

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 28th December, 2016

Special Sitting

*(Convened via Kenya Gazette Notice
No. 10682 of 23rd December, 2016)*

*The House met at the Senate Chamber,
Parliament Buildings, at 2.30 p.m.*

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

PRAYERS

POINT OF ORDER

CLARIFICATION ON NATURE OF SPECIAL SITTING

Sen. Orengo: Mr. Speaker, Sir, I stand on a point of order to raise two or three significant issues relating to the business that has just been called out. I begin with making the point that one of the things that I have been very impressed about the Senate; and I think it is very important that I say this: The sense of decorum and debate today has kept the great traditions of Parliament. I wanted to invite hon. Members to believe with me that political insults are normally the business of politics.

However, the kind of political insults that were experienced in the country are not good and healthy. In fact, I encourage our Members of Parliament (MPs) that if you want to know how to use political insults, go into the debates of people like Retired President Mwai Kibaki who would direct an insult to you and you will not realise that you have been insulted. It would take you about a day to realise.

The Speaker (Hon. Ethuro): Order, Sen. Orengo. You may wish to help the House. Let us do the order first, and then, I will invite points of order on that particular order.

Sen. Orengo: Mr. Speaker, Sir, it is not on the order. Let me leave all that and come to the point.

Mr. Speaker, Sir, I did not want to raise this point of order but when I saw you leave with the mace then I had no alternative but to come and raise this point of order. There are situations where we have been alive to the fact that the mace has significance.

When it is on the Table, it has a special significance. When it is removed, it has a special significance. In fact, I had pointed out to some of my colleagues that if the House would see it fit to adjourn even for half an hour or one hour, they would leave the mace here so that we do not get into these legal problems that we have got ourselves into; but now that we have got into this legal problem, I want to bring your attention to the Gazette Notice that convened the National Assembly and compare it to this Gazette Notice that convened a Special Sitting(s).

I begin with the Gazette Notice of 16th December, 2016, signed by the Deputy Speaker of the National Assembly, Joyce Laboso on 13th December, 2016. The heading of that Gazette Notice No.103371 reads: - Constitution of Kenya, the National Assembly Standing Orders. It says “Special Sittings of the National Assembly.” The body of the Gazette Notice says:-

“Pursuant to the provision of the Standing Orders and Order No.23 (3) of the National Assembly Standing Orders, it is notified for the information of Members of the National Assembly and the general public that two Special Sittings of the Assembly shall be held in the National Assembly Chamber.”

It was not left to doubt. In fact, on that particular day, the first day there are two sittings although interrupted at some point.

The Gazette Notice of 20th December, 2016, signed by the Speaker of the National Assembly reads:-

“Pursuant to the provisions of Standing Order No.29 (3) of the Standing Orders of the National Assembly, it is notified for the information of the Member of the National Assembly and the general public that two Special Sittings of the Assembly shall be held in the National Assembly.”

In fact, he gave even the time; the first sitting at 9.30 a.m. to 1.00 p.m. and the subsequent sitting at 2.30 p.m. and thereafter.

Mr. Speaker, Sir, because of the problems they had run into in the first Special Sitting, they made a provision that the second sitting of the fourth Special Sitting will be until the end of business but before the end of the day. When we come to our own Gazette Notice, it says:-

“Notice is given to all Senators that pursuant to Standing Order No. 29 of the Senate Standing Orders, on the request of the Senate Majority Leader and with the support of 15 Senators, I have appointed Wednesday for a Special Sitting”.

It says “for a day” but for “a Special Sitting”.

The Standing Orders thus make a distinction between a Special Sitting and a sitting day so that it is not a matter of conjecture.

If I draw your attention to the definition of “a sitting”, it means a period during which the Senate is sitting continuously without adjournment. There is the emphasis; “continuously without adjournment” and includes any period during which the Senate is in Committee. Two or more periods of sitting within the normal period of one sitting or within an equivalent period shall not rank as more than one sitting.

What I am trying to say is that whether you use the second part or not, you are still caught up with your gazette notice because the gazette notice talked about one sitting.

I beg to move:-

That in accordance with the Standing Orders of the Senate and notice given in the gazette notice, that this Assembly has no legal capacity to continue with the deliberations of the House until you gazette another sitting for purposes of transacting the business that you have enumerated.

This matter is so crucial on its own and we probably require a ruling from you. I want to rest my case there before I come to the second point.

Essentially, what I am saying is that you had called for a Special Sitting and not two sittings. We are now in a second sitting of the Senate. Much obliged.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. We had seen that coming, considering that the mace was moved today. There was a time we sat here and the mace was not taken. I thought Sen. Orengo was going to address us on why he thinks this is still not one sitting.

In his reading of the definition of what is a sitting, when he was reading - Sen. Orengo is my mentor and I have followed him for many years since I was in high school - midway he noticed that there was a contradiction down there. I could see he paused a little bit and was beginning to think through.

If you read the definition of what is a sitting, the definition part of page four of the Standing Order No. 2(1)(a) defines a sitting as a period during which the Senate is sitting continuously without adjournment and includes any period during which the Senate is in Committee; but two or more periods of sitting within the normal period of one sitting, or within an equivalent period, shall not rank as more than one sitting.

It is so straight forward. It is in plain English. I do not think it needs interpretation. It says that if it is a continuous sitting divided into two parts - if I can make it in a more simple way - then it still remains to be the one sitting that you gazetted.

When we adjourned this morning there was no extension of time when we reached 12.30 p.m. because the sitting was still on. We sat here past 1.00 p.m. because we were still in one sitting. If we were to continue sitting today up to midnight, we would still be on one sitting even if we adjourn again at about 6.00 p.m. and come back at 7.00 p.m.

My request to my senior counsel and my friend is, let us move away from the semantics. We should go to the substance of our debate today. As a House, we have already demonstrated that we are a House of maturity and we are ready to work on the substance. Considering the plain reading of that definition, I do not think that this is a horse that we should continue flogging.

Sen. (Dr.) Machage: On a point of order Mr. Speaker, Sir. Having keenly listened to Sen. Murkomen, I would want to draw your attention to Standing Order No. 30 and seek your interpretation of Standing Order No. 30(1) which states:-

“Unless the Speaker for the convenience of the Senate otherwise directs, the Senate shall meet at 2.30p.m. on Tuesday, Wednesday and Thursday, but more than one sitting may be directed during the same day”.

It means that what we did in the morning was one sitting and this is another sitting.

Sen. Ongoro: Mr. Speaker, Sir, I wish to reiterate what Sen. (Dr.) Machage has said. It is true as Sen. Murkomen has said that this is a House of records and a mature House and we have to debate soberly. Remember that we sometimes refer to precedence that has been set before in some decisions that have been taken here.

The word “continuous” was deliberately used. When you gave your ruling just before we adjourned, you specifically used the words “the House stands adjourned”. Your choice of the word “adjourned” has set this ball rolling. I actually left the chamber with all my things and then realized that we were supposed to come back.

I thought then it would have been in order if I found a different Order Paper on my seat. I have found the same Order Paper. That simply means that this House is improperly constituted. We are not supposed to be here because the mace was withdrawn and you used the word “adjourned”.

We have come back without due process because we wanted to hear your ruling on this. Be informed that the ruling that you will give is going to be used by other Houses in the years to come. I feel that I am part of an illegality which is the un-procedural sitting today.

Hon. Senators: Point of information.

Sen. Ongoro: I do not wish to be informed on that one.

I want to hear what the Speaker is going to rule with regard to this because this is grave. The mace was withdrawn, we left the House, we do not have another Order Paper and we are continuing with an illegality. We are seated here as 67 intelligent Kenyans debating something that is so obviously an illegality. I want to hear the way forward from my Speaker.

Sen. Elachi: On a point of order Mr. Speaker, Sir. I want to thank the Senators. I also want to remind them of the time when we debated the impeachment Motion of the Deputy Governor of Machakos County. The mace was removed; we came back three times in this House and at 7.00 p.m., you came in with the mace. I would want to hear the interpretation of that procedure.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, before I make my point of order, allow me to appreciate you, following your ruling. Just like the police were taken away, the Public Gallery is now open to the public. We feel so independent from the Executive this Afternoon. For this reason, we want us to apply the law as it is.

(Applause)

I would like to bring to the attention of the Chair that following what transpired in the National Assembly, a number of suits are in the High Court. What we are doing now, it should not be surprising that it will attract suits in the High Court. Therefore, one of the strongest grounds that a Kenyan will use is that at 2.30 p.m. today, there is no Sitting. This Sitting does not exist. Kindly listen to the Office of the Clerk. When the Office of the Clerk heard you adjourn the House, they dismantled our desks in the usual manner and thought that we had gone. They did not do that out of ignorance. It is because the Senate Business Committee (SBC) had given them instructions to prepare only one Order Paper for 10.00 a.m. which ended at 1.20 p.m.

The SBC did not give the Clerk instructions to prepare an Order Paper for the afternoon sitting. Therefore, you will find it very difficult defending it in court; that this is a legal sitting when it has no Order Paper. The only way we could have continued with this Order Paper is if you had allowed the Mace to be lowered and covered. Alternatively, you could have allowed people to go out for lunch in turns the way you have done before.

Mr. Speaker, Sir, I draw your attention to Standing Order No.22(2) which speaks to the traditions of this House. It has already been on record in this House during Special Sittings ruled by none other than yourself that Members would not stop until the business is finished. We could have continued until somewhere in the night and finished. Save us from the pain of us not speaking in vain by immediately stopping this illegal Sitting, so that then you can go and gazette afresh with clear instructions for this Senate to reconvene.

The Speaker (Hon. Ethuro): I will allow you, Sen. Orengo. However, before you, let me hear Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, the last time we had a Special Sitting, I had the privilege of being a Temporary Speaker. It was during the debate on the Election Laws (Amendment) Bill. That is the time Jubilee Coalition was merging in Kasarani, Bomas and many other places.

(Laughter)

When we rose, we did not adjourn the Sitting. I was seated where you are seated today. The Mace was lowered, covered in blue. We left and came back at 2.30 p.m. In fact, I remember this correctly because Sen. Murkomen after collapsing his political party came back, attempted to speak, but I denied him the opportunity. He accused me of dictatorship.

(Laughter)

The point is that the last precedent is what Senators Orengo and Dr. Khalwale are speaking to and not during the time of Sen. Elachi.

In my case, I have a second issue. When I look at the Gazette Notice, today is supposed to be an extra ordinary and exceptional Sitting. We are not supposed to have Ordinary Business that we do ordinarily. Otherwise, why did we adjourn to go on holiday and come back and do the same things that we do normally?

If we were to address ourselves to the words of Standing Order No.29(2), whether now or later, give directions so that we know because somebody else will sit there, maybe myself or another person; what was so urgent and so exceptional which has no constitutional deadline and would have been done in January or any other time?

This matter has put the country in so much tension. The police are confused and barricading Parliament because of this Gazette Notice. In terms of your ruling and definition, since this Special Sitting did not fall under Standing Order No.62, it can only fall under the words “urgent” or “exceptional business.” We would like to know, in this Gazette Notice, what is so urgent and so exceptional that we had to be recalled during the

Christmas vacation so that we can form good precedence for the purpose of this Senate and another.

Sen. Wangari: Mr. Speaker, Sir, I also laud this Senate in the way we handle our Business. We have set the pace on how it should be done and that is why we are also debating this one.

