

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 25th May, 2017

Special Sitting

*(Convened via Kenya Gazette Notice
No.4896 of 22nd May, 2017)*

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

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

PRAYER

COMMUNICATION FROM THE CHAIR

CONVENING OF SPECIAL SITTING OF THE SENATE

The Speaker (Hon. Ethuro): Order, hon. Senators. I take this opportunity to welcome you back for this Special Sitting during the Fifth Session of the Senate. I thank you for finding time from your busy schedules to attend the sitting. I am aware of the busy schedules that each one of you has at such a critical time as this in our election calendar.

Hon. Senators, by a letter dated 17th May, 2017 and pursuant to Standing Order No.29(1) of the Senate, the Senate Majority Leader and the Senate Minority Leader, supported by the requisite number of Senators, requested the Speaker to convene a Special Sitting of the Senate to conclude consideration of the following business:-

- (a) The Report of the Joint Parliamentary Select Committee on the election of Members to the East African Legislative Assembly (EALA);
- (b) Bills pending before the Senate; and,
- (c) Petitions due for presentation or reporting to the Senate.

Hon. Senators, following consideration of the request by the Senate Majority Leader and the Senate Minority Leader, I was satisfied that it met the requirements of Standing Order 29 (2). It is in this respect that I convened this Special Sitting of the Senate via *Gazette* Notice No. 4898 dated 22nd May, 2017.

Honourable Senators, as required by Standing Order 29 (5), the *Gazette* Notice specified the business to be transacted at this Sitting and it is the business scheduled in today's Order Paper. Indeed, as specified and in accordance with Standing Order 29(5) of

the Senate, the business listed shall be the only Business before the Senate during this Special Sitting.

Hon. Senators, although this Special Sitting comes at a time when we are through with political party primaries and about to enter into the official campaign period for the August, 2017 General Elections, the Senate has to discharge its mandate up to the end of its term. I am glad that you all heeded to the call of your constitutional duty and came for this Special Sitting. I would like to reiterate that in accordance with Article 123 of the Constitution and Standing Order 71, for the Senate to approve some of the business scheduled in today's Order Paper, the support of a majority of all delegations – that is a minimum of 24 delegations – is required.

I, therefore, urge you to remain in the Chamber for the transaction of business as scheduled and until the conclusion of Business. Depending on how you perform, midnight is the limit.

MESSAGE FROM THE NATIONAL ASSEMBLY

PASSAGE OF THE SACCO SOCIETIES (AMENDMENT) BILL AND THE LIVESTOCK AND LIVESTOCK PRODUCTS MARKETING PROMOTION BILL

Hon. Senators, I wish to report to the Senate that, pursuant to Standing Order No.40(3) and (5), I received the following Message from the Speaker of the National Assembly, on 22nd May, 2017, regarding the passage by the Assembly, of the Sacco Societies (Amendment) Bill (National Assembly Bill No.22 of 2016) and the Livestock and Livestock Products Marketing Promotion Bill (National Assembly Bill No.42 of 2016).

PURSUANT to the provisions of Standing Orders Nos.41 and 142 of the National Assembly Standing Orders, I, hereby, convey the following Message from the National Assembly –

WHEREAS, the SACCO Societies (Amendment) Bill (National Assembly Bill No. 22 of 2016) was published *vide* Kenya Gazette Supplement No. 97 of 24th June, 2016 to amend the SACCO Societies Act, 2008 to provide for the registration and licensing of SACCO Societies as deposit taking savings and credit co-operatives and expand the current credit information sharing mechanism to include SACCO Societies with other licensed financial institutions;

WHEREAS, on 29th and 30th March, 2017, the National Assembly considered and passed the said Bill with amendments and in the form attached hereto;

FURTHER WHEREAS, the Livestock and Livestock Products Marketing Promotion Bill (National Assembly Bill No. 42 of 2016) was published *vide* Kenya Gazette Supplement No. 178 of 16th November 2016 to streamline the marketing of livestock products in Kenya by consolidating the regulation of the sector from various entities;

AND WHEREAS, on 5th April, 2017, the National Assembly considered and passed the said Bill with amendments and in the form attached hereto;

NOW THEREFORE, in accordance with the provisions of Article 110 (4) of the Constitution and Standing Order 41 of the National Assembly Standing Orders, I hereby refer the said Bill to the Senate for consideration.

