have the words, “Authorized persons”. The Committee did not approve the idea of “Expenditure committees” especially in the person of a candidate, or in place of a candidate. Therefore, we now want to have the definition of the “authorized person” under the same Clause 6.

Clause 6(1) will be substituted with a new sub-clause.

Hon. Temporary Deputy Chairman, in looking at this proposal, we did consider in detail the issue of having a committee to regulate the funds of an individual, especially where candidates fund themselves 100 per cent. So, what we agreed upon was this definition that covers candidates or a law that appoints one agent to submit the required proposals by the IEBC. Alternatively, the political party itself will be required to have a financing committee, and in the event of referendum, the campaign financing committee will then have to follow the rules of this Act. Therefore, we propose a deletion of Clause 6(1) and in its place the inclusion of the new sub-clause and the change of the marginal notes to “authorized persons” so that it covers the new list of authorized persons.

On the same note, in Clause 6 the Committee did propose inclusion of new clause 1(A). We do know the sort of issues we have had with some of the political party financing teams and the questions of finances that have arisen in most of our parties. The persons nominated by a governing body of the political party and three of who are signatories, will then assist the party to meet the obligations under this Act.

In the case of referendum, the referendum campaign financing committee referred to in sub-section (1)(d), shall consist of persons nominated by the referendum committee established under Section 51(1) of the Elections Act, three of whom shall be signatories to the referendum campaign financing account.

In the case of referendum, the IEBC is required to set a question and in that question, there will then be two sides; those proposing and those opposing and both of

those referendum teams or referendum campaign committees will be required to keep their finances and the records.

On 1(C) as proposed by the Committee, it speaks to a candidate's political party or a referendum campaign financing committee which shall, as soon as reasonable, notify the Commission of any changes in the authorized persons, the membership of the Committee or in the details of such persons or such members.

Hon. Temporary Deputy Chairman, the persons we are appointing from the governing body or in the referendum committee or the agent of the candidate, if they change, then the committees or the authorized persons are required to notify the Commission of any such changes.

In the subsequent clauses, we just continue changing the word "committee" to "authorized persons" so that the amendments can follow. In the amendments to Clause 6(2)(c) the Committee is proposing that the period there be eight months. That is to have particular teams or authorized persons appointed eight months prior to elections.

In Clause 6(3), the Committee proposes a deletion of that sub-clause and in its place a new sub-clause. Each of these teams must open an account, which account the IEBC will then have details.

In the last amendment to Clause 6, the Committee proposes a deletion of sub-clause 4 and substituting it with a new clause. That the amounts shall be deposited into the campaign financing account referred to in subsection (3)(a) as contributions by a candidate; contributions by a political party and contributions received from any other lawful source. In the subsequent amendments, we will come to the provisions relating to contributions.

After looking at all these matters, the Committee proposed deletions of Clauses 5, 6, and 7 because these matters have already been taken care of in the amendments that have been proposed in Clause 6.

Thank you, hon. Temporary Deputy Chairman, Sir.

*(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 6 as amended agreed to)*

*Clause 7*

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, clause 7 be amended—

(a) in sub-clause (5), by deleting paragraph (e);

(b) by deleting sub-clause (8).

Hon. Temporary Deputy Chairman, I am looking at Clause (5) (e), where actually, to be honest, I think the Committee should have picked up this clause. We do not have the Party Candidate Expenditure Committee, but what we find offensive is that the

committee should prepare and submit the preliminary nomination report and a final campaign expenditure report of the party expenditure committee with respect to the nomination or campaign of the party candidate.

Hon. Temporary Deputy Chairman, this to me is really impractical and very cumbersome. The truth is that structures of most political parties are actually non-existent. Therefore, in my view, if this exercise was to go on, it would be a futility *ab initio*.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Gumbo, you are aware that this legislation is one of those constitutional requirements. Perhaps, the intention of the Constitution is to rein in parties to start being accountable. As you well said, in the past, they have not been accountable. So, perhaps, we are deliberately creating structures for it. Since I do not see any requests from hon. Members, can I hear the Departmental Committee Chairperson?

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, the Committee had already dealt with the question of the Party Candidate Expenditure Committee. In terms of the obligation of reporting, they would remain. Even though candidates will be reporting on their own, parties would also have to report on their expenditure. The question he has raised is important. There is need for a step of reporting to the party by candidates and a further step of reporting to the IEBC. He seems to suggest that we do not need the party step, and that if candidates are going to report, then they should report directly to the IEBC.

However, in the spirit of the new Constitution, and even in the spirit of where we are going, even in the sense of how the House is now organised, where we have got a Majority Coalition and Minority Coalition, we are going into a place where political parties are going to make sense. Parties make sense, but what we have in this regime is actually more of the coalitions making sense. As we go along, a time will come when parties will make sense. When parties are meaningful and strong, they should be able to obligate their candidates to comply with these particular requirements. So, I would urge that we leave it.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Members, I take the lack of requests as a go-ahead for me to put the Question but before I do so, Member for Rarieda, you are entitled to a reply.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I thought that we have done away with the party expenditure committee. So, what happens to this part?

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Gumbo, let me remind you, we have not done away with the Party Candidate Expenditure Committee. What we did away with in the first clause was the individual expenditure committee.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, this individual is a party candidate. We have already done away with the individual – the Party Candidate Expenditure Committee. So, my view is that, in keeping with what we did earlier, the entire Subclause 5 should be deleted. It contradicts what was done in Subclause 3.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Departmental Committee Chairperson, could you look at it again? We want to have a legislation that is

consistent with itself. I see it not only in Subsection 5 but also in Subsections 1, 2 and 3. All of them refer to Party Candidate Expenditure Committee. Do you want to rephrase all those terminologies, so that we can have a clean document?

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, in cleaning the law, we have already adopted a new definition of “authorised persons”, wherever it applies. Where it refers to the candidates, we will not have the term “Party Candidate Expenditure Committee”. We will instead have the candidates or their agents as is in the definition. However, the duty of giving detailed information will still apply even to the candidate. That is what this speaks to – that the candidate will then have to comply and send these particular details to the Commission.

The only part in respect of which I have sympathy with the hon. Member in terms of the amendments is where it requires a preliminary nomination expenditure report and a final campaign expenditure report. I seem to see that in paragraph (d), there is already a requirement to manage the expenditure accounts of the candidates and keep the books of accounts updated and available for inspection. So, if paragraph (d) covers the keeping of books, updating of accounts and availing the same for inspection, then we might want to agree with the hon. Member that, in respect of these new terminologies, in the context of an election campaign, we do not want a situation where when you are running an election, you start filing a preliminary nomination expenditure report and then once you finish, you file the final campaign expenditure report because once you win, you assume the duties of representing the constituents. So, I have sympathy to deletion of that clause. The other duties shall remain.

Thank you.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Members, I want us to move very fast. This is how we are going to do it. We will re-commit this clause to allow you an opportunity to clean up Subsection 7 as we go onwards. Remove those provisions which talk about Party Candidate Expenditure Committee because we had amended the definitions. We had deleted the words “expenditure committees”. We are now talking about “authorised persons”. So, can you work very closely with the Departmental Committee Chairperson, as we go through this, so that by the time we come back to that clause, it is clean. I do not want us to hold ourselves for too long on this one. Hon. Sakaja, is that fair with you?

**Hon. Sakaja:** Hon. Temporary Deputy Chairman, it is fair. As he considers those changes, I would like him to also consider one aspect of part (e) because I realise that the compliance of a candidate will have an effect on the political party – whether the candidate becomes disqualified or not, there are some consequences for the political party. It would be prudent for the political party to have the information instead of the candidate reporting directly to the Commission.

So, I suggest that, as he works on it, he retains the provision for reporting by the candidate to the political party and to the Commission, so that in case of any issue, the political party does not feign ignorance. In the last election, we had many instances where, due to wrong information from candidates, we were not able to field candidates in certain constituencies. Candidates who had come to us previously had given us false information. So, we must compel the candidates to give information to the party and to the Commission.

Thank you.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Since one of you is a seasoned lawyer and the other one is seasoned legislator, sit down together within the time that we are going through these amendments so that by the time we will be through, we will have proposed amendments that you will be proposing. We will then clean up those provisions and continue.

Let us continue.

*(Clause 7 recommitted)*

*Clause 8*

**Hon. (Eng.) Gumbo):** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 8 be amended in subclause (4)(h) by deleting the words “the preliminary nomination expenditure report and” appearing immediately after the word Commission”.

Hon. Temporary Deputy Chairman, Clause 8, under subclause 4(h), says that the party expenditure committee referred to shall submit to the Commission the preliminary nomination expenditure report and the final campaign expenditure report of the political party. In my view, we are getting too consumed with governance issues, as opposed to the practicality of undertaking an election.

*(Question of the amendment proposed)*

**Hon. (Ms.) Kanyua:** I think in the spirit of moving closer to Nakuru, I do not oppose this amendment. I do accept it as it improves the final reporting that is required so that the candidates can then concentrate on their campaigns. They had already submitted their limits. They would only be required to submit the final report. So, I do support that amendment.

**Hon. Sakaja:** Hon. Temporary Deputy Chairman, Sir, I would like to propose a further amendment so that we can make sure that the provisions that we are making here do not negate the provisions of the Political Parties Act. The provisions of the Political Parties Act have it clearly that the Accounting Officer of a political party is the Secretary General. This was put there to ensure integrity and good corporate governance. You realize that the kind of monies that will be put through this expenditure committee might be huge sums and as such, we do not want to create a situation where a political party can appropriate such funds without involving the Accounting Officer of the political party. At the end of it, when a political party has to account, the Accounting Officer who is the Secretary General must actually account for this.

**The Temporary Deputy Chairman** (Hon. Kajwang’): So, what is the text of your further amendment?

**Hon. Sakaja:** I would like to insert some words after Clause 1, that the signatory---

**The Temporary Deputy Chairman** (Hon. Kajwang’): This is Clause 8.

**Hon. Sakaja:** Yes, it is Clause 8 after part one---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Where are we?

**Hon. Sakaja:** In Clause 8(4) after the word “provision”---

**The Temporary Deputy Chairman** (Hon. Kajwang’): In other words, this is a new clause?

**Hon. Sakaja:** It is a further amendment to Clause 8(4). So, after “(h), we add (i).

**The Temporary Deputy Chairman** (Hon. Kajwang’): So, that will be part “i”? We are with you, but that is not a further amendment. That is your own amendment to that clause that we are considering.

**Hon. Sakaja:** Hon. Temporary Deputy Chairman, then I will take your guidance on how to---

**The Temporary Deputy Chairman** (Hon. Kajwang’): That one is a new amendment which you are perfectly in order to bring, but can you reduce it in a text and discuss it with the hon. Member who is beside you? We want to understand that the Committee system also agrees to it and we will come to it.

Here we are only considering hon. Gumbo’s amendment which is in subclause (4)(h) and only to the extent of deleting the words “the preliminary nomination expenditure report and”.

Hon. Sakaja, before I put Question on this clause, do you think you want to talk about it?

**Hon. Sakaja:** We have consulted with the Chair.

**The Temporary Deputy Chairman** (Hon. Kajwang’): So, you want me to recommit this because I am moving faster than you?

**Hon. Sakaja:** Kindly do so.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Speak to the HANSARD and in a short while, you give a written text of what you have in mind.

**Hon. Sakaja:** I will let the Chair speak because she has already noted down the text. She will just explain the concurrence then I shall move the amendment.

**The Temporary Deputy Chairman** (Hon. Kajwang’): First of all, read for us the text.

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, the amendment that he is proposing will fit much more neatly in Clause 8. One of the good things about it is that he has a lot of experience in running a political party. The particular amendment would be to the effect that of the three signatories nominated by the governing body of the party to constitute the party expenditure committee, one of those persons shall be the Secretary General, who in the Political Parties Act is named as a signatory.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Can you read the text as it appears?

**Hon. (Ms.) Kanyua:** In Clause 8 (1)(a) there is already a provision of “three of whom shall be persons nominated by the governing body of that political party.” Other proviso, “one of whom shall be the Secretary General of the party”.

**The Temporary Deputy Chairman** (Hon. Kajwang’): You have already used the word “three of whom”, so you will have a big problem in that legislation. Let me read the amendment: “three of whom shall be persons nominated by the governing body of that political party, provided that one of such persons shall be the Secretary General of the political party”. That is the further amendment by hon. Sakaja.

*(Question of further amendment proposed)*



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

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

*(Clause 8 as amended agreed to)*

*(Clause 9 agreed to)*

*Clause 10*

**Hon. (Dr.) Nyikal:** Hon. Temporary Deputy Chairman, Sir, on Clause 10(3)(g), it says “compile and submit to the Commission the preliminary nomination expenditure report and the final campaign expenditure report.” This is in reference to part (3) which says “The referendum expenditure committee referred to in subsection (1)”.

My concern was that in referendum, do you have a preliminary nomination for which you shall have a report?

**The Temporary Deputy Chairman** (Hon. Kajwang’): Yes, that is a very good intervention but hon. Member, we do not have a proposal for an amendment.

**Hon. (Dr.) Nyikal:** If it is in order, I would propose that---

**The Temporary Deputy Chairman** (Hon. Kajwang’): It may not be in order because that amendment would have been filed procedurally and approved by the Speaker. You can only move an amendment on the Floor if there is an amendment proposed, and you are seeking further amendment. You can do that on the Floor, but when you want to propose a substantive amendment that way, then now it has to be written according to your rules that you are aware of and submitted to the Speaker. Does that answer you?

**Hon. (Dr.) Nyikal:** Yes, thank you.

*(Clause 10 agreed to)*

*Clause 11*

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, clause 11 be amended—

(a) in subclause (1)—

(i) by deleting paragraph (a);

(ii) in paragraph (b), by deleting the word “final” appearing immediately before the word “expenditure”;

(b) in subclause (5), by deleting the expression “subsections (1)(b), (2), (3) and (4)” and substituting therefor the expression “subsection (2)”.

Hon. Temporary Deputy Chairman, Sir, what it says here is that a party candidate shall submit to the political party of that candidate and to the Commission preliminary nomination expenditure report within seven days of political party nomination. This is impractical. In reality, it is not possible. We all know what goes on after the nomination.

The experience that we have is that for almost a week people camp at the party headquarters chasing their certificates. It is impractical and impossible. There is no harm in bringing our experiences to the formulation of good laws because that is the reality. I can assure you that in the foreseeable future, seven days is ambitious, impractical and impossible. I plead with the Chair to support me on this without us having to meet in Nakuru.

*(Question of the amendment proposed)*

**Hon. Iringo:** Thank you, hon. Temporary Deputy Chairman, Sir. I agree with hon. (Eng.) Gumbo and I support his amendment. I want to move a further amendment to paragraph “b” of that clause which reads “the final expenditure report within three months after elections”. Three months after elections is quite a short period. When people are smarting from the hassles sometimes it takes time to compile these documents and one needs at least to have a rest. So, I propose six months.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Iringo, the amendments concern paragraph “a”.

**Hon. Iringo:** I am okay with paragraph “a”, Hon. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Hon. Kajwang’): So, let us just limit it. There are several that we are prosecuting together. The Hon. Member is proposing to delete paragraph “a” which talks about preliminary nomination expenditure report within seven days of the political party nomination. Is that correct, the hon. Member for Rarieda?

**Hon. (Eng.) Gumbo:** Yes, hon. Temporary Deputy Chairman, Sir.

**Hon. (Dr.) Pukose:** Hon. Temporary Deputy Chairman, Sir, I wanted us to recommit Clause 9 on the independent candidate. There are some amendments which we brought concerning the other political candidates in Clause 8. However, we did not consider the independent candidates. We must also make the amendments to be uniform. The law should apply uniformly, whether you are an independent candidate or a political party sponsored candidate.

**The Temporary Deputy Chairman** (Hon. Kajwang’): The Chair really appreciates your intervention. First, you remember that there was no proposed amendment to Clause 9. So, there is nothing we can do here in the Committee. Secondly, we have actually passed it. So, we cannot recommit it. Thirdly, I also see that Clause 9 speaks about independent candidates. That is what Clause 9 is all about. So, you will bear with us that we are now a little ahead.

Yes, hon. Sakaja.

**Hon. Sakaja:** Thank you, hon. Temporary Deputy Chairman, Sir. Whereas I understand and appreciate the argument of hon. Gumbo totally deleting this provision, it negates my earlier plea where we said that there still needs to be accountability or rather an interaction by the candidate and the political party on expenditure due to the fact that the consequences therein will relate to both the candidate and the political party. Given the fact that within the Elections Act you actually have a mandatory 45 days between nomination and the actual election, I propose that instead of totally doing away with the provision or instead of seven days, we have it at 21 days. This will also serve both sides

well because the candidate will have time to prepare the expenditure report. The political party will also be able to see whether there is need to further help or assist a candidate based on that expenditure report or to see if there are issues that they need to interact with the candidate. I am quite averse to the proposal to totally remove the political party from that engagement within that period but we have time within the 45 days between nominations and actual elections.