When I read Standing Order No.30, I am very compelled to agree with Sen. Orenge on the gazettment of this Sitting. This Sitting does not fall in the purview the Standing Order No.30 on hours of meeting. In fact, under Standing Order No.30(3), on a normal day, we can actually meet any other time. However, on this one, it is under Standing Order No.29 which is very specific on a Special Sitting. The way the Gazette Notice is worded, I am compelled to agree that we should have gazetted the time.

Standing Order No.29(3) says:-

“The Speaker shall, by notice in the Gazette, notify the Senators of the place, date and time appointed for the Special Sitting of the Senate.”

It does not leave room for any maneuver because it specifies the time and place. The way I read and interpret the Gazette Notice, that already happened in the morning. We are now in another Sitting. We should review and do another Gazette Notice for another Sitting.

(Applause)

The Speaker (Hon. Ethuro): Sen. Orenge, finally!

Sen. Orenge: Mr. Speaker, Sir, I have been wondering why Sen. Wangari was a student leader at the University of Nairobi. Mark my words; I have not talked about Nairobi University. People who did not go to that institution call it Nairobi University. Today I got the answer why she, not only went to the University of Nairobi, but was a distinguished students' leader.

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

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. Is Sen. Orenge in order to insinuate that some of us who had divergent opinions from Sen. Wangari like myself and others, who went to the University and was SONU Chairperson-- would that mean there would be any contradiction from the line of going to The University? In fact, we shared the same faculty of law with Sen. Orenge who preceded all of us many years ago.

Sen. Orenge: Mr. Speaker, Sir, Sen. Murkomen knows what I think about him. However, when he spoke today, I could not make that reference. I think the party is better left that way.

(Laughter)

In response to what Sen. Murkomen said and I plead with you to read that second component of the Standing Order dealing with the definition of a Sitting which is on page 4 of the Senate Standing Orders. It says:-

“A sitting means a period during which the Senate is sitting continuously without adjournment and includes any period during which the Senate is in committee.” That is the first component.

The second - which I want you to listen to very carefully - but two or more periods of sitting within the normal period of one sitting or within an equivalent period shall not rank as more than one sitting. This means that if we had a gazette notice saying we meet from 2:30 p.m. to 6:30 p.m., that is a normal period. So, you could within that normal period break and go for a cup of tea without taking the Mace and continue and it shall not be counted as more than one sitting. That is my understanding.

Finally, I want you to allow me just to add something to what Sen. Mutula Kilonzo Jnr. has said. He has brought up a very important point which I meant to speak to, but I wanted the Speaker to make a ruling on the first point that we raised which is in Standing Order No. 62.

This is really important because one day, unless we obey the rules of the House, there will be another Speaker sitting where you are sitting and probably there is a bridge between my village and the village where my grandmother comes from and I can come and convince the Speaker to call a Special Sitting. The Speaker can do that if you take the argument of Sen. Murkomen which way I am persuading you not to, because that will be a tragedy of great magnitude.

The Standing Order No. 62, particularly 62(b) says:-

“For purposes of this part, a special motion is one moved pursuant to any of the following Articles of the Constitution...”

All of them are in relation to Articles of the Constitution. The general rule of interpretation of statutes, and that includes delegated legislation, is that if you have a general genre or type of word used in a statute and this one, the commonality of the issues of substance that can be discussed under Standing Order 62(b) all emanate from constitutional provisions.

We are saying that really this House should not be having a Special Sitting if it had nothing to do with any of the enumerated provisions of the Constitution. One of the things that we can clear outrightly is that the Bill is a subject of the next Order which has just been called and has nothing to do with the Articles of the Constitution which are mentioned in this Article 62(b).

The second point is that if it is something that is exceptional then it requires of you to look at that business to determine whether it is exceptional or has some urgency. I want to convince you that looking at the Bill, there is no sense of urgency. This is a Bill that was published in 2015 and has been frozen since then and has just been revived in the last two months. I, therefore, want to persuade you that there is no urgency just looking at the Bill itself.

On the second point as to whether there are circumstances which will find favour with you, to make it a business of this Sitting; what are those circumstances? This is because you have to give a reasoned determination under Article 47. If you make a decision we must know why that decision was made. Under Article 47, I do not see anything which is urgent on this particular Order or business. It is only that Jubilee normally cannot make up its mind in time. You think before you make a decision, once you make a decision, you want to turn it.

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it Sen. (Prof.) Kindiki?

The Senate Majority Leader (Sen. (Prof.) Kindiki): I have a lot of respect for the legal genius in Sen.Orengo but I am afraid that a few things cannot go unchallenged.On this one, I am tempted to suspect there is a game other than what we know the law ought to be and interpreted.

One, this Gazette Notice identifies the time unlike what my colleague Sen.Wangari said. It is 10 a.m. In ordinary interpretation of what today's sitting therefore is, it is any time from 10.00a.m. to midnight.

If the end time is not defined - and I am not saying it should not have been defined. I am saying that in future it should be defined. However, when it is not defined, it means then that the sitting continues but it cannot extend beyond midnight of today. That is the first point.

(Sen. Bule interjected)

Mr. Speaker, Sir, protect me from the Senator for Tana River.

The Speaker (Hon. Ethuro): Order Members. The Senate majority leader has requested special protection from the senator of Tana River. He will be accorded that protection.

The Senate Majority Leader (Sen. (Prof.) Kindiki): It is not true to argue that time has not been defined. It has been. The only problem is that the end time was not defined and even if so, ordinarily the day will end at midnight.

Secondly, on the definition of what a Sitting is which Sen.Orengo has really struggled to find a rationale for trying to nullify this afternoon's proceedings, the last part of the standing order No.2, if you allow me just to read again says:-

“But two or more periods of sitting within the normal period of one sitting”

The normal period of one sitting today, when the end time was not given, ends at midnight. It cannot end before midnight unless the Gazette Notice had said it is from 10.00 a.m. to 1.00p.m. or to 12:30.p.m. So, it is as simple as that, and I beg you and I urge our colleagues not to lose the focus that we started this Sitting with in the morning.

This is because we made a lot of very persuasive remarks about how this House looks at the bigger picture and cannot subvert substance with technicalities. I beg that you rule on this one because Sen.Orengo alone has taken over 30 minutes speaking on one point.

The Speaker (Hon. Ethuro): Order, Members. Some of those issues were similar to the ones you are raising this afternoon. Every intervention invites another. Most of the Members asked for my interpretation, which I will give.

(Sen. Bule consulted loudly)

Order, Sen. Bule! The substantive business will come shortly and I will give you an opportunity.

The issue here is what constitutes a Special Sitting. Is it one continuous sitting including the Committee, which is not the case or is it more sittings within the same sitting? The operational word is “but,” which is the opposite of the provision given. It is the opposite of ‘continuous’. It means we can break; it is simple English. To be honest, there is no major issue. We looked at these matters even before I made the pronouncement and I satisfied myself. Sen. (Dr.) Khalwale threatens that I need to defend myself in court. I think he is a stranger to court proceedings.

(Laughter)

If there would be such an opportunity, the case is tight. Regarding the question whether a Special Sitting can be continuous or it can be broken, I submit that according to that meaning, the proper interpretation is that it can be continuous or we can break within the same sitting. We do not have two sittings; we have one Sitting. That is why we are not changing the Order Paper.

Sen. Ongoro did not complete listening to me. She only heard about the adjournment, but never heard when we will resume. There are also the words ‘until 2.30 p.m.’ How could you carry your luggage?

Standing Order No. 29 (2) allows me to interrogate the request of the Special Sitting. That request is interrogated on three things. Is it according to Standing Order No.62 on Special Motions or is it a matter of urgency or exceptional circumstances? Unless you do not live in the great Republic of Kenya, you are not a candidate or a voter in the next elections or you are not aware of what has been happening in our body politic, there can be nothing greater, more urgent, and more exceptional than trying to sort out electoral matters in good time.

(Loud Consultations)

The Senate Majority Leader was a bit shy. Sen. Orengo knows something better than me; that it is in his own interest that this matter is resolved, so that the events planned for the new year may be varied. Let me just put it that way, deliberately. There is some determination in our country that this is so serious and important and it must be resolved in a way. We are taking advantage of a legislative process, given that the matter was referred from one House to the next House. It would be immoral, illegal and uncaring for the representatives of the people, who are directly elected to perform that duty, to continue sitting on a matter of such grave importance. That is what helped my determination, that is the way I saw it that time, that is the way I am seeing it today and it is the way we will proceed.

Let us proceed to the next Order.

(Sen. Bule consulted loudly)

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

Sen. Bule: Mr. Speaker, Sir, whatever the ruling, we are totally not in order.

(Laughter)

The Speaker (Hon. Ethuro): Order, Sen. Bule! You are challenging a ruling that I have made.

(Loud consultations)

Sen. Bule: Mr. Speaker, Sir, I am referring to the House and not you. Can I 'vomit' what I am trying to say? Could I be heard?

The Speaker (Hon. Ethuro): Order, Members! Sen. Bule. You may resume your seat. I will be the last one to deny you your moment of glory today, but the way you are proceeding, you want to challenge my ruling, which I have already done. You want to vomit, which is even worse. There are better places for such.

(Laughter)

Let us proceed.

BILL

First Reading

THE ELECTION LAWS (AMENDMENT) (NO.3) BILL
(NATIONAL ASSEMBLY BILL NO.63 OF 2015)

*(Order for the First Reading read- Read the First Time
and ordered to be referred to the relevant Departmental Committee)*

(Loud Consultations)

Hon. Senators: Point of Order! Point of Order!

The Speaker (Hon. Ethuro): Let me make my Communication before I entertain your points of order. My Communication might help in a way.

COMMUNICATION FROM THE CHAIR

PASSAGE OF THE ELECTION LAWS (AMENDMENT) (NO. 3) BILL
(NATIONAL ASSEMBLY BILL NO. 63 OF 2015)

The Speaker (Hon. Ethuro): Hon. Senators, I wish to report to the Senate that pursuant to Standing Order 40 (3) and (5), I received the following Message from the Speaker of the National Assembly, on 23rd December, 2016, regarding the passage of the Election Laws (Amendment) (No. 3) Bill (National Assembly Bill No. 63 of 2015):-

“Pursuant to the provisions of Standing Orders 41 and 144 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly.

Whereas, the Election Laws (Amendment) (No. 3) Bill (National Assembly Bill No. 63 of 2015) was published vide Kenya *Gazette* Supplement No. 189 of 27th November 2015 to give effect to Article 99 of the Constitution, amend the Elections Act, 2011, the Independent Electoral and Boundaries Commission Act, 2011 and the Election Campaign Financing Act, 2013 and to make other provisions relating to the electoral processes;

Whereas, on Thursday, 22nd December 2016, the National Assembly considered and passed the said Bill with amendments and in the form attached hereto;

Now therefore, in accordance with the provisions of Article 110(4) of the Constitution and Standing Order 149 of the National Assembly Standing Orders, I hereby refer the said Bill to the Senate for consideration.”

Hon. Senators, this Message was received at a time when the Senate was on recess and pursuant to Standing Order 40 (5), I transmitted the Message to every Senator, vide letter Ref. SEN/L&P/MSG.2016 (65), dated 23rd December, 2016.

Hon. Senators, pursuant to Standing Order 148 which requires that a Bill originating in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading, in accordance with Standing Order 129. Following a request by the Senate Majority Leader, I approved the consideration of the said Bill during today’s Special Sitting.