Hon. Senators, pursuant to Standing Order No.148 which requires that a Bill which originates in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading in accordance with Standing Order No.129, I now direct that the two Bills be read a First Time this afternoon.

Thank you.

PAPER LAID

The Speaker (Hon. Ethuro): Sen. Ndiema, proceed!

REPORT ON PETITION: MODE OF DISTRIBUTION OF SUBSIDIZED FERTILIZER AND FREE SEEDS TO FARMERS

Sen. Ndiema: Mr. Speaker, Sir, I beg to lay the following Report on the Table of the Senate today, Thursday, 25th May, 2017.

Report of the Petition by Mr. Gideon Kiprotich, a resident of Kericho County, on the distribution of subsidised fertilizer and free seeds to farmers.

Thank you.

The Speaker (Hon. Ethuro): Hon. Senators, I have three other petitions to present to you.

PETITION

ALLEGED CORRUPTION AND NEPOTISM AT THE MAKUENI COUNTY EXECUTIVE

Pursuant to Standing Orders No.220(1)(a) and 225(2)(b), I, hereby report to the Senate that a Petition has been submitted through the Clerk by Mr. Justus Mutunga Mutuku, a resident of Makueni County, on alleged corruption and nepotism at the Makueni County Executive.

Among the issues raised by the petitioner are the following:-

(a) THAT, the Makueni County Government has on several instances flouted public procurement laws by failing to advertise tenders or failing to award tenders to the lowest bidders for supply of goods and services to the County Government;

(b) THAT, the Makueni County Government has allocated and spent funds towards projects not falling within its mandate and further, without obtaining approvals for such projects from the Makueni County Assembly or other constitutional bodies. An example is the construction of a residence for the Deputy Governor while the Salaries and Remuneration Commission had issued a circular in 2013 to the effect that only the governor and the County Assembly speaker are entitled to such a benefit.

(c) THAT, the Governor of Makueni County has shown undue favouritism and nepotism in recruitment, assignment of duties, promotion and remuneration of staff

working at the County Executive, contrary to Articles 27 and 73 of the Constitution and Sections 59, 60 and 62 of the County Government's Act; and

(d) The Makueni County Government has failed to effectively facilitate public participation during conception, design and implementation of the various projects undertaken by the County Government.

The petitioner, therefore, prays that the Senate investigates these matters and makes appropriate recommendations thereon.

Hon. Senators, pursuant to Standing Order No.226, I shall now allow comments, observations or clarification in relation to the petitions for not more than 30 minutes.

My proposal is that I read all of them and then you can pick whichever you want to contribute on at the end of their presentation.

ALLEGED WRONGFUL DISMISSAL FROM THE PUBLIC SERVICE

The Speaker (Hon. Ethuro): Hon. Members, pursuant to Standing Order No. 220(1)(a) and 225(2)(b), I hereby report to the Senate that a petition has been submitted through the Clerk of the Senate by a Mr. John Kimani Gitau, a resident of Nakuru County, concerning alleged wrongful dismissal from the public service. In the petition, the petitioner states;

- (a) The Public Service Commission (PSC) unlawfully dismissed him from the public service without following the administrative procedures and regulations that govern such a process.
- (b) His efforts to obtain redress from, among others, the Kenya National Commission on Human Rights (KNCHR) and the Commission on Administrative Justice (CAJ) have not yielded any positive outcome. The petitioner, therefore, prays that the Senate investigates this matter and makes appropriate recommendations thereon.

Hon. Senators, pursuant to Standing Order No.226, I shall allow comments on this after I have exhausted the remaining petitions.

