

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 21st June, 2012

The House met at 9.00 a.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

COMMITTEE OF THE WHOLE HOUSE

(Order for the Committee read)

[Mr. Deputy Speaker left the Chair]

IN THE COMMITTEE

[Mr. Chairman took the Chair]

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

(Resumption of consideration interrupted on 20.6.2012)

Mr. Chairman: Hon. Members, there are amendments that are being circulated, so take note of that.

Mr. Ethuro, could you, please, proceed and move the amendment?

Section 29(2) – The Elections Act, 2011

Mr. Ethuro, can you proceed and move the amendments?

Mr. Ethuro: Mr. Chairman, Sir, I have an amendment to Section 29(2) as per the Order Paper and on page 3687(A).

I beg to move:-

THAT, the Schedule to the Bill be amended as follows-

Delete the words “shall not” appearing after the words “county assembly” and substitute therefore the word “may”.

Mr. Chairman, Sir, this amendment makes it possible for an independent candidate to be nominated by all the systems of the Republic who are willing to support that independent candidate. Yesterday, there were arguments about whether the independent candidate should be nominated by the members of a party or as provided here, should not be nominated.

I want to refer hon. Members to Article 38 of the Constitution which addresses political rights. It states:-

“(1) Every citizen is free to make political choices, which include the right-

- (a) to form, or participate in forming, a political party;
- (b) to participate in the activities of, or recruit members for, a political party; or
- (c) to campaign for a political party or cause.

(2) Every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for-

(3) Every adult citizen has the right, without unreasonable restrictions- to do all those.

Mr. Chairman, Sir, the most important thing here is that we are not saying that the independent candidate is to be supported by members of the party only. We want to give the possibility that political parties or members of a particular party can actually decide to elect or nominate a particular independent candidate. These are the reasons; when you go to vote, even a registered member of a political party can exercise his or her democratic right and vote for a candidate who is not from his or her party. So, why do we want to restrict that if for some reason the citizens of the Republic decide that even an independent candidate is better than their own candidate? That choice should be granted to them. That is what the Constitution anticipates.

Thank you, Mr. Chairman, Sir. I beg to move my amendment.

(Question of the amendment proposed)

Mr. Njuguna: Mr. Chairman, Sir, this is the first time in the history of this country that we will have this new legislation. This new legislation will open up the society and allow more democratic space in our electoral setting. Therefore, I fully support the amendment.

Mr. Mwangi: Mr. Chairman, Sir, I support the amendment. When we go to elections, there may be popular candidates, but as we go to vote other members may decide to change their views and intentions. Therefore, the law should not tie other voters from choosing a person whom they regard as much better placed than the person sponsored by a particular party.

The Minister for Finance (Mr. Githae): Mr. Chairman, Sir, I support the amendment. We must open up the democratic space which has already been provided by His Excellency the President. It is important that an independent candidate should not be tied both hands and legs.

Mr. Ogindo: Mr. Chairman, Sir, I want to oppose this amendment. Kenya is a multiparty democracy. By virtue of being so, that is enough choice. Once you have made that choice, we want to have multiparty practice thrive in this country. It would be legislating in reverse if every time we make a gain, we reverse it.

The Minister for Trade (Mr. Wetangula): Mr. Chairman, Sir, the purpose of having a Political Parties Act and the intention to sanitize and discipline political parties and their Members is constitutional. If a person elects to join a political party, you make a conscious decision to be a member of that party, participate in the activities of that party, nominate candidates of that party and nowhere else. It cannot be that you are a member of Gikomba Party, you go and nominate candidates on the Kamukunji Party. That is not the intention of the Political Parties Act. That is also not the intention of the Constitution. To specify one is to exclude others, so the law says.

This amendment is again one of the unfortunately reverse gears we are engaging on the very laws we have passed in this House. I wish to strongly urge the hon. Ethuro who I believe, believes in the spirit and the letter of the Political Parties Act and the Constitution to reconsider this amendment because to say---

Mr. Ethuro: On a point of order, Mr. Chairman, Sir. I believe, not as TNA, but as the Constitution provides that our country shall be a multi-party democracy. Believing in a multi-

party democracy or even being a member of the party should not deny another person an opportunity for him or her to be independent because that is the democracy you are exercising. Actually, it is your right to either join the party or remain independent.

But more importantly, the Constitution does not deny people from being independent candidates. So, the same Constitution that allows you to be nominated by your political party and be a member of a political party also gives provision for an independent candidate. All we are saying is that let us exercise our democratic space in a wider situation than a restriction of a political party.

Mr. Chairman: For the benefit of the House, Mr. Ethuro, maybe you need to propound on exactly the import of the amendments you are making.

(Mr. Wetangula stood up in his place)

Mr. Wetangula, you will have your moment. It is important that hon. Members get a full understanding of exactly what his amendment is proposing to do.

Mr. Ethuro: Mr. Chairman, Sir, I will do so with pleasure and especially in the presence of--- I would have called them my learned friends but they claim that we are not learned. But my profession which very serious; it is the only one in America where you have a council for economists. We say where you have six economists you get seven decisions. In this other profession when there are six of them you get 12 decisions.

But let me just explain. If you look at the Elections Act which Mr. Wetangula was avoiding deliberately - he was talking about the Constitution and the Political Parties Act and we are in the Elections Act – you will find that Section 29(1) talks about the persons who nominate a presidential, parliamentary, county governor and county assembly candidate shall be registered members of the candidate’s political party.

We are restricting the candidate nominated by a party to the nomination by the party member so that no other party can cause mischief by maybe nominating a candidate that they know is looking for that particular party. So, that is very good.

Section 29(2) states:-

“The persons who nominate an independent presidential, parliamentary, county governor candidate and county assembly shall not be registered members of any political party.”

My argument is that while it might appear it makes sense from one to two, what happens when I have an independent candidate on the ballot box? I have this candidate of various political parties on the ballot box and I go there as a member of a particular party to vote. The country has already given me the choices to exercise. I can decide to vote for my party candidate. I can also decide to vote for another party candidate. I can also decide to vote for an independent candidate. What stops a voter from exercising that decision?

So, it also means that even to nominate an independent candidate since there is no political party known as “independent” --- I am saying all people of the Republic of Kenya who are registered voters, whether in a party or not, should be at liberty to nominate a particular candidate. That is the import of my amendment.

I am using the word “may” because---

(Mr. Wetangula stood up in his place)

Mr. Chairman: Mr. Wetangula, hold your horses.

Mr. Ethuro, just for the benefit of the House and the Chair, all voters in Kenya do not have to become members of a political party. Members of political parties, for example, for the Labour Party in the UK with a population of 60 million are just about 20,000. So, you can get any voter but a registered member of a political party who subscribes to an ideology to go and support---

Mr. Ogindo: On a point of order, Mr. Chairman, Sir.

Mr. Chairman: Anyway, what is your point of order, Mr. Ogindo?

Mr. Ogindo: Mr. Chairman, Sir, is it in order for the Member for Turkana Central to attempt to bring an unconstitutional and illegal amendment given the fact that this House has already legislated to the effect that Kenya shall be a multi-party democracy and the essence of a party is in its membership? This is because a party is defined by its membership. To the extent that you want to create a law that dilutes membership of a party, you are running counter to the spirit and letter of the Political Parties Act. Is he in order?

Mr. Chairman: The Political Parties Act is what he is attempting now to amend. But if you want to say that it is unconstitutional, that is a different ball game.

Proceed, Mr. Wetangula.

The Minister for Trade (Mr. Wetangula): Thank you, Mr. Chairman, Sir. In the past, and indulge me to say this, when you went for nomination for elections, all you needed to do was to go to the bus park and collect *manambas* and field them to intimidate your opponent and get nominated. We have sanitized and changed this, so that there is a register of a political party in the constituency and county, with the Registrar of Political Parties and the Electoral Commission to that extent. If you elect to belong to a political party then you must play by the rules of that political party.

Those who want to be president will be nominated by members of their party in 24 counties. That is what the law says. Those who want to be governors will be nominated by members of their party in their counties.

Mr. Ogindo: On a point of information, Mr. Chairman, Sir.

The Minister for Trade (Mr. Wetangula): Yes, please.

Mr. Ogindo: Mr. Chairman, Sir, I just want to bring to the attention of the hon. Minister that what this amendment seeks to do is to open a window whereby the same gang of people are able to nominate in party X, party Y and party Z. That in essence will kill democracy.

Mr. Chairman: Let Mr. Wetangula conclude his contribution.

The Minister for Trade (Mr. Wetangula): Mr. Chairman, Sir, I do conclude by urging the House that if we want to live to the spirit of the reforms we are carrying out in this country, then we must respect the laws we have passed. It is wrong and politically immoral to say that Members of TNA are given an opportunity to go and decide who should be candidates for FORD-K or Members of ODM are given an opportunity to go and decide who should be candidates for URP. That is not proper. That is not what the law says and that is not what we should encourage in the House.

I oppose.

The Minister for Education (Mr. M. Kilonzo): Mr. Chairman, Sir, thank you for noticing me. I saw that my student/pupil here was having a very hard time. I think I should support him.

Mr. Chairman, Sir, I think we are making an error in this situation. We are forgetting that a political party is defined by Article 260 of the Constitution. Those who are introducing this amendment are forgetting that they are now interfering with the Constitution itself. The

definition of a political party is – for the first time in the history of this country, it has found itself defined; it is an association that meets the requirements of Part III of the Chapter dealing with this issue.

This is such a fundamental issue. When you take a party membership card, you subscribe to a Constitution, code of conduct, principles of that party and, above all, you subscribe particularly for nominations to a manifesto. Therefore, if you have already subscribed to a manifesto the opportunity for nomination--- I would urge hon. Members not to confuse the right to nominate a candidate with the right to vote. During the election a member of any party can vote for anybody. I hope that you can vote for Wiper when the opportunity occurs, but how can you, when you are not a member of Wiper, come to nominate a candidate for Wiper? What right do you have?

Mr. Chairman, Sir, Article 36 protects your freedom of association; you have your right to associate with whoever you like. Therefore, even the definition of a political party is further strengthened by this right in Article 36. You can associate with whoever you like but why would you go to the house of a different clan so that you go and decide who the head of that family is when you are not a member of that clan?

I oppose.

Mr. Keter: On a point of order, Mr. Chairman, Sir. When we left last night at midnight we had restricted ourselves to about one and a half minutes to two minutes so that we do not stay. We have a lot of work. So is---

Mr. Chairman: Order! Order! That is a matter that is determined by the Chair. In any case you are legislating on a matter that is going to have phenomenal ramifications in this country for the future. If you have to do it by basically educating yourselves on it, first and foremost, instead of having the “ayes” and “nays” which just, basically, happen sometime; somebody does not even understand what is happening. They just say aye or nay; the Chair has a duty to make sure that matters of such magnitude are given ample time.

Mr. Waititu, please, proceed.

The Assistant Minister for Water and Irrigation (Mr. Waititu): Mr. Chairman, Sir, I wish to support Mr. Ekwee Ethuro. I want to just narrate a practical situation whereby somebody has been conned by nomination. Somebody gave money and his nomination was stolen. Then that person has gone to become an independent candidate. Then that person needs to be nominated by voters and those voters had joined parties. It is in the spirit of the new Constitution that people must be free so that democracy can be enhanced. In that practical situation, that person still has the right to be nominated because the voters want that same person---

Mr. Chairman: Mr. Waititu, you have not understood it; listen.

The Minister for Trade (Mr. Wetangula): On a point of order, Mr. Chairman, Sir. Is Mr. Waititu in order to take a trajectory that is completely irrelevant to what we are discussing? He is discussing something completely unrelated to what we are discussing here.

Mr. Chairman: Mr. Waititu, the import of this itself and the amendment that is being sought is whether registered Members of political parties--- Not the voters. Anybody can vote for anybody. Even people who are not registered members of a political party can support an independent candidate. But for registered members, there is nothing called independent register. So anybody who is a voter can support and put his name as nominating an independent candidate. The issue is registered members of political parties to nominate independent candidates.

Mr. Abdikadir: Mr. Chairman, Sir, with due respect to the Chairman of CDF, all they need to do is resign from political parties and then go nominate the independent candidate if they want to nominate him or her. You must be either a member of a party or you are not. If you are not, then you go independent. If you want to be independent after you have been registered as a member, it is not a life thing. The KANU life membership thing is gone; you go out and become an independent candidate and get your supporters to deregister from political parties.

This amendment is not necessary, Mr. Chairman, Sir.

Mr. Koech: Mr. Chairman, Sir, I stand to support this amendment. I want to make it very clear to my colleagues that this amendment does not in any way allow a member of a political party to go and nominate a member of another political party. We have not opened that. All that this is saying is that this independent candidate who may be an independent candidate based on other reasons--- In our Constitution we are envisaging a situation and a time in this country when each and every voter shall be a member of a political party. If we are in that situation, it means then that if we do not open this window this independent candidate will have nobody to nominate him at the nominations.

Mr. Chairman, Sir, I want to clarify here that the only advantage---

Mr. Ogindo: On a point of order, Mr. Chairman, Sir. Is the hon. Member in order to mislead this House that the independent candidates have no supporters when we know very well that the people who do not have political party affiliation are more than those who are registered in political parties?

Mr. Chairman: Mr. Koech, can you conclude?

Mr. Koech: Mr. Chairman, Sir, I have just made it very clear that we are envisaging a situation whereby we shall have all Kenyans being members of political parties. We are talking about just a simple advantage of an independent candidate at the nomination. The truth of the matter is after nomination all the candidates shall now go out and seek for support from Kenyans across the divide not from their own political parties. I want to plead with my colleagues that this amendment does not in any way open up the window to discourage or spoil. In any case it is actually a window to even spoil the independent candidate by other candidates actually fielding in a very weak candidate for independence if that is what you want to take.

I want to support.

Mr. Chairman: That is why the Chair insists that there is need for us to educate ourselves on some of these things.

Mr. Koech, it is not the intent, purpose, object and the spirit of political parties. Political parties are supposed to be membership of a core, ideologically persuaded people. The rest of the society is supposed to subscribe in terms of voting.

It is not that all Kenyans must belong to different political parties. No. All Kenyans must vote however they want to, but they do not have to be registered members of political parties.