As you may note, the Bill has been listed for First Reading at Order No.5.

Hon. Senators, Standing Order No. 130 requires a Bill, which has been read a First Time to be committed to a relevant Standing Committee for scrutiny and to facilitate public participation. In compliance with the provisions of Standing Order No 130, after the First Reading of the Bill at Order No.5, the Bill will stand committed to the Standing Committee on Legal Affairs and Human Rights.

As hon. Senators are aware, this Bill has been the subject of some contention. It is also not lost on us that we are counting down to the General Elections now due in just eight months. For these reasons, it is imperative that any legislation concerning the manner in which the elections shall be conducted be disposed off and concluded well ahead of time so that the public and all players are clear about the rules that shall apply.

The urgency of the Senate proceeding with and concluding work on the Election Laws (Amendment) (No.3) Bill (National Assembly Bill No.63 of 2015), cannot therefore be overemphasised. There is no time to be lost.

Hon. Senators, I accordingly direct that the Standing Committee on Legal Affairs and Human Rights, in accordance with Articles 117 and 118 of the Constitution, scrutinizes the Bill and undertakes public participation commencing immediately today after the First Reading of the Bill in the Senate and prepares its Report. The Committee

should engage all stakeholders in the election process and take into consideration all issues that have been raised regarding the contents of this Bill.

I wish to draw your attention that pursuant to Standing Order No.29, the Senate Majority Leader has intimated to me that he will be requesting for Special Sittings to be held next week to receive the Report of the Committee. The Senate Majority Leader requests that the Election Laws (Amendment) (No. 3) Bill (National Assembly Bill No. 63 of 2015) be considered at Second Reading, Committee of the Whole and Third Reading in the said Special Sittings. I will be issuing a Gazette Notice to that effect as I have already gotten the requisite numbers.

The Standing Committee on Legal Affairs and Human Rights must therefore proceed with speed and be ready to table its Report on 4th January, 2017 when the Senate is expected to assemble for the Special Sitting.

(Applause)

Hon. Senators, it is important as a House that we give Kenyans an opportunity to make provisions for the legislative process to proceed. As we process this Bill, I would like to make a special appeal to you to display the same level of maturity and sobriety that this country has come to expect from the Senate and the Senators. The people of Kenya are looking up to the Senate. They expect from the Senate nothing less than a sober reflection and circumspection on the issues before us. Debate robustly and hold different views. It is your prerogative. But, please, do so with decency and decorum and in accordance with the Constitution, the laws and the rules of this House.

In addition to our normal Standing Orders, I also note that the Committee itself has the two Co-Chairs of this process. So, they are better placed than any other Committee to transact this business. I also thank the two sides of the House; the Senate Majority and Minority Leaders, for working together for us to agree on the convenient date for the next Sitting.

Hon. Senators, to do otherwise is to subvert our democracy and our constitutional order which establishes Parliament as the place where the representatives of the people meet peacefully and unarmed and make the laws that govern the nation. This must always be so.

I thank you.

(Applause)

The Senate majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. I thank you for that Communication. Standing Order No.127 provides that a Bill may not be considered in all the three stages unless there is leave of the Senate.

The reason why I have started by quoting Standing Order No.127 is to explain two things. First, the Standing Orders anticipate emergencies and urgent situations which will require the leave of Senate to consider a Bill in all the three stages on the same day. Therefore, that explains the reason why in today's Order Paper, it was envisaged that perhaps this would be one of those issues that would require urgent considerations on the same day.

(Sen. Kagwe stood up in his place)

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

The Senate majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I am on a point of order.

Sen. Kagwe: On a point of order, Mr. Speaker, Sir. Have you noticed that there are a lot of movements around, against our Standing Orders? We cannot hear what the Senate Majority Leader is saying.

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Members! You are only helping the point made by Sen. Kagwe by naming the responsible Senators.

(Laughter)

The Senate Majority Leader shall be heard in silence. If you want to consult, do so in low tones. Do not make too many unnecessary movements including pointing fingers when you are also culpable.

(Laughter)

The Senate majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir. I had started by saying that Standing Order No.127 of the Senate provides that no Bill may be considered in all the three stages on the same day, unless with the leave of the Senate.

The reason I have cited this Standing Order is because we need to understand the reason why in certain circumstances the Order Paper will contain the processing of the legislation within a day with the leave of Senate. I am sure there must be compelling and urgent reasons for that. So, there is nothing extraordinary about it so long as the Senate gives leave.

Mr. Speaker, Sir, is the matter in question urgent? I am entitled to my own view. Those who have the opposite view are also entitled to it. In my view, the matter in the Order Paper that we are addressing ourselves to today - that has been read and in your subsequent Communication - is extremely urgent. It is the most urgent national issue today.

I am on a point of order and I wish the Chair could guide the House on that. I am not debating and after my point of order, the interventions can follow.

Sen. (Dr.) Machage: Mr. Speaker, Sir, I rise under Standing Order No.109. The issue is on the irrelevance or repetition.

(Laughter)

Mr. Speaker, Sir, you so eloquently and in a Solomonic version ruled on an issue that was contentious on the Floor of this House. You did it so ably that every Member of

this side of the House accepted your ruling. Is it in order for the Senate Majority Leader to open it up and do a post-mortem on your ruling?

The Speaker (Hon. Ethuro): Proceed, Sen. (Prof.) Kindiki.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I am one of the students of Sen. Orengo. So, I will ignore that.

In my view, the Elections law is the most urgent matter. As you intimated in your own ruling, that subject to other considerations that could be taking place, or that we may consider, there will be reason for the Committee to which you have committed this Bill, to work expeditiously. They must make sure that the requested special sitting or sittings in a week's time are productive so that we get this matter out of the way of Kenyans and we, as a country move together in unity in the New Year.

I asked for this moment just to raise this point of order because certain clarities have to be highlighted. The reason is that there have been extra ordinary sacrifices and discussions that have been going on between the two sides of this House since this matter started polarizing our country to a level of almost tearing us apart. So, this is an issue that, even as the Committee looks at it, must be looked at in that context.

I thank my colleagues in both Government and Opposition sides because the issue at stake was threatening to derail the progress that we have made so far. In particular ---

Sen. Hassan: On a point of order, Mr. Speaker, Sir. I have had the rare opportunity of Sen. (Prof.) Kindiki once being my campaign manager then ultimately my classmate and teacher. This architect of the new Constitution has no Government and Opposition side. That is where we go wrong. We all belong to the Government. We have a different opinion from the majority or minority, time and again, but we are all in the Government. This is Parliament; it is neither a Government, Jubilee or Opposition per se. Yes, we are the minority in this House. However, for him to continue with the vocabulary of the former Constitution--- That is the reason why we have this hard position on matters. So, he thinks he is here because the Government is a Jubilee Government. We are here because this is Parliament and it can override any Executive.

The Speaker (Hon. Ethuro): Proceed, Sen. (Prof.) Kindiki.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I thank Sen. Hassan for his intervention. I agree with him entirely. However, that notwithstanding, I thank the Majority and Minority sides for the cooperation and statesmanship that we have displayed in handling a very sensitive national matter.

My third point in that connection which flows from the Communication that you have just made is about public participation. Kenyans out there want to hear if the Senators struck a deal to delay this thing or why are we saying this? Article 118 of our Constitution says that Parliament must, not only conduct its affairs in an open and transparent manner with access to the public, but it talks about public participation. So, an issue like this which I have said is urgent, urgent as it is, cannot undergo a proper public participation in a day. Therefore, I support the directive that you have given that the Committee should have a few days, possibly a week, so that we can all support a special sitting to discuss the urgent matter having listened to one another.

Finally, this agenda on this Bill is not a Jubilee or a CORD agenda, but that of the people of Kenya because elections are about Kenyans. In fact, there is a misrepresentation out there that it is a Jubilee amendment. It is not. In fact, I am already

in receipt of a memorandum from the IEBC which had been submitted earlier on in the National Assembly. The originators of some of the ideas which I have contested – I am not pre-empting debate – came from technical people. The fact that a political party supports or does not support should, therefore, not cloud the idea that these things have been raised by agencies that deal with election matters.

We must continue to respect the institutions of our country, however difficult or weak they are. This is because we do not have an alternative and the fallback is anarchy. It is the rule of men as opposed to the rule of law in our country. I plead with the House that as we hopefully wait for the Committee to do the public participation and as we have another special sitting next week, let us put our country ahead of any other loyalties that we may be having. I am willing to put down the loyalties of any other institution other than Kenya, for the sake of a fruitful conclusion of this matter.

I plead with the House to minimize the partisan comments that could jeopardise the work of the Committee or midwifing that this House is expected to perform by the people of Kenya.

Respecting institutions and processes; respecting democracy, including painfully accepting where the majority has had their way, which is not comfortable to the minority; is at the bedrock of any good constitutional country. We must honour our country and this nation. It is where we live, work, raise our families and bury our dead. Please, let us restrain ourselves from making comments that may jeopardise this process.

I am very hopeful that the Committee chaired by the able Attorney-General *Emeritus* of this country, the Senator for Busia County, somebody who has steered very delicate processes even internationally, I am very sure that what has eluded this country in the past weeks or months in terms of stabilizing the electoral process will be found and from now hence forth, one way or another, we will see light at the end of the tunnel, stabilize our country, put our people together and move together as a united people without a winner or loser. If at all there will be a winner, it will be our country Kenya. I request that we tolerate and support the Committee. We can use our positions to enrich the work of the Committee. I hope the technical people will help us reach a solution.

(Several Members stood on points of order)

COMMUNICATION FROM THE CHAIR

VISITING STAKEHOLDERS INVITED TO GIVE VIEWS ON THE ELECTION LAWS (AMENDMENT) BILL

The Speaker (Hon. Ethuro): Order, Members! Before I entertain any other point of order and at the demonstration of the effectiveness of your petitions to your Speaker and the Speaker doing it, we have visitors.

Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon of visiting stakeholders who have been invited to give their views on the Election Laws (Amendment) (No.3) Bill 2015 (National Assembly Bill No. 63 of 2015).

I request each member of the delegation to stand when called out so that they may be acknowledged in the usual Senate tradition.

They are:-

- | | |
|----------------------------|--|
| 1. Mr. John Ngumi | Mkenya Daima |
| 2. Ms. Lucy Muchoki | Mkenya Daima |
| 3. Ms. Gloria Ndekei | Mkenya Daima |
| 4. Mr. Vimal Shah | Mkenya Daima |
| 5. Mr. John Kihui | Mkenya Daima |
| 6. Mr. Suba Churchill | Civil Society Reference Group |
| 7. Mr. Al-Hajj Adan Wachu | Secretary General, SUPKEM & Chair IRCK |
| 8. Ms. Ezra Chiloba | IEBC CEO |
| 9. Mr. Muchai Kunuma | Mkenya Daima |
| 10. Mr. Daniel Juma Omondi | Mkenya Daima & Global Peace Forum |
| 11. Mr. Isaac E. N. Okero | President, Law Society of Kenya (LSK) |
| 12. Mr. Keli Kiilu | KEPSA |
| 13. Mr. Francis Sitati | Communications Authority of Kenya |
| 14. Mr. Juma K Kandie | Communications Authority of Kenya |
| 15. Mr. Abednego Ominde | IEBC |

On behalf of the Senate and on my own behalf, I welcome them to the Senate and wish them well for the interrogation with the Committee. I thank you.

