

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 24th August, 2016

Special Sitting

*(Convened via Kenya Gazette Notice
No. 6780 of 22nd August, 2016)*

*The House met at the Senate Chamber,
Parliament Buildings, at 9.10 a.m.*

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

PRAYERS

COMMUNICATION FROM THE CHAIR

CONVENING OF SPECIAL SITTING TO CONSIDER THE REPORT OF THE JOINT PARLIAMENTARY COMMITTEE ON IEBC AND OTHER BUSINESS

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I have a communication to make on this Special Sitting.

Hon. Senators, let me take this opportunity once again, to welcome you to this third Special Sitting of the Senate during the current August recess. Thank you for finding time from your busy schedules to attend the sitting. I am sure each one of you has scheduled county events. It is because of the value you attach to the business of the Senate, especially the consideration of the pieces of legislation like the one before us today, that you have created time to be here.

Hon. Senators, by a letter dated 18th August, 2016, and pursuant to Standing Order No.29(1) of the Senate, the Senate Majority and Minority Leaders, supported by 16 Senators, requested the Speaker to convene a Special Sitting of the Senate to consider:-

(1) A Report of the Joint Parliamentary Select Committee on Matters Relating to the Independent Electoral and Boundaries Commission (IEBC).

(2) Bills with constitutional deadline of 27th August, 2016.

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(3) A Procedural Motion to extend the recess by a few days given that the August recess of Senators has been disrupted severally by Special Sitzings.

Following the consideration of the request by the Senate Majority and Minority Leaders, I was satisfied that it met the requirements of Standing Order No.29(2). It is in this respect that I convene this Special Sitting of the Senate *via* Gazette Notice No.6780 dated 22nd August, 2016. I subsequently issued an addendum to the Gazette Notice to incorporate Reports of the Mediation Committee on the Energy Bill and the Petroleum Exploration, Development and Production Bill.

Hon. Senators may wish to note that the urgent business currently pending before the Senate includes Motions to adopt the four mediation Committee Reports on crucial Bills, all of which are subject to the 27th August, 2016 constitutional timeline, a Motion to adopt the report of the joint parliamentary select Committee on matters relating to the IEBC and a constitutional amendment Bill by Sen. Judith Sijeny which is due for Division at Second Reading and later if approved, Committee of the Whole.

As hon. Senators are aware and pursuant to Article 256(1)(d) of the Constitution, the constitutional amendment Bill by Sen. Sijeny requires a threshold of two thirds of all Senators to pass it at Second and Third Readings. That is a minimum of 45 Senators.

Hon. Senators, as required by Standing Order No.29(5), the Gazette Notice specifies the business to be transacted at this sitting. It is the business scheduled in today's Order Paper. Indeed, as specified in accordance with Standing Order No.29(5) of the Senate, the business listed shall be the only business before the Senate during the Special Sitting following which the Senate shall stand adjourned until Tuesday, 13th September, 2016 at 2.30 p.m. in accordance with the Senate Calendar.

Hon. Senators, I would like to reiterate that in accordance with Article 123 of the Constitution and Standing Order No.71, for the Senate to approve business scheduled at Orders No. 4 to 7, the support of a majority of all delegations, that is 24, is required. I, therefore, appeal to you all to remain in the Chamber for the transaction of the business as scheduled.

I thank you.

Sen. Moi: Mr. Deputy Speaker, Sir, I beg your indulgence. I request that you give me a little bit of time to lay my papers in the course of the sitting. The papers are at the Speaker's Office.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Moi, how long do you think that will take?

Sen. Moi: Mr. Deputy Speaker, Sir, half an hour.

The Deputy Speaker (Sen. Kembi-Gitura): Okay, let us see how it works out.
Next Order.

NOTICES OF MOTION

RESOLUTION TO ALTER THE SENATE CALENDAR

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, pursuant to Standing Order 28 (4), the Senate resolves to alter its Calendar in respect of Part III of the Fourth Session for the sittings scheduled to resume on 13th September, 2016 instead commences on 20th September, 2016.

The Deputy Speaker (Sen. Kembi-Gitura): Who is giving the notices of Motion on (a) and (b)?

An hon Senator: Sen. Moi.

The Deputy Speaker (Sen. Kembi-Gitura): So, Sen. Moi, you cannot give the notices of Motion until you have laid the papers. Again that will be deferred until we get the papers to be laid on the Table.

I will defer Order No.2 and No.3(a) and (b) until the Papers to be laid are brought to the House.

Next Order!

POINT OF ORDER

FAILURE TO EXECUTE THE BUSINESS LISTED ON THE ORDER PAPER

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, what is your point of order?

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker. We are getting concerned. This is a Special Sitting where everything must be meticulously done in accordance with the Order Paper. If it is listed that a Notice of Motion will be given and Papers will be laid on the Table of the House yet the distinguished Senator for Baringo County is saying that the Papers are held up at the Speaker's office, this raises concern. A Special Sitting is not an ordinary sitting where we can juggle and adjust the programme as we wish. It is very strict. Why are the documents not here? If we are not ready to receive this mediation report and the notice of Motion, why did we list it in the first place? This special sitting was gazetted. Having been gazetted, it obligated the office of the Speaker and the Clerk to make sure everything is properly done.

The Deputy Speaker, Sen. (Kembi-Gitura): Sen. Wetangula I hear you, but the papers are not here.

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(Laughter)

That is the long and short of it and you cannot lay a paper that you do not have, can you? You cannot give a Notice of a Motion which you do not have. I reckon that you have to do exactly what I have proposed. I hear your legitimate concerns, but we must proceed as best as we can under the circumstances.

Next Order!

MOTION

ADOPTION OF THE MEDIATION COMMITTEE REPORT ON THE NATURAL RESOURCES BILL

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I beg to move:-

THAT, the Senate adopts the Report of the Mediation Committee on the Natural Resources (Classes of Transactions subject to Ratification) Bill (National Assembly Bill No. 54 of 2015) laid on the Table of the Senate on Thursday, 18th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill.

Ordinarily, this Motion should be moved by the Chairperson of the Mediation Committee, in our case, the Vice-chairperson, since in this particular mediation, the chairmanship was with the National Assembly. Generally speaking, I have seen the Report which is available because it was laid on the table of this House, the last time we were here. Allow me to say three things in support of this Report.

Mr. Deputy Speaker, Sir, first, I thank the Members of this House and of the National Assembly for expediting this process. The Mediation Committees has been working very hard, not just on this Bill but on all the the other Bills with constitutional deadlines and it is only two reports which are outstanding. They have been called this morning and we are hoping to process today because 27th of August is on Friday this week. It is incumbent that we are able to adopt or pass this Motion today as well as the other Motions that relate to Bills with constitutional deadlines.

Secondly, given the sensitivity of these transactions and their ratification by Parliament, this Bill in its mediated version will go a long way in strengthening the governance of our country in the area of natural resources. We are coming from an era where Government officials and functionaries wielded huge powers over natural resources which should not be the case. This Bill, therefore, vests the power of supervising access to natural resources and their exploitation on the people's representatives, which is Parliament.

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The Bill in the Schedule provides the different thresholds over and above which transactions that relate to natural resources must be approved by Parliament and, in this case, the two Houses.

Thirdly, I want to mention that, since this is a mediated version which we can only pass or reject in total, we hope the Report will be adopted by the Senators given that it has gone through a lot of mediation where there was give and take. I want to encourage this culture of mediation. Initially when we started, we had a lot of difficulties and suspicions, but I think we are getting over it.

This Session alone, I cannot count the number of Bills that have successfully been mediated. This should not be seen as a disruption of the parliamentary process. In fact, it should be encouraged and it shows that each of the Houses is doing something. You do not expect the Senate to sit and approve a Bill as it is without value addition. This is because we are the only institution vested with authority to ensure that devolution is implemented and respected. Therefore, you expect amendments every so often.

Mr. Deputy Speaker, Sir, I do not want to say more. This is a mediated version of a Bill and I hope the Senators will find it appropriate to pass it. I beg to move and request the Senate Minority Leader to second.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I beg to second the Motion. The clauses that were considered are just about two or so. However, they are so fundamental that I laud the Committee for bringing a report that adds immense value to the original Bill. This is because, unless the law is specific and clear, we have always had a situation where either House is bypassed or ignored. For example, we have the Committee on National Security and Foreign Relations where you and I and the Senator for Garissa sit, where the National Assembly cordoned off the Senate in the approval of international Treaties signed by the Government.

This mediated version is important to the extent that Senators represent counties and their governments and whatever agreements are signed by the executive affect resources in the counties.

Mr. Deputy Speaker, Sir, in the bad old days, people just used to sit in Cabinet offices and sign away national wealth to themselves and their friends. That is how if you look at this country today, all the rich people have been civil servants, Permanent Secretaries(PS), directors and all manner of people. We have gone a full cycle. Now the new wealthy people are sons of those people.

We must move away from a situation where an individual given an office to work for the people of Kenya works for himself. That is why Parliament must be involved. The country is moving into an era of petroleum, gas and mineral wealth economy. The representatives of the people in both Houses must be involved.

Just as the Senate Majority Leader has said, the approval of these agreements should not be a ritual or rubber stamp. Parliament must scrutinize every clause and content of the agreement and reject what is onerous to the people and the interests of the country and approve the good. That is why I agree with the mediated Report. They rejected the version that was approved earlier that was creating a situation where there is

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no room even for mediation where the two Houses agree as provided for in the Standing Orders and the Constitution.

I support this mediated version. It is going to make it easier and better for the protection of the natural wealth of the country and that whatever is done behind closed doors in the executive, must end up with the scrutiny of the representatives of the people whom I hope will live to the billing expected by the people who elected them and protect the interests of the country, its wealth and its resources.

I beg to second.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I will now propose the question.

(Question proposed)

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I rise to support the mediated version of this report. What was in contention and what had been passed by the National Assembly had created a bottleneck where the legislators appeared to be interfering with something they should not interfere with or seek to approve something that we should not interfere with. In fact, I was one of the persons who had proposed the amendments which were moved by the Committee to amend the schedule which had a problem. I am glad that the Mediation Committee has seen it fit to agree with part of the recommendations and amendments, so that we do not create a bottleneck for classes of persons who wanted to do honest research and who were otherwise going to be impeded by what appeared to have been a condition precedent of approval by the National Assembly.

Mr. Deputy Speaker, Sir, the mediation under the Constitution is now getting root to the extent that I dare say again, like I have always done, that there should be no fear by our counterparts in the National Assembly to deal with Bills passed by the Senate because the provision to mediate where we disagree is always there. I have not heard of any Bill that has been rejected in totality at mediation. In very many words, that means that what we disagree with is much narrower than we appear to be. Therefore, I support the Committee and the mediated version in its entirety. Thank you.

The Deputy Speaker (Sen. Kembi-Gitura): There is no other request for the Floor. Senate Majority Leader, would you like to reply?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I rise to request your guidance under Standing Order No.1. This being a special sitting, we are hoping that very soon, we will be in a position where the question can be put and a vote taken on this matter. Under Standing Order No.1, I request that you put aside the putting of the question before I reply because if I reply, then that request will come under Standing Order No.54(3) and it will lead to some technicalities which we might not salvage, given that this is a special sitting.

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The Deputy Speaker (Sen. Kembi-Gitura): I will accept your request. I will defer the putting of the question.

(Putting of the question on the Motion deferred)

Next Order!

PAPERS LAID

REPORTS OF THE MEDIATION COMMITTEE ON THE PETROLEUM AND ENERGY BILLS

Sen. Moi: Mr. Deputy Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Wednesday, 24th August, 2016:-

The Report of the Mediation Committee on the Petroleum Bill (National Assembly Bill No.44 of 2015).

The Report of the Mediation Committee on the Energy Bill (National Assembly Bill No.50 of 2015).

(Sen. Moi laid the documents on the Table)

The Deputy Speaker (Sen. Kembi-Gitura): Let us go back to Order No.3 which we had deferred.

NOTICES OF MOTIONS

Sen. Moi: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motions:-

ADOPTION OF THE MEDIATION COMMITTEE REPORT ON THE PETROLEUM BILL

THAT, the Senate adopts the Report of the Mediation Committee on the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015) laid on the Table of the Senate on Wednesday, 24th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill.

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ADOPTION OF THE MEDIATION COMMITTEE
REPORT ON THE ENERGY BILL

THAT, the Senate adopts the Report of the Mediation Committee on the Energy Bill (National Assembly Bill No. 50 of 2015) laid on the Table of the Senate on Wednesday, 24th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill.

The Deputy Speaker (Sen. Kembi-Gitura): Next Order.

MOTION

ADOPTION OF THE MEDIATION COMMITTEE REPORT ON
THE FOREST CONSERVATION AND MANAGEMENT BILL

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, the Senate adopts the Report of the Mediation Committee on the Forest Conservation and Management Bill (National Assembly Bill No.49 of 2015) laid on the Table of the Senate on Thursday, 18th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155(3) of the Senate, approves the mediated version of the Bill.

Mr. Deputy Speaker, Sir, this is also an important Bill which has gone through successful mediation. It will be recalled when the Forest Bill came to this House, the Senate made significant amendments to that Bill. I am happy to note that the Mediation Committee did not differ significantly with those amendments. The Report of the Mediation Committee only touches on four to five provisions; Clause (9), Clause (72), Clause (75), Clause (77) and the Third Schedule.

Mr. Deputy Speaker, Sir, just to highlight two or three of those provisions; first, under Clause (9), the Mediation Committee is suggesting the inclusion of a New Clause (9) (1) (3a) to provide for a new ground for disqualification of members to the Board. It says:

“A person shall not appointed to the Board if the person has been convicted of a criminal offence and imprisoned for a term exceeding six months - which is a standard legal requirement - without an option of a fine; a member of a governing body of a political party - to discourage people who are actively involved in political party administration not to serve in the Board - has previously been removed from public office for contravention of provisions of the Constitution; is an discharged bankrupt or violates the Constitution or any other written law.”

There is also Clause (72) which provides for the inspection by the public of the information that will be under the custody of the Chief Conservator of Forests. It provides:

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“Any register maintained under Section (72) shall be opened for inspection by the members of the public at the Office of the Chief Conservator of Forests. The information includes licenses issued under the Act, information on community forests, private forests, etc.”

Mr. Deputy Speaker, Sir, other than that, there is an amendment in the Third Schedule. Clause (77) removes Government settlement schemes from the purview of Clause (77).

So, those are the four amendments which have been suggested by the Mediation Committee. I hope that those amendments were well thought out and this being a Constitutional Bill I just want to request Senators we support it as it can always be improved. I always believe that you cannot have a perfect legislation. Unless something is automatically and obviously repugnant on the face of it, I really urge Senators to support this Bill. I am sure it can be made better through future amendments.

Mr. Deputy Speaker, Sir, with those few remarks I beg to move and I request the Leader of Minority to second this motion. Thank you.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I beg to second. It is a mediated version. I believe our teams put in their best.

(Sen. Murkomen walked into the Chamber)

Do you always notice that as soon as the distinguished Senator for Elgeyo-Marakwet walks into the Chamber, there is total disorder all the time?

Mr. Deputy Speaker, Sir, while I support this mediated version, it will always be good for the people we sent to mediation to come here and explain the reason or the rationale for arriving at what they arrived at. This is because I do not see Sen. Kivuti here - Sen. Chelule has just walked in - or those who went for mediation. I have failed to understand why, for example, the new Clause (9), and I have discussed this with a few colleagues including the Majority Leader, a conviction of a criminal offence and imprisonment for a term exceeding six months. We must always qualify what kind of offence we are talking about. If somebody, for example, Mr. Speaker is convicted of an affray and convicted and sent to jail for six months, how on earth does that disqualify you from sitting on a board about forests? I cannot understand this.

Under the new Constitution, we have even said clearly and rightly so that prisons now are not for punishment but for correction; they are correctional services. So if you have been taken to prison and you have been corrected, why would you be denied an opportunity to sit on a Board about forests? In any case, we have convicted criminals elected to Parliament, to the Senate and all over. How would we deny people an opportunity to sit in the boards? I do not think this is a good law.

As the Majority Leader has said, we have to rethink about these things and probably bring amendments to the law in the future. We have all manner of people who have transgressed the law. The other day, you saw a Minister hounded out of office for theft, running around the streets with young people and is now headed towards becoming

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a governor. People like those are about to take public office. I do not understand why they should not sit on the boards.

Mr. Speaker, Sir, secondly, I want to point out - my brother, Sen. Kivuti, is not here - we are struggling to raise our forest cover from the current paltry of 2.3 per cent to a recommended United Nations (UN) 10 per cent. Countries like Japan in 1960, had a 10 per cent forest cover, today it has a 70 per cent forest cover. South Korea in 1960 had 15 per cent forest cover, today it has 80 per cent forest cover. And what are we doing here? We are moving gazetted forests from being gazetted and leaving it to land speculators and land grabbers.

I can see in the schedule set out here; there is Aberdares, Mt. Elgon, Mt. Kenya, Londiani, Tinderet, Turbo, Western Mau and Mangrove Swamps. We are moving them from being gazetted as forests, in order to pander to the greed of land speculators and grabbers. There is no ordinary person who grabs land; it is the big people who do. If we want to build our forest cover to even the bare minimum recommended by the United Nations (UN) of 10 per cent, how do we remove gazetted forests from the Schedule and leave them to the ravages to satisfy greed? This is something I also do not understand. I want an undertaking from the Majority Leader that he will consider bringing amendments.

Sen. Khaniri: Mr. Deputy Speaker Sir, point of information. In fact I was complaining that the Committee members are not here.

The Deputy Speaker (Sen. Kembi-Gitura): There is something that has always intrigued me. When a Senator says “point of information” and the Senator being informed accedes to be informed, is it automatic without leave of the Speaker that somebody just starts giving the information?

Sen. Khaniri: Mr. Speaker, Sir, yes sometimes.

The Deputy Speaker (Sen. Kembi-Gitura): Okay; the Speaker says he is not going to be given the opportunity to do so.

(Laughter)

I noticed that somebody rises on a point of information, Sen. Wetangula says he wants to be informed and the Senator just walks to the Dispatch Table, is it right? Rules need to be obeyed. It is just like a point of order, only that the leave has to be given by the Speaker. So I do not want the House to be assumed in its rules and the way it proceeds.

Sen. Khaniri, you may give the information.

Sen. Khaniri: Mr. Deputy Speaker, Sir, I was a Co-Chair to the Mediation Committee and I am sorry for coming in late. I should have been the one moving this particular motion. I want to thank the Leader of the Majority Party for moving it on behalf of the committee.

I want to inform the honorable distinguished Senator from Bungoma County, who is my leader, that the Mediation Committee did not delete any forest from gazettement.

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What happened is that the forests that appear to be deleted were double entries. They appeared twice on the list of gazettement and we had to delete some of the entries. Otherwise, they all remain on the list of gazetted forest. It was just a double entry that we were deleting.

The Deputy Speaker (Sen. Kembi-Gitura): I also heard Sen. Wetangula saying that we are now standing at 2.3 per cent of forest cover when I thought we have about 7 per cent. What is the correct position, Sen. Khaniri?

Sen. Khaniri: Mr. Deputy Speaker, Sir, I know that our target is to get to 10 per cent and we are not there. I may not have the exact figure but I can check and report back to the House.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, we all live in this country and you know even if you do aerial survey, there are no new forests being developed in this country for the last 10 years or so. If anything, we have been depleting forests everywhere; Mount Elgon, Aberdares, Mau Forest, Embobut and so forth. You remember my distinguished colleague and friend was evicted from the forest.

(Laughter)

Sen. Murkomen: On a point of order Mr. Deputy Speaker, Sir. I have no doubt that the Minority Leader is right, even if he did not name me, that I was forcibly evicted from my home in Embobut forest; and that is a fact I have admitted in the past. Is that not the reason why the forest cover has increased? Is the Minority Leader confusing forest cover with gazetted forest because the forest cover in the country is higher than gazetted forest?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, let me respond to the point of information. I stand guided and informed by the Vice Chair of the Committee and if there were double entries and this is an editorial; in law we say *res ipsa loquitur* meaning things speak for themselves. They should have said so, so that we do not belabor points that are not relevant. So, in future, I believe this can be clearer than it is.

If these are double entries that are being corrected, then I stand corrected. I want to finish by informing the Chair that the quality and quantity of our forest cover is public information. Sometimes exaggerations are made to attract donor funding and so on; but we know we are low in forest cover.

I beg to second.

(Question proposed)

Sen. Murkomen: Mr. Deputy Speaker, Sir, I would like to support this mediated version of the Bill. It is important that as a country, we try to protect our natural resource.

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It is critical that as a nation, we ensure that our forests are protected. I live in one of the most important water towers in this country which is Cherangany Water Towers. I actually live in the East and the West side of the tower. That is a very important facility for us in Elgeyo-Marakwet County and it is important also for the people of Tans Nzoia, Bungoma, Busia, Kakamega counties and up to Lake Victoria that the indigenous forest in Embobut and Cherangany as a whole is protected.

Mr. Deputy Speaker, Sir, it is also important to point out that this does not extinguish the rights of forest dwellers and people who have lived in the forest for many years. In countries like South America, they have now found ways of communities co-existing with the forest. One of the reasons as to why Embobut Forest was destroyed - because I saw it since when I was a child until I have grown up - it is because the forest was presented to the public as an enemy of the public. The Government uses force to molest the indigenous communities that live around and within the forest instead of looking at the general public as a partner to the protection of the forest.

Instead of ensuring that the local communities are direct beneficiaries of the forest, it is presented as though they are the enemies. It is like the forest is being protected on behalf of other people elsewhere. Stories will be told by political leaders here of harvesting trees which are allocated by the Kenya Forest Service (KFS). In some situations in the past, some situations have improved and I want to recognize the efforts that are being made by the current Director General of the KFS.

For a long time, you protected a forest in your area, planted trees, participated in ensuring that you improve the forest cover; but on the day of harvesting, some commercial harvesters come from as far as 100 kilometers away from your home, cut the trees, leave without employing the locals, saw millers who have no connection with local people will harvest trees in the area and the schools in that area are not assisted in any way. It is important that in the new Constitution and the new law, communities are recognized as part and parcel of partners of protection of the forest.

Mr. Deputy Speaker, Sir, forest dwellers like the Ogiek, Sengwer and the Bonis - it is important that they are recognized; that having been the indigenous people who lived within the forest before the colonial government came and gazetted that forest, they should also be co-joined in the management of the forest. There are new methods where people can live with forest cover increasing that cover without destroying it by adopting methods and mechanisms that ensure you enhance the forest cover. For example, the rules that you cannot do farming there; that you cannot do grazing in certain areas and, instead, you can adopt methods like bee keeping and other methods that will ensure that the forest is also enhanced.

Mr. Deputy Speaker, Sir, as we continue implementing this law, I want to ensure that the people of Embobut forest, the small indigenous communities in Mau forest, the people who live in Mount Kenya and other parts are going to be partners with the Kenya Forest Service in the management of the forest for the good of this generation and the generations to come.

So, I support this Bill and I want to ensure that in its implementation, there is proper public participation, proper compensation of parties that have given way to those forests to ensure their protection. There should be proper inclusion for such parties in the ultimate benefits. For example, products and benefits that come with eco-tourism must first benefit the local community before benefitting the rest of the country. That is already covered by the Constitution and this law comes into place to provide the structural framework of participation of the counties.