Mr. C. Kilonzo: Mr. Chairman, Sir, I want to plead with my good friend, Mr. Ekwee Ethuro to reconsider this. What he is telling us, for example, my party Wiper does recruitment of members. At that time the independent guy is just sleeping. He is not telling people I want you to be independent, do not belong to any political party. He sleeps on the job, when I finish recruiting he expects my members to come and nominate him. Surely, it does not make any logic.

I really plead with ---

Mr. Chairman: You have made your point.

Dr. Khalwale, you have to dispose of this very fast.

Dr. Khalwale: Mr. Chairman, Sir, I would like to oppose this amendment because, ordinarily, in any core country not more than 20 per cent to 30 per cent of registered voters belong to any party. The majority of people are not bothered to join a particular party. Therefore if a guy does not like any of the parties and he is looking for only 2,000 signatures and he wants to compete for millions of votes as President, if he cannot raise those 2,000 signatures, there surely must be something wrong with that candidate.

Mr. Ekwere Ethuro, because you are very popular I know you can get more than 2,000 votes when you will want to be President, in Kakamega. Why are you bringing this? It is unnecessary. We do not have to pass it.

Mr. Ethuro: On a point of order, Mr. Chairman, Sir. I am particularly pleased that the “bull fighter” has endorsed me for Kakamega.

(Laughter)

But I want to confirm to him that the disease of Kenya is that all good people think they should aspire to a higher office like the presidency. I am very happy to serve Turkana. The reason why I am bringing this amendment which is fundamental and people are losing it, so that Dr. Khalwale does not mislead the House - it is article 38(2) of the constitution; that every citizen has the right to free, fair and regular elections based on universal suffrage and more importantly, the free expression of the will of the electors. I do not want us to confine our people to a particular democratic space of a political party.

(Mr. Ogindo stood up in his place)

Mr. Chairman: Order, Mr. Ogindo! I will take Messrs. ole Metito, Kioni and Keter, then I will put the Question.

The Assistant Minister for Regional Authorities Development (Mr. ole Metito): Mr. Chairman, Sir, I stand to oppose this amendment for simple logic. You cannot belong to more than one political party at one time. Actually, saying that you belong to political party A – an independent candidate is like another party again called “independent”. That is importing people from this party to go and support somebody of another party called independent. So it is not possible. You can be voted by anybody but for somebody to second or propose you and you belong to one political party, I think in that case, my good Secretary-General, I really think this amendment is not necessary and I oppose it.

Mr. Kioni: Mr. Chairman, Sir, I rise to oppose this amendment because in legislating this way, we are actually legislating for indiscipline within parties. It is saying that we want to go back to the anarchical behavior of members within parties. But also fundamentally, there has been civic education in the country to Kenyans on what these provisions of the Constitution and what the Political Parties and Elections Acts means. People have been educated and told that it is important that they belong to a party or belong to none if they do not want to associate themselves to a given manifesto. So, this is going to confuse Kenyans and it is also important that if you think you want to be an independent candidate, make up your mind early enough and carry on with that line. Do not look for rescue votes too late in the day.

Mr. Keter: Mr. Chairman, Sir, I want to support this proposal by Mr. Ethuro. My reason is that we have had incidences before where people are rigged out in their political parties and they have nowhere to go. We are talking about independent candidates. They are independent

and the voters are not independent. You may be liked by your voters and they may not like the parties which you associate with. Let me take an example, URP is popular in my place and if I am rigged out from the URP or I cannot get nomination in URP, I want to go as an independent candidate because if I associate with ODM in my place, my people will not elect me. I am just giving a realistic example using myself.

Mr. Mbadi: On a point of order, Mr. Chairman, Sir. Is it in order for Mr. Keter to mislead this House that if he associates himself with ODM in his constituency he cannot be elected, yet we know he is a member of ODM in the House and has never resigned to be a member of URP? He should resign and win his seat again to prove his case. Is it in order to rely on hypothesis rather than reality?

Mr. Keter: Mr. Chairman, Sir, I was giving an example that if I stand in ODM versus somebody from URP in my place, I will not be elected by the people. Therefore, I come in as an independent candidate. "Independent" candidate means that I do not associate myself with any party and, therefore, I will appeal to voters to elect me. So I need the members of URP, ODM and Ford Kenya to nominate me as an independent candidate and this does not in any way kill democracy of political parties.

I support this amendment.

Mr. Chairman: I will take the last one from Mr. Pesa and then I will dispose it of.

Mr. Pesa: Mr. Chairman, Sir, thank you for giving me time to oppose my chairman who I really respect. Getting the counsel from Mr. Abdikadir and the Minister for Education, I think it is important that the Chairman withdraws this amendment because we need discipline in the party and in every party we expect that the nomination process is exclusive. In every party, the nomination of membership from the lowest levels to the highest level should exclusively be done by the registered members of that party and it should not be done by any other person who is not a member.

Mr. Chairman: Hon. Members, this has taken too long and we will have to dispose it of now.

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

(Mr. Keter stood up in his place)

Mr. Chairman: Sorry, Mr. Keter, you only managed one; you need to have, at least, 15 people to stand up to force a Division.

We will go to the amendments by Dr. Nuh. Is he here?

Hon. Members: He is not here!

Mr. Chairman: His amendments will be dropped!

(Proposed amendments to Section 29 by Dr. Nuh dropped)

Section 34 (9) – The Elections Act, 2011

Mr. Chairman: Mr. Ethuro, you have amendments here but could the Attorney-General confirm that there was a clarification on it?

The Attorney-General (Prof. Muigai): Mr. Chairman, Sir, I think the hon. Member may not be aware but we published---

(Mr. Ethuro consulted loudly)

Mr. Chairman: Order, Mr. Ethuro. Can you hear the Attorney-General?

The Attorney-General (Prof. Muigai): Mr. Deputy Chairman, Sir, I published a correction last year on this – a corrigendum – in particular, the provision that he seeks to amend and we removed the “not”. Maybe what I should explain for purposes of the media that keeps suggesting that the Attorney-General has sneaked in amendments, the Attorney-General was using the powers donated by the Review of Laws Act to make sure that the final Act passed by this House was in accordance with the HANSARD. Therefore, I merely made a correction. I did not do anything of my own personal preference.

Mr. Chairman: Mr. Ethuro, I think it is overtaken by events.

Mr. Ethuro: Mr. Chairman, Sir, I wish to withdraw my amendment on the basis of that explanation but even in our Room No.8, the kind of copies of the laws we get are not yet factoring the corrigendum the Attorney-General is talking about and we are the law makers. So you must make sure that we have the most correct version of the laws.

(The proposed amendment by hon. Ethuro was withdrawn)

Mr. Chairman: Okay, there is also the next one. Hon. Mungatana has a similar one. It is also overtaken by the same. Dropped! He is not in also.

(The proposed amendment by hon. Mungatana was dropped)

Sections 35(1), 38(1), 38(2), 40 and 41(2)– The Elections Act, 2011

Mr. Chairman: Dr. Nuh had amendments on these Sections. Proposed amendment to 35(1) dropped! Hon, Dr. Nuh! Proposed amendment to 38(1) dropped. Hon. Dr. Nuh! Proposed amendment to 38(2), dropped.

*(Proposed amendments to Sections 35(1),
38(1), 38(2) and 41(2) by hon. Nuh dropped)*

Mr. Chairman: Hon. Linturi’s amendment on Section 40 is also dropped.

(Proposed amendment to Section 40 by hon. Linturi dropped)

Then, there is an amendment by hon. Ethuro on Section 41(2).

Hon. Attorney General, I hope you must have studied this one.

Mr. Ethuro: Mr. Chairman, Sir, my amendment is proposed on page 3688(A). I beg to move:-

THAT, Section 41(2) be amended by inserting the word “independent” after the words “consultations with the”.

Mr. Chairman, Sir, Section 41(2) reads (according to the Act):-

The Commission shall, after consultations with the candidates, political parties concerned and the offices responsible for the State-owned media services, monitor the equitable allocation

of airtime during the campaign period. I just wanted a clarification. Maybe, the Attorney-General can assist us here with “the candidates”. Can the Independent Electoral and Boundaries Commission (IEBC) talk with all candidates? I want to imagine the reference here was to the independent candidates. That is because the candidates of the political parties will be taken care of by the political parties. I just wanted that clarity for avoidance of doubt; that IEBC will not assemble all of us in some meeting since we are all candidates.

Mr. Chairman: Attorney General, I hope you heard what hon. Ethuro has said.

The Attorney General (Prof. Muigai): Mr. Chairman, Sir, I was consulting with the---

Mr. Chairman: Could you repeat hon. Ethuro? Could you, in future, consult where you are?

Mr. Ethuro: Mr. Chairman, Sir, on Tuesday, you actually said that all these amendments must be circulated. So, even though the Attorney General was consulting now, I was expecting him to be aware of what I was going to propose in Section 41(2). I am just adding the word “independent” between the words “consultations with” and the “candidates”.

Mr. Attorney General, my desire was just a clarification. The candidates we are talking about here, and which IEBC should be consulting with, will they be all the candidates or independent candidates? Already, we have political parties and the presumption is that political parties will present the candidates they have sponsored.

The Attorney General (Prof. Muigai): Mr. Chairman Sir, it is independent candidates.

Mr. Ethuro: Mr. Chairman, Sir, the Attorney General has agreed with me and so, I think you can put the Question.

(Question of the amendment proposed)

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

*(Provisions relating to the Elections Act, Section 41(2)
as amended agreed to)*

The Minister for Trade (Mr. Wetangula): On a point of order, Mr. Chairman, Sir. Hon. Ethuro referred to page 3688(A) on the Order Paper. But in the Order Paper, I do not have that page.

Mr. Chairman: There is an Order Paper which is being circulated. I hope you have it.

The Minister for Trade (Mr. Wetangula): I have not got it. It is passed but we may have another one again.

Mr. Chairman: Let me see your Order Paper. It is here. Page 3688 (A). Do not look on the left side. This is the number. Just look on the right side. That is because the number is the same. The number never changes but the page is there.

Sections 41(5), 43(4) and 43(5) – The Elections Act, 2011

Mr. Chairman: Hon. Dr. Nuh! Proposed amendments to Sections 41(5) and 43(4) by hon. Dr. Nuh are dropped.

(Proposed amendments by hon. Nuh dropped)

Section 43(5) by hon. Baiya is dropped. Sorry! Let us hear Mr. Abdikadir.

(Mr. Abdikadir stood up in his place)

Proceed then and move it on behalf of the Committee,

Mr. Abdikadir: On behalf of the Committee and Chairman, I beg to move:-

THAT, the Bill be amended in the Schedule by—

(i) deleting the word “five” in the proposed amendment to Section 43(5) and substituting therefor the word “six”;

If you look at page 3686(A), it reads that the Bill be amended in the Schedule by (i) deleting the word “five” in the proposed amendment to Section 43(5) and substituting therefor the word “six”;

It is on the first page of the new Order Paper. Page 3686(A).

Mr. Chairman: Can you expound on this and educate the Members on it first before you--- This is the period before the election that the civil servants have to resign instead of five months.

Mr. Abdikadir: Yes, Mr. Chairman, Sir. The proposal was for seven months. But it has always traditionally been six months. The Act says seven months. The Attorney General has proposed five months. We are saying that it has always been six months. So, why not continue with six months?

(Question of the amendment proposed)

The Attorney General (Prof. Muigai): I am not objecting to that proposal for amendment.

(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)

(Provisions relating to the Elections Act, Section 43(5) as amended agreed to)

Sections 45 and 46 – The Elections Act, 2011

Mr. Chairman: Proposed amends to Sections 45 and 46 by hon. Dr. Nuh are dropped.

(Proposed amendments by hon. Nuh dropped)

Next is amendment to Section 108, hon. Baiya.

Section 108 – The Elections Act, 2011

Mr. Abdikadir: Mr. Chairman, Sir, this is also on page 3686(A). Mr. Chairman, I beg to move:-
THAT, Section 108 be amended-

(ii) by deleting the words “State-owned broadcasting media” in the proposed amendment to Section 108 and substituting therefor the words “all broadcasting media”.

It is below the one that we just moved earlier about the five and six. This is deleting the words “State-owned broadcasting media” in the proposed amendment to Section 108 and substituting therefor the words “all broadcasting media”.

That Section talks about State-owned broadcasting media being fair in their coverage of candidates. We are saying it is not just the State-owned but all the media. This is in line with the constitutional provisions that asks this House to make rules for coverage of elections in the country.

Mr. Chairman: Hon. Khalwale!

An hon. Member: You have not proposed the Question.

Mr. Chairman: I proposed.

Dr. Khalwale: Mr. Chairman, Sir, I want to support the amendment. Whereas in the past national broadcasting was the in-thing, the situation obtaining now is that the privately-owned media houses are the ones which have got the highest number of listenership. So, if we do not cover them, then they can end up influencing the election by favouring a particular candidate and this will obviously affect the outcome of the election.

I support.

Mr. Chairman: I do not think I proposed this.

(Question of the amendment proposed)

The Attorney-General (Prof. Muigai): Mr. Chairman, Sir, I think I would like to oppose this amendment and persuade hon. Members that we may have exceeded our mandate here. Section 108 reads as follows:-

“All candidates and political parties participating in an election shall be allocated reasonable air time on state radio and television broadcasting services during the campaign period.”

If we were to accept this amendment now, this would extend to all broadcasting media. I think it would be quite difficult for us to demand of commercial operators because they are in the business of selling. I, therefore, would persuade my learned colleague to withdraw---

Mr. Chairman: Do you wish to withdraw, Mr. Abdikadir?

Mr. Abdikadir: Absolutely not, Mr. Chairman, Sir. I would like to invite the Attorney-General to look at Article 92 of the Constitution. Actually, what we are required to do is to require of the private broadcasters because the frequencies are public resources---. Article 92 says as follows--- and this is what the Constitution says:-

“Parliament shall enact legislation to provide for—

(a) the reasonable and equitable allocation of airtime, by State-owned and other specified categories of broadcasting media, to political parties either generally or during election campaigns;

(b) the regulation of freedom to broadcast in order to ensure fair election campaigning;”

Mr. Chairman, Sir, we have all the powers under the Constitution to regulate the media.