(Applause)

The Chairman, Sen. Wako.

Sen. Wako: Mr. Speaker, Sir, I must say that I am delighted that this matter, a matter of national importance, has been referred to the Committee. If you may recall, in my discussions with you, the Senate Majority Leader, the Deputy Senate Majority Leader and others, when the Special Sitting was called, I was a very concerned person because I feared that the cardinal principle which underlies our Constitution is participation by the people in whom the sovereignty of Kenya lies may be curtailed or shortened just to meet the deadline that this Bill must be passed today. Those are the fears I had but I am glad that through a consultative approach and so on, we have come to a place where the Committee will be given some time.

Mr. Speaker, Sir, somebody said that our guests are here because of your directive that the police who were manning barricades around Parliament should be removed but actually I am the one who invited them to come. I invited them to come because they had stayed a whole morning just waiting for us. I feared that since we were to start at 2.30 p.m., it could take a few hours before the Committee can embark on its job. So, I told them that rather than waiting where we were going to meet, they should come here and listen to what is happening and as soon as the matter is referred, they should all go to where we will be meeting and start the work immediately.

I also want to appeal to Members of my committee who are here. I know you may want to contribute to other debates that may go on after that but I appeal to you that as soon as you see me leaving, just follow your Chairman so that we start the work.

Mr. Speaker, Sir, I just want to appeal for a slight reconsideration of the date of 4th January because when I look at the calendar, 1st will be a Sunday and that means that 2nd will be a public holiday. Therefore, from a public holiday straight to here, I am not so sure that the Committee will be ready with its report at that time. Therefore, I request for a slight consideration to either 4th or 5th because very much as we anticipated that it will be referred to us and very much as we took steps as you can see to contact various stakeholders, that is not enough.

We are contacting stakeholders whom we know will be interested in this matter. However, the law requires that we must at least publish in the *Gazette* for any member of the public who may want to come. The earliest we can publish that is tomorrow but most likely it will be on Friday. I would like it published on Friday so that the Committee can at least have a meeting on 3rd immediately after the holiday to come and finish with the report.

I would like to appeal to the Committee to be ready to sit today and even Thursday in order to finish with those who have already come so that we all agree---

The Speaker (Hon. Ethuro): Order, Senator! That is business you can transact in your committee.

Sen. Wako: Yes. We all agree that the matter is urgent but I assure the House that the fact that we already took steps to contact stakeholders and the fact that they are here, it is an indication that the Committee feels very strongly that this is a matter of extreme urgency which must be resolved.

I appeal to the public as a whole that when the Committee will be hearing the views, which I hope the press will publish, rather than making comments outside, let them come and make comments inside the Committee rather than address them in public rallies, funerals, burials, churches and so on. They should come and state those views before the Committee. I can assure you that we will try our best. It is a difficult task but my Committee is up to it.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, thank you for the opportunity. Listening to my younger brother, Sen. (Prof.) Kindiki, one cannot fail to appreciate that he is a good man working for difficult people.

(Laughter)

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. The Senate Minority Leader is entitled to his opinion. However, given the gravity of the sentiments he has made, could you order him to substantiate that I am a good man working for bad people? Who are these difficult people? Are they people of Tharaka-Nithi or the people of Kenya? Who are the difficult people?

Mr. Speaker, Sir, I have not complained to the Senate Minority Leader. We might be laughing but I want to say this. As a leader in this House, it is small things like these ones which actually destroy good intentions. I have not complained to Sen. Wetangula that I am working for any bad or difficult person for that matter. Can he withdraw and apologise? Otherwise, I will not entertain this because it is smirks of bad faith and contempt which should not be coming from the mouth of my counterpart in the Opposition.

The Speaker (Hon. Ethuro): Order both of you. Sen. (Prof.) Kindiki, in fact, your first suspect would be the counterpart.

(Laughter)

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, this is the first time I have heard somebody so virulent after being called a good man.

(Laughter)

Mr. Speaker, Sir, let me proceed on the matter of the day. When this matter was dealt with in the National Assembly, it send very wrong and dangerous signal to the country. The manner in which the matter was handled, the conduct of the Executive, the flooding of policemen and policewomen in Parliament---

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. With all due respect to the Senate Minority Leader in the House, I stand on Standing Order No.90(3). The Senate Majority Leader has shown displeasure and all he demanded was an apology. Under this Standing Order, I also demand that the Senate Minority Leader apologises and withdraws.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, you have heard of those who wail louder than the bereaved.

(Laughter)

The Speaker (Hon. Ethuro): Order, Sen. Wetangula! You have been challenged by the Senate Majority Leader and another Member has followed it up. All of us have Standing Orders ---

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I said that listening to my distinguished learned junior, I appreciated that he is a good man working for difficult people. He stood up and protested but you could see when I was sitting there that he was appreciating that I had called him a good man; but if that is an irritant to him, I would withdraw both the description of him as good and the difficult people he works with.

(Laughter)

Mr. Speaker, Sir, let me now get to the issue. We laud you.

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

Sen. Sang: On a point of order, Mr. Speaker, Sir. Every time Sen. Wetangula has an opportunity, though in a light way, he pours out very corrosive and toxic statements in this House; but sometimes you tend to believe that he is the most difficult person. Could it be that he means that Sen. (Prof.) Kindiki works for him because he described the person that Sen. (Prof.) Kindiki works for as being difficult? Clearly, he is a very difficult man.

The Speaker (Hon. Ethuro): Order! We had disposed of this matter.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I shall not be derailed by the exuberance of youth that is being exhibited by the young Senator for Nandi.

The Speaker (Hon. Ethuro): Order Senator! Just one last one from Sen. (Dr.) Machage so that we can dispose of this one.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. I appreciate that we have lost Mr. John Keen, a statesman in this country but I do not think I am bereaved and wailed in this House. It is not petty because the Minority Leader is fond of abusing people.

Mr. Speaker, Sir, is the Minority Leader in order to refer to me as a bereaved and wailing Member in this House?

The Speaker (Hon. Ethuro): Order Senators! That matter was disposed off. The Minority Leader apologised as demanded by the Majority Leader and as supported by Sen. (Dr.) Machage. The other one, Sen. (Dr.) Machage, is an expression without any specific reference to you.

So, proceed.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I want to deal with a very easy issue first.

The Speaker (Hon. Ethuro): Order, Sen. Wetangula; avoid unnecessary distractions.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I will avoid the unnecessary polemics; I will go to the real issues. First, I want to urge you in the ruling that you have made; given the issues surrounding this matter of elections, that perhaps you should consider making reference of this matter not only to the Committee on Legal Affairs and Human Rights but the Committee on Information and Technology as well so that they can sit together. Some of the intricate issues that we are seeing being pushed forward and backwards are ICT issues. The Committee on ICT chaired by the able Senator for Nyeri who has never veered off the track of good behaviour can also enrich the process.

Having said that, let me go back to the point where I left when I was interrupted. This morning you made a very sound direction that Parliament has not invited and does not need police to cordon it off or picket. What happened in the National Assembly and the events that followed have raised the tension in the country. The moment a matter is brought to Parliament, and you come in the morning and find some weird looking gadgets barricading the road at the Basilica and at Harambee Avenue Round About, making it difficult even for Members of this House to drive here; out there the ordinary man thinks and believes that there is something tragically wrong going on in Parliament. You made that directive. We laud you because it was a direction of courage.

Sen. Hassan: On a point of information, Mr. Speaker, Sir.

The Senate Minority Leader (Sen. Wetangula): Yes, inform me.

Sen. Hassan: Mr. Speaker, Sir, ---

The Speaker (Hon. Ethuro): Order, Members. By the way, you are on a point of order, Senate Minority Leader. This is not the time for information to be given.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I take your direction. I mentioned in the morning. It is good to put these things on record so that the

future of this country is seen differently. I have been in this House from 1993. For the first time, I saw the Speaker of the National Assembly escorted to the Chamber by armed men; police with guns. Along the walk way of the Speaker, there were policemen and women holding hands creating a barrier for the Speaker to work through that corridor. It is a shame on our country. That is why we are proud of being Members of this House. In this House, there is no Member who comes here however meek or mighty fearing that he or she will suffer an assault from a fellow Member, sprayed with a chemical or threatened with all manner of negative conduct. This is the Senate of the Republic of Kenya.

Mr. Speaker, Sir, coming to the real issue; why are we here? We are here because some evil hand somewhere wants to bend the law relating to elections in this country. This House and the “Lower” House had a Committee ---

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

Sen. Wangari: On a point of order, Mr. Speaker, Sir. You have already made a direction on the way this Bill will progress. Is it in order then for the Minority Leader to preempt debate on the issues pertaining to it?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, if the enthusiastic Senator listened to me; I never went into the substance of the Bill. I simply said; why are we here? We are here because somebody somewhere wants to change laws relating to elections. I never mentioned an individual but of course, Chinua Achebe said, “When dry bones are mentioned, very old ladies feel very fidgety.”

Mr. Speaker, Sir, we set up a Committee chaired by the distinguished Senator for Meru and the distinguished Senator for Siaya, Sen. Murungi and Sen. Orenge, respectively. They did a sterling job. They brought the law here and we all accepted that no comma or full stop should be tinkered with. We passed the law; that is the law we are now seeking to change after a few months.

Wole Soyinka said in his book ‘The Man Died’ that a man or woman dies when he or she maintains a conspiracy of silence in the face of wrong doing. It is important that we speak here. I salute the distinguished Senator for Nandi for what he said in the morning. We have sent the matter to the Committee, but it is important for us, as a House, to ask ourselves what happened to the law that was engineered by Sen. Murungi and Sen. Orenge that we all passed in unison. Why are we seeking to change it before we even put it to test or get it working? Why are we seeking to change it?

(Loud consultations)

I have not gone into any substance of the law. Those who feel fidgety run the risk of being conspirators to this process.

The Speaker (Hon. Ethuro): What is it, Sen. Kembi-Gitura?

Sen. Kembi-Gitura: On a point of order Mr. Speaker Sir. I must confess that I do not know where this debate is leading to.

(Sen. Wetangula spoke off record)

I am actually listening very keenly. This matter has been referred to a Committee in which I am a Member. We ought to be dealing with matters of public participation for

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us to deal with the issues that Sen. Wetangula is purporting to deal with when we come back on the 4th January, 2016 or whatever day we will come back here.

What he is doing, in a circumvent way, is trying to pre-empt debate, which is against our own Standing Orders. I think we are consuming an unnecessarily long period of time after your ruling on time. We should be utilizing time more purposefully to find a solution with the gentlemen and the ladies sitting in the Speaker's Gallery. They have come to offer their opinion, through public participation, to this very important role that we want to achieve as Senators. If you ask me, we are unnecessarily consuming time that we could otherwise properly utilize.

The Speaker (Hon. Ethuro): Senate Minority Leader, you should be concluding because this is not substantive debate.

The Senate Minority Leader (Sen. Wetangula): I should be concluding, but I take exception to the Deputy Speaker saying that I am "purporting". I am not "purporting"; I am talking to the House.

The Speaker (Hon. Ethuro): Order, Senator. 'Purporting' is in the sense that you are contributing as if there is a debate.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I am a very good student of English, but let me put that aside. I want to say the next three things and sit down.

First, I encourage the Committee of Sen. Wako and his team, and if you will find it necessary to add on the Committee on Information, Communication and Technology, to live to the billing of the expectations of the people of Kenya---. They should go and proceed without any blinkers of ethnicity, partisanship or, in any way possible, to derail the avenue to a peaceful election.

