

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 19th June, 2014

*The Senate met at the County Hall,
Parliament Buildings at 2.30 p.m.*

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

PRAYERS

PAPERS LAID

REPORT OF THE AD HOC COMMITTEE ON LEGISLATION ON HARAMBEE/VOLUNTARY CONTRIBUTIONS

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the House today, Thursday, 19th June, 2014.

Report of the Ad Hoc Committee on Legislation on Harambee or voluntary contributions.

*(Sen. (Prof.) Anyang'-Nyong'o
laid the document on the Table)*

REPORTS OF THE LEGAL AFFAIRS AND HUMAN RIGHTS COMMITTEE ON PUBLIC HEARINGS ON VARIOUS BILLS

Sen. Wako: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the House.

The Report of the Standing Committee on Legal Affairs and Human Rights on Public Hearings, held on the following Bills:-

- (i) The Political Parties (Amendment) Bill, 2014;
- (ii) The County Governments (Amendment) (No.2) Bill, 2014; and,
- (iii) The Statutes Law Miscellaneous (Amendment) Bill, 2014.

(Sen. Wako laid the documents on the Table)

NOTICE OF MOTION

DEVELOPMENT OF POLICY GUIDELINES ON ACCREDITATION OF INSTITUTIONS OF HIGHER LEARNING

Sen. Mohamud: Mr. Speaker, Sir, on behalf of my Chairman, Sen. Karaba, I beg to give notice of the following Motion:-

THAT, aware that the Fourth Schedule of the Constitution of Kenya assigns the role of regulating universities, tertiary educational institutions and other institutions of research and higher learning to the national government; noting that section 5 of the Universities Act, 2013 mandates the Commission for University Education to oversee the establishment and accreditation of universities and to ensure the maintenance of standards for courses of study and examinations in the universities; concerned at the rate at which institutions of higher learning are mushrooming across the country; aware that the growth of universities in Kenya has led to the regrettable demise of some reputable middle-level colleges; cognizant of the fact that the standards and quality of facilities available, courses offered and examinations administered by some of these institutions are substandard; recognizing that Kenya's Vision 2030 underscores the critical role of education in the country's socio-economic development, and that its realization is threatened by the low quality education provided by some of these institutions; the Senate urges the national Government to take immediate measures to develop clear policy guidelines on accreditation of institutions of higher learning in line with the Universities Act, 2013 and other relevant laws in order to ensure provision of globally competitive education, training and research for sustainable development.

STATEMENTS

BUSINESS FOR THE WEEK COMMENCING TUESDAY, 24TH JUNE, 2014

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I wish to give a Statement on the business of the Senate for next week, under Standing Order No.45.

Mr. Speaker, Sir, next week on Tuesday 24th June, 2014, there will be a meeting of the Rules and Business Committee at noon to schedule the business of the week. On that day, the Senate will continue with business that will not be concluded in today's Order Paper. The Senate will also commence the Second Reading debate on the Political Parties (Amendment) Bill, 2014.

Mr. Speaker, Sir, on Wednesday 25th June, 2014, the Senate will continue with the business not concluded on Tuesday and consider any other business that will be scheduled by the Rules and Business Committee. The Senate will also deliberate on the following Motions:

1. Motion by the Chairperson of the Standing Committee on Information and Technology on the Adoption of the Report of the Standing Committee on Education, Information and Technology on the retreat with county executive committee members in charge of education and Information and Communication Technology (ICT).

2. Motion by Sen. Peter Mositet on restructuring the Kenya Urban Roads Authority (KURA) and expanding its mandate to cover road infrastructure in all the 47 county headquarters.

3. Motion by Sen. Elizabeth Ongoro on the need to give incentives to coconut farmers.

4. Motion by Sen. Henry Ndiema on addressing the concerns of medical practitioners in counties.

5. Motion by Sen. Daniel Karaba on measures to streamline education and training for learners with special needs and disabilities.

Mr. Speaker, Sir, on Thursday 26th June, 2014, the Senate will continue with the business not concluded on Tuesday and Wednesday and consider any other business that will be scheduled by the Rules and Business Committee.

Thank you, Mr. Speaker, Sir. I now wish to lay the Statement on the Table of the House.

(Sen. (Prof.) Kindiki laid the Statement on the Table)

REINSTATEMENT OF JOHN MAINA NJOROGI BY TSC

Sen. Kembi-Gitura: Mr. Speaker, Sir, I wish to request for a Statement from the Chairperson of the Committee on Education, on the reinstatement of Mr. John Maina Njoroge (Teachers Service Commission (TSC) No.256488).

Mr. Speaker, Sir, Mr. John Maina Njoroge, a teacher, was interdicted on 14th August, 2002, following accusations and charges of having carnal knowledge of a minor and no other reason was given for the interdiction. The court in Thika Chief Magistrates Court, Criminal Case No.1050 of 2003, Republic versus John Maina Njoroge acquitted him of the charges in a judgement delivered on 14th June, 2006, after which he applied for his reinstatement. On his application the TSC wrote to him, informing him that his appeal had been dismissed for lack of new evidence to “warrant a review of your case.”

Mr. Speaker, Sir, in his Statement, the Chairperson should report on the following:-

(a) In view of the fact that the court found Mr. Njoroge not guilty of the allegations brought against him and on whose strength and the only reason upon which he was interdicted, why was he not reinstated and what was the basis of the statement that “the Commission has carefully studied your case, but found no new evidence to warrant a review of your case?”

(b) When will Mr. Njoroge be reinstated to the position he held before the interdiction?

(c) What is the position regarding his benefits from the date of the interdiction to that of his reinstatement?

Sen. Mohamud: Mr. Speaker, Sir, on behalf of the Committee, I would like to make a commitment that we will report to this in two weeks time, if that is okay with the Senator.

The Speaker (Hon. Ethuro): Okay, in two weeks time.

CONSTRUCTION OF SEAWALLS AND JETTIES ALONG THE COASTAL AREAS

Sen. Sijeny: Mr. Speaker, Sir, on 6th March, 2014, Sen. Mshenga Mvita requested for a Statement from the Chairperson of the Standing Committee on Roads and Transportation regarding the construction of seawalls and jetties along the coastal areas.

Mr. Speaker, Sir, in the Statement sought, the Senator wished to be informed of the following:-

1. Why were the budgetary provisions for the construction and maintenance of seawalls and jetties, which had been provided for the coastal areas of Kwale, Lamu, Kilifi and Malindi for over 20 years discontinued during the 2013/2014 Budget?

2. Could the Chairperson confirm that ongoing works on seawalls along the coast have stalled and Shimoni Jetty in Kwale County is about to collapse due to lack of funds?

3. What measures will be taken to reinstate the budget for the seawalls and jetties to avoid danger occasioned by the pending crisis?

Mr. Speaker, Sir, the Chairperson of the Standing Committee wishes to respond to the Statement as follows:-

The Ministry of Lands, Housing and Urban Development had requested the national Treasury for Kshs545 million for the programme in the fiscal year 2013/2014. The national Treasury did not allocate any amount for this project. Contractors undertaking works on seawalls and jetties have suspended works due to lack of funds. The ongoing projects which have been suspended include the proposed rehabilitation of Shimoni Fisheries Jetty in Kwale County. The Shimoni Fisheries Jetty may collapse if funding is not provided.

Mr. Speaker, Sir, the Ministry of Lands, Housing and Urban Development has requested from the national Treasury for Kshs702.2 million funding in the fiscal year 2014/2015, in order to complete the project. I also wish to inform the Senate that the Committee held a meeting with the Cabinet Secretary for the Ministry of Lands, Housing and Urban Development, with a view to securing adequate funding for the projects. The Committee intends to hold a meeting with the national Treasury on the same in order for the projects to be adequately funded this financial year.

Mr. Speaker, Sir, the Committee has already undertaken a visit to Lamu County in order to familiarize itself and appreciate the status of the projects, which are under the Directorate of Public Works in the Ministry. The following areas were inspected during the visit:-

- (i) Lamu customs jetty and terminal jetty;
- (ii) Matondoni Village and Matondoni Jetty and Seawall;
- (iii) Wiyoni Village and Wiyoni Seawall;
- (iv) Ndau Faza and Kizingitini Seawalls; and,
- (v) the proposed Mbujumwali Seawall.

Mr. Speaker, Sir, I would not want to preempt the recommendations of the Committee arising from this visit. However, the preliminary finding is that all projects had stalled due to lack of funds. It is, therefore, of utmost importance that the projects receive the necessary funding for successful completion.

Mr. Speaker, Sir, the Committee has scheduled to visit other projects in Kwale, Mombasa and Kilifi counties and present its report to the Senate for consideration and adoption. In the meantime, the Committee will continue to engage with the national Treasury and the Cabinet Secretary for the Ministry of Lands, Housing and Urban Development in order to ensure that the contractors are back on site and the projects are completed.

Mr. Speaker, Sir, I beg to submit the Statement.

(Sen. Sijeny laid the Statement on the Table)

Sen. Kisasa: Mr. Speaker, Sir, I wish to thank Sen. Sijeny for that Statement. But I am just wondering how soon the jetties will be completed given that it is a rainy season and they are being washed away by the rains. I think that we are going to face a problem.

