

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 21st July, 2016

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

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

PRAYERS

COMMUNICATION FROM THE CHAIR

VISITING STUDENTS AND COORDINATORS FROM
UNIVERSIDAD PONTIFICIA COMILLA, MADRID, SPAIN

The Speaker (Hon. Ethuro): Hon. Senators, I wish to recognise the presence of visiting students and coordinators from Universidad Pontificia Comillas, Madrid, Spain who are in Kenya for three weeks on a programme dubbed 'Inside Kenya' which is hosted by Hekima Institute of Peace Studies and International Relations (HIPSIR).

They are seated at the Speaker's Gallery and they are as follows:-

Mr. Carlos Martinez	Coordinator
Ms. Angela De Hoyos	Coordinator
Ms. Maria Perez	Student
Ms. Elena Fatou	Student
Ms. Ingrid Garcia	Student
Ms. Raquel Fernandez	Student
Ms. Sonia Leon	Student
Ms. Laura Garcia	Student
Ms. Macarena Mestanza	Student
Ms. Lucia Martin	Student
Ms. Laura Morillas	Student
Ms. Angela Sevillano	Student
Ms. Linsey Agai	Coordinator, Kenya

In our usual tradition of receiving and welcoming visitors to our Parliament, I wish to extend a warm welcome to them and, on your behalf and on my own behalf, I wish to wish them a fruitful visit.

Thank you.

Sen. (Dr.) Zani: Thank you Mr. Speaker Sir. May I also extend a warm welcome to the students and coordinators from Madrid in Spain. Welcome to Kenya. It is a beautiful country as you might have already found out. I think the sort of engagement you are getting into is key to us.

We appreciate that you have been in touch with HIPSIR and that you are specifically targeting areas of peace studies. As you might know, we are always looking for that sort of equilibrium and working hard towards it in this country.

I hope that during your interaction with the people that you are going to talk with, you will pass some information and share experiences of the two countries. *Karibuni* Kenya and enjoy yourselves. We appreciate that you have also come to the Senate of Kenya to see how we conduct our deliberation.

The Senate Leader of Minority (Sen. Wetangula): Thank you, Mr. Speaker, Sir. I also join you and the House in welcoming the visiting students and their leader and to encourage them to feel at home in this “Upper House” of Parliament of the Republic of Kenya. Although Spain is in Europe, it is also a young democracy like us having come to democracy when my good friend Felipe Gonzalez swept to power sometime back.

I appreciate the Spanish football and I am a fan of Barcelona Football Club which we cherish very much in this country. We want to see that emerging democracies in developed regions can share experiences and good practices with us to see that democracy becomes the norm rather than the exception.

I also salute HIPSIR that we have been working with very closely as a Parliament. As they say in Spain, *muchos gracias*.

Sen. Sijeny: Thank you Mr. Speaker, Sir. I also wish to welcome them as you have done. I am delighted because I can see that all of them are ladies except one. I know those are very serious people and they are the future Prime Ministers and Presidents of that Republic. I wish you well and I hope you shall learn from the best that you can get.

I am corrected that you do not have a President but a Kingdom but I know you will be the leaders of whichever position you have. Welcome, feel at home and I hope we shall network the next time we join you in your country.

Sen. Ong’era: Thank you, Mr. Speaker, Sir. May I also join you in congratulating the delegation from Spain. I notice that these are young people who have come to our country to study our political democracy. I want to assure you that the democracy in Kenya is extremely vibrant. We have two major political parties namely the Jubilee Party and the Coalition for Reforms and Democracy (CORD) that are very strong coalitions. The political parties are very vibrant which is clearly seen in the exchanges in this House. In the Senate, being the “Upper House”, we take a bipartisan stand on issues which we come across, especially issues that are of national importance. I hope you are going to learn our sense of democracy and how we practice it.

I also want to congratulate HIPSIR for the good work that they are doing. We want them to also ensure that they do an exchange program for our African students to other European countries so that they can also learn similar practices.

Thank you.

Sen. Njoroge: Thank you, Mr. Speaker, Sir. Mine is to welcome the students from that one beautiful school whose name I have just forgotten because it is too difficult

for me. I hope you all do not go back to Sweden. Some of you should remain behind because this is a beautiful country and I hope next time you will have---

The Speaker (Hon. Ethuro): Order Senator. They may not go to Sweden because they have not come from there. Your prayers have been answered *ab initio*.

(Laughter)

Sen. Njoroge: Oh! They are from Spain. I hope that some of you will remain behind. You should also add the number of males because I can see that you only have one male around you. Thank you very much for coming. This is a very generous country.

The Speaker (Hon. Ethuro): We will finally hear from Sen. Karaba, the Chairman of the Education Committee.

Sen. Karaba: Thank you very much, Mr. Speaker, Sir, for allowing the Chairman of the Education Committee to contribute and welcome my colleagues, friends and students from Spain. Spain is a very significant country in this world because without Spain we would not be talking about the partition and scramble for Africa. It is Spain which has facilitated and pioneered the struggle and the discovery of the continent.

Initially, it was supposed to be one continent called Europa and it is Spain which made sure that they discovered Africa, America and so forth. Through Christopher Columbus, we salute Spain. When you get to Candice which is a Port of Spain, greet the great sailors of this world.

Thank you.

The Speaker (Hon. Ethuro): I am sure you have not been to that Port but you know it through your Geography.

Sen. Karaba: I know it, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Next Order!

PAPER LAID

THE TSC STRATEGIC PLAN FOR THE PERIOD 2015-2019

Sen. Karaba: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Thursday, 21st July, 2016:-

The Teachers' Service Commission Strategic Plan for the period 2015-2019.

(Sen. Karaba laid the document on the Table)

STATEMENTS

INCLUSION OF RELEVANT OFFICES IN POLICE RECRUITMENT EXERCISE

Sen. Njoroge: Mr. Speaker, Sir, two months ago, I sought a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations

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regarding the recruitment of police officers, an exercise that was done two months ago. Since the answer has not been given, through your intervention, I request for an answer today.

The Speaker (Hon. Ethuro): Is that the same one you asked for on Tuesday?

Sen. Njoroge: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What were my directions?

Sen. Njoroge: Mr. Speaker, Sir, you never gave any directions because we had a lot of business in the House.

The Speaker (Hon. Ethuro): Sen. Njoroge, we will check the particulars of the Statement and then come back to you.

Let us hear Sen. Mutahi Kagwe.

MEASURES TO SAFEGUARD KENYA'S DUTY FREE QUOTA ACCESS TO THE EU

Sen. Kagwe: Mr. Speaker, Sir, pursuant to Standing Order No.45(2)(b) I rise to seek a statement from the Chairperson of the Committee on Finance, Commerce and Budget. In the Statement, the Chairperson should explain the following:-

(1) Given that the European Union (EU) deadline of 1st October, 2016 as the date upon which the Economic Partnership Agreement (EPA) ought to have been signed and ratified, what are Kenya's options to safeguard the duty-free quota free market access to the EU?

(2) Are the discussions going on at the United National Conference on Trade and Development 2014 (UNCTAD 14) in Kenya likely to help in any way to extend the 1st October, 2016 deadline?

(3) In the event of the loss of duty-free quota free market access, what would be the impact on exporters of flowers, tea, coffee and other commodities and how can we mitigate these effects?

(4) What are the possible options that might be pursued by Kenya and the East African Community (EAC) in order to safeguard the duty free quota market access to the EU market and avoid trade disruptions?

(5) What are we doing as a country, given the reluctance of the EAC partner States which are still trying to maintain cohesion in the region and in our customs union?

The Senate Leader of Minority (Sen. Wetangula): Mr. Speaker, Sir, allow me to ride on that wonderful request by the distinguished Senator for Nyeri. In responding to that Statement, the Chairperson should tell the House and the country:-

(1) What are the effects and advantages or possible disadvantages arising from the BREXIT vote in the United Kingdom (UK) that is taking the UK out of the EU knowing that the UK is Kenya's No.2 trading partner?

(2) What are the effects of Kenya negotiating with the EU under the umbrella of the EAC when our partner States; Uganda, Rwanda, Burundi and Tanzania are classified as LDCs and Kenya is not. How would an eventual agreement impact on Kenya being in the same bracket with LDC countries?

(3) How is Kenya handling the dual position of Tanzania as a member of the EAC but has also opted to negotiate under the umbrella of Southern African Development Community (SADC)? Does Tanzania's continued negotiation through SADC affect East Africa's position in our negotiations?

The Speaker (Hon. Ethuro): Chairperson, that is a full plate for you but very significant too.

Sen. Billow: Yes, Mr. Speaker, Sir. This is a very important Statement sought by the Senators. The question on the EPA has been a vexing one particularly in the context of the EAC because agreements are now supposed to be signed as East African Corporation. That has been a challenge because some of the countries like Tanzania and Burundi have not been very cooperative.

Therefore, due to the importance of this, we will need a bit of time. I seek the indulgence of the Senator to respond by Thursday next week. I also urge the Clerks to expedite the dispatch of the letter so that by Thursday before the House goes on recess we can respond to it.

Sen. Kagwe: Mr. Speaker, Sir, in view of the urgency of this matter, we must appreciate what happened in 2014 when there was a delay in the signing of the agreement between ourselves and the EU. Farmers all over the country, especially flower farmers, suffered and went through a very difficult period. Now, given the importance of this issue and the ongoing discussions on this matter, as we speak just across the road, the chairman should bring the Statement as quickly as possible, possibly on Tuesday. Alternatively he can invite the Cabinet Secretary (CS) concerned into the House as a matter of urgency so that she can respond to these issues.

The Speaker (Hon. Ethuro): Chairperson, give us your thoughts before I dispose the matter.

Sen. Billow: Mr. Speaker, Sir, this is one of the subjects being discussed at the UNCTAD. However, it is appropriate to get a comprehensive report which would require our committee to sit with the relevant CS and interrogate this matter properly and give a very informed response on the matter.

The Speaker (Hon. Ethuro): Order, Chairperson! We need a comprehensive response. However a comprehensive response is not equated to more time. These are matters that the Ministry has been dealing with and have been around. At the time of EAC, Kenya allowed commodities from other countries without enforcing the tariffs for five good years. It has a real direct bearing on this. You have Friday and Monday which are working days. I direct that you bring the Statement to the House on Tuesday. The country is anxious and waiting for directions.

Let us move on.

OPERATIONS OF THE WOMEN ENTERPRISE FUND

Sen. Cheruiyot: Mr. Speaker, Sir, I rise pursuant to Standing Order No.45(2)(b) to seek a Statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget on the operations the Women Enterprise Fund. In the Statement, I seek the following information:-

(1) What amount of money has been disbursed to individual women groups in counties in the last three years?

(2) What formula do they use to determine the amount to be disbursed per county and per constituency?

(3) What is the organization's source of funding?

(4) Do they receive any monies from other organizations in addition to what they get from the Government of Kenya?

(4) How do they compute the interest rates that they charge to the loanees?

(5) What is the repayment and the default rate of the loans they have disbursed so far?

(6) What percentage of the organization's budget goes to administrative costs *vis-à-vis* the disbursed amount to loanees?

The Speaker (Hon. Ethuro): What is it, Sen. Wetangula, Leader of the Minority?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, in addition to what the distinguished Senator for Kericho has asked, will the Chairperson also tell the House and the country:-

(1) How many individual women and women groups have been foreclosed in the last two years? "Foreclosure" means failing to pay the loans and being auctioned. I have received many cases of women who have been lured into borrowing money and when things fail to work, they are foreclosed all over the country. It is not limited to one place.

(2) Is there any mitigation that the Government is taking to help these women? Sometimes it is not their fault. They put money in farming and the rains fail. They also put money in trade, robbers come. They put money in something else, nothing works!

Sen. Ong'era: Mr. Speaker, Sir, further to that very important question raised by the distinguished Senator for Kericho County, I would like to know how much money has been disbursed to Kisii County, how many groups of women were beneficiaries, were there any defaulters and what were the reasons.

The Speaker (Hon. Ethuro): Order, Sen. Ongera! You are being repetitive. The question was per county, unless Kisii is not listed as a county in this Republic.

Sen. Ongera: Mr. Speaker, Sir, I stand corrected. I am sorry I did not hear that it was per county. If that is the case then that is in order.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, noting that we are in devolution now, where we have elected Members of the County Assemblies (MCAs), Members of the National Assembly, Women Representatives, Governors and Senators, could the Chairperson table a document that shows how these respective offices get to know how many women groups in their respective constituencies have benefitted per year?

Sen. Kagwe: Mr. Speaker, Sir, could the Chairperson also explain to this House the interest rates that are charged to those loans and whether they are commercial or interest rates given strictly by the Government. If, indeed, they are lent by the banks, what percentage of the interest rates charged to the women groups is kept by the banks, which banks and how much of it is going back to the Government?

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

Sen. Sang: Mr. Speaker, Sir, as the Chairperson responds to the statement, I would also like to seek a rider. I know that various counties have developed similar

mechanisms of women enterprise funds within the counties. Is there a mechanism where the women fund is factored into county government budgets to ensure that they synchronize in terms of the disbursements that they give to the women?

Sen. Karaba: Mr. Speaker, Sir, I wonder whether from the source where the Women Fund was mooted, we can go back and moot one for men so that we can have a men fund as well. Very many men are languishing in poverty.

(Laughter)

The Speaker (Hon. Ethuro): Order, Sen. Karaba! I am not sure of what to make of that addition. We are dealing with the Women Enterprise Fund. Therefore, anything to do with men fund is irrelevant. However, I will leave it to the Committee to consider.

Sen. Sijeny: Mr. Speaker, Sir, I also wish to request the Chair to inform the country and the House the banks that are used to disburse the funds.

The Speaker (Hon. Ethuro): Chairperson, please respond.

Sen. Billow: Mr. Speaker, Sir, the Women Enterprise Fund was set up by Parliament and is funded from the national revenue. A couple of the questions that have been sought are readily available on the website of the Fund. The details of the counties as well as details of some of the things that have been requested are in the annual reports that are submitted to both Houses of Parliament. Nonetheless, I will seek the indulgence of the House to give response in two weeks because of the many interventions especially on the interest rates---

The Speaker (Hon. Ethuro): Order, Chairperson! If you had asked for the two weeks immediately, I would have been sympathetic. However, given the preface, the information is readily available on the website, you do not require two weeks. I will give you one week. You will give a response on Thursday next week.

Sen. Billow: Mr. Speaker, Sir, in the meantime, I urge Members to look for some of the basic information which is available on the website of the Fund.

The Speaker (Hon. Ethuro): Chairperson, I hope that you will also attempt to get the response for the House.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM MUTINDWA PRIMARY SCHOOL, EMBU COUNTY

Hon. Senators, I wish to recognize the presence of visiting students and teachers from Mutindwa Primary School from Embu County. They are seated at the Public Gallery. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

I thank you.

Sen. Kivuti: Mr. Speaker, Sir, I join you in welcoming these pupils. I congratulate the school management and the head teacher for having considered bringing

these youngsters to the Senate. They are the future Senators of this country. One day, I would like to find one of them in the Senate. The idea of bringing pupils to the Senate is so as to nurture them to start thinking big as leaders and to know how leadership is handled at the highest level.