Secondly, I want to urge the Committee or Committees that will be committed to this matter, to give an opportunity to those who have raised concern to appear before them and voice those concerns. These are people such as the business community, the bishops, the trade unions, the law society, civil society and any other person of goodwill, including people like Okiya Omtatah and others.

I also encourage Sen. Orenge and Sen. Murungi to appear before this Committee with the proceedings of their Committee. I encourage the Independent Electoral and Boundaries Commission (IEBC) to also appear before this Committee because we have been getting mixed signals from them. They have said: "We presented, we did not present, what we presented is not what we are seeing, what we are seeing is not what we presented." All these things must be brought to clarity.

Thirdly, I want to encourage these Committees to take a patriotic approach to this matter. They should not go to the Committee and say: "We are the majority and, therefore, *maliza haraka tupige kura twende.*" The moment they go that direction, then the job we are giving them will be '*kazi bure.*' We want you to bring a product to this House that when we look at it, we will be ready to own it and appreciate that they did not go there because they come from a certain mountain, valley or whatever.

Lastly, I want to thank every Senator here present - the loud, the quiet, the meek and the opposite - for coming to live to the expectation of the country that this is a House of reference, reason, record and above all, this is the 'Upper' House that can bring sobriety, sanity and give direction to the country.

Mr. Speaker, Sir, thank you for giving me the opportunity. I hope and believe that those who are hell-bent on twisting and turning the process of elections to arrive at a process where losers are announced as winners and winners are announced as losers should know that their days are not only numbered but gone.

Thank you.

Sen. Sang: Mr. Speaker, Sir, I will not go into the direction of uttering a lot of toxic and corrosive statements. I know that is a preserve of a particular Senator in this House.

I want to congratulate the House today. Whereas the general feeling in the political arena in this country was that at the end of the day we would have the opportunity to announce the winners and the losers, I am excited that after the processes that we have engaged in today in this House, we are declaring that this country wins. It is important for this country to appreciate that. I saw the misguided discussions out there, when the National Assembly approved this Bill. People imagined that the Bill would go to the President for assent. A lot of stakeholders raised issues that there was no public participation. If each of those stakeholders cared to understand the law and the process, they would understand that this Senate had to be involved. It points to the importance of a two-chamber Parliament.

If we did not have the Senate in this country, most likely that window of public participation and an opportunity for us to relook at this Bill would have been lost. Such are the times that we realize that a second House that would have the opportunity to consider matters coming from the National Assembly and vice versa is important, especially for those people in this country who might have the imagination that the Senate is not important.

I am excited that we have had an opportunity to stamp the authority and the mandate of the Senate. We hope that Kenyans will benefit from this when the Committee, where I happen to be the Vice-Chairperson, will conclude the matter.

However, it is important also to note that we are living in a democracy. In a democracy, the minority have their say, the majority have their way. We cannot run away from that cardinal principal of Democracy. Therefore, I urge every Kenyan, more so, the Members of the Senate and the National Assembly, to speak out and convince their colleagues regardless of the different views. At the end of the day, if consensus does not work, we resort to a vote. If one loses in a democratic process where there is a vote, they must be willing to abide by the will of the majority.

I urge the Members of the Standing Committee on Legal Affairs and Human Rights, when we get into that committee to deal with this matter, let us expedite the process within a bipartisan manner. However, in case we get to a position where we need to take a vote, let us be ready to abide by the decision of the committee. That is what democracy is. It is the essence of democracy. Otherwise, we cannot subject this House to threats that if some people do not have their way they will demonstrate. That does not make sense. This is a House that believes in democracy. This is a democratic country. We must be willing to take part in the process and abide by the rule of the majority.

However, this coming within the Holidays season, I hope the members of the Committee will sacrifice a bit so that we are able to perform this onerous national

responsibility bestowed on us and deliver a document to this House that everybody will be proud of.

The Speaker (Hon. Ethuro): Sen. Ongoro!

Sen. Ongoro: Mr. Speaker Sir, I thank the Senators for the manner in which they have handled the matter at hand today; the maturity, the sobriety and the decorum with which they have handled themselves and the matter at hand. I want to add my voice to the suggestion that has been put forth by the Minority Leader. As much as the Legal Committee is the Legal arm of the Senate, we have the ICT Committee which is our technical arm. We should also enjoin them in handling this matter.

The argument that has been presented by the Jubilee administration and the IEBC is that it is necessary for these changes because technology required cannot be procured in time and if and when procured, there is a possibility of failure. That can only be handled by the ICT Committee which should then tell us what we need to do that other countries with similar conditions like ours, have succeeded. For example, Nigeria recorded registered 73.5 million voters in 23 days using the same system. Ghana registered 11 million voters in 40 days. India, in just 90 days, registered 863 million voters. Therefore, it is doable. That aspect can only be given to us by the ICT Committee working closely with the Legal Committee.

Lastly, even as we consider this as an urgent issue, I still feel that the most urgent issue is the fact that the IEBC Commissioners still continue to occupy office illegally. They should vacate and allow us to proceed. I am shocked that we are still considering proposals that have been put forward by an IEBC team with which we think should not be in office, They should be giving their opinion as individual Kenyans and then we consider them so that we are all in agreement on the way forward. Otherwise, we will wait for what will be brought by the Legal and possibly ICT Committees for our final consideration.

The Speaker (Hon. Ethuro): Order, Members, I will not hesitate to rule you out of order if you delve into the substance.

Sen. Kagwe!

Sen. Kagwe: Mr. Speaker Sir, I also wish to first congratulate the House for behavior that is well established now. We shamed the other House for their behavior. It was terrible and a bad image for Parliament. I appreciate Senators Ongoro's and Wetangula's contributions regarding this matter being a technical matter, in a legal matter. The first thing I urge the Legal and ICT Committees is to differentiate between "technical" and "political". If we handle these things together, if we politicians make technical decisions, clearly we are likely to have a bad decision. I urge that under whatever circumstances, we must address the real issue. The real matter is whether, technically, we will disenfranchise our people or not. That is what the Committees will have to look at.

We have confidence in our House and our Committees. I am particularly encouraged by the fact that in the Speaker's gallery, some of the people who are there come for the Communications Authority of Kenya, an institution that has become to be very highly regarded in terms of skills and capacity. Therefore, I urge my colleagues that as we go forward, let us remember that the matter must be settled here. It cannot be settled in the streets. Those calling for street demonstrations, now withdraw them, until

and unless they are sure that the committee has not made the correct decision. Preferably, they can withdraw them forever and ever.

I once again reiterate that the ICT Committee is ready to be part of the process. We are able and we have got the skills to do so. Even if we did not and we had the experts from the ICT Community, we would be quite happy to discuss this with the Chairperson of the Stranding Committee on Legal Affairs and Human Rights, Sen. Wako.

The Speaker (Hon. Ethuro): Sen. Hassan; Senator for Wajir!

Sen. Abdirahman: Mr. Speaker Sir, I start by thanking you in person. It depends on who steers the process; you have steered the process very well this afternoon. I thank my colleagues for the manner in which we have collectively handled the matter before us. The senate has been the voice of reason in this country all through. Whenever there are issues of contention, they have been able to solve it amicably.

Elections are emotive in nature; emotive in the sense that there are quite a number of interests involved. It is important for the leadership of this country at any level to avoid raising tensions so that we are able go through this period ahead of us peacefully. I really encourage the stakeholders to bring in their input to the two Committees which will be handling this matter. There is a feeling that so much is not being said openly. We need to be open to each other. There is nothing really to hide. A feeling has been created in the country that what is happening is not the right thing. It is important that we unearth everything that we know as the leadership that will hurt our country. We are not planning for today; we are planning for the future.

Finally, I call on the leadership at the top, irrespective of their party affiliation, to embrace dialogue. They must do it at that level too as we do it in Parliament, cascading down to the lower levels. I thank everyone and urge for commitment as we proceed and wait for the report from the two Committees.

Sen. Mutula Kilonzo Jnr: Mr. Speaker, Sir, there was wisdom when the Committee proposed that we have continuity to ensure that there is implementation of the report which was ably presented to both the National Assembly and the Senate. The devil works at night and, therefore, you see the reason why in the gap, the devil has found his way into the National Assembly and the Senate.

I am glad and I want to thank you for your wisdom in leading this House into finding an amicable solution and also want to say that the Committee on Legal Affairs and Human Rights is able and willing. I would like to just alert the Chief Executive Officer (CEO) of the Independent Electoral and Boundaries Commission (IEBC) that we have several questions for him---

The Speaker (Hon. Ethuro): Senator, except that the devil is a stranger to the Senate. If you can identify the devil, I will ask the Sergeant-At-Arms to get him out.

Sen. Mutula Kilonzo Jnr: Mr. Speaker, Sir, the devil is omnipresent or as we say, he is ubiquitous. On public participation, I was hoping, if you can allow me, the last time we saw our colleagues in the National Assembly debate this matter the press was evicted. A gentleman by the name Mureithi got his videos erased. He was arrested, detained and bashed. I am glad you have mentioned that the press is invited.

Secondly, on public participation, the statement made by the CEO of the IEBC, Mr. Ezra Chiloba, and the Catholic Church on this matter presupposes that they were not spoken to at the time that this matter was presented before the National Assembly.

Thirdly, on technology, I listened to the debate and in particular the National Assembly. I am persuaded as the only Member who sits in the Committee on Legal Affairs and Human Rights and the Committee on Information and Technology; that even the leadership of this country is technologically challenged.

The words “continuity plan” and other things that have been in discussion in this Senate--- There is something which has been pending in this Senate which needs to come back. In this report that was tabled in this Senate, a Committee called “the Technical Advisory Committee” by the IEBC was formed before the regulations were passed. That committee is technical and has already presented the regulations to the Senate and we have interrogated them.

Mr. Speaker, Sir, I sat as Chairperson and the wisdom of having the Communications Authority of Kenya coming into the meeting is because all the things that everybody is talking about are already in the regulations; besides power outages, terrorism has been included. We have even proposed that the server at IEBC which is housed in a floor in Anniversary Towers be moved so many kilometers out of the city. All these things will come out clearly out of the wisdom of having public participation so that they can ventilate those issues.

After listening to some of the debates, it reminded me of a statement by Mahatma Gandhi about greatness. He said: “To achieve greatness, you have to have simple living and high thinking.” In this case, we are having high living and simple thinking. We would like to remove that and this is the place where we can remove those cobwebs that are existing even in leadership and particularly the leaders who I heard moving this Bill from the Jubilee Coalition.

Thank you.

The Speaker (Hon. Ethuro): This Bill has not been moved Senator. Senator Sonko.

Sen. Mbuvi: Mr. Speaker, Sir, let me start by congratulating all the Members of this House from both sides and compliment you on your earlier ruling this morning on the barricades and the roadblocks which were put up by the police near Parliament. Because of that ruling, the Senate is trending all over social media.

I have one message here with me if you will allow me to read it: “Speaker Ekwe Ethuro orders police to withdraw from the precincts of Parliament as Senators criticize police action and reject the Coalition for Reforms and Democracy (CORD) Senators’ demand to suspend the sitting.”

We have handled the issue in a very mature and sober way unlike what transpired in the National Assembly whereby some old school street bitches were trying to insult the President with all sorts of abusive language.