Sen. Billow: Mr. Speaker, Sir, the Chairperson gave an elaborate Statement. In the rest of the world, the waterways are used as transport, not just in the sea, but even in the rivers and lakes. We have similar lakes and rivers which can actually be used. What is the Ministry doing in terms of putting up jetties in some of those lakes, like Lake Turkana and many other inlets in the Coast in particular, to encourage utilization of these waterways for transport? I remember that the last *Tsunami* did affect as far as Malindi. What is the Ministry doing to address concerns that are being raised; that places like Mombasa, in the next few decades, might actually sink?

Sen. Hassan: Mr. Speaker, Sir, it is my hope and prayer that Mombasa does not sink in two decades.

Mr. Speaker, Sir, the Committee Chairperson did indicate that monies were, indeed, requested and work suspended. My understanding of a Government is that once a project has commenced, it is assumed that there are already funds allocated to these projects. That is why it is procured through the normal system and contracts are awarded to the procurement system. At what point did these funds get lost? Why is it that continually, one financial year after another, the Government has failed to allocate funds to ensure the completion of these projects?

Sen. Sijeny: Mr. Speaker, Sir, regarding concerns raised by Sen. Billow, I would request for more time so that I give a comprehensive report.

Mr. Speaker, Sir, regarding what Sen. Hassan has stated, that also will come with the response to the request by Sen. Mvita. This is because we require, at least, three

weeks so that we can compile a comprehensive report. If I give any response now it will be preliminary. Therefore, I beg to be given time in order to give a complete report.

The Speaker (Hon. Ethuro): Okay! In three weeks' time, you will give responses to those others.

Sen. Billow Kerrow!

Sen. Billow: Mr. Speaker, Sir, I have a Statement to make that was requested by the Senator for West Pokot, Sen. (Prof.) Lonyangapuo, but he is not in the House. Should I continue?

The Speaker (Hon. Ethuro): It was on what?

Sen. Billow: Mr. Speaker, Sir, it was on the status report on the implementation of the Economic Stimulus Programme.

Mr. Speaker, Sir, I need your guidance.

The Speaker (Hon. Ethuro): Since he is usually a very dutiful Member, let us indulge him for now. You can give the Statement on Tuesday, next week.

(Statement deferred)

Next Order!

BILL

Second Reading

THE COUNTY GOVERNMENTS (AMENDMENT) (No.2) BILL, 2014

(Sen. Wangari on 15.4.2014)

(Resumption of Debate interrupted on 15.4.2014)

The Speaker (Hon. Ethuro): Who was on the Floor? I think that the last contributor concluded her contribution.

Sen. Murkomen.

Sen. Murkomen: Mr. Speaker, Sir, I stand to support this Bill. I want to thank Sen. Martha Wangari for doing a very good job. I have just come from a meeting of the Committee on Devolved Government where we were deliberating on other issues. In the process, the issue of gender representation in the counties came to the fore. I agree with the Chairperson of the Commission for the Implementation of the Constitution (CIC) that the manner in which county assemblies were constituted in the absence of the nominated Members of County Assemblies (MCAs) that is the youth, persons with disabilities and women was contrary to the Constitution. I am just quoting what the Attorney-General *Emeritus* said in the same meeting, that this Bill, for avoidance of doubt, is to clear any doubt that might be collecting in the minds of some people who may not care about representation of gender and marginalized groups in the counties.

Mr. Speaker, Sir, through this Bill, it will be clear that county assemblies cannot purport to run in the absence of those who are expected to represent the marginalized groups. This is a serious situation because as we speak there are more than 600 nominated women in the county assemblies. Very few county assemblies were able to elect women to represent the various wards. It was necessary that we take nomination as a process of ensuring that there is equity. Nomination is also dealing with marginalized groups. There are other two nominations namely; two youth, a man and a woman; two persons with disabilities, a man and a woman and two persons, a man and a woman representing marginalized communities in their county. Can you imagine that when the county assemblies were constituted, they elected chairpersons and vice chairpersons of committees, majority and minority leaders and deputy speakers. Of all those people, marginalized groups were not considered and they are not part and parcel of the assemblies.

Mr. Speaker, Sir, our deliberations in the committee were around the constitution of the County Public Service Boards (CPSB). As per the law, the County Assembly Board should include the Speaker, the Majority and Minority leaders and one of the county assembly Members elected by Members of the CPSB. We note that they constituted all these entities without a single woman. In some counties, you find no single lady, person with disability or youth sitting in the CPSB. This is the entity that is expected to hire all the staff that are going to run the county assemblies for many years to come. This is because once they have been hired and most of them are in their 20s, they will be there for the next 20 or 30 years. I think a grave injustice was occasioned on the people of Kenya by county assemblies operating without the representation of the diverse persons in the counties.

I congratulate Sen. Wangari for coming up with this Bill. This Bill will make it clear that county assemblies will not form committees, swear in speakers, deputy speakers, majority or minority leaders without the representation of the marginalized groups.

Mr. Speaker, Sir, there is a fundamental question that we need to ask ourselves as a country. How does it occur that in a whole county all MCAs, about 40 or 45 of them, no woman is elected? That is a fundamental question. At the end of the day, the question we are asking ourselves is: Why should a county assembly elect 30 men and then nominate 15 women? Why can they not promote an election of, for example, of 10 women so as to ensure that instead of the 15 women extra nominations, the money that is coming from there can go to fund education, roads and any other social services? There is greater value in promoting civic education and leadership that recognizes persons with disability, election of youth and women. This is so that we can do away with the possibility of nominating over 600 people. Can you imagine, with the minimum earnings that a county assembly gets, that you have nominated 600 people each earning at least Kshs200,000. That is millions of shillings in one month. So, in a year you have wasted a lot of money that would have gone to social services. So, there is value in ensuring that we promote election of the other gender, which in this case is represented by women.

Mr. Speaker, Sir, this problem is prevalent in the counties that are marginalized. This is a double marginalization because the money that has been given to those counties

will be voted to the CPSB to pay people who, otherwise, should have been elected. To address this issue, Senators, the CIC and the Gender and Human Rights Commission (GHRC) should be able to carry out civic education. This will ensure that information gets to the people so that they understand the value of electing instead of nominating. That is the issue that we must address.

Mr. Speaker, Sir, the other issue is on representation in the counties. Despite the fact that these people were nominated and they came in late, because of the wrong footing that our county assemblies started on, they are not being recognized. In fact, the Chairperson of the Gender and Human Rights Commission just told our Committee, and Sen. (Prof.) Anyang'-Nyong'o was there today, that all these nominated people are referred to as *bonga* points. This is a translation of "extra points." In other words, they are being treated like they just came later to fill the gap. People must appreciate that nomination under the Constitution is an election. There is an election using a list and an election by going to ask for votes. Either way, they are both elections.

We are told that the County Executive led by the governors are bribing the elected MCAs, giving them benefits here and there---

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. I normally agree with Sen. Murkomen on very many things. But on this one, I beg to disagree with him. Is he in order to make a blanket attack on governors and MCAs alleging that the governors are bribing them? Is this attack in order? Can he substantiate? If not, can he withdraw and apologise to all the county governments of the Republic of Kenya?

Hon. Senators: Yes! Substantiate!

Sen. Murkomen: Mr. Speaker, Sir, there is nothing to apologise for about because I am about to substantiate.

The County Assembly of Elgeyo Marakwet today passed a Bill that allows only the elected MCAs to employ five people in the wards and to establish a ward office. The others are told: "You know you can hang around the headquarters." The point is this---

Sen. Kajwang: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. Kajwang?

Sen. Murkomen: Mr. Speaker, Sir, can I be allowed to finish justifying---

The Speaker (Hon. Ethuro): Proceed, Sen. Kajwang.

Sen. Kajwang: Mr. Speaker, Sir, it was a very simple matter for *Mheshimiwa* Murkomen to withdraw and apologise. It is not about being allowed to create offices like we have been allowed to create offices. It is about the word "bribery". So, can he deal with that first?

The Speaker (Hon. Ethuro): Indeed, Sen. Murkomen, you were challenged to substantiate. You rose confidently telling the House you are just about to substantiate. What did you do?

Sen. Murkomen: Mr. Speaker, Sir, that was the first point. I am moving on to the next point.

The Speaker (Hon. Ethuro): Even as you enumerate your points there is something called "relevance."

Sen. Murkomen: Mr. Speaker, Sir, this is relevant to this debate. It is important, especially on the issue of marginalized groups.

Mr. Speaker, Sir, I have just come from a meeting of the Committee on Devolved Government. Sen. Wako and Sen. (Prof.) Anyang'-Nyong'o will bear me witness. They are my evidence here, that the Chairperson of the Gender and Human Rights Commission told us that they have evidence in their collection that some of the counties are in an attempt to contain the elected MCAs. In other words, some of the County Executive are forced to bribe some of the MCAs. I may not have further substantiation on that matter, but I am just saying the potential of trying to reach out to those who are elected at the expense of those who are nominated or basically putting pressure, refusing to appreciate that the nominated Members are equally playing a role of representation in the county---

The Speaker (Hon. Ethuro): Order, Sen. Murkomen! You are making a good point and I have no problem with that. But you have failed miserably to prove the bribery claims. So, there is no amount of pleading with the other Senators just because they carry some good names like Sen. Amos Wako and Sen. (Prof.) Anyang'-Nyong'o, that will save you. So, just withdraw and apologise and proceed.