Embu County has two of the 42 tribes of Kenya. These pupils come from the drier part of Embu County. That means that they have not had the luxury to learn a lot about Kenya the way they are learning it at the highest level today. I would like to appreciate the motivation that they have been given by their teachers so that they can pass well in their Kenya Certificate of Primary School (KCPE) and go forth to become Kenyan leaders.

I welcome them.

Sen. Wangari: Asante sana, Bw. Spika. Ninachukua fursa hii pia kuwakaribisha wanafunzi hawa. Nilipata motisha ya kuwa Mbunge wakati nilitembelea Bunge nilipokuwa katika shule ya msingi. Wanafunzi hawa pia wanaweza kukalia viti tunavyokalia leo. Wasichana na wavulana wote wana huo uwezo. Ninawakaribisha katika Bunge la Seneti nikiwahimiza waige yale mazuri watakayoona hapa. Yale mabaya wayaache yatokomee papa hapa.

The Speaker (Hon. Ethuro): Sen. Wangari, kwani kuna mabaya yapi?

(Laughter)

Let us proceed to the statements to be issued. However, before we move to that, there was a Statement that was requested by Sen. Njoroge. I can see the Vice-Chairperson of the Committee on National Security and Foreign Relations present. Do you have a response to Sen. Njoroge's request for a Statement on the police recruitment?

Sen. Adan: Mr. Speaker, Sir, I have the response ready. If you allow me to issue, I can do the same.

The Speaker (Hon. Ethuro): Did you get the response today?

Sen. Adan: Mr. Speaker, Sir, I have been having it for the last two months.

The Speaker (Hon. Ethuro): Please, proceed.

INCLUSION OF RELEVANT OFFICES IN POLICE RECRUITMENT EXERCISE

Sen. Adan: Mr. Speaker, Sir, this is in response to a statement by Sen. Njoroge. I believe that he went through the statement a while ago. In response, I would like to say that Article 246(3)(a) of the Constitution states that:-

“(3) The Commission shall—

(a) recruit and appoint persons to hold or act in offices in the service, confirm appointments and determine promotions and transfers within the National Police Service”

Recruitment is, therefore, a function of the National Police Service Commission (NPSC). Due to the enormity and logistics that are associated with the recruitment exercise, the NPSC pursuant to Section 13(i) of the National Police Service Commission Act established the national police service recruitment committee which was chaired by a

commissioner with members drawn from the Inspector-General's Office, the Administration Police Service, the Kenya Police Service and the Directorate of Criminal Investigation.

The Committee presented its proposal to the Commission's Board that sat on 22nd March, 2016. Pursuant to Section 10(2) of the National Police Service Commission Act, the Board directed that the actual recruitment exercise should be delegated to the Inspector General who by use of the staff under him, would carry out recruitment in the 331 centres. The delegation instrument was communicated to the Inspector General (IG) of Police through our letter Ref. No. NPSC/1/3/12 Vol.4 Folio 39 of 29th March, 2016. The Commission subsequently issued Circular No.NPSC/1/2/016, giving guidelines on how the exercise should be carried out.

It is also important to note that the National Police Service Commission (NPSC) Recruitment and Appointment Regulations, 2015 are in place and were expected to be followed. Besides these arrangements, the National Recruitment Committee was extensively involved in monitoring the recruitment exercise by sending commissioners and members of their secretariat to the field to oversee the preparations and the actual recruitment.

Secondly, is the analysis of the recruitment results. The names of shortlisted candidates were submitted to the Office of the IG by the recruitment panels from the 331 centres for verification, determination of successful candidates based on availability of vacancies and subsequent announcement. The analysis and verification was carried out by a secretariat appointed by the IG.

Thirdly, is whether some candidates were dropped. The Commission has received a number of complaints from some applicants who claim that they were successful but did not receive notification to join college. The Commission has launched investigations and if the allegations are found to be true, corrective measures will be taken to ensure that such applicants are not disadvantaged. We shall also endeavour to submit a comprehensive report once the IG has forwarded his final report to the Commission.

Finally, is publishing of the names of successful candidates. At the time of recruitment, the Commission was still awaiting Parliament to approve the revised budget estimate and as such, there were no resources either at the Commission or at the Ministry of Information and Communication to meet the high cost of publishing 10,000 names. However, once the Commission receives the final report from the IG, we shall publish the names on the Commission's website in order to comply with the constitutional provision. I have attached copies of the Commission Regulations, the Delegation Instrument and the Recruitment Guidelines for your ease of reference.

I trust that the explanations will assist the Committee Chairperson to address Sen. Njoroge's concerns. I have guidelines attached to the response which is ready for his perusal.

The Speaker (Hon. Ethuro): What is it, Sen. M. Kajwang? Do you want to seek clarifications?

Sen. M. Kajwang: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Let us allow Sen. Njoroge first, and then I will get back to you.

Sen. Njoroge: Mr. Speaker, Sir, from the statement, it is very clear that there were anomalies in the last police recruitment. There were complaints about the names which were presented to the IG after successful recruitment.

The Speaker (Hon. Ethuro): Sen. Njoroge, please seek clarification. We all heard the statement.

Sen. Njoroge: Mr. Speaker, Sir, for how long will we wait for the response from the Commission regarding publication of the names of the successful candidates? This was supposed to be done earlier before the candidates reported to college. That is the requirement. The excuse that money was not available is not binding. They should have waited for availability of the money then published the names. That is why we have complaints which cannot be addressed because we cannot see the names.

The Speaker (Hon. Ethuro): Order, Senator. Your clarification is very adequate. You do not need to fatten it.

Proceed, Sen. M. Kajwang.

Sen. M. Kajwang: Mr. Speaker, Sir, I thank the Chairperson for the detailed response. However, I would like to seek clarification on two issues. The Chairperson has indicated that the Commission has received complaints regarding the recruitment exercise. I would like to find out how many of the complaints relate to bribery or corruption. I have received complaints from young men and women who attempted to join the police force through this recruitment and it was clearly indicated to them that if they did not have Kshs200,000, they would not join the police force.

I would also like the Chairperson to clarify to this House: Does the police service have an ombudsman, an office or centre where some of these complaints can be directed to? When they are brought to me as a Senator, all I can do is bring them to the Floor of this House. Is there an ombudsman or a point where young people who have been asked to bribe to get into the police service can be sorted out?

Finally, we will look at the Recruitment Guidelines which the Chairperson has tabled. Every time recruitment to the police service or the armed forces is done, young men and women are asked to run, jump, undress, flash their teeth and do some other things that the colonial police used to do. In this modern world, at what point will be police service review their recruitment guidelines so that they recruit people on the basis of modern competencies not on the basis of the colour of their teeth? There are some young men and women who grow up in areas where the water is contaminated. As a result, their teeth get discoloured. They cannot join the police service because of archaic recruitment guidelines. When will these issues ever be addressed?

The Speaker (Hon. Ethuro): I cannot help but agree more. There are things that you can do something about while there are those that are as they are. Why should you discriminate on the basis of where I come from?

Sen. Abdirahman: Mr. Speaker, Sir, the police service in this country has been rated the most corrupt, year in year out. Whenever such issues arise, it takes long to get the grievances of individuals, including would-be, recruits to be addressed. The Chairperson has talked about publishing names, months after the recruitment. Will that help? It will not. There should be internal control mechanisms. The police talk about reforms. They have desks for complaints. Is there a shorter way in which this matter

would have been addressed concerning publication of names way after recruitment, when recruits have reported to colleges?

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, over a week ago, one police man went berserk and killed his colleagues in Kapenguria Police Headquarters. It is alleged that he was an Al Shabaab sympathizer. He has served for two years in the police service. Could the Chairperson tell us what stringent criteria have been put in place to identify *a priori* these Kenyans that are already in these vices so that they do not find themselves in the police service? They could be more dangerous in future.

The Speaker (Sen. Ethuro): Sen. Karaba.

Sen. Karaba: Mr. Speaker, Sir, some of the conditions to be considered before you are recruited to the police force are archaic in the sense that they do not seem to consider Africans as potential soldiers. Imagine when somebody is said to be 5 feet 8 inches tall. What happens to the Taita who are about four or five feet tall?

We also recruit police long after the students have left school when they have already “tasted” so many things such as drugs. Why do we not consider recruitment to the police force immediately the students leave Form Four, by which time they will not be polluted and they will be keen and will have known what it means to be patriotic soldiers.

Lastly, why do we not recruit the police from the National Youth Service as a way of commendation to those youth who have done very well in carrying out national tasks instead of having direct recruitment as it is now done?

The Speaker (Sen. Ethuro): Finally, Sen. wetangula.

Sen. Wetangula: Mr. Speaker, Sir, the police force in this country is enjoying a very dirty image. The other day, the distinguished Senator for Nyeri, talked about the manner of training and the need for continuous training to keep the police force abreast with the changing circumstances under which they operate.

You saw what happened in Kapenguria last week. Yesterday, there was a story of a policeman who dressed himself in a gunny bag and stood outside a police station in Langata the whole day, demanding to have audience with the Inspector-General (IG) of Police. As a policeman, I am sure he knows where the office of the IG is; it is not at the Langata Police Station.

Could the chairman tell the country what we are going to do to rationalize and improve the process of recruitment into the police, including removing the bottlenecks that the distinguished Senator for Homa Bay has cited?

Mr. Speaker, Sir, last year in Kisii County, Sen. Obure and Sen. Ong’era can bear me witness, a man collapsed and died because he sold land and bribed the recruitment officers with Kshs300,000, to recruit his son, but when he went to Kiganjo, he was not on the list. He sold the family possession, collapsed and died.

How are we going to weed out this cutting of corners, corruption and so on? What happens is that when a family buys a position for the son to join the police, he is instructed to be corrupt in order to bring back the family land that was sold. They, therefore, think that is a way of life.

The Speaker (Sen. Ethuro): The Vice- Chairperson. Sen. Adan Adan.

Sen. Adan: Mr. Speaker, Sir, this Statement was ready from May, 11th, 2016. The fault, therefore, is not with the Committee or with the National Police Service

Commission (NPSC) and that is why the Statement is overtaken by events. As to why the names have not been published up to now---

The Speaker (Sen. Ethuro): Order, Vice-chairperson. Why did you not process the Statement?

Sen. Adan: Mr. Speaker Sir, I have been having this Statement from 16th, May. Every time we wanted to issue it, Sen. Njoroge was not in the House. That is why it was delayed. I had the Statement from 11th May and I gave him the copy.

The Speaker (Sen. Ethuro): When you absolve the Committee and the Ministry, then you should also allocate blame somewhere.

Proceed.

Sen. Adan: Mr. Speaker, Sir, I would ask the NPSC to publish the names of those who were recruited as quickly as possible whether it is expensive or not. I do not know who will give direction in this case because I am hearing murmurs from both sides. The question is why the names have not been published. This is a matter which I will discuss with the NPSC and see a possible way of ensuring that the list has reached the public.

I believe there is a complaints office---

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

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

Sen. Njoroge: Mr. Speaker, Sir, the publishing of the names was supposed to be done before the recruits joined the college, which is procedure. It was supposed to be done in one of the dailies as a requirement. It lacks any merit for the Vice-Chairperson to say that it is late. There are those complaints which the NPSC has confirmed receiving; that some names were omitted when the recruitment was concluded after they had already succeeded at the grassroots.

Sen. Kembi-Gitura: Mr. Speaker, Sir, my view is that this is a very important issue that we are canvassing here. It cuts across the 47 counties. What Sen. Wetangula said is true. Those cases are there and there is rampant corruption in the recruitment. We have seen policemen being vetted and dragged through the mud and yet nothing comes out of it.

Why can the relevant Committee of the Senate not summon the NPSC and the IG and whoever is responsible for recruitment to come here and tell us all those issues; why it is happening, why every time there is a recruitment people lose their lives and are misused?

In the olden days, for example, in Murang'a where I come from, we had very brown teeth due to the high level of fluoride in water. If that is a reason to disqualify a person from joining the police force, it is ridiculous. We may canvass these issues here and not get the answer. The Vice-Chairperson may not have the answer. Why can the Chair not direct that the relevant government officers come here and give us the answers, once and for all?

(Applause)

The Speaker (Sen. Ethuro): What is it Sen. Billow?

Sen. Billow: Mr. Speaker, Sir, I am not going to talk about the teeth. Obviously, everyone who goes to a police station and expects to see a smiling policeman--- I would think in the context of publishing 10,000 names on dailies. As a House, we need to look at alternatives like putting the names on the police website rather than---

(An hon. Member spoke off record)

It is not about villagers but the leaders who represent those villagers should go through the website to see whether their people are there. How many villagers access the website? I think it is relevant.

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

The Speaker (Sen. Ethuro): What is it, Sen. Bule? Remember the Vice-Chair has only responded to one issue you had previously raised.

Sen. Bule: Mr. Speaker, Sir, the issue of security is one that needs a lot of care and looking into. The issue of police recruitment has become a matter which is not well addressed every now and then. If the police officer is recruited through corruption, is the product of discrimination and pervasiveness, there is no day we will get what we expected from the police---

The Speaker (Sen. Ethuro): Order, Sen. Bule. This is Statement Hour.

Sen. Bule: Mr. Speaker, Sir, let me come to the point of what I am trying to say.

Mr. Speaker, Sir, we are no longer in times where the police officers were handpicked or recruited through remote control from the top. We need to have a system where the locals identify the right people who fit because the communities living in the given area were not given the opportunity to say who deserved to be employed or who has the---

The Speaker (Hon. Ethuro): Order, Sen. Bule, just conclude there.

Sen. Abdirahman: On a point of order, Mr. Speaker, Sir. Listening to the Deputy Speaker's proposal, I tend to think that the questions we have raised may not be sufficiently addressed by the Vice Chair. I tend to think so because publicizing their names in the dailies will not be a solution. The reason for us to raise all this is to---

The Speaker (Hon. Ethuro): Order!

Sen. Abdirahman: Mr. Speaker, Sir, could I finish?

The Speaker (Hon. Ethuro): Order, you cannot just finish the way you want.

Sen. Abdirahman: Mr. Speaker, Sir, just allow me to finish. If, getting the entire group to be mentioned will be a solution for the future, can we go that route?

The Speaker (Hon. Ethuro): Order, Members, I really thought that the Senator for Murang'a spoke out of turn. You sought clarifications and you should let the Vice Chair respond to them then you will reach the verdict on the basis of the responses. You are now taking a dangerous path of having no faith in your own committees. That should come after the full submissions have been responded to by the Chair, then we will know what has been satisfied and what has not.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. I know you have already indicated your thinking and direction but I first wish to thank Sen. Njoroge for bringing the question. However, the supplementary

questions that have come on the Floor have broadened the issue beyond its original form to the extent that it looks like an issue which, this House needs to deal with, as the protector and defender of counties, their governments and their people that live therein from where recruitments are done and upon whom corruption is revisited during the recruitments.

Mr. Speaker, Sir, I must confess that I am also a Member of the same Committee. However, Sen. Adan is unlikely to respond to all the issues that we have been raised for the simple reason that she was only asked about the publication of the list yet we need to improve the image of the police.