If we can say within 21 days of the political party nomination, I think we would have solved your issue. Seven days is too close given the fact that most political parties will still be dealing with issues of certificates and will still ensure that there is that interaction between the political party and their candidates. It will even give the political parties clarity on who might need more support or who has certain problems or who has issues of compliance. I think the Chair will have the final say. I propose that instead of seven days we actually have 21 days.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Are you moving a further amendment, hon. Sakaja?

**Hon. Sakaja:** Yes, hon. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Hon. Kajwang’): What is the content of your further amendment?

**Hon. Sakaja:** Hon. Temporary Deputy Chairman, Sir, I would like to propose a further amendment by deleting the word “seven” between the words “within and days” and substituting with the words “twenty one”.

**The Temporary Deputy Chairman** (Hon. Kajwang’): But you will run into technical problems here, hon. Sakaja. This is because the amendment is proposed by the Member for Rarieda. Your proposed further amendment really negates his amendment. So, if you are speaking to his amendment, it means that you should have brought your own amendment.

**Hon. Sakaja:** Hon. Temporary Deputy Chairman, Sir, I think we can have concurrence. This is because when he was prosecuting his amendment his main issue was that seven days were too close to the nomination.

**The Temporary Deputy Chairman** (Hon. Kajwang’): No, I fully understand and appreciate what you are saying. My problem is that you are running into a technical problem with your Standing Order that when there is a deletion of a clause then a further amendment to it has the import of negating the---

**Hon. Sakaja:** I understand you, hon. Temporary Deputy Chairman, Sir.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, Sir, in my view and like I said before, there is no harm in bringing the benefits of experience to this. I am not anticipating debate but in my view, you do not need a preliminary and a final report. One report to the party and the Commission is good enough.

**Hon. Sakaja:** Hon. Temporary Deputy Chairman, Sir, if you look at the second provision of the final report, you will find that it is three months after the elections.

So, if that Report comes after the elections, really there would be no benefit apart from accountability for the actual candidate and the political party. That interaction would not be there before the election where there can be interventions from the political party on candidates who might be having compliance issues which might lead even to disqualification. So, it is very important to maintain that interaction between the candidate and the party before the election and after nomination. So, to sort out the

technical hitch, I could propose an entire amendment because even if he drops his amendment, he will not have sorted out the issue of seven days.

**The Temporary Deputy Chairman** (Hon. Kajwang’): He will be getting into the same problem the Member for Seme got into. Why do you not just prosecute this one which we have and see whether it sails through or it does not sail through?

Hon. Priscillah.

**Hon. (Ms.) Kanyua:** I think in the circumstances, I am constrained not to accept the proposal by hon. Eng. Gumbo. By deleting this entire clause, we will lose some of the benefits that were envisaged by having candidates keep a relationship with the parties. If we delete it entirely until after the elections then that particular benefit is going to be nullified. We will be requesting hon. Eng. Gumbo to also, in view of the proposal for 21 days that has been raised by the Chairperson of the party of The National Alliance (TNA) and who speaks from experience about parties--- Looking at the way the drafting has been done, there is need for a preliminary report to go to the parties. Some benefit is supposed to be derived from being members of the party.

The Member bringing the amendment seems to be really pessimistic about political parties. My plea to him is that as we move forward and as we look at the law on political funding we are going to have, by the time of the election--- I know this particular Parliament has not been able to give any funds to political parties. There were no enough funds in the last Budget and the matter went to court and so the parties have not received their funding. But as we go closer to the elections and with the percentage that is marked in that law, the political parties are going to have sufficient funding to take care of these logistical matters. The matters now remain logistical nightmare because the parties are incapacitated in many ways. So, there are other laws coming that will secure and protect parties.

So, Eng. Gumbo, you could kindly withdraw your amendment so that we consider the one of 21 days. That would be a better way to move.

**Hon. (Eng.) Gumbo:** Hon. Ms. Nyokabi Kanyua might want to hear me on this one. I am not averse to the 21 days proposal. However, I think it is a hopeful and wishful shot. If I can tell you, some of us have gone through that routine. In 2007, some of us were very broke and we were told to prepare an expenditure report and submit it to the party. How we wanted to be helped. It is now six years down the road and we are still waiting for that report to be implemented. So, I do not have a problem with 21 days, but I know that unless you are going to clean up---

This pessimism I am talking about is from experience. To be honest, our political parties still remain a one man, or one woman show. Decisions are made at the whims of one person. Some of us, given where we come from, were told that we did not need funding. I have no problem with the 21 days, but in practical terms and from the experience that we have, I do not think it will serve much purpose.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Are you prosecuting your amendment? Could you, please, speak to the HANSARD?

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I have no problem with a further amendment to my amendment so that instead of deleting it entirely, I withdraw mine so that they change it to 21 days.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Could you, please, speak to the HANSARD unequivocally and state whether you are withdrawing or not?

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I am withdrawing my amendment in view of the proposal by hon. Sakaja, the Chairman of TNA.

*(Proposed amendment by hon. (Eng.) Gumbo withdrawn)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Members, I have an amendment here proposed by hon. Sakaja still on that Clause 11.

It reads thus: “Delete part (a) and substitute therefor the following words, “a preliminary nomination expenditure report, within 21 days of the political party nomination.”

*(Question of the amendment proposed)*

**Hon. (Dr.) Nyikal:** Hon. Temporary Deputy Chairman, I know I may be taking you back but I still was hoping that hon. Eng. Gumbo did not withdraw. This is because what I am seeing is the practicality in the middle of an election and you are being asked to give an expenditure report. You have to sit down to work on this report and yet you have thousands of candidates. I think you are bringing something that is going to be practically impossible at this point. I do not know the procedures in the Standing Orders, but I would have loved to have it hon. Gumbo’s way, in the first instance.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Unfortunately, hon. Eng. Gumbo has spoken very clearly on the HANSARD and we are now bound by it. There is no amendment proposed now by hon. Eng. Gumbo. The one we have is by hon. Sakaja which is about 21 days. I am sorry about this *Daktari*, but this is where we have come.

**Hon. (Dr.) Nyikal:** Hon. Temporary Deputy Chairman, I would propose that you put the Question. I can see people nodding. Probably, it would have carried the day.

**Hon. Abongotum:** Hon. Temporary Deputy Chairman, I want to speak through experience. I want to suggest that Members take the route suggested by hon. Eng. Gumbo and the Member for Seme. When you leave this Parliament, actually, political parties desert you. They behave like they want to serve each and every candidate. So, you actually end up being on your own. We must make sure that we enact laws that will not haunt us when we are out there. I am just cautioning you that the route suggested by hon. Eng. Gumbo would have been the best. I know my Chairman here is in charge of a big party, but when we leave here, he will be treating all of you equally together with the people you will be competing with. I think the best way would be to delete it and just leave it there like that. I do not know, but that is my position.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Members, we have to move on. We are too slow on this. We are ahead of that now.

**Hon. (Ms.) Juma:** Hon. Temporary Deputy Chairman, I want to agree with the last two speakers. I want to plead with hon. Sakaja to withdraw. Having worked at a secretariat, I know what it means getting paper work from all candidates; it is going to be almost impossible and, therefore, many people will break the law. I do not think we are here to make laws so that they are broken.

**Hon. (Ms.) Ghati:** Hon. Temporary Deputy Chairman, I want to really appeal to hon. Sakaja to withdraw. I am very sure that hon. Sakaja is going in for an elective position. I do not think he will want to be nominated again. What my brothers are talking

about is a serious reality and some of us have passed through that. If anything, I would have suggested that he adds the number of days. However, I would like to support my two colleagues. It is something that he will obviously experience when he goes through the election.

Hon. Sakaja should withdraw that, so that we can go back to the original amendment as proposed by hon. Gumbo.

**Hon. (Ms.) Nyasuna:** Hon. Temporary Deputy Chairman, Sir, I hear the Members who have spoken, particularly to the impracticability of this. I agree that it might be impractical. However, the Chair of the TNA is saying that there are already requirements in this law for contestants to comply within certain financing limits. The parties are saying that if this proceeds until after elections and the people they have fielded have not complied, and the parties do not even know that these people have not complied, then you have people being disqualified for not having complied, yet the party did not have the benefit of seeing this. So, we give it to the party. As a candidate, you just get your record, give it to the party and whether the party checks it or not, keeps it in the file, the party will not say that they did not know. They will not plead ignorance that they did not even know that this candidate did not comply with the requirements. That is why I agree with hon. Gumbo that seven days is too short. When it is extended to 21 days, you file your paper work and it is upon the party to check for compliance. If they do not check for compliance, at the end of the day, they cannot plead that they did not know that you had not complied and therefore, you are on your own.

**The Temporary Deputy Chairman (Hon. Kajwang’):** So, are you supporting the amendment by hon. Sakaja?

**Hon. (Ms.) Nyasuna:** Hon. Temporary Deputy Chairman, Sir, yes.

**The Temporary Deputy Chairman (Hon. Kajwang’):** Members, make it easy for us. Let us not debate. We have looked at this legislation before and we have debated it. We have it and we just want to push on and make it legislation. Help us such that once we have passed some stage, do not get us back there. The last person on this is hon. Mwinga Ngunga.

**Hon. Chea:** Hon. Temporary Deputy Chairman, Sir, you have already made a ruling that we should not take you back to what we have done, but you will allow me to, in two seconds, say that we have loved the way hon. Gumbo and hon. Seme have put it, so that we can go down to reality in politics.

**The Temporary Deputy Chairman (Hon. Kajwang’):** Hon. Seme?

**Hon. Chea:** Hon. Temporary Deputy Chairman, Sir, it is hon. Nyikal my good friend, Member for the great constituency, Oseme.

**The Temporary Deputy Chairman (Hon. Kajwang’):** I am sure he will agree to both of the words, particularly the Seme one. Hon. Okoth, is this very burning?

**Hon. Okoth:** Hon. Temporary Deputy Chairman, Sir, yes it is. I rise to oppose what hon. Sakaja is proposing completely. The realities are that some of our parties were not even able to issue and receive registration cards, record their members and here we are presuming that they are going to be able to collect from civic, gubernatorial, senatorial, presidential and woman representative candidates at all these levels. They should be able to collect all these documents and paper work and even store it and handle it. Our parties do not have the capacity. Let us make laws in a proper way and with the reality.

**The Temporary Deputy Chairman** (Hon. Kajwang’): The point is made. Dr. Pukose.

**Hon. (Dr.) Pukose:** Hon. Temporary Deputy Chairman, Sir, I would take a more neutral position. I have heard what hon. Sakaja is saying that if at one stage you need to present your budget so that the party can support you, you can do so. If I am going to spend a few days to work and prepare a budget that I present to the party, then I shall make sure that the party is able to honour it. We can put it in law to make the party honour that expenditure report, so that where there are deficits, they must be able to pay for it.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Okay, now we have the amendment by hon. Sakaja. I want to propose that Clause 11 be amended as has been proposed by hon. Sakaja.

**Hon. Sakaja:** Hon. Temporary Deputy Chairman, Sir, let me explain the implication because I am willing to drop it if Members are not interested in it. This law, as it is being passed, already has certain obligations you must fulfill in respect to financing as a candidate, whether it is limits or the sources of your funding. Already, it was providing that you do a preliminary report within seven days, which is impractical, we are saying that within 21 days, you do your report to the party and the party can look at it.

**The Temporary Deputy Chairman** (Hon. Kajwang’): General, we acknowledge your presence in the Chamber, but you know it.

**Hon. Sakaja:** Hon. Temporary Deputy Chairman, Sir, I am asking hon. Zuleikha to just listen because we can drop the amendment. The party can look at your expenditure report before the election, tell you that you are verging on disqualification because of this and this, ask you to change certain things or to address certain issues. So, it is to help the candidate to comply with the law. Failure to do this, there will be a report given to the Commission. This law will obligate you, as a candidate to still give a report. We have had no one, in the intervening period, to look at your report to advise you. After the election, it will be very easy for the elections to be nullified and the party will disown you and say that they were not aware that this person had gone beyond limits or this person had contravened this law in any other way.

The issues of capacity of the political party can be addressed not necessarily through law, but through the political parties funding. This can be done at the county level.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Sakaja, as you are on your feet, can you talk therefore to the HANSARD, if you are withdrawing your amendment or if we put the Question?

**Hon. Sakaja:** Hon. Temporary Deputy Chairman, Sir, I will put it because the Members can understand what I am saying. I would like the decision to be theirs. The reason I am bringing this is to allow you, before the date of the election, to make sure that your expenditure report, which will still end up with the Commission, complies with the law. You can be nullified or disqualified. Issues of your own party’s capacity, you can deal with in your parties and I promise the Members of the TNA that we will deal with that issue of capacity. You will still have to submit your report. You will submit your report at a point where you are being disqualified and it will be too late.

**The Temporary Deputy Chairman** (Hon. Kajwang’): I will put the

Question that Clause 11 be amended as proposed by hon. Sakaja.

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

Hon. Gumbo, finish with parts (ii) and (b)? Please, could you move faster?

**Hon. (Eng.) Gumbo:** On a point of order, hon. Temporary Deputy Chairman, Sir, since, I dropped mine and hon. Sakaja's has failed, what is the import?

**The Temporary Deputy Chairman** (Hon. Kajwang'): The import is that the Bill is as it was before. It means therefore, that Clause 11(a) is where it was before.

**Hon. (Eng.) Gumbo:** On a point of order, hon. Temporary Deputy Chairman, Sir. Would I then, therefore, request that we recommit that clause, please, because it is so important?

**The Temporary Deputy Chairman** (Hon. Kajwang'): But the problem would be that even if you recommit it and it is withdrawn, how then will it be easy to prefer a new amendment?

**Hon. (Eng.) Gumbo:** We propose another amendment, hon. Temporary Deputy Chairman, Sir. We all agree that going back to what it was before is too drastic.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Okay, can you finish parts (ii) and (b) before we make a decision on that?

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, Sir, it is not possible for me to move the second amendment because it is consequent upon the first amendment.

**The Temporary Deputy Chairman** (Hon. Kajwang'): All right, hon. Members. Does that same position go with what you have in (b) of Clause 11?

**Hon. (Eng.) Gumbo:** No, hon. Temporary Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang'): So, can you prosecute that one?

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I propose that Clause 11 (b) be amended.

In my view, the import of this clause is unfair attempt to convert candidates into accountants. Who provides the resources to do all these things listed in that clause? If you look at it and study it closely, we are merely being converted into accountants and we have to look for money. If you have to do cash flow statement, an income statement and a balance sheet, then somebody has to be professional.

Therefore, this is my proposal and I beg hon. Members to agree with me. Politics and accountancy are becoming the same thing and it will be incumbent upon candidates to look for extra money to do all these assignments which are listed here.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang'): Hon. Simba Arati, Member of Dagoretti Constituency, was this by mistake?

**Hon. Simba:** I thought we were to go ahead and you put the Question, hon. Temporary Deputy Chairman.

**Hon. (Dr.) Pukose:** I am okay, Sir.



**Hon. Mwaaura:** Thank you, hon. Temporary Deputy Chairman. While I agree with my friend, hon. Eng. Gumbo, I am just wondering whether these sections actually guide candidates on how to write their reports. If you do not do that, then what forms of reports are they supposed to be submitting? This is because an expenditure report must also be detailed; it has to have certain requirements. In fact, what is it that the political party should be looking for, even the Commission? So, I am a bit hesitant to support this deletion.

**The Temporary Deputy Chairman (Hon. Kajwang’):** All right. Let us hear from the Chair of the Committee.

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Speaker, Sir, I would have more difficulties in deleting some of the subclauses. The only thing I am not sure of from the amendments by the hon. Member is what then is left on subclause (5) because you did not propose a deletion of subsection (5). Therefore, we delete only “subsections (1) (b), (2), (3) and (4)” while part of it is left.

**The Temporary Deputy Chairman (Hon. Kajwang’):** No, subsection (2) remains. What he is doing is deleting all those subsections, but he is replacing them with subsection (2).

**Hon. (Ms.) Kanyua:** So, he deletes the record showing transactions?

**The Temporary Deputy Chairman (Hon. Kajwang’):** No, what he is doing is to maintain “a political party shall within three months after election submit the final expenditure report to the Commission.”

That is the only thing that remains.

**Hon. (Ms.) Kanyua:** Yes, but in terms of the other ones that are there, subsection (5) was explaining what needs to be submitted as part of the report in subsection (2). Therefore, if you delete subsection (5), then there is going to be a weakness in terms of understanding the whole of that section. So, I would ask him to be a little bit clearer so that we do not delete everything and leave the sub-section naked.

**The Temporary Deputy Chairman (Hon. Kajwang’):** That is clear, hon. Eng. Gumbo. What he is saying is that all those things which that sub-section requires, according to him, make political candidates mere auditors and so forth. That what should remain is what is in sub-section (2). That is what he is saying.

**Hon. (Ms.) Juma:** Thank you, hon. Temporary Deputy Chairman. I just want to say that I agree with what hon. Gumbo said. I do not know how we can retain Sub-clauses 5(a) and 5(d). The rest seem to be so detailed. You need to have done some accounting in order to understand. I do not think that as Kenyans in politics we are ready for the detailed accounts, as he said.

**The Temporary Deputy Chairman (Hon. Kajwang’):** Unfortunately, paragraphs (a) and (d) of Sub-clause 5 are not part of hon. Gumbo’s amendments. So, we cannot discuss them at this point in time.