Sen. Murkomen: Mr. Speaker, Sir, I withdraw and apologise and substitute my initial statement that "it is alleged that cases of bribery and county assemblies holding the county executive at ransom are rampant out there". My Committee---

The Speaker (Hon. Ethuro): Order, Sen. Murkomen! The word "alleged" is good, but you cannot use it in the same breadth that "I withdraw and substitute." We want you to withdraw without qualifying.

Sen. Murkomen: Mr. Speaker, Sir, I withdraw unconditionally. However, as I continue with my submission, I am just saying that cases of alleged bribery are alive outside there.

The Speaker (Hon. Ethuro): That is perfectly in order.

Sen. Murkomen: Mr. Speaker, Sir, as my Committee goes out to discuss these issues with---

Sen. Ndiema: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. Ndiema?

Sen. Ndiema: Mr. Speaker, Sir, what I got is that he reported what he heard. Is there anything wrong because he was not personally alleging, but he is reporting what was alleged? Is it wrong for him to make that statement that he heard?

The Speaker (Hon. Ethuro): Order, Senator! If you were following the debate, then you would have determined whether it was wrong or not. We have said and clarified that when he has used the words "it was alleged" then that is proper. He has also apologised for making the assertion of bribery claims, which, of course, he cannot substantiate. You are just taking us back when we have already concluded this matter in a very nice way.

Proceed, Sen. Murkomen. Let us save his time because apparently, especially as was shown by Sen. Ndiema, those were not very useful interventions on his time.

Sen. Murkomen: Mr. Speaker, Sir, for avoidance of doubt I am begging that you rule that I still have five more minutes.

(Laughter)

The other important question when it comes to representation is the marginalized groups. There is no clear legal definition of what “a marginalized group” in a particular county is. The last nominations across the political parties were done haphazardly. This was somehow because people had never understood the power of the county assemblies. In the last elections few people were left in the political party offices to pick names. There are cases where governor candidates were lucky. They became the ones who picked the names. So, they are enjoying the support they need in the county assemblies. But there are some counties where the governor had no say in those who were being nominated. Someone else, perhaps his competitor had a say. Now that competitor is pulling the strings politically because they had a say in the people who were being nominated. The transparency about how people are going to be nominated in the county assemblies needs to be clear.

Mr. Speaker, Sir, we need to amend the Elections Act to give enough time for parties to agree on the list of the people being nominated and spread it across the counties. In Kiambu County, for example, we are told that there is one constituency that has several nominated Members while another one does not have any. When we are debating issues within the county, you will find that a certain sub county is more advantaged than another one because the nomination was not evenly spread across.

Mr. Speaker, Sir, we also need to clearly define who a marginalized or a disabled person is because it has been abused. A while ago, there was a case in our political party where a person said he must be in the list of nominated persons. When he was asked he said: “Because I stammer.” I do not know whether stammering can qualify against a person who does not have limbs, or who is blind or deaf. There are more severe cases of marginalization than someone who is stammering a little bit. What about, for example, someone who lost a single finger when he was farming or he had an injury and lost one finger? He is now claiming that he will be a representative of persons with disabilities. What amounts to disability must be very clear because if it is not, some people will take advantage.

Mr. Speaker, Sir, I believe that this is a very good Bill. The late Chinua Achebe in his book entitled: *Things Fall Apart* said that: If a child washed his hands he could eat with kings. Those days women were not an issue yet. But we can say that when a young lady washes her hands, she can eat with kings. Sen. Wangari will be recognized among the people who have made significant contribution to this House by sponsoring a Bill.

Mr. Speaker, Sir, with those remarks, I beg to support.

The Speaker (Hon. Ethuro): Yes, Sen. (Prof.) Anyang’-Nyong’o! In that wisdom, I was about to give Sen. Omar, given that a young man or a young lady when he washes his hands can eat with kings. In any case, when they wash their hands, the whole purpose is to dine with the elders. So, I decided let us give a chance to an elder.

(Laughter)

Sen. (Prof.) Anyang’Nyong’o: Mr. Speaker, Sir, I stand to support this Bill by the young Sen. Wangari. I want to reiterate the point that Sen. Murkomen was making about the role of political parties in exercising what I call proportional representation, not just in counties, but in Parliament as well. This word “nomination” is, perhaps, having a funny connotation. I think what we are trying to do in this process, according to the Constitution, is some amount of proportional representation; that parties nominate people according to certain criteria proportionally in line with their strength either in the county assemblies or in the National Assembly. So, in a sense, this is really proportional representation on party lists.

I agree with Sen. Murkomen that next time, there should be more time and more proper consultations in order for people to be nominated to these bodies properly. Last time, I remember as the Secretary General of the biggest and most dynamic party in this nation, the Orange Democratic Movement (ODM), we had to spend almost 24 hours trying to sort out lists of nominees on a full time basis, but we still did not really do a perfect job. On the other hand, the Independent Electoral and Boundaries Commission (IEBC), had another problem in trying to collaborate or to work with parties in this process. They were rather rigid in the way they applied the law; they became Pharisees in their own profession and I think this made things rather difficult. So, I think if these issues can be ironed out, it will be better for all of us.

Secondly, Mr. Speaker, Sir, it was a travesty of justice for those people who were nominated to go to the county assemblies almost three months after the county assemblies were inaugurated. I remember I went to my own county assembly to discuss with them this issue because they had left out all the nominated members of the county assembly from the committees. I said, really, these people are MCAs. There is no prefix or suffix in their names, MCAs, which says “MCA-N.” They are all MCAs. Therefore, they should be in those committees by virtue of being MCAs. That was then allowed. But there was also some reluctance on making some members of the MCAs chairpersons of committees. Again, this is a stigma which can stifle debates in the county assemblies.

Some of this proportional representation in persons in these bodies are some of the most dynamic debaters. Quite often, you find that in competition to be nominated, we get even better quality MCAs. If we do not use those good qualities in committees or in the work of the assemblies, then we are really missing a big opportunity. We really misuse these people. You can see in this Senate our lady Senators who came in on proportional representation have done quite a good job. For example, we have Sen. Beatrice Elachi as the whip, God help her. Sen. Wangari here has mothered this very good Bill. So, the contribution of the people who come to the Senate or to the National Assembly or to county assemblies should not really be belittled. So, I think this Bill is very epochal; it is really going to help us solve a very big problem.

Mr. Speaker, Sir, there is something else which the Senate might pay attention to. I was surprised when reading the newspapers the other day and also when somebody came to my office again, telling me that she is an agent for a tour company which is specializing in arranging tours for counties and MCAs. I said, no; members of legislative bodies are usually invited by other governments to visit their countries on a purpose. If they are in committees, they may take these trips to go and benchmark on some activities

or collect information which will be useful to their country. But I have never really known that it is in the practice of legislation or of making law that tour companies organize trips either for Members of National Assembly or for MCAs.

Then I was told, as I was still wondering, that this lady had actually organized a trip for a certain county, which I will not mention, that they are already abroad. A whole county assembly has travelled to a certain country. I wonder what would happen if the whole Senate travelled to Burma or Myanmar. If the whole Senate travelled to Myanmar or to Jamaica, what would we really be doing there? What would we, as Senate, be studying in Jamaica? So, really this idea that tour companies are organizing trips for MCAs all over the nation. Touring other countries by MCAs is something that the Senate should pay attention to. I do not think it is normal. It is also tremendous misuse of resources.

Mr. Speaker, Sir, I was told that in some counties, they discriminate against nominated members. The plot thickens. So, there are more complications being introduced into this thing. I hope that when we are discussing with the Transition Authority (TA) about regulations that are necessary to regulate how we, in our work, can build counties, we can establish certain political cultures in these county assemblies that will lead to good governance. County assemblies must really lead in good governance; in as much as we too, in the Senate, must lead in good governance. If county assemblies are going to be oversight authorities on the executive, and they themselves engage in some behaviour that is so questionable both by the executive and by the electorate, it may put assemblies in disrepute.

Secondly, Mr. Speaker, Sir, let me be careful with what Sen. Murkomen was saying about the allegation that was made before us in the Committee on Devolution by the Chief Executive of the Gender Commission. The county executives tend to use bribery to buy favours from county assemblies on the pretext that if they do not do that, the sword of Damocles hanging around their necks, called impeachment, will descend with wrath.

(Laughter)

Mr. Speaker, Sir, I think this is real and I do not think that we should take it lightly. It may be a political culture being developed in counties; that governors must turn the other way when some excesses are being committed in the assemblies on which these allegations are based. Again, we must say that this is not happening everywhere, but it is a likely tendency that may engulf all counties and present us with a very terrible state of affairs.