The Speaker (Hon. Ethuro): Order, Sen. Wetangula. I have not disposed of this matter. I have not given any direction including my own thinking. I just said that; in terms of procedure a statement was made by the Vice Chair and clarifications were sought by Members. The Vice Chair has only responded to one of those clarifications sought. Why do we not allow her to respond to as many as possible, then on the basis of the responses, we can consider what the Senator for Murang'a has stated, unless we want to say that as a House, we do not even care what the committee's thinking might be? We all care about and appreciate our committees because some of you are Members. So, let her respond and then on the basis of the response, we can determine that we need more. We have always done that and it will not be the first time.
Vice Chair?

Sen. Adan: Mr. Speaker, Sir, thank you for your ruling. I think I responded to the issue of publication of names. I believe this question was asked earlier before names were out. At the moment, this has been overtaken by events. If it is really necessary for Sen. Njoroge to see the list, we can request the Ministry to publish the list of all those who have been recruited. Nevertheless, this can be an avenue that we could use in future to make sure that the names are out before they are admitted.

Secondly, I am sure there is a complaints office within the National Police Service Commission (NPSC). That is why I have indicated in the Statement that they have received several complaints regarding the recruitment that took place. However, I will not be able to answer how many complaints they have received and how they have responded to. This is a matter I still have to verify with the NPSC and come back with an answer on that.

The Speaker (Hon. Ethuro): Order, Vice Chair, neither can you confirm there is a complaints office because Sen. M. Kajwang's clarification was actually on an ombudsman which is very necessary for the police, just like the Judiciary has one.

Sen. Adan: Mr. Speaker, Sir, let me confirm that I am not sure there is an ombudsman with the NPSC. I know there is the Ombudsman Office which takes care of all the complaints regarding the acts of public offices and public officers in this country. That is what I can confirm but I am not sure about whether the police have an office for that.

If I am not wrong, the guidelines and regulations for the recruitment were reviewed by the NPSC in March 2016 but they had also been done in 2015. This was brought to the attention of the country, including the Senate, so that people give their input in terms of how they need to change this or that. We have a guideline that is being

used by the NPSC and also there are regulations for recruitment in place. This is a matter that we can look at and advise the NPSC that we need amendments to various issues that have been raised by Members in this House. That is my position regarding the regulations.

Regarding the issue of shorter ways of addressing issues, I might not be able to respond to that because I do not know the complaints mechanisms within the NPSC. However, I will go by the request made by the Senate Minority Leader and the Deputy Speaker who is the Senator for Murang'a County, that we can summon Kavuludi's Commission and the Inspector General to respond to some of the issues which I believe they will be able to answer exhaustively.

Mr. Speaker, Sir, I thank you.

The Speaker (Hon. Ethuro): This matter is expended. Therefore, let us wait for the next course of action.

Sen. Kagwe: On a point of order, Mr. Speaker, Sir. My proposal to the Vice Chair is that when Mr. Kavuludi comes, we should also discuss the matter of background checks on the recruitment process, given the set of individuals who are now threatening police forces and the possibility of even recruiting radicalised individuals.

The Speaker (Hon. Ethuro): Order Sen. Kagwe! I am afraid there is nothing new there. All you needed was to listen to your good neighbour, the Senator for West Pokot County; he said as much. He even dramatized it better given the incident of last week in his county.

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

The Speaker (Hon. Ethuro): Sen. Elachi, that must be very new or else I will stop you dead in your tracks.

Sen. Elachi: Thank you Mr. Speaker, Sir. Mine is just to remind the Chair about a month ago, I requested for a statement to understand why, for the last two to three years, the Administration Police (AP) have not been promoted. If that is answered, it will divide the country and the conflicts that we have been seeing in between the "blue force" and the APs.

Sen. Adan: Mr. Speaker, Sir, I have Sen. Elachi's answer but have we really concluded on the earlier statement? I think we have not. May be I would have to request the Inspector-General of Police and his team to come next week before we go for a recess, if that is agreeable.

The Speaker (Hon. Ethuro): That is so directed. Members, we are not doing well with time. Statement 2(a), since the Member is not here, we will push it to Tuesday next week.

FINANCING OF THE JARAMOGI OGINGA ODINGA HOSPITAL

(Statement deferred)

Statement 2 (b), the Member is not here as well. Statement 2(c)?

Sen. Sijeny: I am here Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): You need to sit where we know you are usually located. Statement (d)? Sen. Adan, this is the last time you are responding on behalf of the Committee on National Security and Foreign Relations.

Sen. Adan: Mine is statement (c) Mr. Speaker, Sir. Statement (b) is for the Health Committee.

The Speaker (Hon. Ethuro): What about statement (d)? I am actually at statement (d).

DISAPPEARANCE AND BRUTAL MURDER OF CHILDREN
IN CHESUE VILLAGE, NANDI HILLS

Sen. Adan: Mr. Speaker, Sir, I do not have statement (d) and I have discussed with Sen. Sang. I have spoken to the Cabinet Secretary (CS) and the Principle Secretary (PS) this morning and up to now I do not have the answer.

The Speaker (Hon. Ethuro): Order! If you have discussed with the Senator and he has no objection, we do not want to know the details.

Sen. Sang, just confirm.

Sen. Sang: Mr. Speaker, Sir, I cannot confirm because I just asked Sen. Adan if she had a written statement and she told me she does not have it but that she was going to give proper explanations as to why she does not have the statement on the Floor. I am expecting to hear that from her.

The Speaker (Hon. Ethuro): But you heard her say “discussed”. That does not amount a discussion.

Sen. Sang: She just mentioned to me, Mr. Speaker, Sir.

Sen. Adan: Mr. Speaker, Sir, it is not fair for Sen. Sang to deny that I discussed with him and I had even shown him the message that I had written to the Principle Secretary telling him that I have tried my best. Nevertheless, I will request Sen. Sang to give us some time until next week so that we can respond to this statement.

Sen. Sang: Mr. Speaker, Sir, while I appreciate the predicament committee chairs find themselves in; yesterday, yourself, Sen. Adan, myself and others were attending a particular function and I saw Sen. Adan engaged with the Cabinet Secretary in-charge of Interior and National Coordination and I hoped that this being an urgent matter, she would have pointed out that there are certain standing statements.

(Laughter)

I appreciate but I think this is an urgent matter. If you look at the question, this is about the disappearances of children aged between 8 years and 16 years. We are getting unconfirmed information that one of the girls who disappeared is somewhere that the security forces are trying to locate. We understand that she is safe but that kind of information is what we need. You can imagine the agony that families are going through. Three weeks down the line and there is no official information from the Government. The Chairperson has an opportunity to interact with the officer in charge. This is an urgent

matter and I would request that the Vice-Chair takes it a little bit more seriously and pushes it so that the families of those children are able to get their children.

Sen. Adan: Mr. Speaker, Sir, let me confirm to the House that, first, it is very wrong for Sen. Sang to say that I had a discussion with the Cabinet Secretary yesterday. I have not even met him but I just saw him at the airport. Having said that, I know this is a very sensitive matter---

The Speaker (Hon. Ethuro): It depends on how you saw him.

(Laughter)

Sen. Adan: I just saw him from far, Mr. Speaker, Sir. Let me confirm to him that I spoke to the Cabinet Secretary and the Permanent Secretary this morning stressing the urgency of this matter but up to now I have not received the response. I am kindly requesting Sen. Sang to give us up to next week to get this answer from the Ministry.

The Speaker (Hon. Ethuro): Order, Senators. This is a very grave matter. I direct the Committee to issue this statement on Tuesday. Failure to do so, serious sanctions will be made against the Committee and the Cabinet Secretary with a view to considering them as conspirators in the disappearing act. We are dealing with people who have already disappeared; they could have been abducted and killed. That should really worry us. What is it, Sen. Kembi-Gitura?

Sen. Kembi-Gitura: On a point of order, Mr. Speaker, Sir. I agree with your sanctioned ruling but some of us are Members of the Committee and we do not know on what basis you would sanction us on the issue. I think it has to be clear that it has to be the Chairperson and not the Committee because I sit in that committee and I am not culpable. So, I think it is good to correct it for HANSARD purposes.

The Speaker (Hon. Ethuro): I was informed--- on the time of the abortive coup of 1982, that you were accused of failing to prevent the coup. Since you have put out the case, we will consider every case at that particular time on its own merit.

Sen. Adan: Mr. Speaker, Sir, I agree with the Senator for Murang'a County. Personally, I have walked to these offices to try and get answers from relevant ministries but it is important for Members also to understand the efforts we are putting in as a Committee because we have made our efforts. Those who should be held responsible are the relevant officers. We will try our best as a Committee to answer---

The Speaker (Hon. Ethuro): Let me help you. One way to discharge your obligation is to bring a Censure Motion on the responsible officers. That way, you will confirm to the House that you did your best because we employ civil servants for purpose of delivering and some matters are very grave. They need to be attended to like yesterday. I will need to refer to Article 47 of the Constitution on Administrative Action; they must be efficient, expedient and timely. We do not want to be reading post-mortems. Let us save others if they can still be found.

Order, Members! Senate Majority Leader! Before Sen. Wetangula gives the Business of the Senate for the week, let us allow Sen. Sijeny on Statement 2(b).

IMPLEMENTATION OF GOVERNMENT
POLICY ON FREE MATERNITY SERVICES

Sen. Sijeny: Mr. Speaker, Sir, I sort for this Statement from the Chairperson of the Committee on Health on 16th June, 2016. He had been compelled to issue the Statement today, but I neither see him nor the Vice Chairperson of the Committee. However, the Senate Majority Whip who had given the undertaking is present. This is an urgent issue.

The Speaker (Hon. Ethuro): Yes, I recall.

Sen. Elachi.

Sen. Elachi: Mr. Speaker, Sir, I briefed the acting Chairperson of the Committee on Health, because the Chairperson has not been in the House for a while and the Vice Chairperson is also not around. I thought that Sen. (Dr.) Machage would have helped at that time, but he is also not in the House. I would like to ask Sen. Sijeny to give us up to Tuesday. It means that I will have to go for the statement myself and deliver it next Tuesday.

Sen. Ong'era: On a point of order, Mr. Speaker, Sir. This is a very serious matter. We are talking about the health of women. As we know, quite a number of women in these hospitals share beds. This is a serious matter and I feel that this Committee is not taking it seriously. I request you to rule on this matter, because it is not the first time that we are requesting for this Statement. Sen. Sijeny requested for it but no answer came. In fact, at that time, if you recall, there was not even one Member of that Committee in the House and that is why the Majority Whip made that undertaking. We seek your direction on this matter.

The Speaker (Hon. Ethuro): Hon. Members, let us give the Whip up to Tuesday. Sen. Ong'era, I will revisit your request on Tuesday. I would like to remind Sen. Elachi that there is something called responsibility and collective responsibility, as used to be said. You were given this mandate by the virtue of the office that you are holding. It was up to you, on behalf of the House, to ensure that the Chairperson, Vice Chairperson or any Member of the Committee delivers the Statement. For you to be reminded, it is just falling into the same problem with the ones that you are accusing of being absent. You should have been proactive. Now that you have only a weekend, we will confirm your position by Tuesday.

Let us now move to the Statement on the Business of the Senate for the coming week by the Senate Minority Leader.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, before I do that, you directed very firmly that the Statement I sought on the situation in South Sudan be issued yesterday or latest today. Sen. Adan had indicated to me that she was awaiting the Statement. I do not know what direction you would give. I know that we have run dangerously out of time.

The Speaker (Hon. Ethuro): Sen. Adan, do you have the Statement?

Sen. Adan: Mr. Speaker, Sir, I have just received the Statement. If you can allow me to issue it, that is fine, but Sen. Wetangula has not seen it.

The Speaker (Hon. Ethuro): Sen. Wetangula, I plead with you, in the interest of time and also for the subject to be interrogated better, that we put it on the Order Paper on Tuesday. You will have looked at the document and can do a better job.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I oblige. It will be a good idea if we start with it on Tuesday because of the interest that that matter attracted. In fact, this morning I had a meeting with the Assistant Secretary of State for the United States of America (USA) and half the time we discussed about the situation in South Sudan.

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 26TH JULY, 2016

Mr. Speaker, Sir, I wish to issue the following Statement under Standing Order 45. The Senate Business Committee (SBC) will meet on Tuesday 26th July, 2016, at 12.30 p.m. to schedule the business of the Senate for the week. Subject to further directions by the SBC, the Senate will continue with the Business that will not be concluded in today's Order Paper, focusing on Bills at the Committee of the Whole Stage.

On Wednesday, the Senate will continue with the business not concluded during the Tuesday Sitting. In addition, the following Bills will be scheduled for the Committee of the Whole:-

1. The Alcoholic Drinks Control (Amendment) Bill (Senate Bill No.5 of 2014).
2. The Persons With Disabilities (Amendment) Bill (National Assembly Bill No.43 of 2013).
3. The County Statutory Instruments Bill (Senate Bill No.10 of 2015).
4. The Micro and Small Enterprise (Amendment) Bill (Senate Bill No.12 of 2015).
5. The Persons With Disabilities (Amendment) Bill (Senate Bill No.1 of 2015).
6. The Basic Education (Amendment) Bill (National Assembly No.38 of 2014).
7. The Agriculture, Fisheries and Food authority (Amendment) Bill (National Assembly No.17 of 2015).
8. The Medical Practitioners and Dentists (Amendment) Bill (Senate Bill No.2 of 2016).

The Senate will also consider any other business scheduled by the SBC.

On Thursday, 28th July, 2016, the Senate will consider Bills at Second Reading, deliberate on Motions and any other business scheduled by the SBC. Let me take this opportunity to notify the Senate that in accordance with our Calendar, the Senate is scheduled to proceed on recess on Thursday, 28th July, 2016 until 13th September, 2016.

I hereby lay the Statement on the Table.

(Sen. Wetangula laid the document on the Table)

The Speaker (Hon. Ethuro): Hon. Members, that is the end of Order No.7. We will skip Order No.8 and 9 and proceed with Order No.10 and 11, which is the Committee of the Whole.

COMMITTEE OF THE WHOLE

THE REPRODUCTIVE HEALTH CARE BILL
(SENATE BILL NO. 17 OF 2014)

THE COUNTY OUTDOOR ADVERTISING CONTROL
BILL (SENATE BILL NO.11 OF 2015)

(Committee of the Whole Deferred)

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

*[The Chairperson (Sen. Kembi-Gitura)
took the Chair]*

THE EMPLOYMENT (AMENDMENT)
BILL (SENATE BILL NO. 1 OF 2015)

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, we are in the Committee of the Whole to consider The Employment (Amendment) Bill (Senate Bill No.1 of 2015).

Clause 2

Sen. Wangari: Mr. Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting clause 2 and substituting therefor the following new clause-

Insertion of new

section 29A

The principal Act is amended by inserting the following new section immediately after section 29-

Preadoption leave

29A. (1) Where pursuant to section 157 of the Children Act, a child is to be placed in the continuous care and control of an applicant who is an employee under this Act-

(a) the employee shall be entitled to three consecutive months pre-adoption leave with full pay from the date of the placement of the child;

(b) in the case of a female employee who is married, the employee shall be entitled to three consecutive months pre-adoption leave with full pay from the date of the placement of the child; and

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(c) in the case of a male employee who is married, the employee shall be entitled to two weeks pre-adoption leave with full pay.

(2) An employee eligible for leave under subsection (1) shall notify the employer in writing of the intention of the adoption society to place the child in the custody of the employee at least fourteen days before the placement of the child.