SETTLEMENT OF VARIOUS DEBTS OWED TO NAIROBI CITY COUNTY GOVERNMENT BY THE NATIONAL GOVERNMENT AND ITS AGENCIES

The Speaker (Hon. Ethuro): Hon. Senators, pursuant to Standing Orders 220(1)(a) and 225(2)(b), I hereby report to the Senate that a petition has been submitted through the Clerk of the Senate by Dr. Evans Kidero, the Governor of Nairobi City County concerning the settlement of various debts owed to the Nairobi City County Government by the National Government and its agencies. In the petition, the petitioner states as follows;

(a) The Nairobi City County Government is currently facing cash flow challenges which have made it difficult for the county government to meet its financial obligations, among them payment of salaries, remission of statutory deductions and the fulfillment of service delivery obligations to the residents of the Nairobi City County.

(b) The problem is compounded by the huge outstanding debt that remains uncollected, the bulk of which is owed by the national Government, its agencies,

corporations and other government entities. The petitioner states that the amount owed by the National Government is estimated to be Kshs9 billion.

(c) Efforts by the county government to recover these debts from the national Government and its agencies have not yielded any positive outcome.

The petitioner, therefore, prays that the Senate investigates this matter and makes appropriate recommendations and interventions thereon. Among the proposals made by the petitioner is for the two levels of Government to undertake a debt swap with the difference to be settled either in cash or other guaranteed financial instruments.

Hon. Senators, pursuant to Standing Order No.226, I shall now allow comments, observations or clarifications in relation to any of the three petitions that I have read to you.

I thank you.

Sen. Obure: On a point of order, Mr. Speaker, Sir. I do not know whether it was deliberate, but you have not read the last petition.

The Speaker (Hon. Ethuro): Order, Sen. Obure! I can confirm that it was not deliberate. I had information that there were three petitions. However, I did not bother to check the bundle that I was holding. Apparently, all the three were in the bundle that I was holding. The third document looked a bit thick because the one you are looking for was attached to it.

VARIATION OF THE BOUNDARIES OF NYANGWETA FOREST

Hon. Senators, I hereby report to the Senate that a petition has been submitted through the Clerk by the Governor of Kisii County, Hon. James E.O. Ongwae for variation of the boundaries of Nyangweta Forest in South Mogirango Sub-County, Kisii County. The petition is submitted pursuant to Section 34 of the Kenya Forests Conservation and Management Act No.34 of 2016 which outlines the procedure to be followed in varying the boundaries of or revocation of a public forest as well as the factors to be considered in arriving at such a determination.

In the present case, the petitioner prays that the Senate approves the proposed variation of the boundaries of Nyangweta Forest in South Mogirango Sub-County, Kisii County by excision of 120 acres thereon to avail land for the establishment of a complex comprising of the following:

- (a) A sugar production plant
- (b) an ethanol production plant
- (c) An electric power generation plant

The petitioner indicates that the County Government of Kisii has entered into a Memorandum of Understanding (MoU) with an investor for the development of the said complex and it has since obtained the following approvals and licenses;

- (1) Approval by the County Assembly of Kisii;
- (2) The Environmental Impact Assessment (EIA) license from the National Environment Management Authority(NEMA);
- (3) Approval by the Kenya Forests Service (KFS); and
- (4) Approval by members of the public through various stakeholder engagement fora.

The documents relating to the captioned approvals are annexed to the petition.

Pursuant to Section 34 of the Forest Conservation and Management Act as well as applicable provisions of the petition to Parliament Procedure Act and Senate Standing Orders, the relevant Committee of the Senate is required to consider this matter and carry out its own inquiry before reporting to the Senate on whether the proposed variation of boundaries should be approved or rejected. Consequently, the Senate will vote on whether to approve or reject the recommendations of the Committee.

Hon. Senators, it is noted that this is the first time the Senate, and indeed, the Parliament of the Republic of Kenya, will be considering a petition of this nature. I, therefore, urge the relevant committee, in this case, the Standing Committee on Land and Natural Resources to move with speed in carrying out an inquiry into the matter and to present this report thereon to the Senate in not more than 30 days.