Thirdly, Mr. Speaker, Sir, the Bill before us which is amending the County Governments Act opens doors to further discussion. To me, this further discussion is something that I have been very conscious about. To what extent do we want to see the TA fold its operations in the new future? I think the Constitution envisages a five-year transition period. But the more we discuss county affairs in the various committees, the more I realize that this transition may take very long. For example, the role of county governments in looking after the economies of the counties and given what they have so

far done up to now in settling down; given the primacy where county governments have paid more to politics and consolidation of power, to what extent do we really envisage that they will be in a position to be effective in managing their economies within the next five years? When the TA have succeeded in transferring certain critical institutions to these counties within the time---

This morning, I was lucky enough to have been in Sen. Billow's Committee on Finance, Commerce and Economic Affairs, in which I am a Member; and Sen. Murkomen's Committee on Devolution, in which I am also a Member. The discussions in these two Committees were interesting. In Sen. Billow's Committee on Finance, Commerce and Economic Affairs, we were discussing with the Cabinet Secretary in charge of tourism, commerce and trade. In the Committee on Devolution, we were meeting the Chief Executive Officer (CEO) of the Gender Commission. The CEO of the Gender Commission put before us a whole raft of problems facing the implementation of the Constitution with regard to inclusiveness. I think in the Constitution, the value of inclusiveness is given prominence among all those other values that are listed in that particular Article. It hits at the heart of the problem and it is clear on the gender issue.

Mr. Speaker, Sir, the county governments, including the governors, speakers, the majority leaders, and so on, will not really appreciate the importance of what they are doing if they do not understand the principle of inclusiveness. That includes, amongst other things, not just gender, but minorities in those specific counties. The fact that there is also a law that says that when you are recruiting members of the executive, 30 per cent should come out of the county; were we to do an audit today, how many counties have been faithful to the Constitution and to the principle of inclusiveness? We would come out with a very sorry balance sheet. But the governments that were elected are going to, first, serve for five years; so, we must then prepare for the next round of formation of governments in the counties. This makes me feel, therefore, that a body like the TA or any institution performing that role should be around for quite some time; charged with nothing other than making sure that these principles in the Constitution in the formation of county governments are done properly.

Mr. Speaker, Sir, if you look at the history of African States since Independence, almost every African country had a beautiful constitution at Independence. However, 10 years down the line, those constitutions are now a pale shadow of their former selves because they have been amended according to the interest of certain very specific elites in those countries. Now, we do not want this to happen to counties. Fortunately for the counties, we now have a Constitution and an institution like the Senate which must look after the implementation of this Constitution very carefully.

Mr. Speaker, Sir, so, I am saying that if in the principle of inclusiveness, it includes these other things that county assemblies and county governments might look after, then we must have an institution like the TA, lasting much longer to ensure that this is done, of course, along with the Senate. That is why I said the other day that although there may be only a few Articles in the Constitution that refer to the Senate, but they are, perhaps, very important. This is one of the most important institutions in this Republic to ensure good governance and the implementation of this Constitution because we all live

in counties. Counties take a big chunk of our attention politically and, thus, this Senate is a very important institution.

Mr. Speaker, Sir, I would like us, as a Senate, to do a balance sheet of how the counties are implementing the Constitution across the board because there are many things. That will mean how the counties are handling the responsibilities that they should handle under the Constitution, including all those functions that have been transferred to the counties Ministry by Ministry and institution by institution. We shall realize that counties still have a long way to go. The issues that the Council of Governors (CoGs) have so far focused on are some of the major ones; like how much money do we get? Where do the two or three most important functions of government go, for example, security, education and health? I have never heard a major debate amongst the CoGs on roads or infrastructure, which is another one, among other softer functions like fisheries, tourism and social welfare; which are very important for the day today issues in our lives.

Mr. Speaker, Sir, in the end, let me just commend Sen. Wangari for this amendment, which I am sure nobody in this Senate will oppose. I think it is well intentioned, well thought out and very timely. It opens our eyes to look at the County Governments Act even much broader to see whether there are other things that we may need to amend that will be important. One amendment which I hope Sen. Billow Kerrow, who is the Chairperson of the Committee on Finance, Commerce and Economic Affairs will think about is this. I am very disturbed that we, as a Senate, have very little to say on money Bills and yet counties cannot survive without money. I am told, although I am not convinced, that this is something that is common in all jurisdictions where we have the Senate. But there is no need or there is no reason we, as Kenyans, cannot be different. I hope that over time, our Committee will look into this, whether the other House will come along with us is a different issue, but I think the issue should be tabled and discussed for what it is worth.

Mr. Speaker, Sir, I beg to support.

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

[The Deputy Speaker (Sen. Kembi-Gitura) took the Chair]

Sen. Elachi: Thank you, Mr. Deputy Speaker, Sir. I also rise to thank Sen. Martha, knowing very well that, indeed, I was also the Secretary General of “Level 30”. I know what we went through in terms of ensuring the lists are taken care of; not just by the IEBC, but also within the counties where we had these nominations. As I speak today, due to the process we had in court, you will find that most of the counties did not even respect the court process and wait for the nominated members to join them, so that they can constitute an assembly that is legal. What happened is that they went on and constituted the assemblies. Today in many of their committees, they do not have the nominated women even representing themselves either as Deputy Chairperson or even a Chairperson of any of those committees. The Constitution is very clear on what should be done. The reason we made it clear at that time is that we knew the challenges we would

face, especially in the county governments because not many women would understand their rights. Therefore, there is need for inclusiveness.

Mr. Speaker, Sir, today, we had a very interesting meeting in the Committee on Devolution. It is important to raise it, not just through the Senate, but also for the county governments, especially to the Governors and also the county assemblies. While we ensure we want to see progress, if we do not start to appreciate from the county level that we are all Kenyans in that county, regardless of how marginalized we were – either as a minority group or tribe is - that we cannot be accepted or they cannot involve you in terms of the growth of that county, we shall still have the challenges of cohesion. When we look at this amendment, we are saying let us ensure the county assemblies start on the right foot so that when we are talking about development, we are not talking about development in terms of the biological status of either the male or the female.

We are talking about the development of a county based on each and every person whether a woman, marginalized or disabled, must be involved and you understand your target group. That is why you are there. This is one thing that we lost in the last 50 years. We have now fought for it. We thank the new Constitution. However, if we are not also careful, we may lose it from the counties and we will only manage it at the national level.

Mr. Deputy Speaker, Sir, the issue of ethnicity is a major challenge we are facing in this country. We understand majority of people in a county will be the locals of that county. However, they must embrace the minority tribes who live in that county. It is important for the Senate to come out clearly and say “we are from a county; let us look at who is who within our counties.” We want to see where a majority that ensures the minority tribes are also part of what is happening in their county. When you look at the CPSBs, you will realize that a majority of them are constituted by the major communities or tribes in that particular county. But the challenge, again, is that most of the Governors and the rest of the leadership will look at this issue politically and say “for those who gave me more votes, I will have to give them some of the slots” so that they will continue voting for him. We need a law such that it is not the pressure of the vote, but you need a law to guide that process so that everyone appreciates; when you are in that county, I do not need to think “why can I not go back to maybe where my father came from” maybe because I am married somewhere else. All those challenges are there.

Mr. Speaker, Sir, we need to enhance staff capacity in counties. We, as a Senate, must assist counties in terms of capacity building for both the MCAs and staff. We should ask them where they are lacking so that we assist them. Today again, we have a petition from one of the counties who are looking at how the county assembly normally votes. They are saying: “If the Senators vote as per delegation, how come we cannot do the same?” But the spirit of the law was that if you are saying that you want to be all involved, then you have a right to vote. This is something that we also need to ask ourselves and also look at it not just from the way the Senate does its work, but in the spirit of inclusiveness. If you want to be involved, then you have the right to vote. This is something that we need to look at not only in the way the Senate does, but in the spirit of if we want the county assemblies to have growth and to show an example to the national

Government. That is something that we need to discuss, dialogue and agree without disadvantaging those who are nominated in the counties.

Mr. Deputy Speaker, Sir, the most challenging part in the whole process is that you find that in some counties, the number of nominated Members is nearly at par with those who were elected. Therefore, if you have to make a decision then you have to talk to the nominated Members to get what you want. That is where the elected Members feel a bit disadvantaged and we understand that. However, the nominated Members have a duty to ensure that whatever they pass is not because they have been compromised, but they do it for the sake of their counties. So, we are sending to our counties the message that it is always important to look at the interest of all your people. When you are nominated by a party, you look at the manifesto of that party. You agree on the growth of the party based on what they had agreed on regarding services to the people. If we find ourselves being compromised in the process, it will bring fear both at the counties and the national level.

Mr. Deputy Speaker, Sir, the other challenge we face is that we pass these laws here, but we have not fully implemented them. This is the culture we have inculcated in ourselves where we pass laws, but we do not follow them. It is good to follow the law. The governors will find it difficult to operate. I will not name the county, but there is a county that has been taken to court. They were summoned. They were supposed to ensure that during recruitment a disabled person is represented. Yes, the disabled person applied for the job, but in-between, they decided to use the county assembly to compromise the process. This person was not recruited. So, he went to court. The cohesion secretariat has taken upon itself to follow up why they did so. When the governor realized that it is becoming serious, he was ready to agree with the commission on this. He preferred to settle the matter out of court and promised to follow the process.

Mr. Deputy Speaker, Sir, governors must follow the law to the letter as they recruit. They must consider the gender, marginalized, minority and people living with disabilities as they recruit. By so doing, they will bring everybody on the board. When you want to recruit you must do so through an advert not only in the newspapers, but also at the chief's office so that those who are marginalized and cannot afford the newspaper are able to see it.

We want to urge those women who are nominated in the county assemblies to take up their role. They should show that they are able and have the capability of transforming their county through legislation. They should also ensure that they are not manipulated in a process; instead, they should be free to determine whether the process will benefit the county as a whole.