The Minister for Transport (Mr. Kimunya): Thank you, Mr. Chairman, Sir. With all due respect to the Committee, I stand to oppose the amendment by the Committee and in support of the Attorney-General. I do remember that when we were actually looking at this element at the first round, it became very clear that there was a very clear distinction between what we can do with what is funded by the public and which we can then regulate, decide how it is allocated and what is purely private. As much as the Constitution talks about both public media and other media, the same Constitution also protects private property. Within this definition of “private property”, it includes the businesses. The Constitution says that Parliament shall not legislate on anything that deprives a person access to their rights and their property. What we are basically saying here is that, you can go to *KTN* or to *NTV* and tell them “you must allocate so much time to so and so” without necessarily saying who will pay for it. Because once you put this obligation, you must also put who will compensate them for this time.

Mr. Chairman: You have made your point!

The Minister for Transport (Mr. Kimunya): If we do not do that, then we will be putting ourselves in a situation where you are forcing and you are actually basically nationalizing private assets without necessarily providing for compensation, which will be against the Constitution.

The Minister for Trade (Mr. Wetangula): Thank you, Mr. Chairman, Sir. I want to persuade the Attorney-General and hon. Kimunya to see the point that hon. Abdikadir has raised.

(Applause)

Mr. Chairman, Sir, even private enterprises in the media do not sell news. At election time, if they are broadcasting news about campaigns, then they must be fair to all candidates! If somebody goes to---

Mr. Chairman: Are you sure that media houses do not have what they call “editorial policies?” Just for your benefit while you are still there, you do not expect Fox News to give a lot of coverage to Obama unless it is negative!

(Laughter)

Proceed!

The Minister Trade (Mr. Wetangula): Mr. Chairman, Sir, any news is good news; it does not really matter.

Mr. C. Kilonzo: On a point of information, Mr. Chairman, Sir.

The Minister Trade (Mr. Wetangula): Yes, can I get your information?

Mr. C. Kilonzo: Mr. Chairman, Sir, I want to inform the hon. Minister that the other reason our two brothers should consider supporting this particular amendment is because politicians in this House actually own media houses. So, what would happen if this politician owns a political party and a media house? He will use his own facility or media house to make sure that some hon. Members will not get elected to this House. So, as far as I am concerned---

The Minister Trade (Mr. Wetangula): Mr. Chairman, Sir, I was just finishing my point. I want to urge my colleagues to reconsider their position because election time is a unique period in the history of the country and media houses that disseminate news must be fair to all. That is what the amendment that hon. Abdikadir has brought is talking about and I support it.

Mr. Abdikadir: Mr. Chairman, Sir, let me read for the hon. Members what the Article itself says. Article 108 says:-

“All candidates and political parties participating in an election shall be allocated reasonable air time on state radio and television broadcasting services during the campaign period.”

Mr. Chairman, Sir, what the Committee is saying is that, that is a very small bit of the broadcasting world. The rest of the media also have to give reasonable air time. What is reasonable is in the eyes of the broadcaster himself; in the eyes of the regulator. It is not us saying that you must give one or two hours, but reasonable air time. This is what the Constitution says. Because the way the media covers the campaigns is very critical on the outcome. Airwaves are public property; they are not private property. The airwaves are a national resource.

The Minister for Medical Services (Prof. Anyang’-Nyong’o): Mr. Chairman, Sir, like my friend, hon. Wetangula, I would like to plead with my colleagues here to really support hon. Abdikadir’s point. He is trying to implement the constitutional provision saying “other media” and he is making it much more precise to mean all broadcasting media. This is because broadcasting media are the ones that are listened to by a majority of the people because they reach many more people. Indeed, when fairness is to be felt; fairness will be felt with regard to the listeners. Now, we know that in this country that State radio and television alone does not reach the majority of Kenyans. So, I think that this particular amendment is really good in the sense that it is in the spirit of the Constitution rather than against it.

Mr. Chairman, Sir, I beg to support the amendment.

Mr. Chairman: I will take two more and then I will put the question.

Yes, hon. M. Kilonzo and Dalmás Otieno.

The Minister for Education (Mr. M. Kilonzo): Thank you, Mr. Chairman, Sir. I support this amendment.

In fact, it does not go far enough. We seem to forget that in future elections, we will have runoffs. That is a very critical period of time. Since it is a small window of 30 days during a runoff, a country like France, for example, has very severe restrictions as to how much air time you give.

Hon. Abdikadir, I agree with you entirely that we should not look at private property as the broadcasting equipment because airwaves belong to Kenyans. I think that during this window of 21 days for the main campaigns and the 30 days for runoffs, we ought to be able to regulate the method in which the media uses it for advertising or, for that matter, giving news on particular candidates.

Mr. Chairman, Sir, I beg to support.

The Minister of State for Public Service (Mr. Otieno): Mr. Chairman, Sir, I remember the history of this very clause way back in 1997. During those days of the IPPG, KBC would black out all opposition views from the media. That is when we found it necessary to bring this clause. Now that we have private media, there are people who can buy the media to block other candidates.

(Applause)

So, I think it is so important that we make it obligatory that during campaigns, information to Kenyans is disseminated equally and equitably to all candidates.

Mr. Chairman, Sir, I beg to support.

(Applause)

Mr. Njuguna: Mr.Chairman, Sir, I rise to strongly support this amendment because it enhances media participation. The media houses should not be denied this right. This is an open society and participation is already guaranteed.

(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)

(Provisions relating to the Elections Act, Section 108 as amended, agreed to)

AMENDMENT TO THE SCHEDULE

Section 112 – The Elections Act, 2011

Ms. A. Abdalla: Mr. Chairman, Sir, I beg to move:-

THAT, the Bill be amended in the Schedule in the amendments proposed to the Elections Act (No.24 of 2011) by inserting the following new amendment immediately after the amendment proposed in section 112-

Provision

Amendment

Third Schedule

In the Oath of Secretary prescribed under section 60(1) and set out in the Third Schedule, delete the Words “Magistrate/Commissioner for Oaths” and Substitute therefor the words “Member/Secretary/ Returning Officer (of the Independent Electoral and Boundaries Commission).”

Mr. Chairman, Sir, the Schedule deals with the oath of secrecy that would be administered to elections and returning officers. The current Elections Act only allows magistrates and Commissioners of oath to administer these oaths. In the past, it was done by the Commissioners and returning officers. The reason I am bringing this amendment is that in the budget of the Independent Electoral and Boundaries Commission (IEBC), they budgeted to pay these commissioners of oath Kshs135 million for a job that can be done internally and cost the taxpayer nothing. So, I am, therefore, proposing that this oath can be given by a member of the Commission, secretary or returning officer instead of costing the taxpayer any money.

(Question of the amendment proposed)

Mr. C. Kilonzo: Mr. Chairman, Sir, I wish to support and say that the IEBC seems to have lost ideas on how to reduce their huge budget. This is one of the many ways they can do so.

They should think outside the box, so that they can reduce their budget and be able to do the job to satisfaction.

Mr. Chairman, Sir, I beg to support.

Mr. Abdikadir: Mr. Chairman, Sir, probably we could ask the Attorney General, so that instead of removing the magistrates and commissioners of oath, this can be an addition. So, a magistrate or commissioner of oath can commission, because those already have the rights to commission any of those documents in the first place. So, these again are additions. But I agree that this would save about Kshs150 million in terms of costs to the electoral body.

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

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

Mr. Chairman: Hon. Mbadi has a proposed amendment to Section 112(2) of the Elections Act, 2011. Is hon. Mbadi not here?

(Proposed amendment to Section 112 by hon. Mbadi dropped)

*(Provisions relating to Section 112 of the Elections Act,
2011 as amended agreed to)*

*(Provisions relating to the Kenya Citizens and Foreign Nationals
Management Service Act 2011 and the Industrial
Training (Amendment) Act, 2011 agreed to)*

(Title agreed to)

(Clause 1 agreed to)

The Attorney General (Prof. Muigai): Mr. Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Statute Law (Miscellaneous Amendments) Bill, subject to the recommittal of the provisions of Section 22 of the Elections Act, 2011.

(Question proposed)

Mr. Ethuro: Mr. Chairman, Sir, while I support the Attorney General, I would also want to recommit Section 12(1) of the Animal Diseases Act. We will be doing a lot of injustice to this country if diseases kill the livestock of pastoralists and they are just given half the value.

The Attorney General (Prof. Muigai): And Section 22?

Mr. Ethuro: Yes, Section 12(2) and 22. That is correct.

The Attorney General (Prof. Muigai): Mr. Chairman, Sir, I have no objection.

Mr. C. Kilonzo: Mr. Chairman, Sir, I wish that we also commit Section 22(1) of the Elections Act.

Mr. Chairman: It is already recommitted.

Hon. Members, I will now put the Question which is, that the Committee doth report to the House its consideration of The Statute Law (Miscellaneous Amendments) Bill and its approval thereof with amendments, subject to recommitment of Section 22 of the Elections Act and Sections 12(1) of the Animal Diseases Act.

(Question put and agreed to)

(The House resumed)

[Mr. Deputy Speaker in the Chair]

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

The Attorney-General (Prof. Muigai): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said report.

Mr. Ethuro: Mr. Deputy Speaker, Sir, I thought I was supposed to move first so that the Minister agrees with me. I just seek your indulgence on this matter.

Mr. Deputy Speaker: Hon. Members, yes, there was a lapse of procedure in this case. It is the Chairman who comes first and then the Minister agrees with you.

Mr. Ethuro: Thank you, Mr. Deputy Speaker, Sir. I beg to report that a Committee of the Whole House has considered The Statute Law (Miscellaneous Amendments) Bill and approved the same with amendments subject to committal of Section 22 of the Elections Act and Section 12(1) of the Animal Diseases Act.

The Attorney-General (Prof. Muigai): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Transport (Mr. Kimunya) seconded.

(Question proposed)

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for the Committee read)

[Mr. Deputy Speaker left the Chair]

IN THE COMMITTEE

[Mr. Chairman took the Chair]

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

*(Resumption of consideration interrupted
in the Committee today on 21.6.2012)*

Mr. Chairman: Hon. Members, we have recommitted the Animal Diseases Act Section 12(a).

Yes, hon. Ethuro.

Mr. Ethuro: Mr. Chairman, Sir, can the Clerks-at-the-Table assist me with the page of the Act so that I can read it to hon. Members. The background to this amendment is that northern Kenya has suffered a lot of livestock losses due to disease. What the Minister has proposed is that livestock dying from notifiable diseases which the Government has a serious commitment even internationally to ensure that these diseases do not kill our livestock--- They are proposing that if an animal has died out of a notifiable disease, then the State should give half the value. But if an animal, in the subsequent section, is suspected of the same disease, both of them whether dead or the one being suspected of having the disease are automatically killed just like the British did with the mad cow disease. When there is suspicion of the disease, you give full value but the ones that the disease has killed, you give half the value. Where is fairness here?

Mr. Chairman: Can you now move the amendment?

Section 12(1) of the Animal Diseases Act

Mr. Ethuro: Mr. Chairman, Sir, for the sake of the good people of northern Kenya and all the pastoralists in the world, I beg to move:-

THAT, the provisions to Section 12(1) of the Animal Diseases Act Cap.364, be amended by deleting the words “one half of its” appearing after the words notifiable disease and substituting thereof the word “the.”

The effect of this is not even money to the herders but it is to ensure that the Government takes the responsibility to ensure vaccinations are conducted in a regular manner. You owe it to our people. We are also *bona fide* citizens of this Republic.

The Minister for Finance (Mr. Githae): Mr. Chairman, Sir, I just want to say that even in my Budget Speech, I provided money for vaccination of animals and, therefore, this Government fully supports the pastoralists.

Mr. Chairman: So, you support the amendment?

The Minister for Finance (Mr. Githae): I support, Mr. Chairman, Sir.

*(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 provisions relating to Section 12(1) of the Animal Diseases

Act as amended agreed to)

Mr. Chairman: Now, let us move on to Section 22 of the Elections Act.
Proceed, Mr. Kimunya.

Section 22 of the Elections Act

The Minister for Transport (Mr. Kimunya): Mr. Chairman, Sir, I beg to move:-

THAT, Section 22(2) of the Elections Act be amended by inserting the words “Member of Parliament” after the words “Deputy President.”

Mr. Chairman, Sir, yesterday, the House made a major decision in terms of the qualifications when it comes to nomination of candidates, the import of which was to give a leeway to Members who are serving either in Parliament or in the councils to be eligible for purposes of the first election, obviously, with the understanding that between now and the election time, they will not have enough time to get the extra qualifications. This is understandable and is very fair. We all agreed on that. However, you may recall that when we were doing this law earlier, we had said that Members of Parliament also require a degree, we changed it because it was seen that people could not get a degree within the time that was required. Now that we have created a window for five years, we need to go back and create the requirement to equate a Member of Parliament with the Deputy Governor, Governor and President.

(Applause)

As an accountant, when we were looking at the Salaries and Remuneration Commission, the experts who advise this Commission brought to our attention the fact that part of the determination of the salary of a Member of Parliament will be determined by the entry level of their qualifications. So, if their entry level is “O” level, then their salaries will have to be pegged on that because salaries are based on one’s academic qualifications plus one’s expected work. It is important that we define the Member of Parliament of the future----

Mr. C. Kilonzo: We want to move together with him. The majority of us have no idea of what he is talking about. If you can just tell us the gist of your amendment so that we move with you, that will be good.

The Minister for Transport (Mr. Kimunya): Mr. Chairman, Sir, the gist of the amendment is to amend Section 22(2). Currently, Section 22 states in part: “Notwithstanding 1(b).” Now, Section 1(b) states that one must hold a post-secondary qualification in Kenya. A person may be nominated as a candidate for election as President, Deputy President, County Governor, or Deputy Governor only if the person is a holder of a degree from a university recognized in Kenya.

The amendment I am proposing now requires the Member of Parliament to have a degree. This is because the new Clause 22(3) already exempts the Members who are in service in the first election. We passed that yesterday. Let us now move to the position of Member of Parliament in future. He should have a degree. The serving Members of Parliament are exempted, but it has a bearing. That is the import. We need to understand that everyone will be required to have a degree. However, those who are serving are exempted. It is only fair that we move this way while giving a window for people to catch up.

Mr. Chairman, Sir, I beg to move.