Yes, hon. Sakaja. What is the confusion?

**Hon. Sakaja:** Hon. Temporary Deputy Chairman, I listened to them as she made her contribution. Clearly, they are talking about something different. The proposal before us is that Clause 11 be amended in Sub-Clause 5 by deleting the expression “subsections (1)(b), (2), (3) and (4)” and substituting therefor the expression “subsection (2)”. That is where we are.

We have already removed the one that we have already dealt with. We only retained (2), which says that a political party shall, within three months of the elections, submit a final expenditure report. Hon. Gumbo's amendments are not about this particular amendment. It says that the report that will be submitted to the Commission will only be the report under (2); that of the political party. In essence, the proposal by hon. Gumbo is that this very law is only about the party's expenditure. It will have no issue of a candidate's expenditure.

So, we remove subsection 1(b), which requires a candidate to report to the Commission three months after an election. Subsections (3) and (4) are about the independent candidate's report. So, what we will have as the law is the Election Campaign Financing Bill that only governs expenditure by political parties, and not candidates because there is nowhere else where a candidate is compelled to submit a report to the Commission. I would like hon. Members to remember that we have already amended the Bill to say that the Commission can come to you at any time and ask for information.

We have also, by rejecting the amendment, removed the shielding of a candidate by a party. I do not know how many of you have dealt with the IEBC as individuals, and not through political parties. It is very difficult. So, I will ask hon. Gumbo to, kindly, reconsider his amendment, unless the objective is to make sure that the law only applies to political parties financing, and not candidate financing.

**An hon. Member:** On a point of order, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Just a minute. I hear you. I am sure that hon. Gumbo is considering that proposal.

Hon. Members, this is one of the constitutional Bills that we have to pass. You can see that time is fast approaching, yet we have to pass them. So, you will be persuaded to sit for as long as it takes until this Bill is passed. As we discuss these amendments, you need to know that we do not want to be here for so long. If you will be brief and stick to the point, we will save a lot of time.

Yes, hon. Musimba.

**Hon. Musimba:** Hon. Temporary Deputy Chairman, I want to concur with what the engineer has said but propose an amendment to his suggestion, which simply reads "retain (1)(b), 2, 3 and 4" but the subsequent computations (a), (b), (c), (d), (e) and (f) be done away with, if he concurs.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Hon. Musimba, we can only deal with what is before us, which is what the hon. Member has proposed. Member for Rarieda, are you getting confused by this proposal?

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, it has been a long day and there are a plethora of amendments and sometimes it tends to turn into a mess of some sorts. I am open to assistance, but what I am against and what I was intending to cure is this requirement where you require a candidate to produce a balance sheet, an income and expenditure statement, a cash flow statement and audited accounts. All these things are lengthy. I have done a bit of accounting and I know even professional accountants have a problem with preparing cash flow statements. So, what is the purpose of this attempt to turn politicians into accountants? It is not our work. Who is going to finance all these because they are additional expenses? You have to get a professional, if it has to make sense.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Do I feel that we have the necessary consensus to move this thing on? The direction is very simple; you see, you are the debaters. We can only give guidance but you debate. So, do not be confused in the debate. We will guide you. The guidance is simple, that the hon. Member for Rarieda is seeking an amendment to change Clause 5 by removing all the expenditure report submitted under this subsection. All these issues where you should compose an expenditure report should only refer to political parties. That is how it looks. So, hon. Members, you must make up your minds. You must decide by voting in one way or the other.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, you are very right. What I am trying to do is to say that a political party has the wherewithal to do a balance sheet, income and expenditure statement, cash flow statement and to submit audited accounts but not the candidate. So, the import of my amendment is to transfer all these and make all these requirements incumbent only upon a political party, but not the candidate. It is not practical.

**The Temporary Deputy Chairman** (Hon. Kajwang’): I do not see any requests. I am seeing people repeating themselves. Can I get a very fresh contribution? Hon. Kamama.

## **PROGRESS REPORTED**

### THE ELECTION CAMPAIGN FINANCING BILL

**Hon. Abongotum:** Hon. Temporary Deputy Chairman, I wish to propose that the Committee of the whole House do report progress and seek leave to sit again today until we conclude the business that is before us.

**Hon. Kajwang’:** Hon. Temporary Deputy Speaker, it has been a long day and we are still here going for another hog.

I beg to report that a Committee of the whole House is considering the Election Campaign Financing Bill, National Assembly Bill No.14 of 2013 and has instructed me to report progress and seek leave to sit again today.

**Hon. Abongotum** seconded.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*(The Temporary Deputy Speaker  
(Hon. (Ms.) Mbalu in the Chair)*

## **PROCEDURAL MOTION**

### EXTENSION OF SITTING TIME

**Hon. Abongotum:** Hon. Temporary Deputy Speaker, on behalf of the Leader of Majority Party, I beg to move the following Procedural Motion:-

THAT, pursuant to the provisions of Standing Order No.30(3)(a), this House resolves to extend its sitting time today, Thursday, 28<sup>th</sup> November, 2013 until the conclusion of business appearing under Order No.8.

I would like hon. Pukose to second this Procedural Motion.

**Hon. (Dr.) Pukose** seconded.

*(Question proposed)*

*(Question put and agreed to)*

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

IN THE COMMITTEE

*[The Temporary Deputy Chairman  
(Hon. Kajwang') took the Chair]*

THE ELECTION CAMPAIGN FINANCING BILL

*(Resumption of consideration  
interrupted in Committee today)*

*Clause 11*

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Rarieda, I hope you have now lobbied enough to be able to help the Assembly move forward. Please, can you address us?

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, we have agreed with the Chairman of the Committee that I propose a further amendment to my amendment to delete sub-clauses 5(c), 5(e) and 5(f).

**The Temporary Deputy Chairman** (Hon. Kajwang'): I am afraid that would not be in order. You cannot bring a new amendment on the Floor. We can only deal with the amendment which we have. You either drop this thing wholesale or you decide which one of them you will drop. You cannot include new ones that were not in the notice that you gave the Speaker.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, they were there only that I had dropped everything. I am just dropping a few now.

**The Temporary Deputy Chairman** (Hon. Kajwang'): We do not have 1(e), for example.

**Hon. (Eng.) Gumbo:** 5(e) is there.

**The Temporary Deputy Chairman** (Hon. Kajwang'): We do not have 5(e). I do not see it on Page 483 of the Order Paper. I only see sub-sections 1(d), 2, 3, and 4. So, release me from technical problems here. So that we move, let me direct you. We are

going to recommit this clause. In any case, we had said that we were going to recommit (i). Within the time that we are recommitting this can you, please, agree very quickly with the Chairman so that when we come back to it you address us in one sentence and we are able to vote.

*(Clause 11 recommitted)*

*Clause 12*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Speaker I beg to move:-  
THAT, clause 12 be deleted.

The Committee, having done some reorganization of the matters raised in the Bill proposes that Clause 12 be deleted in its entirety and those matters will be addressed in a different section.

*(Question of the amendment proposed)*

**Hon. Mwaura:** Hon. Temporary Deputy Speaker, I rise to seek further information from the Mover with regard to deletion of this clause and possibly other proposals that may come later. We shall, however, deal with that at that point.

This section clearly deals with issues of campaign expenses. I thought this is the gist of this legislation and, therefore, to propose total deletion of Clause 12 actually negates the purpose of having this Bill.

**Hon. Washiali:** Hon. Temporary Deputy Speaker, I want to concur with hon. Mwaura. Since we have suggested that this clause be deleted, the Chairperson suggested that there is another clause that will replace this Clause 12. It would have been reasonable if we were told more about the other clause which will replace the campaign financing expenses. As it is now, if we just suggest that we delete without finding out about the clause that will replace Clause 12, that will not be in order.

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, Sir, let me just clarify that the matter in Clause 12 is on disclosure of funds. I said earlier that the Committee deleted this part. So, it is not that the matters in Clause 12 are being deleted out of the window. In fact, they are in the New Clause 19A. If you look at the Order Paper, you will see Clause 19A which covers all the matters that are under disclosure of funds. In essence, then we did not need to have Clause 12 because a lot of those matters had already been cleaned under Clause 19A which we will come to when we get to that amendment. So, I would urge the House that the deletions in Clauses 12, 13, 14 and 15 are in terms of better organisation of the Bill and we will come to them when we come to the new clauses. So, it should not raise any alarm and the Members should allow those deletions and then we will come to the substantive clauses and we can discuss them.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Members, that is true. The Chair is dealing with subsection 3. The rest of subsection 1, 2, 4 and 5 are all being maintained. All they deal with is disclosure of funds. Her amendment is so that she streamlines it with the definitions that she has provided earlier and which are in Clause 19. So, shall I put the Question on this?

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, Sir, I had an amendment to that clause. I just want her to explain to me.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you so much. We were going to that but you know, being a seasoned debater, if the amendment is carried, then there will be nothing to amend.

Shall I put the Question that Clause 12 (3) be amended as proposed by the Chair of the Committee on Justice and Legal Affairs? Members, I am greatly mistaken. I need to apologise for that. Hon. Gumbo, I read the clause upside down. I was on your amendment instead of the Chair’s amendment. Members, the Chair’s amendment seeks to delete the entire Clause 12 and not subsection 3.

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

*(Clause 12 deleted)*

**Hon. Members:** It has been deleted!

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you. It has already been deleted and so, there is nothing to be part of the Bill. Thank you, Member for Migori and the Member for Homa Bay. The two of you are awake.

*Clause 13*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 13 be deleted.

Clause 13 speaks to matters of failure to make disclosure. This is also another part that we had proposed a new clause just like in the earlier provision that we have dealt with in Clause 12. In the particular matter raised under Clause 13, we made a similar recommendation that Clause 13 be deleted in its entirety and in its place, we have 19A which covers disclosure of funds. The matter of disclosure of funds took a lot of time of the Committee and there was no way we could have been able to amend parts of Clause 13. We took the decision to delete the entire Clause 13 and come up with a new clause. That is what we have. So, I ask Members to support the deletion of Clause 13 and when we come to Clause 19A, those matters will be canvassed.

*(Question of the amendment proposed)*

**Hon. Mwaura:** Thank you, hon. Temporary Deputy Chairman. I had a very minor amendment, if you can look at my proposal. The import of my amendment was to suggest that political parties should not be disqualified on account of having had a candidate who never made a full disclosure of his expenditure. Maybe, I will comment about this further because from the new amendment, I think this is still retained.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Well, hon. Mwaura, we are learning, I am sure when we are through with this clause, we will not make mistakes or if we do, they will be fewer mistakes. Therefore, you will see that if the amendment

proposed by the Chair is carried, then yours will automatically drop because it will have nothing to hang on and there will be nothing to amend.

**Hon. Angatia:** Thank you, hon. Temporary Deputy Chairman. I rise to support the Chair of the Committee. Disclosure deals with what happens exactly during the election campaign period. Malicious campaign, propaganda and all this will land at the IEBC.

During that period, your political rival will want to capitalize on anything to bring you down. So, if we do not delete this clause, we are endangering ourselves. Therefore, it is better we delete it and replace it with the content in Clause 19 which is similar to this but is better addressed in this Act, than in Clause 13.

So, I support the amendment.

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

*(Clause 13 deleted)*

#### *Clause 14*

**Hon. (Ms.) Kanyua:** Thank you, hon. Temporary Deputy Chairman. I beg to move:-

THAT, Clause 14 be deleted.

With regard to Clause 14, again, the Committee proposed its deletion. The clause is on the matter of spending limits and on the Order Paper, we do have a new Clause 20A on spending limits. The Committee really wanted to make sure that some of these matters that are very pertinent like spending are covered in detail and in a way that everybody participating in an election will follow.

Therefore, I will propose again that hon. Members agree with the Committee that we delete Clause 14. When we come to Clause 20A, we will look at the spending limits as proposed in the Order Paper.

*(Question of the amendment proposed)*

**Hon. (Ms.) Nyasuna:** Hon. Temporary Deputy Chairman, I agree with the proposed amendment. My only question is that, we have deleted many sections and now they are not part of the Bill, will they be re-numbered or what will happen?

**The Temporary Deputy Chairman** (Hon. Kajwang’): Yes, they will be re-numbered. That can also be done by corrigenda. There is simple way of cleaning it up and re-numbering it.

**Hon. (Ms.) Nyasuna:** Is that something we can do here?

**The Temporary Deputy Chairman** (Hon. Kajwang’): No. It is something which the law reform or the drafters can do.

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

*(Clause 14 deleted)*

*Clause 15*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 15 be deleted.

Clause 15 deals with matters relating to contributions and sources of campaign financing. We have proposed a new clause on these matters. So, we recommend that this particular Clause 15 also be deleted. When I make presentation on the new clause, hon. Members will follow how the matters of contribution and spending limits will be linked.

So, we propose that Clause 15 be deleted.

*(Question of the amendment proposed)*

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

*(Clause 15 deleted)*

*Clause 16*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 16 be deleted and replaced with the following new

clauses-  
Sources of  
campaign  
finances

16. The sources of funds for purposes of financing party nomination, election or referendum campaign are—

(a) contributions received from any person, political party or any other lawful source;

(b) contributions from a lawful source, not being from a foreigner, a foreign government, a foreign intergovernmental organization or non-governmental organisation; and,

(c) contributions from a harambee.

Limits to  
contributions

16A. (1) The Commission shall, at least twelve months before a general election, by notice in the Gazette, prescribing limits on—

(a) total contributions;

(b) contributions from a single source;

(c) paid-up media coverage;

(d) loan forming part of a contribution, which a candidate, political party or referendum committee may receive during the expenditure period.

(2) Except where contribution is from a candidate to that candidate's campaign financing account, or from a political party or a



referendum committee to that political party's or referendum committee's campaign financing account, no contribution from a single source shall exceed ten per cent of the total contributions received by that candidate, political party or referendum committee.

(3) The Commission shall prescribe the limit beyond which contributions received by a candidate, a political party or a referendum committee from a single source may be disclosed.

Hon. Temporary Deputy Chairman, this speaks to the sources of campaign finances; the sources of funds for the purposes of financing party nomination, election or referendum campaign and contribution received from any person, political party or any other lawful source.

Part (b) speaks to contribution from a lawful source not being a foreigner, a foreign government, a foreign inter-governmental organisation or a non-governmental organisation and contributions from *Harambee*.

The Committee proposes to limit the number of persons who can contribute to the campaign of a political candidate. The reasons are that we want genuine candidates for this country. We also do not want foreigners to have a greater hand in the manner in which we conduct our elections, especially in the manner of financing candidates. We do not want a candidate who is owned by a foreign government or a particular organisation by virtue of having received funding.

In the same vein, in the proposed Clause 16A, the Committee looked at limits to contributions and proposes that the Commission shall at least 12 months before a general election, by notice in the Gazette, prescribe limits on total contributions, contributions from a single source, paid up media coverage and a loan forming part of a contribution, which a candidate, political party or a referendum committee may receive during the expenditure period.

Again, the Committee's reasoning, especially on contribution from a single source, is that if a candidate or a party has only one person contributing 100 per cent of the budget, there will be problems. That particular candidate or party will have to bend to the wishes of the financiers. The ideal position is that there are limitations as to how much a single donor can contribute to a campaign or candidate or political party or even a referendum committee.

Under the proposed Clause 16A(2), we are saying that where contribution is from a candidate to that candidate's campaign financing or from a political party or a referendum committee to that political party or referendum committee's campaign financing, no contribution from a single source shall exceed 10 per cent of the total contributions received by that candidate or political party or referendum committee.

A single donor can only give up to 10 per cent in terms of funding of the budget of a political party, a candidate or a referendum committee. The Commission shall prescribe the limits beyond which contributions received by a candidate or a political party or a referendum committee from a single source may be disclosed. I would urge that hon. Members look carefully at some of the proposals contained here because they have far-reaching implications. Those of us who have had links with Non-Governmental Organisations (NGOs) need to look carefully at whether it is indeed okay to allow funding from an NGO for a political candidate.

We also need to look carefully at how much such an organisation can donate. There was a lot of debate in the Committee meetings as to how much a single donor should give in a campaign or a candidate's kitty. The ceiling was finally set at 10 per cent in the proposals contained in the new proposal under Clauses 16 and 16A.

With those remarks, I beg to move the amendments.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang'): Yes, hon. Musimba.

**Hon. Musimba:** Thank you, hon. Temporary Deputy Chairman. I think I want us to be careful as already the Chair has highlighted, especially when you are trying to set a limit on campaign contribution from a single source more so when it comes to independent candidates. This is because you are going over a raft of political parties and this would sort of negate their positions. So, I am pleading with the Chair that we find a suitable wording where we are saying "contributions from single source" especially under Clause 16A (b) to remove the 10 per cent limit and leave it open.

Thank you, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang'): All right. The problem is when you make a contribution which does not amount to an amendment, then that is the best it can be. It can only be a contribution.

**Hon. Musimba:** Delete the 10 per cent.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Which sub-clause are you looking at?

**Hon. Musimba:** Contributions from a single source and that is sub-section 2.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Delete it to be what?