Mr. Deputy Speaker, Sir, we will have to look at the capacity issue very seriously because that is where the legal process comes in. The legal committee in the Senate can look at a few of those challenges and assist. We, as Senators, also have the right to bring in legislation or guide the county assemblies in legislation drafting. So, both of us have to work together for the sake of devolution with the aim of achieving it. It would be unfortunate to find that a Senator has only gone to his county assembly only once. It is important to have that bond so that you can understand their challenges. Some of them will come out and say that the governor has taken a clique and a few are remaining.

Those who were elected are the ones who are given priority to go out. Then the nominated ones have to find a way of showing that they can do something for the governors.

It is time we agreed whether we need one or two county service boards in the county governments. This is very critical, not only because of the wage bill, but we need to ask ourselves; this other county assembly board which employs for itself, how sure are we that they are doing the right thing? Who even checks and understands how they do the recruitment. This is something that is very wanting. When you look at the concept of commissioners in the Parliamentary Service Commission (PSC), we also have staff. The commission rises above the bar and embraces everyone. So, we should ask ourselves whether county assemblies need the 47 county service boards for the assemblies which will not employ more than 100 people. This is something that the Senate should debate.

Mr. Deputy Speaker, Sir, in conclusion and as I support, I want to thank Sen. Wangari so much and say that this Bill will now heal political parties and even make them to grow. This can also assist Nyeri which is in a worse situation where nominated Members were thrown out by the court and now, they have to go back and do the whole process to get new nominated Members.

With those few remarks, I beg to support.

Sen. Hassan: Mr. Deputy Speaker, Sir, first and foremost, I want to commend my good friend, Sen. Wangari, for authoring such an important Bill that I think, fundamentally, shifts the balance of representation.

Mr. Deputy Speaker, Sir, this Bill is very thoughtful to the extent of the chaos we witnessed in the nomination exercise of Members of the County Assemblies (MCAs) immediately after elections. We saw court battles, court orders, and interventions by the gender commission and so on, thus disenfranchising MCAs who were to be duly nominated to a point where they came in when almost all major decisions had been made.

The whole idea about gender parity is about representation. It is about getting that input from minority groups or dispossessed groups from the diversity that is supposed to be represented by these Members in the county assemblies. Therefore, I do believe that if we were to follow up very carefully, it is likely that all these Speakers and chairpersons of county assemblies might have been unconstitutionally elected to those positions because the input of a third of those MCAs was not present. Therefore, these decisions might have failed the test of constitutionalism on the basis that they did not necessarily factor in representation. I do acknowledge one or two women who were elected to the position of the Speaker, but I do believe that had there been greater women representation we would have more speakers because at the county level where there were Senators and Governors, none of the women was elected to those positions. If we had 600 women across the country, that would have been sufficient leverage for more women speakers in the county assemblies.

Mr. Deputy Speaker, Sir, it is interesting also to note that it is possible that there are very few, if any, women chairpersons of committees in the county assemblies. I think that the way these county assemblies were constituted *ab initio* might have jeopardized fundamentally the women of the Republic of Kenya in terms of that representation and the minorities that was envisaged.

Even as we were doing our own internal dynamics of the Senate we were very careful to ensure that there were committees that were diverse in terms of the chairpersons. Even as Jubilee or CORD made their decisions they ensured that they also encompass the diversity. If one person is elected from one part of the country then the next position had to go to the other person. That monolithic nature of having a patriarchy within MCAs must have disenfranchised many. In fact, it would be important that the Committee on equal opportunities goes to the MCAs and finds out how women have been able to execute their functions coming in well after the decisions have been made so that the report can be acted upon. Where necessary, amends should be made to ensure that minorities and women representative must be encompassed to chair certain committees.

This particular Bill remedies that effect and I want to support it fully. Even as we support this Bill, I place the responsibilities on political parties because the context that we had in CORD was about diversity and representation. Even some of our colleagues here in the Senate are still having pending court cases on the basis of how political parties made their decision. Therefore, political parties must be guided by the Constitution to ensure that as they make their nominations, particularly to the county assemblies then there is a process in which the diversity of the various counties must be factored in.

I concur with Sen. Murkomen when he poses the question; how do you define minorities in various counties? Who are minorities in those counties? These are some of the definitions that must continue to evolve. This Senate must contribute to ensure that they evolve in a manner as to give substance to the Constitution so that its implementation is based on certain benchmarks or regulations and it is not discretionary. Today, the discretion is just an assumption made by political parties that there might be a few Ndorobos somewhere and we need to nominate them. There must be a formula to do this. You might be a minority when looked at in the context of the entire country, but you might be a majority when looked at in the context of your own county.

Mr. Deputy Speaker, Sir, most minorities at the national level are majorities in their counties. Therefore, they must now move progressively to ensure that those minorities are involved in day today running of counties. Unfortunately, in terms of the makeup of our politics, they are fairly tribal. You will find that in the context of Mombasa, there are minorities who might be in the political opposition in that context of Mombasa. By the time you are through, for instance, Mombasa is one of the counties where all the 30 elected MCAs come from one party, that is, the ODM party. Since all the MCAs are from ODM, it is likely that people who might not have been politically correct in that context, might have been left out of that nomination process. Therefore, in terms of hindsight, it places a responsibility on counties to be effectively represented notwithstanding who voted for what coalition.

If you look at the composition of the Senate, you will find people, in terms of their ethnic or regional majority voted for other counties, but they are beneficiaries of either CORD or Jubilee Coalition based on that national dynamic. We need to also think through how to determine minorities because today we might, probably, be successful in Mombasa and tomorrow we might be in the minority. If we continue to use our advantage correctly, it is likely that tomorrow that advantage might be lost due to the dynamic

nature of politics and you might find yourself severely disfranchised. It is important, moving forward, for us to see how we can factor in people who might have been left out politically because it is likely due to the arrangement we have, those people who ascribe to a certain coalition might not be effectively represented in terms of their ethnic backgrounds or other areas of diversity in the county assemblies.

Mr. Deputy Speaker, Sir, we need to apply our wisdom and find out how these things can be corrected in future because those nominations are agreed upon well before elections. It would be a fallacy for me to suggest, for instance, in the CORD, to nominate somebody who, I presuppose, might not be necessarily be a minority in our own political thinking. This Bill corrects a serious anomaly. I am personally convinced that there was a constitutional lapse in terms of how these county assemblies were constituted. It has disenfranchised the women of Kenya in the county assemblies. We must now retrace our steps proactively to see how this kind of dispossession can be restored. In the legal terms, there should be some kind of restoration and equilibrium that is created so that the voice of the women of Kenya is heard fundamentally.

Mr. Deputy Speaker, Sir, as I caution on my second point, political parties bear a substantial responsibility in terms of how they nominate women into these places. That is why we need to start thinking creatively how these women representatives get nominated, particularly in the county assemblies. Right now, we are in the process of amending the Constitution of the Wiper Party. I am dealing with the nomination rules. I am thinking that there is a way in which political parties can open themselves to application from its memberships, so that it is a robust and competitive process. Trust me, even if I belong to the dominant coalition in Mombasa, there are still some rigors in getting elected. So it must also reflect in the rigors of getting nominated. Let us put you in a public forum for you to debate. Even here we ridicule ourselves as being passengers in this ship and yet you are supposed to effectively represent.

This is a progressive women Bill because what brought you here is the interest of women and them being secured. The interest of the youth should also be secured. Therefore, we must put in place a robust process so that we give equal opportunities and not to party cronies. I have seen the nomination criteria that are used by parties. You just find that they are stalwarts of governors, of the Senators or the Members of the National Assembly, so they lack the independence and the capacity to execute the mandate of the county assembly. Therefore, it is important that even as we move forward we must apply our minds into our own political parties to rearrange them in a manner that accords equal opportunity for people to be nominated. It is not right for you to just think that you can get nominated because you know one of the big players in the political parties.

It is important, therefore, for Martha to bring the next Bill that outlines the robust nature in which the MCAs are able to get effective women representation. How many of them are bringing up Bills that are intended for gender mainstreaming? How many of them appreciate the constitutional consequence of them getting nominated? How many of them resonate with the gravitas? If you are coming to a senate where you are going to be with Wamatangi, Billow, Murkomen, Khaniri---

The Deputy Speaker (Sen. Kembi-Gitura): Order. Address Members with their right titles.

Sen. Hassan: I was saying Senators together.

The Deputy Speaker (Sen. Kembi-Gitura): I heard you call Sen. Wangari “Martha”. You may be on first term basis, but in the Senate, address her by her proper title.

Sen. Hassan: Yes, Mr. Deputy Speaker, Sir. It is Sen. Wangari and the rest of the Senators. Do you think it is easy for you to be nominated through simple patronage without competence to come and stand against the onslaught of Sen. Murkomen who, probably, was one of the spirits of this Constitution?

Mr. Deputy Speaker, Sir, for us, therefore, to nominate people, we must also allow people who come with competences not be passengers in this ship, so that they are not ridiculed. If you are put in a sea that you cannot swim in, it is likely that people will notice your inadequacies. So, Sen. Wangari, look into your heart and into your competencies and see how we can further set criteria so that these women who are duly nominated are women who possess a certain quality. Let them also make sure they present the alternative. When you are nominated, it is, probably, one step towards election. Therefore, they will also keep the elected leaders on their toes. That is why we the elected cadre are always very comfortable to lock you out because we know that if we allow you, then you might develop an ambition bigger than that which brought you here.