Mr. Deputy Speaker, Sir, now that counties are going to be participants in the management of the forest, there is no reason why local interests are not going to be factored into this law. I hope it will not be an avenue for local political leaders to now say it is their forest and they can destroy it. We must appreciate that forest cover is a global requirement in terms of fighting global warming and restoring the ozone layer. Our Embobut Forest has a responsibility of benefitting the whole world. Therefore, we, as a nation, must ensure that we benefit from carbon credit under the new law that we passed here on matters of climate change.

There must be cross referencing between the climate change law and the forest law to ensure that our communities benefit in terms of employment and resources. We must invest a lot of those resources in the management of our forests. We want to see that forest scouts or guards are people who were born and brought up around that area. The locals should see that their sons and daughters are employed in Kakamega Forest because they live around Kakamega and they know that their forest is an important contributor to the income of the people of Kakamega and Nandi counties. This is because Kakamega and Nandi counties co-share the forest.

Tinderet Forest must benefit the people of that area. Mau Forest must benefit the people of Narok, Bomet and Kericho counties. Once people realize that the benefit is accruing to them, they will have no reason not to support the protection and regeneration of our forests.

I support and I propose that going forward, the structures that are being put in place must ultimately reflect the interest of the local community. This is because this law does not supersede the constitutional requirement that the rights of local communities are protected, particularly those who call forests of this Republic their home.

Sen. (Prof.) Anyang'-Nyong'o: Thank you, Mr. Deputy Speaker, Sir. I rise to support this Bill which is very timely because it comes at a time when we have counties. Counties are in charge of land, agriculture, water and the environment as well. These are four critical variables in dealing with forests. There can be no better level of government to be in charge of environmental control, to fight environmental degradation and to work for afforestation if it is not the county government. However much we plant trees, if there are other things going on which lead to environmental degradation which lead to the depleting of water resources, then our forests will not be there.

Afforestation and planting of more trees must go hand in hand with environmental control and preservation of water catchment areas and forests. At the moment, there is no other county among the 47 counties which have adopted a

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progressive climate change policy, except Makueni County. I know that there are many Non-Governmental Organisations (NGOs) which have been holding climate change seminars across the counties. However, whether these seminars are leading to policy changes and policy implementation, is another matter. Those of us who are in the Land Committee like my friend Sen. Khaniri should come here with a Bill on environmental control and preservation of water resources. This is because those two issues are very closely related to preservation of forests and afforestation.

We should not just think about the large forests as the only issues relevant to the preservation of forests. In the traditional society, forests were usually found along rivers. For some reason, people knew that rivers could be preserved by preserving forests along rivers. During colonial times, there was a very strict law that made it mandatory for people not to cultivate within about 10 metres of a river. If you did so, the chiefs visited you with wrath. At the moment, there is a very lackadaisical way of treating rivers. People cultivate within the riverbeds. You can even find people mining sand within river beds and I think our environment has gone haywire. It is the county governments which can help in the preservation of the environment and afforestation.

We should have a very clear policy that every county whether arid, semi arid or fertile, must have a certain percentage of forest cover to qualify for some grant from the National Treasury. There should be some inducement to increase forest cover by giving some conditional grants for afforestation to counties.

Secondly, there should be a regular inspection and a report from the Ministry of Environment, Water and Land on how much forest coverage exists in a country from year to year. This must be done incrementally. Targets should be set for counties every year and incrementally, we should be able to determine which counties are fulfilling---

(Loud consultations)

Mr. Deputy Speaker sir, could you kindly protect me from a *Kamkunji* initiated by the Senate Minority Leader going on at the right of me that is completely making this Senate impossible to speak in?

The Deputy Speaker (Sen. Kembi-Gitura): Order! Sen. Wetangula, you were accusing Sen. Murkomen of being disorderly in the House not more than 30 minutes ago. Let us have some decorum in the House. We should consult in lower tones.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I am tempted to think that the Minority Leader ate *Kalanjiri* yesterday. He could consult me on what *Kalanjiri* is but---

We should set some standards and targets for counties. There is no need of talking about these things in the abstract. Laws can be very good on paper, but they are only important if they are translated into reality. The only way that I know as a planner on how to do so is to come up with a programme with targets that people should meet. As we used to say in NARC; the Coalition Government, that which is done gets measured. If we will claim our forests and have afforestation, we should have a programme of

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afforestation which is implemented and which can be measured. All these issues that we lament and talk about in theory will not help this nation.

The retired President Kibaki introduced a policy called a “working nation.” This nation must work to achieve afforestation. If we do not do so, the wrath of climate change will be with us year in, year out. It will affect agricultural production, the weather and all kinds of development initiatives that we take part in. It is not something we should treat simply. I would like the relevant Committee to come up with a policy where counties are given targets, the national Government gives an initiative to counties to plant forests by having a conditional grant every year given to counties, based on what they have achieved in terms of environmental control, afforestation and water development.

Thank you, Mr. Deputy Speaker, Sir.

Sen. Khaniri: Mr. Deputy Speaker, Sir, I rise to support the adoption of the amended version of the Bill. As stated earlier on, I had the privilege to co-chair the Mediation Committee together with Hon. (Dr.) Wilbur Otichillo from the National Assembly. We had debated the Forest Conservation and Management Bill extensively and what we are doing today is just to adopt the mediated version. Having been a co-chair and your representative in the Mediation Committee, I owe you an explanation of what transpired.

It should be noted that this Bill originated from the National Assembly and the Senate had made very many amendments. In fact, the Senate had amended a total of 23 Clauses. I wish to report that the National Assembly agreed with almost all those amendments save for three clauses plus the Schedule that Sen. Wetangula had earlier alluded to.

The first clause that the National Assembly made an amendment to the amendments that we had made was the one to do with the circumstances under which a person shall not be eligible to sit on the board. All the conditionalities that the Senate had put were accepted, but redrafted. One more conditionality (e) was added; ‘a person who violates the Constitution or any other written law.’ Therefore, essentially, they agreed with us but just redrafted the conditionalities or circumstances which the Senate had already enumerated.

The other issue was the Schedule, which I have explained earlier. The Senate had proposed deletion of some gazetted forests. The reason for this was because those particular forests were appearing twice. When we explained to them they agreed with us and we deleted those particular forests, but they still remain because they were appearing twice. They appear on the list of gazetted forests, but just once.

The last issue that they disagreed on, and which we consented to as a team from the Senate, was that the Senate, in our duty to defend the interest of the counties, had insisted to put a legislation that the relevant counties will at all times be furnished with pertinent copies of all the relevant documents maintained in the office of the Chief Conservator of Forests. This particular amendment was rejected on the premise that this information held by the Chief Conservator of Forests is public knowledge and, therefore,

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it would be cumbersome for us to compel him to furnish the counties with this information.

(Loud consultations)

Sen. Obure: On a point of Order, Mr. Deputy Speaker, Sir. The Member on the Floor is making very important contribution, but we can hardly hear him because of loud consultations going on around him.

The Deputy Speaker (Sen. Kembi-Gitura): Does that have to do with the Senator for Mombasa at all?

(Laughter)

Let us have consultations, but in low tones, so that we can follow the debate on the Floor.

Proceed, Sen. Khaniri.

Sen. Khaniri: Mr. Deputy Speaker, Sir, the only aspect that we lost in the mediation was that we had moved an amendment as the Senate, so that all the relevant counties are furnished with pertinent copies of all relevant documents maintained by the Chief Conservator of Forests. The National Assembly argued that under the Constitution this is public knowledge and the counties are at liberty to access this particular information. Therefore, it would be cumbersome for the Chief Conservator of Forests to furnish all counties with all these documents. We let go that one.

Otherwise, we won all the amendments that the Senate had included in the Bill. I assure the House that the spirit of the Bill was maintained. I believe that if we pass this mediated version of the Bill, it will go a long way in ensuring that we increase our forest cover, as advocated by my Minority Leader. I plead with Members to support and approve this version of the Bill.

Thank you, Mr. Deputy Speaker, Sir.

Sen. Ndiema: Mr. Deputy Speaker, Sir, I stand to support this Bill that contains very important provisions towards conservation of forests, which are the natural resource for our country. As we move towards conserving forests, we should not lose sight of the fact that we are doing this for the benefit of the people. Forests principally exist for the benefit of the people. Forest conservation should not be viewed at any time as a way of penalizing or punishing them. Forests in this country exist in specific locations as indicated in the Schedule; the gazetted forests.

Before any gazettelement was done, there were already indigenous people residing there. Unfortunately, when gazettelements were done no regard was given towards their wellbeing, in terms of being compensated with land elsewhere or any other way. Even as forests were gazetted, the indigenous communities in some instances were allowed to reside there and eke their livelihood. As we move to the next phase, we believe that the

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indigenous people living in these forests will not be subject to harassment and eviction because they have been looking after these forests since time immemorial. The Constitution of Kenya recognises the right of communities living in forests including those living in the gazetted forests. These are communities like the Ogiek, Ndorobos and Boni among others. We hope that they will not be harassed.

When it comes to benefits sharing; our Constitution provides that any investment in any particular area should benefit the local people. Forests in this country for a long time have discriminated against the local people. The people in the wards and counties have largely not benefited from the exploitation of forests and its products like timber. There is no specific allocation set aside for the local benefit. The fees that accrue for harvesting have not been shared with the local communities. This Bill will ensure that the local communities share the benefits that accrue. It is one thing to have a Bill and another to have an Act to protect the interests of the local people. It is also another thing to ensure that the letter and spirit of the law and the Constitution are put into practice.

Mr. Deputy Speaker, Sir, currently, there are settlement schemes that were established legally by the Government in the forests. There are people who were settled in these forests. Secondly, some of these forests have been excised and their excision gazetted by the Government. There are also settlement schemes whose degazettment is yet to be completed and people settled. I have in mind several settlement schemes in various places including Mt. Elgon. We are all aware of the Chebyuk Settlement Scheme Phases One, Two and Three. We wish that as we move to the next phase under this law, these settlement schemes are degazetted and excluded from the forest reserves once and for all so that people continue farming and earning their living.

Mr. Deputy Speaker, Sir, we would not wish that when this law is enacted, evictions are conducted on settlement schemes that were already recognised and approved by the Government, the National Environment Management Authority (NEMA) and the Kenya Forest Service (KFS). I request the Members that when the degazettment comes, we support the settled local communities by approving it.

I support.

Sen. Haji: Mr. Deputy Speaker, Sir, I support the Motion but with a rider. Apart from the gazetted forests which we knew many years ago, there are forests which were maintained by county councils and the communities who lived within the forested areas. Particularly, I would like to talk about Bota Forest. The last speaker talked about Boni Forest which is also part of the Garissa County. This forest is the only forest in the Northern Kenya and it extends up to Somalia. Unfortunately, while the local people have always coexisted with this forest without any damage - they only use the resources during drought to graze their livestock - the Ministry for Environment and Natural Resources, unfortunately without legal basis and without carrying out public participation went ahead and gazetted the Bota Forest as Government gazetted forest.

We object to that and the community has already made an appeal to the National Assembly. I am glad the National Assembly Committee on Environment and Natural Resources went to Ijara to receive the views of the people. We are following it keenly

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and waiting for the report so that this forest is degazetted and left to the management of the county.

Mr. Deputy Speaker, Sir, while going through this mediated report, there is an element where it is stated that the Ministry should assist county governments to build capacity in order to manage their forests. That is a good move which should be the spirit instead of the Government planning to take forests from the people.

I support with that rider and hope that the Committee of the National Assembly when making their report, the Senate will also ensure that the rights of the people there are maintained.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I rise to support the report on the mediated version of the Forest Conservation and Management Bill in an attempt to enforce Article 69 of the Constitution. I have a question on the amendment that the Senate had proposed. In my own view - though I can be corrected - the wisdom of the Senate including Clause 72(1)(a), where we had proposed that the relevant counties will at all times be furnished with pertinent copies of all relevant documents maintained by the Chief Conservator of Forests, which was not agreed upon, raises questions.

The proposal that a record be kept by the Chief Conservator of Forests and accessible to the public is not the same and cannot be the same with the view that the Chief Conservator of Forests would submit records of forests cover and other records to counties. My view is supported by a resolution of this Senate that forest management be devolved in its entirety to counties.

Mr. Deputy Speaker, Sir, although our Committee in its wisdom acceded to that amendment, the amendment does not satisfy that Clause that the county governments are given a role. From the reading of the Bill, the Chief Conservator of Forests is an officer of the National Government appointed by the National Government and reporting to the National Government.

The portion where this function is now devolved to counties, the Chief Conservator of Forests should have been given a responsibility to report to the respective county governments. The resolutions we have made; devolving this function and management to counties has been given with one hand and taken away with the other in the refusal by the Committee to accede to the amendment to Clause 72. Otherwise, I am happy that this Bill is now out of the way. Article 69 can now be enforced. There are very few counties that have achieved Article 69 in terms of maintaining 10 per cent of tree cover. Nyeri is at 17 per cent, Machakos is at two per cent and Makueni is at 11 per cent. That is why we are fighting with people who are harvesting sand as if the world is coming to an end.

Mr. Deputy Speaker, Sir, therefore, I hope that this Bill and this person called the Chief Conservator of Forests would not become the chief logger. I am on record as having requested the Committee to summon the Cabinet Secretary on the lifting of the moratorium on harvesting of trees. That request is still outstanding. While that was going on, some people who are known invaded the Mau Forest and are continuing to log. I hope

that the Committee can find some wisdom in ensuring that the people who have been logging our forests for personal aggrandizement face the full force of the law.

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

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I beg to move. I do not know whether Standing Order No.54 (3) applies.

The Deputy Speaker (Sen. Kembi-Gitura): What did you do with the last one?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I requested your guidance under Standing Order No.1. Likewise, I request that you put aside the putting of the question so that it can be considered alongside the other agenda for voting.

The Deputy Speaker (Sen. Kembi-Gitura): It is so ordered.

(Putting of the question on the Motion deferred)

Next order!

ADOPTION OF THE MEDIATION COMMITTEE
REPORT ON THE PETROLEUM BILL

Sen. Moi: Mr. Deputy Speaker, Sir, I beg to move that the Senate adopts the Report of the Mediation Committee on the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015) laid on the Table of the Senate on Wednesday, 24th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill.

Mr. Deputy Speaker, Sir, the Mediation Committee on the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015) was constituted by the Speaker of the Senate and the Speaker of the National Assembly on 18th August, 2016 and 15th August, 2016 respectively. The Committee comprised the following Members:-

- 1) Sen. Gideon Moi - Chairperson
- 2) Hon. Jamleck Kamau - Vice Chairperson
- 3) Sen. Kiraitu Murungi
- 4) Sen. David Musila
- 5) Hon. John Olago Aluo
- 6) Hon. Onesmus Muthomi Njuki

The Committee held a sitting on 23rd August, 2016 to deliberate on the contentious clauses.

Mr. Deputy Speaker, Sir, out of the 21 amendments proposed by the Senate to the Bill, only four clauses, that is Clauses 12, 17, 48 and 49 were rejected by the National Assembly. The Clauses deal with the membership of the National Upstream Petroleum Advisory Committee, membership of the Board of---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Moi, did you move that Motion?

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Sen. Moi: Mr. Deputy Speaker, Sir, that the Senate adopts the report of the Mediation Committee---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Moi, this may look easy but it has to be done correctly. You have to move the Motion.

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

THAT, the Senate adopts the Report of the Mediation Committee on the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015) laid on the Table of the Senate on Wednesday, 24th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill.

Mr. Deputy Speaker, Sir, out of the 21 amendments proposed by the Senate to the Bill, only four clauses, that is Clauses 12, 17, 48 and 49 were rejected by the National Assembly. The Clauses deal with the membership of the National Upstream Petroleum Advisory Committee, membership of the Board of Directors of the Upstream Petroleum Regulatory Authority and the appointment of an operator and the penalty for offences, respectively.

Mr. Deputy Speaker, Sir, after deliberations, I am happy to say that the Mediation Committee agreed with the Senate proposal to Clauses 17, 48 and 49. With regard to Clause 12, the Committee agreed to drop the Senate amendment to include a member of the Kenya Private Sector Alliance (KEPSA) into the membership of the National Upstream Petroleum Advisory Committee. As this was an inter-ministerial Committee set up to jointly advise the Cabinet Secretary on upstream petroleum operations.

Mr. Deputy Speaker, Sir, with those remarks, I beg to move. I call upon Sen. Murkomen to second.

Sen. Murkomen: Mr. Deputy Speaker, Sir, I beg to second this very important report. I would like to congratulate Sen. Moi for his leadership in the Committee in so far as this Bill is concerned. If you heard Sen. Moi speak, you could see the give and take that always ensues when we are dealing with Article 110 of the Constitution. This is what we wanted in our constitutional order.

Mr. Deputy Speaker, Sir, I know what is ahead of us. I debated and made my position clear regarding this Bill in terms of ways of dealing with matters of petroleum. At that time, I talked about my past interactions with the President of Nigeria, Goodluck Jonathan, having been his escort of honour three times. He told me something which is very profound. That, for a country like ours, when we are dealing with matters of petroleum, how petroleum can be very divisive and become a matter of a lot of conflict; he recommended to me then that it is important to have a clear legal framework that ensures that everyone in the community where exploration is done must be involved in consultation in the process of exploration and ultimately when getting out the oil. There is no better legislation.

There is no country in the region that has prepared itself so well for purposes of exploring, selling, developing and producing oil than our country. It is good because most of the oil that is being discovered is in areas that were initially marginalised, for example,

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Turkana and Elgeyo-Marakwet. The areas where exploration is done in Elgeyo-Marakwet and Baringo are parts of the country that are dry and were not considered as being a priority in development. Now that there is a stampede towards those regions, it is good that there is a legal framework that protects the locals when it comes to matters of benefits in terms of production and selling of oil.

So, Sen. Moi, Sen. Munyes, I and other Senators who come from oil producing counties, are an “OPEC”. As Senators of “Oil Producing Counties” of this country, we are appreciative of the legal framework. We thank this House for supporting a legal process that will be beneficial to our country. It will keep our country in a harmonious position.

Mr. Deputy Speaker, Sir, I do not want to say much because of the business that is ahead of us, including the report. With those remarks, I beg to second.

(Question proposed)

Sen. Abdirahman: Mr. Deputy Speaker, Sir, I support the Mediation Committee Report on the regulation of the petroleum industry. Sometimes it can be a curse more than a blessing.

I particularly support the regulation or the development of a legal framework because, as we speak, in my own county and particularly my constituency, there is an oil exploration going on. I think this will go a long way in supporting our local communities and our national Government to understand that there is need to guard against risks that are associated with the failure to develop legal mechanism.

I support.

The Deputy Speaker (Sen. Kembi-Gitura): Let us have Sen. Murungi.

Sen. Murungi: Mr. Deputy Speaker, Sir, I rise to support the Report of the Mediation Committee. Many people have been talking of Africa’s “resource curse”, specifically the “oil curse”. There is no resource curse or Africa’s oil curse. There is only a management and political curse.

This new law is putting in place a system to ensure more transparency, better management of the resources in this country so that the resources are more equitably distributed, especially to the host communities. I commend this Bill and the Report of the Mediation Committee because it will ensure that the oil resources are a blessing and not a curse to this country.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Prof.) Anyang’- Nyong’o.

Sen. (Prof.) Anyang’- Nyong’o: Mr. Deputy Speaker, Sir, I rise to support this Motion and congratulate the Mediation Committee for doing a good work and bringing this Motion to its conclusion. I believe it will be supported by this House today.

From the geophysical and other surveys of this nation, many more counties are going to be endowed with oil production and other petroleum related products. We need to have forward-looking petroleum policy and laws. We need to establish institutions that will manage the extraction of petroleum products in this country.

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We must avoid the emergence of cartels and tenderpreneures in the petroleum industry. That kind of development has ruined Nigeria and made it very difficult for the nation to benefit from the extraction of petroleum. That is why it is called the oil curse because as Sen. Murungi says, it is the management of the petroleum extraction and its use that turns it into a curse.

I hope that this nation will not be bitten by the Nigerian bug and make petroleum a curse for our future. It should be a basis for development, capital formation, equity, development and that all Kenyans should partake of this wonderful resource in our nation.

I beg to support.

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, I want to congratulate our team for having participated well in this Mediation Committee for the purposes of making laws that will govern the petroleum management in this country. The history of Africa and petroleum management is known. Examples are Nigeria, Angola and many other countries. It has actually been a curse.

We very much anticipate that our mining of petroleum in Kenya will be a blessing. We can only achieve that by having good laws as has been done by the participants of this Mediation Committee.

Sen. Hassan: Mr. Deputy Speaker, Sir, I congratulate the Mediation Committee. I have a cautionary note which I heard Sen. (Prof.) Anyang'- Nyong'o and Sen. Murungi allude to. With respect to extractive industry, globally there is now a movement towards greater transparency and accountability in this area. What has bedeviled those countries that should have otherwise been oil-rich or resource-rich is the lack of accountability and rampant corruption and cartels that are manifest in these areas.

I, therefore, commend the work of the Mediation Committee. God has apparently blessed us with massive natural resources and as we move into this new tier of extractive industry, I hope we will have the frameworks necessary to ensure that there is great transparency and actual benefit to our economy. As we move into the oil sector, we should not go the Nigerian way and create a dependency but we diversify our economy so that we can continue to rely on areas of manufacturing, agriculture and other areas that are more durable and sustainable when the oil market crashes.

I beg to support.

Sen. Moi: Mr. Deputy Speaker, Sir, I move and seek your indulgence that before you put the question we combine the two motions for the sake of time.

The Deputy Speaker (Sen. Kembi-Gitura): It is so ordered.

Next order!

MOTION**ADOPTION OF THE MEDIATION COMMITTEE
REPORT ON THE ENERGY BILL**

Sen. Moi: Mr. Deputy Speaker, Sir, I beg to move:-

THAT, the Senate adopts the Report of the Mediation Committee on the Energy Bill (National Assembly Bill No. 50 of 2015) laid on the Table of the Senate on Wednesday, 24th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill.

The Mediation Committee on the Bill was constituted by the Hon. Speaker of the Senate and the Hon. Speaker of the National Assembly on 18th August, 2016 and 15th August, 2016, respectively. The Committee comprised the following Members: Sen. Moi, Hon. Jamleck Kamau, Sen. Murungi, Sen. Musila, Hon. Olago Oluoch and Hon. Muthomi Njuki.

The Committee had a sitting on the 23rd August, 2016 to deliberate on the contentious Clause. Out of the four amendments proposed by the Senate to the Energy Bill, only Clause 57 was rejected by the National Assembly. The Clause deals with the membership of the Board of Directors of the Nuclear Power, Energy and Petroleum Agency.

The Senate had proposed inclusion of two persons from an organisation representing persons carrying out operations in the energy sector, a person from the Private Sector Alliance, Energy and a person from an institution of higher education. After deliberations, the Mediation Committee agreed that the person from the Private Sector Alliance would sufficiently represent persons carrying out operations in the energy sector.

The Committee, therefore, agreed to retain only the provision including a Member from an institution of higher education and one from the Private Sector Alliance.

I beg to move and call upon Sen. Murkomen to second.

Sen. Murkomen: Mr. Deputy Speaker, Sir, I would like to second this very important mediated version of the Energy Bill for the same reasons that I gave earlier, that we are in a new regime under the new Constitution. The existing legal framework for management of the energy sector is no longer useful in a country that is democratic like ours and the Constitution requires public participation. Secondly, it is because we need a legal framework that will capture the two levels of government. If you look at the Constitution, you will find that energy reticulation is a function of both the national and county governments. We have to find the interface and ensure that there is a role that will be played by county governments when it comes to energy matters.