**Hon. Musimba:** Not to exist at all. You should not limit it.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Which is all right but you see amendments cannot be such that they negate the objective of the proposer. So, I appreciate that you are putting a further amendment but it looks like it is shaking the foundation of the Mover.

**Hon. Musimba:** That is why I am pleading with the Chair to relook at it.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Then you need to consult the Chair. Let us move forward. Everybody is contributing and repeating themselves. Member for Kibra.

**Hon. Okoth:** Thank you, hon. Temporary Deputy Chairman. I would actually like, as we look at Clause 2 where we are talking about the 10 per cent, to further amend that to give people leeway and make it 20 per cent.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Can all of you who want to give their amendments concerning this, consult with the Chair? That is if they are substantive. So, Member of Kibra consult with the Chair.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I wish the Chair of the Committee could make us understand the proposals under Clause 16(b) – contributions from a lawful source, not being from a foreigner, a foreign government, a foreign intergovernmental organization or non-governmental organization.

The reason I am asking this is because even in Kenya we have a lot of multinational corporations whose shareholding are actually foreign governments. What happens when you get a contribution from a multinational corporation resident in Kenya whose shareholding wherever they come is from foreign government? Is that considered a contribution from a foreign government? I think we need to be very careful with some of these clauses. They look harmless but they can bring points of big arguments especially when push comes to shove. Could I kindly ask the Chair of the Committee what she means by “foreign government”? What about multinational corporations that for example are resident in Kenya and are owned primarily by foreigners? Are they foreign government?

**The Temporary Deputy Chairman** (Hon. Kajwang’): If you want to bring a further amendment, please do so. Let us not reduce it to an argument. Member for Kibra, do you still have that we should still have 20 per cent instead of 10 per cent?

**Hon. Okoth:** Hon. Temporary Deputy Chairman, Sir, I think we should go for 20 per cent. Since I was asked to go on a long journey to persuade the Chair on the substance of my request for a further amendment, I would like to consult with her but I can also explain to everybody here for their benefit.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Okay. Can you move that further amendment?

**Hon. Okoth:** Hon. Temporary Deputy Chairman, Sir, I propose that we further amend Clause 16A (2) where it says “no contribution from a single source shall exceed ten percent.” That should be amended to say “no contribution from a single source shall exceed twenty per cent of the total contribution received by that candidate, political party or referendum committee”.

The rationale behind this is that if you are influential enough, you have the connections and friendships to finance your campaign from five people, then you should be able to do it and focus on campaigning rather than to be limited to look for 10 people to fund your campaign. That is simpler and easier.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Can you just follow me and speak to the HANSARD because your further amendment is deleting a word and replacing it with another word? So, just be clear and say---

**Hon. Okoth:** Hon. Temporary Deputy Chairman, Sir, I propose that we delete the words “ten per cent” and replace them with the words “twenty per cent.”

**The Temporary Deputy Chairman** (Hon. Kajwang’): It amounts to the same thing. You are proposing to delete the word “ten” and replace it with the word “twenty”?

**Hon. Okoth:** Yes, hon. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Can you go on consulting so that you will be there when I come back.

Yes, hon. Nyasuna.

**Hon. (Ms.) Nyasuna:** Hon. Temporary Deputy Chairman, Sir, first, I would like to speak to Clause 16(b) on a matter that has already been raised by hon. (Eng.) Gumbo on contributions from a lawful source not being a foreign government, a foreign inter-governmental organization or an NGO. I would like to say that this is likely to disadvantage particularly women and candidates from marginalized communities who have many times benefited from contributions from NGOs especially in terms of capacity building and several other agenda within their campaign. I would like to have an

opportunity to consult with the Chair because I would like to move a further amendment to this particular clause.

I would also like to move a further amendment to the further amendment moved by the Member for Kibra. Rather than make it “twenty per cent” my proposal is “thirty per cent”. The reason for 30 per cent is that even in any shareholding, if somebody owns more than a third of you then he or she really owns you. I think the intent of this is to stop candidates from being owned by people and, therefore, held captive after elections to the whims of those people. You can increase it to 30 per cent because if they do not own more than 30 per cent of you then they really do not own you.

**The Temporary Deputy Chairman** (Hon. Kajwang’): The County Woman Representative for Homa Bay, while you are still on your feet, move a further amendment to the hon. Member for Kibra’s further amendment so that we dispose of this percentage thing first before we go to where we were. This is because we are going to lose track very easily.

**Hon. (Ms.) Nyasuna:** Hon. Temporary Deputy Chairman, Sir, I would like to move a further amendment.

**The Temporary Deputy Chairman** (Hon. Kajwang’): The Hon. Member for Kibra, you now have the text of the further amendment that you had proposed to the House. So, let me propose the Question.

*(Question of further amendment proposed)*

Hon. Sakaja, where are you? It is very simple. You need to understand where we are so that there is no confusion here.

**Hon. Sakaja:** I would like to inform Members that we have other laws that prescribe the maximum contribution from an individual, particularly the Political Parties Act. It talks of 20 per cent. We would be better informed so that we do not contradict another statute that is already in operation.

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Speaker, I would like to support the 20---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Member for Homa Bay, for as long as we have this amendment you cannot leave the Chamber.

**Hon. (Ms.) Kanyua:** I agree with the amendment raised by the Member for Kibra about the 20 per cent. The spirit of the law is to avoid the funding of a candidate by certain wealthy individuals and then ruining the election. When you talk of 30 per cent, it means that three people can fund your entire campaign budget. At least, 20 per cent is one-fifth of whatever budget and we will also avoid contradicting another law.

With regard to the amendments proposed by the hon. Member for Homa Bay that we delete “NGOs” and that we also delete, as raised by hon. Eng. Gumbo---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order, hon. Kanyua. Just talk about this 10 per cent, 20 per cent and 30 per cent only.

**Hon. (Ms.) Kanyua:** For now I will leave it at 20 per cent, but I urge that we go back to 16 on the foreign issue because that is a bit contradicting.

**The Temporary Deputy Chairman** (Hon. Kajwang’): I will put the Question on the amendment.

*(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)*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, Sir, I think there was an issue to be cleaned in Clause 16. The one we have cleaned now is the New Clause 16A. However, if you look at the sources of campaign funding, they are next to each other. So, there is an issue around the foreign, NGO and even foreign inter-governmental organisations. Given the debate by the Members, we want to limit contributions from a lawful source. They should not be from a foreign government. The intention of the Committee is to stay within the Constitution, but more importantly to also limit the interference of foreign governments in elections, not just in Kenya, but also in Africa. However, we can allow a foreigner, an individual, because hon. Millie had alluded to the incidents of Members being married to foreigners. So, there would be a problem of even denying a spouse the chance to contribute. There was also the question of also an NGO, as raised by the Member for Home Bay, that many women and young people get supported by NGOs in this country in terms of funding. If you look at our definition of “support”, you will see that we recognised non-monetary contributions. So, if you recognise non-monetary contribution like capacity building, you will then in essence be negating that by deleting “NGOs”.

Finally, the amendment that I propose would be to the effect that contributions from a lawful source not being directly from a foreign Government or a foreign inter-governmental organisation.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you, Member for Nyeri County. I am listening to you patiently, but as I have said, we are on a learning experience. One, we have passed that stage. Two, it is not possible that you can propose further amendments to your own amendments. These are the rules that we have. Some other Member must do it. So, you cannot do that. You could have raised it, but you are running into a technical problem. I do not want to open this to discussion. Member for Homa Bay, we are already on Clause 17. I will allow you to speak to it. Hon. Phillip Rotino, before the Member for Homa Bay.

**Hon. Rotino:** Hon. Temporary Deputy Chairman, Sir, you have rightly said that we have already passed that clause. Even if we have to go back, I will not support that. I will leave it as it is because some of us come from the Arid and Semi-Arid Land (ASAL) areas and we have to have a fair playing ground for everybody, so that some people do not get an advantage of getting NGOs to support them and others do not. I wish that we leave it the way it is.

**Hon. (Ms.) Nyasuna:** Hon. Temporary Deputy Chairman, Sir, when I contributed earlier, I indicated my intention to move an amendment to subclause “b”. You refrained me saying that we should, at that point, just focus on the percentage, which I much obliged. However, before I realised it, you moved to the next one. I had indicated explicitly my intention to move an amendment. I had indicated that I needed to consult with the Chair and you refrained me and said that from now, we should deal with the issue of percentage and then come back and deal with the others.

**The Temporary Deputy Chairman** (Hon. Kajwang’): You were consulting on the issue of thirty, twenty and ten per cent?

**Hon. (Ms.) Nyasuna:** I was very clear that I was consulting on the issue of NGOs as to the exact of the amendment I was going to be moving. In the event that we passed it, I will then be seeking a recommitment.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Okay, in principle, I do not want to recommit so many clauses. It is not tidy. Hon. Nyikal.

**Hon. (Dr.) Nyikal:** Hon. Temporary Deputy Chairman, Sir, they basically did. The hon. Members for Homa Bay and Nyeri and the Chair said categorically on the other issue that: “Stick to the issue of the number 20 per cent.”

Therefore, I think I would support her request for re-commitment.

**The Temporary Deputy Chairman** (hon. Kajwang’): Okay. Since you have been very industrious and you have been keeping awake, I will allow a re-commitment on Clause 16 (b), but only limited to that issue; you can hear the spirit of the House.

Hon. Rotino has talked very passionately. So, even as you are considering that, we have pastoralist communities in many parts of this country, who you may want to look at whether your amendment would be necessary or not.

All right, next clause.

*(Clause 16 recommitted)*

#### *Clause 17*

**The Temporary Deputy Chairman** (Hon. Kajwang’): You need to multi-task now.

**Hon. (Ms.) Kanyua:** Yes. Thank you, hon. Temporary Deputy Chairman, Sir. I beg to move:-

THAT, clause 17 be amended by deleting subclause (4).

On this clause, the recommendation of the Committee is to the extent of Subclause (4). The Committee proposes that Sub-clause (4) be deleted and that requires a referendum because it proposes very draconian penalties to Members and their parties, if they fail to comply with the requirements of this particular law.

The proposal earlier in the Bill was that, if you fail to comply or commit any offence, at the first instance, you will get disqualified from contesting in that election or referendum.

The proposal by the Committee which I will come to in the new clause is a structured punishment mode that, first there is a notice to comply followed by another penalty and then only at the final instance would disqualification be applied. In any case, it is indeed, true that if a party does not qualify or a Member does not qualify or if a member does not comply with its requirements, they can be disqualified, but the Committee does not want that to be at the first instance. That should be as a final result and as a final penalty.

**The Temporary Deputy Chairman** (Hon. Kajwang’): So, those ones are coming ahead. Is that not so?

**Hon. (Ms.) Kanyua:** Yes. That Clause 17 subclause (4) be deleted.

Thank you.

*(Question of the amendment proposed)*

**Hon. (Dr.) Pukose:** Thank you, hon. Temporary Deputy Chairman. I stand to oppose that amendment because when you look at the other sections, we are talking about people declaring whatever they have received. Should we not have a remedy to that which we can put?

In subclause (3), we are saying that if you do not do this then you have committed an offence. Just saying that you have committed an offence is not enough, we should move a step further and even disqualify the candidate. I do not think that we should be so much lenient. I think we are doing these things for ourselves, and that will not be good. We should also do it for others and let others also do it for us so that we have penalties for whatever happens.

**Hon. (Ms.) Juma:** Thank you, hon. Temporary Deputy Chairman. I think the Chairlady explained that the Committee has made provisions for that later on. It is not the first thing that happens when you have not complied. This is because we know there is mischief in politics within our country and the heat of elections and so on. It would be a way in which a candidate can be removed by the competitor. So, I think what the Chair is saying is fine.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Therefore, you are supporting the Chairlady.

**Hon. Okoth:** Hon. Temporary Deputy Speaker, Sir, I am actually concurring with the amendment as proposed by the deputy chair of the Departmental Committee on Justice and Legal Affairs on this amendment.

**The Temporary Deputy Chairman** (Hon. Kajwang’): You are supporting.

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

*(Clause 17 as amended agreed to)*

#### *Clause 18*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 18 be amended—

(a) in sub clause (2), by deleting the phrase “or a state institution” and substituting therefor the words “a state institution or a public officer”;

(b) by deleting subclause (3) and substituting therefor the following new subsection—

“(3) A candidate who or a political party or a referendum committee which receives any campaign support referred to in subsection (1) shall, within forty-eight hours of the receipt, report such receipt and submit the contribution to the Commission”;

(c) by inserting the following new subclause immediately after sub clause (5)—

“(6) A candidate who or a political party or a referendum committee which contravenes subsection (1) commits an offence”.

Hon. Temporary Deputy Chairman, on Clause 18, the Committee proposes an amendment in subclause (2) on prohibitions of contributions. There is deletion of the words “or a state institution” and substituting therefor the words “a state institution or a public officer”, so that prohibition for contribution can be to both a state institution and a public officer to ensure that they do not use public resources to support or campaign in support of a candidate, a political party or a referendum committee or support any organisation. The prohibition will cover state institutions and public officers.

We have a further amendment in sub clause (3) deleting the existing subclause and replacing it with a new subsection which says that a candidate or a political party or a referendum committee that receives any campaign support referred to in subsection (1) shall, within 48 hours of the receipt, report such receipt and submit the contribution to the Commission. If you receive any funding from the State or from a public officer or from a State institution, the party or the candidate will be required to submit that money to the Commission, and not keep it.

Hon. Temporary Deputy Speaker, there will be another subclause coming after subclause (5), which says that a candidate or a political party or a referendum committee that contravenes subsection (1) commits an offence. If you receive any campaign support as a candidate of a political party or a referendum committee from a State institution or a public officer, you will have committed an offence. So, that is the extent of the amendments on Clause 18, prohibiting contributions by State institutions or public officers and going further to detail what should happen if you receive any support from any of those institutions and persons that are prohibited from supporting you.

*(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 18 as amended agreed to)*

#### *Clause 19*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 19 be amended—

(a) in sub clause (2), by—

(i) deleting the word “expenditure” in paragraph (c) and substituting therefor the words “campaign financing”;

(ii) deleting the word “three” in paragraph (c)(i) and substituting therefor the word “eight”;

(b) in subclause (4), by deleting the phrase “expenditure committee” and substituting therefor the words “authorised person”.



Hon. Temporary Deputy Speaker, the amendment to subclause (2)(c) is only to the extent of changing the words “expenditure” to “campaign financing”. It is just a matter of language. In the subsequent amendment proposed on subclause (c)(i), we are dealing with the question of timelines. Any person who will be going into electoral campaigns must open a campaign financing account into which the contributions shall be deposited. In the case of a candidate or a political party committee, the account will be opened eight months before the polling day. The earlier provision was for three months. The Committee felt that three months is too short a period and decided that for purposes of getting funding, the account needs to be opened eight months before the polling day. That is the extent of the proposal of the amendments to Clause 18.

In Clause 19(4), we have another issue of clarifying the language in the sense of removing the “expenditure committee” and bringing in the “authorised persons”, whom we have defined in Clause 6.

Thank you.

*(Question of the amendment proposed)*

**Hon. Sakaja:** Hon. Temporary Deputy Chairman, I am not convinced and I would just like to ask if possible, why the extension from three months to eight months is necessary? In the course of your campaigns, they usually change. As you keep campaigning, you might be able to convince more people to support you. If within three months of the polling day you have overwhelmingly convinced a new organisation to support you, I think we should not prohibit that organisation from being able to support you because three months is good enough time. I have not understood really the justification of eight months before an election.

Hon. Temporary Deputy Chairman, you should also remember that nomination is done for 45 days. Many other factors like which party you are likely to be nominated under and whether your opponents are dropping out or not, influence whether people want to support you. So, I do not think we should limit ourselves to eight months because in many respects in eight months you really may not be allowed to be campaigning according to other laws that we have. So, how are you getting funding when the official campaign period has not started? So, I think to be safer we need to drop that and remain with three because three will be well within the official campaign period and we will not be cutting ourselves at our feet when we get new support based on the political dynamics such as the political party you will be running on and what is happening with other candidates.

So, with that I would like to oppose the amendment that is increasing the time to eight months because actually it may even be illegal to receive campaign funds when you are not in a campaign period. So, I really beseech the Chair to drop that particular one and leave it at three.

**Hon. (Dr.) Pukose:** Hon. Temporary Deputy Chairman, I think I want to support the Chair with the amendment because what the statement is saying is: “open an expenditure account into which contributions shall be deposited in the case of one, a candidate or a political party committee.” In here they are saying three months and they are amending it to eight months before the polling day. If you open it early enough candidates know that you are going into campaigns. So, opening it early enough gives

you enough time to prepare. If you are limiting to within three months before the elections, then that period is too short for you to be able to organise. It is talking of an individual. Eight months means there is adequate time for you to prepare and get contributions. Thank you.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Mwaura, the Chair is aware of your amendments and they are in the Order Paper. Do you want to contribute to this?

**Hon. Mwaura:** What the Mover has proposed, it is also in tandem with a proposal in law. It is a provision that you should stop going for *Harambees* eight months before the campaign. It also gives ample time for accountability and monitoring over a long period of time. In my opinion, three months is too short, it is the official campaign period and it is very difficult to say that, that is the only time we start using money on election.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Do I feel a consensus on this? I feel a consensus. So, I will put the Question.