Mr. Deputy Speaker, Sir, I want to support this Bill. I want to acknowledge and accolade the sponsor of the Bill. Mombasa County fully puts its voice to support this Bill.

I beg to support.

Sen. Billow: Thank you, Mr. Deputy Speaker, Sir. I also want to add my voice of support to this Bill. The Bill is a very important piece of legislation that clearly provides that the county assembly shall not be fully and duly constituted for the first sitting after the general election unless all the Members have been nominated and their names published in the Kenyan Gazette. This is important.

During the previous elections; the first time that we had elections under this Constitution, I agree with most Members that there was serious violation, in my view, of the Constitution. The spirit of the Constitution is that one-third of all elected seats should be held by either gender. This is particularly by women who have been very difficult to sell during elections.

Mr. Deputy Speaker, Sir, I think what has happened in most counties is what Members have said. It took inordinately a long time for women nominations to be gazetted because of questions regarding capacity, if you will, of most political parties. The whole process of preparing those lists which were done before the elections was subjected to, for lack of a better word, corruption and manipulation. After the election, it became very difficult for the names to be submitted and published by the Independent Electoral and Boundaries Commission (IEBC) as required. This calls for an improvement in the manner in which political parties conduct their business.

The key challenge came from the political parties in terms of submitting names. For the same position, they submitted several names. That became very difficult for the IEBC. Subsequently, all those people whose names were submitted ended up going through a whole process of determination by the IEBC. Others went to court and the

whole process dragged on for months and delayed the gazetting of the special categories of Members.

The spirit of the Constitution is very clear. These special seats must be provided for in these assemblies so that they represent various interests like women, people with disabilities, the youth and marginalised communities. Therefore, it is unfortunate that assemblies can conduct their business for several months before these people come on board.

Consequently, what happened in these assemblies is that these categories of special persons failed to secure seats, for instance, in chairing committees. Some counties were sensitive and reserved a few positions for them. However, many counties went on with their businesses. It is important that we make it clear that county assemblies should not start work until these people come on board.

The last point I want to add is that there is need to look into the process of the IEBC. The IEBC took long to verify and to gazette names. As a matter of fact, the process took a very long time. That process, between the parties and the IEBC, should also be addressed so that the time frame is reduced. The political parties should be held to account in the way they submit their names before the elections. That is the essence of this proportional list being given before the election.

Once the elections are done, the names are automatically given to the IEBC which goes on automatically to gazette. Now that the experiences have been learnt, we are hopeful about the next elections. I want to urge the same Member who came up with this Bill to look at the political parties and the long process so that this delay does not occur in the first place.

With those few remarks, I support the Bill.

Sen. Sijeny: Thank you, Mr. Deputy Speaker, Sir, for giving me a chance to contribute to this wonderful Motion. I wish to congratulate Sen. Martha Wangari for coming up with this Bill timeously.

This is the right time to start correcting and putting our Houses in order. This just confirms that all those who have been playing around with what is enshrined in the Constitution and threatening to scrap the positions of the nominated Senators will be missing the boat. We have proved that we are working very hard. We also consider our constituents and the electorate. That is the main reason we are here.

Having said that, this Bill is the first step towards solving the affirmative equation. We know that the Supreme Court gave an Advisory Opinion that said that affirmative action must be complied with by the year 2015. However, no one has been bold enough to come forward and to give ideas on how this can be implemented. So, for this again, we congratulate Sen. Martha Wangari.

Mr. Deputy Speaker, Sir, this Bill will go a long way to help to achieve all the provisions stated in the Constitution that are against discrimination. If women and special groups; the young, the disabled and others, are left out, then they will be denied the opportunity to take up leadership, start working and getting the empowerment they deserve.

I wish to state that some time back, a month ago, we, as a Delegated Legislation Committee, invited our counterparts at the county level; Chairpersons of the Delegated

Committees. Out of the 47, there was only one lady who had been elected as Chairperson. This is because she had really struggled in her own way to get it. By the time women were being nominated, people had already positioned themselves. The voice of women in leadership was left out.

All the political parties in this country should borrow a leaf from this. As they always say, charity begins at home. The political life begins at the party level. Therefore, political parties should come up with policies or rules within their nominations or constitutions that will ensure that there are special seats for women from the time they are nominated for electoral positions. This has worked very well. We are aware that in the United Kingdom, the Labour Party does have this affirmative action within the party. They have very many women elected to Parliament in all respective positions. This is the best way forward. For that, I say that this is an important time for political parties. Indeed, this House should help the country by achieving the affirmative action.

I beg to support.

Sen. Wamatangi: Thank you, Mr. Deputy Speaker, Sir. I also rise to support this Bill. This is a well thought-out Bill. Most of us witnessed the cacophony that accompanied the inauguration of county assemblies all over the country.

It is important that this procedure and questions are answered, once and for all, by being defined clearly in law. We should know what is right and what is not right as far as the constitution of the county assemblies is concerned. The amendments that have been proposed by Sen. Wangari lead us to a conclusion that it is almost difficult to settle. However, we have to deal with the reality of it.

Mr. Deputy Speaker, Sir, most of the sitting officials in leadership under counties could be in office unconstitutionally. That is the reality. We joined our Houses from the county assemblies; the Senate and the National Assembly. County assemblies are the focus of this Bill. Hardly any county assembly in the entire Republic was constitutionally constituted. Most of them, indeed, as we witnessed in what was happening fell short of the nominations. The question that we need to answer as we deal with this Bill is: Should we turn a blind eye to the fact that some of those people were elected without the input of the Members of the County Assemblies?

Having said that, looking at the County Governments Act as quoted in this amendment Bill, there is the issue of community diversity. This is a requirement of the Constitution that should also be reflected in the county assemblies. As we address the issue of gender, this is also an issue that requires to be addressed properly and candidly.

Let us take examples without any inferences. For instance, there are members of other communities who work as business people in Murang'a County, but they are not represented in the Murang'a County Assembly. This also applies to Kiambu, Nyeri and other counties. You may be having a few workers who work in the tea and coffee farms. However, you will hardly find a nominee in the county assembly called Wafula. That is reflected in the entire country. This is the scenario.

If you look at Migori County, you will realise that there are a number of Otienos, but quite a few Kamaus and Mutuas who work in the same county. However, within the county assembly, you will hardly find a Mutua or a Kamau. The issue of community

diversity is also a requirement of the Constitution. That is in the County Governments Act. It needs to be addressed adequately, candidly and effectively.

One anomaly that I am sure that this Bill will deal with is the process of the time that nominations are done. You will remember that during and after the elections of 2013, the first things we had to deal with were countless court cases that were brought to the High Court by possible nominees. Many of the lists that were brought earlier were changed by the IEBC. Some were changed by individuals before they got to the IEBC. That conflict has lasted up to today.

There are several counties that are going through that problem. Given the fact that most of those lists that are given for nominations are given by aspirants themselves, the issue I am addressing right now is; at the time of giving the nominations lists to political parties, who is allowed in law by the Political Parties Act or the infrastructure of the political parties, to compile a list of nominees? That list is compiled by aspirants who hope to benefit in case nominees succeed in getting nominated in the county assemblies. That constitutes a big problem of performance even after the nominations are through. Supposing an aspirant who wanted a certain nomination is not successful? This has continued to bring a lot of problems and will need to be addressed. I am sure that this Bill will address this problem.

Lastly, it is important, as we support this Bill, especially on the basis of gender, that we see to it that our nominated MCAs, once they are nominated, owe their allegiance, faith, duty and service to the people of this country and the Constitution. We have had complaints in several county assemblies. When nominees are taken to the county assemblies, they owe their allegiance to the nominating persons. At times this can be the Governor, MCAs or even officials who are working there. This has brought about a major problem. It is important to tell nominated MCAs that, once they are nominated, they must stand beyond reproach and serve the country.

Last is to address the issue of how political parties should give a clear procedure of nomination. We should know who should give the names of the nominees after the nominations have been done. We have Governors, Senators, Members of the National Assembly and MCAs. All the elected officials serve the same country. We serve the same electorate. The nominated MCAs will still be serving the same electorate. It is important to ensure that even in the nomination process; there is diversity at the county level, including representation of the elected members of that county. I will give an example of the Kiambu County Assembly, Nairobi County Assembly and the Nyeri County Assembly, among others, that have more than 30 nominees being nominated by one person. It is important that we have a balance. We should not have all those nominees being appointed or nominated by a single individual. That creates a very big imbalance. You end up having 30 or 40 MCAs feeling inclined to owe allegiance to one person.

This process should be set out clearly so that we have a procedure that says that within the political party, a Governor can propose five names, a Senator five names, a Member of the National Assembly three names and an MCA one name. That diversity would help balance this. When the nominated MCAs sit in a county assembly, they should know that they represent diversity in the people who have proposed them. That

takes away the possibility of owing allegiance and feeling, inclined not to serve as per the Constitution.

With those remarks, I support the Bill.