Mr. Deputy Speaker, Sir, finally, as a country, we are moving from the old systems of getting energy towards having green energy. We are talking about wind power which is clean and green. I think the Senator for Nyeri may not say the two words,

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“clean” and “green” following each other. This country needs to invest in wind power, solar energy and geothermal power, in reference to which I have heard the Chairman, Sen. Moi, use other words that I do not want to use on public television.

He said that geothermal is a more friendly source of energy and he used a word which I do not want to use here but the point is that we want to move to the level of energy that will be useful to the country. Again, public participation will be considered and communities will play a role. We have watered down the sole powers of Cabinet Secretary (CS), so that there is an advisory committee. Parliament will also have a role to play as well as other bodies in this country so that we move our nation forward.

Mr. Deputy Speaker, Sir, for those many reasons, even as we discuss matters of energy, matters of environment are also important and they have been captured well in this report. They include protection from oil spillage and things to do with the hazards of energy to the environment. Coming from Elgeyo-Marakwet County which has the second highest forest cover in the country with over 40 per cent of forest cover, I am, more than any other person, conscious of the importance of the environment to this Republic.

Mr. Deputy Speaker, Sir, I thank you and beg to second.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I will now propose the question.

(Question proposed)

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, as I support the Mediation Committee Report as tabled on the Floor of this House, I want to appreciate the fact that they have dealt with environmental and cultural impacts on energy issues in depth. I am however concerned that the Mover requested for a combination of two Motions to be voted at the same time. I think that is unprocedural and I would like to be guided. I would have risen on a point of order on this issue but I did not.

The Deputy Speaker (Sen. Kembi-Gitura): What have you said?

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, what I said was directed to you. I do not know whether you heard me well but I may repeat because you are the boss. I was concerned by the request by the Mover that the two Motions be combined when it comes to voting according to my understanding and I think that was unprocedural.

The Deputy Speaker (Sen. Kembi-Gitura): No, he did not say that. You cannot combine two Motions for voting purposes. What he said was that we vote at the same time in one Division Bell.

Sen. Moi, do you wish to reply?

Sen. Moi: Mr. Deputy Speaker, Sir, I will be very brief because I know we have a heavy load. I would like to take this opportunity to thank Members of my Committee who participated in this.

(Loud consultations)

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Sen. Njoroge: On a point of order, Mr. Deputy Speaker, Sir. What is being presented here by the Senator is very important but we cannot hear what he is saying because I have just heard Sen. Hassan calling someone, “former Senator.” Is he in order?

The Deputy Speaker (Sen. Kembi-Gitura): What is your point of order? Is it about not hearing or what is it?

Sen. Njoroge: Mr. Deputy Speaker, Sir, my point of order is that there is a “chaotic” behind me where one of the Senators called another Senator “former Senator.”

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Njoroge, a Senator cannot be chaotic in the first instance. So, you are out of order in the first instance. Having said that, Sen. Hassan, we need to have some level of conversation so that we can follow what is going on.

Sen. (Dr.) Machage: On a point of order, Mr. Deputy Speaker, Sir. I beg to be corrected but if I listened carefully to Sen. Njoroge, he talked of there being a “chaotic” behind him. What is the meaning of a chaotic? Could he enlighten us on what he meant?

Sen. Njoroge: Mr. Deputy Speaker, Sir, I meant there are chaos behind because when I heard a Senator call the other “former Senator” I was expecting much to happen. So, that is why I said there were chaos behind me and that is what I meant.

The Deputy Speaker (Sen. Kembi-Gitura): You know there are people who thrive in chaos and that is why you are telling us that you expected chaos because of what was said but there has been no chaos at all. So, that was your own imagination and that is why I said you are out of order in that regard.

Sen. Moi, did you make a reply or have you finished with this issue?

Sen. Moi: Mr. Deputy Speaker, Sir, I would like to add my voice by saying that Sen. Billow should take heart but not to listen to this---

The Deputy Speaker (Sen. Kembi-Gitura): Order! I was talking about your matter, the Motion.

Sen. Moi: Okay. Mr. Deputy Speaker, Sir, I would like to thank Members of my Committee who participated in this noble task of formulating these two Bills. Especially, I would like to thank Members of the Mediation Committee namely; Hon. Jamleck Kamau, Hon. John Olago Aluoch and Hon. Onesmus Muthomi Njuki who conducted themselves in a most professional and upright manner. I also thank my Members for their support. I thank you.

The Deputy Speaker: We will have a division on Orders No. 4, 5, 6, and 7. The Division Bell will be rung for five minutes and then we commence the voting.

(The Division Bell was rung)

(There was a Technical hitch)

The Deputy Speaker (Sen. Kembi-Gitura): What is your point of order, Sen. Wetangula?

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The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. Since technology appears to be failing us, why do we not vote by way of roll call and we have three Motions; you call Sen. Kiraitu and he says “yes”, second one “noes” and we go round and finish quickly? We used to vote like that in the “garage”. We can do it here.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula, we can have a manual roll call as you have proposed but it has to be on each Motion. When we vote one, two and three is when we are doing amendments and I have to put the question for each Motion.

The Senate Minority Leader (Sen. Wetangula): Let me amend my proposal that we have a roll call vote and if the technology is rectified, then we move back to technology.

The Deputy Speaker (Sen. Kembi-Gitura): Okay, I agree with you because we have already lost more than 10 minutes. Can we now have tellers? Sen. Murkomen and Sen. Sijeny. If you are ready then we proceed. I have already put the question on No.4 as in the Order Paper.

Let us proceed.

(Hon. Senators proceeded to vote)

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. I rise on Standing Order No.77(5) on Roll Call Voting which we have just done. It says:-

“When called out, each Senator shall, thereupon rise in his or her place and declare assent or dissent to the question in the following manner, “I vote Yes” or “I vote No” or “I abstain” or use appropriate Kenyan sign language.”

Mr. Deputy Speaker, Sir, are you convinced that there has been a Roll Call Voting in view of the fact that several Senators led by Sen. Khaniri of Vihiga County, Sen. Wetangula of Bungoma County, Sen. Murkomen of Elgeyo-Marakwet County, Sen. Kembi-Gitura of Murang’a County and Sen. Murungi of Meru County sat in their seats and screamed that they voted “yes.”

Sen. Obure: Mr. Deputy Speaker, Sir, I completely disagree---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Obure, what is your point of order?

(Sen. Obure spoke off record)

Sen. Murkomen: On a point of order, Mr. Deputy Speaker, Sir. The Standing Orders are clear that when Roll Call begins it shall be done in silence and without interruptions, like what Sen. (Dr.) Khalwale is trying to do.

The Deputy Speaker (Sen. Kembi-Gitura): Assuming that the point of order raised by Sen. (Dr.) Khalwale has any merit at all – I heard him mention the Senator for Murang’a County - it can only be for the future not about the vote that is now finished.

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You make a point of order to deal with a situation that is about to happen and not what has happened. The voting on No.5 can proceed as the other one is being tallied.

Having said that, the point of order raised by Sen. (Dr.) Khalwale is not idle; the Standing Orders are very clear that you stand in your place and vote 'Yes', 'No' or 'Abstain.' It is absolutely important.

Hon. Senators, can you log out and log in again and check whether we can proceed with electronic voting.

Let us continue with Roll Call voting.

(Roll Call voting continued)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Murkomen, what is your point of order?

PROCEDURAL MOTION

EXTENSION OF SITTING UNTIL COMPLETION OF BUSINESS ON THE ORDER PAPER

Sen. Murkomen: Mr. Deputy Speaker, Sir, considering that we have a few minutes before midday, with your leave, I beg to move:-

THAT, pursuant to Standing Order No.33(a), the sitting of the House be extended until conclusion of business appearing in the Order Paper.

I request Sen. Wetangula to second. Sen. Wetangula has nodded.

The Deputy Speaker (Sen. Kembi-Gitura): It appears you have no seconder.

Sen. Sijeny seconded.

(Question proposed)

(Question put and agreed to)

Hon. Senators, these are the results of the four divisions.

MOTIONS

ADOPTION OF THE MEDIATION COMMITTEE REPORT ON THE NATURAL RESOURCES BILL

THAT, the Senate adopts the Report of the Mediation Committee on the Natural Resources (Classes of Transactions subject to Ratification) Bill (National Assembly Bill No. 54 of 2015) laid on the Table of the Senate on Thursday, 18th August, 2016 and pursuant to Article 113 of the

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Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill.

DIVISION

ROLL CALL VOTING

(Question, that the Senate adopts the Report of the Mediation Committee on the Natural Resources (Classes of Transactions subject to Ratification) Bill (National Assembly Bill No. 54 of 2015) laid on the Table of the Senate on Thursday, 18th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill, put and the Senate proceeded to vote by county delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Kisasa, Kilifi County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Moi, Baringo County; Sen. Mungai, Nakuru County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Murkomen

NOES: Nil.

Teller of the Noes: Sen. Sijeny

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, the result of the Division is as follows:-

AYES: 25

NOES: 0

ABSTENTIONS: 0

The "Ayes" have it.

(Question carried by 25 votes to 0)

ADOPTION OF THE MEDIATION COMMITTEE REPORT ON
THE FOREST CONSERVATION AND MANAGEMENT BILL

THAT, the Senate adopts the Report of the Mediation Committee on the Forest Conservation and Management Bill (National Assembly Bill No. 49 of 2015) laid on the Table of the Senate on Thursday, 18th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill.

DIVISION

ROLL CALL VOTING

(Question, that the Senate adopts the Report of the Mediation Committee on the Forest Conservation and Management Bill (National Assembly Bill No. 49 of 2015) laid on the Table of the Senate on Thursday, 18th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill, put and the Senate proceeded to vote by county delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Kisasa, Kilifi County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Moi, Baringo County; Sen. Mungai, Nakuru County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Orendo, Siaya County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Murkomen

NOES: Nil.

Teller of the Noes: Sen. Sijeny

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, the result of the Division is as follows:-

AYES: 25

NOES: 0

ABSTENTIONS: 0

The "Ayes" have it.

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(Question carried by 25 votes to 0)

ADOPTION OF THE MEDIATION COMMITTEE REPORT
ON THE PETROLEUM BILL

THAT, the Senate adopts the Report of the Mediation Committee on the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015) laid on the Table of the Senate on Wednesday, 24th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill.

DIVISION

ROLL CALL VOTING

(Question, that the Senate adopts the Report of the Mediation Committee on the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015) laid on the Table of the Senate on Wednesday, 24th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill, put and the Senate proceeded to vote by county delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Kisasa, Kilifi County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Moi, Baringo County; Sen. Mungai, Nakuru County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Orenge, Siaya County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Murkomen

NOES: Nil.

Teller of the Noes: Sen. Sijeny

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, the result of the Division is as follows:-

AYES: 25

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NOES: 0

ABSTENTIONS: 0

The “Ayes” have it.

(Question carried by 25 votes to 0)

ADOPTION OF THE MEDIATION COMMITTEE REPORT
ON THE ENERGY BILL

THAT, the Senate adopts the Report of the Mediation Committee on the Energy Bill (National Assembly Bill No. 50 of 2015) laid on the Table of the Senate on Wednesday, 24th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill.

DIVISION

ROLL CALL VOTING

(Question, that the Senate adopts the Report of the Mediation Committee on the Energy Bill (National Assembly Bill No. 50 of 2015) laid on the Table of the Senate on Wednesday, 24th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill, put and the Senate proceeded to vote by county delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Haji, Garissa County; Sen. Hassan, Mombasa County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Kisasa, Kilifi County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Moi, Baringo County; Sen. Mungai, Nakuru County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Murkomen

NOES: Nil.

Teller of the Noes: Sen. Sijeny

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The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, the result of the Division is as follows:-

AYES: 25

NOES: 0

ABSTENTIONS: 0

The “Ayes” have it.

(Question carried by 25 votes to 0)

Next order!

What is your point of order Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. I rise to request for clarity from the Chair. I am sorry I came into the House a bit late but I heard your communicate at the beginning of the Session this morning on radio. You guided us that when we shall handle Standing Order No.8 and 9, we will require a majority of 45 Members. You recall that I approached you; my concerns being that the decision of this House---

The Deputy Speaker (Sen. Kembi-Gitura): Draw the bars and open the doors.

(The Bars were drawn and the door was opened)

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, decisions of this Senate made under the Constitutional provisions are found in Article 123. However, you persuaded me that I should go and be guided by the provisions of Article 256. I have done so, but I would like further clarification.

Under Article 256, Amendment by Parliamentary initiative 256(1) D, says that:-

“Shall have been passed by Parliament when each House of Parliament has passed the Bill, in both its Second and Third readings, by not less than two-thirds of all the Members of that House”.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, I am just wondering what you are referring to, for the sake of good order.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, to your communication about the voting that we are about to do on Order Nos. 8 and 9.

The Deputy Speaker (Sen. Kembi-Gitura): Has it been called?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, you have made a communication about the same.

The Deputy Speaker (Sen. Kembi-Gitura): Has it been called yet?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, just for good order, we have not called it yet.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, I know you are making a report on Order No.10, but it has not been called. We are going to call the order but we have some other orders on the Order Paper.

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Call the next Order, then Sen. (Dr.) Khalwale you can continue with your point of order.

BILL

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL (SENATE BILL NO. 16 OF 2015)

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I will continue from where I left off.

The operative word here is “when each House of Parliament”. This Bill has gone through the Second Reading in the National Assembly and it has been lost. The direction I would like to get from the Chair is that having been lost in the other House in the Second reading, even if we go ahead and vote and it was to pass, of what consequence is it?

This is because for a constitutional amendment to be seen to have passed through the Second Reading, it should get the concurrence of both Houses. I would like you to clarify and I will be most grateful.

(Applause)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, we went through this because fortunately I was looking at the HANSARD this morning although on a different issue. The last time we sat and canvassed this issue, we went through it at great length and you contributed at great length. My ruling, since I was in the Chair was that this is a Senate Bill and not a National Assembly Bill. It is not the same Bill that has been to the National Assembly.

It is completely different, I had made a ruling on this and we are dealing with it because it is in front of us. A constitutional amendment Bill can originate from any of the two Houses. What was lost in the National Assembly is not in my knowledge and we went through this last time. If I remember correctly just from my memory is that a Bill like this was lost in the National Assembly and because it was lost, no message came from there. I have no knowledge of it.

This is a Senate Bill and we must do what we must do and we are going to have to do what we must do; finish with it and send it down via message to National Assembly. If they decide to throw it out, so be it. If they decide to throw it out and it goes to mediation, so be it, but the fact remains that we have a job to do and we are going to do it.

If you look at the HANSARD of the last time we canvassed this issue, you will find that we took more than one hour. That is the direction I gave and it is the same I am now giving.

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(Applause)

I think that is the direction I gave last time and it is the direction I am giving now. Is that true?

(An hon. Senator spoke off record)

Thank you.

COMMUNICATION FROM THE CHAIR

MANNER OF VOTING ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL AND WHETHER THE BILL REQUIRES A REFERRENDUM

The Deputy Speaker (Sen. Kembi-Gitura): Before we go on, I have a short communication to make on Order No.8; the Constitution of Kenya (Amendment) Bill (Senate Bill No.16 of 2015). This is a Bill sponsored by Senator Judith Sijeny. As indicated in the Order Paper, the Bill is listed for Division of Second Reading. As the House proceeds to Division, it is important that I give guidance on two issues that are important on this matter. The first is on the manner on which the Senate is to vote on the Bill and, secondly, is whether the Bill is one that is subject to a referendum in terms of Article 255(1) of the Constitution.

On the matter of how the Senate is to vote, the Amendment Bill proposed by Sen. Sijeny is an amendment to the Constitution by parliamentary initiative under Article 256 of the Constitution. Article 256(1)(d) provides that:-

“A Bill to amend this Constitution shall have been passed by Parliament when each House of Parliament has passed the Bill, in both its second and third readings, by not less than two-thirds of all the members of that House.”

The upshot of Article 256(1)(d) of the Constitution is that at both the Second and Third Reading of a Bill to amend the Constitution, the Bill would only have been passed by the Senate if two-thirds, that is, 45 Senators should vote in support of the Bill. The exact figure is 44.6 per cent which is rounded off to 45.

On the question of whether the Bill requires a referendum, hon. Senators, you will recall that on 28th June, 2016, I ruled that and I will quote; “After the conclusion of the debate on the Bill and before the question for Second Reading of the Bill is put, in terms of Standing Order No.131(1) of the Senate Standing Orders, the Speaker shall make a ruling as to whether the Bill falls within the ambit of Article 255(1) of the Constitution and, therefore, whether it is one that will require ratification by the people of Kenya in a referendum.” It is, therefore, necessary that I make a ruling on whether the Bill is one that

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requires a referendum in terms of Article 255(1) of the Constitution before we proceed to Division of the Second Reading.

Article 255(1) of the Constitution provides as follows:-

“A proposed amendment to this Constitution shall be enacted in accordance with Article 256 or 257, and approved in accordance with clause (2) by a referendum, if the amendment relates to any of the following matters—

- (a) the supremacy of this Constitution;
- (b) the territory of Kenya;
- (c) the sovereignty of the people;
- (d) the national values and principles of governance mentioned in Article 10 (2) (a) to (d);
- (e) the Bill of Rights;
- (f) the term of office of the President;
- (g) the independence of the Judiciary and the commissions and independent offices to which Chapter Fifteen applies;
- (h) the functions of Parliament;
- (i) the objects, principles and structure of devolved government;
- or
- (j) the provisions of this Chapter.”

As hon. Members will observe, the Constitution of Kenya (Amendment) Bill (Senate Bill No.16 of 2015) seeks to amend Articles 81, 90, 97 and 98 of the Constitution.

These are not matters that are listed in or fall within matters listed under Article 255(1) of the Constitution. Consequently, the Bill could not be one that requires approval by referendum in terms of Article 255(1) of the Constitution.

With this guidance, hon. Members, we shall now proceed as indicated on the Order Paper.

I thank you.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. I would like that you clarify further because in Article 255(1)(c), the issue of amendment relating to the sovereignty of the people is stated. The provision of Article (1)(2) which says that: “The people may exercise their sovereign power either directly or through their democratically elected representatives.”

The Bill that we seek to amend the Constitution through today, is speaking to the elections of those special members. Those special members upon being elected will exercise indirectly the sovereign power of the people on behalf of those people.

Mr. Deputy Speaker Sir, in view of that, would you like to clarify further whether my conviction that the issue of then those people exercising donated sovereign power by the people makes this an amendment that touches on the sovereignty of the people of the Republic Kenya. Could you clarify that?

The Deputy Speaker (Sen. Kembi-Gitura): It is an interesting point to raise Sen. Khalwale. Indeed, if you read the whole of Article 255(1), you might find that there is

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nothing there that maybe does not touch on the sovereignty of the people of the Republic of Kenya. That is why sometimes you have to interpret the law widely or narrowly. In this instance or case, we are dealing with the gender parity to comply with constitutional provisions. In my view, I do not think there would have been anything easier than to put in the Article 255(1) that the issue of gender parity is an issue that would have gone to referendum.

I have made my ruling or communication on that issue and I would like to leave it at that for now.

Sen. Machage, what was your point of order?

Sen. (Dr.) Machage: On a point of Order, Mr. Deputy Speaker, Sir. In view of the fact that we do not have the threshold to vote or for us to be able to tackle Order Nos. 8 and 9, would I be in order to request that we move straight to Order No. 10?

The Deputy Speaker (Sen. Kembi-Gitura): I was going to come to that Sen. Machage. The threshold is agreed at 45. Obviously, we do not have it. It will be absolutely futile to proceed to it without the threshold.

Sen. Murkomen, was that your point of order?

Sen. Murkomen: Mr. Deputy Speaker, Sir, could Sen. Khalwale because he is the one who raised this issue---

The Deputy Speaker (Sen. Kembi-Gitura): Order! I have finished that issue.

Sen. Murkomen: Mr. Deputy Speaker, Sir, I had raised that point of order before you finished. This being a House of record, I support that Article 255 where it talks about things that are touching on, then lists and says, "sovereignty of the people." The only other place where "sovereignty of the people" is listed is in Article (1) which is titled "Sovereignty of the People." So, in other words, a proper interpretation of the Constitution would say anything that touches on amending Article (1) of the Constitution, stretching it to say Parliament and so forth.

You can see even in that same Article 255, the only aspect of Parliament that requires referendum is not the composition nor the formation of Parliament, but the functions of Parliament which has excluded itself specifically in Article 255(h). So, a proper reading of the Constitution would be saying that when you are amending Article (1), you must go through the referendum.

However, a liberal interpretation to include everything that touches on sovereignty of the people would mean the whole Constitution. If that was the case, then there was no need for a list in Article 255, it would have been no easier for the Constitution to say when you are amending anything in the Constitution you will have to need a referendum.

The Deputy Speaker (Sen. Kembi-Gitura): That was my view; that you might decide whether you take a broad view because as far as I can see and I said it myself and Sen. Murkomen, everything in truth will end up touching the sovereignty of the people of Kenya.

Hon. Senators, there is no threshold to deal with Order No. 8--- what is your point of order, Sen. Khaniri?

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Sen. Khaniri: On a point of order Mr. Deputy Speaker, Sir. This is an amendment to the Constitution and I think the threshold is provided for as two-thirds. Our Standing Orders are clear that for you to determine whether there is threshold or not, you must order for the division bell to be rung.

The Deputy Speaker (Sen. Kembi-Gitura): We are going to division. What is your point of order, Sen. Ong'era?

Sen. Ong'era: On a point of order Mr. Deputy Speaker, Sir. That is the same point I wanted to raise that Sen. Khaniri has raised; that we are not so sure that we have the threshold because the bell has not been rung. We do not know whether there are others Senators waiting in the lounge. This is a very important amendment. As you know, this amendment affects the constitutional requirement of having one-third of either gender in the Houses. So, let us treat it with the importance that it deserves. I plead with you.

Sen. Hassan: On a point of order Mr. Deputy Speaker, Sir. Take note that this is the second time we are staying this Bill on the basis that we do not have threshold to vote for it. What we shall do is to give these Members one last chance on the basis of following what Sen. Khaniri said. There are those who might not be here, but that is their vote in terms of threshold. So, we should allocate and designate one more time specifically for the business of this Bill so that the business should proceed with or without the threshold of 45 members. There could be a misinterpretation that everybody wants to vote in that way.

Sen. Omondi: On a point of order Mr. Deputy Speaker, Sir. I wanted to ask Sen. Ong'era, being the Minority Whip, if she has done the whipping to raise this number.

The Deputy Speaker (Sen. Kembi-Gitura): That is not a matter we can canvass here. Sen. Orengo, what is your point of order?

Sen. Orengo: On a point of order Mr. Deputy Speaker, Sir. I thought what was being raised in relation to the question of quorum and that we defer this Order and that the ringing of the bell was out of caution because if you ring a division bell, then the bars must be drawn. When the bars are drawn, you have to take a vote. You cannot say we cannot vote. Alternatively, you can ring the bell because there is no quorum. But if you ring the division bell, then you must proceed to vote. You cannot ring the division bell and you do not vote. So, I thought those who were calling for deferring Order Nos. 8 and 9 were just out of caution so that the two orders are not locked out by lack of quorum.