(Question proposed)

Mr. C. Kilonzo: Mr. Chairman, Sir, I know that we are trying to help some of us. I remember that it was none other than the Temporary Deputy Chairlady, Dr. Laboso, when the Bill on elections was here for discussion, she said: “We cannot legislate for ourselves as Members of Parliament.” If this amendment was saying that we are going to lower for all Kenyans until the election of 2017, I would accept it. But to say that it should serve only those of us who are here, that is discriminatory and I am sure if you go to a court of law it will be declared unconstitutional. Surely, we should say that if you do not have these qualifications today then let other people in your constituency have the same rights to compete with you. This is because they are the ones who put you in office and then come 2017 you must have a degree. Let us not look at just a few of us here.

I oppose.

Mr. Duale: Mr. Chairman, Sir, I stand to oppose. We should not apply the law selectively. We should not be very selfish. By cushioning our colleagues it means that the people out there, even those who have not gone to school---

Mr. Chairman: Order, hon. Duale! I hope you people understand the gist of the amendment. The amendment is not cushioning the---

(Loud consultations)

Order, Mr. Duale! Hon. Members, for your benefit, you cushioned your own colleagues last night. That issue is not there now. The issue is whether after the next election Members of Parliament should also be required to have a degree in line with the President, Deputy President, Governor, and the Deputy Governor. That is all!

Mr. Duale: Mr. Chairman, Sir, I agree with what you have said. That is what hon. Kimunya has brought this morning. We have no problem with it. However, we must live by the Constitution. This House can say that in the next five years Members of Parliament of this House can go to school. They are in essence given a grace period.

I oppose.

Mr. Chairman: Mr. Wetangula, can you clarify for the benefit of everybody?

The Minister for Trade (Mr. Wetangula): Mr. Chairman, Sir, before we engage in debate, the clarity of the matter should be as follows: Previously, we passed a law in this House that required a councillor and a Member of Parliament to be Form IV leaver and above. Last night, we passed a law that said that for those of us who are in this House and the councillors out there, it matters not your level of education, the law we passed notwithstanding and that for the next elections you are allowed to stand – only for that election. In 2017, it will not be applicable.

Hon. Kimunya has brought a further amendment to say that fine, we stand by what we passed yesterday. Those of our colleagues without degrees and our councilors out there without a Form IV certificate can stand, but by 2017, you will not stand for Parliament unless you have a degree. That is the amendment that we are now addressing.

(Several hon. Members stood in their places)

Mr. Chairman, Sir, I reserve the right to contribute. I was just clarifying.

(Laughter)

Mr. Chairman: Order! Yes, hon. Keter!

Mr. Keter: Mr. Chairman, Sir, after that clarity, I want support this amendment. I do so because it is not discriminatory. What we have done is to cushion those of us who are here notwithstanding the law which we had passed earlier which says that you must have post-secondary education. We have to be a serious Parliament. We need to have serious people because we are going to vet people in higher offices. Therefore, we are giving a window of five years and if you cannot go to school within those five years, then there is no need of you seeking an elective position.

I support that amendment.

The Assistant Minister for Regional Development Authorities (Mr. ole Metito): Mr. Chairman, Sir, I stand to support this amendment. I want to inform the House that we cushioned our colleagues twice yesterday. What we are trying to ignore is the fact that we also cushioned ourselves on the issue of party hopping when we said that it is not going to be applicable for this first election. It is, therefore, important that we know these facts. Maybe those who are saying that this is so selective were not here yesterday. Cushioning was done twice yesterday – the issues of party hopping and qualifications are not applicable at this time taking into consideration that this is a transition period. It is a window we are providing.

I support the amendment.

The Minister for Finance (Mr. Githae): Mr. Chairman, Sir, I thought it will be important to inform the hon. Members what the Salaries and Remuneration Commission is doing. It is trying to allocate salaries, first of all, based on academic qualifications; secondly, on the workload; and thirdly on responsibility. So, it is important that we have some higher qualifications so that when they are reviewing salaries, Members of Parliament do not lose out because they do not have degrees. All we are saying is that for this coming year's elections, there is an exemption, but in 2017, you must have a degree. That is what Kimunya's amendment is doing.

Mr. C. Kilonzo: Mr. Chairman, Sir, you remember that I requested that we recommit the amendment by hon. Dr. Nuh. My issue here which has not come out very clearly from them is that this amendment is only cushioning Members of Parliament and councillors who are in office at the expense of the general public. What we are saying is that if the members of the general do not have post-secondary education, then they are not qualified, but a Member of Parliament who is not a post-secondary will qualify.

If we are going to recommit the amendment by hon. Dr. Nuh, it has to come afresh here so that we delete it and we allow everybody, that is, Members of Parliament and outsiders – not a select few. That business of a select few is actually unconstitutional. Assuming hon. Kimunya has not gone to school and he is a Member of Parliament, why should he have an unfair advantage over others out there?

Mr. Deputy Speaker: What is your point of order, hon. Ogindo?

Mr. Ogindo: On a point of order, Mr. Chairman, Sir. Pursuant to what hon. C. Kilonzo has just said, I need your guidance here. For us to be able to canvass this amendment that has been brought by hon. Kimunya, we need the assurance of the Chair that we will get back because the entire Article 22 was recommitted. That we will get back to Article 22(3). We need that guidance that Article 22(3) that was brought here by hon. Dr. Nuh will be recommitted.

Dr. Khalwale: On a point of order, Mr. Chairman, Sir. It will be difficult to proceed without remaining completely clear what recommitting Article 22 means. Yesterday, we made a

decision on Article 22(1) (b) and when hon. Kimunya has stood, he has not visited what we did yesterday. He has brought an amendment on Article 22(2). I am one of the people supporting hon. Kimunya. It is well thought out on Article 22(2) but because what we did yesterday was about (1) (b), we should today take a decision on 1(b) and put into consideration all that has build up from the time we made that decision yesterday because it has become clear that whereas we were trying to give serving Members of Parliament and serving councillors an opportunity to be elected by the people, the people seem to be unwilling to allow these Members to be elected. So, the House has to make a fresh decision. Why are we hiding and yet we live in this country?

Mr. Chairman, Sir, it is there. On the Frequency Mode (FM) stations, that is the voice of the people. On the televisions and the print media, the people are saying that: “Thank you very much. You allowed councillors and MPs who do not have this education to have a second chance but we, the voters, do not want that.” So, as a House, since we have this opportunity, let us dispose of hon. Kimunya’s proposed amendment – something I support and then go and make a decision in view of what now the country is saying about education.

The Assistant Minister for East African Cooperation (Mr. Munya): Mr. Chairman, Sir, I want to oppose hon. Kimunya’s amendment. This is the Kenya National Assembly (KNA) and it is an elected House. The Senate is also an elected House. So, we are trying to set up a system that is relying largely on academic qualifications and yet the people of Kenya are supposed to elect their representatives to this House. The people with degrees in Kenya are less than 200,000 people. Now, you want to limit.

Hon. Members: No! Ahhh! Uhh!

Mr. Chairman: Order! Hon. Duale, hon. Khalwale and hon. Keter, if you insist on engaging and talking loudly to hon. Munya even if he is a minority, he has a right to be heard and to be heard in silence. This is not a market where you say aaahhh, uhhhh and aaaah! No!

Proceed hon. Munya!

The Assistant Minister for East African Cooperation (Mr. Munya): Mr. Chairman, Sir, I was saying the people with degrees in this country are a minority and it is the majority of Kenyans who have a right to elect their representatives. When you limit them to only an elite in this country, what you are creating is not a democracy but it is a dictatorship. Form Four education is sufficient education to be able to open up how you have to debate, understand issues properly and to be able to be an effective Member of this House.

Mr. Chairman, Sir, we have seen people who have no formal education and who have been great leaders in the world – people who even dropped out of school but who have the intellect and who were able to educate themselves to become great leaders. Winston Churchill who was one of the greatest Prime Ministers of Britain did not attend formal school. So, if we have to amend this, we need to include also self-education where people educate themselves and are able to sufficiently debate.

I oppose.

Mr. Keynan: Mr. Chairman, Sir, one of the reasons why Kenyans sought a new constitutional dispensation was to address some of the past historical, educational and other injustices. In their own wisdom, they sought to have a devolved government and in that devolved government, in their own wisdom, they decided to have county government. What we are proposing today and if it goes like that, is going to kill the very tree of having devolution. I do not agree and I hardly disagree with my good friend, my lawyer, hon. Munya, but on this one, he got it wrong. University of Nairobi (UoN) alone over the last two years has had more than 200,000 graduates. That is an insult to Kenyans! Kenyans have gone to school. Kenya is not an

illiterate society. Let us be honest; we cannot legislate for a selected group because we have the advantage here today. The councillors are there, we are here and we cannot just make legislations that are just meant to help us. We must legislate for now, the future and tomorrow. We must legislate for every Kenyan – the 40 million Kenyans.

Mr. Chairman, Sir, what is being proposed as much as it is political, we cannot use the Floor of this House to do political gerrymandering. Education is a must and that is why we are encouraging Kenyans to go to school. How are you going to oversight? You have the county representatives who have not gone to school. So, you have to look for an interpreter for them. I want to go on record that the longest serving councillor in the Republic of Kenya comes from my constituency – and he is willing for the sake of devolution to retire honourably and I am very proud of that particular Kenyan.

Therefore, what we need today is not to legislate for particular individuals. I want to propose like what hon. Khalwale has done, we dispose of with the amendment by hon. Kimunya and we delete the whole amendment by hon. Dr. Nuh and retain the original spirit of the Electoral Act.

The Assistant Minister for Industrialization (Mr. Muriithi): Mr. Chairman, Sir, you know in debate, we can use very elaborate English to hide a variety of things. The issue before us right now is the following: Remember yesterday, we dwelt with 22(1) (b) by providing 22(c) to cushion Members of Parliament and serving councillors. As a result of that, it becomes necessary at Article 22(2) to equalize to say that if you require a degree for the President, Deputy President, County Governor or Deputy County Governor, surely you should require the same of the Member of Parliament of the future.

Therefore, we should not mix the two issues. We should dispose of hon. Kimunya’s proposed amendment, which I support.

In addition, on economic and social rights, the Constitution provides that a Kenyan child shall have free and compulsory basic education. Basic education is up to Form Four. So, as we implement this Constitution, we should appreciate that the Constitution itself anticipates that every Kenyan must at least get to Form Four. So, we must legislate for the future. We must, surely, support hon. Kimunya’s amendment

With those remarks, I beg to support.

Mr. Chairman: Hon. Members, let me clarify one thing. The entire Section 22 is re-committed. So, if you want us to dispose of hon. Kimunya’s amendment and go back to the rest, the Chair will gladly do so.

Mr. C. Kilonzo: On a point of order, Mr. Chairman, Sir. We have to know exactly what has been re-committed. Our understanding of what has been re-committed was the amendment by Dr. Nuh, and nothing else. Standing Order No.121 says as follows:

“121(1) When a Bill has been re-committed to a Committee of the whole House, the Committee shall consider only the matters so re-committed and any matter directly consequential thereon.”

My suggestion would have been we deal with that commitment first, and the consequential aspect comes second, so that we can be very clear. What we are doing---

Mr. Chairman: Hon. C. Kilonzo, other than the re-committal of the whole Section, you have not brought to the House any amendment.

Mr. C. Kilonzo: Mr. Chairman, Sir, I am getting there.

Mr. Chairman: Propose a further amendment. You can delete the whole amendment.

Mr. C. Kilonzo: Mr. Chairman, Sir, I am about to put my case to you, so that you can decide. What I am saying is that we are having two debates. We actually support hon. Kimunya's amendment, but we are having two confusing debates. We are opposing Dr. Nuh's amendment and, at the same time, we are supporting hon. Kimunya's amendment. So, we need to be very clear. If it is his, we should deal with it knowing that there is Dr. Nuh's amendment coming, so that we do not get confused.

The Minister for Trade (Mr. Wetangula): On a point of order, Mr. Chairman, Sir. My understanding is that you re-committed the whole of Section 22.

Mr. Chairman: Yes.

The Minister for Trade (Mr. Wetangula): Hon. Kimunya then brought an amendment on Section 22(2).

Mr. Chairman: Yes.

The Minister for Trade (Mr. Wetangula): We still have a pending re-committed amendment by Dr. Nuh, which we passed yesterday, but which has caused the re-committal. So, we are being sequential by dealing with Section 22 and then going to Section 23.

Mr. Chairman: Hon. Wetangula, the Chair agrees with you entirely on that one. I am going to put the question on the amendment to Section 22(2). The whole section is re-committed. So, we will dispose of Section 22(2) and go back to any other section you want.

Hon. Members, I now put the question on the provisions relating to the Elections Act, 2011, which is that Section 22(2) be amended as proposed by hon. Kimunya.

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

*(Provisions relating to the Elections Act,
Section 22(2) as amended agreed to)*

Mr. Chairman: Hon. Members, I now ask hon. C. Kilonzo to move the amendment to Section 22(3).

Mr. C. Kilonzo: Mr. Chairman, Sir, for purposes of clarity, I beg to move:-

THAT, the insertions on Section 22(3) of the Elections Act, 2010, be deleted.

Mr. Chairman, Sir, yesterday, we approved this amendment but, unfortunately, hon. Members did not understand the implication of this amendment.

(Loud consultations)

Mr. Chairman, Sir, hon. Members are consulting loudly.

Mr. Chairman: Order! Order, hon. Waibara! Order, hon. Kiptanui! Order, hon. Wetangula! You can consult but you should do so in very low tones – tones that are only audible to the person you are consulting with.

Mr. C. Kilonzo: Mr. Chairman, Sir, yesterday, we introduced a provision which would allow councillors---

Mr. Chairman: Move your amendment, hon. C. Kilonzo.

Mr. C. Kilonzo: Mr. Chairman, Sir, I have already moved the amendment.

(Question of the amendment proposed)

Mr. Duale: Mr. Chairman, Sir, I support the amendment. We want county governments where the county assembly representatives can read and analyse the county budgets. We want county assemblies whose members can be accountable to the people. This House is going to vet the Attorney-General and the Cabinet Secretaries. We want people who have gone to school. So, we want quality men and women to be county assembly representatives. We do not want people who can be manipulated by the governors. We cannot take to the county assemblies, people who cannot write their names. It is will be very shameful.

I beg to support.

The Minister of State for Public Works (Mr. Otieno): Mr. Chairman, Sir, we all know that, following the promulgation of the new Constitution, serious changes have been taking place in all the Arms of the Government, namely, the Legislature, the Executive, the Judiciary and Independent Commissions.