*(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** (Hon. Kajwang’): Hon. Mwaura.

**Hon. Mwaura:** I seek to move an amendment to subclause 4 of Clause 19, by deleting the word “one” appearing therein and substituting thereof the word “two”. What this means is that organizations that may support a candidate have at least two months to report the expenditure that they may have incurred towards this activity. That is why I thought one month is actually very short for people to account and you know very well that even after that, there are so many activities including petitions and all of that.

**The Temporary Deputy Chairman** (Hon. Kajwang’): what do you want to do with subclause (3)?

**Hon. Mwaura:** No, Subclause (4).

**The Temporary Deputy Chairman** (Hon. Kajwang’): It is Subclause (2) paragraph (b)

**Hon. Mwaura:** I am sorry. Thank you for guiding me. I would like to delete that provision. The organization should register with the Commission. I think it is unnecessary, because that will mean they first go and declare they want to support a certain candidate, and I think that is cumbersome. I would rather it is deleted.

**The Temporary Deputy Chairman** (Hon. Kajwang’): So, can we dispose of hon. Mwaura’s amendment? Chair, did you get the gist of hon. Mwaura’s amendment?

*(Question of the amendment proposed)*

**Hon. (Ms.) Kanyua:** I do support hon. Mwaura’s amendment on Clause 19 (4). The change from one month to two months to extend the time within which the final report will have to be submitted. I agree that one month may be too short. But I do not

support hon. Mwaura's other amendment deleting Clause 19 (2) (b), the requirement to register with the Commission. I would urge you to drop it, and then we are left with the amendment of one month to two months. We will support and pass this one.

**The Temporary Deputy Chairman** (Hon. Kajwang'): So, we have hon. Mwaura's amendment that we have to deal with. I will put it to a vote. You have heard the contribution; I think we have a consensus. Can we do it piece by piece?

*(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 19 as amended agreed to)*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, Sir, before Clause 20, there is New Clause 19(A) that is after Clause 19 which we have adopted with hon. Mwaura's amendment. If you look at the Order Paper, you will see New Clause 19(A)---

**The Temporary Deputy Chairman** (Hon. Kajwang'): No, we will take the New Clause after we are through with the clauses with amendments. Again, that is in the Standing Orders. So, go to Clause 20.

*Clause 20*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 20 be deleted and replaced with the following new

clause—

Surplus

campaign

funds.

20. (1) A candidate, political party or a referendum committee shall—

(a) within one month after the date of an election or referendum, notify the Commission of any surplus campaign funds held in the expenditure committee;

(b) within two months after the date of an election or referendum, submit the surplus campaign funds to—

(i) in the case of a political party campaign finance committee, to the political party;

(ii) in the case of a party candidate, to the political party that nominated the candidate;

(iii) in the case of an independent candidate or a referendum committee, to a charitable organisation preferred by that independent candidate or referendum committee, as the case may be;

(c) within three months after the date of an election or referendum, report to the Commission in respect of the action taken under this section.

We are proposing a deletion of Clause 20 as currently worded. We want it to be replaced with New Clause 20 that provides for surplus campaign funds. The question of surplus campaign funds took the Committee to task in terms of exercising their mind on what to do with excess campaign funds.

I know most Members will agree that if you come from a certain region and you are in a certain political party, you actually get 50 per cent of mileage from that political party. So, the Committee felt that it was only fair that if you have excess campaign funds and in the spirit of strengthening our political parties--- This is very rare occasion that people will have excess campaign funds. However, in the event that you have the excess campaign funds and you are a political party candidate, you will donate or submit the excess funds to the political party.

An independent candidate could pick a charitable organization of choice to give the surplus campaign funds. This was important because the law has already allowed contributions and has allowed people to contribute to the campaign of a candidate or a political party.

Lastly, if you give the money to the political party or a charitable organization of your choice as an independent candidate the report of that will be given to the Commission within three months. That is how the Committee proposes to deal with excess funds.

I beg to move.

*(Question of the amendment proposed)*

**Hon. Rotino:** Hon. Temporary Deputy Chairman, Sir, in supporting what the Chair has said, I wish to move an amendment--- I feel that one month is a very short time. If you finish an election, you have fatigue of the election and you are not able to prepare this within one month. So, I propose an amendment to the effect “three months after the date of an election”.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Which subsection are you referring to?

**Hon. Rotino:** Hon. Temporary Deputy Chairman, Sir, that is Clause 20(1)(a) which says “within one month after the date of an election or referendum---”

**The Temporary Deputy Chairman** (Hon. Kajwang’): So, you delete one month and you replace it with three months?

**Hon. Rotino:** Yes, hon. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Hon. Kajwang’): That is okay.

Hon. Musimba, I am sure that you want to contribute to the amendment as proposed by the Chair but now we have a further amendment which has been proposed by hon. Rotino. Can we dispose of the further amendment by hon. Rotino?

*(Question of further amendment proposed)*

We can now conduct both amendments together.

Yes, hon. Musimba.

**Hon. Musimba:** Thank you, hon. Temporary Deputy Chairman, Sir. I wanted to propose a further amendment to Clause 20(b)(iii) which talks about the independent candidates. It says that surplus funds be committed to a charitable organization of choice. I want to delete that so that the candidate is able to retain it for purposes that other candidates who are in political parties will be able to benefit from the political parties funds as a source of residual income to carry on the activities.

In the case of an independent candidate, he has no other funds to carry on any sensitization or political mobilization thereof after an election. So, I was pleading with the Chair----

**The Temporary Deputy Chairman** (Hon. Kajwang’): In actual fact, what you are asking is to delete the amendment on part (iii). You see, you cannot do that. Just amend so that it reads, “to the charitable organization.” Can you, therefore, read what your amendment states?

**Hon. Musimba:** In the case of an independent candidate, or a referendum committee--- Hon. Temporary Deputy Chairman, give me time so that I reword it. This is because it has an import of also altering the referendum committee and I want that committee to be able to give to a charitable organization.

**Hon. (Ms.) Mbalu:** Hon. Temporary Deputy Chairman, I was to contribute on Clause 20(1)(a) in support of that amendment that talks of three months.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Just go on.

**Hon. (Ms.) Mbalu:** Hon. Temporary Deputy Chairman, I think that one month after the date of election or referendum it is still short to notify the Commission. I support the amendment of providing for three months.

**Hon. (Ms.) Nyasuna:** Hon. Temporary Deputy Chairman, I would like to support the amendment as proposed by the Chairman of the Departmental Committee. Earlier on I was a bit hesitant in this thing of giving money back to the party because many of our parties do not really give you money. However, after the explanation that you actually get mileage from your party--- By just being in that party you actually get mileage. I do support that you actually give anything left, but I also support this in view of the fact that really for you to have surplus in a campaign, you must be well endowed. Many times I do not think it will occur, but there will be surplus. It is not bad to have a safety net in case you have surplus to return.

On the amendment being raised by hon. Musimba, the independent candidate, in aiming at retaining the money--- I think the spirit is that this is money that you have received from elsewhere. These are donations and they are supposed to be for the campaign. Now, when you retain such money and use it for yourself, it is not right. So, I think this is really the thing.

**The Temporary Deputy Chairman** (Hon. Kajwang’): I am entertaining a lively debate, but you know very well that hon. Musimba has not moved the amendment. We want to keep awake here.

**Hon. (Ms.) Nyasuna:** Hon. Temporary Deputy Chairman, Sir, my good friend would like to inform me and I accept the information.

**Hon. Sakaja:** On a point of information, hon. Temporary Deputy Chairman, Sir. Maybe the Member for Homa Bay is not aware that hon. Musimba is an independent Member of his own class. I am not sure if anyone contributes to his campaign. So, he is worried that his own contributions, which might be 100 per cent, will be going to another

organisation. That is what we need to address and have a special provision for hon. Musimba, probably.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Can I hear hon. Nyokabi? Can I hear you on both of those issues? You have heard the responses. Can you have a right of reply?

**Hon. (Ms.) Kanyua:** I was just pointing out to hon. Musimba that indeed, what hon. Wanga is saying is true that sometimes you raise funds from other people. When the Committee looked at this issue, they thought that it is not fair for the independent Member to keep the funds which were raised for purposes of a campaign and now are surplus. However, when it says “charitable organisations preferred by the independent candidate”, it allows a lot of leeway to the independent candidate to put the surplus funding in whichever organisation they want. The Committee was thinking more in terms of the area where the Member had tried to vie. You could direct the funds to that particular area. I would not support his amendment. We are carrying the Committee’s amendment together with the one that was passed for three months as it is.

**Hon. (Ms.) Juma:** Hon. Temporary Deputy Chairman, Sir, I just wanted to make a small further amendment, which I think you will like.

I beg to move:-

THAT, Clause 20(1)(b)(ii), be amended by adding the words “to the activities for youth, women, persons with disabilities” between the words “the” and “political party”.

So, it reads that “in the case of a party candidate, for the activities of youth, women, persons with disabilities of a political party that nominated the candidate”.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Can you read it again? Can you read how it would be after it has been done?

**Hon. (Ms.) Juma:** Hon. Temporary Deputy Chairman, Sir, “in the case of a party candidate, to the activities for youth, women, persons with disabilities of a political party that nominated the candidate”.

**The Temporary Deputy Chairman** (Hon. Kajwang’): I see your proposed amendment, but before I even propose it, I do not think, we as the House, want to get involved in how political parties manage themselves. We want to limit ourselves to the principal, which is the political party. There is a Political Parties Act which is already regulating the political parties. Therefore, in our oversight responsibilities, we would be getting too much if we direct parties what to do with themselves.

**Hon. (Ms.) Juma:** Is that a ruling?

**The Temporary Deputy Chairman** (Hon. Kajwang’): This is not a ruling, it is just an intervention to guide you.

**Hon. (Ms.) Juma:** I still stand by my amendment because I know in political parties, sometimes the marginalised groups lose out a lot. They want to do their own activities sometimes and money would go into other activities. So, if the surplus can come, it will assist these marginalised groups within political parties.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Okay, it is your right. So, can we just get it correctly? Put the words.

**Hon. (Ms.) Juma:** Hon. Temporary Deputy Chairman, Sir, “in the case of a party candidate, to the political party that nominated the candidate for purposes of activities for youth, women, persons with disabilities of a political party that nominated the candidate”.

**The Temporary Deputy Chairman** (Hon. Kajwang’): You are saying activities for the youth, women and---

**Hon. (Ms.) Juma:** I am saying persons with disability of a political party that nominated the candidate.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right. We have another further amendment--- Let me propose this one also so that we then deal with them.

*(Question of further amendment proposed)*

Gentlemen, it is the hon. Member’s right to propose, but it is your duty to debate. I do not want to put it to further debate, but to Question. Can I put the entire thing to debate? Let us hear from hon. Sakaja.

**Hon. Sakaja:** Hon. Temporary Deputy Chairman, I understand what the hon. Member wants to achieve. If you act in that manner, then it is not clear where the money goes to. This is because at that point you cannot give money to an activity; you give money to the party, but the money is for the activity. Therefore, the wording: “activities for youth and women” should come after, in the case of party candidate nominated for the purposes of activities benefitting youth, women and the rest. That is neater, and it is clearer in terms of her intention.

Hon. Temporary Deputy Speaker, Sir, the political parties fund is very clear in the Political Parties Act that certain percentages need to go to certain usage though, I do not anticipate that this amount might be too much.

So, I will support when the Question is put.

**The Temporary Deputy Chairman** (Hon. Kajwang’): You will support and yet you are telling her that it is not properly placed?

Can I hear from the Chair on this matter?

**Hon. (Ms.) Kanyua:** Thank you, hon. Temporary Deputy Chairman. It is with a little of constraint that I have to oppose what the Member is proposing. In this law, it is being proposed for all candidates and it proposes to create a fair and level playing field for all candidates, whatever their status in life. Therefore, only in the surplus funds to try and bring in persons with disability, youth and the women; I think we will be judged very badly. It is rare that campaigns have surplus funding and the Political Parties Act already takes care of what will happen to young and people living with disabilities in a fair amount of detail.

So, this particular area is only in the very rare case that there is excess campaign funding. It would be unfair to persons with disability that they only appear where they may not appear. So, I would be hesitant to include them at this point. Since the leaders are here and most of us are in parties, let us hear their views.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Members, we are also supposed to declare our interests as per the Constitution. So, hon. (Ms.) Juma, as young person on that matter, I hope the groups that by age are associated to you are not going to receive the surplus funds because of these amendments. But anyway, let us put this to question so that we start with this amendment of hon. (Ms.) Juma.

Hon. Zuleikha, as advised by hon. Sakaja, do you want to put these words elsewhere? How do you want it to read? It should come from you, and not from the Chair.

**Hon. (Ms.) Juma:** Hon. Temporary Deputy Chairman, I want it to read: “in the case of a party candidate, to the political party that nominated the candidate for purposes of the activities of youth, women and persons with disability.”

Should I repeat, Chair?

**The Temporary Deputy Chairman** (Hon. Kajwang’): No, we have captured it.

Hon. Members, I put the Question which is that Clause 20 be further amended in subclause 1, paragraph (b)(ii) by inserting the words “for the activities for youth, women and persons with disabilities” after the word “candidate” appearing therein.

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

Hon. Members, I put the Question that Clause 20(1)(a) be further amended as proposed by hon. Philip Rotino by deleting the words “one month” and replacing therefor the words “three months”.

*(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 20 as amended agreed to)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Mwaura, in view of the amendment that we have just disposed of, you can see the fate of your amendment. What you intended to change has not only been deleted but it has also been replaced.

Next clause!

*Clause 21*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Am I moving too fast, hon. Vice-Chairperson?

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, we are very charged even at this very late hour. We have New Clause 20A.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Vice-Chair, we do not have a problem with the new clauses. According to the Standing Orders, we have to, first of all, finish with all the clauses that have amendments. We will then move to the new clauses, followed by the Long Title and the Short Title, in that order. So, that is taken care of. So, move the amendment to Clause 21.

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-



THAT, Clause 21 be amended by deleting the words “PART VI: OFFENCES” and substitute therefor with the words “PART V: DISPUTE RESOLUTION AND OFFENCES”

By inserting the following new clause immediately after Clause

- 20-  
21 Dispute Resolution
1. Any person may lodge a complaint with the Commission alleging that a breach of this Act has been committed.
  2. The Commission, may on its own initiative, investigate a breach of this Act.
  3. Where a complaint has been filed or a breach detected under this section, the Commission shall hear and determine that complaint-
    - (a) within seven days, if filed before an election; and
    - (b) within fourteen days, if filed after an election
  4. In determining this complaint and subject to section 4, the Commission shall have the powers to-
    - (a) request for the attendance of any person believed to have information related to the complaint; or
    - (b) call for any information believed to be relevant in the determination of the complaint.
  5. Where the Commission makes a finding that there is a breach of a provision under this Act, the Commission may make any of the following orders-
    - (a) order the rectification of any record;
    - (b) issue a formal warning;
    - (c) impose a fine as specified under the Regulations;
    - (d) prohibit the errant candidate, political party or referendum committee from campaigning for a specified period or within a specified area;
    - (e) prohibit media coverage of the errant candidate, political party or referendum committee within a specified period;
    - (f) disqualify the errant candidate, political party or referendum committee from contesting in that election or referendum, as the case may be.
  6. Where the offence is discovered after an election and an order of disqualification is made, the candidate or the political party shall be disqualified from contesting in the subsequent by-election or general election.
  7. Where an order of disqualification is made under this section, the order shall be-
    - (a) registered in the High Court, in the case of presidential, parliamentary, governor elections or referendum; and
    - (b) registered in the Resident Magistrate’s Court, in the case of county assembly elections.

Hon. Temporary Deputy Chairman, on Clause 21, on the offences, we have a New Clause 21. We reorganised the section from offences to dispute resolution and offences. The New Clause 21 speaks to questions of dispute resolution and to matters of offences. Let me just follow it as it is here.

In dispute resolution we propose that a person may lodge a complaint with the Commission alleging that a breach of this Act has been committed. The Commission may on its own initiative also investigate a breach of this Act and where a complaint has been filed or a breach detected under this section, the Commission may hear and determine that complaint within seven days if filed before an election and within 14 days if filed after an election.

In determining this complaint and subject to Section 4, the Commission shall have the powers to request the attendance of any person believed to have information related to the complaint or call for any information believed to be relevant to the determination of a complaint. Where a Commission makes a finding that there is a breach of a provision under this Act, the Commission may make any of the following orders: Order the rectification of any record; issue a formal warning; impose a fine as specified under the regulations; prohibit the errant candidate's political party or referendum committee from campaigning for a specified period or within a specified area; prohibit media coverage of the errant candidate, political party or referendum committee within a specific period or disqualify the errant candidate, political party or referendum committee from contesting in that election or the referendum, as the case may be.

Where the offence is discovered after an election and an order of disqualification is made, the candidate or the political party shall be disqualified from contesting in a subsequent by-election or general election. Where an order of disqualification is made under this section, the order shall be registered in the High Court, in the case of a presidential, parliamentary, governor elections or referendum and registered in the Resident Magistrate's Court in the case of county assembly elections.