(3) A notice under subsection (2) shall be accompanied by documentation evidencing the intention of the adoption society to place the child in the custody of the employee, including a custody agreement between the employee and the adoption society and an exit certificate.

(4) Subsections (2), (3) and (7) of section 29 shall, with necessary modifications, apply to an employee eligible to leave under subsection (1).

(Question of the amendment proposed)

The Chairperson (Sen. Kembi-Gitura): The division will be at the end.

New Clause 1A

Sen. Wangari: Mr. Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after clause 1-

Amendment to section 2 of cap. 141

1A. Section 2 of the Employment Act, in this Act referred to as the “principal Act”, is amended by inserting the following new definition immediately after the definition of the term “employer”-

“exit certificate” means written authority given by a registered adoption society to a prospective adoptive parent to take the child from the custody of the adoption society;

(Question of the New Clause proposed)

(New Clause 1A was read a First Time)

Sen. Wangari: Mr. Chairman, Sir, I beg to move:-

THAT, New Clause 1A be read a Second Time.

The Chairperson (Sen. Kembi-Gitura): Sen. Wangari, you do not want to justify anything or it is okay with you?

Sen. Wangari: Mr. Chairman, Sir, the essence of this first amendment is to include adoptive leave prior to the adoption process itself. The time that a mother or an adoptee requires, mostly is before the order is given. Initially, the Bill had anticipated a maternity and paternity leave after the adoption, but in the public participation, we were able to gather that the time that is required is before. We are now amending it to make

sure that it is pre-adoptive leave, so that one gets custodial time on the placement of the child.

The new clause deals with the issue of exit certificate. There was an argument by employers that there is no way of verifying that someone wants to adopt a child. When you are pregnant, for biological mothers, it is evident, but for adoption you have to give something legally to show that you will adopt a child. That is why we are providing for the exit certificate. Already the process is complete and employees can justify that to their employers, so as to qualify for the leave, so that it is not abused.

*Question that New Clause 1A be now
read a Second Time, proposed)*

Title and Clause 1

*(Question, that the Title and Clause
be part of the Bill, proposed)*

Sen. Wangari: Mr. Chairman, Sir, pursuant to Standing Order No.139, I beg to move that the Committee reports progress on its consideration of The Employment (Amendment) Bill (Senate Bill No.1 of 2015) and seeks leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

The Chairperson (Sen. Kembi-Gitura): Next Order.

THE COUNTY LIBRARY SERVICES BILL
(SENATE BILL NO. 6 OF 2015)

Clauses 3-12

(Question, that Clause 3-12 be part of the Bill, proposed)

The Schedule

*(Question, that the Schedule be part
of the Bill, proposed)*

Clause 2

Sen. Gwendo: Mr. Chairman, Sir, I beg to move:-

THAT Clause 2 of the Bill be amended by inserting the following new definition immediately after the definition of the term “county executive committee member”-

“electronic resources” means any publication in electronic form;

(Question of the amendment proposed)

The Title and Clause 1

(Question, that the Title and Clause be part of the Bill, proposed)

Sen. Gwendo: Mr. Chairman, Sir, I beg to move that, pursuant to the Standing Order 139, the Committee do reports to the Senate its consideration of The County Library Services Bill (Senate Bill No. 6 of 2015) and seeks leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

PROGRESS REPORTED

THE EMPLOYMENT (AMENDMENT) BILL (SENATE BILL NO.1 OF 2015)

Sen. Sijeny: Mr. Deputy Speaker, Sir, I beg to report that the Committee of the Whole has considered The Employment (Amendment) Bill (Senate Bill No.1 of 2015) and seeks leave to sit again tomorrow.

Sen. Wangari: Mr. Deputy Speaker, Sir, I beg to move the Senate do agree with the Committee in the said Report.

Sen. Gwendo seconded.

(Question proposed)

(Question put and agreed to)

THE COUNTY LIBRARY SERVICES BILL (SENATE BILL NO.6 OF 2015)

Sen. Sijeny: Mr. Deputy Speaker, Sir, I beg to report that the Committee of the Whole has considered The County Library Services Bill (Senate Bill No.6 of 2015) and seeks leave to sit again tomorrow.

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Sen. Gwendo: Mr. Deputy Speaker, Sir, I beg to move the Senate do agree with the Committee in the said Report.

Sen. Wangari seconded

(Question proposed)

(Question put and agreed to)

BILL

Second Reading

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

(By Sen. Sijeny on 10.2.2016)

(Resumption of Debate interrupted on 10.2.2016)

The Deputy Speaker (Sen. Kembi-Gitura): Who was on the Floor?

Sen. Wangari, you have the Floor.

Sen. Wangari: Thank you, Mr. Deputy Speaker, Sir. I congratulate the Mover of the Bill, Sen. Sijeny. This Bill talks to the Constitution that Kenyans voted for overwhelmingly in 2010. Under Article 81 of the Constitution on the general principles of the electoral system, there is a clear provision, under (b), on how the electoral system should be. It says:-

“The electoral system shall comply with the following principles-

(b) not more than two-thirds of the members of elective public bodies shall be of the same gender.”

The issue of the gender parity and equality in this country in terms of leadership has come a long way. We have graduated from a moment when Parliament had only one, three or ten women. Today, we boast of improved numbers. In fact, in the National Assembly we have 68 women Members, inclusive of the 47 in the affirmative seats. In the Senate, we have 18 women out of the 67 Members. This also extends to the county assemblies. We are not lucky to have elected many women Members of the County Assemblies (MCAs). The current women membership in the county assemblies is about 4 per cent. Most of them were ‘gender top-ups,’ as stipulated in Article 177 of the Constitution.

This has both the good and the bad, even as we boast of these numbers. In the 10th Parliament, out of the 210 constituencies, there were 18 women Members. That was a better percentage compared to today, when we have 290 constituencies, yet we only speak of 16 elected women. Therefore we are moving two steps forward and two steps backwards; the gains are not absolute. We have had challenges as demonstrated in the

election of governors. No woman was elected to be governor. Similarly, no woman was elected Senator. I say this with a lot of pain.

When the President of the United States of America (USA) was visiting this country, he said that the non-inclusion of women in any body, whether public or private, is like having a football team and half of it are not participating in the game. If you look at the demographics, the women are slightly above 50 percent of the global population. However, these numbers have not translated in terms of political offices or political party offices where this political process starts. We are also lagging behind in the professional world.

Looking at the Gallery, I know that young boys and girls have visited this Senate. It is very sad when they hear that no single woman qualified to be a governor, out of the over 50 per cent of us in population. The process of election in this country has been very tough for women. The terrain has been very tricky. I always give an illustration when I talk of gender parity; that if we are watching a match at the Moi International Sports Center, Kasarani, and Sen. Kajwang is six feet tall and I am five feet tall, if there exists one crate for someone to step on, I should get that crate to step on to get to Sen. Kajwang's height. That is the essence of equity. We need to pull those that are disadvantaged.

The Constitution (2010) has been very generous. It was achieved through a negotiated process and very abrasive women, the likes of Phoebe Asiyo and Beth Mugo, who were in the first Kenya Women Parliamentarians Association (KEWOPA), when they were very few. In fact, most of us are sitting in these positions of affirmative action courtesy of other women. It is, therefore, our duty and responsibility as women of this country and as women sitting in Parliament, to ensure that we entrench this in law and come up with this framework as is required of us. If we do not do so, we will be absconding our duty.

This has also been reiterated by the President of Kenya when he came before the National Assembly. Even in the Jubilee manifesto women participation in every level has been emphasized. In the different parties they are given some kind of affirmative action in terms of payment of nomination fees. In my own party, United Democratic Front (UDF), we were charging women aspirants 50 percent so that we could get more.

It has been a long process and we are not there yet. Eighteen out of 68 is about 26 per cent. We still have not achieved the requirement of Article 81 in terms of 'not more than two-thirds should be of the same gender.' We still have a long way to go. Of course, we are doing much better than other democracies, including much bigger and older democracies like the US who have been there for about 200 years. They still look at us as a role model in terms of women participation and affirmative action.

This Bill, therefore, aims at making this a reality. Of course, it does not replace the fact that we need to have more women elected. That tells us, as people sitting on affirmative seats, that we have no option but to go out there and fight for these positions. Until we have a level playing ground, we will still need to consider affirmative action or the 'nominated seats' as it is, to achieve this parity. This Bill does not intend to give it as a token. In fact, it envisages that all of us will go for election. Many of us even in this House have made a deliberate effort to identify a constituency and run. We must do that

and encourage the over 600 Members of County Assemblies who were nominated as 'gender top-up' to seek election into office. However, if that still does not happen, we must look at the modalities of achieving Article 81(2). How do we give a framework of achieving that?

There have been several proposals. This Bill has been a culmination of many processes that we have engaged in our different capacities, especially as KEWOPA. We are the first beneficiaries of affirmative action under this Constitution. We had different views and finally came to an agreement that we tabled today. It has been well presented here by Sen. Sijeny. We agreed to import the provision of Article 177 of the Constitution, which is very clear on the constitution of county assemblies. It says:-

“A county assembly consists of-

- a) members elected by registered voters of the wards, each ward constituting a single-member constituency on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year; and,
- b) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender.”

It was an oversight to provide this for the MCAs and leave it out for the National Assembly and the Senate. That is why we are experiencing the current problem. We are still talking of 26 per cent here and 20 per cent in the National Assembly, because this was not provided for. Therefore, it is meant to actualize Article 81(2) by importing what is in Article 177. I have been very vocal on the issue of the MCAs because at the end of the day, we have had very harsh judgement of the women leadership in this country. We have had ourselves being referred to as flower girls; we have been seen to be *bonga* points at the county assemblies - that is what they are called. The segregation of members elected as under Article 177(1) (a) and (b) is very clear.

That is why I proposed an amendment to have the MCAs sworn on the very same day. The current MCAs, came on board as 'gender top-ups,' four months after election. It means that they did not participate in very crucial decisions of the county assemblies. They missed out in the election of the Speaker. They could not vie to be Deputy Speaker or participate in very critical committees. We have scrutinized committees that deal with finance issues in the county assemblies and know that very few women are members of the budget or public accounts committees. Most are nominated to the labour, social welfare, social development and cultural development committees. That is a very bad culture.

This Bill will help to deal with the fact that it is not just numbers that we are looking for. We want to give them a proper portfolio and a good starting point. When one comes in four months after everyone has settled, you have a disadvantage already. You are not able to perform at your best. This Bill is very critical and in the centre of this Constitution. We have had a threat of dissolution of Parliament if it is not enacted. It is our responsibility to look at it and see how best to address it.

There is one thing that I would look forward to amend at the Committee Stage. If one is sitting on an affirmative action seat, whether as a Women Representative, a Senator or a Member of the National Assembly, they should not serve for three terms. If

one serves in an affirmative seat for one term, you have already been given a push to vie for a position. Give that position to another woman and let them also have a chance to have a profile and build momentum to run for a seat. These are some of the things that were made as a compromise and this Bill envisages two terms. I think that two terms is too much. I hope that we will relook at that. If one serves in an affirmative seat for one term, they should then run for office.

The other good thing is the exit clause. This will not be permanent. I hope in 20 years when we review, we will do affirmative action for men or maybe we will be at 50-50 and hence, not need any affirmative action. Therefore, this exit clause helps a lot, so that it is not seen to be permanent. Women should not just relax and do nothing towards acquiring these positions. We must go out there and encourage everyone who serves on an affirmative action seat to get out so that we can grow the numbers.

With those many remarks, I beg to support. I hope that Members will see the need, duty and the constitutional requirement of enacting this Bill into law.

Sen. M. Kajwang: Mr. Deputy Speaker, Sir, thank you for giving me this opportunity to contribute to this Bill. I wish to congratulate and thank the Mover of the Bill, Sen. Sijeny. We are aware that many attempts have been made to deal with the issues that Sen. Sijeny has brought before this House. Many of them have not succeeded partly because of the jingoism that many political leaders in this country have and partly because of the attitudes that we have towards the implementation of the new Constitution.

I support this Bill for two reasons; the first one is because the Constitution requires that in elective positions, not more than two-thirds shall be of one gender. When we got the Constitution we swore an oath to defend and protect it. Therefore, if the Constitution requires it, it is upon us to ensure that we give effect to it.

Secondly, I support this Bill because it is the right thing to do. In a society like ours where women have always been categorized alongside children and their place considered the kitchen and other peripheral areas of the homestead, it has not been very easy for our women to rise to attain positions of leadership as opposed to men.

Mr. Deputy Speaker, Sir, there are still very many cultures in this country where even for a woman to stand before men and seek political positions is still being frowned upon. In fact, many women will be called prostitutes when they are seen running around going to meetings in the night and hobnobbing with men and other normal citizens in the name of looking for votes. Therefore, it is right for us to provide the “crate” that Sen. Wangari talked about.

If we want to treat everyone on equal terms in society, that means that women will definitely struggle to keep up with men. That is why there needs to be some equity. We need to provide women with some soft landing and certain advantages so that they are able to overcome the historical injustices that they have suffered in the past. In the county assemblies, we have already attempted to cure this issue. In my county, Homa Bay, only one woman was elected competitively out of the 40 wards. One out of 40 could easily be 2.5 per cent. That is very far off the mark of ensuring that not more than two thirds should be of the same gender. As a result, we have had a number of nominated women Members of the County Assembly (MCAs). At the county assembly level across all the counties, we have already rectified that anomaly. We can also see that the

composition of women is fairly balanced in the Executive and complies with the constitutional requirement.

Mr. Deputy Speaker, Sir, there is no reason why Parliament which is the House that is supposed to represent the will of the people including the will of the women of this country should fall behind in implementing this, yet we have already required the same of the county assemblies, the Cabinet and every other time there are appointments to the public sector. The top up formula that is proposed in this Bill might not be the most elegant approach to solving this problem. However, in the absence of a better formula, this is what we must go for.

There have been very many suggestions on how to achieve the two-thirds gender rule within Parliament. Some people have even proposed that some constituencies should be ring-fenced for women. This is a very impractical proposal if you were to ask me. Some people have even gone ahead to suggest that parties should deny men nomination certificates and give to the women which would further entrench the problem of discrimination. This top up is what has been used in the county assemblies. I do not think that anyone in their right senses would oppose this unless they come up with a better formula for seeing to it that two-thirds is not of one gender in this House.

Mr. Deputy Speaker, Sir, there are certain countries where such formulae are no longer necessary because society has got to a level where the role and influence of women has been recognized and appreciated. They do not need to go back to legislation to enforce the rights of women. There are those who have talked about additional cost of implementing this. It is true that our Constitution came up with so many structures and as the Senate Minority Leader keeps saying, it is important that we audit the Constitution and ascertain whether everything in it still remains sacrosanct.

As it is right now, if we do not come up with a mechanism to go for a referendum or amend certain parts of it, then we are stuck with the cost. Therefore, those who are talking about the cost should relax because this is what we wanted. The pain that we suffered as a nation prior to this new Constitution was too great that the cost that we have to pay to have it implemented should be something bearable. Until and unless we conduct an audit of the Constitution, I believe that the additional cost of having more women in this House should not be an issue.

If we are looking at the cost in terms of salaries and maintenance for the additional Members, that is the wrong way of looking at it. We would rather look at the opportunity cost of having women outside this House. The cost of maintaining them is a smaller price to pay as opposed to the cost of having women not being represented in Parliament and the upper echelons of power in this country.