Sen. Billow: On a point of order Mr. Deputy Speaker, Sir. I think this is a very important Bill which seeks to address the issue of gender, specifically women. I agree with Sen. Hassan that we need to have a special day to consider but it is disappointing that even the ladies are not here. Out of 16 nominated women Senators in this House, only six are here.

(Applause)

Even if they do not vote, they need to give moral support and they need to be here. Let us have another day for them and they should show commitment.

Sen. Wako: Mr. Deputy Speaker, Sir, in view of the Motion that was passed that we sit until we finalize the business which is on the Order Paper, we should go into that business. We know that we have now taken a vote on delegations of 25 Members on the Motions that have been passed. We now know that the Nominated Members, not all of them are here. They may be about seven. If you add to that, it comes to about 32 Members. That is nowhere near the threshold required for a constitutional amendment which takes into account not just the delegations but all the Members of the Senate. That is about 45 Members. You can take note that having voted five times and the vote was of 25 Members and adding the seven Nominated Members who are here, it comes to 32 Members and it falls far below what is required.

Therefore, for caution and for my sister, we better proceed on this matter when we have a quorum and we shall support her rather than going ahead and failing. I support Sen. (Dr.) Machage that you make a ruling and we go to the next order.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, this vote is on a constitutional amendment like I said in my communication, the voting will not be just by delegations but by all Senators. We appreciate that. All Senators are 67 and if we divide by two-thirds, it comes to around 45 Members. So, I hope you listened to the point made by Sen. Orendo. We can ring the bell if you wish. I think what Senators need to be reminded is this; a vote does not have to be positive. It can also be lost. If we ring the bell and we draw the bars, we have to vote. It does not matter whether we are 45 or less; we could still lose the vote. So, it is a question of pragmatism. This is the second time this is happening and it is up to you to make a decision. I have no problem ordering that the Division Bell be rung for eight minutes as provided for and the consequences will follow.

So, the points of order you are going to make; if they are related to this, let us reduce them. There are quite a number of you that want to say something. We will start with Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, it has been a practice that when there is a communication on an important matter, it is put in the pigeon holes. I suspect that Senators are imagining that when we vote, they are delegating their votes to their respective delegations. This being a very important ruling, in terms of Article 254, it is important that, that communication is given to all Senators to the extent that there will be no delegation of those votes. Those who normally give out their votes should be here, and for the first time, Nominated Senators, including my good friend, Sen. Onchwang'i, will have an opportunity to cast a vote.

I plead with you that other than designating a different day, that communication be sent to all Senators in whatever form; email, pigeon holes or SMS messages. Since this is the first Bill we are voting on under Article 254, and I suspect that there will not be any other, it is important that we do not appear to fail ourselves by lack of quorum.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Lesuuda.

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Sen. Lesuuda: Mr. Deputy Speaker, Sir, I want to echo what Sen Mutula Kilonzo Jnr. has said, that probably most Members, especially the Nominated Senators, were not aware that they would cast their vote on this matter. I propose that we do not ring the Bell, but rather assign another day when we will do proper mobilization to vote on this Bill.

Sen. Abdirahman: Mr. Deputy Speaker, Sir, we do not have to skirt around the subject; we have said it all. Do we need to call for a Division when we do not have the numbers? I would suggest that you defer these Orders.

Sen. Mugo: Mr. Deputy Speaker, Sir, I also want to add my voice. This Amendment Bill has been mistaken to be a women issue. It is in the Constitution that we all accepted.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Mugo, kindly do not take us back; we are discussing threshold.

Sen. Mugo: Mr. Deputy Speaker, Sir that is what I am trying to say. We need to challenge the Whips that when we reschedule - I hope you will make that ruling - everybody and not just the Nominated Senators - is bound to come and honour the Constitution and the people of Kenya who gave us this Constitution.

Sen. (Dr.) Khalwale: I rise to beg that you do not call for a division and you be guided by the submissions by Sen. Orendo. There has been a deliberate effort in the media by some Members of the National Assembly and this Senate to misrepresent the fact that male Senators and male Members of the National Assembly do not support the two-thirds gender rule. Because of that misinformation, I want to congratulate the six women Senators who are here, including Sen. Lesuuda, Sen. Kisasa, Sen. Mugo, Sen. Sijeny, Sen. Omondi and Sen. Ong'era. Out of 18 women Senators in this House only six have come, compared to a whopping 22 men who are in the House today. May the country know that men came here today, led by me, to vote for this Bill and the women have denied us numbers to support it.

(Loud consultations)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators. Let us go through this.

Sen. Murkomen: Mr. Deputy Speaker, Sir, first I wish to go on record as being one of the firm and consistent supporters of this Bill in the past, now and in the future. I believe in women empowerment. I disagree with Sen. Mugo that it is not about women; it is about women at the moment. The most disenfranchised group is the women. I am a full supporter of women in this Republic. Having said that, I disagree completely with what Sen. (Dr.) Khalwale said. There are more men who are more absent than women. More than half of the men are not in the Senate. A total of 25 men are not in the Houses. Had the 25 been in the House, we would have had the number. The elected Senators alone can make a quorum. If we have all the elected Senators, we would have 45 plus an extra two

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to pass this Motion. Therefore, it is incorrect to say that the reason why this Bill has not passed is because the women folk are not here.

With your permission, I stand under Standing Order 54 (3) which allows that despite the other paragraphs, the Speaker may on the request of the Senator defer the putting of the Question to the following day, in which case the Speaker shall thereupon nominate a time when the Question shall be put. Therefore, I stand to make a request that the Question be put to a day the Chair will nominate. If possible, the day should come before we come back from recess. The Business for the day shall be voting on the Bill.

The Deputy Speaker (Sen. Kembi-Gitura): That may not even be necessary because that has been done before twice. What I need to do after you are done with the Standing Orders is to defer the matter to another day.

Sen. Sijeny, do you have a point of order?

Sen. Sijeny: No, Mr. Deputy Speaker, Sir.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, may I disabuse this House of this notion that many Senators are not here. We must understand that some Members are in Rio de Janeiro, Brazil, for the Olympics and others are genuinely out of this country on missions and conferences. Therefore, to give the impression to the media that many Members are absent is absolutely wrong. Let us get the facts right. I think there are some Members who are not here for genuine reasons. Let us deal with the number of those who are here and not to speculate that some Members are absent irresponsibly. That is wrong.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you Sen. (Prof.) Anyang'-Nyong'o. The direction I am making is that we do not have a threshold to carry out the Business of Order No. 8. Since we cannot conduct the Business of Order No. 9 in the absence of having disposed number Order No. 8, I am deferring Order Nos. 8 and 9 to a future date. So, we still have two other Orders to deal with.

Therefore, Orders No. 8 and 9 are deferred.

THE CONSTITUTION OF KENYA (AMENDMENT)
BILL (SENATE BILLS NO.16 OF 2015)

(Bill deferred)

COMMITTEE OF THE WHOLE

THE CONSTITUTION OF KENYA (AMENDMENT)
BILL (SENATE BILL NO.16 OF 2015)

(Committee of the Whole deferred)

MOTIONS

ADOPTION OF REPORT OF THE JOINT PARLIAMENTARY SELECT COMMITTEE ON MATTERS RELATING TO THE IEBC

Sen. Orendo: Mr. Deputy Speaker, Sir, I stand to move:-

THAT, the Senate adopts the Report of the Joint Parliamentary Select Committee on matters relating to the Independent Electoral and Boundaries Commission (IEBC) laid on the Table of the Senate on Thursday, 18th August, 2016.

I beg to move this Motion on behalf of the Committee and the Co-Chair, Sen. Murungi with whom I had the privilege and honour to co-chair the Committee.

I commend and appreciate the work done by the Committee and each Member of the Committee individually. We had a Committee consisting of Members of the Senate and the National Assembly. Without mentioning each and every Member of the Committee, I register my appreciation to each one of them. If you look at the report, there was 100 per cent attendance by each Member on each occasion that we sat. A Member may have walked out for a moment or a few minutes but on each and every day that we sat, all the Member of the Committee took part in the proceedings.

Mr. Deputy Speaker, Sir, I also want to register my appreciation to the leadership of the coalitions. As you know, the Motion that was passed respectively by the National Assembly and the Senate was as a result of consultations between the leaders of the coalitions, Jubilee and CORD. For those who thought that the Committee was working on a partisan basis; from the very beginning, even in drafting the Motion that was passed by the National Assembly and the Senate, the leadership of this country both in Government and in the CORD coalition, consulted and came up with the text that constituted the work of this Committee.

The reason why I want to register my appreciation to the leadership of both coalitions is; when initially this matter arose, the only question on the table before the political formations in the country as exemplified by the various political activities prior to this Motion was the question of the constitution of the IEBC. The Motion originally that was to come to this House was based on the question of determining the vacation from office of the commissioners.

However, through consultations that were made strenuously and overtime between the leadership of both coalitions – you realise from the Motion that the leadership of the coalitions decided that the mandate of the commission should go beyond mere consideration of the vacation from office of the commissioners. In consideration was also the question of the secretariat and the electoral process and law; not only for the purposes of the elections in August, 2017 but also to ensure that the elections that we hold meet the constitutional standards of accuracy, verifiability, transparency and accountability. All those words are in the Constitution.

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Mr. Deputy Speaker, Sir, at the time, the emotions of the country were high. People had taken positions that were very difficult to resolve. We were talking not to each other but at each other. In order to resolve this problem, something significant happened on Madaraka Day. Prior to that, the leadership of both sides of the coalitions met. In order to bring political temperatures down, it was possible to hold a Madaraka Day in Nakuru and at the same time for a CORD public rally to be held in Uhuru Park on 1st June, this year.

Therefore, for this reason and with privilege and honour, I have to register the appreciation of the Committee for the work done, the thinking that went into this matter from the President of the Republic of Kenya, Mr. Uhuru Kenyatta and also the leadership of CORD, Rt. Hon. Raila Amollo Odinga, H.E. Stephen Kalonzo Musyoka and the Minority Leader in the Senate, Sen. Moses Wetangula. People will remember that such meetings were held between those four principals including the Deputy President.

I want the country to know that it would have been impossible without the top leadership of this country for this joint committee to be formed. This is the first time in our history because; even though we had a Senate before, we have not had an occasion where there has been a Joint Parliamentary Select Committee consisting of the National Assembly and the Senate.

Another thing that happened was that contrary to the general rules of both Houses, the numbers that were in this Joint Committee were not determined on the basis of the numerical strength of the coalitions in the National Assembly and Senate. The Committee had equal numbers of Members from both the Coalition for Reforms and Democracy (CORD) and the Jubilee Coalition. For this again, one must register appreciation for the leadership of both coalitions who wanted this matter to be dealt with in a bipartisan manner and in a way that would enable us to proceed to discuss the issues surrounding the IEBC in a bipartisan manner. We were able through those many sittings to resolve the issues on the four thematic areas that were spelt out in the Motion that was passed by Parliament.

Mr. Deputy Speaker, Sir, after the Motion was passed by both Houses, we held several hearings in which various stakeholder organizations and individual stakeholders appeared before the Committee and made their submissions in form of memoranda and oral submissions and quite a number of them were able to do both.

The number of stakeholders and Government agencies that appeared before us were numerous and I cannot enumerate. If you look at the Report of the Committee and the HANSARD reports which are available, you will see that we were able to hear views of a cross section of Kenyans who appeared before the Committee.

Mr. Deputy Speaker, Sir, on the various thematic areas that were contained in the Motion, the first one was to deal with hearing allegations that parties presented before us against the commissioners of the IEBC and the Secretariat. It was required under thematic area No.2 of the Motion that we then proceed to make recommendations on a legal mechanism of vacation from office of the members of the Commission including the Secretariat.

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Mr. Temporary Speaker, Sir, from the views that were presented before us, I am glad to report that there were various allegations that were made, some of which were not in the form of concrete evidence but some were in terms of reports that were received from agencies including the Ethics and Anti-Corruption Commission (EACC) and other Government agencies that had relevant material for our consideration. This included the Office of the Director of Public Prosecutions (DPP) and the Attorney-General.

Because of the legal complexities on the question of how the commissioners could vacate office, we decided to hear the commissioners to determine whether some other mechanism could be found on how the members of the Commission could vacate office. This arose because under the Constitution, as it stands, although for various offices, including those of Members of Parliament (MPs), there are provisions of how one can vacate office, including by way of resignation, death or other factors which you will find in various provisions of the Constitution, when you look at offices such as that of the President and MPs. For the Independent Electoral and Boundaries Commission (IEBC) both in the statute such as the IEBC Act and the Constitution, there was no other legal mechanism for vacation from office for the commissioners including by way of resignation.

Therefore, since we undertook to find a mechanism under which the commissioners would vacate office, we have – in our recommendations which are contained in the Bill – made provisions. If they find favour with the Senate and the National Assembly, we have provisions that will make it possible for the members of the commission to resign voluntarily, which is what the members of the commission told us in the plenary. They said that Kenya is bigger than each one of them and all of them were prepared to vacate office by way of a dignified exit.

Mr. Temporary Speaker, Sir, if we had not found a mechanism by which we involve the commissioners, together and individually, to leave office voluntarily, we would have invoked the provisions of Article 251 of the Constitution. That Article requires Parliament to hear a petition on the removal from office of commissioners on the grounds which are spelt out in the Constitution. For that matter, if the National Assembly has determined that there are grounds for removal from office of the commissioners, the matter will then be presented to the President who will then appoint a tribunal. If we had gone that direction, it would have taken a very long time to attain a legal mechanism for the removal from office of the commissioners as spelt out in Article 251 of the Constitution.

Various members of the Electoral Commission voluntarily came before the Committee and said they were prepared to vacate office on accounts of the fact that Kenya needed to move forward. They also said that the debate over the question of elections should not be postponed any longer, and that we should proceed with other business without necessarily going through the process of a tribunal. To that extent, I feel happy to report that we were not then bound to look into Thematic Areas Nos.1 and 2 because of the offer by the commissioners to voluntarily vacate office without any kind

of hearing or trial which would have made things a lot more difficult in the circumstances.

It would have been also extremely difficult for us to deal with that question because the kind of evidence that was required to be adduced for us to make that determination to the extent that under the Constitution every Kenyan is guaranteed the right to a fair trial and putting all those legal considerations into account, the only logical way and process for us to resolve this question was to agree with the commissioners that they should voluntarily vacate office which they have done.

Mr. Deputy Speaker, Sir, that is not to say that--- from all the presentations that were put before the Committee; either through memoranda or through oral submissions, the conclusion drawn by many stakeholders and agencies was that the country had lost confidence in the commission and its membership. That is a matter which could not be idly taken on account of the fact that for elections to be undertaken in the country, we needed that election to take place in an atmosphere--- If I may put it this way - that even the single loss of confidence by every Kenyan was taken into account in order to make sure that by the time we are holding elections we have confidence in the electoral process.

Therefore, under Thematic Area Nos. 1 and 2, all that is left for Parliament is to enact the proposed Bill which is part of the report to provide that legal mechanism for the commissioners to vacate office and for a panel to be constituted to nominate these commissioners for eventual appointment by the President. That is required under recommendations within a space of the next 40 or so days. In fact, our proposal is that we must have new commissioners by 30th September this year if we have to maintain the election timetable of ensuring that the elections are held on the second Tuesday of August, 2017. I would propose that on approval of this report we proceed to publish the proposed Bill and then table it before the House for enactment.

Mr. Deputy Speaker, Sir, essentially, our report in terms of the statutory framework which we have developed is contained in the two Bills which are part of the report. If I may just highlight some of what is in those two Bills is as follows: -

First, there were many offences in the Elections Act which were antiquated. They were offences that in various jurisdictions, you will not find them in the statute books. If you look at our history, the records of the courts and the prosecutions, you will find that there are hardly any persons who have been taken to our criminal courts to be charged with the offence of treating or transporting voters. This also came from the Director of Public Prosecutions (DPP) who actually owned up that it is not possible to trace any prosecution that has been carried out in relation to the offences of treating and transportation of voters.

When you look into how they have been dealt with in the Election Courts, you will find that somebody would be held to have committed an election offence simply because he had some people who visited. Normally when one is campaigning, people would visit and if you prepare a cup of tea, or gave out some transport, then it will be deemed that an election offence of treating voters had been committed. We looked at

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what is happening in other jurisdictions and found out that this could still be covered under the general law of bribery in cases where they are found to be indeed serious. This is because bribery is still an offence under the laws of Kenya. Therefore, in regard to election offences, we repealed those provisions that related to election offences of treating and transportation of voters.

We also said that if one has to be prosecuted for election offences, that prosecution must be undertaken within 24 months. This is because you may commit an offence today and somebody waits until the ninth or tenth year when you are about to go for an election campaign for them to drag and arraign you in court. This could happen when some of the witnesses have died and some of the materials are unavailable. We, therefore, said election offences must be undertaken within a period of 24 months. In England, they must be undertaken within a period of 12 months.

There are some issues that were presented to us by the judges in relation to the jurisdiction of the election courts. We commend the judiciary because we were addressed by Judges from the Supreme Court, the Court of Appeal, the High Court and even the Magistracy. The general view was that the proper forum for election offences should be the criminal court and not an election court because that is where a person so charged would have the normal protections under the criminal law and more particularly Article 50 of the Constitution.

Finally, on the issue of election offences, we decided as guided by some of the presentations we received from the office of the Attorney General, the office of the DPP and the courts themselves, that we needed a stand-alone statute that made provisions for election offences instead of all of them being consolidated into an Election Act.

I want to come to Thematic Area Nos.3 and 4. I am sure the Members of the Committee who are here and my Co-Chair will address the Senate on some of the areas if I do not cover them.

On the issue of registers, we have come up with a recommendation that the law should define properly what a register of voters is. This is because over the past years, we found a situation where there were several registers or several components of registers. People who are familiar with previous election disputes know that there have been references to the green book and even the black book. Under the proposals, there would be one register of voters.

Part of the problem of the legislation as it stands in the definition or interpretation clauses of the current Act and the provisions as contained in the Act is the use of the word “principal register.” It was then assumed that if you have a principal register then there would be so many other registers. We have addressed that and ensured that there will only be one register.

The Bill would also require determination and verification of lawful voters in the register because of the many complaints that have been put forward. This is not just in relation to the last general elections, but it goes as far back as the elections in 2007 and even before. The Registrar of Persons who came before us said that between them they had found out that there were cases of double registration involving nearly 100,000

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voters. This was without an audit. It was just an inspection carried out. They found out that there were more than 100,000 people who had been registered twice as voters. Probably the numbers could be more. Our proposal was that we should have an audit carried out, not only for purposes of elections in 2017, but it should be done every time before an election. If there were genuine complaints made, there should be inspections carried out.

More importantly, the register that will be maintained now would require that, not only the names of the voter or eligible voter is contained in the register, the register would also contain the biometric data of the voter. To that extend, we would now need to carry out a complete verification of the voters who are in the register. This can only lead to the conclusion that before we go for elections in 2017, the commission shall within 30 days engage a reputable firm to conduct an audit of the register of voters for the purposes of verifying the accuracy of the register and also updating the register. This is contained in Clause No. 6 of the Bill. The conclusion in this is that once this verification is done, it would mean that whether you like it or not, it will be required that every voter on appearing before any polling station must identify himself not just through an identity card, but through biometrics. This would mean that after the audit we will have a new register in place, whether you like it or not. Clause No.17 of the Bill says:-

“Subject to this section there is established an integrated electronic electoral system that enables biometrics of voter registration, electronic voter identification and electronic transmission of results.”

Therefore, the electoral system that we have put in place would require that at the time of voting, your biometrics will have to be confirmed before you can be given a ballot paper. You will be electronically identified as a voter. The process of voting, that is, balloting and counting of votes, will remain manual.

The other significant change is that there will be electronic transmission of results from the polling stations. That transmission will be relayed to the national tallying centre, the tallying centre at the constituency and to a public portal. One will be able to follow the counting of votes from polling stations, especially for the presidential election, from their house, offices of political parties, if they have got systems in place, as well as the media, so long as they have connectivity.

Indeed, the Constitution says that the presidential elections results should be announced at the polling stations. We will not need to be at Bomas of Kenya like it happened before. People went to Bomas of Kenya or Kenyatta International Convention Centre to follow the tallying of votes. In other countries where the systems are like the ones we have proposed, people need not to be at a national tallying centre. All this will be happening in real time. What will be published are not just announcements; there will be a prescribed form of the tabulated results of the elections in every polling station. Those results will be relayed as published from the polling station results form into an online public portal. Therefore, the controversies that we have had in the past would not be there.

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

[The Temporary Speaker (Sen. (Dr. Machage) took the Chair]

The other significant proposal that we have made is that because of the use of biometrics in the voting process, we did a calculation to find out how long it would require each voter to be processed through a polling station. In South Africa, for example, each polling station, which is not necessarily a school or centre, has not more than 300 voters. During the just concluded elections in Tanzania, there were only 425 voters in each polling station.

Mr. Temporary Speaker, Sir, we should not have more than 500 voters at any particular polling station. They could be less but they should not be more than 500. This is because in order for one to vote, and the biometrics to be taken, it requires a little more than two minutes. If the voting begins from 6.00a.m.to 6.00p.m., a calculation was done by experts and they determined that the number should not be more than 500 voters. That is found in Clause 13 of the Bill on page six of the Bill.

Regarding the other significant proposals, in the acquisition of infrastructure for elections, which include equipment like Biometric Voter Registration (BVR) kit, Electronic Voter Identification Device (EVID) equipment and documentation, we propose that political parties and other stakeholders and agencies will be involved in the process. This includes testing that prior to holding of an election; the Political Parties should engage with the Independent Electronic and Boundaries Commission (IEBC) in testing the equipment.

The report that I have here which was undertaken by IEBC itself shows that there was a lot of failure of systems. First, it was because of the lateness and secondly, they were not tested in time. Thirdly, one can come to the conclusion that they were designed to fail. This is from the report of an internal audit by the IEBC.

Mr. Temporary Speaker, Sir, Kenyans should remain assured that political parties will not be waiting till the tail end to be told the equipment that was in place did not work. The system in place will engage political parties and other stakeholders in the process; from the beginning to the end. We have made it possible for them not only to engage in the acquisition of these technologies before or during elections, but also dealing with the aftermath of the elections. These are for instance, data storage and information securities. All of which are provided for in the Bill. There is a provision for the formation of a technical committee which involves political parties and other stakeholders in ensuring that these processes are undertaken in a transparent and accountable manner.

In conclusion, I assure the Senate that the discussions that were held were done candidly without fear or favour. Sometimes we differed but we had a mechanism for finding out how to resolve the problems by using experts or we would go back to the principals. Many of us including the leadership of the Committee were in constant touch with the leadership of both Coalitions. Although some people may ask about what is in

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the document for purposes of what was anticipated, there is always a process of give and take. That has been the spirit in this country that must continue for us to find common solutions to common problems.

Mr. Temporary Speaker, Sir, if I remember my experience from the Serena process, we had a Committee of this nature - although it was not a Parliamentary Committee - and those who were members of that committee will remember that at the conclusion, we were deadlocked. There was no agreement on almost every detail in order to bring a new constitutional order in resolving the problems that were there in 2007/2008.

Those differences were taken before the President and the Prime Minister at that time under a session chaired by the President of Tanzania and Kofi Anan. The principals sat and resolved those matters in a spirit of give and take. The document that we have come up with has been in the spirit of give and take. For example, on the issue of Members of the Joint Committee, the CORD coalition had wanted five Members and the Jubilee Coalition wanted 11 Members but in the spirit of give and take, we had agreed on seven Members.