In all the other Arms of Government, there are academic qualifications requirements. In the Judiciary, the vetting process has even gone back to evaluating the degrees and judgements of all the judges, and some of them have been disqualified on account of incompetence.

In the Public Service, we have set minimum qualifications to be attained before one can be promoted to any higher job grades. In the independent Commissions, appointment criteria examined and approved by this House have set very high thresholds for anybody to be chairman or member of a Commission.

Mr. Chairman, Sir, we cannot derogate standards for the Legislature. Therefore, I support that the amendment that was passed yesterday – unfortunately, I was not here – should be deleted and academic qualifications made comparable. When it comes to the salaries and remuneration principles, equal pay for work of equal value; it will be difficult if one arm of Governance in this country starts from very low standards. We have to accept it.

If you do not have the qualifications, you will miss out for five years and come back after you are competent. Competency and the ability of this country to be globally competitive cannot, and should not; be compromised.

Mr. Chairman: Hon. Members, we will have Prof. Anyang’-Nyong’o and Eng. Mahamud, and then I will put the question.

The Minister for Medical Services (Prof. Anyang’-Nyong’o): Mr. Chairman, Sir, let me say that I am the happiest man this morning because when this amendment was passed yesterday, I was very worried.

I was worried because, county assembly representatives are going to interview people of very high calibre who are going to work in the counties, if indeed our counties are going to perform. Therefore, it is important that we maintain the threshold of education that is in the Constitution.

Secondly, with regard to ourselves, I did say yesterday that we should not, really, legislate in our favour. Doing so would be very selfish. Today, by re-committing this amendment to be considered again, is very good.

Finally, some of us in this House are not old enough to know what happened before Independence. Before Independence, qualifications to become a member of the Legislative Assembly were very stiff. It was extremely stiff. We have democratically reduced that qualification to be based purely on education. We now have universal access to education. Therefore, that is very democratic precisely because we invest so much in education, there

should be hiring terms for it as such levels as being elected to positions in the county assemblies and in national assemblies.

Mr. Chairman, Sir, I support the complete deletion of the amendment made yesterday and returning to constitutional provisions.

The Assistant Minister for Energy (Eng. M. M. Mohamud): [Mr. Chairman, Sir, I support the deletion of this amendment. It is very unfortunate that in this country and this day and age that we encourage illiterate people to be our leaders. Last night, I was very sad when this amendment went through. We are going through a new dispensation. We are going to have a county government where county assemblies will be expected to make laws that will guide that particular county. We would not allow people who cannot even write their names to be members of the county assemblies. I was actually very disappointed as this went through yesterday. So, I support the deletion

I, therefore, support the deletion of the amendment.

The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria): Mr. Chairman, Sir, nobody is being punished. We are just saying that this country must be competitive. Leaders at the county level and in Parliament have to be an example. After all, all Members of this Parliament are struggling to have their constituents gain education of a higher level and everybody is going to university these days. It is important to appreciate that it is not a punishment. There is time and that it is good for the country and everybody else. There were always people like Churchill and Major, but they were exceptions. It is important that we have a standard and that it should be uniform across other arms of the Government. It is important also that we promote education for those that are supposed to lead us at the county and at the national assembly.

I support the deletion.

Mr. Chairman: I will take one more from Dr. Khalwale and from Ms. Mathenge Murugi for gender balance, then I will put the question.

Dr. Khalwale: Mr. Chairman, Sir, it is with a heavy heart that I have to move and bring clarity to the minds of councillors and Members of Parliament currently serving who do not have these qualifications. The situation which is obtaining in the country is that to be a member of the land control board, you must have a mean grade of C; to join a teachers' training college, you must have a mean grade of C; to join the Early Childhood Development School, you must have a C-; to become a sub-chief, you must have a mean grade of C- and so on.

We have provided that a governor and the deputy governor to have a degree as a mandatory requirement, how then would you allow them to go and superintend over a county that have people with academic challenge? In the past, when we were supporting this, we had in mind counties like Turkana, but now Turkana is going to be a county driven by oil. How then do you expect to drive an oil economy when they are not literate?

In conclusion, I am a very happy man because earlier on when we were making this decision, I was worried that we were legislating for ourselves. At that time, we had put a very low bar for Senator and Member of Parliament, but now Mr. Kimunya has raised the bar. Now a Senator and a Member of Parliament must have a degree. So, we are now asking people to get post-secondary education.

I support the amendment.

The Minister for Finance (Mr. Githae): On a point of order, Mr. Chairman, Sir. I just want a clarification, so that we are sure of what we are doing here; what about honorary degrees? Are they included?

(Applause and laughter)

Mr. Chairman: Order! Order, Mr. Githae! An honorary degree is not an academic qualification.

The Minister of State for Special Programmes (Ms. Mathenge Murugi): Mr. Chairman, Sir, I want to support the deletion of this amendment and I support Mr. Kimunya's amendment. We must ask ourselves what kind of message we are sending to our children. Do we want them to be delinquent in school and drop out because they can attain these low standards and come to these assemblies? I want to support this amendment by Mr. Kimunya and remove the other one for Dr. Nuh.

(Loud consultations)

Mr. Chairman: Order! Order, hon. Members!

(Question put and agreed to)

(Applause)

The Attorney-General (Prof. Muigai): Mr. Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Statute Law (Miscellaneous) Amendment Bill, 2012 and its approval thereof with amendments.

[Mr. Chairman left the Chair]

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

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Mr. Deputy Speaker in the Chair]

Mr. Deputy Speaker: Order, hon. Members; the Temporary Deputy Chairman to report.

CONSIDERATION OF REPORT AND THIRD READING

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

Mr. Ethuro: Mr. Deputy Speaker, Sir, I beg to report that a Committee of the Whole House has considered The Statute Law (Miscellaneous Amendment) Bill and approved the same with amendments.

The Attorney-General (Prof. Muigai): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Medical Services (Prof. Anyang' -Nyong'o) seconded.

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

Mr. Deputy Speaker: Order, Dr. Nuh! You can only stand and contribute after the Chair has proposed the Question.

(Question proposed)

Dr. Nuh: Mr. Deputy Speaker, Sir, I also support that the House doth agree. But I also want to bring to the attention of the House and the Chair that I was missing this morning for many of my amendments and they were dropped. I did not think that The Statute Law (Miscellaneous Amendment) Bill was coming this morning. I got the message late. I also had to rush to another meeting. Most of the amendments, as the hon. Members would see and I have discussed with the Attorney-General, are corrections of inconsistencies within the Elections Act. They have to do with clauses following in sequence and others that have errors in numbering. We have discussed with the Attorney-General and he has said that he is going to do corrigenda to do the corrections, so that these worthy amendments are not lost.

Thank you, Mr. Deputy Speaker, Sir.

The Attorney-General (Prof. Muigai): Mr. Deputy Speaker, Sir, I am able to confirm that we have had a very fruitful discussion with the hon. Member, and he has some very insightful amendments that he proposes but I have found within my power to make the amendments in the revision of the Laws Act. That will be done at an appropriate time.

(Applause)

Mr. Mbadi: Mr. Deputy Speaker, Sir, I am happy that we have reversed some of the mistakes that we were likely to make. Surprisingly, the most important one has come from none other than Mr. Kimunya. I did not expect that but I thank God he has done what he did.

(Question put and agreed to)

The Attorney-General (Prof. Muigai): Mr. Deputy Speaker, Sir, I beg to move that The Statute Law (Miscellaneous Amendments) Bill, 2012 be now read the Third Time.

The Minister for Transport (Mr. Kimunya) seconded.

(Question proposed)

(Question put and agreed to)

*(The Bill was accordingly read the
Third Time and passed)*

Mr. Abdikadir: On a point of order, Mr. Deputy Speaker, Sir. In the next Order---

Mr. Deputy Speaker: You do not anticipate!

Hon. Members, we will now go straight to the Committee Stage of the Public Finance Management Bill, Bill No.7 of 2012.

COMMITTEE OF THE WHOLE HOUSE

(Order for the Committee read)

[Mr. Deputy Speaker left the Chair]

IN THE COMMITTEE

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

THE PUBLIC FINANCIAL MANAGEMENT BILL

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, we are in the Committee of the Whole House and we will be considering the Public Financial Management Bill.

Mr. Abdikadir: On a point of order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Ethuro): Let me call out the order first. We are now in the Committee of the Whole House and we will be considering the Public Financial Management Bill, 2012. I will entertain the point of order by Mr. Abdikadir.

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, with much respect to the Minister for Finance, this Bill is very critical. The Second Reading was finished a day ago. Yesterday, the House was fully engaged with the Statute Law (Miscellaneous Amendments) Bill.

The Minister has proposed very many amendments to the Bill. All those amendments require hon. Members, at least, to read them and we have not even read them.

(Applause)

This is a very critical law for purposes of devolution. Could I request the Minister to bring it even in the afternoon so that we can, at least, read through them?

(Loud consultations)

The Temporary Deputy Speaker (Mr. Ethuro): The Government Bench, just listen to the hon. Members.

Mr. Mungatana: On a point of order, Mr. Temporary Deputy Chairman, Sir. If you look at this Bill, you will realise that it is critical, for example, for the functioning of the county governments. We debated these matters during the Second Reading. The Minister never took into consideration some of the issues we raised, for example, the 15 per cent ought to be a direct charge on the Consolidated Fund. This was ignored amongst many other things.

We feel that this Bill is being rushed and the purpose of it being rushed through the Committee Stage is so that they can hide some of the dangerous things which are in this Bill. It is unfair for us to be put through this. We have not filed all the amendments we wanted. We

worked up to midnight last night and we would like to see some of the issues we raised during the Second Reading reflected in the amendments. The Minister has not done so. Many of us would like to file those amendments. I request that even if it is to be in the afternoon, this Bill be deferred.

Mr. Mbadi: Mr. Temporary Deputy Chairman, Sir, I would also like to support my colleagues that this Bill, I think we need a little more time, especially, to look at the amendments that the Minister has proposed. I would even like to tell this House that I have seen one of the amendments in this Bill proposing to legalise the illegality which the Treasury has been perpetuating, and which the Speaker is supposed to rule on I believe this afternoon.

So, if we allow the Committee Stage of this Bill to proceed, we may live to regret it later.

(Mr. Githae stood up in his place)

The Temporary Deputy Chairman (Mr. Ethuro): Yes, the Minister for Finance although I thought you should really come at the end of it all.

Yes, Prof. Anyang'-Nyong'o before I come back to the other hon. Members.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Temporary Deputy Chairman, Sir, I do empathize with the sentiments expressed by my colleagues. I do appreciate their desire to have this thing this afternoon. However, between now and the afternoon, there is still very little time. But nonetheless, having said that, I was going to plead to hon. Members that they allow the Minister to proceed with the amendments on the following proviso. The proviso is very important that we move very systematically from clause to clause where the Minister explains what he is introducing as an amendment from the original Bill by quoting to the House that original Bill so that the House can know. I know the hon. Members fear that they need to check the Bill with the amendments proposed. However, that mischief can be cured by the speed with which we meet and the carefulness with which hon. Members look at the amendments *vis-a-vis* the Bill. I think the Minister can do that ably. So, rather than defer the Bill to the afternoon, let us, at least, begin to make progress by providing the Minister the opportunity to explain the amendments and we, at least, achieve something by 12.30 p.m. and then during lunch time, hon. Members can look in more details what is left. I appeal to hon. Members to accept that.

The Temporary Deputy Chairman (Mr. Ethuro): Let us be brief. Just make a very specific request.

Dr. Nuh: Mr. Temporary Deputy Chairman, Sir, I think it should be understood by the Minister and the House that the Second Reading stage of this Bill was passed on Tuesday evening. The whole of yesterday morning and afternoon, hon. Members were committed until midnight, last night. Some of us stayed here until midnight. The amendments so proposed by the Minister only appeared on the website after 9.00 a.m. this morning when some of us came to learn about the amendments by the Minister.

So, we had gone through many workshops on the Public Financial Management Bill as a caucus. We have several misgivings and we have issues that we need to pick up. If anything, if there are amendments that we think the hon. Minister has not carried on board, we need to bring them as individual Members so that they are included in the Public Financial Management Bill amendments.

I think ambushing Members; even if the Minister was to go at great details to try and explain his caricature of amendments that he has here, does not take of our interests as Members

to safeguard the dignity of the county governments who are facing an upfront at many clauses in this Bill.

Mr. Temporary Deputy Chairman, Sir, yesterday we made it explicit as Members here that let us not be ambushed with the Public Finance Management Bill in the morning session. The reason even for us being asked to have a sitting in the morning was because Mr. Kimunya said he wanted to consider the Public Finance Management Bill. The Government again retracted his argument and said because we have a backlog of Bills we need to clear, let us have a special session in the morning. This was with an understanding that they do not bring this Public Finance Management Bill.

I plead with the Minister and the Executive Bench to at least give us until this afternoon. We may concur on many of these issues. Sometimes we use inconsiderably long time debating on amendments that if Members were given ample time to reflect on their own and in their caucuses would be sailing through in a minute.

Mr. Temporary Deputy Chairman, Sir, let us defer this Bill. After all, we have several other Bills on the Order Paper which are also important. Let us have this Bill in the afternoon.

The Minister for Trade (Mr. Wetangula): Mr. Temporary Deputy Chairman, Sir, thank you for the opportunity. I think the issues raised by Mr. Abdikadir and Dr. Nuh are legitimate. I want to persuade my learned friend here that we stand down this Committee of the whole House to this afternoon, then we can go straight to Mr. Mutula Kilonzo's Bill which we can deal with up to the rise of the House. In the afternoon, we can then come back to the Committee of the whole House. I am sure most of the complaining Members are very clever young men. They will have run through all these documents and we will be able to very ably participate in the Committee Stage in the afternoon.

Mr. Temporary Deputy Chairman, Sir, I request my colleague to see what he can do to ameliorate the situation.

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, this is a very important Bill. It is anchored in Chapter 12 of the Constitution to be reduced to an Act of Parliament. It is a huge Bill but it has been rushed. There have not been sufficient in depth consultations between the Ministry and the two Committees. I have not even seen the Minister's amendments.

These amendments came last night so even talking about the afternoon is impractical. I think it is important that there should be sufficient consultations between the Minister, the Committee on Finance, Planning and Trade and the Budget Committee. In fact, because of the rush even the harmonization between the amendments of the Budget Committee and the Committee on Finance, Planning and Trade has not been done. You will see duplications and a lot of conflicting amendments. This is all because we were trying to beat the time deadline of this morning. Therefore, even pushing it to this afternoon, to me, does not make a difference. Between now and 2.30 p.m., what are we going to be able to achieve? Shall we have a meeting with the Minister so that we can go through his amendments as is the usual practice? We do it when dealing with the Finance Bill.