So, we propose that the new clause that ought to have been in the Order Paper is read together with what we have in Clause 21 so that it is now "offences and dispute resolution".

Thank you. I beg to move.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang'): Hon. Members, the reason I allowed her to speak to the HANSARD is because the Order Paper does not contain the details of those offences. I think by oversight or misprint in the Order Paper but that document is contained in the report which the Chair had already submitted to the House and we have it somewhere in the system. Hon. Sakaja.

**Hon. Sakaja:** Thank you, hon. Temporary Deputy Chairman. I have heard the measures that can be taken by the Commission as read out by the Chair. I would only like to propose that this should not be done singlehandedly by the Commission, in that you do not give the Commission sweeping powers to just make declarations without providing for fair hearing as is the principle in our Constitution. I would suggest really that we have an exclusive provision that such determinations be made once a dispute resolution mechanism and one which exists is the Political Parties Tribunal has heard the matter.

The IEBC could also set up a tribunal or we could set up one legislation but we need to provide explicitly in this provision that a fair hearing must be done because the IEBC might as well prevent a candidate from vying or disqualify you or a political party and those are very drastic measures to be taken unilaterally by the Commission. So, I think we need to put an intervening process between an offence being cited either by somebody reporting or by the initiative of the Commission and there must be a hearing through tribunal that will be set up by the Commission. So, that is what I would like to suggest and I would love to propose an amendment but I do not know where to place it. I would like to propose an amendment that the Commission sets up a dispute resolution tribunal that will provide for fair hearing of a complaint or an investigation by the Commission before any action is taken. That will safeguard everyone.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Those are very good observations but you are sitting next to the Chair. So, can you get that done so that by the time we come back to you, you have an idea? Find out how to bring that to us. Hon. Musimba.

**Hon. Musimba:** Thank you hon. Temporary Deputy Chairman, Sir. I wanted to concur with what hon. Sakaja has said, but specifically highlight that the role of the Commission is to be an arbiter to disputes brought before it. I would like to initiate and say, delete the part that says “on its own initiative”. I do not know exactly where the clause is; I will be moving to the Chair. I would like to say that they can only arbitrate on issues brought before it, in terms of dispute resolution mechanisms that is proposed by the Chair.

**The Temporary Deputy Chairman** (Hon. Kajwang’): The Chair, we are unfortunate that you are a long serving lawyer so you will serve us very efficiently. What the Member is saying is that you could quickly just say that any person may lodge a complaint to the Commission alleging that a breach of this Act has been committed. Then in paragraph 2, you may perhaps say that the Commission shall constitute a dispute resolution tribunal and then 3, everywhere where now you say ‘commission’ you change to ‘tribunal’, but it is your amendment, so carry your cross.

This is another long one. Hon. Musimba. I want to recommend that so that we move faster, in that period of time I am allowing hon. Musimba and hon. (Ms) Kanyua to clean up their amendments.

Next clause.

*(Clauses 22, 23 and 24 agreed to)*

*Clause 25*

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 25 be amended in subclause (3) by deleting paragraph (a).

I am proposing that we delete that prescribed fee because if we look at our Constitution and the Bill of Rights, Article 35, we are allowed access to information from the State and it should be for free. It should not be at a fee.

*(Question of the amendment proposed)*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, Sir, I am looking at Clause 25(3)(a). I have no objection because the only thing the Member is rejecting is the prescribed fee. I just want to warn the Member that sometimes the prescribed fee also helps a lot of busy bodies to stay away. Otherwise, very many people just come in and request for all manner of information when it is free.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Now that he has mentioned it that is an overriding consideration.

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

*(Clause 25 as amended agreed to)*

*(Clauses 26 and 27 agreed to)*

*Clause 28*

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 28 be amended in subclause (1) by inserting the words “and such regulations shall be laid before the National Assembly for approval before they are published in the Gazette” immediately after the word “Act”.

I know that what I am attempting to amend here might look obvious but as an engineer, we are taught to appreciate that the most unobvious things are the obvious things. Just before we went into elections this year, we had a big battle in this House when we were demanding that the IEBC brings regulations here and they were saying that they are an independent body and they are not obligated to bring their regulations here. This was until we went back to the law and showed them. Before that I had battled, and God rest his soul in eternal peace, with the late Mutula Kilonzo to bring an amendment like this one. He accepted reluctantly and even commented that he did not see what an engineer was doing trying to amend laws done by lawyers. So, it may look obvious but our training is such that obvious things are sometimes not very obvious. So, since it does not offend any part of this Act, I plead with the Chair that we accept it.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): There must be law of diminishing returns catching up because you remember in not so long ago, we had talked about Statutory Instruments Act and Section 34 of the Interpretation of General Statutes Act.

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

*(Clause 28 as amended agreed to)*

*New Clause 19A*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the following new clause be inserted immediately after clause 19—  
Disclosure of funds.

19A. A candidate who, or a political party or a referendum committee which receives contributions under this Act shall issue a receipt for any contribution exceeding twenty thousand shillings.

(2) Where contributions are received from a harambee, the authorised person shall keep a record of the specific details of the harambee including the venue, date, organiser of the harambee and total contributions.

(3) A candidate, political party and a referendum committee shall disclose the amount and source of contributions received for campaign for a nomination, an election or a referendum, as the case may be.

(4) The disclosure of funds under this section shall, for purposes of this Act and in the absence of any other factors, be sufficient evidence that the candidate, political party or referendum committee has complied with the requirement for disclosure of funds.

(5) The disclosure of funds shall be confidential and details of such funds shall not be divulged except where such information is the subject of a complaint or an investigation, or is the subject of proceedings in a court of law.

(6) A candidate who, or a political party or referendum committee which fails to disclose funds or donations as required under this Act shall be disqualified from contesting in an election or from campaigning in a referendum.

Hon. Temporary Deputy Chairman, this New Clause 19A proposes to speak to disclosure of funds. A candidate who, or a political party or a referendum committee which receives contributions under this Act shall issue a receipt for any contribution exceeding Kshs20,000. In discussing this particular amendment, we deliberated on the issue of not having to disclose every small amount that comes to the candidate or the party. We found that a minimum of Kshs20,000 will need to be receipted.

Where contributions are received from a *harambee*, the authorized person shall keep a record of the specific details of the *harambee* including the venue, the date, the organizer of the *harambee* and the total contributions. Again, there are many issues to do with *harambees* and so we decided to narrow this down only to keeping records and details of the *harambee* and especially the total contribution. Every candidate or political party is allowed to conduct *harambee* for the purpose of raising funds for their campaign.

A candidate, political party and a referendum committee shall disclose the amount and source of contributions received for campaign, nomination, an election or referendum, as the case may be.

In part (4), the disclosure of funds under this section shall for the purposes of this Act in the absence of any other factors, be sufficient evidence that the candidate, political

party or referendum committee has complied with the requirement for disclosure of funds.

The disclosure of funds shall be confidential and details of such funds shall not be divulged except where such information is the subject of a complaint or an investigation, or is the subject of proceedings in a court of law. A candidate who, or a political party or referendum committee which fails to disclose funds or donations as required under this Act shall be disqualified from contesting an election, or from campaigning in a referendum.

The only thing that this particular new clause requires is disclosure of funds received by a candidate, political party or referendum committee. The disclosure will be taken as meeting the requirements of the law.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause  
be read a Second Time, proposed)*

**Hon. (Ms.) Nyasuna:** Hon. Temporary Deputy Chairman, I agree. I am just looking at subclause 6. Is it not part of this other process of dispute resolution so that other measures can be taken before you are actually disqualified? I am wondering whether this should not be part of what is covered under what we have just passed where there is a process of establishing these processes and being subjected to the graduated system of discipline. I know I have just discussed that because that particular amendment is not with us. I do not know how that applies, but I will give it back to the Chair.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Those are very good comments. You are free to subject it or provide a provision by way of a further amendment to the clause that you are talking about, if that is your view.

Then it makes sense the way hon. Sakaja is saying to just say that it will be an offence under this Act.

**Hon. (Ms.) Kanyua:** Yes, hon. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Then when you come to your clause, the offences under the Act will be punished in the way that you have stated. Member for Homa Bay, your further amendment would speak to subsection 6 of the amendment. Can you, therefore, read those for the HANSARD as further amendment?

**Hon. (Ms.) Nyasuna:** Hon. Temporary Deputy Chairman, Sir, I would like to move a further amendment to this amendment, so that subsection 6 of the New Clause 19A shall read as follows:-

“A candidate who, or a political party or a referendum committee which fails to disclose funds or donations as required under this Act shall have committed an offence under this Act”.

*(Question of the further amendment proposed)*

*(Question, that the new clause be read*

*a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be  
added to the Bill, put and agreed to)*

*New Clause 20A*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the following new clauses be inserted immediately after clause 20—

Spending limits.

20A. (1) The Commission shall, at least twelve months before an election, by notice in the Gazette, prescribe the spending limits including the total amount that a candidate, political party or referendum committee may spend during an expenditure period, including the limit for media coverage.

(2) Except for contribution by a candidate into his or her own campaign financing account, any contribution from a person, organisation or any other lawful source contributed to a candidate, a political party or a referendum committee campaign financing account shall not exceed the limit of the total contribution prescribed under subsection (1).

(3) The Commission may, by notice in the Gazette, vary the spending limits prescribed under subsection (1).

(4) The Commission shall, in prescribing spending limits under subsection (1), take into consideration—

- (a) the difference in the geographical size on an electoral area;
- (b) the type of election;
- (c) the population in an electoral area;
- (d) the number of party members in an electoral area;
- (e) the communication infrastructure in an electoral area.

(5) Subsection (4)(d) shall only apply with respect to party nomination expenditure of a party candidate.

(6) Where a candidate, political party or a referendum committee exceeds the spending limits prescribed under this section, the candidate, political party or referendum committee shall file a report with the Commission specifying the reasons for exceeding the limit, with such time as the Commission may prescribe.

(7) A candidate who, or a political party or referendum committee which, exceeds the prescribed spending limits and fails to report this fact to the Commission commits an offence.

We are on the spending limits. The Committee proposed the above limits. These factors were thought to influence the amount of money that candidates spend. For example, those now vying in counties would spend more than those vying in single

member constituencies. Those in terrains that are very difficult in terms of infrastructure would then spend more than those whose terrains are much easier. So, all these factors would be used to decide the spending limits for each election and each candidate in terms of the different batches of elections, namely, presidential, governor, senator and all that.

Hon. Temporary Deputy Chairman, Sir, Sub-section (4) shall only apply with respect to the party nomination expenditure of a party candidate. The subsection relates to party Members in an electoral area. If there are party members in an electoral area, more than one party candidate, then there would be a nomination exercise and that is catered for in terms of their spending exercise. That is catered for in terms of their spending limits.

In Subsection (6), this was also found necessary because in every budget there must some allowance in the event that some extraneous matters happen. In terms of discussion with the Committee, we had very many examples of extraneous circumstances. I think that in some of the terrains, it costs more to campaign during the rainy season and it costs less when the rains are not there. So, these kinds of factors make an original campaign budget exceed. The excess can be applied but with the condition that is putting that clause.

On subclause (7), I just want to tell hon. Members that we spent a lot of time discussing this part of spending limits; so we hope that we have captured the aspirations of the hon. Members and other candidates.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause  
be read a Second Time, proposed)*

**Hon. (Dr.) Nyikal:** Hon. Temporary Deputy Speaker, Sir, on subsection (6), where candidates of political parties have since made spending limits be prescribed, to me that negates everything. This is because I do not see even by what percentage you should spend. I do not see whether somebody will look at whether it was justified. It just says all you need to do is to say why you have to record that you have exceeded.

Therefore, I really do not think we need to see it so. My proposal would be to delete subsection (6).

**Hon. Musimba:** Thank you, hon. Temporary Deputy Chairman, Sir. I want to contribute on 20(A)(1), in line with the amendment which was proposed by hon. (Eng.) Gumbo, Member of Parliament for Rarieda. I think we should add the same preamble which said, and such regulation shall be laid before the National Assembly for approval before they are published in the Gazette. I would want to propose that so that we are consistent. So, it says: "The Commission shall, at least, twelve months before an election, by notice in the Gazette prescribe the spending limits, including the total amount that a candidate, political party or referendum committee may spend during an expenditure period, including the limit for media coverage".



Therefore, prior to the words, “by notice in the Gazette” we insert what we did in clause 28, which says, “and such regulations shall be laid before the National Assembly for approval before they are published”.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Let us not get tired because hon. Musimba, you know that under Statutory Instruments Act, all regulations will have to be approved by the House. That is why I was asking you whether there were a lot of diminishing returns catching up with us. But that is the law. So, we have applied that before.

**Hon. Sakaja:** Hon. Temporary Deputy Chairman, I think the issue that has been raised by the hon. Member is credible. If we say that in any given circumstances, if you report yourself you will be forgiven, we will be negating the entire essence of this Bill. I think what the Committee wanted to do was to provide for an extraneous circumstance that is not expected. I will give an example. During nomination, at some point we had to use choppers because of flooding and other problems that occurred, which were unaccepted. That totally goes beyond your budget. So, just to clarify the provision, I want to propose a further amendment to this clause.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Sakaja, before you do so, I was allowing a few interventions but hon. Nyikal was quite in order to rise and propose a further amendment to delete subsection (6). Now that I have heard a few interventions, before you go ahead of him, I think it is fair that hon. Nyikal expresses himself on the HANSARD and proposes his amendment first.

**Hon. Sakaja:** Hon. Temporary Deputy Chairman, even as he does so, I just want him to know that if we provide that, that is only due to extraneous circumstances, then it covers the issue that he is concerned about. So, he might actually be convinced to forego the amendment provided that it has to be in an extraneous situation that can be explained later, like the example that I have just given. Certain things can happen. In the constituencies, a road might be cut-off and one’s transport budget goes up tremendously.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Nyikal, do you want to prefer him to bring his amendment? Your amendment seeks to delete the entire subclause. His amendment is seeking to retain that subsection, subject to putting some rider to it.

**Hon. (Dr.) Nyikal:** Hon. Temporary Deputy Chairman, I can withdraw and listen to the rider that he intends to introduce that can take care of my concern.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Okay, can the two of you come and face each other at the Bar? As consultation on that matter goes on, let us hear hon. Wanga.

**Hon. (Ms.) Nyasuna:** Hon. Temporary Deputy Chairman, the intervention button on my gadget is on. I did not quite mean to comment on this matter but now that I have the Floor, I would like to know how the Committee considered the levels of “untying” the electorates in terms of how much money one spends on them.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Committee Vice-Chair, can you pronounce yourself on it?

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, it is a very interesting debate because when we were in the Committee meeting and looking at the costs of campaign, there were costs of travel, communication and special visits that a candidate would need to give to his constituents. It appeared that in places that are densely

populated, a candidate would end up spending more. So, I hope that answers the question. In any case, in many electoral areas, the election indices are two: The geographical area and the population. We now have a limitation in the Constitution as to the number of people that an electoral unit shall have. In many wards, it should not exceed 26,000 people. In many constituencies, we are still aspiring to around 133,000 people. The counties also have certain limitations. So, the population is a very important index.

**The Temporary Deputy Chairman** (Hon. Kajwang’): I will come back to you, hon. Member for Homa Bay.

Yes, hon. Mwaura.

**Hon. Mwaura:** Hon. Temporary Deputy Chairman, I want to speak to the issue of Clause 6. Looking at the provisions of Subclauses 6 and 7, they give a leeway that can be abused; with regard to people having to explain. In fact, if we are to include the word “extraneous”, we would be forced to define what would amount to “extraneous expenditure”. So, if the cost of doing a campaign shall be varied to include such unforeseen circumstances due to campaigns being more expensive in certain areas, in my opinion, that takes care of it. Otherwise, Subclauses 6 and 7 of New Clause 21A defeat the whole purpose of the Bill.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Member for Homa Bay, do you have a burning issue? We want to move on.

**Hon. (Ms.) Nyasuna:** Yes, hon. Temporary Deputy Chairman. We have covered the issue of geographical size but we have not covered the issue of the dynamics of the geography. For example, when you run in Nairobi and I run in a rural constituency, does it make a difference in terms of how much I actually spend? Apart from I having a higher population, does it not make a difference in terms of how much money I actually spend in terms of urban rural dynamics? Even if you were to add things like the poverty index, there are some places where you go to a function and when you give people Kshs.1,000 for transport, they will just throw it back at you but there are places where even if you give them Kshs100 or Kshs200, it is okay. So, I am just asking in terms of that consideration, apart from just geographical size and population, there are other dynamics like urban rural and so on and I do not know what to call them because my English has disappeared. Sakaja, where is the English or the Chair will know the English?

**The Temporary Deputy Speaker** (Hon. Kajwang’): Thank you. You are very right that there are several other dynamics that may have not been captured here but we proceed upon the principle that voters will come to vote on their own volition. That may be an ideal situation or it might just be a wishful thinking but that is the philosophy that we must proceed on. I think you are talking about whether it is poverty index but to therefore say that there are some constituencies where people are so poor that candidates will use more money, it will be sanitizing the point that we are trying to come away from. We are trying to make elections be clean so that voters cannot be bribed but voters should also not ask for bribes. Hon. Sakaja, you were looking at Subsection 6. Can we dispose it of now?