The CORD had taken a position that the discussion should be extra parliamentary. That means it should have been purely a non-parliamentary process. The Jubilee wanted a purely parliamentary process. If you look at the structuring of this Committee, the leadership of the coalition outside Parliament had a role. There were stakeholders engaged outside Parliament in coming up with the mandate of the Committee. We got experts from both coalitions to participate in the work of the Joint Parliamentary Committee. So, again in the spirit of give and take, we were able to have a parliamentary process, but one which was tampered with participation and contribution from non-parliamentary entities. That worked out very well.

Mr. Temporary Speaker, Sir, you will also realise that at the very beginning the position that was relayed was that the IEBC must go. That was the clarion call from the CORD coalition. Jubilee Coalition had taken a position that: "No, if the commissioners have to go, you had to go by Article 251 of the Constitution". That required that a tribunal be established. Through this process we had agreed on a way of resolving the problems to do with the commissioners some of whom, I dare say, have no direct accusations against them. They are going away in the spirit of keeping the country together. This again, is in the spirit of give and take.

In addition, in the spirit of give and take, the issue of audit of the register was resolved. On the numbers of the commissioners, Jubilee had taken the position that we retain the nine commissioners on a permanent basis while CORD had taken a position that we should have five commissioners on a permanent basis but if they had to be part time, then we should have no more than seven commissioners.

We agreed on seven commissioners on a permanent basis, taking into account that because this commission was so important to the country, we needed the face of Kenya, regional diversity and gender equality considered in the constitution of the committee. The number of seven permanent commissioners was agreed as necessary because in

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another two years, the commission must engage in the process of delimiting constituency boundaries as required under the Constitution and that requires a hearing.

Those who can remember what the Hon. Ligale Commission did, they had to go all over the country to undertake their work. In the spirit of give and take, we agreed on seven permanent members of the commission.

Mr. Temporary Speaker, Sir, concerning the selection panel, if you look at the current legislation, which is the Independent Electoral and Boundaries Commission (IEBC) Act, the template which is there, is executive driven and was brought into place at the time of the Grand Coalition Government which made it the responsibility of the President to appoint the selection panel.

We have agreed on a format in which the religious leaders are going to play an important role. We are going to have five of them from various sectors within the religious community, and four, who are going to be nominated by the Parliamentary Service Commission (PSC) with the understanding that the participation of the coalitions would be necessary as is the case with some of the commissions such as PSC and the Commission on Revenue Allocation (CRA) where the coalitions have played a significant role.

Although we were given examples of countries where commissioners are nominated and appointed directly by the political parties, we had again in the process of give and take find out something that can work not only for 2017, but for Kenya. I am trying to demonstrate that the Committee in its deliberations, there was very candid engagement that took place.

Mr. Temporary Speaker, Sir, I thank the religious community since, prior to the establishment of the Committee they played a big role in bringing the two sides of the coalitions together. I also thank the Kenya Private Sector Alliance (KEPSA) which was very much involved in the diplomacy that went on. The diplomatic community particularly the United States of America (US) ambassador and the High Commissioner of the United Kingdom (UK) who were able to intervene at instances when we were not probably talking to each other, and managed to narrow the differences, to the extent that we now have this Report.

I also thank the leadership of both coalitions as I did in the beginning. You saw on Monday, his Excellency the President and the Rt. Hon. Raila Odinga saying that we shall never have violence again, that Kenya deserves better and elections should never be a source of the kind of conflict that we saw in 2007-2008. In other countries such as Ivory Coast, they have brought complete dismemberment if not for all time, but temporary dislocation of activities of Government.

Generally, the third world is replete with instances where elections have caused a lot of problems. It is time that we in the political class must be prepared to ensure that those who participate in elections are able to do so on a level playing ground. An outcome of an election may be a disappointment but essentially you would find the various rivals in elections accepting the results because they are sure, like in a game of football or even the athletics we have had in Rio that there was nobody taking an

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advantage in any way and this is how elections should be. As political leaders, we should never be proud to win elections through fraud or rigging.

The objective of this process, as I understand it, was to ensure that whenever elections are held, they are free and fair, transparent, accountable and verifiable. That is not an objective that we as Kenyans cannot attain. I know we can because in the presidential elections that were held in 2002, there was a general acceptance of the election outcome. Because of that outcome of a clean election, it was acclaimed worldwide that the most optimistic citizens in the world were Kenyans who had welcomed the changes that took place in 2002.

Mr. Temporary Speaker, Sir, during the just concluded elections in South Africa, the value of the rand went up because there was general satisfaction with the outcome of the elections. The ruling party lost significantly in major cities and in some areas in South Africa. They managed to retain some areas but at the end of the elections, both sides accepted the results of the elections. Therefore, I hope that we as Kenyans should live together in peace. Whether there are elections or not, we should continue living in peace and together as one nation under one Constitution. We should build on the promises of this Constitution to achieve many other things that this Constitution guarantees.

Maybe my Co-Chair will address this. There was a question of party hopping. My take on this is that in order to build the kind of political parties that are contemplated under this Constitution, because the Constitution of Kenya says that Kenya is a multi-party democracy---We are a democracy where political parties receive state funding. Political parties themselves being constitutional organs, they should be operated almost at the level Government institutions. Therefore, once somebody has made a choice to join one political party, he should stand by that party not only on account of competitions and elections but also on what that political party stands for.

We have seen that in major democracies where such a principle is valued and kept, democracy has thrived. Where people thought that parties were inimical to the realisation of the development or even of political rights like Libya and at one time in Uganda where there was a design to have a no-party kind of system but it did work.

Mr. Temporary Speaker, Sir, we need to develop strong political parties that are identified by what they are standing for, ideologically. When the name of a political party is mentioned, a person will be able to know which direction that political party is going to take him. So, if a person looks at the general spirit of the legislation, even the time for nomination of candidates by political parties, extension of time for resolving disputes and extension of time for consideration of whether one wants to run as an independent candidate, all these have been placed there. Even if you are wronged by a political party, there will be enough room for that person to challenge the decision of any nomination process that would have taken place. Even from the Judiciary, they did suggest that we need a little more time to handle disputes that emerged from the elections themselves or from the nomination process.

Let me finalise my contribution by saying I really appreciated working with Sen. Murungi. We have come a long way. Through his leadership, we were able to resolve so

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many of the issues that confronted us. We have come long away enough to make a determination of what is good for our country. Between us we were talking very honestly and candidly to our leadership, either in the case of CORD or on his case with the President and the Deputy President. There were times when we also gave advice on how to resolve the differences that were before us. This was possible because the history of Sen. Kiraitu Murungi in the struggle to attain a new constitutional order in Kenya is very well known. However, I will not dwell on it at length because it is there in the annals of our history.

Mr. Temporary Speaker, Sir, we had a membership of very senior Members from the Senate and the National Assembly in our Committee. We had Sen. (Dr.) Khalwale who is here and others. They are people who I did not think that anybody would even dare approach them and compromise them in any form or shape. We all worked as a team on the report that now is before the House.

Mr. Temporary Speaker, Sir, I look forward to the Senate passing this Motion. I know if this Motion is passed in both Houses, there will be a lot of work to be done on the Bills. Then there is the execution of the provisions of the two Bills, particularly the Election's Laws Amendment Bill which will require to put the new structures that we have put in place or we have suggested should be put in place by 30th September, 2016. When the commission starts working within 30 days, there must be an audit and after that audit the register has to be dealt with. I know that is achievable because even in 2012 we had a new register. Within a space of a month, the commission was able to come up with a new register.

I beg to move and invite my Co-Chair Sen. Murungi to second.

Thank you so much.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. Sen. Murungi, as you know, according to Standing Order 100, you have 15 minutes to second the Motion. However, having been a Co-Chair, I will allow a further five minutes so that you have 20 minutes.

Sen. Murungi: I want to thank you, Mr. Temporary Speaker, Sir, for extending my time by five minutes because I have a lot to say on this matter. First, allow me to thank my Co-Chair Sen. Orengo for moving the Report and the draft Bills on behalf of the Committee. He has done an excellent job and in an eloquent manner that impresses everybody.

Mr. Temporary Speaker, Sir, I also want to thank the Members of the Joint Select Committee with whom we worked; the "bullfighter" here and the other group which is now called "the Pangani Six". I think this team worked very hard and we did a great job which is making our country proud. The group worked tirelessly, we burnt the midnight oil and we were able to meet the 30 days deadline which had been given to us by Parliament. So, I sincerely thank the Members of the Committee.

Mr. Temporary Speaker, Sir, also allow me to thank the members of the secretariat, our rapporteurs and the experts who supported the Committee and we sometimes worked up to 5.00 a.m. of the next day; filing up the discussions and coming

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up with the Report. I think the Committee has come with the most voluminous reports which had several volumes. I want to specially recognize the leadership of the secretariat in the name of a lady called Ms. Eunice Gichangi. If there is any promotion to be done in this Parliament, it is that lady who should be promoted together with the other officers who worked with us. They were very efficient and they did Parliament proud.

Mr. Temporary Speaker, Sir, may I take this opportunity to thank the coalition leaders in Parliament; both the Majority and Minority leaders, who went through the recommendations and supported the report, specifically the Senate Majority Leader (Sen. (Prof.) Kindiki, the Senate Minority Leader (Sen. Wetangula) Hon. Duale, the National Assembly Leader of Majority and Hon. Nyenze, the National Assembly Minority Leader because they supported us all the way and they signed the Report, finally, as required by the Motion.

Also, allow me to thank the coalition leaders. On the Jubilee side, President Uhuru Kenyatta and his Deputy, His Excellency William Ruto who supported this process through difficult times but when the Report came to them finally, they said it should be adopted by both Houses because they commended the Committee for doing a good job. Also, allow me to thank the Coalition for Reforms and Democracy (CORD) leaders led by the Right Hon. Raila Odinga, Hon. Moses Wetangula and Hon. Kalonzo Musyoka who have also supported the work of this Committee.

Mr. Temporary Speaker, Sir, as my Co-Chair has said, I think the President and Raila Odinga did us proud as a country when they appeared at the Holy Family Basilica during the memorial service of the Late President Jomo Kenyatta. That was a very good show by the leadership of this country so that we should not be defined by hatred as political leaders

I want to especially thank Hon. Raila Odinga for coming out in total support of the work of the Committee and stating that this Report should be adopted without any change; any comma or full stop. This is the strongest endorsement that the Report has got and I commend him for that. We are living in a country that is deeply divided by its leaders on selfish, hypocritical and ethnic agenda; a country where leaders in their political struggles maim, kill and destroy property, just to retain or capture power. We were happy that the two main contestants, Hon. Raila Odinga and President Uhuru Kenyatta, have assured Kenyan that never again will a brother kill a brother or sister and never again shall we shed blood in our electoral contests. This is the new mood that this country will move to.

It was our privilege, as a Committee, to be the team that sowed seeds of friendship and solidarity in this country between the Opposition and Government. We know that much of the violence has been caused by mistrust and elections that have been said to be a sham and do not truly reflect the wishes of the people of Kenya. As a Committee, we knew that our primary responsibility was to improve the electoral environment; to bring reforms that will ensure that this country will have genuine, peaceful, free, fair and transparent elections that will truly reflect the will of the people of Kenya. It is our hope that all the candidates will accept the verdict of the people after the

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next elections, because we have done everything possible to propose reforms that will guarantee transparency, accountability and verifiability of our election results.

Mr. Temporary Speaker, Sir, my time is short, but allow me to refer the Members to the recommendations of this Committee, which are in Chapter Six of this Report. The four thematic areas that the Committee worked on were in the following order. On Thematic Area No.1 we were supposed to consider allegations against the commissioners and the secretariat of the IEBC, specifically focusing on their credibility, impartiality, integrity and independence. On the basis of those allegations, we were supposed to recommend legal mechanism for vacation from office of the current commissioners and the secretariat, in accordance with the Constitution. The Committee received a lot of memoranda and we listened to the public for almost 20 days. The Committee finally decided not to make any findings or vote on the basis of the allegations made against the members of the commission.

Mr. Temporary Speaker, Sir, my colleague has touched on many of the recommendations which were made by the Committee. However, the most controversial issue is what has been referred to as party-hopping. After the discussion, we agreed that it is important to strengthen the political parties in this country and that the chaos that we see in the nomination processes of various parties, be reduced so that we can have internal democracies within parties so that the chaos in political parties does not follow us into the elections.

It was proposed that the nomination should be done strictly by members of the parties. The political parties should submit the lists of the party members to the IEBC at least 90 days before a General Election. The political parties shall also forward the names of the candidates who shall participate in the nomination 21 days before the nomination. The names must be published in the Kenya Gazette within seven days of their receipt.

Mr. Temporary Speaker, Sir, it was also proposed that the IEBC publishes the lists of the party primaries for all political parties in the Kenya Gazette and that the IEBC, at the request of any political party conducts and supervises party nominations in accordance with their mandate under Article 88 of the Constitution.

The Report proposes that once the names of the party candidates and independent candidates who will contest in the general elections are submitted to the IEBC at least 60 days before the election and that 14 days before the nomination date, all independent candidates submit their names to the IEBC. If the candidates of the political parties and those of the independent are forwarded to the IEBC, and published in the Kenya Gazette, a person cannot change his or her political status. If a candidate participates in a nomination under one party and loses, then the candidate cannot participate in the nominations of another party. Such candidates cannot even participate in the election because they are barred.

Mr. Temporary Speaker, Sir, similarly, the losing candidate cannot participate as an independent candidate. I know a lot of debate is being raised about this issue but time has come for us to take political parties seriously. If a person is a member of a political party, he or she should be bound by the rules of that particular political party. If he or she

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does not trust his or her political party, then the candidate may run as an independent candidate. It makes no sense of the nomination to have 10 candidates running for a ticket of a particular party and after nine lose the nomination, they all face the same candidate who defeated them under the disguise of other different parties. So, what is the point of having other political party nominations if they are not binding on the candidates? That is the mischief that we have tried to cure. We are requesting the Members of both Houses to support this provision because under democracy there is need to have constitutionally strong parties. If this country is to move forward, this has to be implemented now.

As per the Constitution, regional or religious parties have been made illegal. So, we would be very happy for CORD or ODM to have candidates in all the counties in this country; just like Jubilee should have candidates also across the country and maybe one or two other parties; so that we do not have 80 political parties throwing confusion in the political scene.

Therefore, this provision is targeting the political acrobats. I urge Members to support the report and not to amend any comma or full stop.

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

(Question proposed)

Sen. Wako: On a point of order, Mr. Temporary Speaker, Sir. This is a very important document. We entrusted very senior people who have been in the struggle for a long time who qualify to be legal luminaries to come up with this document. Members of this Joint Committee should not be given priority over people who are not Members of the Committee. They should take a back seat a bit and listen to Members who are not Members of the Committee. They know what is in the report. They have been involved. We do not have to be briefed for too long. Those who were not there have already been briefed by the Mover and the seconder. We also know how to read. Members who were not in the Committee should be given priority to speak on this Motion. Thereafter, they can speak.

(Sen. Murkomen consulted loudly)

The Temporary Speaker (Sen. (Dr.) Machage): Order! Being a Member of this respected Senate, you do not just shout across the House. So, keep your peace and listen to my order. Here it comes.

Although common sense has never been common, what Sen. Wako has suggested makes a lot of sense to me. We have had a Mover and a seconder. I am not ruling that Members of the Committee will not contribute. However, I accept the request that we listen more to Members who were not in the Committee first. That is my ruling.

What is it Sen. Murkomen?

Sen. Murkomen: On a point of order, Mr. Temporary Speaker, Sir. We have Standing Orders which clearly provide for a mechanism of when someone is allowed to

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speak and how long he or she should speak. In my opinion, it will be completely out of order to introduce that kind of provision however reasonable it may be. We are not governed by reason alone. We are governed by laws and regulations. Whereas you may--

The Temporary Speaker (Sen. (Dr.) Machage): Order! Are you challenging the decision of the Speaker?

Sen. Murkomen: Mr. Temporary Speaker, Sir, I am challenging the proposal of Sen. Wako.

The Temporary Speaker (Sen. (Dr.) Machage): There are ways in your Standing Orders where you can challenge the decision of the Speaker.

Sen. Murkomen: Mr. Temporary Speaker, Sir, that is why I rose on a point of order.

The Temporary Speaker (Sen. (Dr.) Machage): I have not denied anybody to speak. I have said that I will give priority to the Members who were not in the Committee.

What is it, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, the rules of debate in this House are very clear. I am not pressing for an opportunity to speak but I would like to urge the Chair to be guided by those rules. There is no rule that suggests anywhere---

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale! I have just given a ruling on that.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, you have given me an opportunity to speak.

The Temporary Speaker (Sen. (Dr.) Machage): Order! You are repeating. I may also surcharge on the same Standing Orders you purport to support.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, maybe you could have heard me.

The Temporary Speaker (Sen. (Dr.) Machage): No, I will not. This is what it is. I will give every Member time to speak, but I will give priority to Members who were not in the Joint Parliamentary Committee on the IEBC. Discretion of the Speaker, Standing Order No.1 says:-

“In all areas where matters are not expressly provided for by the Standing Orders or by any other Orders of the senate, any procedural question shall be decided by the Speaker”.

Order Members! I call upon Sen. Wako to speak.

Sen. Wako: Mr. Temporary Speaker, Sir, it is only right that the leadership of the Senate, the senior people who we appointed to this Committee should also listen to the Senator who was not there. We voted and elected them because of their qualities, and we hoped we were also electing them because of their humility. In that humility, they should also listen to us.

I will not take long because I have absolute confidence in the people we appointed to the Committee. This is our Committee, fairly selected, equally represented

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on both sides and chaired by the leading lights of the second liberation. Some of the Members were very active in the second liberation, consisting of young upcoming legal luminaries on both sides of the House, including Sen. Murkomen, who should also now listen to me and Sen. Mutula Kilonzo Jnr., among others.

We have every confidence that what they have brought to be approved by this House is something that this House must approve. Of course, in any negotiated instrument, you cannot expect to have it altogether. However, I can say that for my part, I agree with 80 per cent of the recommendations and maybe, one or two I could have thought otherwise. However, since it is a negotiated instrument and negotiated instruments have dynamics of their own, of give and take, they must have had very good reasons for making the recommendations that they made.

They must have had very good reasons for going against party-hopping, because our Constitution is very clear that we are a multi-party democratic State and party-hopping undermines the viability and the sustainability of political parties.

Mr. Temporary Speaker, Sir, had I been there - although I accept what they have done, since they must have thought about it - I would have given more provision for independent candidates. I would have made the issue of independent candidates come after the nomination by the parties. The law is that the nominations of the parties and independent candidates are at the same time.

I would have brought independent candidates slightly after the nomination of political parties to enable those who have been rigged out, if I may say so, to have an option, although we have provided a very good proposal that the Independent Electoral and Boundaries Commission (IEBC) should supervise party nominations, I think it is a proposal in the right direction but it does not stop having irregularities in the nomination exercise. It would not necessarily stop having a bigger influence of the party leaders in the nomination process.

[The Temporary Speaker (Sen. (Dr.) Machage) left the Chair]

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

Therefore, in this transition period, as the political parties develop their own proper machinery for---

Sen. Murkomen: On a point of order, Mr. Deputy Speaker, Sir. Did you realise the Sen. (Dr.) Machage is not listening? Secondly, he did not bow when he left the Chair. He just walked as if he is in a market in Kehancha.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Machage, did you bow when you vacated?

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, maybe some Members need to see opticians for correction of eyesight. I did bow so efficiently that I felt my neck crack.

(Laughter)

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The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Machage, you actually did not bow when you vacated the Chair. It will be good to do it the correct way.

(Sen. (Dr.) Machage bowed to the Chair and took his seat)

(Applause)

Sen. Wako, you may proceed.

Sen. Wako: Mr. Deputy Speaker, Sir, thank you very much. That has taken three or four minutes. Please add me time.

The Deputy Speaker (Sen. Kembi-Gitura): I told you that your time was held.

Sen. Wako: Thank you.

Mr. Deputy Speaker, Sir, I was talking about the issue of party hopping and so on. I entirely agree with the recommendations because they should lead to the strengthening of political parties because Kenya is a multi-party state under the Constitution.

Mr. Deputy Speaker, Sir, we are in a transition period where we know that although the IEBC will do the primary nominations, there will still be very many complaints. We still need to have strong traditions of nominations at the party level. Therefore, during this transition period, a number of people could be denied the right to stand. We have seen quite a substantial portion of the current Members of the National Assembly, the Senate and so on. If they had not hopped to other parties, they would not have been elected. The same case also applies to a number of governors. So, rather than a person to be rigged out hopping to another political party, that person should be allowed to stand as an independent candidate.

In other words, he is not leaving one party to strengthen another party but it means that he is the most popular person in a certain constituency. Therefore, such a person should be allowed to stand as an independent candidate. That would have meant that the process of nomination of people who want to stand as independent candidates has to begin not simultaneously with the political parties but slightly after and it would have meant amending that law and so. However, I accept what they have come up with. It must have been for very good reasons.

Mr. Deputy Speaker, Sir, the other thing that I am very happy about the recommendations here is the issue of the biometric. Biometric means unique identifiers or attributes including fingerprints, hand geometry, earlobe geometry, retina and iris patterns, voice waves, DNA and all that. To me, this is a step in the right direction.

Mr. Deputy Speaker, Sir, there is also the Integrated Electronic Electoral Systems (IEES). I listened very carefully to what the Mover and the Seconder said about the entire system. This is a system that will help the electoral process in this country. The law that has been proposed is excellent. However, it must be implemented.

Uganda recently had its general elections. All these issues that have now been covered under recommendations in the law were in place in that country. However, the

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implementation failed far short of what was required because there was no time to put all these things in place. It requires not just putting all these measures in place, it also requires proper training of the employees of the Electoral Commission in the management of these systems. As a result of that, Uganda had problems. I am trying to emphasize this because the time factor is now an extremely important issue. All biometric systems and other recommendations should be implemented in good time. The public must be educated on these issues in good time, but more importantly the presiding officers, electoral officers and other staff who will implement this must be properly trained.

Mr. Deputy Speaker, Sir, I was the Deputy Head of the Commonwealth Observer Group in Uganda. Right on the eve of the elections, although this law was in place, they had not actually covered the whole area of Uganda. Not all the polling stations had biometric systems, yet that was in the law. The Electoral Commission had to come up with directives that if a voter comes to the polling station with an identity card, they should be allowed to vote. If they had some documentation and appraisal and the administrator confirms the voter comes from that area, they would be allowed to vote. Therefore, it allowed many people to vote at the last moment because the biometric system had not been installed in all the areas of the country. There were some areas where a fallback position had to be used and results were announced. Some of the complaints were that even these announcements were coming late to the media. Not all voters knew what they were required to carry in those areas where the biometric system had not reached.

Therefore, I would like more focus to go to the issue of implementation. How shall we ensure that whatever has been recommended in this document is implemented in good time before the General Elections? That is the issue that, as we adopt this report, we must continue to address.

Mr. Deputy Speaker, Sir, I do not want to take too long on this but I want to commend our team for having done a good job. This provides another good lesson in the history of this country. Up to now, whenever this country has had a big problem, we have always come together and applied our minds regardless of political party positions. We have addressed our minds to what is in the best interest of Kenya. These minds came together and recommended what is in the interest of Kenya. If you may recall, we did so under the Inter-Parties Parliamentary Group (IPPG).