Mr. Deputy Speaker, Sir, there are certain areas that I wish we could look at to see to it that we entrench the representation of women in leadership. For example, could it be an idea that one day we consider that when we have people running for the office of the governor, we make it an obligation that one of the two, between the governor and the deputy governor shall be a woman and must be of alternative gender. That is the only way to ensure that we have at least 47 male or female governors and deputy governors. That will give women an opportunity to see how things are done at that level.

Mr. Deputy Speaker, Sir, I do not think that will be discriminative in any way because if you look at the office of the governor as a single institution, you would say that it is not fair if the governor and the deputy governor were all of the same gender. That is a debate that I urge the sponsor of this Bill and those who are passionate about the issue of representation of women to look at before we get to the next elections. That would allow more women to get into executive seats at the county level.

We cannot avoid talking about this being the age of women rising. In the United Kingdom (UK), a woman is at the helm. In the United States of America (USA), a woman for once is set to be nominated as a presidential contender. In Germany, a woman is at the helm as well as the International Monetary Fund (IMF) and at the African Union (AU). Women are also at the helm in Brazil, Argentina and in an increasing number of nations. Women have risen to top level positions not necessarily because of affirmative action but because of their own industry, effort, dedication, ambition and focus.

I urge the women of Kenya that tokenism is not the solution. In as much as we have done this for some of the less developed regions, much has not been achieved. For instance, we have an Equalization Fund; we have set aside some money to allow less developed counties to catch up with the other counties. With the experiment with the Equalization Fund, it is evident that there is no amount of favours, tokens or grants that you can provide that will fully compensate for the discrimination and injustices that have been meted out for many generations. So, tokenism is not the solution. We must get to a point where young ladies and even elderly ladies - though I am told that there is nothing like an elderly lady, you are either a young lady or a lady. So, young ladies and ladies in this country should believe in themselves and aspire to scale the heights.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. M. Kajwang, who has been misleading you? I do not believe there is anything like what you say you have been recently informed about; young, old and elderly ladies. There are elderly ladies. They are very respectable.

Sen. M. Kajwang: Mr. Deputy Speaker, Sir, the older they get, the younger they want to be. So, you are safe if you do not allude to age on their part.

My argument is that women should not look forward to tokenism and favours. We know that they have been left behind historically but tokens will not propel them to that level. We live with ladies. My wife is more educated and qualified professionally than I am. She has transcended that mental bondage that she is a woman. She sees herself as an individual and a human being who is capable and competent to scale the heights of success. That should be the attitude across.

However, when it comes to the political field, it is a slightly different matter. I want to advance an argument. This week, in the western edition of some dailies, the headlines have been about nominations and how they will be free and fair for certain political parties. The discussion on nomination in my view is similar to the discussion between a free market and a controlled economy. When you are in a free market where it is free for all, our women will not be able to compete. If they are left to compete with men using the same devices, strategies and same amounts of cash, they will never be able to compete. Even in our nominations we must attempt to strike a balance and say that, fine, a free market, free nomination is good, that is the letter and spirit of what democracy

means, but we must come up with certain means to ensure that women, youth and persons with disability are shielded from some of the vagaries that they will be subjected to by the male contestants.

I support the proposal by Sen. Wangari which contradicts one of the amendments here. Once someone has been nominated, this business of eligibility for nomination for two further terms is an abuse of a privilege. Once you have been nominated once, that should give you enough exposure to understand the rules and how the game is played so that you can go out there and try it out on your own. You should also give an opportunity for others to come to this House or go to the National Assembly and get that exposure. At that right time, I will be rooting that we amend and change this from two further terms and in my view, a nomination should be for one term after which the nominee should be free to go out and square it out and come back to this House through a proper election.

Mr. Deputy Speaker, I conclude by quoting the words of a popular song of the reggae class. A famous musician sang, "They say women will rule this world in time to come." That time has come. When we visited Sweden with a Parliamentary Committee, we met women working in the Swedish Prison Service who did not want to be recognised as women. They did not want to be congratulated for being women at the top. To them being a woman is just an issue of anatomy. It does not define their condition. I emphasize again that the women of this country must start thinking that way but the men of this country must also free women so that it is just about the anatomy. The focus should be on the intelligence, character and all the gifts that God gave them.

I believe that God gave women gifts equal if not greater than gifts that he gave men. When I see men carrying their pot bellies around town and the way they look fatigued, if they were to carry a baby for nine months, manhood would be extinct. That is why God made women stronger and more graceful. I wonder why they cannot use these gifts to transcend.

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

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, I enjoyed listening to Sen. M. Kajwang. If an honorary title was to be awarded today, we would award him for supporting women vigorously.

I also rise to support this Bill which is quite interesting. As my colleague Sen. M. Kajwang has said, amendments will be suggested when it moves to the next stage.

I congratulate Sen. Sijeny for being bold enough to raise these issues in the Constitution, particularly Articles 81, 90, 97 and 98. They dwell majorly on nominations with regard to gender and persons living with disabilities at all levels; the county assembly, the National Assembly and the Senate.

I have gone through the Bill briefly. I am impressed to note that Sen. Sijeny has suggested that concerning Article 81, we need to insert a new paragraph which is indicated in this Bill to introduce legislation, policy and other measures including the setting of standards to achieve the realisation of Clause 1(b) and Article 81(1)(b). Article 81 purely talks about the electoral system that they need to comply with in entirety.

The Senator has introduced another part which states that the state shall take legislative policy and other measures including the setting up of standards to achieve the realisation of Clause 1(b). In other words, the whole of Article 81 from (a) to (e) now

becomes one. That is entirely what is indicated there. Sub article (2) has been introduced. That, the state needs to introduce legislative policy and other measures including the setting up of standards to achieve the realisation of all the clauses. I would like to mention one.

Article 81(a) states:-

“81. The electoral system shall comply with the following principles—
(a) freedom of citizens to exercise their political rights under Article 38; ”

Recently, we introduced amendments to the Political Parties Act. Some people are now misusing the amended version of that Act. They force people to join political parties while killing their parties. This article is alive and kicking. It emphasizes the freedom of citizens to exercise their political rights under Article 38 by joining any political party they wish to. Some fellows have decided to zone this country. They want to zone their counties to belong to one specific political party. Some want to zone regions. This is not in the spirit or letter of Article 81 of the Constitution.

Sen. (Prof) Lonyangapuo: Mr. Temporary Speaker, Sir, it now needs to come into the minds of Kenyans that we should not force things onto others whenever we have an idea that may be appealing to you. Do not misuse a position, particularly when you are a person in charge.

Article 81 (e) says:-

“Elections must be free and fair”.

I suppose this is why we now have this agitation of wanting the Independent Electoral and Boundaries Commission (IEBC) to be reformed which is true because if the players and the users of the decision of the IEBC are not comfortable, then it requires that it be reformed. I thank the Senate and the National Assembly for sending a strong team that is sitting almost the whole day on a daily basis in County Hall, co-chaired by Sen. Murungi and Sen. Orengo.

Kenyans desire to make this Constitution better. When we passed it in 2010, we appealed to the people who had voted “No” that there would be changes to some of the issues that were not clear. This Article guarantees anybody who has a problem to read it. Saying the elections are free and fair means that it should be by secret ballot, free from violence, no intimidation and no undue influence or corruption.

In my county and some neighbouring counties, some characters are already saying: We will use thorax in 2107 election, so that we can take a candidate of our choice. I am wondering whether they have the same Constitution or there is a new one that has been produced by the people who go to the villages to mislead others.

Mr. Deputy Speaker, Sir, this body is supposed to be independent and the author of the Bill has no disagreement with that.

He now only says:-

“That, the state shall, take legislative and other measures, including the setting of standards, to achieve realization of the Clauses set up above”.

Of which part (b) says:-

“Not more than two thirds of the members of elective bodies shall be of the same gender”.

We and the executive of the national Government are supposed to come up with a policy. I was watching a clip showing the Prime Minister of Britain handling questions during Question Time every Friday afternoon. Yesterday was such a day and they put a title that the new Prime Minister, May has reduced this fellow, the leader of the opposition side who is a male, into nothing and like a rag which should be on the floor. I watched her talk.

I am wondering whether our sisters are not misusing this and going too far with this Clause which says:-

“Not more than two thirds of the members of elective bodies shall be of the same gender”.

Did we really need to do this or we delete it after all? I am saying this because countries such as Britain and Germany have nothing like that. People show themselves up to show their competencies. Why should we give you sympathy when it comes to electoral positions while you are doing very well in the other fields?

Look, for example, at Prof. Mugenda in the universities. She led Kenyatta University (KU) brilliantly. The only other person who beat her record was the late Prof. Eshiwani. There is also Prof. Marbel Imbuga, the Vice-Chancellor (VC) of Jomo Kenyatta University of Agriculture and Technology (JKUAT), who was propelled by nobody.

There is time for everything. The time for maturity in politics for the ladies, may be another ten, 20 or 30 years to come. Why are you fast-tracking yourself to the extent that, now we are forcing things to happen here?

If you look at the number of seats that we are talking about, I do not see why we should not be having people vying. For example, Sen. Mugo, was a Member Of Parliament (MP) for a long time. When we introduced these Clauses, it looks like the ladies went into slumber and relaxed. There are a few now who are in elective positions.

Sen. Okong’o: On a point of order, Mr. Temporary Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): What is Sen. Okong’o?

Sen. Okong’o: Mr. Deputy Speaker, Sir, while you were consulting with the “King of Meru” the good professor is misleading the nation by saying that the women of Kenya are forcing matters which are in the Constitution.

Is he in order to mislead the nation that these rights are coming to this House in the wrong way, whereas it is a constitutional requirement that we realign our Constitution which was voted for?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Okong’o, do you not think Sen. (Prof.) Lonyangapuo is just expressing his opinion? I noticed that you are the next on line and I am sure you will be able to disabuse that notion, if it is wrong. Everybody has a right to express their views and that is the essence of debate. When it is your turn, you will show whether that was wrong.

Sen. Okong’o: I am most obliged, Mr. Deputy Speaker, Sir.

Sen. (Prof) Lonyangapuo: Mr. Deputy Speaker, Sir. Thank you for reminding my neighbour that he is the next one in line. We need to remind him that I am the other small king. When you see Sen. Murungi here---

Sen. Sijeny has also brilliantly and eloquently addressed Article 90, where it talks about what needs to be done. I support that and say that as we address this, my challenge to the other gender is that, you are capable of presenting your candidature.

The only problem I have noted in Kenya is that when it comes to party issues and articulating what you can do and showing your ability, not very strong and competent ladies want to go to politics, except a few. If you go to the villages, the strong ladies such as, teachers and doctors do not want to run for office. They only want to enjoy nomination. If you stood against a man including myself, there are women who are better than me.

My challenge is that as we introduce this - I am very happy with her proposal to bring an amendment - we should not be nominating people forever. It is not healthy to have somebody always serving as a nominated Member. I am sure we have all learnt something and are competent the way Sen. Sijeny, Sen. Wangari and all the others have shown. They have brought Bills and Motions to this House. Why do you not go the next mile and show your ability to go and vie, instead of wanting to be nominated again?

This ceiling of two terms is better because we have already put a ceiling for the presidency which is a maximum of two terms and for the governor which is also two terms. We should also adapt the same for the women who have already stood for party seats and have been nominated.

(Sen. Khalwale interjected)

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

Sen. (Prof) Lonyangapuo: Mr. Temporary Speaker, Sir, the “bull fighter” is not in good sports.

The Deputy Speaker (Sen. Kembi-Gitura): Order! I did not give you that chance, did I? Continue with your debate.

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, the Clause talking about a maximum of two terms is essential. Let us not curtail people too much. It does not have to be that when you have served for two terms, you are automatically supposed to be elected. As we said, it should be competitive.

Lastly, if you read the history and books, particularly where we have seen the emergence of female leaders, you will find that they are not curtailed. They just emerge and automatically find themselves performing quite well. So, we need to encourage our sisters that it is their time. I support.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you Senator. Sen. Okong’o, now it is your opportunity.

Sen. Okong’o: Mr. Deputy Speaker, Sir, as I rise to contribute, there is an issue which I did not want to delve into. First, I have to congratulate the Mover of this Bill, my learned friend, Sen. Sijeny, for coming up with what she is entitled to do as a legislator.

Mr. Deputy Speaker, Sir, when we passed the 2010 Constitution, we legislators are required to come up with several Acts and amendments to realign the 2010 Constitution to fall within the letter and spirit of the Constitution. That is what Sen. Sijeny has done.

Secondly, we borrow a lot from the West. For instance, the Americans over 200 years ago had relegated women to work only as nurses. However, they realised that that was a disservice to humanity and they empowered their women to become sailors to work in the navy and to become doctors, engineers and lawyers from the 18th Century up to now. We are almost approaching a situation where the Americans may deem it fit to have a woman president.

Mr. Deputy Speaker, Sir, the arguments on why we might allow our women to challenge their male counterparts in elections are shortsighted considering the circumstances of the African heritage where women have been given challenging jobs considering the African setup. Now, in the 21st Century, it is not a big requirement to allow women to feel what they are entitled to by the Constitution. We have seen prominent professors, doctors and engineers and that is not enough but it is just a drop in the sea. I have heard the good professor say that the women of Kenya are forcing people but they are not forcing anybody. What they are asking for is what they are entitled to by the Constitution.

Mr. Deputy Speaker, Sir, we have made some progress in the country. We have women pilots and those on the frontline in the war against the *Al Shabaab* in Somalia but that is not enough. What does it cost the Senate to have more Senators to comply with the constitutional requirement? These are the issues Sen. Sijeny is raising. In her Bill, she has gone further to say that we should have a sunset Clause. The Bill proposes Articles 97(1)(c) and 98(1)(b) which provides for a sunset Clause so that affirmative actions on gender representation will be reviewed 20 years down the line. That is not a very long period of time considering how far we have gone with this constitutional requirement.

Mr. Deputy Speaker, Sir, my good friend, the Senator for Homa Bay, spoke about the challenges women undergo. They do not have all the freedoms men have and there are challenges which they go through during the campaigns. We know what we go through and there are timelines of doing very many things. For instance, if a woman is married and she has siblings, their male colleagues will be asking them where they are. That is an African setup which we support. However, there is a reason we need to support this Bill, so that we realign ourselves to the Constitution.

The good professor from West Pokot was talking about the British who, for instance, consider themselves as “sybarites.” They have never been colonized and these are things they have learned in centuries; to give authority and powers to those who can grow to their highest level. They are neither challenged nor vetted. In this country, we have seen what those who have dared to dream to be presidents of this country undergo. We have Ms. Charity Ngilu and Ms. Martha Karua, among others. They get challenges especially in terms of raising funds for their support.

Mr. Deputy Speaker, Sir, we have women who have been elected but they are not enough as per the constitutional regulations. That is why I support this Bill as brought by Sen. Sijeny that we should comply with the Constitution. After we have complied, then other issues of who has done what and what their positions are could follow.

Finally, Sen. Sijeny has stated that to ensure that the enactment of this Bill does not affect the composition of the 11th Parliament, the Bill expressly provides that the post provisions shall apply to the general elections following the coming into force of this Act.

So, for those who are worried about whether it will interfere with the status quo, their worry should rest in peace.