Sen. (Prof.) Anyang’-Nyong’o: On a Point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it Sen. (Prof.) Anyang’-Nyong’o?

Sen. (Prof.) Anyang’-Nyong’o: Mr. Speaker, Sir, in as much as I would like to listen very carefully to my friend Mike Sonko, is it really in order to use a very unparliamentary language to refer to an hon. Member of the other House, however much

he disapproves of her actions? Is it not within the decorum of this House to keep speaking in Parliamentary language?

The Senate Minority Leader (Sen. Wetangula): On a point of order Mr. Speaker Sir. Standing Order No.90 is very clear, particularly 90(3) and (4). It states:-

“It is out of order to use offensive or insulting language whether in respect of senators or other persons.”

Nobody justifies a wrong but two wrongs do not make a right. When I heard the distinguished Senator say “bitches” I thought he meant beaches. I have since learnt that he used something different and we demand that under Standing Order No.90, you cannot use derogatory language against a Member of this House or another House or a County Assembly without a substantive Motion.

The Speaker (Hon. Ethuro): Sen. Sonko, you withdraw those words.

Sen. Mbuvi: Mr. Speaker, Sir, maybe I used the word “bitches” but I meant one Hon. Millie Odhiambo who has been all over social media stating that she is a fan of sex. So she is a bitch.

The Speaker (Hon. Ethuro): Order, Senator. You are making it even worse because before, there were no names. Just withdraw and continue with your contribution.

Sen. Mbuvi: Mr. Speaker Sir, I withdraw. We are not here to bend any law as earlier stated by Sen. Wetangula. We are only trying to give each and every Kenyan an opportunity to participate in the voting process in case the electronic or biometric system fails.

Let me commend the Committee of Sen. Wako and other stakeholders who led the process and with your input, Mr. Speaker, Sir. I want to give two crucial examples: In the 2007 General Election, the current leader of opposition Hon. Raila Amollo Odinga was almost denied the chance of voting when his name was not found in the Lang’ata Constituency Electoral Commission Register. However, there was a backup which was called the Black Book which had the name of the former Prime Minister and in the process he was allowed to vote. So we are not trying to bend any law. Still in this same House, in case our electronic voting system fails, the Clerk who has all the records normally calls out the names of Senators to participate in the manual voting process.

The Speaker (Hon. Ethuro): Hon. Members, keep clear from the substance of the Bill; deal with the process.

Sen. Wamatangi: Mr. Speaker, Sir, in tune and tandem with my colleagues, I congratulate Members of this House for the conduct that they have shown in the morning and this afternoon. I also congratulate you for your wise guidance and leadership.

The expectations that the country had on the Senate, right from the time you called the Special Sitting until we convened, were extremely high. If you recall, every headline this morning stated that Kenyans were expecting that the superiority of thought that prevails in this House would help and guide this country differently to arrive at solutions that may have evaded this process earlier. That is why my colleagues and I believe that we are in the right direction.

Mr. Speaker, Sir, it is also important that we define the way forward, so that this process proceeds from here onwards with the honesty it deserves. Sometimes I ask myself where the departure point comes between the legislator, the gentleman he is or the lady she is and the politician.

Already, as we are sitting here, there is a 411 message from the Nation Media that says that CORD has gone to court to challenge the Special Sittings called by the Senate and the National Assembly. When there was a Special Sitting of the National Assembly, the breaking news that morning was that CORD Members of Parliament blocked Speaker J.B. Muturi from accessing the House.

If we are to address these issues and find a solution that will bring us to the pedestal at which we are expected to deliver on what we are saying, we have to be honest, forthright and true to what we say. I do not want to stretch this. However, we sit here and preach and drink water, but when we step on our political platforms out there, we become drunkards of the wine of politics and the alcohol of fame.

When the clergy was expressing their views on this issue, I remember one clergyman being quoted saying that he cannot believe how fast we are running to anarchy as a country, remembering and considering the events of 2007/2008. Although we have done a lot of good work---

The Speaker (Hon. Ethuro): Conclude, Senator.

Sen. Wamatangi: Mr. Speaker, Sir, although we have done what was expected of us and the Committee has been given a huge onerous task, it is important for them to conclude it without leaving any loopholes. The biggest burden will lie on us, as Senators and politicians. If we decide to do what we do best - beat an about-turn from what we have committed to do, as has already started - this will all be an exercise in futility. This country needs us more than we need it. We have to say to the legislators - ourselves included- that we have to live to the billing of the Senate.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order, Senators. Subsequent contributions will be limited to a maximum of two minutes.

Sen. Kariuki Godfrey.

Sen. (Dr.) G.G Kariuki: Mr. Speaker, Sir, first of all, I thank you for your wisdom, especially by giving us some time to think about this matter. It is a very emotive matter as far as the public is concerned. You have guided this House and we can speak freely.

I think the citizens went to churches and prayed hard to make sure that when the Senate sits there will be a solution of some kind. We have not gotten the solution, but we have referred the matter to a Committee of this House, which will help us to deliver. This debate has given some hope to the people of Kenya. Some of us who believe in nothing but politics will think that something has gone wrong. I want to assure Kenyans that nothing has gone wrong; it is just the wisdom of the Senators and their Speaker.

The Speaker (Hon. Ethuro): Your time is up, Senator.

Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I want to make two points. I want to urge the Committee to distinguish what is required to be legislated for in the elections law as opposed to what can be fixed by rules and regulations. Reading through these intended amendments, you can get all they want through rules and regulations. I hope Sen. Mutula Kilonzo Jnr., Sen. Hassan and others will not let us down.

I want the Committee to remember that this is third unique law in this country. In 1997 we had the Inter-Parties Parliamentary Group (IPPG) law that brought peace and

order to this country and in 2008, the National Reconciliation Accord. They were born out of negotiation. As you work your way into attempting to amend, please remember that this is a sacrosanct rule.

Finally, this debate today has reminded me of the wisdom of the great American President Thomas Jefferson, who taught Americans that rebellion against tyrants is obedience to God. The Members of the National Assembly repelled against an attempt to deny this law from going to the Committee before it came to Plenary the way we have achieved today. They were obeying God by behaving the way they did. I congratulate them. Freedom is not fought in an easy way. *Heko*, Members of the National Assembly.

I thank you.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir. I have three simple things that I wish to say. First, I congratulate the House for how they have transacted this extraordinary business today. Secondly, I point out something that I have heard a few of our colleagues mention. I think Sen. Ongoro mentioned that these amendments have been requested by the Jubilee Coalition and the Independent Electoral Boundaries Commission (IEBC). This being a House of records, let it be on record that these amendments were requested by the IEBC and the Jubilee Coalition has nothing to do with it.

In conclusion, I remind my fellow leaders that our actions sometimes demand counter actions. I heard the Senate Minority Leader say that for the first time, he saw police officers lead the Speaker's procession. I was waiting for him to tell us when is the other time when he saw Members of the National Assembly block the Speaker's procession as was witnessed in the National Assembly. As leaders, if we behave in a sober way, then we will be accorded the respect. I challenge the Coalition for Reforms and Democracy (CORD) that given the sobriety with which this matter has been handled by this House; will they consider calling off the planned mass action on 4th January, 2017? Let them demonstrate leadership the same way this House has done. That is the kind of the direction we wish to move this country to.

Thank you.

Sen. Munyes: Mr. Speaker, Sir, I will be brief. I take this opportunity to thank you and the House for exhibiting maturity in today's business. Allow me to thank you for what happened today. Kenyans are proud of what has been witnessed in the Senate.

My contribution on this matter is that, as we accept the Committee on Information and Communications Technology (ICT) to join this Committee, I request that we allow the Committee on National Security and Foreign Relations to also join them because of the threats we are getting on the ICT installations. There are many external and internal threats in this country that will affect the connectivity of the server. It will be important to have that Committee on board. On the matter that was raised by Sen. Mutula Kilonzo Jnr., terrorism is a factor in matters of electoral laws. I request that we allow that Committee to be part of the Committee that will Report by 4th January.

Mr. Speaker, Sir, ICT is an important aspect because if you look at our country and compare it with Uganda, Ethiopia and many other countries bordering us, the mobile connectivity in those countries has improved. We should take this opportunity to expand the services of Safaricom Limited. I have seen it getting into the corners of Turkana County but it is not enough. We do not want to expect somebody to lose a vote because the system failed. We want every single citizen in this country to be served equally.

So many other countries have attempted to roll out the network all over the country. A good example is Ethiopia which has covered all its borders. Because of these threats, I propose that the Committee on National Security and Foreign Relations be part of this whole process. The Committee will bring their arguments. We have seen Safaricom Limited structures destroyed in parts of this country. We want them to be part of this.

Thank you.

Sen. Mugo: Thank you, Mr. Speaker, Sir, for the opportunity to add my voice. I also congratulate you and the Members for the way they conducted themselves. It was a mature way. Your rulings were also wise.

I congratulate the Committee for the responsibility. The Committee on Information and Communications Technology has a room for it. I think the major question before them is whether they need a back-up. If we need it, what type of back-up is it? We all need to have credible elections. Every citizen must have a chance to vote. President Good luck Jonathan's name was missing in the biometric registration which Sen. Ongoro talked about. It took him 50 minutes to vote. That is the incumbent in Nigeria. As we interrogate what has happened to other countries, there is nowhere where the systems were smooth. A lot of villages did not vote. So, it is not just about the registration but will everybody vote? Is the Member of the County Assembly (MCA) going to lose an election because his or her small village did not vote?

Mr. Speaker, Sir, I hope that we will look at it not only in this election but what we shall leave as a legacy for this country.

I support.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. Obviously, the Senator is trying to debate. Even if she tries to debate, is she in order to mislead the country that voting under this law will be electronic? Voting under this law will be manual.

The Speaker (Hon. Ethuro): Order, Members. Both of you are trying to debate what is neither here nor there.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, may I make brief points. First, let us not forget why we are passing these election laws. It is to have free and fair elections where all those who participate will accept the results as legitimate; both the losers and the winners. That is the essence of democracy.

Secondly, our Constitution provides clearly that we are a multiparty democracy. In the principles of governance, the word "inclusiveness" is included as one of the major values of governance.

Mr. Speaker, Sir, what happened in the National Assembly on the Bill that we are now considering, was far from being inclusive. That is why I have been reminding this House that we must observe the principle of the separation of powers. If any Kenyan is dissatisfied with how the legislature is conducting its matters, he or she is entitled to go to court to claim their rights.

I observed earlier that as far as the principle of multiparty democracy and inclusiveness is concerned, what we have before us as a product of the National Assembly is far from being a reflection of that. Therefore, whether we like it or not, we are debating a Bill which is before this House to avoid the process. That is something

which is debatable but can only be settled in court. Therefore, to Sen. Wamatangi, anybody who goes to court in this Republic to challenge the legality of what we are doing is within their rights. I feel they are entitled to addressing that issue in the court.

Mr. Speaker, Sir, secondly, the principle that the majority will have their way and the minority will have their say is a hackneyed principle in democracy.

(Sen. (Prof.) Anyang'-Nyong'o spoke off the microphone)

I have been waiting for a long time to say these things here---

The Speaker (Hon. Ethuro): Order. Give Sen. (Prof.) Anyang'-Nyong'o, the microphone.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, you may not have me here for a long time. Democracy has advanced, especially in a society like ours. We no longer speak of majority having their way and the minority having their say. It is conscientious democracy in a society like ours. It is extremely important to give respect to conscientious democracy which goes to underline the principle of inclusiveness. If we insist on this issue of majority having their way and minority having their say; that is what leads to conflict and anarchy.