We should sit with the Minister and that consultation will result in probably just a number of amendments that can be moved by the Minister himself. This is because then we will agree where there are inconsistencies between his and ours or disagreements and we reduce them to one set of amendments by the Minister. By that time, he will have consulted with the Committees and we shall have agreed on the various clauses. I would like to really ask that we have more time; between now and afternoon is not adequate.

Dr. Khalwale: On point of order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Ethuro): Let us get the Deputy Leader of Government Business.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I think I have listened to the sentiments of the Members. We are persuaded that we might need to some time to have these consultations and consolidation of these amendments so that we reduce even the time within the committee because they have been sorted out there. If it is agreeable, then I believe what I heard from the Chairman of the Committee on Finance, Planning and Trade and the Chairman of the Budget Committee they are willing to meet with the Minister for Finance now; harmonize all these things so that by the time we come back and start to debate at 3.30 p.m., we will be having a clear slate, so that we can come back to this Committee of the whole House in the afternoon and finalize this; which is possible.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, let us conclude.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, accordingly, I beg to move that the Committee doth report progress and seek time to meet again.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Members! Let us conclude. I have heard the Minister and hon. Members.

(Several Members stood up in their places)

Hon. Members, I think you are making very valid interventions. I am sure even the ones standing will just be adding to the same issues that have been ventilated. I think the Minister is willing to allow the spirit of proper public participation through the representatives. We defer this particular matter.

Standing Order No.36 also allows the Chair to dispose business for the convenience of the House. I would not put it to next week. I will put it to this afternoon so that---

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Ethuro): Let me finish! I am making a ruling from the Chair and so challenges may not be entirely entertained.

Use the opportunity between now and the afternoon at least to harmonize. I would direct the Minister to convene a meeting with the Committees so that you can harmonize as much as possible. Of course, the contentious issues will always remain so but we will minimize them. Then in afternoon, we do it. The only small request from the Chair is that you should also be prepared to extend the sitting hours maybe up to midnight again.

Let me have Mr. Githae first and then---

The Minister for Finance (Mr. Githae): Thank you Mr. Temporary Deputy Chairman, Sir, for that ruling.

I personally would have no problem. However, this issue is not as new as Members are trying to make it. This issue has been discussed for a long time. We have even held a workshop with the Members of the Committee on Finance, Planning and Trade. We have discussed these amendments. Basically, I know they are major but I can assure you we have taken into account the amendments that were raised by Members during debate. Even more, most of them are clean up. They are many but they are not major.

(Several hon. Members stood up in their places)

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members!

Minister, even you are not helping your own course. I just made a ruling and I remember the Deputy Leader of Government Business asking that we report progress.

I, therefore, wish to put the question---

Since I had granted Dr. Khalwale a chance on a procedural matter, that should be the last one.

Dr. Khalwale: Mr. Temporary Deputy Chairman, Sir, the reason the Public Finance Management Bill found its way on the Order Paper was a result of considerations that took place in the House Business Committee (HBC). One of the reasons was that the Minister was able to persuade us about the deadline of 27th.

To bring this Bill this afternoon is still to rush it because between now and afternoon, we are not free. We are still in the House. We will not have time to go over this thing. Now that he has made such a good decision; the Leader of Government Business, the Minister for Finance and Mr. Wetangula, you should extend it further for the sake of Kenya. Either if you cannot accept that we reconsider this matter much later on, you reconvene the HBC so that we weigh this matter. Putting effect Chapter 12; the Chapter on Finance is not a child's play. We have to think it through. You have seen last night we almost made a very big mistake. We must think this thing through properly so that when it comes we have come with all our amendments.

Supposing we want to make amendments now, what time will they have to go to the Committee on Justice and Legal Affairs for them to be looked upon and put on the Order Paper? Afternoon would be the wrong time.

The Temporary Deputy Chairman (Mr. Ethuro): Dr. Khalwale is challenging the decision of the Chair and that decision cannot be challenged.

PROGRESS REPORTED

THE PUBLIC FINANCIAL MANAGEMENT BILL

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, in keeping with procedure, we have to report progress and either seek leave to continue consideration of the Bill in Committee today, or another day.

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, the Committee of the whole House is considering The Public Financial Management Bill and has instructed me to report progress and seek leave to sit again today.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Mr. Mungatana) in the Chair]*

REPORT

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House is considering The Public Financial Management Bill and has instructed me to report progress and seek leave to sit again today.

Mr. M'Mithiaru seconded.

(Question proposed)

Dr. Nuh: Mr. Temporary Deputy Speaker, Sir, I heard the arguments by Dr. Khalwale and I would like to plead with the Leader of Government Business, if the reconvening of the House Business Committee (HBC) can be done to realign this business even if it is for Tuesday, that can be good. They can wait at that level and see the input that even Committees have. They need to take every comment on board. If that is done, we will have no business of coming to debate a deferment in the afternoon and we take 30 minutes arguing back and forth as to why it should not be on the Order Paper. So, again, it is just to plead with the HBC; it will not take them more than 30 minutes to make a decision for the House and reduce the time that would have been consumed debating in this House.

Mr. Shakeel: Mr. Temporary Deputy Speaker, Sir, I want to support the sentiments that have been put by my brother, Dr. Nuh, but there is something that the Minister said which I think needs to be clarified. Yes, we had workshops where we discussed The Public Financial Management Bill as a whole. We have never had the opportunity to discuss the amendments that the Minister is proposing. They are very good amendments but we need a bit of time to look through them but I support the request to the HBC to please consider giving us more time.

Mr. Ogindo: Mr. Temporary Deputy Speaker, Sir, allow me to thank the Leader of Government Business for his understanding of this issue but I know they can do better. The new Minister for Finance had done very well and he enjoys a lot of goodwill from this House. We are doing this for the good of the country and we do not want to get it wrong. The Public Financial Management Bill is going to be the lifeblood of these two governments and it is imperative that this thing is interrogated with a toothcomb. To that end, even the afternoon Session will not be enough. So I want to indulge him that we consider taking this thing to next week, Tuesday.

Mr. Mbadi: Mr. Temporary Deputy Speaker, Sir, I want to just plead with my colleagues that immediately we leave this Parliament now, we engage our minds to these amendments and come and finish this afternoon. I say so because even if we delay this thing for a further one week, probably very few will engage their minds in reading this Bill. If you have read this Bill, then I think it will not take you so much time to just confirm, agree or disagree with the amendments.

Prof. Kaloki: Mr. Temporary Deputy Speaker, Sir, mine is just to urge my friend, the Minister for Finance, definitely as a Member of the Departmental Committee on Finance, Planning and Trade, we have worked very well with him and we are just urging that we get more time to come and work together with him to support his amendments. This is a comprehensive Financial Management Bill and we do not want to feel like we are being rushed. Some of the issues we will bring up will strengthen this Bill and what we are asking and we need his direction here, is not to debate this Bill today but to get additional time, probably on Tuesday so that we can work on it. It is so important that we have a comprehensive Bill to strengthen financial management.

Mr. Okemo: Mr. Temporary Deputy Speaker, Sir, I just want to emphasize the point I made earlier that it is in the interest of the country and the interest of the Ministry of Finance that

we engage sufficiently because all these sets of amendments are coming from so many different quarters particularly from the Departmental Committee on Finance, Planning and Trade and from the Budget Committee. If we engage the Minister, we are going to reduce all his amendments, our amendments and the amendments from the Budget Committee into one set of amendments which we shall agree upon. When we come to this House all those will be the Minister's amendments and they can be passed within a record time and that is all what we are saying. It is in the interest of this House that we do not spend too much time dealing with conflicting amendments. I do not really know but we can make an effort to try and meet the Minister immediately so that we see how we can proceed. If we are unable, then we will come and request for time here but if we are able to complete, then we shall do so this afternoon.

The Temporary Deputy Speaker (Mr. Mungatana): I would like the Minister to hear everyone.

Mr. M'Mithiaru: Mr. Temporary Deputy Speaker, Sir, I wish to support the line argued by the Chair of the Departmental Committee on Finance, Planning and Trade because this document is heavy and we need to get our priorities right. So, my proposal is that if we can be allowed as the Departmental Committee on Finance, Planning and Trade and the Budget Committee to meet now, and once we agree on our amendments, then as a joint Committee we meet the Minister probably on Monday, clear everything then on Tuesday we can have this Committee of the whole House to consider this Bill.

The Minister for Trade (Mr. Wetangula): On a point of order, Mr. Temporary Deputy Speaker, Sir. We are really saying the same things over and over and undermining the consultation time that we wanted the Minister and the Committee to go and have. Why do we not bring this unhelpful debate to an end so that the Minister and the Committees can go and meet and come and give us progress in the afternoon? If they have made good progress, we move on and if they have not then we will consider the matter.

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, in fact, I was going to suggest the same thing that we have a joint meeting now of the Departmental Committee on Finance, Planning and Trade, the Budget Committee and the Treasury and we try to harmonize the amendments then come and report at 3.00 p.m. when the matter comes up for debate. If you could rule that, that would give us some more little time now so that we can move out immediately.

The Temporary Deputy Speaker (Mr. Mungatana): You will want to meet in the Treasury? Hon. Members, let me just say that following that direction, the Minister and the relevant Committees of Finance, Planning and Trade and Budget should – I direct – meet immediately after this and then they can report progress in the afternoon.

(Question put and agreed to)

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

*[The Temporary Deputy Speaker
(Prof. Kaloki) took the Chair]*

BILL

THE TEACHERS SERVICE COMMISSION BILL

The Minister for Education (Mr. M. Kilonzo): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity.

Mr. Temporary Deputy Speaker, Sir, I beg to move that the Teachers Service Commission Bill, Bill No.17 of 2012, be now read a Second Time.

- Mr. Temporary Deputy Speaker, Sir, it has been said and I quote:-

“Education is a great engine of personal development. It is through education that the daughter of a peasant can become a doctor; a son of a mine worker can become the head of a mine; that a child of farm workers can become the President of a great nation. It is what we make out of what we have, not what we are given that separates one person from another.”

Mr. Temporary Deputy Speaker, Sir, with your kind permission, I have just quoted an African living legend, former President Nelson Mandela, in his book: *Long Walk to Freedom*, published in 1994.

Mr. Temporary Deputy Speaker, Sir, allow me again before I present the Bill to quote that exceptional man. I quote:-

“The divide between the rich and the poor, the privileged and the deprived, the powerful and the marginalized has become marked primarily by a differentiation in access to knowledge and information. Those who have access to cutting edge knowledge hold the advantage in all arenas of social, political and economic life.”

Again, the former President of South Africa, Nelson Mandela, was addressing the 26th International Conference on improving university teaching in Johannesburg University in South Africa in July, 2001.

Mr. Temporary Deputy Speaker, Sir, permit me also to quote the very distinguished former President of the United States of America, the late John F. Kennedy, when he said and I quote:-

“And when at some future date the high court of history sits in judgement on each one of us recording whether in our brief span of service we fulfilled our responsibilities to the State, our success or failure in whatever office we hold will be measured by the answers to four questions: First, were we truly men of courage? Secondly, were we truly men of judgment; thirdly, were we truly men of integrity and finally, were we truly men of dedication?”

Mr. Temporary Deputy Speaker, Sir, the Teachers Service Commission (TSC) is now a constitutional Commission alongside other commissions in Chapter 15 of the Constitution. This is a part of the free choice that Kenyans made in 2010 in the constitutional referendum. It is provided for under Article 237 that I wish to refer hon. Members in presenting this Bill to be aware of. It must be understood that, that decision by Kenyans to entrench the TSC in the Constitution was not decided by a clear desire to get out of the box, as it were, of the challenges that have faced our education system since Independence.

Mr. Temporary Deputy Speaker, Sir, as you are well aware, this House approved a Motion moved by former President Moi, when he was a Member of Parliament way back in 1957, in which he petitioned this House that teachers be allowed to form a national organization to fight for the welfare of teachers. This was realized on 4th December, 1957, when the Kenya National Union of Teachers was launched at DEB Pumwani Primary School in Nairobi.

On 10th December, 1958, the constitution of the union was ratified and the Kenya National Union of Teachers, otherwise, known as KNUT, became operational. At the beginning, it was the secondary school teachers and tutors from teachers training colleges who developed the constitution and other guidelines, arising from their long suffering under the colonial

administration. You will recall that the first KNUT Chair was Mr. Mkok, a teacher at St. Peters Secondary School in Mumias. He was followed by Mr. Anyani and many others since then. Parallel to this, there arose the need to have TSC so that when KNUT was pursuing the welfare of its members - and it has done a wonderful job--- It is one of the oldest trade unions in Kenya. It is one of the oldest professional bodies in Kenya and it has done a tremendous piece of work during that time. But even as the country was appreciating the benefits of an organized teachers welfare union and association, it was essential that the country also develops a method of managing teachers and managing the standards themselves not from a trade union perspective or purely professional body perspective that forms a holistic approach that will also benefit not only the teachers, but also the students and the country as a whole. It is because of this that this House enacted the Teachers Service Commission Act, Chapter 212 of the Laws of Kenya in 1967. You will notice it was enacted barely three years after Independence. So, it is one of the oldest post-independent statutes.

Mr. Temporary Deputy Speaker, Sir, for many years since the enactment of Chapter 212, its inadequacies developed and a feeling developed in the country that we needed to address this very important institution in a better way. Therefore, in promulgating the new Constitution, the country also decided to entrench this very important Commission in the Constitution. I dare say Article 237 was not among the contentious issues in the Constitution. It is, therefore, not an accident that this Bill is on the Floor of the House today. It is a very urgent law because as we all remember, the Constitution was promulgated on 27th of August, 2010 entrenching the TSC. There has been serious erosion in the existing Commission such that, under the existing Chapter 212, the original Commission comprised of 24 Commissioners. But now, because of continuous attrition, people acquiring their retirement age or their contract expiring, we only have seven left. There is, therefore, no other method. None whatsoever! The country must understand that there is no available option other than to fast-track this Bill into law.