With those very few remarks, I beg to support.

POINT OF ORDER

RE-INTRODUCTION OF BILL IN THE SENATE AFTER REJECTION IN THE NATIONAL ASSEMBLY

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. I am rising under Standing Order No.146 which speaks to the reintroduction of Bills after they have been rejected after the Third Reading in this House. I do not have to read that particular Standing Order because you know it. The determination I am requesting that the Chairs makes is; given the provisions of Article 112 of the Constitution which provides that a Bill like this one will have to get concurrence of the National Assembly and recalling that a similar Bill was before the National Assembly, in fact, last month and it was rejected; could you make a determination whether it is procedural for us to continue with this Bill knowing that this Bill would be seeking for concurrence in the National Assembly which already has rejected a similar Bill?

Mr. Deputy Speaker, Sir, I would like you to guide me and because of your unique position as a lawyer and my equally unique position as a long serving legislature in this country, this matter is unprecedented and requires clarity.

The Deputy Speaker (Sen. Kembi-Gitura): Let me get you right Sen. (Dr.) Khalwale, you quoted Standing Order No. 146 on Introduction of Bills. Is there anything wrong we have done there?

Sen. (Dr.) Khalwale: Absolutely nothing, Mr. Deputy Speaker, Sir. That is why I brought the matter together with Article 112 of the Constitution.

The Deputy Speaker (Sen. Kembi-Gitura): So Standing Order No. 146 is okay?

Sen. (Dr.) Khalwale: Yes, Standing Order No. 146 is super.

The Deputy Speaker (Sen. Kembi-Gitura): Because six months have lapsed and we are in a different session, right?

Sen. (Dr.) Khalwale: Sorry, Mr. Deputy Speaker, Sir. Maybe you did not hear my opening remarks.

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

Sen. (Dr.) Khalwale: You heard me; thank you.

The Deputy Speaker (Sen. Kembi-Gitura): What did you say about Standing Order No. 146?

Sen. (Dr.) Khalwale: Standing Order No. 146, I said it should come in a different session or not earlier than six months.

The Deputy Speaker (Sen. Kembi-Gitura): So that one is okay? That one is complied with? These are our Standing Orders.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, that one is complied with for the reason that a similar Bill has not been before this House.

The Deputy Speaker (Sen. Kembi-Gitura): So, Standing Order No. 146 is okay?

Sen. (Dr.) Khalwale: Yes, Standing Order No. 146 is super. When you read Article 112 of the Constitution ---

The Deputy Speaker (Sen. Kembi-Gitura): Let us go to Article 112 of the Constitution which you have referred to. What is your issue there?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, in Article 112 of the Constitution; if one House passes an ordinary Bill concerning counties and the second House rejects it, this is now contemplating a situation whereby the Bill goes to the second House. So, because Article 112 of the Constitution anticipates a Bill going to the other House and I know that this Bill will require concurrence of the other House---

The Deputy Speaker (Sen. Kembi-Gitura): Take me to Article 112 of the Constitution. Let us go through it together.

Sen. (Dr.) Khalwale: I will read Article 112 of the Constitution?

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

Sen. (Dr.) Khalwale: It states and I quote:-

“If one House passes an ordinary Bill concerning counties and the second House rejects the Bill, it shall be referred to a Mediation Committee appointed under Article 113 of the Constitution or passes the Bill in an amended Bill; it shall be referred back to the originating House for reconsideration”.

Do I stop or I continue?

The Deputy Speaker (Sen. Kembi-Gitura): Is that where your issue is?

Sen. (Dr.) Khalwale: My issue is on concurrence of the other House.

Deputy Speaker (Sen. Kembi-Gitura): With the Bill that we are dealing with now?

Sen. (Dr.) Khalwale: Yes, Mr. Deputy Speaker, Sir. This Bill, God willing, when we pass it, will go to the National Assembly for concurrence, but the National Assembly is in the unique position that last month, they rejected a similar Bill.

The Deputy Speaker (Sen. Kembi-Gitura): A different Bill and not The Constitution of Kenya (Amendment) Bill (Senate Bill No.16 of 2015) but may be a Bill that was almost the same in its essence. My understanding is that your fear is that the National Assembly has dealt with a Bill very close to this one and has rejected it.

Sen. (Dr.) Khalwale: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): That does not stop us from debating our Bill. Would it?

Sen. (Dr.) Khalwale: Not in the least.

The Deputy Speaker (Sen. Kembi-Gitura): Your fear is that we are working in futility because if we pass this Bill and take it to the National Assembly, it will be rejected.

Sen. (Dr.) Khalwale: Yes, that is my fear.

The Deputy Speaker (Sen. Kembi-Gitura): But is that not pre-emptive?

Sen. (Dr.) Khalwale: It is pre-emptive but I was forward looking and I wanted that because this is unprecedented, you make a determination not necessarily now but we can debate it.

The Deputy Speaker (Sen. Kembi-Gitura): My understanding Sen. (Dr.) Khalwale is that if one House passes an ordinary Bill like the one we are dealing with

concerning counties and the second House rejects the Bill, if we pass this Bill and the National Assembly rejects the Bill, so it did not come here; right?

Sen. (Dr.) Khalwale: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): So, in this case, if for the sake of agreement we pass this Bill, what will happen is that we are going to fight with the National Assembly. Am I correct?

Sen. (Dr.) Khalwale: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Then two things will happen; if the Senate passes it to the National Assembly and they reject it, then a committee on mediation will be formed. Am I right?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, so that I do not look like I am arguing with you---

The Deputy Speaker (Sen. Kembi-Gitura): No; I am quite happy, Sen. (Dr.) Khalwale, going through this Motion with you because it is important. My understanding of what you are saying is that your fear is that we are working in futility in the sense that even if we pass this Bill, it goes to the National Assembly, they will reject it.

Sen. (Dr.) Khalwale: Exactly and it may not be rejected in Plenary. The Speaker will not find it admissible for debate because the Standing Orders will tell him this matter has recently been before the House. So, it will not even be taken for debate. That is the determination I want.

The Deputy Speaker (Sen. Kembi-Gitura): Can it go for mediation?

Sen. (Dr.) Khalwale: It cannot, Mr. Deputy Speaker, Sir. A Bill only goes for mediation if it has been rejected. The House will not have been given an opportunity to reject.

The Deputy Speaker (Sen. Kembi-Gitura): Then you need to show me the proper legal provision because Article 112 of the Constitution is about going to mediation. It is not a situation where the Speaker will reject it.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, before he takes, you have made an important point. Article 112 of the Constitution is not about mediation. Mediation is Article 113 of the Constitution.

The Deputy Speaker (Sen. Kembi-Gitura): But it flows from Article 112 of the Constitution.

Sen. (Dr.) Khalwale: Yes Mr. Deputy Speaker, Sir. I want you to understand me that the only reason why this Bill will find itself at Article 113 of the Constitution is because the National Assembly will have spoken to it and rejected it with an amendment. However---

The Deputy Speaker (Sen. Kembi-Gitura): Why would the Speaker of the National Assembly reject the Bill before taking it to the Floor of the House?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, he will reject it because six months will not have elapsed.

The Deputy Speaker (Sen. Kembi-Gitura): This is not their Bill; it is a Senate Bill.

Sen. (Dr.) Khalwale: Okay; you make a determination, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): No, Sen. (Dr.) Khalwale. You are raising a very important legal issue and my understanding is that this is a Senate Bill and our Standing Orders guide us, as they are guided by their Standing Orders. That is why I asked you in Standing Order No. 146 and you said it is okay. If it goes to the National Assembly, it will not be their Bill that was rejected less than six months ago. They will not be dealing with that Bill but they will be dealing with our Bill and determining whether or not they can pass it. If they do not pass it, it will go to mediation. That is my understanding from where I am sitting.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, because I have raised this issue---

The Deputy Speaker (Sen. Kembi-Gitura): Because Standing Order No. 146 is talking to a Bill within the same House. I do not think the Speaker of the National Assembly will say we had a Bill similar to this one – it may be similar but not the same. It may be addressing a similar thing but not the same things. That is my understanding but I could be wrong. I can see Sen. Mutula Kilonzo Jnr. is asking for the Floor and Sen. M. Kajwang is also asking for the Floor. Let me just hear them out.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, there is a serious issue there. Let me take another angle. The advisory opinion of the Supreme Court on the gender question in Article 91 gave Parliament the deadline of 27th August, 2016. So, there needs to be an element of determination of this question.

I am not certain whether the Bill in the National Assembly was on principle. This is on principle or under Article 81, but I am not certain whether we are looking at the measures of ensuring that we comply with the two-thirds requirement. Any conflict on this question will fall squarely on this House in terms of the failure to comply with the deadline set by the Supreme Court. It is very dangerous if we do not determine what question the National Assembly did not agree to is. When we finish what we are doing here, we should not end up with a quarrel, at the National Assembly level about this question.

There needs to be clear direction, maybe through consultation, so that we do not end up in a deadlock. We want to help, but it would be unfair for us to sit, with the knowledge and information that we have about, first, the deadline set by the Supreme Court and, two, the rejection by the National Assembly. We should not sit here and assume that all will be well, when we know it might not be. A little direction here will be useful, so that we know that once we finish this--- The issue is urgent and I have said that if we do not comply with Article 81(b) it is possible that a good Kenyan, like Mr. Omtata, will make sure that we are not sworn in, in 2017. It is a serious question.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Mutula Kilonzo Jnr., I thought you would help me on the issue of procedure; the legality of the---

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, it is the same. That is what I said. If there is a rejection on the Standing Orders.

The Deputy Speaker (Sen. Kembi-Gitura): Where?

Sen. Mutula Kilonzo Jnr.: At the National Assembly, because the Bill needs concurrence. The legal question---

The Deputy Speaker (Sen. Kembi-Gitura): Forget about the Constitutional deadlines because those are there and if they catch up with us, they do. Citizens like Mr.

Omtata will do what they have to do. However, the issue that I want to deal with is: Are we doing something futile?

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, that is the elephant in the room. Did they reject the measure or the principle to the extent that---

The Deputy Speaker (Sen. Kembi-Gitura): The truth of the matter, Sen. Mutula Kilonzo Jnr., is that from where I am sitting, I do not know. Normally, I would have a message from the National Assembly that I would have read out to the Senate and said that this is the position. What happened in their situation is that the Bill died; it was voted out twice or thrice. The “nays” had it, as it were. Are we dealing with the same thing?

Sen. Mutula Kilonzo Jnr.: Yes, because it is Article 81.

The Deputy Speaker (Sen. Kembi-Gitura): No, not Article 81. Are we dealing with the same Bill?

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, we are not dealing with the same Bill.

The Deputy Speaker (Sen. Kembi-Gitura): Then, if we are not dealing with same Bill, we are dealing with the same situation. I do not know why they rejected it ---

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, that is why it is important to have a reasoned ruling. I must confess that I know that it is possible that there were other considerations of rejecting the principles that were in Article 81, because the amendments are the same. It could be a different Bill, but the National Assembly was attempting to deal with Articles 81, 97 and 98. So, if it is substantially the same ---

The Deputy Speaker (Sen. Kembi-Gitura): The big question is: If we pass this Bill here – and remember they did not pass the Bill from what we have been told – the next thing that will happen is that we shall send a message to the National Assembly. The question then that must be answered is: Will the Speaker of the National Assembly say that he will not take it to the Floor of the House because it is the same thing or will he be obliged to take the matter to the Floor of the House and then they reject our Bill and it goes to mediation? That is what Article 112 of the Constitution says. The problem that I have is that we are dealing with issues that I do not know about.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, that is the reason it would have been important that before we finalise whatever we are doing, we check, so that we are clear. It is a point and I am ready to contribute because where I stand, I am a special rapporteur for gender parity of the Inter-Parliamentary Union (IPU). I have an issue about this, but those are fundamental questions. We know what has happened before. Bills have been sent to them but they have not been listed. Instead, they have listed something else. It is fair that we confirm because we suspect that, in fact, it will not even leave the Rules and Business---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Mutula Kilonzo Jnr., the only problem I have – you may take your seat for now – from where I am sitting, and I know that Sen. Kajwang has also asked for the Floor on the same point, is that the National Assembly has its own Standing Orders. A Bill can originate from either House. Am I correct so far?

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, yes, you are.

The Deputy Speaker (Sen. Kembi-Gitura): They originated a Bill which died because it was voted out; the “Nays” had it. So, we do not know about it; it is a stillborn. We now have another Bill, which is not based on that Bill. It is a Bill that is now originating from the Senate. It may be dealing with similar issues; Article 81, 90, 97 and 98, but it is a different Bill for all purposes. For the sake of argument, I want us to assume that we shall vote “Yes” and pass it. If we do, we are *fanctus officio* that far, because we shall send a message to the National Assembly, who shall then take it to the Floor of the House. They shall debate and reject it.

The only thing that will then happen; since we will have gone through the whole hog of debating and passing it, is that; it must go to mediation under Article 113. That is where it will pass or not, but we shall have done what we have to do. But we cannot preempt a situation and say that a similar Standing Order in the National Assembly, like our Standing Order No.146, has been breached because ours has not been breached. The Speaker of the National Assembly cannot say they had a similar Bill less than six months ago and so, they cannot put it on the Floor of the House, because it is not their Bill; this is our Bill. That is my view.

Sen. Kajwang, what is your opinion?

Sen. M. Kajwang: Mr. Deputy Speaker, Sir, sometimes when you have tough subjects involving legal minds and experienced legislators like Sen. (Dr.) Khalwale, you need a fisherman like me who is experienced in disentangling nets.

I see two things here. Is this Bill properly in the House or this is an exercise in futility? I agree with you that on the question of whether this is an exercise in futility, we are being pre-emptive.

The Deputy Speaker (Sen. Kembi-Gitura): Is the Bill in the House properly?

Sen. M. Kajwang: Mr. Deputy Speaker, Sir, as to whether the Bill is in the House properly, when I look in the Constitution and Standing Orders, I see sections which oblige the Speakers of both Houses to do certain things before a Bill comes to this House. I want to assume that, that was done. Of course, the wording of the Constitution says that whether it concerns county Governments or special or ordinary Bill; I want to believe that this Bill was subjected to Article 110(3) of the Constitution.

Secondly, our Standing Order No.117 talks about introduction of Bills; what must be done when a Bill is being introduced to this House. Standing Order No.117(2)(c) obliges the Speaker to refer the legislative proposal to the Clerk, who shall consider the proposal and whether it conforms to the Constitution and the law and it is in order as to format, style and in accordance with these Standing Orders--- Unless we are questioning whether the Speaker went through very vigorous process then, we would consider that this Bill is properly in the House.

Just yesterday, we had a similar discussion, where a Bill came to the house and we were arguing whether the requirements of the County Governments Act on renaming of county headquarters had been fulfilled. The County Governments Act says that a county Government must make a resolution supported by two-thirds of the assembly and the resolution transmitted to Parliament. We were questioning whether that resolution had been passed. The Speaker ruled that by the time the Bill is before us, then those conditions have been met.

So, as to whether the Bill properly in the House, in my view, if those processes have been adhered to, then it is properly in the House.

The Deputy Speaker (Sen. Kembi-Gitura): What does the fisherman think about the second test?