In 1992, we did so because we had an honest “broker” by the name of the Attorney-General who “broke” all sides. I can remember that day when the Late Jaramogi Odinga, Retired President Mwai Kibaki and Kenneth Matiba came to my office and the slogan they were “no new electoral body, no elections”. We were able to hammer out an agreement on how we should proceed and they wrote me letters nominating people. I found a common denominator in all the lists and I recommended them to the President and we were able to move ahead with that election. Documents are there to support what I am saying.

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Mr. Deputy Speaker, Sir, I begin to wonder why our coming together and having this joint team could not have been done earlier. We have known for quite some time that this requires to be done. Somehow, we took some positions and it took people to go on streets before we agreed to come together and form a joint team. Had we agreed on this joint team in good time, these recommendations - we would have had them a year or so ago, I would not be standing here to warn people that I hope we shall be able to implement these recommendations in good time. In future, if we are faced with any type of crisis or national disagreement which we know inside us that if we sat together we can reach a solution, let us move in that direction faster rather than later. This is now our tradition; let us move in that direction faster so that we cannot complain that we cannot implement it in time.

Mr. Deputy Speaker, Sir, I commend Sen. Orengo, Sen. Murungi and all the Members that sat on this Committee for the long hours that they put in and for making good recommendations. In the light of that, I do accept the recommendations and endorse them and I hope we can move with speed particularly on the issue of implementation.

Thank you.

Sen. Murkomen: Thank you, Mr. Deputy Speaker, Sir. I would like to support this Report having been one of the Members that sat in this Committee and I am conversant with what happened and the negotiations. I would like to tell the House that this is a product of extensive consultation across the political divide. This is a product of nationalism and patriotism. The leadership of Sen. Orengo and Sen. Murungi enabled us to reach consensus on all the issues that we dealt with. As a matter of fact and for the record, we never voted on any of these issues. We thought we should sit down and we agreed from the beginning that there are positions that come from our political parties. We invited them and they came to make presentations. Both Jubilee and Cord coalitions made their presentation before the Committee. In fact, they made their presentations on behalf of the parties we belong to individually.

As a Committee, we had a responsibility to behave over and above those positions because we were balancing both the positions of the political parties but there were also various positions of Kenyans from different walks of life; whether it was the private sector, the religious sector or the civil society. Therefore, when you look at this Report as it is here, it is a product of extensive public participation by the people of Kenya who wanted a position on the IEBC and electoral reforms.

On Thematic area No. 1, I was in one of the media houses today with my friend, Sen. (Dr.) Khalwale. When I left there, somebody told me that the debate was not as interesting as they wished it to be because we did not fight. There has been misconception in the public domain that this Committee declared commissioners immune from any prosecution. They say that the Committee sat down and cleared them of any allegations. May be some people are unable to read and comprehend English language. We said that we made no findings at all on matters related to whether or not, the allegations were factual and substantiated. We decided in the public's desire to have a free and fair election next year, to let them voluntarily vacate the office.

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Secondly, it was because of sufficient good will from the IEBC commissioners and, third, it was because there were many recommendations from various sectors that were saying that we should get a dignified political settlement to this matter. We agreed to a recommendation that will make the roadmap to the next election to be fair without touching on the dignity of the commissioners or the staff because that is what we need as a country. I know many people are asking what legal framework is going to be there for implementation of Thematic Area No.1. Once there is negotiation by the Attorney General, Treasury and the Salaries and Remuneration Commission (SRC) and all the other stakeholders, they should be able to propose to us the way forward, including the legal framework. If we approve this report now, then the time begins to run. In the next 14 days, we should be able to have a proper legal framework that is known to every Kenyan on the dignified exit of the commissioners.

The second question was on the issue of the recommendation related to commissioners leaving office. We thought there was need to have timeline so that some people do not drag the process forever. We agreed that the commissioners should leave office by 30th September, 2016. That leaves the Selection Committee with about a month and one week to be able to do all that is needed for them to have new commissioners in place.

We, as a nation, were cognizant of the fact that we need to protect the institutions or commissions of this country. One of those commissions is the IEBC. It must not be the norm for us to walk out there and disband institutions every time we disagree or we agree as political entities. This is an exceptional circumstance. We recognize that we are within the first few years of the implementation of the Constitution. We believe that we will stabilize as a nation going forward and ensure that all political players will not be able to destabilize institutions such as the IEBC in future.

I would like to recognize the magnanimity of the commissioners of IEBC to accept a settlement which is dignified. Otherwise, if they dragged us through the process of the Constitution in Article 250, we would not be able to get it because it would require getting evidence, putting in place tribunals and so forth. Kenyans must also know that the reason we needed to have this dignified negotiation is because the commissioners who have been mentioned in regard to allegations against the commission were two or three. There were some six commissioners who have not been mentioned in any way because there were no allegations against them.

So it was not going to be useful to the country to have a group of three or four commissioners going through a tribunal and another clean six commissioners who are awaiting directions on what will happen to the commission. There was a middle ground that was necessary so as to ensure that everybody leaves with their dignity in place and without delaying the process. You remember one guiding principles for us was not just that the committee be fair, but to be seen to be fair.

Since one side of the political divide no longer saw IEBC as an independent player, we needed to create not just the actual fairness, but the perception that they are fair. That is why it was necessary to have this Commission leave in a dignified manner.

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On Thematic Area No.3, we needed to deal with the question of the panel. I have seen some people complain out there that there is a choice for the President to appoint six out of nine people as commissioners and one out of two people as chairman. It must be understood very clearly that the selection panel we have put in place is so independent that the President has no say when it comes to the selection panel. Once we have achieved that independence, in terms of the selection panel, we should not be worried about the nine or eleven people they will select because we have cured the possibility of interference within the selection panel, in such a way that in future we do not have to worry whether the president was given nine or six names to choose from.

I heard some Coalition for Reforms and Democracy (CORD) legislators saying that the negotiators on their side acceded to a process that gives the President powers. There is absolutely no process here giving the President powers because the selection panel is independent. It is composed of five leaders from the religious sector, four to be appointed by the Parliamentary Service Commission and the secretariat will be the Parliamentary Service Commission.

Many people thought that for the Church to be involved too much in the political process, elections process and selection process it may not be good for the country in the long run. That is why there is a caveat in that proposal that it is only going to apply to the next commissioners we will deal with. Thereafter, Parliament has to sit down and work on a fairer panel, which can accommodate the various interests, without dragging our religious leaders through a process of picking commissioners. In future, if we disagree again on the commissioners, many people will say that those were the commissioners of religious organizations. Therefore, their position as umpires or voices of reason might be compromised when they are part and parcel of dealing with the selection panel. Therefore, we have put a caution there that this is just in regard to the first nomination of the commission when it comes to the next elections.

The last part, which is Thematic Area No.4., is the one that has far-reaching reforms on questions of voter registration. We agreed that we must move the voter registration process, verification process and transmission of results to modern ways of dealing with technology. We emphasized the need to use technology to transmit presidential results from polling stations directly to the national tallying centre, constituency tallying centres for the position of Members of Parliament and county tallying centres for the leaders who are running for office in the counties.

We also emphasized the need to verify the register. Again, this is an area that had contention because a section of the political divide said that the register is not credible. We thought that it is good to get a competent and reputable firm to do a one-off kind of verification, but also provide in law that in future, the commission should be free to continue doing the verification. It is important to remind Kenyans that verification of voters and clearing of the register is a continuous process. It requires that when someone passes away, they should no longer continue being in the register. That is why we made the provision that the commission should continue having the powers to continuously clear the register.

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Finally, I want to comment on nomination. I have seen so many misconceptions out there and propaganda. We are all in politics and may have problems with our political parties. However, what would one be doing, as an elected leader 21 days to the close of nominations, in a party whose nomination process they do not have faith in? Why would one want to drag their political party through a nomination process when they have no intention of agreeing with the results of that nomination process? Why would one want to punish the candidate who has defeated them in the nomination process by running again against the same person in another political party? A clever and wise politician should decipher early enough, like the way Sen. Hassan Omar did, that they may not succeed in a particular political party and go to another party way before the nominations. Party-hopping has not been outlawed; that is the wrong position out there. It has only been outlawed during the 21 days of nominations.

Mr. Deputy Speaker, Sir, we are preventing any political candidate who does not believe in his or her political party from jumping from that party to another. What we are saying is that 21 days before closure of nomination by the IEBC, one should have made up his or her mind as to whether he or she believes in Wiper Party or ODM. If we do not do that, it will be an exercise in futility to continue putting resources into political parties alleging that we are building them when actually we are not protecting them as entities of democracy.

In one of the media houses, today, I stated that this country would have been beautiful if the Forum for Restoration of Democracy (FORD) had remained as a fourth party and Kenya African National Unity (KANU) remained as it were. The FORD then had Sen. Murungi, Sen. Orengo and hon. Paul Muite. It had representation across the country the same way KANU had representation across the country. How beautiful would have been our democracy been if the mobilization and the competition was around issues, without disintegration into Forum for Restoration of Democracy-Kenya (FORD-K) which moved to the one corner of the country until it is now confined there.

Mr. Deputy Speaker, Sir, FORD- People and FORD-Asili also moved to their own corners until they are no more. If we have to build political parties for the future, we have to create systems that will make the parties viable for democratic competition. The candidates will have the choice to vie as independent candidates without hopping to any political party. That is why we provided for in the Report that if a person who wishes to vie as an independent candidate---What is independence? Independence is from the political parties. How can we say one is independent three months prior to the election yet the candidate had not made up his or her mind on the independence?

In conclusion, I appreciate the work of Sen. Orengo and Sen. Murungi. I also appreciate the leadership that they provided. Those who are speaking out there, that there were concessions by one political side and not the other, they must be told that concessions were made by both sides of the political divide. There were consultations to all political parties. I remember Sen. Murungi would always call the President and the Deputy President. Sen. Orengo was always on phone with Kalonzo Musyoka, Sen. Wetangula and the Rt. Hon. Raila Odinga.

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Mr. Deputy Speaker, Sir, it will be a lie to say that there was a decision that we made as a Committee without consulting the political leaders. Every decision in this Report is a decision by consensus by all the 14 Committee Members. Over and above, it was in concurrence with the political leaders. Nobody should crucify any person on account of consensus that was achieved because this nation is greater than anyone of us.

Those trying to score political points must be told that there is no way one can move the country forward if all times they want their positions to be accepted. This country must be liberated from the mentality of thinking that one person must always win.

With those few remarks, I beg to support.

(Sen. Hassan consulted loudly)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Hassan! Hon. Senators, I have about 11 requests seeking the Floor. That is virtually everybody in the House. If each takes 15 minutes, you know where that will take us and we have not had a break since 9.00a.m. As you know, I like operating on consensus, I do not want to say we reduce the time for debate but if the Members are inclined, we may try less than 15 minutes so that we all get a chance.

Hon. Senators: Five minutes!

The Deputy Speaker (Sen. Kembi-Gitura): It looks like there is a consensus for five minutes for each. Therefore, it is five minutes for each Member.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I will be brief. I will begin from the point that Sen. Wako made. It is unfortunate that we did not agree a year ago. We did not agree because politics is about struggle and interests. Those who have been interested are those who want to rig elections in this country so as to stay in power.

Therefore, what we need in this country, notwithstanding that we have a good law, is a political culture that respects trust, fairness and dedication to public duty. As it has happened since independence for the purposes of “tenderpreneurship” and the reaping off of the State, this law will remain good on paper but not in practice.

Mr. Deputy Speaker, Sir, I thank the IEBC for having been intransigent. It is because they were intransigent that we went to the streets to force them out. It is because they were intransigent that the Government also thought that it was good to defend the IEBC.

(Loud consultations)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Machage, what is your point of order?

Sen. (Dr.) Machage: On a point of order, Mr. Deputy Speaker, Sir. Thank you, the noise has subsided. I was begging for protection from Sen. Wako and Sen.

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Murkomen. They are making too much noise next to me, yet I want to listen to the debate.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I hope my time was held while that was going on.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wako, Sen. Murkomen, you have contributed and people listened to you. So, give people a chance also to contribute.

Sen. (Dr.) Machage, Senators do not make noise. They consult. That is important. However, Sen. Murkomen, that is not a license for you to continue to make very loud consultations. You are in my line of vision, clearly. So, I will keep a tab on you.

Proceed, Senator.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I was thanking the IEBC for having been intransigent. That made us go to the streets to protest and call for their leaving. The Government supported them for some time. They were more intransigent. Finally the whole world realised that there was something wrong in Kenya and the other side came to the negotiation table. That is what I call struggle. If they had not been intransigent, we would not have struggled. We were determined to get an IEBC that would run elections properly. That forced the other side to come to the table and we have this law.

Thanks to those who have been prepared to sacrifice for proper democratization in this country. On the Floor of this House, I thank all Kenyans who came out to say, "IEBC must go." We have won. We must congratulate ourselves. Therefore, now we have a good law. However, this law will not continue being good if as Sen. Wako says, it is not implemented. The implementation of this law requires some political hygiene in this country. In other words, let us have people in public service who respect the Constitution, law and order and will implement this Constitution.

Let us have a Government which knows that they may be in office today, thanks to the sovereignty of the Kenyan people who have exercised their rights in democratic elections to put them in power. They are not in power because they have money or were born in a certain region of this country. They are in power, thanks to the Kenyan people who have exercised their rights in this Constitution according to these election laws to put them in power. When the people of Kenya through the same Constitution and the same law vote in an election, let the rights of those Kenyans be respected and let people go in and out of office according to this law and our Constitution. Then, we will have a proper political hygiene and culture in this country.

Mr. Deputy Speaker, Sir, therefore, what has failed in Africa and has just happened in Zambia last week is that; elections are held, some people win but those in power refuse to go out and put countries in a lot of jeopardy. Zambia does not lack proper electoral laws or a Constitution; but so long as we have men and women in power who have bad political hygiene, we shall not have our democracy progressing. While we may have good laws, we still have another mile to travel. This mile is to institutionalize a democratic political culture in our nation. I do not want to celebrate this law until I see

the outcome of the next election and until I see commissioners, men and women of integrity who will behave better than the commission that we are sending away.

We appointed these commissioners. I was there when they were being nominated and appointed. We believed they would do a good work. As soon as they got there, they caught the Kenyan disease called “tenderpreneurfilia”. These are “tenderpreneures” who suffer from that “tenderpreneurfilia”, unless we stamp it out in our political culture, such--

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Prof.) Anyang’-Nyong’o, I can see you want to develop the language. That word, “tenderpreneurfilia”, is not in the dictionary or anywhere near, but that is innovative.

Sen. (Prof.) Anyang’-Nyong’o: Mr. Deputy Speaker, Sir, “tenderpreneurfilia” are the seeds of those who believe in “tenderpreneurship”.

The Deputy Speaker (Sen. Kembi-Gitura): It is interesting. Sen. (Dr.) Machage.

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, I praise the team that took all the time to come up with a document that has been tabled on the Floor of the House today for our adoption and more so Senior Counsel, Sen. Orengo and Senior advocate the ‘King of Meru, Sen. Murungi.

However, today is a very sad day for me when Parliament is being used to sanitize law breaking. Article 251 is very clear and this is a Constitution which the President of this country swore to protect. The Article is very clear on how commissioners are to be removed from office.

In Article 19(3) the rights and fundamental freedoms in the Bill of Rights is guaranteed to every Kenyan.

Article 25 says: - .

“Despite any other provision in this Constitution, the following rights and fundamental freedoms shall not be limited...”

(c) The right to a fair trial.

Has this team been condemned because it is made up of many people from the minority groups in this country?

The Bill of Rights in Article 19(2) states that the purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.

Mr. Deputy Speaker, Sir, the Report has exonerated the IEBC from any wrong doing; both the secretariat and the commissioners. If you go by the Report, on what basis are they recommending their expulsion? Is it because of force from the public? Do you lose your rights in this country because the people have rioted out there?

The purpose of this Committee would have been to press for the legalization of the process of expulsion.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): What is your point of order?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, we had heard the Senator for Migori allege that the Committee has exonerated the commissioners from blame. Could he point out in the report where the Committee has done this? I was a Member of the Committee and I am aware that the Report says that we make no finding on the allegations made against the commissioners. Could he stop misleading the country?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, let that be a point of debate. Maybe that is his own interpretation. I will also give you a chance to contribute.

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, I hope you preserved my time. It is very clear that the Chair said that to get facts to accuse the commissioners was a tall order. Therefore, the benefit of doubt should have gone to the commissioners. Why do we have to legitimize a wrong move by Parliament? What we are doing is to make what we call parliamentary dictatorship where Parliament will disregard all facts of the law in the Constitution. Parliament will break them from top to bottom and make its own law to expunge members of a commission who are protected by the Constitution.

This Report may be adopted because maybe the majority have said so but today is a sad day for this country for openly disobeying the Constitution in the House of creation of law. We will be out watching how the new commissioners will be selected. In my own mind, the whole purpose of this exercise was to expunge the minorities and replace them with the majorities in this country. That was the whole purpose and there was no other purpose of this commission. This might be very painful but it is a bitter pill to be swallowed by those who listen. I oppose.

Sen. (Prof.) Lesan: Mr. Deputy Speaker, Sir, I am going to be very brief on this. First of all, I want to thank Members of the Joint Committee of both Houses of Parliament for having taken time and taking upon themselves the very heavy duty of making a decision about the electoral commission. I also thank the outgoing commissioners who have been disgraced yet what has been reported here is that there were no findings. I think the statement of no findings is an escapist statement. They should have made it clear that there was no offence committed by the commission except the fact that they failed the confidence test, which is a thing that has no measure in terms of how you can quantify or qualify confidence.

Mr. Deputy Speaker, Sir, it is very unfortunate that these commissioners had to go. These are commissioners that we had a lot of confidence in when we put them in office. Unfortunately, we have accused them of all sorts of evil, including the “Chickengate” scandal and all manner of stuff, yet the Joint Committee has reported that there were no findings about their culpability of what we are accusing them of. I really commend the commissioners.

We do not want to be like Zimbabwe. Zimbabwe chose some athletes to go to Rio de Janeiro, Brazil. She sent them to Rio to go and try to win medals but they did not win the medals. They left for Rio as athletes but they are now arriving back to Zimbabwe with the Commissioner of Police having been ordered to arrest them at the airport because they did not win any medals but they tried their best. The commissioners we

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have also tried their best and we are now sending them away by even breaking the constitutional provision.

It was very sad when I heard the Co-Chair – while he was presenting this document – say that there was no other way of removing the commissioners. It is clearly stated in Article 251 of the Constitution. A due process of appointing a tribunal and removing commissioners is well stated there and there would have been no other way of removing them except by what is stated. So, it is not correct to say there was no other way of having to remove the commissioners because they have not committed any offence.

Mr. Deputy Speaker, Sir, be that as it may, I agree with the Committee on the recommendation of a negotiated exit which to some extent goes a long way in healing the egos of good Kenyan citizens who have served us in the last commission. I hope that the negotiated position will be implemented so that they go home and probably watch things differently and even advise the new commissioners that they will as well suffer the same fate in 2019 when the next election will be prepared.

Mr. Deputy Speaker, Sir, I just want to say something else about the selection panels.

Mr. Deputy Speaker, Sir, I note that the selection panel is competitive. Even the bodies that have been asked to provide a name may have challenges doing so because of the nature of the competition. I hope that if any of those bodies are unable to nominate a candidate, the rest of the panelists who have been nominated should go on and not be held back because of lack of nomination by any of the entities that have been given an opportunity.

Lastly, is on the transmission of the results, I hope they will come up with the best way to do so. However, there should be parallel avenues in which the results are transmitted. There should be a method of counter checking whatever results that are transmitted. We know the errors come about because of manipulation; and even electronic systems can be manipulated. So, I do hope that the Committee will look at this transmission seriously to ensure that the elections results are counter checked at various levels from the polling centres.

Mr. Deputy Speaker, Sir, I support this.

Sen. Mutula Kilonzo Jr.: Thank you, Mr. Deputy Speaker, Sir. I realise that most of us did not follow what was happening in the Committee. However, the fact of the matter is that, that was an exceptional circumstance that we found ourselves in a committee. Sometimes, when I think about the people who set up this Committee and how it was set up, nobody thought it would come up with a Report like this or that some thought we would not agree. However, I want to point out several issues that can inform some of our decisions.

The fact of the matter is that there was a big failure in terms of management of our elections. That is borne in the reports of the special audit shown on pages 130 and 131. The Public Accounts Committee has tabled their report. It makes adverse findings

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on IEBC. Anybody who thinks, like Sen. (Dr.) Machage and others, that the IEBC were condemned for something they did not do, should read page 139 which shows that an audit done by the IEBC, the experts of CORD and Jubilee Party show that the Biometric Voter Registration Kits (BVR) that we purchased were dysfunctional.

The servers and the software that were purchased were also dysfunctional. The NOKIA phones that they purchased were dysfunctional too yet these cost the country Kshs7.2 billion. Which part of minorities are you talking about? This is called failure. If this can happen and yet we did not have bloodshed, we should thank our lucky gods that somehow they moved on. We cannot allow this to happen. This is called incompetence. It is a ground for removal. They are persons who are hired to do a job and are given a job that they cannot do it. It is that simple.

On the question of transmission, we went to great lengths to ensure that we do not have the bottle necks that happened in the last election. We have a Report commissioned by Independent Elections and Boundaries Commission (IEBC) and I ask the Senators to go and read the material we have received; a report of the International Foundation for Electoral System (IFES) that demonstrates that the results transmission system could not work hence the elaborate system. A gentleman by the name Mr. Okiya Omtatah, in his submission, says this country cannot have a simple, accurate and verifiable election if it is manual. It is inconsistent.

Mr. Deputy Speaker, Sir, you notice even simple systems offices use technology. If Kenya cannot manage its elections in the manner we have proposed, we are not a republic but just an organization of people who pretend to be organized.

In the Committee, it was proposed that the election offences that were muddled up and contained in the Elections Act be separated and that has been done well. It is the persons contesting elections and public officers who think they will use their public office to compromise elections. Public officers or election security organs who think they will participate in the elections should be forewarned. Just like Sen. Wako has proposed, the first Joint Select Committee--- Just add me five minutes.

The Deputy Speaker (Sen. Kembi-Gitura): Sorry!

Sen. Mutula Kilonzo Jnr.: That cannot be five minutes Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Your time is not up yet.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, the proposals that have been made in the Election Amendment Bill are revolutionary in every sense of the world. They are not unique to Kenya. We did our research and in a country like India that has got over---

The Deputy Speaker (Sen. Kembi-Gitura): Your time is up. Sen. Lesuuda!

Sen. Lesuuda: Thank you, Mr. Deputy Speaker, Sir. I rise to support this Report and to congratulate the team that worked on it. It is quite a detailed one. Within the five minutes, it is important to echo what many of my colleagues have said. In Kenya, we are not short of laws and good laws for that matter. It is the implementation that continues to drag us back and put us in positions that we have found ourselves in as a country and we are not proud of it.

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Mr. Deputy Speaker, Sir, I would like to point out two things; we know the process and recommendations, if passed, then the commissioners will leave office. Now that they have to vacate office, not all of them had any allegations whatsoever of any incompetence but it is one thankless job. It is important to note and appreciate the commissioners; that they took their time, appeared before the Committee and gave their views rather than dragging. They had an option. They could have gone to court and the law was on their side. It is important that we commend them for the work that they have done and for appearing before the Committee.