Hon. Senators, pursuant to Standing Order No.226, I shall now allow comments, observations or clarifications in relation to said petition.

I thank you.

Sen. Khaniri: Mr. Speaker, Sir, allow me to hail Mr. Mutunga Mutuku, a resident of Makueni County, the Governor for Nairobi, the Governor for Kisii County as well as Mr. John Gitau for petitioning the Senate using that constitutional provision to address issues that may be affecting them or the society.

On the petition by Mr. Mutuku, the story reads the same in all the counties where county governments have blatantly and deliberately flaunted procurement procedures, refused to involve the public in what they are doing yet it is expressly provided for in the Constitution that public participation is mandatory. I know that a few of my colleague who have expressed interest for governorship such as Sen. (Dr.) Khalwale and Sen. Sang who have been given the nod by their political parties---. I urge them that once they get there, they should show the difference. I want them to show the difference so that devolution can succeed and benefit the public.

Mr. Speaker, Sir, I am only worried that these petitions may not get the justice that they deserve because members of these relevant committees are so busy on their campaign trails. Therefore, it is very difficult to raise quorum. I tried that in my Committee and I can tell you that it is extremely difficult to raise quorum. However, I urge all the committees where these petitions have been referred to expedite this process of looking into them in the next two weeks so that they can table a report in the Senate.

I beg to support the petitions.

Sen. Obure: Mr. Speaker, Sir, my remarks are in relation to the petition brought by the Governor of Kisii County. In normal circumstances, you would expect that Senator of a county to know something about a petition being presented to the Senate by the Governor of his county. Unfortunately, I am hearing about this petition for the first time. This demonstrates the poor working relationship between governors and senators in some of our counties. That notwithstanding, this petition touches on the livelihood of many people in Kisii County, especially the residents of South Mugirango and its environs.

The petition is seeking authority to vary the boundary of Nyangweta Forest with the view to apportioning land for the establishment of a sugar production plant, an ethanol production plant and an electric power generation plant. These industrial ventures proposed will have a positive impact on the economy of the county and more directly on the citizens of South Mugirango through the generation of job opportunities and income

to local residents, especially sugar cane farmers. The ventures are also expected to trigger the growth of many support services.

Mr. Speaker, Sir, you will notice that an MoU has already been entered into with the potential investor. You will also notice that various approvals and licences have been given notably from the Kisii County Assembly, NEMA, KFS and the Kisii residents have endorsed these ventures.

I support your view in urging the relevant committee to work with speed so that they assist in ensuring that this proposal becomes a reality for the benefit of the economy in our county.

The Speaker (Hon. Ethuro): Hon. Senators, I encourage you to restrict your comments to not more than three minutes.

Sen. Ong'era: Mr. Speaker, Sir, thank you for giving me this opportunity to make my comments regarding the petition by the Governor of Kisii County, His Excellency James Ongwae. From the onset, I congratulate the Governor for coming up with such an excellent idea of putting up a sugar cane factory in South Mugirango.

The essence of devolution was to take services closer to the people. By putting up the sugar factory in South Mugirango, it will be a big catchment area for our farmers. The intended sugar factory will serve close to 50,000 farmers from the whole of the former Gucha District. It has a catchment of South Mugirango, Bobasi and Bomachoge constituencies. The nearest factories have been Trans Mara and SONY Sugar companies. Many times, you find that the farmers in south Mugirango are not able to deliver their cane to those two factories because of the distance. You will find that sometimes these two factories want to, first of all, serve their catchment areas. Therefore, I want to laud the Governor for bringing the services closer to the people.

If our people in South Mugirango have the factory, they will have their cane harvested in time and processed to produce sugar. That also means that we will have sufficient sugar for the people of Kisii County.

Mr. Speaker, Sir, I want to note that the various necessary licenses and consents have already been received. The county assembly has already given its approval and a license has already been given---

The Speaker (Hon. Ethuro): Order, Senator! Do not repeat what you said.