Sen. M. Kajwang: Mr. Deputy Speaker, Sir, the fisherman does not like to be presumptuous or to pre-empt things. History will judge us as a House that considered this matter and either agreed or disagreed with it. When I read the mood of the House, we are generally in support of this Bill. We cannot predict what will happen in the other House.

The Deputy Speaker (Sen. Kembi-Gitura): That is the kind of position I am taking. I take it advisedly. I am happy that Sen. M. Kajwang has brought in the issue of Article 110 (3). As far as I am concerned, I am not competent at the moment to talk about Article 110 (3). My assumption, just like yours, is that when a Bill passes through the Senate Business Committee (SBC) and comes to the Floor of the House, it has complied with all those other issues. I will not look behind it or talk about Article 110 (3). I can only talk about Article 112.

As far as I am concerned, my eyes are closed; I cannot see. I do not know whether this Bill was debated anywhere else at any other time, because I have no knowledge or message on the same, and so, my hands are tied. We have a Bill in front of us and we must pass or reject it. If we pass it at the division stage, then we shall only do what we must do under Article 112 (1) of the Constitution. I have no control at all of what will happen after that. I will not defer this issue for a ruling more considered than what I have given. I am only dealing with the law as I see it.

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

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, I have already made a ruling on this issue. If it is to argue on whether or not we will proceed, I have already made a decision.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I just want to be on record. I concur with you; I cannot challenge you. There is no evidence that there is reason for us to stop or stand down the debate on this Bill. However, for the first time, we are now creating a parliamentary practice that will eventually become our tradition. Such a matter might recur in future. My thinking is that we proceed with debate - even if we pass the Second Reading today, there will be still the Third Reading waiting - but in the meantime, the Office of the Speaker should be forward-looking and do the necessary consultations, so that a ruling is made once and for all.

Why do I say this? Before this message goes before the National Assembly, the Speaker will look at the Bill and say that according to the Constitution, it is admissible for debate. He then goes to the House Business Committee (HBC) in the National Assembly which ballots the Bill. If they find that the matter had already been before the House, there might be an issue that will require a declaration.

The Deputy Speaker (Sen. Kembi-Gitura): They can never find that the matter was before the House because it was never before the House. They can find that it is deceptively similar - as we used to say in law - to what was before their House, but they may not say that it is the same, because it is not the same.

Sen. (Dr.) Khalwale, I respect your views and those of other Members, and they are valuable. You have even made me think about something that was not in my mind when you resumed debate on this Bill. But the truth of the matter is that you are asking me to do things that I cannot do from where I am sitting. If we pass this Bill, we will send it down to the 'lower House' or we shall reject it like they did, and that would be the end of the matter. We will deal with the consequences of having failed to deal with the constitutional deadline at that moment in time. That will be my ruling.

Who was on the Floor? Sen. Gwendo, were you contributing.

Sen. Gwendo: Mr. Deputy Speaker, Sir, I had just started.

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

The Deputy Speaker (Sen. Kembi-Gitura): Is it on the same issue, Sen. Sang?

Sen. Sang: Yes, Mr. Deputy Speaker, Sir. I came in when you had already progressed in these discussions. Thank you, for giving the undertaking to do a considered ruling---

The Deputy Speaker (Sen. Kembi-Gitura): I will not do any other ruling. I have made my ruling.

Sen. Sang: Mr. Deputy Speaker, Sir, I am sure that the issues that have been raised here will still be part and parcel of the deliberations in this House. You have given us the green light and we shall proceed with the Second Reading on this Bill. However, I am sure that at one point or another, we will have to address a number of the issues that have been raised in this House.

Some of the constitutional provisions with regards to Article 110 on whether or not a Bill affects counties might not necessarily apply on a constitutional amendment. The Constitution under Chapter 16 provides only two ways of amending the Constitution. Article 256 is a parliamentary initiative, which I believe---

The Deputy Speaker (Sen. Kembi-Gitura): I do not know where you are getting to, but I suspect that you want to bring in new issues. You are now talking about Article 256 and things that might happen in the future. I have made a ruling on what is before us now. We still have to go to the Third Reading and pass the Bill before it goes to the 'lower House.' All those things will happen. If at another stage in time something else has to be ruled upon, it will be dealt with at that time.

Proceed, Sen. Gwendo.

(Resumption of debate on the Bill)

Sen. Gwendo: Mr. Deputy Speaker, Sir, on the contrary, I would like to congratulate Sen. Sijeny for bringing this Bill.

The Deputy Speaker (Sen. Kembi-Gitura): Contrary to what?

Sen. Gwendo: Contrary to the point of order by Sen. (Dr.) Khalwale. It goes to show how---

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

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, I hope that you will not take us back. What is your point of order?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, is Sen. Gwendu in order to impute that my point of order was intended to deny recognition or congratulatory remarks to Sen. Sijeny, when all I was doing was to seek clear directives from the Chair about a matter which you have concurred and you have directed me. Is she in order?

The Deputy Speaker (Sen. Kembi-Gitura): She is totally out of order.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, could she withdraw and apologize?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, you had not sought for withdrawal and apology.

Proceed, Sen. Gwendu.

Sen. Gwendu: Mr. Deputy Speaker, Sir, unfortunately, Sen. (Dr.) Khalwale, did not wait for me to finish for him to understand my statement. I was congratulating Sen. Sijeny and at the same time bringing out the fact that Sen. (Dr.) Khalwale's point of order goes a long way to show the kind of fight that we have to go through as women. You are bringing out where you feel women belong. It is like insinuating that---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Gwendu. Address issues without getting into areas that you may not be able to extricate yourself from.

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

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale. Sen. Gwendu, you will address the Chair. I have made a ruling that you are out of order in the first instance. You can now contribute to the debate.

Sen. Gwendu: Much obliged, Mr. Deputy Speaker, Sir.

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

The Deputy Speaker (Sen. Kembi-Gitura): What is it Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, thank you, for giving me this opportunity to beg the distinguished Senator to withdraw those remarks, so that they are not part of the record of the House. She does not have to apologize. My children will come here when I am gone and I do not want them to think that I was 'anti-women.' In fact, I am on record as one of the few politicians in this country who loves our women so much that I not only have one or two wives but slightly more. What greater appreciation can a man have for women?

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, I think you are the one who is now out of order. Let us continue with this important debate.

Sen. Gwendu: Thank you Mr. Deputy Speaker, Sir. I congratulate Sen. Sijeny for bringing this Bill to the Senate. I just want to reiterate what Sen. M. Kajwang said; counting the achievements that we have had in the world today. The current Kenya Ports Authority Managing Director is a woman. We also have the British Prime Minister, the German Prime Minister among others. These are some of the achievements that we have managed to conquer as women.

These women managed to attain these positions through their struggles. In Kenya, we have to amend the Constitution for women to get these positions. Women do not need

to get these positions as tokens; we are asking for your support. We understand that this is a man's field and we come from a society that is patriarchal. Women are considered to belong in the kitchen, nursing and teaching careers. When a woman vies for a political position, she is considered a rude woman. She is described by words that I cannot use in this House.

Mr. Deputy Speaker, Sir, we are not asking for tokens. We are not asking to be nominated or given 'free seats'. We would like to vie with you people, the men in this Parliament, but we would like you to support us and not to fight us. We do not want to hear stories of women vying and they are stripped of their panties, which are hanged---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Gwendo, we are in Parliament. If you want to contribute, you must use parliamentary language. You cannot refer to Senators as 'you people'. You must use Parliamentary language that is palatable, which can go on the HANSARD. I hope you are so directed.

Sen. Gwendo: Much obliged, Mr. Deputy Speaker, Sir.

As women leaders in this society, we are not asking for tokens. We are asking for the support of men and male leaders. I wish the society could be prompted to change the thinking that a woman cannot be a leader. For example, in any group a woman will many a times be given the position of an organising secretary or treasurer. They will never be chairperson, not because they not capable of handling the position, but because it is perceived that the chairperson's position has to be taken by a man.

Mr. Deputy Speaker, Sir, I urge political parties to find a way of supporting women so that when issuing nomination certificates, women pay half the nomination fees, like what some parties did during the last general election. Women should also be supported in terms of campaign materials and security. Lack of such things is what makes most women shy away from vying for positions. It is not because they are afraid or they are incapable, but because of they have seen other women go through before.

There is no tool more important in development than the empowerment of women. When you empower one woman, you have empowered a whole society. When you support one woman, you have supported a generation.

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

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

[The Temporary Speaker (Sen. Mositet) took Chair]

Sen. Elachi: Thank you, Mr. Temporary Speaker, Sir. I also want to thank Sen. Sijeny for bringing the amendment to the Constitution regarding a critical issue to our country. Article 261 (5) may be used against Parliament if we are unable to ensure that the two-thirds gender matter is determined.

I also want to thank Sen. Mutula Kilonzo Jnr., Sen. Hassan and the Senate Minority Leader for their stand when this Bill was in the 'lower House'. They stood firm and declared that it is time that we finish with the agenda.

Sen. Sang: On a point of order Mr. Temporary Speaker, Sir. We are several Members in this House. Is the Senator in order to isolate and discriminate against Sen.

(Dr.) Khalwale and I? In fact, I am the Vice Chairperson of the Committee on Legal Affairs and Human Rights and we have processed this Bill and given the necessary support. Is she in order to discriminate against Sen. (Dr.) Khalwale and I, who are the strong supporters of women leadership?

Sen. (Dr.) Khalwale: On a point of order Mr. Temporary Speaker, Sir. It is this attitude of being confrontational that is part of the reason in the National Assembly, a few male Members walked out of the House and we missed the numbers. Today, we have spent the whole day listening to the presentations as, the Select Committee, from the National Gender and Equality Commission, particularly on this agenda. Should this matter fail, we yet have another avenue, as a Committee, to give it a chance to see the light of day. Is she in order to leave me out of the list of people being given accolades?

(Laughter)

Sen. Elachi: Mr. Temporary Speaker, Sir, the Senator of Kakamega and the Vice Chair of the Committee on Legal Affairs and Human Rights should have waited until I finished my statement. I was just affirming. Of course, I know what my Senator and the Vice Chairperson of the Committee have done. I wish they could have waited.

The Temporary Speaker (Sen. Mositet): I can confirm they are happy now.

Sen. Elachi: Mr. Temporary Speaker, Sir, indeed, they are part of the movement and I am sure that the Vice Chair will follow up after we finish debating, so that we can ensure that even the 'lower House' agrees with us.

I thank every Kenyan who participated and ensured that we have a new Constitution. I also thank the late Sen. Mutula Kilonzo (senior) - may his soul rest in peace - because he stood with us. Even at the National Assembly, he stood steady to ensure that 50 seats are given to women. He later joined the Eleventh Parliament and gave more support. Many would wish to see more women in representative positions and meet the two thirds gender requirement, as it happens in other East African countries and in the Commonwealth Parliaments.

Looking at the object of this Bill, we need to be sure and clear as we move forward that the 'Lower House' will support this agenda. We know that they just lacked the numbers during the second Division. However, they all agreed on the Bill. Therefore, I plead with the principals of both sides of the coalitions that it is time to finalize this Bill so that the August deadline does not find a Kenyan with mischief who would want to see disarray not just on the affirmative action agenda but on other critical agenda as well that we must ensure Parliament passes.

Mr. Temporary Speaker, Sir, we are currently dealing with the issue of Independent Electoral and Boundaries Commission (IEBC) as well as other constitutional Bills. This Bill is one of those that under Article 261 of the Constitution that the court made a ruling on. It is important for us not to take it lightly. This is the 'Upper House' that can ensure Kenya goes back on track.

I have realized that our brothers and sisters in the National Assembly think that this Constitution is a joke, not just on the issue of affirmative action, but on the way they manage many of the things. They forget that somebody can sabotage the whole process at

one point. That is why the Constitution gives every Kenyan a right to go back to the courts for interpretation or remind the court on the ruling of Judge Mumbi. We normally assume that we can do everything including reducing days, clamping everything and finishing---

It is time to show Kenyans that we have the spirit of respecting the rule of law and the Constitution. You remember that we lobbied our colleagues and we are still lobbying. This is not a women's issue. Women are fewer today but tomorrow, it may be the men who have less numbers. You never know. Nobody knew that at one point the former Prime Minister of Britain would leave his seat. A woman now occupies that seat. A woman may also end up being the President of USA. Therefore, let us not ignore this Bill. Let us agree in principle that whoever will benefit is a Kenyan; either male or female.

Mr. Temporary Speaker, Sir, the Bill also serves to affirm the marginalized groups and people living with disabilities. While amending it, we can bring amendments in the Elections Act so that everyone goes out to compete. That would be important so that we also feel the heat that everyone else feels. All these things depend on how we amend the Elections Act and ensure that happens when political parties are doing their nominations. I know that Kenyans feel that there are too many seats, which is true. However, if everyone goes for competition, then Kenyans will appreciate that one is not just given a seat but they have worked and toiled for it.

We have clear debates in the Senate that people will come to understand. Sometimes because of the politics that we bring, Kenyans get totally confused and think that we are creating non-existent issues. However, let us bring out the sacrifice that we made when passing the new Constitution. We came up with a principle which must now have a formula to be implemented. That is why we have many nominated women in the counties. I discourage this. Let us ensure Kenyans understand why more women need to be elected to the county assemblies. At the same time, if more women are elected, men must be nominated to ensure that not more than two thirds of either gender is in that house.

Nominated women are called "top ups" and Kenyans have decided to erode the issue of political parties "topping up" women in the county assemblies. They do not even remember that these women were nominated through a party list. It is important that nominated members uphold the interest of their party as they debate in that house. They should bear in mind the manifesto of their party. They should ensure their party is heard.

Therefore, we must redeem that so that in the next elections in 2017, while we are aware that there will be many male contestants for the seat of MCA in a Ward, for instance 45, we must encourage women to be part of the 45. MCA will be a competitive seat. The men might discourage women by telling them that they have their "top up." We should discourage this. That is why we must be clear in the amendment of the Elections Act on nominations. We must put in place a clear formula. Everyone has to contest for a seat. If you lose, and you are a best loser, your party can nominate you.

We must also look at the amendments on the issue of handing in the party list before the elections. I am pleading with the House that, we should look at that amendment to ensure that people who have worked for the party benefit in those

nominations. At the county assemblies, not many parties realised that these seats were very powerful and would help the party. Some no longer support their parties yet it is important to support your party so that it progresses. We should put in place a clear framework so that everyone who is nominated is responsible. This will ensure that their party thrives; party agenda is well articulated, nationally and at the county level.

In addition, some nominations do not benefit residents of a county. This is worrying. For instance, in Mombasa, two MCAs are from Nyanza yet they were nominated to Mombasa County Assembly. In Kisii County Assembly, there is a Borana lady who was nominated yet the Kisiis are there. This is wrong. This is where the electoral commissioners erred. They mismanaged the process in that regard. We must close up that gap where people take advantage of such situations just because it was very open. I hope legal minds will help political parties to ensure that in 2017 this does not recur. Every community should benefit from their county assembly. Those are their slots. Let them feel they are part and parcel of the elections.

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

Sen. Mutula Kilonzo Jnr: Mr. Temporary Speaker, Sir, I rise to support in principle. It is fair that we affirm the constitution.

Article 260 says:-

“The “affirmative action” includes any measure designed to ameliorate an inequity or the systematic denial or infringement of right or fundamental freedom”.