I want to salute His Excellency the President because when he addressed this House in April, he highlighted the need to enact the Teachers Service Commission Bill as one of the emergency legislative steps to be taken by this House. It is for this reason that I plead with hon. Members to enact this Bill into law so that the process of recruitment under the Act can commence. If we fail to do so, the responsibilities created by Article 237 of the Constitution will be grossly and irreparably undermined to the enormous irreparable damage to the country's education system and the economic development as a whole, including the medium global goals and Vision 2030.

Mr. Temporary Deputy Speaker, Sir, the Bill is, in fact, one of the most straight forward Bills that I have had to present to this House. Part II of the Bill deals with the composition and administration, including guiding principles, functions of the Commission, its committees and its powers and units. It also deals with the conduct of the affairs of the Commission. Part III deals with the registration and discipline of teachers and compliance with teaching standards. It also deals with qualifications for registration as a teacher. I have it on high authority from the TSC General-Secretary himself, saying that with the enactment of this law, all teachers, whether in private or public schools, will be registered to ensure compliance with standards. They will be issued with a registration certificate. This will regulate the profession and ensure Kenyan children are handled by competent persons. In addition, he has assured me that the proposal I table on this Floor under Clause No.35 for teaching standards; that teachers will undertake career progression courses to make them relevant and up to date with the emerging trends and challenges in the teaching profession.

In addition, a teacher will be required to take a teaching certificate, just like lawyers take practising certificates, to ensure that they are registered and that they have undertaken continuous teacher-training modules after deployment as will be prescribed by the Commission.

Mr. Temporary Deputy Speaker, Sir, Part IV deals with financial provisions. I also want to assure the House that, as I have done in the past, I keep an open mind in proposing laws for this beautiful country. I am already in direct discussions with the Chair of the Departmental Committee on Education, Research and Technology. If this House approves this Bill in the Second Reading, we will be presenting amendments that have arisen from the continuous debate in the country about this very, very important institution during the Third Reading. I will also be bringing forth comments and proposals driven by whatever it is that has been said, not only by the Kenya National Union of Teachers (KNUT), but also by the Kenya Union of Post Primary Education Teachers (KUPPET), which is a much more recent teachers association. I will also be bringing forth comments from the public generally because I am getting proposals from all over the world by email and otherwise.

Mr. Temporary Deputy Speaker, Sir, Part V deals with miscellaneous provisions like annual reporting, offences, code of conduct and regulations. It is very important for this House, although I notice that a lot of hon. Members have gone out, perhaps for further consultations on the Public Financial Management Bill. This is such a fundamental area that even as they concentrate on those matters, they look at Part V, which deals with offences, so that we eliminate the problems that we have had.

Mr. Temporary Deputy Speaker, Sir, this is a law whose time has come. There will be others which I will be presenting to this House in the course of the next two months, including the 2012 Education Policy that my Ministry has also finalized.

I will also be presenting, in the course of the next two months, the 2012 Basic Education Bill to cover basic education as required by Article 53 of the Constitution. Not to mention, of course, that I will also be presenting a law in the course of the next two months to convert the Kenya Institute of Education (KIE) into a world-class curriculum development institution

Mr. Temporary Deputy Speaker, Sir, I want to draw specific attention of hon. Members to the schedules, particularly the one on disciplinary offences. You will recall that in the retiring law, there used to be an appeals tribunal. I want hon. Members to look at this very carefully, bearing in mind that the power given to the Teachers Service Commission (TSC) to discipline teachers in Article 237 should not be taken at face value. The rules of natural justice apply equally to quasi-judicial as well as judicial bodies. Therefore, the disciplinary process must also respect the human rights of our Kenyan teachers. I will be looking forward to fertilization of greater ideas in the Bill from the Floor.

I welcome improvement and suggestions on this very important law so that the quotations that I have opened up with distinguish human beings, quoting a living African legend, so that they can be realized in this country during our lifetime.

Mr. Temporary Deputy Speaker, Sir, I want to conclude by stating without fear that education is the path to lasting reforms for Kenya. Quality education will produce citizens and leaders who do not have to be persuaded about the Bill of Rights in our Constitution; or leaders and citizens who do not have to be persuaded that Chapter Six of the Constitution or any other dream that Kenyans had in enacting the new Constitution is a reality.

Mr. Temporary Deputy Speaker, Sir, education is the only pathway to real and permanent elimination of corruption; permanent elimination of negative ethnicity; it is the only trusted pathway for the elimination of hate speech and other undesirable practices, including drug

trafficking, not to mention terrorism.

Mr. Temporary Deputy Speaker, Sir, this Bill will facilitate tremendous improvement in education, for without teachers and teachers who enjoy and love their profession; teachers who feel that they are appreciated by their country, there is no education worth talking about.

Mr. Temporary Deputy Speaker, Sir, I beg to move and I am very happy and lucky to have nobody less than a full professor, hon. Professor Anyang'-Nyong'o, to second this Bill.

Thank you, Mr. Temporary Deputy Speaker, Sir.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Temporary Deputy Speaker, Sir, let me thank the senior counsel, the Minister for Education, hon. Mutula Kilonzo, for requesting me to second this very important Bill; the Bill establishing the TSC Bill, 2012, by this National Assembly and, of course, putting the old TSC to rest so that the new one can rise up like the owl of Minerva in its place.

Mr. Temporary Deputy Speaker, Sir, if we read this Bill, particularly if we go to Article 6 of the Bill which talks about qualification for appointment of chairperson and members of the Commission, you will see the importance of what we have done today in this House. This Article says, "A person shall be qualified for appointment as the Chairperson if such a person:-

(a) Holds a degree in education from a university recognized in Kenya."

Now, if we are going to make such laws for institutions as important as the TSC and we say that both the chairman, secretary and members of the TSC must hold degrees, then it is important that we, ourselves, should rise up to the same levels of education and qualification.

Mr. Temporary Deputy Speaker, Sir, let me say something about education in this country. Apart from the fact that our founding fathers, when they founded this nation, declared war on three things; ignorance, poverty and disease, in that order and making them equally important as enemies of the people of Kenya, education has always been a prime concern for Kenyans even in colonial times. That is why nationalists like Jomo Kenyatta and Mbiyu Koinange started Thogoto Teacher Training College here in Kiambu to find alternative teacher-training institutions for the people of Kenya who did not have access to teacher training. Therefore, this was to become an institution to train teachers of their own people and to prepare them for a competitive system that the colonial system had established, which was rapidly being reserved to only a select elite that could have access to schools established by colonial regime.

Mr. Temporary Deputy Speaker, Sir, likewise in the established churches then, independent churches arose. I know, for example, that in Nyanza, the Nomiya Luo Mission arose not simply to give an alternative view of religion to Africans as opposed to the established churches imported from abroad, but also to use the church to establish schools that would give education to our people.

In that regard, education has always been primary to the lifeline of our people and, indeed, after Independence, the Government and the people of Kenya, seeing that the Government itself could not provide proper facilities and teachers for its people, the people of Kenya started the *harambee* movement to establish schools and, indeed, to hire teachers to teach. Therefore, the TSC, right from its very beginning, was established not only to regulate the teaching profession, but to set standards for the teaching profession; a subject which is competently addressed in this particular Bill.

Mr. Temporary Deputy Speaker, Sir, I want to go to the issue of standards in the teaching profession. The fact that standards are so important in achieving excellence, if we do not have a commission that jealously looks after and promotes standards our education will be run down. What I fear is that over the years, particularly as education has expanded – and, indeed, we are

now expanding education at the higher level, including universities and so on – we must pay specific and particular attention to standards, otherwise, we run a risk where people have certificates but they cannot equally profess or perform in line with the certificates they have.

Mr. Temporary Deputy Speaker, Sir, I would like to refer to Clause 27 of this Bill and urge the Minister for Education that, indeed, as he brings amendments to this House, one of the things that he should look at very carefully is the manner in which the Teachers Service Commission (TSC) will maintain and supervise standards. Secondly, he should look at the manner in which, at the school level, it is going to be possible to improve and check standards. This is because, at the moment, I fear that our schools particularly the primary and secondary schools--- This thing may be going to the universities as well, but let us talk about primary and secondary schools, because universities belong to the Ministry of Higher Education, Science and Technology. I fear that we are compromising the issue of standards, because we are being pennywise and pound foolish. We have over the last couple of years promoted our teachers' colleges to become branches or campuses of universities, but we have not invested as much in new teachers' colleges that can train more teachers to teach our children. For example, Arata Primary School where I come from has been well built through the Constituencies Development Fund (CDF), community and development partners. So, the physical infrastructure is very attractive to students and the number of students that have come in has grown exponentially over the last five years. But the teacher to pupil ratio is about one teacher to 90 pupils, depending on what class you are talking about. This, thus, obviously affects the standards of education, because the teacher-student ratio is not optimal. Teachers are trying to handle too many pupils at the same time and, therefore, they are not handling them effectively.

Mr. Temporary Deputy Speaker, Sir, Clause 27 says that the Commission shall not register a person as a teacher if such person does not possess the prescribed qualifications. Subsequently, in Clause 35, the Commission shall take all necessary steps to ensure that persons in the teaching service comply with the teaching standards prescribed by the Commission under this Act. I would like to know what criteria is given in this particular Bill as to how the Commission is going to prescribe standards for these teachers, unless it is coming in a separate law or regulation that the TSC is going to pass. That is important because I think standards are very key to the profession of teaching and education of our children.

Mr. Temporary Deputy Speaker, Sir, let me just look at these sections one after the other, so that I can dispose of some of the issues that I want to address. Section 27 reads:

“The Commission shall not register a person as a teacher if such a person-

- (a) does not possess the prescribed qualifications;
- (b) is not of good moral character;
- (c) has been convicted of a sexual offence or offence committed against a child;
- (d) has been convicted of a criminal offence which, in the opinion of the commission, renders the person unfit to be a teacher;
- (e) is engaged in any activities which, in the opinion of the commission, are prejudicial to peace, good order or government in Kenya; or,
- (f) suffers from such physical or mental infirmity, which in the opinion of the commission, renders the person incapable of performing the duties of a teacher.”

Mr. Temporary Deputy Speaker, Sir, I think in these provisions, this Bill addresses really the problems that we are facing in schools. My problem, however, is the mode of implementation of these provisions, that is, after putting these standards and qualifications of registering that person as a teacher, whether the Commission is going to have mechanisms and powers of

implementing them. This is because at the moment they do not exist or if they exist, they are extremely ineffective. For example, I have had cases in some of my primary schools in my constituency – Kisumu Rural – where teachers have actually be caught red-handed sexually abusing the pupils. Of course, they have been taken to a police station, and you know how the police do these things. They are very insensitive to sexual offences. They refer the teachers to the system, that is, the District Education Officers (D.E.Os) and so on. Then, quite often, the union comes in to speak on behalf of the teachers or defend them. The parents become afraid because they want their children to continue learning. They do not want to ensure that proper steps or disciplinary action is taken against such teachers. So, let us be frank that there has grown a little bit of impunity among those teachers who go against these standards. We do not seem to have systems of compliance or that which actually makes it possible that there is punishment that can then prohibit such things from happening in our schools. Therefore, a little bit of indiscipline among the teaching profession has occurred under circumstances which I think are inimical to good education and health of our students and pupils in primary and secondary schools.

Mr. Temporary Deputy Speaker, Sir, secondly, I am glad that “c” says: “Has been convicted of a sexual offence or offence committed against a child.” That is important but look at the next one which says: “Has been convicted of a criminal offence which, in the opinion of the commission, renders the person unfit to be a teacher.” A criminal offence is a criminal offence. I do not see how a criminal offence becomes a subject in the opinion of the Commission. I think if somebody has been convicted of a criminal offence, then he is not fit to be a teacher. But if it is qualified in the opinion of the Commission, we are opening a Pandora’s Box, where the Commission will want to make a decision on which criminal offence is heavy enough to disqualify somebody.

Mr. Temporary Deputy Speaker, Sir, when I was growing up, the teachers were really the examples of excellence in society. When you went to a teacher’s house, you could see that this was really a teacher’s house. The way a teacher dressed was a standard set in the village. Teachers’ wives were the only ones called “madam” in the village. There were very few “madams” in the village except teachers’ and pastors’ wives and I am glad my mother was one of them. So, this is the excellence that teachers must establish, however many they are in this Republic. I have always told teachers in my constituency that if, indeed, they are going to be the people who bring up our children, they must all – it does not matter whether or not one is a headmaster – exemplify this excellence all the time, otherwise, our children will not have role models.

Mr. Temporary Deputy Speaker, Sir, part “e” says: “Is engaged in any activities which, in the opinion of the commission, are prejudicial to peace, good order or government in Kenya.” Yes, I think that the opinion of the Commission can be invited, but in the case of a criminal offence, I do not think that the opinion of the Commission matters, because one way or the other, it is a criminal offence. For example, I am afraid that the drinking of *Chang’aa* among school teachers has not only affected adversely their character, but also their performance.

One of the things that I think the Teachers Service Commission (TSC) should do in putting in place methods of compliance is that there should be a high premium placed in punishing teachers who drink and affect their teachers hours. I do not mind people drinking socially after teaching hours. That means *baada ya kazi* and you do not go to school the following day without brushing your teeth, combing your hair or walk in sandals with your belt half tied. When people drink too much, it affects their character with regard to the way they dress and the way they appear. However, if they drink socially so that they take one or two *baada ya*

kazi, or they go to a reception, that is accepted. However, this drunkenness that I see in our schools which headmasters, principals, school boards and the Parents Teachers Associations (PTAs) are not being effective in controlling very serious matters.

Part “F” is very important. I am going through these things because I would really like, in maintaining standards for the TSC to have mechanisms of implementing or causing compliance to these standards. The Commission shall not register a person as a teacher if such a person:-

“(f) suffers from such physical or mental infirmity which in the opinion of the Commission renders the person incapable of performing the duties of a teacher.”

There is a danger there. This should not be in the opinion of the Commission but it should be the opinion of qualified persons. I think for the TSC, without a psychiatrist, a medical doctor or a social psychologist, to be in a position to determine whether someone is suffering from mental infirmity it is extremely difficult. Therefore, to implement this particular one, I do not want it to be abused by the Commission because a headmaster who does not like a clever young woman or man can easily write a letter to the Commission and say that this fellow suffers from mental infirmity and he should be deregistered as a teacher. This is simply because that fellow cannot stand useless authority or a headmaster loading it over him or her. That particular provision can easily be misused.