Mr. Deputy Speaker, Sir, it is important to note that all these things that we have are good; issues to do with voter registration, voter education, issues of nomination and registration of candidates and everything. It is the implementation and the timeframe that we are going before the next general elections that will be key to ensuring we have a process that will be accepted by Kenyans. We do not want it to be fair but it has to be seen that the process of elections is fair.

I want us to think about it and to bear in mind what the President and the Opposition Leader, Hon. Raila said during the memorial service of the first President of this country. The two vowed that there will be no bloodshed in our country because of elections. This is something that we have to continuously remember as we ensure that the elections are free and fair for us to have one country which we should jealously guard.

I agree with my colleagues that the implementation will be key. We know how nomination processes have been in our country. If those who are already inside the political parties have that fear, what of those who are outside? Will they not seek political office? The leadership of my party, Jubilee, has said they will invite IEBC to help them oversee their nominations for fairness purposes. I also want to ask our colleagues in CORD to invite the IEBC to help with their nomination process in order to avoid the men in black messing up the whole process.

I do support.

Sen. (Dr.) Khalwale: Thank you, Mr. Deputy Speaker, Sir. Having sat on this Committee, I would want to use this opportunity in supporting the report to register my tribute to the following people: one, the Kenyans who pressed so hard for us to have these mediation talks. Some of them lost their lives, property and even got injured. I thank them.

I also want to thank President Uhuru, the Rt. Hon. Raila Odinga, Hon. Kalonzo Musyoka and Sen. Wetangula who were the people that we would consult whenever we hit a stalemate. What came out clearly is that they all gave us the latitude to do what we did and we believe that we succeeded. I also want to thank Sen. Orengo and Sen. Murungi for the leadership that they gave when we were preparing this report.

There are only two points I would like to use graphically to request members to we support this report. The first one is a picture which I have put in my library of Sen. (Prof.) Anyang'-Nyong'o born on 10th October, 1945. He is now going to be 71 years old. That photograph was taken outside Anniversary Towers when he was running for his

life in the midst of “teargas Monday”. I looked at it and asked myself, what are we doing?

Here is a man who was in the Nyayo Torture Chambers fighting for the second liberation when people of my generation who include the President and to a small extent the Deputy President, were in either early secondary or late primary school. How could we then take over the leadership of this country and then ask Sen. (Prof.) Anyang’-Nyong’o to go back to the trenches? I will forever salute him. I also hope that upon passing this Report and making the reforms that we have recommended, the Government of Kenya will see the wisdom in withdrawing the case they have preferred against me, for the simple reason that I participated in leading peaceful demonstrations in Kakamega that brought us where we are.

I want to speak to two points. The first one is the register of voters and the use of technology in next year’s elections and beyond. There are many people on our side, the Coalition for Reforms and Democracy (CORD), who would have wanted that we have a new voters’ register and there are many people in the Jubilee Coalition who did not want to hear of anybody touching that register. Granted, the Jubilee Coalition had done a lot of mobilization in the lead up to the 2013 elections and would feel that they will lose something if that register was thrown away and a new one put in place. Similarly, CORD on its fair assumption feared there are many people in that register who are either ‘dead voters’, ghost voters, underage voters or outright illegal voters.

I would like to remind both sides that what we achieved was a win-win situation, where we settled on an audit of the register. When you look at it scientifically and critically, a new voters’ register is achieved through a scientific audit of the current register; I will not go into the details.

The second and final issue is---

The Deputy Speaker (Sen. Kembi-Gitura): Your time is up.

Sen. Omar Hassan.

Sen. Hassan: Mr. Deputy Speaker, Sir, I rise to support this Report and also make several observations. First and foremost, I appreciate the Committee’s findings, particularly in terms of the concessions made by the IEBC, in ensuring that there will be a dignified exit for the members of that commission. However, as is the practice of law, that will not stop any other processes where anybody has criminal culpability of being held responsible for any crime that might have been committed by people individually. I wish well those who will exit. Some have exited based largely on the premise of ensuring that this nation is greater than them; not because there is any culpability or guilt established on their part.

Time is short and I cannot speak on all areas I would have wished to speak on. However, nothing in the proposals of this Report must formulate foundations of law that will abrogate other fundamental freedoms. We come here and pretend that we want to build political parties that are founded on certain ideologies. Let us debunk this myth that all our political parties are founded on any particular ideologies. Most of these ideological issues are issues of plebiscite. Look at the composition of our membership.

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Most of our parties are the galaxy of looters and violators of the successive regimes; they represent nothing but the continuation of looting. For one to tell me that they want to preserve ideology by allowing people not to shift parties is wrong.

I am a creature of hopping. If I had not hopped from ODM to Wiper I would have been a member of the ODM pressure group in Mombasa County. Therefore, let us not undermine a fundamental ideal of association. This Report is not good to that extent. It tries to curtail freedom of people from moving from one party to another. This country is moving very dangerously from an autarchy to an oligarchy. There used to be a rule of one man during the President Moi regime but now there is a rule of a few men either in the Jubilee administration or even in the opposition.

By institutionalising oligarchy we oust the principle of democracy. We have fundamental concerns about how parties have been institutionalised to discharge a constitutional obligation of being free and democratic. I have listened to the passionate debate by my friend and colleague Sen. Murkomen but we live in Kenya; people buy party positions, leaders and patrons buy party positions. They can buy positions and oust you, notwithstanding your competence.

Therefore, for us to pretend that we will lock these people from electoral competition--- We know people choose sycophants and those who contribute to parties. We must allow this until Kenya becomes organic in terms of building an ideology. That ideology will come from some of us who are hopping parties and finally come to the realization that we need to institutionalise visions and ideologies within political parties.

Mr. Deputy Speaker, Sir, however, I support this Report because in many respects it has given extraordinarily good recommendations which will break the impasse that is present now with respect to the electoral process. I speak for the minority in the Independent Electoral and Boundaries Commission (IEBC). This Report has also brought extraordinary bad blood politically. Some of us have to constantly respond to the constituents who claim that there is no due process. Everybody must face a due process while implementing this Report.

Mr. Deputy Speaker, Sir, I support what Sen. Orengo said. I have not seen a Committee where if you look at the minutes, every Member attended every meeting. I think everybody appreciated the weight and the seriousness of this meeting. Definitely there were Members who missed once or thrice but on the overall, everybody did the best in the process.

Finally, in terms of the timelines, they are reasonable. I support the audit of the register and the timelines set with respect to the 30th September, 2016 and the auditing of the register by November so that---

(Sen. Hassan spoke off the microphone)

The Deputy Speaker (Sen. Kembi-Gitura): Your time is up.
Sen. Ndiema.

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Sen. Ndiema: Mr. Deputy Speaker, Sir, I also would like to thank the Committee and its leadership for having dedicated itself to work and delivered its Report in good time.

The IEBC, according to the Constitution, is supposed to be independent. Therefore, whatever we do or say, we must make sure that any Commission in place or in future, is guaranteed independence. I do not know whether the Commission that will be formed will feel secure and independent. This is especially since the allegations that were put forward against the incumbent commission, have not been proved beyond any reasonable doubt. However, the Commission has to vacate office.

Mr. Deputy Speaker, Sir, you will excuse those who think that the pressure for these commissioners to go had more than just the malpractices. Other things have come to bear in terms of each person wants his or her own referee. It may even be proper but perhaps this country may consider having a commission for each and every election. They should not be continuous. Perhaps that will cure the misuse that may be there.

However, be that as it may, the commission which is comprised of individuals will never be effective unless we look at the systems. Let us not look at the individuals so much but the systems. The weakest link in our electoral system is not in the commission or the commissioners. We should have looked at the secretariat as well. Beyond that, in our electoral system, the weakest link today is the party nomination process. We should form an independent Select Committee, first of all to look at the nomination processes where there is massive abuse and corruption that cause candidates to party-hop. They do not just hop for nothing. There is unfairness.

This House should press for a Select Committee to look at nomination process so that we weed out malpractices in nomination. Unless we do that, we shall have elections which are not free and fair. On that note, until we sort out the nomination process, we should not limit candidates from deciding and enjoying their freedom of association guaranteed in the Constitution. After nomination, if you feel you have not been taken care of properly, you should be free. It is guaranteed in the Constitution; one can move to their party of choice.

As we speak, I have been a victim of rigging in a nomination process. There was supposed to be a nomination but no nomination ever took place and a certificate was issued to somebody.

The Deputy Speaker (Sen. Kembi-Gitura): Your time is up. I will give you a chance to say whether you support.

Sen. Ndiema: Mr. Deputy Speaker, Sir, I support with amendments to take care of what I have said.

The Deputy Speaker (Sen. Kembi-Gitura): That will come at its own time.

The last speaker is Sen. Wetangula. I will give you 10 minutes.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I know that according to the Standing Orders, I am entitled to an hour. However, I beg you to give me at least 20 minutes.

The Deputy Speaker (Sen. Kembi-Gitura): Then, we must set a compromise. I will give you 15 minutes. We had discussed that with you earlier. Time is running.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, thank you for giving me an opportunity. First, I salute all the 14 Members who served on this Committee; seven Members from this House and the seven Members from the National Assembly. When this Committee was set up, some radio stations cynically remarked that some Members like my friend hon. Moses Kuria and hon. Jimmy Angwenyi had been deliberately put in the Committee by Jubilee to go and cause a fracas. However, the information we have is that the proceedings were tranquil, non-partisan and patriotic.

When they were starting their proceedings, I addressed the Joint Committee. I could see how eager everybody was ready to do their work. This Committee report is so important to this country because the manner in which the outcome of elections is received can lead to peace, tranquility and prosperity of this country or confusion. This country has recorded more than three conflicts at different times either preceding, during or after elections, the worst being 2007/2008.

I fully support the Report and the accompanying Bills. I was disheartened while coming back to the Chamber when I heard one Member speak in a manner that I thought was completely out of tune. You cannot have everything. I salute this Committee because many people have accused the Coalition for Reforms and Democracy (CORD) of ceding too much ground to Jubilee. However, as a leader on the CORD side, I have said to everybody that you cannot go and negotiate from a fixed position. You go to negotiate because you have a different positions and the person or group you are negotiating with have a different position and you must find a middle ground.

Mr. Temporary Speaker, Sir, looking at the report, you can see that each of the 14 Members has appended their signature, signifying that it is a unanimous decision of the Committee and is a Committee report reached by consensus. I know that there are certain issues that some Members are uncomfortable with but I also want to encourage Kenyans that the question of IEBC commissioners leaving office in the manner that is recommended is neither an assault nor a derogation of the constitutional provision. This is a negotiated process.

You and I and everybody else know that when you hold an office of public confidence, even where you are not culpable, once the public has lost confidence in you, you are obligated to reconsider your position. I salute the commissioners, among them there are bad ones and good ones. It is a cocktail of the good the bad and the ugly, but they all appeared before the Committee and said that if their position was putting the peace and future of this country on a slippery path, then they would opt to leave office. That alone is patriotic thinking and decision.

Mr. Temporary Speaker, Sir, they could have dug in for a bruising, ugly and fatal fight in terms of character. They opted to say that they would leave to do something else for their country. As we go to elections, we always as lawyers say that justice is not what you as the judge is doing but what the public think you are doing. The perception you create is what people see and perceive to be justice. The public had lost confidence in

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Isaak Hassan and his group. Nobody is ready to ask for framing charges against them on what they did or failed to do. Some are guilty by association while others are innocent, but the point is that we want to go to the next election with the country in totality, whether you are Jubilee, CORD or some undefined force among the many that are coming up.

We want to go to the election with everybody knowing that the race may belong to the strong but everybody must have a fair start and the referee must be fair throughout the race. You can borrow a leaf from what happened to my son Ezekiel Kemboi, a great runner with gold medals along the chain. When he stepped outside the lane, they took away even the medal they had given him. That is the painful truth about justice.

Mr. Deputy Speaker, Sir, I want to urge the House and the country to embrace the product of this Committee. Regarding the last elections and the manner in which the Supreme Court handled the petition, even the judges themselves came to this Committee to own up that there was something that needed to be changed. Let us start with the register. How can you go to elections with an electoral body that does know which register they are using? That is why I support that there should be one indivisible register of voters, so that when Sen. Murkomen wants to know whether he is a voter in Elgeyo-Marakwet or not, he just logs in and finds where he is. Nobody will tell you that you are not in the master register but you are in the green book or you are not in the green book but in the black book or you are not in the black book but in the red book. That is a recipe for chaos. So, reorganizing the register alone is critical.

The other day, I brought an issue here. I said that in my county, we bury an average of almost 2,000 people a month. These are adults and voters but who edits the people who die out of the voters roll? There is nobody and you end up with dead people voting and juveniles on the voters roll. So, the idea of auditing the register is crucial. I want to urge this country to borrow a leaf from what happened in Nigeria. In Nigeria, before the last elections, there was a serious dispute as to the integrity of the voters roll. They hired a competent manpower company to audit the voters roll and you cannot believe that they found 10 million dead voters in the register and they had to be edited out.

I am sure we have a couple of hundreds of thousands of dead voters in our register. We need to audit that and come up with a register where we synchronise the registration of births and deaths and registration of persons. When you die and it is registered that so and so has passed on, that registration alone should be reflected in the IEBC register and your name is erased from the voters roll. You do not have to go to any other length.

Mr. Deputy Speaker, Sir the most important thing is the manner in which results are handled. The Committee has said that counting of votes will be done at the polling station and then electronically transmitted to the constituency headquarters and from there, directly to the national tallying centre. That is editing or cutting out fraudsters like what we saw; the mischief that was played in the last elections by the National

Intelligence Service (NIS), Safaricom and all manner of middlemen like Chirchir who masterminded an electoral fraud of a monumental level that put us in almost---

Sen. Murkomen: On a point of order, Mr. Deputy Speaker, Sir. The Senate Minority Leader has mentioned Chirchir but I do not which Chirchir. Could he substantiate?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, Chirchir is a man who was a Minister for Energy. He “ate chicken” and it is in the reports that are with the EACC and everybody has seen them. He left office because the President brought a report to Parliament that implicated him. We also know that at the time he was working with the IEBC as the head of ICT and he was the mastermind of the electoral fraud that we know.

Sen. Murkomen: On a point of order, Mr. Deputy Speaker, Sir. Repeating a statement twice is not substantiating. The Standing Orders make it clear that a Member who makes allegations against any person must be ready to substantiate, either now or at the time appointed by the Speaker.

The Deputy Speaker (Sen. Kembi-Gitura): What are you relying on?

Sen. Murkomen: I am relying on the Standing Order Number---

(Sen. Wetangula stood up in his place)

The Deputy Speaker (Sen. Kembi-Gitura): Just a minute. Let him get the Standing Order because he is on his feet.

(Sen. Wetangula sat int his place)

Sen. Murkomen: Mr. Deputy Speaker, Sir, it is Standing Order No.94 which is about the responsibility for statement of fact. Standing Order No.94 states that:-

“(1) A Senator shall be responsible for the accuracy of any facts that the Senator alleges to be true and may be required to substantiate any such facts instantly.

(2) If a Senator has sufficient reason to convince the Speaker that the Senator is unable to substantiate the allegations instantly, the Speaker shall require that such Senator substantiates the allegations not later than the next sitting day, failure to which the Senator shall be deemed to be disorderly within the meaning of Standing Order 110 (Disorderly conduct) unless the Senator withdraws the allegations and gives a suitable apology, if the Speaker so requires.”

Mr. Deputy Speaker, Sir, I would like the Senate Majority Leader, because of the allegations against Mr. Davis Chirchir now that he has confirmed which Chirchir he was talking about, to provide to this House evidence of the statements that he has made to the extent that he masterminded election fraud.

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Mr. Deputy Speaker, Sir, Secondly, the evidence that he is talking about that he ate chicken and I do not know whose chicken. Is it Bungoma chicken or Bomet chicken? He must also substantiate that.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Machage, what is your point of order?

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, on a point of order. If my memory serves me right, the only substantiation Sen. Murkomen sought was on a description on who Mr. Davis Chirchir was. Is the Member in order to raise some other demands on the same point of order?

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators! Order! Let me dispose off the last one first. Sen. Murkomen is entitled to seek further clarification on the point of order that he raised and that satisfies Sen. (Dr.) Machage. Sen. Wetangula, you made an allegation against a certain Mr. Davis Chirchir whom you have indicated to be a specific one. You made serious allegations against him. Are you able to substantiate?

The Senate Minority Leader (Sen. Wentangula): Mr. Deputy Speaker, Sir, it is a rule of thumb that a Member is not obligated to substantiate what is obvious.

The Deputy Speaker (Sen. Kembi-Gitura): Order! Order, Sen. Wetangula! I do not think so. You made an allegation against a person who is not sitting in this House and therefore he is not supposed to defend himself.

The Minority Leader (Sen. Wetangula): I have not finished---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wetangula. I heard you. I am in control of the debate. You made an allegation against a person who is not in the House. You made rather serious allegations against him. They could be true or maybe they are not true. I have absolutely no idea. I do not know about the veracity of any of the things you have said. So the questions that Sen. Murkomen is asking is: Are you able to substantiate? If you cannot, then you must withdraw and apologise.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, a man called Mr. Davis Chirchir was a Cabinet Minister for Energy. Prior to that, he was the Head of ICT at Independent Electoral and Boundaries Commission (IEBC). In the dossier about the now famed Chickengate, his name is there.

The Deputy Speaker (Sen. Kembi-Gitura): Has that dossier been tabled in this House?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, that dossier is a report in the National Assembly.

The Deputy Speaker (Sen. Kembi-Gitura): Has it been tabled here?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, it has been tabled in the National Assembly.

The Deputy Speaker (Sen. Kembi-Gitura): Has it been tabled here?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, if you give me time I can bring the report.

The Deputy Speaker (Sen. Kembi-Gitura): Exactly; that is the point.

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The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I can bring the report. Let me finish.

The Deputy Speaker (Sen. Kembi-Gitura): No, Sen. Wetangula!

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I cannot be asked to substantiate and then I cannot be given time to substantiate---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wetangula! Order! I cannot allow you to altercation with me. I am sitting here and I know the rules. I am here to enforce the rules of the House. I am not doing it to please any Member of this Senate. I will do it according to our own Standing Orders. That needs to be understood clearly.

The point here is this: You made a serious allegation against a person who is not in this House. I have no idea of knowing whether or not what you have said is true. I have no idea at all. It is not part of my responsibility, really. However, the point I am making is that you are either going to substantiate what you have said or give us a date when you are going to substantiate with documents or you are going to withdraw and apologise. It is as simple as that.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, what is there to substantiate? You are challenged on an issue you have raised then you explain. There is no requirement in these Standing Orders that substantiation means I have to carry documents and place on the table. I have been challenged to substantiate and I am substantiating by explaining the source of my information, the basis of my assertion and why I said so.

I feel disheartened that my distinguished and respected Speaker in the Chair now is trying to participate in debate instead of giving me time to explain myself.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wetangula! I will give you directions on this matter because you and I are not going to argue on this issue. You know the rules as well as I do. When you tell me that a report on something called “chicken gate” is somewhere, and I ask you a question whether it has been tabled in this Senate, you talk about the National Assembly. I do not preside over the National Assembly, and I have no knowledge about that report.

You must protect the dignity and personality of every Kenyan. If you want to talk about “chicken gate”, it is an individual issue. I am not protecting anybody. You can substantiate it. If you cannot do it now, give us a date when you are going to table documents to show that there is something called “chicken gate” and the person you are naming was involved or in the alternative, bring us a court record to show that the person has been charged in a court of law and indicted. I cannot allow statements to fly in the Senate against persons who are not able to defend themselves here. It is not fair and it is against the rules of natural justice. If you call that an argument with me; I am not arguing with you at all. I am stating the law as I know it and the procedure of the Senate as I understand it.

What is it, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: On a point of order Mr. Deputy Speaker, Sir, I realize how difficult it is for you to rule because this is an important matter.

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The Deputy Speaker (Sen. Kembi-Gitura): I have ruled. It is not difficult for me to rule.

Sen. (Dr.) Khalwale: I am saying I appreciate. I want to agree with you on your ruling but it will also help. I sat on this Committee and during the presentations that various stakeholders made, the name of Mr. Chirchir was mentioned in respect of “chicken gate”.

The Deputy Speaker (Sen. Kembi-Gitura): You may want to help Sen. Wetangula in substantiating when the time comes, whether it is now or in the future. Do not enter in the same fray unless you are able to substantiate now or in the future.

The Senate Minority Leader (Sen. Wetangula): To cut a long story short, Mr. Deputy Speaker, Sir, let me give you the following undertaking that at the next sitting, I will bring evidence to show that Mr. Chirchir worked at IEBC, that he was in charge of Information Communication Technology (ICT), that he was named in the “chickengate” where two white men are in jail in the United Kingdom (UK), that he was among the list of people the President brought to Parliament when he addressed joint Houses of Parliament as one of the then suspects of corruption, that on the basis of that Report by the President, he was suspended from office, that as a consequence of that suspension, he was subsequently dismissed by the President and another Minister appointed in his place, that consequent upon his suspension and dismissal, he has not been hired by the same Government to any other job because he does not fit the requirements under Chapter Six of the Constitution.

I will bring all those at the next sitting.

The Deputy Speaker (Sen. Kembi-Gitura): Very well. At least you have now told us that you are going to be able to substantiate. It is on HANSARD that you have mentioned seven items that you are going to prove to substantiate and it is so ordered that at the next sitting of the Senate, you have to substantiate by tendering and tabling documents.

The Senate Minority Leader (Sen. Wetangula): I will do it, Mr. Deputy Speaker, Sir.

Sen. Murkomen: Mr. Deputy Speaker Sir, the reason I raised the point of order is not in the seven areas of substantiating. Sen. Wetangula said that Mr. Chirchir participated in masterminding the greatest rigging using technology. That is the very reason I raised that issue and he must add it in the seventh list. To the best of my knowledge, Mr. Chirchir never worked for the Independent Electoral and Boundaries Commission (IEBC); maybe the Interim Independent Electoral Commission (IIEC). He has never been a head of a technology unit, he was then a Commissioner. He, therefore, must add the question of masterminding the greatest rigging. In his first statement, he never said that it was an allegation. He, therefore, must add it in his seventh list of issues because this is captured in the HANSARD.

The Deputy Speaker (Sen. Kembi-Gitura): This is a very serious issue, not because of any individuals named but because it is an allegation or a statement against a

Kenyan citizen. The HANSARD is clear. Sen. Wetangula will substantiate the allegations that he has made in the next sitting of the Senate.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker Sir, there is no problem whatsoever. The Independent Electoral and Boundaries Commission (IEBC) is a successor in title to the other. The distinguished Senator for Elgeyo Marakwet knows the facts that I am talking about.

Let me conclude by saying that from my position of leadership, I encourage both Houses of Parliament to pass this Report and move on to deal with the Bills both on election offences and on the amendment of the Elections Act. But more importantly, it is very critical that we all embrace this reform process so that there are no people feeling they have lost or won.

I want to stand here and defend Sen. Orengo and the entire team because I have heard some people alleging that Sen. Orengo and his team gave in too much. Hon. Kalonzo Musyoka, Rt. Hon. Raila Odinga and I have spoken publicly in full support and confidence in the product of this process and so has President Uhuru Kenyatta.