Sen. Ndiema: Thank you, Mr. Deputy Speaker, Sir, for this opportunity to also contribute to this Bill which I fully support. In so doing, I want to thank Sen. Wangari for this timely intervention on an issue that has been of concern, not only to the nominated Members of the National Assembly, but to the organizations and the groups which they represent. The decision of Kenyans through the Constitution to provide or to reserve special seats for special groups was well thought out and it had a purpose. This was to ensure that all Kenyans feel included in the processes of legislation and representation. It was unfortunate that most of the country assemblies were constituted without the nominated Members. This really contravened the Constitution.

What this Bill seeks to do is to correct that situation and make it clear so that, in future, county assemblies will not be constituted without the nominated Members. This amendment will not only guarantee that gender equality is upheld, but also that affirmative action is done and that other groups are also represented because nominated Members of the County Assemblies are not just the women, but it is also to cater for the youth and the other groups, including those that are marginalized. These amendments have also provoked some thoughts as to the whole process of nomination; whether the way it is being carried out is transparent and is really taking care of the groups that were meant to be taken care of.

Mr. Deputy Speaker, Sir, we have heard that in some counties and even in the Senate here, when it comes to nomination, the issue of regional balance even among those who are nominated has not been taken care of. While some counties do not have nominated Members, others have as much as five or four. My county is fortunate to have two nominated Members and I am glad about it. For the sake of fairness, these nomination seats should be spread out because if it is the disabled, they are all over the country. There is nothing to bar us from making sure that regional balance is also taken care of.

There is also another issue of the minorities. The Constitution talks about the marginalized and the minority, but I think time has come for us to define who is a minority at the national level and in every county. A minority at the national level may not be a minority at the county level and a majority at the national level may not be a majority at the county level. It is important that some work needs to be done to determine this because the process of nomination by political parties has some bias in that, at the end of the day, the political parties look at the numbers. If they nominate a certain candidate who comes from a minority group, the minority could as well be the second largest ethnic community and because of numbers they may want to please the majority and, therefore, not go for the absolute minority who is marginalized.

There are those minorities whose numbers are so small that some political parties may not take them into consideration. Therefore, it is time that we considered identifying those communities and ring fencing them at the county level to ensure that they are not subjected to marginalization. I have in mind communities like the Sengwer. The Sengwer are not a majority in terms of election. They may never be able to elect one of their own

because the practice in Kenya is that it is very difficult. I know in some cases the minorities have been elected, but---

Sen. Murkomen: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the distinguished Senator of Trans Nzoia and my neighbour, Sen. Ndiema, to assert that Sengwers may never be elected, when the Chairperson of the Devolution Committee is a Sengwer and was elected to be the Senator of Elgeyo-Marakwet County while a Sabaot who is considered minority was elected as Senator of Trans Nzoia?

Sen. Ndiema: Mr. Deputy Speaker, Sir, I have not said that the Sengwers are not electable absolutely. I do admit that they are elected, but there should be provision for them to be elected.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Ndiema, I was listening to you and you said that they can be elected. However, the trend in Kenya is that they will most likely not be elected. Has the statement of Sen. Murkomen shown that what you said is not necessarily correct? Would you like to modify it?

Sen. Ndiema: Mr. Deputy Speaker, Sir, I want to modify it and say that I am referring to situations where they are not elected; a provision should be made for their representation. I am not saying that Kenyans cannot elect the minority. I was elected by people who do not know me. I am very grateful and proud of the people of Trans Nzoia. I am also proud of the people of Elgeyo-Marakwet for electing my brother Sen. Murkomen despite the fact that he comes from the minority.

The Deputy Speaker (Sen. Kembi-Gitura): That is why I thought it was important for you to modify your statement.

Sen. Ndiema: Mr. Deputy Speaker, Sir, nevertheless, there are other communities like the El Molo. I was looking at the record today and I noticed from the figures which have been given, in the county of Marsabit, there is only one El Molo employed in the county government. These are situations that I think should be looked at. There are those absolute minorities that I would like considered and ring fenced and, perhaps, be nominated, notwithstanding the parties.

With those few remarks, I want to congratulate and commend Sen. Wangari and support this Bill.

Sen. Kanainza: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to support the amendment that is on this Bill. I want to appreciate Sen. Wangari for thinking through to correct a wrong that has happened before. When you look at the current situation, we are looking forward to see that this affirmative action has been achieved or adhered to by 2015. That is why it is important for us to have precedence and even set the rules properly.

When you look at the Constitution of Kenya Article 90(2)(a), it says that each political party participating in a general election nominates and submits a list of persons who will stand elected if the party were to be entitled to all seats provided for under Clause 1. That is why I support strongly the view that these nominated Members, whether in the Senate, the National Assembly or in the County Assemblies stand elected after the nomination. That is why it is very important that even when they were swearing in the elected Members of the County Assemblies, even the nominated ones were supposed to be sworn in.

Mr. Deputy Speaker, Sir, to that extent, somehow the IEBC failed and it has brought back the process. That is why I say that we need to have better rules and policies that will be able to guide this process so that they are treated equally. Even sometimes when the county governments are having functions, they only call the elected leaders. This means that they are even undermining the women that are in that House and yet they are very important. Even the two youth in every county assembly that were nominated to represent the interests of the youth were even left out in this process; they never participated in even choosing the committees. They were just allocated committees without their participation. At the same time, they even did not participate in electing the Chairperson or the Vice Chairperson. That is why I really support the amendment in this Bill so that next time the nominated Members, including those living with disabilities are considered.

I support.

Sen. Wako: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to speak on this very important Bill brought by Sen. Wangari. I must say that this is one of the very first Bills that we received as a Committee on Legal Affairs and Human Rights. She was so hot on the issue; that the gender issue was not being considered in the county assemblies. That is why she drafted this Bill. At that time, I felt that because it was just two paragraphs, it should have come under the Statute Law (Miscellaneous Amendments) Bill which we will move after this Bill. But on hindsight, I then felt that we should let it go.

Mr. Deputy Speaker, Sir, I want to take this opportunity to inform my fellow Senators that maybe, in future, if you have an amendment which touches on one or two sections of a Bill, bring it to the Legal Affairs and Human Rights Committee, so that it is part of the Statute Law (Miscellaneous Amendments) Bill. I gave permission for this to go ahead because I thought it would go faster than us. However, we have now arrived in the Senate more or less at the same time.

Mr. Deputy Speaker, Sir, my colleague Sen. Murkomen who is the Chairperson of the Sessional Committee on Devolved Governments has actually said all that I wanted to say because this very morning we were sitting in that Committee where many issues which are going to be corrected by this amendment, were brought up. In fact, we mentioned to everybody that the Senate has gone ahead. We are going to enact this Bill this afternoon because of an omission in the interpretation of the Constitution; that it was not very clear on when the County Assembly can be properly constituted for the purpose of electing the Speaker; that was a misconception. Many county assemblies went ahead and did so.

Therefore, this Bill as I know it is now for the avoidance of doubt; that this is what must happen. Since it went ahead, it has undermined very many provisions of our own Constitution. It has undermined the proper functioning of county assemblies. It has also undermined the proper functioning of county governments. We were given figures that because the nominated Members did not take part in the election of the Speaker, only three ladies out of 47 were elected as Speakers. Because the nominated ladies were not involved at all at that point in time, none of them were elected as leaders in their respective county assemblies. Only two are Leaders of Minority.

Mr. Deputy Speaker, Sir, more importantly, when it comes to constituting committees where according to the modern parliamentary practice, most of the work is done, and not merely on the Floor of the House, nearly all the nominated Members are not represented whatsoever. I want to take the Floor of this House now to appeal to the county assemblies that although they were elected, they should take some corrective measures in ensuring that the committees are reconstituted to take into account the nominated Members of the county assemblies who did not participate in the election. They are many because the electorate did not elect many women as Members of the County Assembly.

In my own Busia County Assembly, only one lady is an elected Member of the County Assembly. The rest are nominated Members. Therefore, if the county assemblies can go ahead, then they should not wait until the next general election. The Martha Wangari amendment is there so that the ladies can participate in the election of the Committees. They should start taking corrective measures now to reconstitute committees to take into account the nominated Members of the county assemblies.

Mr. Deputy Speaker, Sir, I am aware that the county assemblies have Sessional committees which are constituted every year. So, why can they not take the opportunity to ensure that, at least, the nominated Members are properly represented in those committees of the county assemblies? That can be one step forward. On the issue of the nomination process as a whole, there is just one issue that I hope can be corrected before the next general election. The way the law is now under Article 90 of the Constitution, these party lists are submitted before the general election and normally when the heat of the general election is on. Therefore, we tend to get people who are the supporters of those who are going to seek for re-election and who are now in power being put on that party list. When the election is over, you will find that a number of those have been voted out, but the people they nominated are still there. Because the people they nominated are still there; they owe their loyalty to the people who were thrown out by the electorate. So, they tend to be an opposition force against the one who was elected.

Mr. Deputy Speaker, Sir, I would urge that we look into ways in which the party nomination list can be done after election, so that the people who are involved in the process, within the political parties, of nominating those people, will be people who have just been elected and in whom the people have placed confidence. That is the one more thing that I wanted to add to this debate, which I do not think has been touched by many people. It is very important that we have made our Constitution in that regard.