So, I call upon my colleague here that this provision, while it is useful, can be misused unless this is revised. It says; “suffers from such physical or mental infirmity which in the opinion of the Commission---” This cannot just be in the opinion of the Commission. It should be in the opinion of qualified persons. Because if it is reported to the Commission that somebody suffered a physical or a mental infirmity and, therefore, cannot teach they must subject such a report to a qualified institution or person to give a report to the Commission on the basis of which the Commission can make a decision. I know this is very important because some headmasters can be vindictive when they think that a member of staff is cleverer than them. So, the cleverness is reduced to mental infirmity which is terribly unfair.

Let me go to Clause 35 although I know that my time is almost up. Let me just make some proposals here which I hope will maybe influence my learned friend, my senior counsel or hon. colleague.

Clause 35 says:

“(1) The Commission shall take all necessary steps to ensure that the persons in the teaching service---“

The Temporary Deputy Speaker (Prof. Kaloki): Order, Professor, could you sum up your contribution? I will give you an additional one minute.

The Minister for Medical Services (Prof. Anyang’-Nyong'o): Mr. Temporary Deputy Speaker, Sir, let me say this one. Clause 35(1) further says:

“---comply with the teaching standards prescribed in the Commission under this Act.

(2) For purpose of subsection (1), the Commission shall-

(a) require every registered teacher to undertake career progression and professional development programmes---”

This is very important. The reason I want to conclude with this is I think that in order for people to comply with this provision, we need to have in our counties Education Development Centres or Teacher Development Centres where teachers can go to do research, get some more information or to consult with others. The professional development programmes can be benchmarked against the development centres for teachers established in every county to help

them upgrade themselves or know how to progress upwards in the absence of teacher training colleges.

I think teaching development centres like farmers training centres in our constituencies are extremely important in implementing this. Let us not have provisions which we will expect teachers to comply with if there are no institutions to make them comply.

Mr. Temporary Deputy Speaker, Sir, I beg to support.

(Question proposed)

Mr. Koech: Thank you, Mr. Temporary Deputy Speaker, Sir. Allow me first of all, to sincerely thank the Minister for having fast tracked the introduction of this Bill to this House. There has been a lot of agitation out there because the management and the running of the TSC, at the moment is in jeopardy unless we pass this Bill. Allow me to also thank the Minister for the many Bills that are in the pipeline. I want to say and confirm that this is one very active Minister that we have worked with as a Committee.

The TSC is a very important institution for the Republic of Kenya. At Independence, we did agree that, as a country, we would fight three things namely ignorance, poverty and diseases. I want to make it very clear here that if we, as a country, fight illiteracy with focus and purpose, we shall indirectly take care of poverty and diseases because a well-educated person will know how to take care of himself. He will also know when to go for medical checkups and when not to.

Through education, we have seen many Kenyans come out of poverty. So, I want to indicate that for this country, Kenya, education requires serious attention so that we overcome all the other things that we agreed to fight as a nation.

Mr. Temporary Deputy Speaker, Sir, the TSC is mandated to manage teachers. Teachers are very important in the Republic of Kenya and all over the world. For us to be what we are today, and for any person to be what he or she is today or for any child to be what he or she aspires to be, the teacher is a very important person. Therefore, this Bill that looks at the management and recruitment of teachers is very important.

The TSC roles include registration of teachers and issuance of certificates so that we can clearly know who is a teacher in this country and who is not. The Commission is also empowered to recruit teachers and ensure standards are met. Now that the TSC is an independent entity, it should, guided by this Bill once passed, address squarely the issue of shortage of teachers to ensure quality education. What we have in this country today is for a fact that those who are able have taken their children to private schools where the private owners have made sure that they have enough teachers to teach, and the classes that they teach are reduced to manageable sizes. These children, therefore, have advantage over a child of a Kenyan who is struggling and his child goes to a public school where they have one teacher teaching or trying to help up to 100 students in a class. So, I want the TSC, once established, to seriously address this matter so that a child of a poor man can one day dine with a child of a king and probably become the king himself to lead this country in future.

We expect TSC to ensure the improvement of standards in our country. We also expect them to discipline those teachers who do not perform. It has been taking too long for the TSC to act on any issue because they have been relying on the Ministry of Education officers under the Quality Assessment Department where sometimes they take too long to give a report to the TSC. We always say that justice delayed is justice denied. It is, therefore, important that within the

TSC they should put up clear regulations that will address these matters within a very short time. This is because we are talking about people who are dealing with the children of the Republic of Kenya.

Mr. Temporary Deputy Speaker, Sir, looking at the composition of the Commission, I concur with the need to have only nine commissioners. A lean commission is more effective when they put more to the devolution in the counties. Currently, TSC has over 20 commissioners and this may have affected the performance of the TSC. It is important to note here that it is proposed that they shall be full time commissioners. I want to laud that.

Issues have been raised out there by some major stakeholders. Within the provision of the composition of the commissioners it has been made clear here that to be a chairman of this Commission, one must first of all have had some training in the field of education. I want to support this. Since we also need people with qualifications in other fields, I want to concur that for the other commissioners we actually need persons who have a degree.

The process of appointing commissioner is important and critical for this country. We need clear participation and clear process of interviewing the selection panel. What has been indicated here is that the panel shall be constituted by the President in concurrence with the Prime Minister. We are seized of this matter and we are discussing it. We have opened it out to major stakeholders to also give us their input. We believe that their input together with the input of hon. Members of this House we will be in a position to perfect this document.

There is need to ensure that the panel which is going to select and advertise for positions goes through the vetting process just like we have been doing in the case of other Bills. I am also happy with the fact that from the advertisement the selection panel shall pick three persons for the position of the Chairman and 13 persons for the position of members to be forwarded to the President who shall be expected to pick one person for the position of Chairman and eight persons for the position of members. Those names will then be forwarded to this honourable House for consideration and either support and forward, or reject and return.

Mr. Temporary Deputy Speaker, Sir, the need that three persons be picked for the position of Chairman will give the appointing authority a leeway that if the proposed candidate is rejected then the appointing authority is able to bring any of the remaining two so that we do not take too long in going through the entire process. I want to commend that proposal.

The powers of the Commission include the advertisement and recruitment of the Chief Executive Officer (CEO). The CEO is a very important officer in the Commission. I want to laud the proposal because in this Bill it is very clear that the CEO shall work for five years renewable once. I want to make it clear that it has not been practically possible to deal with this matter because in the current Teachers Service Commission Act it is not known who should appoint and for how long the CEO should serve. It is important for this House to consider that this being a very important position there is need for the CEO to be vetted alongside the Commissioners. The CEO should also go through this House for approval.

The question that every other person has been raising is who should teach in this country. If you asked anybody who should be allowed to treat people, Prof. Anyang'-Nyong'o will tell you that it has to be a qualified doctor. Who should go to court? It has to be a qualified lawyer. We must come out clear and clean in this country about who should be teaching our children. For those of us who have undergone that training, there is more to teaching that one requires to understand and know. Therefore, there is need to ensure that teachers in Kenya undergo teaching professional courses before they are engaged to teach. This is important because Kenya is proud

in the whole world and specifically in Africa to have more than enough trained teachers right from the ECD to the highest level of education. We, therefore, need to be clear on that matter.

Mr. Temporary Deputy Speaker, Clause 35 of the Bill indicates that the TSC shall enter into agreements with any institution, body, department or agency of the Government pursuant to its functions and powers bestowed under this Clause. I really want to thank those people who have invested in education because they have helped the Government in the public/private partnership arrangement. These people should be able to register with the TSC in order to ensure that the teachers they engage are persons who have been licensed by the TSC. This should be made mandatory.

I am happy about the need for teachers to go for further studies. What is happening in the country today is that once a teacher graduates, he or she is left alone to decide when to go for very important courses. The Kenya Education Management Institute has very important courses which can help teachers progress. However, this has been left at the mercy of teachers who have to look for money to go for those courses. We should ensure that these courses are mandatory and that the Government provides money to enable our teachers undergo these important courses.

We must ensure performance. Our new Constitution contemplates that every person engaged in the Republic must perform. Today we do not have a clear mechanism to ensure that those teachers who perform are rewarded. There is no clear programme of recognizing them. They, therefore, end up getting discouraged. It is important to recognize people who have performed.

As I wind up, on the financial provision, children learn through what they are taught in class and through what we call the hidden curriculum where they see their mentors. They learn from the way their mentors operate and behave. Their first mentor is the teacher. The way the teachers behave and carry out their activities, many of our children learn and pick a lot from them. We must endeavor to ensure that this issue of delaying the payment of salaries for teachers stops. The TSC is entitled to prepare its budget estimates and present them.

Once presented and adapted we should be able to see the Teachers Service Commission (TSC) releasing the salaries on time to avoid seeing people demonstrating and to also ensure that these people are entitled to an increment. It should be an entitlement that should not require even the unions to go demanding for it. It should be something that should be updated even before.

Mr. Temporary Deputy Speaker, Sir, we expect and I want to make it very categorical that once the TSC commissioners have been vetted, we expect them to go beyond and vet the other staff up to the lowest levels. We are aware that they have already posted some County Commissioners. I want to indicate here that there is need for TSC once reconstituted, to even vet the County Commissioners afresh and ensure equity, that out of the 47 counties it should be mandatory in the law that when they are picking commissioners, they pick at least one commissioner per county but they do not need to serve in their own counties so that no part of this country is left out.

Lastly, TSC is a separate entity from the Ministry of Education. It is important to ensure that there is no collision in the role of the TSC and the Ministry of Education as far as performance of their duties is concerned. One thing that has come out very clear which is now better, is the budgeting of the TSC that will now fall within the budget cycle of Government from July to June, as opposed to the problems and challenges that we have been facing between the Ministry of Education and the Government in terms of the financial year and the academic year.

Mr. Temporary Deputy Speaker, Sir, so, I want to support this Bill and invite all Kenyans, especially the major stakeholders not to speak outside there to the Bill. Now that it is before the House, let them come to my committee. Let them go to the Minister and present their views so that we capture this at the Third Reading.

I support.

The Minister for Trade (Mr. Wetangula): Mr. Temporary Deputy Speaker, Sir, thank you very much. I thank and congratulate my learned senior for bringing this Bill to give effect to a constitutional provision that creates the TSC. On Article 5I, I want to urge and recommend the Minister that the nine commissioners to be appointed for the period of six years, for purposes of institutional memory and continuity, their appointments should be staggered so that when a certain number falls out, there is at least some left because we have quite a number of statutory members. But there is no guarantee that the statutory member representing the Permanent Secretary for Education would be the same one all the time. Those who are appointed among the nine, we should find a way of staggering so that we do not have a situation where you have a whole new commission walking out and a whole new commission coming in and having difficulties in following and continuing with what work has been going on.

Mr. Temporary Deputy Speaker, Sir, the functions of the Commission as spelt out in Article 11 are commendable but I want also to urge that the TSC pays attention to some of the ills ailing the education sector. We have an auxiliary arm, maybe not of the TSC but a critical component of the teaching fraternity – the trade union group who are also teachers. You will always find that when a teacher has misbehaved, for example, those who molest the young girls in school or those who commit other misdemeanors and felonies, the Kenya National Union of Teachers (KNUT) is normally very quick to defend them.

You never hear the KNUT talk about the schools whose performance in examinations is dismal because of one of their own. I would want to see a situation where the KNUT constantly assists parents in talking about schools that constantly perform badly despite the fact that head teachers are there. Members of Parliament are damn scared of teachers, because they can show them the door by influencing voters.

We would want internal self regulation from the teaching fraternity. If a teacher posts bad results year in, year out, he should not be given an opportunity to be a head teacher for more than two terms, so that somebody else can come in. Parents take their children to school with the hope that they will be assisted to do well, and not ruined in those schools.

Mr. Temporary Deputy Speaker, Sir, the TSC has been given authority to register and remove teachers from the registers but Clause 30 needs to be re-looked at. In fact, let me start with Clause 27, grounds for refusal to register. I am very uncomfortable with this phraseology, where we are saying “in the opinion of the Commission”. There must be criteria. What is going to inform that opinion? The Bill, in Clause 27, says:

“27. The Commission shall not register a person as a teacher if such person-

- (a) does not possess the prescribed qualifications;
- (b) is not of good moral character;
- (c) has been convicted of a sexual offence or an offence committed against a child;
- (d) has been convicted of an offence which, in the opinion of the Commission, renders the person unfit to be a teacher---

Mr. Temporary Deputy Speaker, Sir, is the Commission being invited to form an opinion on the nature of the conviction or nature of the offence? A criminal offence is a criminal offence. If you are convicted of a criminal offence, the Commission should not be invited to have

an opinion on whether the gravity requires you to be registered or not. We should just have a single standard rule such that if you are convicted of a criminal offence, you do not qualify.

Of course, my learned senior friend knows that there are certain quasi criminal offences like those under the Traffic Act, where you may be convicted through a parking ticket. That may not impact negatively on your capacity to teach but we should not talk of “in the opinion of the Commission”.

Mr. Temporary Deputy Speaker, Sir, the Bill continues to say as follows in Clause 27:

“27(e) is engaged in any activities which, in the opinion of the Commission, are prejudicial to peace, good order or good government in Kenya--”

Mr. Temporary Deputy Speaker, Sir, what does this mean? I am at a loss. What is “prejudicial to peace” that a person who is likely to be a teacher is supposed to guard against to qualify to be registered? How do we leave it to the TSC to determine what is “good order”? We have courts of law. We have the administrative arm of the Government. I think the phraseology needs to be changed.

Clause 27 of the Bill concludes by saying, in paragraph (f), that the Commission shall not register a person as a teacher if such person suffers from such physical or mental infirmity.

Mr. Temporary Deputy Speaker, Sir, certainly, a person who suffers from mental infirmity has no business being a teacher but there are lots of people who suffer from physical infirmity with excellent clarity of minds. With the advent of ICT, somebody can sit with his physical infirmity even in his bedroom and teach and impart knowledge.

So, we should not import something that is prejudicial. In fact, our new Constitution bars discrimination on account of physical infirmity, unless you want to say that the infirmity to your--

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Wetangula! You will have additional 13 minutes to complete your contribution when debate resumes.

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, it is now 12.30 p.m. Therefore, the House stands adjourned until this afternoon, at 2.30 p.m.

The House rose at 12.30 p.m..