The basis to the Committee that drafted these Bills and laws that came to this House - and we were told not to remove a comma or add a full-stop - was because of conscientious democracy that Committee had. Therefore, rather than deal with the results or duress from the "lower" House, let this House free itself. I am glad that we have freed ourselves by taking the monitory way then let us free ourselves to make sure that the electoral laws that we are going to pass will enjoy the confidence of every Kenyan and every voter.

Finally, where does honesty begin and end? Indeed, if you are acting honestly, then that Bill that went to the "lower" House should have been a Bill reached at by consensus in both sides of the political divide. However, it was taken there in a partisan manner and hence the conflict in the "lower" House. Now, we need to understand that partisanship must end. We must begin debating this issue on the basis of conscientious democracy.

Sen. Elachi: Mr. Speaker, Sir, I thank all Senators and you for the wisdom that you have given us this afternoon. By referring this Bill to the relevant Committee, you have given Kenyans an opportunity to participate fully in the enactment of this Bill. I am sure the Chairperson will move this country forward. The whole country is looking at the Senate to ensure we have a peaceful election. Therefore, we should enact laws that will help this county move forward and have peaceful general elections.

Article 38 is about political rights. This Article can only be amended through a referendum. It is a right for every Kenyan who has attained the age of 18 years to register as a voter and, indeed, be allowed to vote during elections. Let us make it very easy for them to know whether they are registered as voters through their mobile phones. Let us calm the country by passing the right laws that will guarantee us peaceful elections next year and in future.

I beg to support.

Sen. Orengo: Mr. Speaker, Sir, let me repeat what Sen. (Prof.) Anyang'-Nyong'o has said. This fondness of talking about the majority having their way and the minority having their say is totally against the letter and spirit of the current Constitution. We are no longer just a democracy, but also a constitutional democracy. Therefore, any law that we make, that is contrary to the Constitution whether they are 100 against 10, then they cannot have their way. It is in this spirit that I want to ---

The Speaker (Hon. Ethuro): Order, Sen. Orengo! I do not want to take it away from you, but on what basis do we declare the “Ayes” or “Noes” have it?

Sen. Orengo: Mr. Speaker, Sir, you would not put a question like that on the face of it because it is against the Constitution. Article 10 requires of you, when applying and interpreting it, you must do it in accordance with the Constitution. For example, if you take a vote that murder all lecturers, the majority can have it, but that will be clearly contrary to the Constitution. So, it is no longer applicable in a modern constitutional and liberal democracy.

My second point which is more important is that there are certain values in the Constitution that should be common to all of us. For example, when talking about matters to do with elections, we should endeavour to create unity. Mr. Pele described football as a beautiful game because its rules are understood. However, in elections in which the rules mean nothing depending on who is applying them can never be appreciated in a proper democracy. So, I urge us all that sometimes we need to come together as Kenyans. This is because the preamble of the Constitution says that even if you are the President of Kenya and in basic principle of this Republic is national unity. That is why he is the head of State. If you are the Opposition leader, those principles also apply.

I urge all of us that as we go to this Committee and come back, we must find some commonality in the things that we are trying to do. Otherwise, we come with 100 laws which will never improve Kenya. These laws that are rushed are always very bad. I remember when Judge Muli brought the Bill removing the tenure of judges and other independent offices, he said the President has the power to hire and so he must have the power to fire. Within a week, he was the one who was fired. He forever regretted the words that he said. So, we need to be careful about what we do because, probably, the next morning, you may be the one who is visited with the tyranny.

Sen. Gwendu: Mr. Speaker, Sir, I also add my voice to that of all the other Senators by, first of all, congratulating you for the guidance and the wisdom that you have exhibited today as our leader. I also congratulate other Senators for the courage, wisdom and leadership that they have shown today. We all know a leader knows, goes and shows the way. Therefore, if we are able to show the right direction, all the people who have been watching us today will take the right direction and we will have ourselves to thank for giving the right direction to this country.

Also, as we debate and go on with this Bill, we need to know that whatever we discuss in this Senate today or even on 4th January, 2017, will one day be the law that our children and grandchildren will live by. We also need to take caution on what we say. Will they bring peace or incite people or are we trying to live by what we have all congratulated ourselves about today that we are trying to know, show and try to go the same way that we are trying to lead our people to go.

Sen. Ndiema: Mr. Speaker, Sir, I also congratulate this Senate and you particularly for the manner in which we are moving. I was worried when I was coming because I thought we would be rushed to vote on this Bill in the same manner that we did the Bill that became the Act that we are now seeking to amend. If you recall, some of us expressed some reservations. Nevertheless, we were told not to remove a comma or a full stop and we voted. That is why, perhaps, if we had listened and held public participation, we may not have been here today. Some of the issues or short falls that we are now seeing would have been omitted at that time.

I request the Committee to do a thorough job.

Mr. Speaker, Sir, we represent counties and as a Senator, I know that what is good for my county is good for Kiambu and what is good for Kiambu is good for Kisumu. So, the issue of imagining that the majority and the minority will either go this way or that way should not arise because each one of us represents a county that wants fair and transparent elections. Therefore, partisan issues should not arise.

Today, our country is viewed as a country where anything could happen during elections. I think the Senate is doing us proud. Today, Kenyans, foreigners and investors will go to sleep knowing that there is a House of Parliament which is a House of reason that will ensure that elections will be peaceful.

The Speaker (Hon. Ethuro): Senator, please conclude.

Sen. Ndiema: Mr. Speaker, Sir, I would like the Committee to involve county assemblies and executives in public participation to ensure that their views are also taken into---

(Sen. Ndiema's microphone went off)

The Speaker (Hon. Ethuro): Senator, your time is up.

Sen. Hassan: Mr. Speaker, Sir, if there was ever one monumental moment for this Senate, it is today. This is even greater than any impeachment process we have had. We have had these proceedings in a manner that restores extraordinary national faith in this House. The potential of what we will do on 4th potentially can impeach this country. What happened today is what Sen. Wetangula said; that it where we seek good men and women for that matter.

Mwalimu Julius Nyerere said; *Watu wema wako* meaning, good people are there. All we need as a nation is to continue seeking good people. Today, we live in a nation where there is so much suspicion, ethnic hatred, division and malice across the board. It is important for this Senate and politicians across the board to start bridging that rhetoric. We should start to pronounce ourselves on some of these most fundamental national issues because the perception of a fair election is one thing but elections that end up in bloodshed is something we must avoid by all costs.

Therefore, as we prosecute our matters in this Senate, let us make sure that that perception of fairness or a level playing field is enshrined. Sen. (Dr.) Khalwale and Sen. Orenge talked about the issue of the majority having their way. It is not a question of having their way but bulldozing their way and we must stop it.

Mr. Speaker, Sir, we administer a poor country with poor people out there. They look to us for hope every single day. This Senate and the National Assembly constantly

appear to abrogate this popular aspiration. In elections comes a stable nation. Therefore, I hope that as we move to the 4th of next month, we will act in a manner not to impeach the nation but to ensure that this nation is strong forever.

I thank you and both Offices of the Senate Majority Leader and the Senate Minority Leader. We have conducted ourselves in a most sober manner. In fact, this is what Kenyans expect of this Senate and today, it has been redeemed. The “Nyumba ya Wazee” could be a derogatory term for those who use it constantly but it could also---

(Sen. Hassan’s microphone went off)

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I want to compare what we went through today with what is found in the Book of Esther Chapter 4, verses 13 and 14 which I will read:-

“¹³Mordecai sent this reply to Esther. Do not think for a moment that because you are in the palace, you will escape when all other Jews are killed.

¹⁴If you keep quiet at a time like this, deliverance and relief for the Jews will arrive from some other place but you and your relatives will die. Who knows if perhaps you were made queen for such a time as this?”

Mr. Speaker, Sir, the Senate has become the cornerstone for the people of Kenya. The people that we thought would read and listen to the law – which are Members of the National Assembly – refused to listen and follow the procedure.

I commend the Speaker of the Senate, the entire leadership and Members of this Senate for displaying patriotism and honesty to the people of Kenya that we do not belong to any side of the coalitions or oppositions but we stand to protect and bring dignity to the people of Kenya. If we continue this way, the stone that was rejected by the builder--- Remember we have been tossed around as Senate and denied funds but finally this is the anchor and the hope.

Mr. Speaker, Sir, I support and ask the Committee to go and look at everything that appertains to what the Bill says. I thank you.

Sen. Karaba: Mr. Speaker, Sir, thank you very much for allowing me to stand and appreciate your ruling which has gone down in history as being a House which can guide the country. This one comes as a result of having considered very many parameters. As I speak about those parameters, I want to compare Kenya to the United States of America (USA). Kenya has 53 years after Independence while the USA has 240 years since Independence because it was independent from 4th July, 1776. Given the nature of the country where there are massive deserts like Arizona and Utah and with big mountains like Appalachians and basins and great lakes, there are differences in networks. It has taken America over 200 years to come up with what we can call “common pattern” which kept on changing year after year.

So, we are not late. Let us encourage our people to continue doing it but it takes time. Criticism will always be there because nobody can be an island. We always make mistakes. Once we have made mistakes of any nature, it is important to be tolerated by

the other people because you never know, even the same people can make the same mistakes.

When the Constitution was promulgated in 2010, quite a number of people doubted whether it would take long. There were cases where some people said that so long as somebody had read the Constitution, they had read. So, let us take care of the people who listened to the people who read the Constitution for others because they might have skipped some of the areas. We are the people to interpret---

(Sen. Karaba's microphone went off)

Sen. Omondi: Mr. Speaker, Sir, thank you for giving me the opportunity. First, I thank the House, the Leadership and the Speaker for today's transaction of the business of the House. When we come back here to receive a report, let us have a report that carries the interest of Kenyans. I want to remind my fellow Senators, I included, that when we are entrusted by the people who elected us, we are entrusted to make laws that benefit the people of Kenya and this is the time when Kenyans are more important than ourselves or individuals. Those who have never seen the suffering or the type of lives Kenyans are leading can make laws that benefit them. History will judge us harshly. There comes a time when you become a victim of the law that you made to benefit you thinking that you will not be a victim. That is the time when you cannot reverse. That is when we say, history is judging you harshly because the law you made is against you.

Mr. Speaker, Sir, I leave this House this evening a strong legislator simply because Kenyans have requested us as legislators not to let them down. The process is on. We cannot say that we have finished but we are asking God that we finish this process in a peaceful way and in a manner that will benefit the people of Kenya. Election is the only time when ---

The Speaker (Hon. Ethuro): Conclude, Senator.

Sen. Omondi: Mr. Speaker, Sir, election is the time when Kenyans speak. We must give them the opportunity to speak through voting.

Sen. Kisasa: Asante Bw. Spika kwa kunipa muda huu. Naomba kwanza kukushukuru kwa umahiri wako. Pia nawapa kongole wenzangu kwa ukakamavu wao. Kama unavyojua, yasemekana ngoma ya vijana haikeshi. Kwa hii ngoma ya leo ya hili Bunge la watu wazima, tumeonyesha umahiri wetu. Tumeonyesha kuwa sisi ni watu wazimu. Mtu mzima huwa hawashi. Mtu mzima huzima.