**Hon. Sakaja:** Even before that, maybe I can assist here because we saw the same problem in 2009 while we were working on the Constitution, especially on the area of boundaries. It was difficult to differentiate between urban centres and rural areas and really there might be very many dynamics, but I think one which might cover many of the factors is the distinction of urban and rural areas. If you look at Article 89(5) of the

Constitution, which are the factors to be taken into account when creating boundaries of constituencies? Part 5(a) talks about geographical features and urban centres. So, geographical features include mountains and what not which also have an effect on the communication network. So, “geographical features” is a more encompassing word than just “area” and “urban centres”. This will give you a distinction between the urban and the rural areas and it will be able to cover a lot of those dynamics. We assume that most rural areas may be homogenous.

**The Temporary Deputy Chairman** (Hon. Kajwang’): So, you think that we should have a further amendment which talks about urban areas?

**Hon. Sakaja:** Yes. We should amend part 4(a) by deleting all the words and replacing them with “geographical features and urban centres”. It is simple as that. It will be able to cover area, mountains, rivers, urban and all of those.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Will you propose that?

**Hon. Sakaja:** Yes, I propose that we delete subsection 4(a) and replace it with a new subsection (a) that states “geographical features and urban centres.”

*(Question of the further amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Let us have the other amendment.

**Hon. Sakaja:** On subsection 6, we have reached consensus with hon. (Dr.) Nyikal. I beg to move:-

THAT, we insert the words “due to unforeseeable and extraneous circumstances” between the words “section and the” in the second line and add the words “and the Commission shall determine if such spending was justifiable” after the word “prescribe” in the fifth line.

**The Temporary Deputy Chairman** (Hon. Kajwang’): I prefer that we say before the words “the candidate” in the second line. It makes sense.

**Hon. Sakaja:** It is okay. I think we might be looking at different papers. It should be before the words “the candidate” in the second line but mine is in the third line.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Yes, it is in the third line. You are right.

**Hon. Sakaja:** Before the words “the candidate” in the third line.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Immediately before the words “the candidate” in the third line.

Thank you.

**Hon. Sakaja:** To insert the words “due to unforeseeable and extraneous circumstances” immediately before the words “the candidate” in the third line and add the words “and the Commission shall determine if such spending was justifiable” immediately after the word “prescribe” in the fifth line.

The import of this is that it will allow unforeseeable and extraneous circumstances. Maybe somebody might overspend but he or she needs to notify the Commission which will still need to determine whether the spending was justifiable or not, based on that notification. Just notifying the Commission might be enough whereas such spending that exceeds the limit was not justifiable. So, it will read:-

“Where a candidate, political party or referendum committee exceeds the spending limits prescribed under this section due to unforeseeable and extraneous circumstances, the candidate, political party or referendum committee shall file a report to the Commission specifying the reasons for exceeding the limit within such time as the Commission may prescribe and the Commission shall determine if such spending was justifiable.”

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order, hon. Members. These amendments should really come by way of written proposals so that we can read them. However, because you have been fastidious Members, debating up to very late in the night, I will leave it at that.

Hon. Members, let me just use English there. Hon. Sakaja, after the word “prescribe” just say “but in any event”. After the word “prescribe” say “but in any event the Commission shall determine if such spending was justifiable”.

*(Question, that the new clause be read  
a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be  
added to the Bill, put and agreed to)*

*New Clause 20B*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, even as Members start asking for extra time, I think we should quickly move to New Clauses 20B and 20C. I, therefore, beg to move:-

THAT, the following new clause be inserted immediately after Clause 20 –

20B. The Commission shall, at least, 12 months before the election, by notice in the Gazette, prescribe the authorized items or activities for which campaign expenses may be incurred including the cost of -

- (a) venue where campaign activities may be undertaken;
- (b) publicity materials for the campaigns;
- (c) advertizing for campaigns;
- (d) campaigns personnel; and
- (e) transportation in respect of campaign activities.

These would be the authorized expenditures in campaign and outlawing any form of bribery, whether in urban centres or in the rural areas. These particular elements of spending will be permissible under this Election Campaign Financing law.

I beg to move.

*Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause  
be read a Second Time, proposed)*

**Hon. (Ms.) Mbalu:** Hon. Temporary Deputy Chairman, I rise to propose an amendment to New Clause 20B. It is an addition from (e). The amendment states: “and any other justifiable expenses.”

Hon. Temporary Deputy Chairman it is because this one is limiting us to the expenses. I am sure there are other justifiable expenses that could arise from the constituency level or even from individuals.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Who makes this decision that something is justified? Where is the authority that makes the decision?

**Hon. (Ms.) Mbalu:** Hon. Temporary Deputy Chairman, this could be by the Commission or from the individuals because we have different expenses as per, say, your area of campaign, mode of campaign and any other justifiable--- The word “justifiable” takes care of everything.

This particular clause is limiting us to---

**The Temporary Deputy Chairman** (Hon. Kajwang’): The reason I ask is because I am careful not to allow an amendment which goes to the root or which interferes with the primary intention of her amendment.

**Hon. (Ms.) Mbalu:** Hon. Temporary Deputy Chairman, Sir, I want to appeal to the Vice-Chair because I know she was part of this and with the knowledge from the Committee when they were indicating the four years’ expenses, to consider that and maybe even put a better word to it. It can be accommodated.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Even before the Vice-Chair responds, my reading of this section is that it is not exclusive. It is inclusive. Are we together, hon. Vice-Chair? My reading of this provision is that it is not exclusive. In other words, there could be so many things. This is just an itemization of some of those things, which helps us to understand what can be used as authorized expenditure. But, can you, hon. Vice-Chair, therefore, respond?

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, Sir, that was the spirit of the proposal, but I do not mind what she is adding in part (f), “any other justifiable expense as accepted by the Commission”. If we could just add that, that would take care of the incidences. However, in the HANSARD, it must be clear that bribery and any forms of witchcraft would not be part of justifiable expenses.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Well, I still have a technical problem because that will be a new addition. It will be an addition because you will be adding part “(f)”. When it comes as addition, I will have a technical problem with your rules. So, it becomes a new one. Hon. Gumbo, you want to discuss this?

**Hon. (Eng.) Gumbo:** You have not proposed it!

**The Temporary Deputy Chairman** (Hon. Kajwang’): Yes, I have not proposed it because I have not admitted it. I am still allowing an intervention. I have not proposed it.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, Sir, it is good that we are all here as political practitioners and the nature of campaign expenses is something unpredictable, that you find yourself getting into expenses that are not necessarily foreseeable beforehand. This clause is in a way protecting those of us who are political

practitioners, so that so long as you can justify it before the Commission, clearly this is understood that this justifiable expenses will not be things that may be illegal like bribery and inducements. She has put it very well that in different parts of the country, there are unique and peculiar circumstances that only appertain in particular areas and do not apply in other parts. Some of these circumstances only become known once they manifest themselves.

For example, I remember I have been sitting in the CDF Committee and one of the things we grappled with after the post election violence was where a constituency had used money to help people who had been injured during the post election violence. Clearly, on the letter of the CDF Act, it was not permissible, but we looked at it bearing on the circumstance. This was a situation that was outside anybody's scope to manage and we thought it was admissible. Even when audits were done, we agreed that, that could be admitted. This, in my view, covers those unpredictable circumstances and should be permitted.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Can I allow hon. Mbalu to propose the amendment?

**Hon. (Ms.) Mbalu:** Hon. Temporary Deputy Chairman, Sir, I beg to propose a further amendment to New Clause 20B to include part "(f)" stating "any other justifiable expenses as accepted by the Commission".

I beg to move:-

THAT, New Clause 20B be amended by inserting part (f) to read  
"any other justifiable expenses as accepted by the Commission."

**The Temporary Deputy Chairman** (Hon. Kajwang'): Can we put a full stop at expenses? The reason I have allowed her is because, as I had said, these are just itemization. It is inclusive and not exclusive. What lawyers call *ejusdem generis*. It explains to you several other things that can be there. So, any other justifiable expenses, of course, will take the form of what has been put in parts "(a)", "(b)", "(c)" and "(d)" and have to be similar to what you have there. In that case, therefore, it does not negate what the Chair is proposing. It is complementary. It is building on what the Chair has said.

*(Question of the further amendment proposed)*

**Hon. Sakaja:** Hon. Temporary Deputy Chairman, I have a further amendment.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Okay, hon. Sakaja. Do it quickly.

**Hon. Sakaja:** Hon. Temporary Deputy Chairman, I understand that the reason for saying that, it might be difficult for there to be an exhaustive list of items or activities that are used in a campaign. If we insert the words "to prescribe the nature of authorised items or activities", they truly cover it. So, instead of the Commission saying "balloons and posters", it talks about "publicity" or just the nature. If you talk about the nature of items and the nature of activities, it will be easier for any of the activities to fit into either personnel, publicity, equipment or assets. So, if we amend it by inserting the words "nature of" between the words "the" and "authorised" in the second line, it will read, "The Commission shall, at least twelve months before an election, by notice in the

Gazette, prescribe the nature of authorised items or activities for which campaign expenses may be incurred”, and it will truly cover most of those things.

**The Temporary Deputy Chairman** (Hon. Kajwang’): You are very right, hon. Sakaja. Again, what you are saying is really what the amendments are all about. Paragraphs “(a)”, “(b)”, “(c)” and “(d)” are descriptive of the nature of some of those things. For example, if you are talking about balloons and all that, they fall within publicity or advertising. The expression “any other justifiable expense” is within the understanding of the nature of all the things that have been described. So, we are talking the same language.

What is your reaction, hon. Sakaja?

**Hon. Sakaja:** Hon. Temporary Deputy Chairman, if you do not add the words “the nature”, what the Commission will describe is the items. Without including the word “nature”, the provision says that the Commission has to describe the authorised items or activities, meaning that the Commission will actually have to list down actual activities or actual items. I think that will be an exercise in futility. So, I propose that we say “the nature of items or activities”, instead of the Commission actually having to list actual items and activities.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Sakaja, I agree with you. There is no problem. When an hon. Member tries to make the law clear, that is what legislating is all about – to make clear and certain. So, if your contribution is that we insert the word “nature” for it to read “prescribe the nature of authorised items”, it really helps us to understand the law better. So, that is okay. Of course, in part (d), we will have to cross out the word “and” and put in a semi-colon after the word “activities” in (e); put the word “and” and put a full stop after the word “expenses”.

*(Question, that the new clause be read  
a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be  
added to the Bill, put and agreed to)*

*New Clause 20C*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the following new clause be inserted immediately after Clause 20 –

20C. (1) The Commission shall, after consultations with political parties, the officers responsible for the state-owned media enterprises and authorities responsible for the regulation of media in Kenya, set out the limit of media coverage of a candidate, political party or a referendum committee, which shall include—

(a) paid-up advertisement; and

(b) free broadcasting spots or coverage in the print media.

(2) The Commission shall establish mechanisms to monitor media coverage for purposes of campaign as may be necessary to enforce the limits set out under subsection (1).

(3) A candidate, political party, referendum committee or a media enterprise which breaches the limits prescribed under this section commits an offence.

In terms of electoral campaigns for that matter, media coverage becomes a very big factor contributing to who gets elected and who does not and how viewers and citizens view certain candidates. Women have especially suffered the brunt of the media coverage. A lot of the times, they will talk of three frontrunner candidates or three horses and then women candidates are portrayed as either donkeys or people who may not finish the race. So, there was reason to regulate media coverage as we talk about election campaign financing because media does, indeed, aid candidates. I beg to move.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause  
be read a Second Time, proposed)*

**Hon. Mwaure:** Hon. Temporary Deputy Chairman, I rise to propose an amendment to the term “elections”---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Are we all on Clause 20C?

**Hon. Mwaure:** Hon. Temporary Deputy Chairman, Sir, you caught me off-guard.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Can I put the Question?

*Question, that the new clause be read  
a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be  
added to the Bill, put and agreed to)*

Let us move to Clause 2.

*Clause 2*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, clause 2 be amended—

(a) in the definition of “contribution”, by deleting the word “money” appearing immediately after the word “means” and substituting therefor the words “monetary and non-monetary contributions including”;

(b) in the definition of “organisation”, by deleting the phrase “or a corporate body”;



(c) by inserting the following new definitions in their proper alphabetical sequence—

“expenditure period” means the prescribed period for regulating election campaign financing;

“monetary contribution” means a non-repayable amount of money contributed to a campaign financing account;

“non-monetary contribution” means the market value of a service, other than volunteer labour, or of property or of the use of property or money to the extent that they are provided without charge or at less than their market value.

The essence of the amendment is to capture the monetary and non-monetary contribution that there can be in terms of campaign financing.

In the next definition in part “(b)”, we want to delete the phrase “or a corporate body” and just leave “organisation” as defined in the starting lines of that definition. We think that adding “a corporate body” is just double interpretation because already the word “organisation” would cover the parts or the bodies covered in the definition. “Organisation” includes a club, group, foundation, business or a registered society. There was really no reason to then include “a corporate body”. So, we proposed deletion of the “corporate body”.

In part “(c)”, we want to insert the following new definitions in their proper alphabetical sequence. One, “expenditure period” means the prescribed period for regulating election campaign financing. Again, this law does not apply at all times. It only applies as far as “electoral” and “period” are defined by the Commission.

We also want to define the term “monetary contribution” and “non-monetary contribution”. We spent a bit of time in terms of vehicles and a lot of other materials that candidates or political parties may receive during the campaign which may not be directly charged but then they can have a monetary value applied to them, because they do indeed aid in the campaigns.

With those definitions, we think that the law will become clearer and will even become much easier to implement for the Commission and much easier to follow for the groups that are targeted which are the political parties, candidates and the referendum committees.

Thank you, hon. Temporary Deputy Chairman. I beg to move.

*(Question of the amendment proposed)*

**Hon. (Dr.) Nyikal:** Hon. Temporary Deputy Chairman, I do not know whether it will be in order but campaign financing in my mind means resources spent by a candidate or political party during an election period. I would have liked to add for the purposes of the campaign that during the election period, you may have other things that you do that do not relate to the campaign and I think people can start splitting hairs and saying: “Well, it is the money spent during the campaign.” So, mine was a proposal to put an amendment to the “campaign financing”. At the end of it, we have the word “period” for the purposes of the campaign.

**Hon. Mwaura:** Hon. Temporary Deputy Chairman, Sir, I do not know whether we have just dropped the further amendment by Dr. Nyikal. Having said that, I wish to propose an amendment to the definition of the word “election” by deleting the words “or county” and substituting therefor the words “county or referendum”. This is because the referendum as a form of election is not captured in this definition as an election. It is left out but if you go down there, or if you are talking about a referendum campaign and a referendum committee--- This is meant to capture the word “referendum” that is omitted from this definition. This is because it captures presidential, parliamentary, county elections or a by-election.

Thank you.

**The Temporary Deputy Chairman** (Hon. Kajwang’): We are slow because there are too many amendments today. Hon. Mwaura, help me here. The definition of election means “a presidential, parliamentary---” You have removed the words “or county” and replaced them with the words “county or referendum election”. Help us here because this is definition. Can you be persuaded to word it this way: That election means “a presidential, parliamentary, county election or referendum” so that your amendment is in two parts? Delete the word “or” and then include the word “referendum” after the word “election” and you are there. This is because you will lead us to more confusion than where we were.

**Hon. Mwaura:** Hon. Temporary Deputy Chairman, Sir, I think that is very much in order. That was the intention I had.

**Hon. (Ms.) Nyasuna:** Hon. Temporary Deputy Chairman, Sir, I am just worried that you are omitting a very important amendment proposed by Hon. Nyikal. I think it is valid.

**The Temporary Deputy Chairman** (Hon. Kajwang’): I am sorry if I moved too fast on the Member for Seme’s amendment. However, after you gave a very good contribution, you did not propose what in effect, therefore, becomes a further amendment. Allow Hon. Nyikal to speak on the microphone.

**Hon. (Dr.) Nyikal:** Hon. Temporary Deputy Chairman, Sir, I think it is the law of diminishing returns and I proposed an amendment on campaign financing to mean “resources spent by a candidate or a political---”

**The Temporary Deputy Chairman** (Hon. Kajwang’): Where are we?

**Hon. (Dr.) Nyikal:** Hon. Temporary Deputy Chairman, I am talking about campaign financing that is, resources spent by a candidate or a political party during an election period. My amendment is after the word, “period”. It should state: “for purposes of the campaign.” My explanation was that you will spend money on other things during the campaign. If that is included---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Member for Seme, I appreciate your contribution, but as usual you make the Chair run into technical problems. This is because when you consider the text of your amendments, it is a new amendment. If it is a new amendment, your own rules will prohibit you moving it. We will later on consider Standing Order No.133 (2) and then you will see that no amendment shall be moved to any part of the Bill by any Member other than the Member in charge of the Bill, who is the Chairperson of the Committee, unless written notification of the amendment has been given to the Clerk 24 hours before the commencement of the sitting at which that Bill is considered.