It is disappointing that in the history of this country we know - Sen. (Dr.) Khalwale mentioned this during our Senate Select Committee - that women are 52 per cent of the population. They are the majority and yet 50 years since Independence, they continue to be marginalized.

I have the privilege of being one of the two rapporteurs of the Inter-Parliamentary Union (IPU). I will be presenting a report in October during the General Assembly of the IPU on this question.

We are investigating why it is that so many years after the Beijing Declaration, many other declarations and conventions, we are still arguing on this principle of this minimum. Kenya is at 22 per cent in terms of the gender question. This is way below the one third that is contemplated.

Mr. Temporary Speaker, Sir, under Article 91, I had the privilege of making this presentation and I will repeat it today, that this gender question is not separate from a free and fair, simple and accurate election. This is to the extent that if this question is not answered before the next general election, we are going into a constitutional crisis.

It is possible that the men who are the majority in this Parliament will have to stand up to be counted. I am doing some work for the IPU and it has long been recognized that men are the ones who are occupying all the seats whether it is executive, parliamentary or parastatal. It is a structural problem in a patriarchal society. This is the theme that we in the IPU have adopted. Men and women have now come together to create a bridge, in our quest to find out how the gender parity issue is being done all over the world. In Togo, special seats are reserved for women, but they do not take them up. In India, there is an Amendment Bill No 208 passed by the Upper House and rejected by the

Lower House. Currently, they are at the 50 per cent position representation in all the Lower Houses except the Lok Sabha which is the equivalent of the National assembly.

Mr. Temporary Speaker, Sir, this matter is urgent and important. However, I have seen the arguments where somebody asks: “Why did you send me a message? You should have allowed my conscience to dictate whether or not I should vote for the gender question.” This is so, yet, that person was seated a few minutes before that vote and walked out. We leave these nice seats as leaders; go home to our daughters, mothers and wives. It is an embarrassment to us, the men folk.

If there are people who need to change, it is we. I want to stand up to be counted and say my vote is that this question must be answered; how else are we going to produce Angela Merkel, Hilary Clinton, Theresa May and Sonia Gandhi? We are doing poorly among the world democracies.

Mr. Temporary Speaker, Sir, when I hear the Jubilee coalition saying that they will have somebody now, another person the other time and so on, I think that even these people are not thinking. They should say that the Deputy President in another election should be a woman. That is the way to do it so that we can then support this cause. Take leadership, Sen. Elachi, instead of saying that we are going to have men ruling us in the next 20 years.

(Laughter)

Mr. Temporary Speaker, Sir, the National Gender and Equality Commission (NGEC) has been so frustrated walking from pillar to post, trying to speak to everybody and preaching something that we all know and yet it is 30 per cent. In counties, people are taking 50 per cent of representation in elective positions because we have achieved provisions of Article 27 of the Constitution. When we sit in committee meetings, that is seen. One of the recommendations we have made is that in parliamentary committees, we must elect Chairs who are women. That is one of the recommendations and there are many others so that we can offer leadership. It is how we are going to build this country.

We visited Sweden which is a Nordic country with some of the Members who sit here. We visited at least two prisons where the leadership was by a woman. The Senators were so impressed that they congratulated them. In return, they said it is not a privilege but the positions were earned. That is where we need to be. When I was interrogating this issue in Zambia when we were dealing with the resolutions about how we can deal with gender parity, Sweden excused itself. They said they do not deal with quotas. They said it was not their issue because they are at 50 per cent. That is why their women go for maternity leave for six months and the men also take six months. It is in the law.

I am sure we are going to get there soon but it is a starting point, so that we can give our daughters a chance. There are a number of girls who spend so much time here in the Senate hoping that one day they will be leaders. I would like to advise Sen. Sijeny that in my quest to check this issue, the sunset Clause is a problem. They tried it in Uganda and Egypt and the minute the sunset Clause expired, the figures went lower. So,

it is dangerous to suggest having a sunset Clause because after 20 years, chances are that the figures will reduce like the case of Uganda and Egypt.

Secondly, why are we introducing terms? If we are going to allow 30 per cent representation through affirmative action, we must give the women and other groups more opportunities but not to recycle them. When you represent an interest, this Parliament gives another opportunity to another woman out there in the public because they are so many out there who want to come to Parliament. Why do you want to recycle yourselves? You should move and get another person to have that opportunity. That is the only way the gender parity is going to make sense. Otherwise, it is looking selfish and we who are proposing want to protect our turf and lock out the people whom we represent.

My concerns are the sunset Clause and a person being eligible for two other terms. We have abused the nomination list. The NGEC Chairperson told us that those who are nominated are wives and girlfriends other than considering the question of affirmative action. I hope that that we will put measures in place in determining this. I am not sure why Sen. Sijeny has proposed an amendment in Article 81 to say “the state shall enforce” because the state is involved in Article 27 where they are appointing. Article 81 is about general principles for the electoral system.

Why do we want the Government in this issue because this is a question of the agencies that deal with elections and gender parity, like the National Gender Commission, the IEBC *et cetera*, hence what Sen. Elachi was talking about nomination lists. This morning we were told of a case where a secretary nominated herself by just putting her name in a list, simply because she had the opportunity to do so; a typical Kenyan thing. We have to ensure that so that this lady seated next to me can one day move from where she is and sit here, because she is eligible. We can only ensure that if we do not put terms and sunset clauses. There is no reason to do so.

Thank you, Mr. Temporary Speaker, Sir.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I rise to strongly support any initiative, like this one, that attempts to equalize the boys and girls; the men and women of the Republic of Kenya. This is because, in His wisdom, the Lord Almighty created all of us equal.

Mr. Temporary Speaker, Sir, I wish to speak to the importance of this constitutional amendment Bill and emphasize the reasons I am happy that, finally, we have an opportunity to make a pronouncement on it as a House. This matter has been before the National Assembly two times and we watched helplessly as the Bill got defeated. I want to appeal to colleagues and leaders of delegations in this House to ensure that we pass this Bill, so that we send a clear message to the country that the Senate is the “upper House;” the House of reflection that can reflect on matters when they have not been handled very well in the “lower House”.

I, therefore, wish to confirm that I support this Bill, because of Article 100 of the Constitution, which provides that affirmative action should be extended to women, amongst other minority and marginalized groups, including persons living with disability. I support this Bill for the sake of my daughters. I have beautiful girls who are very brilliant. In fact, it normally gives me a lot of pleasure that so far, my girls continue to score better than my boys in all national examinations. So, I know that the real expression

of leadership, through my (DNA), might actually be through my girls. I do not want them to be denied any opportunity whatsoever in life.

Thirdly, I support this Bill because of my wives. My wives are a demonstration to all the women of this Republic that the Senator for Kakamega appreciates women and he is a good man who knows how to live, not just with one woman, but a number of them. Why would we want to live with them when we do not want to give them opportunities? I support it and I know where they are, they will be very happy to appreciate what I am saying.

Mr. Temporary Speaker, Sir, I support this Bill because of the women of Kakamega who voted for me overwhelmingly in 2013, especially the women of Ikolomani Constituency who have nurtured me enough to have emerged to be a leader not just in Kakamega, but also in the Republic of Kenya.

Mr. Temporary Speaker, Sir, I support this Bill, in support of millions of Kenyan women who admire my parliamentary prowess and demonstrated leadership in this Republic.

The Senate Minority Leader (Sen. Wetangula): Which is immense!

Sen. (Dr.) Khalwale: Which is immense, as put by my able national party leader of FORD Kenya.

Mr. Temporary Speaker, Sir, I support this Bill for the memory my late mother, Mama Paulina Shinangoi, *omukhana wa* Lugonzo.

Finally, I want to clarify that I support all these women that I have mentioned above, I am currently teaching my daughters and I hope all the girl-children of this country are listening to me or will one day read this. We must teach our girls to learn to compete. We do not want them to think that the reason we give them affirmative action is because they are in any way inferior to their age mates who are boys. This is evident in the convergence that is soon coming in the world. In the community of nations, the three superpowers of the world; the United States of America (USA), the Republic of Germany and the United Kingdom (UK) will all be led by women by the end of November. Hopefully, these will be Hillary Clinton in the USA, Angela Merkel in Germany and, of course, Theresa May in the UK. I want to pass my congratulations to Ms. May. So, we must teach our children to compete.

It is a pity that the Mover of the Motion has stepped out because I wanted her to hear this. She cannot move in the spirit of affirmative action and then provide in this Bill Clause 4(b) which says that you insert the following New Clauses immediately after Clause 1. Clause 1(a) states that a person elected under Clause 1 for a seat in Parliament or a county assembly shall be eligible for re-election under Clause 1 for two terms. No way! With all due respect, Sen. Sijeny, you are legislating for yourself, the current Members of the Senate who are nominated to this House or you are legislative in connivance with the MCAs and Members of the National Assembly who are currently nominated.

Mr. Temporary Speaker, Sir, I would like to appeal to Sen. Sijeny to demonstrate good will. I would like you to know that we are the majority in this House. She will not use us to disenfranchise the other deserving women in the Republic of Kenya. She needs to demonstrate good will by dropping this particular New Clause.

Secondly, Sen. Sijeny attempts to introduce Clause 1(b) which states that despite Clause 1(a), a person elected under Clause 1 for a seat in Parliament or a county assembly in the First General Election held under this Constitution shall be eligible for election under Clause 1 for two further terms, again for the same reasons.

Sen. (Dr.) Zani: On a point of order, Mr. Temporary Speaker, Sir. I have been listening to Sen. (Dr.) Khalwale talking and I am wondering whether he is in order to mislead us about the interpretation of Clause 1(a) which states that a person elected under Clause 1 for a seat in Parliament or a county assembly shall be eligible for re-election under Clause 1 for two terms only. That means that if they had been there and they want to be re-nominated for the third term, they will not. This Clause does not suggest that they must be nominated for two consecutive terms. That is a misunderstanding that creates a lot of unnecessary interpretation and debate, specifically for this Clause because at the end of the day, we are saying that this person should not be elected more than two terms. It does not mean that if you have been here for one term, you must again be nominated for a second term.

The Temporary Speaker (Sen. Mositet): Sen. (Dr.) Zani, Sen. (Dr.) Khalwale is not out of order in his debate.

Continue, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, with your permission, allow me to thank you and also remind Sen. (Dr.) Zani that I understand that she is a lecturer at the University of Nairobi. If she had been one of the teachers who taught me, she would not have qualified to teach English because, apparently, I understand English better than she does. I can read this clause and understand it well. I am asking Sen. Sijeny to do the honourable thing, demonstrate good will, bring us on board and not disenfranchise other Kenyan women and drop this amendment. We want all other Kenyans to benefit.

Mr. Temporary Speaker, Sir, during the Third Reading, I will introduce a further amendment. I will provide that persons who qualify for nominations under this particular Article must, over and above the provisions of Article 99, be people who have demonstrated interest in politics. We do not want nominated people to be women who have been fished from nowhere and we end up with people's girlfriends and wives. I know of a personal assistant of a party leader, who when given an opportunity to organize a list, nominated his two daughters to a county assembly. To stop this mischief, I will be introducing the clause, which I will beg the House to support; that for a woman to qualify for nomination, she should have vied and lost. That way, we will know that she has the appetite for politics.

Finally but not least, I want to appeal to the Chairperson of the National Gender and Equality Commission, Ms, Winfred Lichuma, that this is an excellent opportunity. Instead of the time she wasted trying to lobby Members of the National Assembly, she should come and talk to our Senators. She should also call for a quick workshop of the women Senators so that they tone down on the kind of attitude demonstrated by Sen. (Dr.) Zani this afternoon. Sen. (Dr.) Zani should appreciate that she does not lead any delegation.

Mr. Temporary Speaker, Sir, I therefore, conclude by assuring---

Sen. (Dr.) Zani: On a point of order, Mr. Temporary Speaker, Sir.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, could you protect me?

The Temporary Speaker (Sen. Mositet): Sen. (Dr.) Zani, I hope you do not want to debate again.

Sen. (Dr.) Zani : Mr. Temporary Speaker, Sir, I did not want you to pre-empt what I want to do. Is Sen. (Dr.) Khalwale in order to suggest about an attitude being presented in terms of debate when we are clear about the fact that when we are debating in this House, we do so as Senators of the Senate of Kenya? When bringing our points to the fore front, let us not show the differences that we have as human beings at this particular point. As women of Kenya, we have tried to create a scenario for positions for the women. We are trying to do so with a lot of understanding between the Senators. If I speak about it, he should not interpret it as an attitude; neither should he question my credentials as a lecturer. I have taught a lot of people and they have done well.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, this is a good debate. I want to conclude by appealing to the Chair that the point of order I raised this afternoon was about the interpretation of the process through which this Bill is expected to move under Standing Order No. 146 and Article 112 of the Constitution. A ruling should be made over it because it is a major constitutional issue that requires determination.

With those many remarks, I support.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, let me start from where Sen. (Dr.) Khalwale left. I believe that according to Sen. Sijeny, this is not her Bill but she is the conveyer belt of the use of others to this House. May I advise her for free that Clause 4(b) -before looking at the main Bill - will collapse this Bill.

(Applause)

Mr. Temporary Speaker, Sir, this is advice for free, take it from me that I am a presidential candidate and I need women votes. I have been in Parliament since 1993 and I have seen these things many times. A constitutional Bill, once it is brought to the House, passes as is or falls as is. We, as CORD, support affirmative action – and this I am telling my distinguished friends and sisters, whom I love so much. Affirmative action the world over is never extended to an individual in perpetuity. It is a one shot and when one finishes, he or she exits and somebody else comes. This is because it is a process of capacity building. We are building capacities of women.

I have daughters. My first daughter is a distinguished lawyer; my second is an engineer like you the Chair. I also have others who are on the same lineage. If my first daughter who is a lawyer is given an opportunity, she must exit after the first bite to give room for her younger sisters who must also have the same opportunity. That is what affirmative action worldwide is all about. We support our women and we must have a minimum of one-third in this House. However, I am not ready to support that in a term, we have a certain group and in the next, we have the same group. That does not work and it will not work.

Mr. Temporary Speaker, Sir, there is a Member in the National Assembly who nowadays behaves as if she is the most elected Member in this Parliament. She even calls

herself a senior legislator. She has been nominated, unfortunately, three times at the expense of other women of this country.

(Laughter)

How then will a *mama mboga* from Kariokor ever develop capacity? How will another woman from a village in Bungoma, Nandi or Kakamega Counties develop capacity to emerge as a leader?

(Applause)

We want these opportunities to be shared and spread fairly. I would love to see an El Molo woman from Loiyangalani nominated to this House to build capacity and not our ladies from the streets of Nairobi who are walking up and down in hotels with party leaders and *ensconcing* themselves.

(Laughter)

Mr. Temporary Speaker, Sir, I will support this affirmative action to the hilt.

The Temporary Speaker (Sen. Mositet): Order the Senate Minority Leader. You are entitled to one hour. Therefore, when the Bill appears in the Order Paper next, you will have a balance of 56 minutes. With your power of debate, I believe you will exhaust that time.

ADJOURNMENT

The Temporary Speaker (Sen. Mositet): Hon. Senators, it is now 6.30p.m., time to interrupt the business of the House. The Senate stands adjourned until Tuesday, 26th July, 2016 at 2.30 p.m.

The Senate rose at 6.30 p.m.