Twatarajia tuwe na wakati mwema. Nchi yetu ni nzuri sana. Hakuna nchi ambayo yaweza kututosheleza sisi sote. Kwa hivyo twaomba tuwe na matarajio mema katika siasa. Twataka tuwe na amani nchini. Kama nilivyosema hapo awali, hakuna nchi ambayo itatutosha sisi sote. Tukitoka mbio hapa, ni nchi gani ambayo itatutosha sote kama Wakenya? Kwa hivyo umahiri wa Bunge hili umeonyesha ya kwamba sisi twafikiria wananchi na tumewaweka mbele kuliko matakwa yetu.

Kwa hivyo nawapa kongole watu wote na Seneti, kwa sababu leo kila mtu alikuwa macho wazi; kila mtu asema twawaona; mtie kidole na mtoke haraka lakini sivyo. Kwa hivyo nauombea umahiri wetu, Mwenyezi Mungu uzidi kuendelea; nawe pia Mungu akupe nguvu. Umeketi kwenye hicho kiti siku nzima kama sisi. Mawimbi

yalijaribu kukupiga lakini umahiri wako umeonyesha uko kwenye Bunge hili; Bunge lile lingine ni la vijana. Hongera, Bw. Spika.

Sen. Ong'era: Mr. Speaker, Sir, from the onset, like my colleagues, let me also take this opportunity to thank you for the wisdom in which you have conducted these proceedings.

First of all, I laud you for seeing it necessary and making express directions for the removal of the police officers who had barricaded the precincts of Parliament, particularly those funny green police gates that barricaded the roads leading to the Parliament of the Republic of Kenya.

I also congratulate my colleague Senators for rising to the occasion. They have ably shown that they are men and women who can rise above partisan interest and deal with the welfare of Kenyans as one nation. They have indicated and clearly shown that they are men and women who can be trusted to carry forward the torch of peace for this country. I laud them.

We want good laws. We want laws that can be perpetuated into posterity. We want laws that our great, great grandchildren can look back on and say, indeed, these laws were passed and legislated by men and women who had a vision for the prosperity and peace of this nation.

What is important in our Republic is for us to create an enabling environment in which there can be peaceful elections, free and fair process, and a level playing field for all players across the field whether in the Majority or Minority side.

As I indicated, I laud you for the wisdom; you have directed that the Committee on Legal Affairs and Human Rights look at these laws so that they can give the public the benefit of participating. We will collect their views before we discuss these issues. That is the spirit of consensus ---

The Speaker (Hon. Ethuro): Your time is up Senator! Proceed, Sen. Wangari.

Sen. Wangari: Mr. Speaker, Sir, I join my colleagues in lauding everyone who has participated today, and more importantly, you, for your landmark rulings that you have made today. All eyes were on the Senate. We have done justice.

However, what we have done today, will be put to test on 4th January, 2017 because we have only postponed the issue. The biggest New Year gift we can give to Kenyans is to ensure that we come up with something that we would give way and show light to the country.

When Sen. Wetangula was speaking, I tried to rise on a point of order because I have no doubt whatsoever that the Committee that you have committed this Bill will do justice. We must put it clearly that even if that Committee has majority from the Jubilee side, the chairmanship of that Committee is from the CORD side. That is for a reason. We could have bulldozed and got the chairmanship. So, it cannot cast aspersions. We expect nothing but the best results from this Committee. Going forward, good faith is two way. It is very disappointing when we sit here and debate for hours on the procedure, especially on the Special Sittings; then, the same people go to court to object to a process which had not even ended. We need a demonstration of good faith from every divide. Even CORD need to demonstrate that as we have agreed to debate this, they can give that a chance and the Committee to do their work.

Mr. Speaker, Sir, anarchy is not the issue of Majority versus Minority or Majority winning. It is about going to the streets and using unconstitutional ways to solve matters. We have this House and the Floor. We have had the whole day and we will have another day on 4th to put it on record as a House that remembers that Kenya should be the winner in this case.

Sen. M. Kajwang: Mr. Speaker, Sir, allow me to join my colleagues in thanking and congratulating you for presiding over this session that has lifted the lid off the pressure that this country has been under. For that, this is a belated Christmas gift to Kenyans. I hope that today you will allow me to refer to you as Father Christmas. I hope there would be no point of order on that.

Mr. Speaker, Sir, as we proceed to the New Year, it is obvious that the work that this Committee will do will be a big relief to many Kenyans. The date of 4th January, 2017--- because there are other appointments that the people of Kenya have made; to undertake their civil duty to protest at some of the constitutional and legal changes that have been going on. The challenge has been that for those who have made plans for 4th January, 2017 to undertake civil protest or mass action, that the action of this Senate would be enough to make them change their minds. I wish that those good people who work for difficult people were in this House so that this message could also pass to them. That, there is the responsibility---

The Speaker (Hon. Ethuro): Order, Sen. M. Kajwang! Those words were swallowed by the author. So, you cannot make reference to them.

Sen. M. Kajwang: Mr. Speaker, Sir, that is noted. I withdraw. The message is this; let us have new commissioners for the IEBC so that it can become a new year gift to Kenyans. We are many months beyond the timelines that we have put in place.

Let us have a situation where the political class is involved in the issue of voter register cleansing because looking at accuracy alone is not enough. We must look at validity.

Finally, I do pray that the Senate Majority Leader will call us back to deal with the issue of the doctor's strike. As we talk about elections and laws, we need healthy people to vote for us. We need people who---

The Speaker (Hon. Ethuro): Time is up Senator. Finally, could we hear from Sen. Chelule?

Sen. Chelule: Asante, Bw. Spika kwa kunipatia nafasi hii niweze kuchangia kwa mambo ambayo yana husu uchaguzi katika nchi yetu ya Kenya.

Kwanza,ningependa kukupongeza kwa kutuongoza kwa njia ambayo nafikiri wananchi wote wameona ni mwelekeo mzuri sana kutoka kwa viongozi ambao wamechaguliwa kuketi kwenye Seneti.

Mambo ambayo tumekuwa tukiongelea leo ni mjadala ambao unahusu uchaguzi katika nchi yetu ya Kenya. Haya mambo iyamaana kushinda matarajio ya mtu mmoja. Ninajua ya kwamba Kamati husika ambazo zitaongelea yale mabadiliko katika sheria zinazohusu mambo ya uchaguzi zitafanyakazi nzuri.Tunajua watatupatia jawabu nzuri.Sisi tumesimama kama Seneti tukijua kwamba jukumu letu nikutengeneza sheria. Inafaa tuketi kama maseneta na kutengeneza sheria ambazo zitaboresha mambo ya uchaguzi katika nchi yetu ya Kenya.Sioni sababu ya viongozi wengine kusema ya kwamba kutakuwa na maandamano. Mambo ya kutekeleza na kutengeneza sheria

ambayo inahusu uchaguzi, inatengenezwa kulingana na mapendekezo ya wananchi wa Kenya. Tukependa mapendekezo ambayo yataleta amani na utulivu katika nchi yetu ya Kenya.

Umetuongoza kwa njia nzuri naninajua ya kwamba tutapata jawabu nzuri kutoka kwa kamati husika ambayo hii kazi imewekwa mbele yao adhuhuri ya leo.

Tunafurahi kwa sababu tunajadiliana kwa amani bila mapigano. Wananchi wa Kenya walikuwa wakitarajia ya kwamba masenata pia watapigana kama wale Wabunge wa National Assembly. Lakini sisi kama maseneta tunaelewana kwa sababu tumeketi hapa kwenye Seneti kwa mnajili ya mwananchi wa Kenya.

The Speaker (Hon. Ethuro): Order Members.

(Several Hon. Senators rose up)

Order Senators, relax. We have exhausted the matter on Order No. 5. Everybody got an opportunity to comment on it.

I want to reiterate a few things. The next Special Sitting will be on 4th January, 2017. The Committee on Information and Technology should join the Committee on Legal Affairs and Human Rights for all the reasons that have been stated. I want to encourage the public to take this opportunity to make representations before our Committees for the Committees to reach a decision that is well grounded on suggestions made and more importantly, for us as a House, the issue of public access and public participation is extremely important to a legislative process.

Finally, I want to appeal to all other political formations that there is need to trust our institutions. This is an opportunity you have given us, a House of Parliament, to our country, to try and use the legislative process to resolve some issues even when they are contested. All actions should encourage and should await the outcome of the legislative process.

As we always argue, even before court, this matter is seized by the Senate and we must give the institution an opportunity. I am sure the Senate Minority Leader can agree with me on this kind of suggestion.

Having said so, I would also want to congratulate the Members. I must admit that when this matter came to our attention, we agonized on how to proceed with it and we considered various proposals. We consulted widely in terms of the leadership of the House and the general Membership. I want to thank the political leadership of the House for coming together even in the midst of difficulties but able to appreciate that we need to give Kenyans an opportunity to make contributions to the Bill that is before the Senate. I encourage that we keep that spirit and for the Membership to agree with our proposal.

That takes us to Order No. 7. The Mover is not around.

MOTION**ADOPTION OF REPORT OF THE JOINT SITTING ON THE VETTING
OF NOMINEES FOR APPOINTMENT TO THE NATIONAL
CLIMATE CHANGE COUNCIL**

THAT, pursuant to Section 7 of the Climate Change Act, 2016, Section 8(1) of the Public Appointments (Parliamentary Approval) Act, 2011 and Senate Standing Order 65, the Senate adopts the Report of the Joint Sitting of the Senate Standing Committee on Land and Natural Resources and the National Assembly Departmental Committee on Environment and Natural Resources on the vetting of nominees for appointment to the National Climate Change Council, laid on the Table of the Senate on Wednesday, December 28, 2016 and approves the recommendations of the Committees as follows:- i) Approves the nomination of Messrs. Suresh Patel and John Kioli for appointment to the National Climate Change Council; ii) Rejects the nomination of Ms. Cynthia Wechabe and Dr. Jane Mutheu for appointment to the National Climate Change Council; and iii) Recommends that the appointing authority submits nominees of the female gender to represent the marginalized communities and Commission for University Education as prescribed by the Public Appointments (Parliamentary Approval) Act.

(Motion deferred)

The Movers for the next Orders are not around.

COMMITTEE OF THE WHOLE

CONSIDERATION OF THE PRESIDENTIAL MEMORANDUM ON THE PETROLEUM
(EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL
(NATIONAL ASSEMBLY BILL NO. 44 OF 2015)

CONSIDERATION OF THE PRESIDENTIAL MEMORANDUM ON THE ENERGY BILL
(NATIONAL ASSEMBLY BILL NO. 50 OF 2015)

THE ELECTION LAWS (AMENDMENT) (NO.3) BILL (NATIONAL
ASSEMBLY BILL NO. 63 OF 2015)

(Committee of the Whole deferred)

The Mover of Order No 18 is not around.

MOTION**EXTENSION OF THE MANDATE OF SESSIONAL COMMITTEES
UNTIL THE COMMENCEMENT OF THE FIFTH SESSION**

THAT, pursuant to standing order 210 (3), the Senate resolves that the mandate of the Sessional Committees appointed in the Fourth Session be extended until the commencement of the Fifth Session.

(Motion deferred)

The Speaker (Hon. Ethuro): Order Members, as you had earlier anticipated, there being no other business to transact as per the Order Paper, the House stands adjourned until Wednesday, 4th January, 2017 at 10.00 a.m.

The Senate rose at 5.25 p.m.