Mr. Deputy Speaker, Sir, I want to be very clear to Sen. Wangari that I do support this Bill wholeheartedly, but in future, when these single-liner things are being brought, they should come to the Committee on Legal Affairs and Human Rights, so that they are incorporated in the Statutes Law Miscellaneous (Amendment) Bill.

Mr. Deputy Speaker, Sir, with those few remarks, I beg to support.

The Deputy Speaker (Sen. Kembi-Gitura): It appears that nobody else wants to contribute.

Sen. Wangari, would you like to reply now?

Sen. Wangari: Thank you, Mr. Deputy Speaker, Sir. First, allow me to thank all the Members who have contributed to this Bill. It is a debate that had begun a while ago and the support is overwhelming. I am really grateful.

Mr. Deputy Speaker, Sir, I know that many issues have already been touched on. I had also enumerated the issues or objectives of this Bill. Affirmative action can only be successful if you get the tools of trade. Looking at the situation and footing where we began this journey, we will end up, as a country, judging a fish by how fast it can climb a tree. This is because those people who were nominated in the county assemblies or elected through party lists, as it should be, have not had the right to serve as they should. They missed out and the circus that was witnessed was contributed to by many scenarios.

First of all, Mr. Deputy Speaker, Sir, there is the difference of this Constitution and the way it used to be before. We used to do these lists after elections. It was done in a very tricky manner. It was done from an office or some hotel somewhere and submitted. It was a Mickey Mouse game. The reason for the decision to prepare these lists 45 days prior to elections was to deal with that problem. But we have also had emerging issues, looking at this system.

Mr. Deputy Speaker, Sir, most people did not realize the impact of that nomination and the party list. In fact, having served in a National Executive Committee (NEC) of a party, we had very interesting debates later when people were coming to ask whether we had done the lists, yet they were already done 45 days prior to the elections. We also had issues with members who felt that, as Sen. Wako has said, they lost the election, but their people had been nominated to the county assemblies. We have cases in my party where some have even threatened to remove some Members of the County Assembly (MCAs) because they do not think that they favour them. These are the issues that we are dealing with.

Mr. Deputy Speaker, Sir, there is the scenario of Kiambu County. At one time when the Speaker was under siege and was about to be removed, I remember the Deputy Speaker of that county actually ruling that they could not pass a motion to remove the Speaker, because the county assembly was not fully constituted. I could only read doublespeak. First of all, how was the Deputy Speaker elected if they could not be removed when the others were not on board? These are the issues that we have to deal with and we have learnt our lessons.

We saw the tussle between the Independent Electoral and Boundaries Commission (IEBC) and Members. We also saw the tribunals taking so long. We saw injunctions and that process took about four months. That meant that these members had to play catch-up, as we all have been told here. They missed out and as you realize only about 4 per cent of the elected MCAs were women. That is 68 out of 1,450 MCAs. We had a few young people and people with disabilities. We cannot audit this success if we do not let them have the chance to serve in Committee or even vie to be deputy speakers and chairpersons of committees. As I speak, you will realize that in some of the counties, like Nairobi, out of 14 committees only one is headed by a woman. That case is replicated in very many other counties. We have to correct that.

Mr. Deputy Speaker, Sir, I have noted several issues that we need to improve in this Bill. I hope that we will do so in the Committee Stage. I want to specifically note the

intervention that was done by the Senator for Homa Bay, Sen. Kajwang, on taking care of death as an eventuality, because we are all mortal. If we then hold county assemblies that they do not hold their first sitting and then someone dies, that needs to be taken care of. I hope that we will be able to do that in the Committee Stage.

Mr. Deputy Speaker, Sir, this being a very progressive Bill, we cannot reverse back the time. If we could, we could do it better. However, since the ones that are there now are already in office and a lot of water has gone under the bridge, I hope that with this amendment, we will be able to deal with the circus with the IEBC, especially with the party lists. If anyone has a contest with them, they can go to court, like we have in the National Assembly and Senate. We should have a clear nomination procedure, such that this list is very final. The moment the election then is done, these names will be gazetted. The reason we also took very long with that list was because the IEBC took very long to solve the disputes that were coming to the tribunal. Consequently, it meant that the gazetting of these lists took place much later in the year.

Mr. Deputy Speaker, Sir, I agree with most of the Members that we need to get a guide to these nominations. We need to make it very clear that we are able to give a clear way. This is because as you realize, even after saying that we needed to prepare the lists 45 days prior to the elections, we still did not have a clear criteria. If that can be streamlined, and I know that I will be working to actually look at those electoral laws, including the Elections Act and the Political Parties Act, we will set clear criteria for nomination, taking on board what has been said on this Floor.

Mr. Deputy Speaker, Sir, I look at affirmative action as a corrective measure. I like using football as an analogy. For example, right now, the World Cup tournament is going on in Brazil. It is quite something when you talk about it. I am not very tall; I am about 5'1" or 5'2". So, when there is a game going on in Kasarani and you are taller than me, if there is one crate for stepping on, it is me who should step on that crate and not you. We have had a majority of Members in this country having the advantage of being elected to office and that we have more men being elected to office, as has been demonstrated by the statistics. It is, therefore, time for us to give that head start to these marginalized groups; it is incumbent upon us to give crates to these Members to step on.

The people living with disabilities can now look upon us and see that they have representation in the counties, in the National Assembly and in the Senate. If we cannot give them this chance, then we will be failing. This is the first Senate under this Constitution. Therefore, we, as Senate, must streamline these laws so that these lacunas that were there when we did the elections last year can be avoided. Unless we do that, we will still be having a problem.

I know that people have made very interesting scenarios; I have heard people even argue in the media and in other fora, especially when we were debating the wage bill. I have heard people talk of very simplistic ways, for example, they have asked "why do we need these positions, right from the Senate, to the county assemblies, to the National Assembly?"

Mr. Deputy Speaker, Sir, when I talk to young girls and young women, I tell them "even if for no other reason, the fact that I can stand here and talk in this House should be a reason enough to encourage and motivate you" because sometimes that is all they need

to see and hear. They need to know that a person living with disability can be given a position which can touch on their lives. We cannot achieve that if we only give these positions with no portfolio; that will be crippling them even before they even start. If we can correct that, then as a Senator who has sat in the first Senate under this Constitution, I will be able to hold my head up high and say that I did the job that I was given to do and we will all be proud.

Mr. Deputy Speaker, Sir, I do not want to add so much because a lot has been said. I just want to conclude by saying that we, as a Senate, will be judged very harshly by history if we do not correct these anomalies. It is our responsibility and our constitutional duty to actually make sure that we streamline devolution.

Mr. Deputy Speaker, Sir, I have also seen a petition coming from the same Kiambu County Assembly moving that they do not want nominated Members or the Members who were elected through the party lists to even have a voting right. I know that this issue is before a Committee in this House. Therefore, I will not dwell on it much. But I am hoping that we can actually show leadership, as the people who are representing women in this Senate. Many people see me as women's representative. The other day, I was in some show on radio and I was referred to as women's representative. I did not fight it because, actually, I represent women. I am not shying away from that. I am in this Senate to represent women. If we cannot do so, then we will be showing our girls that, yes, we were given a position, but we have not used it properly. So, let us give these Members of County Assembly (MCAs) the tools and the opportunity to utilize the knowledge and the position they have been given to change the lives of Kenyans.

I beg to reply.

Mr. Deputy Speaker, Sir, considering the quorum in the House, I am requesting that under Standing Order No.54 (3), that we defer the putting of the Question on this Bill to a later date.

Thank you, Mr. Deputy Speaker, Sir.

(Applause)

The Deputy Speaker (Sen. Kembi-Gitura): Thank you very much, Sen. Wangari.

(Sen. Murkomen stood up in his place)

Sen. Murkomen, do you have a point of order or something?

Thank you very much, Sen. Wangari, for that.

Now, quite obviously, there is no quorum to vote on the Bill. So, I will defer the voting on the Bill to Tuesday, 24th June, 2014, at whatever time we shall be able to vote on that day. Is that okay?

Thank you very much.

(Voting on Bill deferred)

Next Order.

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

The Deputy Speaker (Sen. Kembi-Gitura): What is it, Sen. Murkomen?

QUROUM

Sen. Murkomen: Mr. Deputy Speaker, Sir, as you may see, the next order is a very weighty order because it is The Statute Law (Miscellaneous Amendments) Bill. As a Member of the Committee on Legal Affairs and Human Rights, I know that this Bill cuts across various legislations. Considering that there is no quorum, I think we should adjourn the House until such a time that we have enough quorum for the Chairperson of the Committee to prosecute this matter effectively and with the support and contributions of the other Members.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Murkomen, are you drawing my attention to the fact that there is no quorum?

Sen. Murkomen: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Clerks, is there a quorum?

(The Clerk-at-the-Table counted the number of Senators present)

Okay, hon. Senators; there is obviously no quorum. I have been informed that there is no quorum in the House. So, the quorum bell is going to be rung for ten minutes under Standing Order No.35(2). After that, we shall see whether we still have quorum.

I order that bell be rung for 10 minutes?

(The Division bell was rung)

ADJOURNMENT

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators. I am advised that there is no quorum after the Division Bell has been rung for ten minutes.

The House, therefore, stands adjourned for lack of quorum until Tuesday 24th June, 2014 at 2.30 p.m.

The Senate rose at 5.00 p.m.