Finally, we came to where we are, not because we all of a sudden discovered our sanity but because there was interlocutors. Allow me to salute the leaders of various churches led by Bishop Korir of Eldoret, Canon Karanja of the National Council of Churches of Kenya (NCCCK), Bishop Okoth of Kisumu, Bishop Obanyi of Kakamega, Bishop Kilioba of the Pentecostal Evangelical Fellowship of Africa (PEFA), Bishop Rotich of the Army and the leaders of the Muslim community. All these people shuttled between the leadership of CORD and Jubilee in the midst of the demonstrations that we had. Allow me to also salute the diplomatic community, more particularly, the American ambassador Robert Godec and his British counterpart who shuttled between Jubilee and CORD consistently and tirelessly to make things happen.

More importantly Mr. Deputy Speaker, Sir, allow me to salute the Kenyans who lost their lives to bring sanity to the leadership of this country. There are people who are six feet deep and those who are still in hospital. They were crippled and suffered serious injuries because they wanted the country to find a direction of sanity that can take us to the next elections without the risk of a conflict. Those people sacrificed, including their own lives.

Allow me to salute the young men and women who, on hungry stomachs, braced the brutality of Maj-Gen.(rtd) Nkaisserry and his policemen on the streets of Nairobi; firing at them with water cannons, tossing teargas at them as if they are throwing cakes at children and boasting on television in the evening that “*kama hawaogi nyumbani nitawaosha tena.*” Kenyans made a sacrifice to make a point. Indeed, without those sacrifices, I can say without any fear of contradiction that we would never have formed the Joint Select committee to sit and bring what they have brought.

Allow me to salute people who at the beginning sounded obstinate and belligerent - they were digging in saying ‘never, no retreat no surrender’ - but came back and agreed to serve in this Committee. They turned out to be great negotiators and did a good job.

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Finally, I urge our beloved country and our politicians who think that there is no tomorrow that there is always tomorrow. We have no spare country; we have only one country called Kenya. Elections are not war. People who make elections look like war are the referees of those elections. Like I have said before, deprivation breeds resentment; resentment breeds rebellion and rebellion breeds conflict, and conflict can consume a country.

I urge of all us without exception that this new found path to a tranquil situation in elections must be embraced and those who have been chest-thumping and saying all manner of unhelpful things have to cease and embrace a spirit of brotherhood and sisterhood, so that this country can grow.

Finally, after going over this, we must fight the nightmare of tribalism, exclusion and corruption that is rapidly permeating itself into our body politic and threatening to consume our country.

I beg to support.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. Wetangula.

Sen. James Orengo, do you want to reply?

Sen. Orengo: Mr. Deputy Speaker, Sir, very briefly because we have been at this for very long. I thank the leadership of the House from both sides of the divide for the leadership they have shown in this matter. I also thank the membership of the Committee.

I want to respond on one issue only. Sen. (Dr.) Machage said that the commissioners have been treated unconstitutionally, but that is not true. As we speak, nobody has removed the commissioners. I can assure him that nobody is going to remove them at any time. I can also assure him that no commissioner has been forced out of office.

Mr. Deputy Speaker, Sir, no Commissioner has been forced out of office. Those who wish to remain can do so. That is not in doubt. The Committee was well aware about their legal limitations. The Members should look at Article 251 of the Constitution again. It provides about the removal of the Commissioners. We knew we could not go under Article 251. What we were looking for was vacation from that office which the Commissioners voluntarily told us that they were willing to do. That is how we started talking about a dignified exit from office.

However, having said that, Parliament has a great opportunity to show leadership on this occasion; that we can resolve conflicts amongst ourselves. This is the day we should show it. We will not resolve conflicts by looking at selfish interests as other leaders may do but by looking at the question before us today. I am encouraged by the spirit in this House.

Mr. Deputy Speaker, Sir, with those few remarks, I move.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. Orengo.

Hon. Senators, it is the end of the debate and as required under Standing Order No. 72, this is a Bill not affecting counties for purposes of voting by the delegations. It is a voice vote. Therefore, I will put the Question.

(Question put and agreed to)

RESOLUTION TO ALTER THE SENATE CALENDAR

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I beg to move:-

THAT, pursuant to Standing Order 28 (4), the Senate resolves to alter its Calendar in respect to Part III of the Fourth Session for the Sittings scheduled to resume on 13th September, 2016 instead commences on 20th September, 2016.

(Several Senators withdrew from the Chamber)

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, we still have some Business to dispense. I am requesting you to sit in.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I do not wish to speak a lot but I will be brief because we have been here since 9.00a.m., for which I am grateful and I do not take it for granted. I know it is our responsibility but I think this is over and above what is expected of us.

As Senators are aware, we have interrupted this recess three times. Every time we have interrupted it, we have had Senators here and on one occasion we missed one Member to put through the vote. However, notwithstanding, we had 23 delegations who were present. Therefore, I thank the Senators for being kind enough and responding to the national duty by interrupting the recess.

Mr. Deputy Speaker, Sir, secondly, during those three interruptions in the middle of the recess, we have transacted extremely useful Business. I am happy to note that all the Bills that had constitutional deadlines are now dispensed to finality. We need to applaud ourselves because of that national duty.

(Applause)

The country should rest assured that by Friday, 27th August, 2016 the two Houses will have discharged their responsibilities.

Thirdly and finally, I wish the Hon. Senators, fruitful remainder of the recess. It is in this connection, that I consulted with the Senate Minority Leader and the other House Business Committee Members and it was agreed that perhaps in order to adjust to that interruption, we extend the recess by one more week. Instead of resuming on 13th September, 2016, we resume on 20th September, 2016 so that we finalise the important Business that we have started this morning. The Report that has been adopted has two Bills which must be enacted as soon as possible to allow the process of reconstituting the Independent Electoral and Boundaries Commission (IEBC). I take this opportunity once more to thank Senators and wish them a fruitful recess. God bless you. God bless our

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country, especially on the very difficult agenda we have just passed; the Report on the IEBC and the next General Election.

Mr. Deputy Speaker, Sir, with those remarks, I beg to move. I request the Senate Minority Leader to second.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I beg to second this Procedural Motion that seeks to give the Senate an extra week of recess because we have eaten away a whole week of our recess by recalling Members twice. Although today, we have had an uninterrupted sitting, these are literally two sittings. We have sat in the morning and in the afternoon. We expect Senators to be out there also doing some public work, constituency work, *et cetera*.

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

[The Temporary Speaker (Sen. (Dr.) Machage) took the Chair]

Mr. Temporary Speaker, Sir, as we extend this recess by one week, allow me to acknowledge that the President has finally succumbed to public pressure and signed the Bill that caps interests into law so that we can tame banks that have been fleecing Kenyans. You saw cases in---

The Temporary Speaker (Sen. (Dr.) Machage): Senate Minority Leader, although it is really not unparliamentary but be fair in your language; that, the President has succumbed to public pressure is not fair.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, if you watched the television over the weekend, I personally put pressure. There are many others who did, including the Member who brought the Bill. They were threatening all manner sanctions from his own party; Jubilee.

The Temporary Speaker (Sen. (Dr.) Machage): You are entitled to your language. Proceed.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, sometimes I ask myself why this country likes copying. My colleagues including the Senate Majority Leader can bear witness. In America, banks cannot increase interest rates by 0.5 per cent without sanction from the Federal Reserve Director. They cannot. In England, the head of the Bank of England which is equivalent to our Central Bank will not allow any bank to escalate interest rates by one per cent without its sanctions.

I do not want to give a personal testimony but I can tell you that in 1995 I borrowed Kshs970,000 from then Kenya National Assurance to purchase a mortgage. By the time I sold another property to pay that loan, I had paid Kshs19,800,000 up from Kshs970,000. There are people who have suffered even more. Even with the *in duplum* rule that we adopted as law, banks do not care.

We have a governor of the Central Bank who does not seem to know what he is doing. He is busy telling banks that if, for example, Sen. (Dr.) Machage goes to withdraw Kshs1 million you have literally to write an essay to explain what you will do

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with it instead of curbing and controlling rogue banks. That is why you hear, “Equity Bank made Kshs30 billion and another one the same.” All this is from properties of people that they are selling. There is nobody in this House, including my colleagues across who do not know anybody who has suffered at the hands of banks. In the villages and on the streets of Nairobi, there are people who are walking while talking to themselves like lunatics because of bank loans.

(Laughter)

The Temporary Speaker (Sen. (Dr.) Machage): Let us go back to the main point lest I hit you on irrelevancy.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, normally in this Motion you say anything under the sun. It is like contributing to the President’s Speech. We have sat for a long time.

I beg to second that we extend our recess by an extra week and as we go on to our extended recess, I wish each Member a very good recess and congratulate all of you, just like my brother did for the job well done this afternoon.

I fully appreciate your out of turn dissent on the matter---

(Laughter)

The Temporary Speaker (Sen. (Dr.) Machage): Order. The minorities will always be heard when the majority have their way.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, that is why I am saying that we appreciate your point of turn in dissent. As your leader, I had pronounced publicly that every Member must be whipped to support. You dissented, but I will not take any action against you.

I beg to second.

The Temporary Speaker (Sen. (Dr.) Machage): Order. You cannot take action against the Speaker.

(Laughter)

On a lighter note, he is the Principal of my party.

(Question proposed)

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I strongly support this Motion, not because I have become lazy but because I want to appreciate the fact that the few days we have been here, we have done tremendous work. It gives me a lot of pleasure that we have now met all the deadlines on all constitutional Bills. That is yet

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another statement that this Senate will forever be the reason why constitutionality and constitutionalism will be upheld in this Republic.

Secondly, I am a very happy man that finally because of this Special Sitting, we have adopted as it is, the Report of the Joint Parliamentary Select Committee on the IEBC.

As I go to recess, I remember and will do so for a long time, the speech you have made this afternoon touching on the position of the minority communities in this country. I think you say these things because you are remembering that the outgoing disgraced former chairman of IEBC is from a minority community. As you said these things, I have been reflecting.

We have been told on 411 News Bread that Mr. Hassan Wario the Cabinet Secretary (CS) for sports is currently at the Directorate of Criminal Investigations---

(An hon. Member spoke off record)

Mr. Temporary Speaker, Sir, I am being forced to use other people's words. He is answering to questions by detectives in respect of the allegations concerning the fiasco in Rio de Janeiro. I hope the CS Hassan Wario will receive justice. I hope that nobody wants to use him as a sacrificial lamb. He cannot be a scapegoat. The real problem that was in Rio was not the CS. There is a cartel called the National Olympics Committee of Kenya (NOCK) and that is where the problem is. The Government must crack the cartels at the NOCK and FIFA Kenya Branch if they want to get sports going.

I want the youth to keep on watching, listening and remembering what the Jubilee Manifesto said. The Jubilee Coalition conned the youth of this country into voting for them. They promised them that upon being elected, they will construct ultramodern stadia in Mombasa, Nakuru, Nairobi, Eldoret and Garissa. As we speak today, we do not know whether the Jubilee has given---

The Temporary Speaker (Sen. (Dr.) Machage): Sen. (Dr.) Khalwale, if I were you, I would have waited for their term to come to an end. Now you are waking them up.

Sen. (Dr.) Khalwale: They have no time. Even if they try, we have got them. As we speak now, the Senate Majority Leader, who is a youth, will also agree with me that I am crying for many youths including those ones in Tharaka-Nithi, that not even a single wheelbarrow of sand intended to construct a stadium has been delivered. The Jubilee government instead went to Chuka and annoyed and irritated the youth by trying to honour some characters for the tremendous work they have done for the people of Chuka by naming the great roads of Chuka after them.

Please, the people of Chuka; hold in there. How can you build a road in honour of the Deputy President? Is he not the one that we are told that opinion polls say that his Office is the most corrupt in the Republic of Kenya. It appears like there is no achievement until you put it on the scale at the international level. Internationally, Kenya has been rated to be the third most corrupt country. So, if Ruto is the most corrupt person in Kenya, it means he is the third most corrupt person in the world.

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The Temporary Speaker (Sen. (Dr.) Machage): May I remind you that newspaper information is not admissible in this House.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I was using opinion polls but not newspapers. In the current age of technology, there are many ways of getting access to opinion polls and not necessarily through the media. If the Deputy President of Kenya is the third most corrupt person in the world, it begs the question; what happened to Chapter Six of our Constitution on Leadership and Integrity?

Because the Senate Majority Leader is respectfully in the House today and he is on record for having---

Sen. Ndiema: On a point of order, Mr. Temporary Speaker, Sir. You have heard Sen. (Dr.) Khalwale saying that opinion polls indicated Ruto to be the most corrupt person. Did the opinion poll actually indicate the individual or the office? Could he substantiate that?

The Temporary Speaker (Sen. (Dr.) Machage): Very well, you have been challenged.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I take the challenge in my stride. Allow me to remind my good colleague from Trans Nzoia that Parliament does not expect a debater to substantiate the obvious. If you are in doubt---

The Temporary Speaker (Sen. (Dr.) Machage): Order! Sen. (Dr.) Khalwale, it might appear obvious to you but that is a subjective issue. Whatever may be obvious to you may not be obvious at all to other legislators in this House. So, just go ahead and do the noble thing by substantiating.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I want to do it gladly and thank you for the invitation.

Mr. Temporary Deputy Speaker, Sir, the opinion poll indicated office by office. The first is the Office of the Deputy President; the second is the Office of the President; the third is the *aaah* of the *aaah*; the fourth is the *eeeh* of the *eeeh*; all of them offices of Jubilee.

The Temporary Speaker (Sen. (Dr.) Machage): Order! Order! You are a medical doctor. I know your IQ is far much above average and you have a very good memory. You are supposed to just clear the air whether the name of Deputy President William Ruto was mentioned or just the office. That is all. Why do you labour a lot about the *aaah* and the *eeeh*?

(Laughter)

Sen. (Dr.) Khalwale: Thank you, Mr. Temporary Deputy Speaker, Sir, I wanted to make it abundantly clear because you had suggested that these Senators are not informed. So, I wanted to make it even clearer. Therefore, if number one and two are the offices of the Deputy President and the Office of the President, the question, is Sen. Ole

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Ndiema; who is the head of the Office of the Deputy President? The buck stops with the head. The head is called William Samoei arap Ruto?

The Temporary Speaker (Sen. (Dr.) Machage): What is it, Sen. Ole Ndiema?

Sen. Ole Ndiema: Mr. Deputy Speaker, Sir, on a point of order. I asked for substantiation because we know an office comprises of many officers. An office may not necessarily mean the individual who is heading that office. What I asked is; can you substantiate whether that report actually indicated the name of the Deputy President by the name William Ruto or was it the office. Can you clarify that?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, instead of beating around the bush, to further substantiate, some of the scandals that are the reason why the Office of the Deputy President is in the lead, include an occasion where none other than the President of the Republic tabled in a Joint Sitting of this Senate and the National Assembly the list of the names of the people who were named as being suspects. One of those people involving Kshs200 million was none other than the Chief of Staff of the Deputy President, Ms. Mary Keittany.

The Temporary Speaker (Sen. (Dr.) Machage): Order! Order, Sen. Khalwale! May you have a seat. I know you are a good legislator and a seasoned politician in this House. I call upon you to look at Standing Order No.90(3):

“It shall be out of order to use offensive, insulting language whether in respect of Senators or other persons”

Please, I may not reprimand you too much on this but tilt your discussion and tone down on mentioning the Deputy President on this or else I will hit, and I will hit very hard.

Sen. (Dr.)Khalwale: Mr. Deputy Speaker, Sir, so guided. As you guide me---

The Temporary Speaker (Sen. (Dr.) Machage): I have not allowed you. You heard my order to Sen. (Dr.) Khalwale and that was enough.

The Senate Minority Leader (Sen. Wentangula): Mr. Deputy Speaker, Sir, on a point of order. Is it in order and is it Parliamentary for the distinguished Speaker to tell a Member that you will hit and hit very hard? The Speaker only rules either for or against an issue. I am on a point of order Mr. Speaker.

The Temporary Speaker (Sen. (Dr.) Machage): I thought you are through.

The Senate Minority Leader (Sen. Wentangula): Mr. Deputy Speaker, Sir, I get worried because the Chair is an impartial Arbiter. The Chair rules a Member out of order or rules you in order to proceed.

The Temporary Speaker (Sen. (Dr.) Machage): Very well I have heard that. Let me hear another point of order.

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Temporary Speaker, Sir. My point of order is twofold; one, whether the Leader of Minority is in order to challenge the Speaker. To the best of my knowledge, the Speaker cannot be out of order. Secondly, is it in order for Sen. (Dr.) Khalwale to impute the motives he has imputed considering that corruption is a crime and criminal law is

personal. Criminal responsibility is personal. If somebody commits a crime, they are dealt with personally and not through proxy or office. Is he in order?

The Temporary Speaker (Sen. (Dr.) Machage): Of course, he is not in order and for Sen. Wetangula; “hit” is an English word that could mean beating, application of fire and so on.

The Senate Minority Leader (Sen. Wetangula): Which is not applicable in this case---

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Wetangula! Continue, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Thank you, Mr. Temporary Speaker, Sir. Allow me to respond to the point of order by the Senate Majority Leader. Had he been listening to me carefully, he would have realized that I was not discussing the conduct of the Deputy President. The rules of debate do not allow me to. All I was doing was asking oversight questions. Once you are in public office, you must be prepared under a democratic dispensation like the one we have in this country---, you must be prepared to live with the questions of what, why, when, how and why not.

Whenever we ask this question, people start running away saying you are debating my conduct, they are running away saying it is hate speech; not that way. If people in public office cannot take such kind of questions, they are free to tender in their resignations and go home. It is about our money and people’s private money. They have their own privet money. We are demanding for accountability of how public offices are run and how public resources are expended.

Mr. Temporary Speaker, Sir, having said those many words, I hope I will come back from the recess a very happy man that the Sports and Culture and Arts Cabinet Secretary Hassan Wario has been given justice and not converted into a sacrificial lamb. I support.

Sen. Obure: Thank you, Mr. Temporary Speaker, Sir, for the opportunity. I stand to thank the leadership of this House for convening this Special Sitting. I want to congratulate my colleagues Senators. I believe we have put in a genuine hard work to be able to accomplish the important business we were convened to transact; in particular, that we were able to debate and vote on the important constitutional Bills which had the deadline of 27th August, 2016. All that is behind us now, and I appreciate and thank the efforts of all the Senators.

Mr. Temporary Speaker, Sir, we have also debated and adopted the Report of the Joint Select Committee on matters relating to the IEBC. We hope to put in place an institution which is credible and acceptable by all Kenyans to manage our elections. We all agree that the conduct of fair, credible and democratic elections is an important prerequisite for stability and harmony in any country in the world. We are looking for good days ahead of us.

In respect to the one week extension, I believe we deserve this and I wish to take this opportunity to wish every Senator a very fruitful vacation.

Thank you.

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The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Temporary Speaker, Sir. I want to urge the Chair to, probably, reduce the time of contribution so that we can run through the list and allow Senators to attend to other things. We can each be given two minutes because this is a Procedural Motion.

The Temporary Speaker (Sen. (Dr.) Machage): Very well, the subsequent legislators will have two minutes.

Sen. Wako: Mr. Temporary Speaker Sir, I am concerned that if part three of the fourth session of the sitting of the Senate is to begin on 13th September, 2016, some of us have suspicions about it. It, therefore, appeared to us that the Session will be mired in negativity. I am very pleased that the negativity will be no more now that we will start on 20th September, 2016.

We have achieved a lot. When I retired as the Attorney General, one of the greatest achievements I had achieved with other stake-players was that we ensured that the legislation which was supposed to be enacted under the Sixth Schedule of the Constitution within one year was actually enacted within one year just before I retired.

I also want to reiterate that I do hope that there will be no need for diplomats and church leaders to come in for us to put our heads together in future. There will also be no need for people to be injured and even end up dying before we can sit round a table and solve problems. We should be able to see the problem and solve it. There would have been no need for us to have been called during recess had we done this before then. This would have been passed in good time about a year or so ago and we would now be focusing on implementation.

I wish all the Senators good recess. Let *wananchi* see what you are doing in the Senate. Please, explain to them because the role of the Senate has not been understood by the electorate.

Sen. Hassan: Mr. Deputy Speaker Sir, it was wise and pragmatic for the leadership to realize that they had called us far too many times. I thought this recess was supplied so as to give us an opportunity to go into our fields. They must try to see if they can communicate so that we also limit the committee meetings so that people can go to the ground and be felt. Unless the leadership has very compelling reason to call us between today and the 20th September, 2016, I believe that the decision they made is wise. Let us now serve the full length of our recess for us to be visible in the counties that we serve.

Sen. Ndiema: Thank you Mr. Temporary Speaker, Sir. I congratulate the leadership of this House and all Senators for the dedication that has seen us clear all the business that was before us, especially Bills with constitutional deadlines. We have done it in record time despite the fact that these Bills always reach us late. Today we have had a marathon Sitting, I believe like in the true athletics spirit of Kenya that our marathoners have shown. Kenyans won quite a number of medals. We are proud of our athletes more so, our marathon runners who won both the female and male titles in marathon for the first time ever. I congratulate them.

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As we go on recess, I wish all Senators well. I hope that we shall be given good time to be with our constituents, to see what is happening in the counties. I also call upon the governors and the county governments to put more effort to implement whatever projects they had planned, so that we do not get negative reports about some funds have not been utilized. This is because Kenyans are looking forward to development. I also call upon Kenyans to embrace the spirit of togetherness and being mindful of one another.

Thank you, Mr. Temporary Speaker, Sir.

Sen. Abdirahman: Mr. Temporary Speaker, Sir, I join my colleagues in appreciating the efforts of the Joint Select Committee of Parliament that prepared a Report worth mentioning and recognizing. I applaud the manner in which they conducted the business, particularly the bi-partisan approach with which they handled these matters that had a lot of divergent views. They carried the country together. They carried both Houses and the leadership from both sides together. It is a very good effort.

The history of IEBC in this country has not been very good, honestly. The Kivuitu-led commission was sent home and now another one is about to be sent home. I recognize the legal, institutional and policy recommendations suggested by the Joint Select Committee. In fact, it is important to build sound institutions. Individuals come and go, but institutions that are built firmly on sound principles normally last. I would encourage that beyond picking individuals to serve as commissioners, our country, leadership and legal minds must set up sound systems that will move us forward in the years to come.

Finally, I thank the top political leadership in this country for the commitment they showed towards restoring peace and order and creating harmony amongst the various communities in this country. Kenya is not a small country; it is a country that has many tribes.

The Temporary Speaker (Sen. (Dr.) Machage): Your time is up.

Sen. Godliver Omondi.

Sen. Omondi: Mr. Temporary Speaker, Sir, I join my colleagues in supporting the Motion on the alteration of the Senate Calendar. As we proceed on recess, I would like to pass the message that the Bill on the one-third gender rule is for either gender. A time will come when more women will be elected and this Bill will support more men to be in Parliament.

We need God's intervention to deal with the issue of corruption in this country. This is because it is the common *mwana nchi* who is suffering in the process. It is the high time that everybody goes back to God. At the end of the day, everything that we have is provided for by God. I say this with a heavy heart. There is corruption even in sports and the sportsmen and women are suffering.

I support the Motion.

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Senators, we remain seated because I have not put the Question. However, it is a procedural Motion and the Mover does not need to reply.

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(Question put and agreed to)

ADJOURNMENT

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Senators, this brings us to the end of today's session. We have no other business today. Therefore, the House stands adjourned until Tuesday 20th September, 2016 at 2.30 p.m.

The Senate rose at 4.30 p.m.