So, if you were improving on what the Chairperson has, then it is all right. However, if it has the effect of being a new amendment then you will be unable to proceed that way.

**Hon. (Dr.) Nyikal:** Hon. Temporary Deputy Chairman, I presume you are talking of Clause 2, yet we are talking about---

**The Temporary Deputy Chairman** (Hon. Kajwang’): But exactly what she was pointing at in Clause 2 was specific definitions and not the entire Clause 2. She was proposing specific definitions.

**Hon. (Dr.) Nyikal:** I think this is an important one. I think you need to guide us because to me, we are still on Clause 2 and we are talking of definitions.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Ask the Chairperson to own this because I hate to rule you out of order, but I am struggling with the rules. So, do what you did with hon. Sakaja.

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, we have an understanding on his amendment and I think we should proceed with it.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Could you, please, propose this amendment yourself?

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, the definition of “campaign financing” means resources spent by a candidate or a political party during an election period for the purposes of the campaign.

Hon. Temporary Deputy Chairman, we are agreed on this one.

**The Temporary Deputy Chairman** (Hon. Kajwang’): To include which words and after which words?

**Hon. (Ms.) Kanyua:** “For the purposes of the campaign”, after the word “period.”

**The Temporary Deputy Chairman** (Hon. Kajwang’): Did you say, “for purposes of the campaign” after the word, “period”?

**Hon. (Ms.) Kanyua:** Yes. Delete the column and then include the words, “for the purposes of the campaign.”

*(Question of the further 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 2 as amended agreed to)*

*(Clause 1 agreed to)*

*(Title agreed to)*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Election Campaign

Financing Bill, National Assembly Bill No.14 of 2013, and its approval thereof with amendments subject to recommitment of the Bill in Clauses 7, 11, 16 and 21.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*(The Temporary Deputy Speaker  
(Hon. (Ms.) Mbalu) in the Chair]*

## **REPORT**

### THE ELECTION CAMPAIGN FINANCING BILL

**Hon. Kajwang’:** Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Election Campaign Financing Bill, National Assembly Bill No.14 of 2013, and approved the same with amendments subject to recommitment of the Bill in Clauses 7, 11, 16 and 21.

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move that the House doth agree with the Committee in the said Report.

**Hon. (Ms.) Nyasuna** seconded.

*(Question proposed)*

*(Question put and agreed to)*

## **COMMITTEE OF THE WHOLE HOUSE**

*(Order for Committee read)*

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

### IN THE COMMITTEE

*[The Temporary Deputy Chairman  
(Hon. Kajwang’) took the Chair]*

### THE ELECTION CAMPAIGN FINANCING BILL

*(Re-committal of Clauses 7, 11, 16 and 21)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Members, this is a recommitment stage. Only specific clauses have been re-committed, which are Clauses 7,

11, 16 and 21. You will remember that they are specific to the issues that are subject to the recommittal. Let us start with Clause 7.

*Clause 7*

**Hon. (Eng.) Gumbo:** Hon. Chairman, could I get your guidance a little bit?

**The Temporary Deputy Chairman** (Hon. Kajwang’): Clause 7 is under re-committal. According to the HANSARD, you had withdrawn paragraph (a), the deletion. So, do you want to reinstate it?

**Hon. (Eng.) Gumbo:** Yes, hon. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. (Eng.) Gumbo, you went into the HANSARD unequivocally withdrawing your proposed amendment to paragraph (a).

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, we agreed to delete the entire Clause 7 and re-arrange the Bill.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Therefore, there is no problem with Clause 7. We were to delete the entire Clause 7. Was it deleted? I remember it very clearly now.

Hon. Members, when we came to subclause (5), you said that there was a Party Candidate Expenditure Committee; this seems to be recurring through subclauses (1), (2), (3) and we allowed the Chair of the Committee to consult so as to give us exactly how they wanted us to do it. That is the specific issue that you will lead us in.

**Hon. (Ms.) Kanyua:** Thank you, hon. Temporary Deputy Chairman, Sir. If you look at this proposal, it is on the Party Candidate Expenditure Committee, which is what the Committee had done away with at Clause 6 by recommending that there would be no need to set up a committee for all the candidates. Therefore, I think it may have been an omission for the Committee to have deleted this particular clause. This is because all the matters that the candidates will need to respond to in terms of election campaign financing have been dealt with in various clauses. The Committee has been very clear and the Members as well, that a candidate should not be made to form any expenditure committee for themselves.

So, this particular clause should be deleted in its entirety.

Thank you.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Are you deleting the entire Clause 7?

**Hon. (Ms.) Kanyua:** Yes, hon. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right, can you speak on the HANSARD and say unequivocally what you want to do?

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I move:-  
THAT, Clause 7 be deleted in its entirety.

*(Question of the amendment proposed)*

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

*(Clause 7 deleted)*

*Clause 11*

**Hon. (Eng.) Gumbo:** Thank you, hon. Temporary Deputy Chairman, Sir.

I beg to move:-

THAT, clause 11 be amended—

(a) in subclause (1)—

(i) by deleting paragraph (a);

(ii) in paragraph (b), by deleting the word “final” appearing immediately before the word “expenditure”;

(b) in subclause (5), by deleting the expression “subsections (1)(b), (2), (3) and (4)” and substituting therefor the expression “subsection (2)”.

Hon. Temporary Deputy Chairman, in Clause 11(1), I move that in paragraph (a), we delete the word “seven” and replace it with the words “twenty one”.

So, it will read: “a preliminary nomination expenditure report within twenty one days after the political party nomination.”

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Can I put the Question, hon. Sakaja?

**Hon. Sakaja:** Yes.

*(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)*

Hon. Members, therefore, paragraph (a) will read: “a preliminary nomination expenditure report within twenty one days after the political party nomination.”

Hon. Gumbo, move the amendment to subsection 5.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, subclause 11(5) be amended by deleting paragraphs (b), (c), (e) and (f).

Hon. Temporary Deputy Chairman, the import of this amendment is that it will now read: “The expenditure reports submitted under subsections 1(b), 2, 3 and 4 shall include records showing all transactions and income and expenditure statement.”

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Yes, Departmental Committee Chairperson.

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I support the amendment. There were consultations between the two of us. I think we are now headed to Nakuru together.

Thank you.

*(Laughter)*

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

*(Clause 11 as amended agreed to)*

### *Clause 16*

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 16 be deleted and replaced with the following new

clauses-  
Sources of  
campaign  
finances

16. The sources of funds for purposes of financing party nomination, election or referendum campaign are—

(a) contributions received from any person, political party or any other lawful source;

(b) contributions from a lawful source, not being from a foreigner, a foreign government, a foreign intergovernmental organization or non-governmental organisation; and,

(c) contributions from a harambee.

Limits to  
contributions

16A. (1) The Commission shall, at least twelve months before a general election, by notice in the Gazette, prescribing limits on—

(a) total contributions;

(b) contributions from a single source;

(c) paid-up media coverage;

(d) loan forming part of a contribution, which a candidate, political party or referendum committee may receive during the expenditure period.

(2) Except where contribution is from a candidate to that candidate's campaign financing account, or from a political party or a referendum committee to that political party's or referendum committee's campaign financing account, no contribution from a single source shall exceed ten per cent of the total contributions received by that candidate, political party or referendum committee.

(3) The Commission shall prescribe the limit beyond which contributions received by a candidate, a political party or a referendum committee from a single source may be disclosed.

*(Question of the amendment proposed)*

**Hon. (Ms.) Nyasuna:** I move that in part (b) the words “foreigner,” “foreign intergovernmental organization” and “non-governmental organization” be deleted and insert the words “directly from” after the words “not being”. This is so that (b) will read “contributions from a lawful source, not being directly from a foreign government.”

**The Temporary Deputy Chairman** (Hon. Kajwang’): Can you read the entire paragraph (b) as it will be, if the amendments are taken on board?

**Hon. (Ms.) Nyasuna:** I will read “contributions from a lawful source, not being directly from a foreign government.”

**The Temporary Deputy Chairman** (Hon. Kajwang’): In other words, you want to delete the word “foreigner”?

**Hon. (Ms.) Nyasuna:** I want to delete “foreign intergovernmental organization” and “non-governmental organisation.”

**The Temporary Deputy Chairman** (Hon. Kajwang’): Well, can you read the entire paragraph (b) as it will appear if the amendments are adopted? How would it read?

**Hon. (Ms.) Nyasuna:** Okay; it will read, “Contributions from a lawful source, not being directly from a foreign government”.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Oh, I see. You are removing all those words. One word I see is “foreigner” and then?

**Hon. (Ms.) Nyasuna:** I am deleting ‘foreigner’, “foreign inter-governmental organisation” or “non-governmental organisation”.

**The Temporary Deputy Chairman** (Hon. Kajwang’): But you are leaving the words “foreign government”?

**Hon. (Ms.) Nyasuna:** And inserting the words “directly from”.

**The Temporary Deputy Chairman** (Hon. Kajwang’): “From” is already there. However, this is a substantive amendment. Have you discussed this with the Chair? Can you give the Chair this?

**Hon. (Ms.) Kanyua:** Yes, we have discussed that following the proposal for recomittal and in any case there was a big question around the word “foreigner” because there are, indeed, persons of this country married to persons who are not citizens of this country. In fact, we have a Member of this House who is married to a foreigner and Eng. Gumbo intends to marry a foreigner. Actually, in some traditions it is even a culture to marry a foreigner. So, there will be a problem around that.

If we come to the question of inter-governmental organisations, again there are inter-governmental organisations whose work is actually capacity building, and working around empowerment of women and youth to contest in elections. In any case, there is already a limitation on how much a single donor can donate to a campaign; it is capped at 20 per cent.

On NGOs in Kenya, I think that is easy to explain. Many of them have supported candidates through direct and indirect contribution, and all of them are bound by the 20 per cent rule. So, I agree with the amendments and ask that we put the Question.

Thank you, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right. I will put the Question.



*(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)*

Let me first of all read the text as it is before I put it as amended. Therefore, the amended version or text of that clause will read as follows: “The sources of funds for purposes of financing party nomination, election or referendum campaign are:-

(a) contributions received from any person, political party or any other lawful source;

(b) contributions from a lawful source, not being directly from a foreign government; and

(c) contributions from a harambee.

*(Clause 16 as amended agreed to)*

#### *Clause 21*

**Hon. (Ms.) Kanyua:** Thank you, hon. Temporary Deputy Chairman, Sir. We have a slight amendment to Clause 21 on the second subsection that the Commission may investigate a breach of this Act. I think there is a Member who is really uncomfortable with the words “on its own initiative”. So, we want to delete those words and just have “the Commission may investigate a breach of this Act.” That is the only amendment that we have agreed upon.

The other one that was proposed for the tribunal will take us to many matters, including issues of Money Bills, and you have to discuss institutional framework. That might be taken up when the other electoral offences---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Can you forward the written text of your amendment to the Chair right now?

**Hon. (Ms.) Kanyua:** Yes, I will, hon. Temporary Deputy Chairman, Sir.

*(The Temporary Deputy Chairman (Hon. Kajwang’)  
consulted with hon. (Ms.) Kanyua)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): It is now all right. Hon. Ms. Kanyua, can you, therefore, move the amendment.

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 21 be amended by deleting the words “PART VI: OFFENCES” and substitute therefor with the words “PART V: DISPUTE RESOLUTION AND OFFENCES”

By inserting the following new clause immediately after Clause

20-  
21 Dispute Resolution 1. Any person may lodge a complaint with the Commission alleging that a breach of this Act has been committed.

2. The Commission may on its own initiative, investigate a breach of this Act.
3. Where a complaint has been filed or a breach detected under this section, the Commission shall hear and determine that complaint-
  - (a) within seven days, if filed before an election; and
  - (b) within fourteen days, if filed after an election
4. In determining this complaint and subject to section 4, the Commission shall have the powers to-
  - (a) request for the attendance of any person believed to have information related to the complaint; or
  - (b) call for any information believed to be relevant in the determination of the complaint.
5. Where the Commission makes a finding that there is a breach of a provision under this Act, the Commission may make any of the following orders-
  - (a) order the rectification of any record;
  - (b) issue a formal warning;
  - (c) impose a fine as specified under the Regulations;
  - (d) prohibit the errant candidate, political party or referendum committee from campaigning for a specified period or within a specified area;
  - (e) prohibit media coverage of the errant candidate, political party or referendum committee within a specified period;
  - (f) disqualify the errant candidate, political party or referendum committee from contesting in that election or referendum, as the case may be.
6. Where the offence is discovered after an election and an order of disqualification is made, the candidate or the political party shall be disqualified from contesting in the subsequent by-election or general election.
7. Where an order of disqualification is made under this section, the order shall be-
  - (a) registered in the High Court, in the case of presidential, parliamentary, governor elections or referendum; and
  - (b) registered in the Resident Magistrate's Court, in the case of county assembly elections.

Hon. Temporary Deputy Chairman, the import of the new clause is really to provide for a dispute resolution mechanism where the Commission may investigate and where also a complaint may be filed within a certain timeframe. More importantly, it allows that the Commission, where it makes a finding of a breach of a provision under this Act, can make the following orders: It can order the rectification of any record; it can issue a formal warning; it can impose a fine specified under regulations; it can prohibit the errant candidate, political party or the referendum committee from campaigning for a

specified period or within a specified area, and it can also prohibit media coverage of the errant candidate, political party or referendum committee within a specified period.

Lastly, and this was the emphasis of the Committee, only in very rare circumstances would it resort to (f), which is to disqualify the errant candidate, political party, or referendum committee from contesting in that election or referendum, as the case may be.

I beg to move.

*(Question of the amendment proposed)*

**Hon. Sakaja:** Hon. Temporary Deputy Chairman, just for the record and a last minute effort, I had alluded to something before we recommitted this clause. It might be safe and prudent for us to really be clear on the mechanism through which these disputes will be handled.

I wanted to propose, just for the consideration of the Chair and, again, for the record, that we amend the new clause by inserting a provision that the National Assembly shall set up an election offences tribunal that will hear and determine cases. If we do not do that, then we will be leaving the Commission to be investigator, judge and jury without any access to further recourse by a candidate, who may feel aggrieved by the decisions which will have grave consequences, including disqualification. Therefore, we might need to set up an election offences tribunal that will sit; the prosecution will be done by the Commission that has found a Member guilty of an offence, and the candidate will give his side of the story. If he is not satisfied, then he will go to the High Court for the actual dispute resolution mechanism, and the IEBC will be there for that purpose. That is my intervention.

**The Temporary Deputy Chairman (Hon. Kajwang’):** I think that is a very novel discussion into this, but the way, perhaps, it should go is--- Remember also that there is the Elections Act and the Political Parties Act in which there are several dispute resolution mechanisms. The Chair is not seized of information on the jurisdiction of those commissions. It may well be that they have jurisdiction to entertain disputes which have been referred to the Commission, whichever way. At this level, we may not investigate deeply the contents of that other legislation. Shall I tell hon. Sakaja that he may want to look at it and after six months, he will be able to prefer an amendment and consolidation?

I think there is a very good case for consolidation because there is another problem of double jeopardy when several legislations talk about the same offences; any conscientious Kenyan can go to court and say that those sections of the law are burdensome because all other laws talk of the same offences and punishment. Therefore, you could consolidate and bring them here as a legislative proposal, which then we will harmonise by amending their provisions.

Hon. Sakaja, do you think that sits well with you?

**Hon. Sakaja:** Yes, hon. Temporary Deputy Chairman, Sir. I am much obliged. I must agree also that after we discussed, it was clear that it is something that we need to pursue but will, definitely, need to think more about this. There is also a possibility that it could be a money Bill if we decide to go the way of setting up an election offences tribunal. I am obliged.

**The Temporary Deputy Chairman (Hon. Kajwang’):** There would be expenses arising from such a tribunal.

**Hon. Sakaja:** Yes, hon. Temporary Deputy Chairman, Sir. I take your guidance, but for the record, we know that there is an intention to deal with that issue.

**The Temporary Deputy Chairman** (Hon. Kajwang’): You will extract the HANSARD of today, together with the ventilations you may have in future. This will help you to develop the idea that the spirit of the National Assembly today was to further your cause, which is to set up a dispute settlement tribunal, so that people will not be disqualified without a fair hearing.

**Hon. Sakaja:** I stand guided, hon. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Vice-Chair, do you have something that is burning?

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, Sir, there is a burning small point; it is that the whole part will now be headed “Offences and Dispute Resolution”.

*(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 21 as amended agreed to)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Chairlady, do you have a Motion to move for reporting?

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Election Campaign Financing Bill and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker  
[Hon. Mbalu) in the Chair]*

## **REPORT**

### **ELECTION CAMPAIGN FINANCING BILL**

**Hon. Kajwang’:** Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Election Campaign Financing Bill, and approved the same with amendments.

**Hon. (Ms.) Kanyua:** Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

**Hon. Waiganjo:** seconded.

*(Question proposed)*

*(Question put and agreed to)*

### **ADJOURNMENT**

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Members, for obvious reasons we will not be able to move to the Third Reading of this Bill.

This House stands adjourned until Tuesday, 3<sup>rd</sup> December, 2013, at 2.30 p.m.

The House rose at 9.55 p.m.