Sen. Ong'era: Mr. Speaker, Sir, I am speaking on rights but I stand to be guided.

The Speaker (Hon. Ethuro): Do not do industrial production on the Floor. Just give a justification.

(Laughter)

Sen. Ong'era: I stand to be guided.

Mr. Speaker, Sir, as I was saying, this is a very commendable petition. Just like the Senator for Kisii County, I also request that the relevant committee moves with speed, so that we have the factory up and running. I thank you.

Sen. Billow: Mr. Speaker, Sir, the fact that today we have four petitions touching on matters of provision of services to Kenyans before this Senate is an indictment of the Executive and the many independent institutions we have in this country. If institutions carried out their functions and mandate effectively, some of the matters that have been

raised like determination of boundaries and collection of intergovernmental debts would not find their way to the Floor of the Senate.

I think it is clear from the many petitions that have been in this House that some of our institutions have failed to provide basic fundamental services including resolution of some of the issues, for instance, the issue that was raised by the Governor for Nairobi about the debt between the national and the county government.

Article 189 of the Constitution provides for very clear mechanisms which includes negotiation, mediation and arbitration that they can engage in, in order to resolve issues between them. This Senate, like any other house of parliament, has its work cut out. We should try as much as possible to assist Kenyans to address some of these issues.

I would like to take this opportunity to urge some of the institutions to maximise on service delivery, so that Kenyans do not have to bring everything from debt collection to determination of boundaries and provision of services to the Senate. I support.

The Speaker (Hon. Ethuro): I can see that there is great interest. I direct that the contributions are limited to a maximum of two minutes. Let us have Sen. (Dr.) Machage.

Sen. (Dr.) Machage: Mr. Speaker, Sir, my concern is with the petition about annexing of Nyangweta Forest. I am of a little bit different view from Senators from that area, especially with the reason that Nyangweta also borders Migori County and the environmental impact that has been studied may not have included Migori County.

As a person from a region that produces sugarcane, I would advise the Senators from the area to think twice before jumping into the sugarcane industry, taking cognizance of the size of land available for that kind of introduction in Kisii where land is a major issue.

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

Sen. Sijeny: Mr. Speaker, Sir, I commend and thank the Governor for having brought this Petition. It is a clear indication that some of our governors have the best interest of “Wanjiku” at heart and they are doing what they should be doing. I hope and believe that the committee will look into it so that he gets what he needs. I also hope that proper structures will be put up for accountability for the next Parliaments so that money is utilised properly and the best results are achieved.

Sen. (Eng.) Muriuki: Mr. Speaker, Sir, mine is to commend those who have found it appropriate to bring petitions to the Senate but more particularly the petition by Mr. Mutuku of Makeni. I think the Senate should in future look at that petition and allow or provide for an official window where residents of a county can be able to raise issues of governance and malpractices officially without each one of them having to compile a petition. That way, we can help the Senate to cut a lot of embezzlement of funds and malpractices within the counties.

Thank you, Mr. Speaker, Sir.

Sen. Omondi: Mr. Speaker, Sir, thank you for giving me the opportunity to add my voice to the petition. My contribution is on the petition on the establishment of a sugarcane factory in Kisii County. I support the idea, the vision and the governor. I believe it is because it will create more opportunities to the people of Kisii and improve the economic growth and status of the county in terms of physical accessibility and development. That is a noble cause in terms of counties and devolution because a county is a country on its own and such establishments improve the growth of a county. I support.

Sen. Muthama: Bw. Spika, naunga mkono ombi lililoletwa na Gavana wa Kisii, Mheshimiwa Ongwae, kwa sababu angependa kutumia ardhi hiyo kujenga majengo ambayo yatafaidi umma siku zijazo.

Kuhusu ombi la Makueni, ningependa kusema kuwa nitaenda nyumbani shingo upande tutakapomaliza kipindi cha Bunge hili kwa sababu sijaona gavana hata mmoja akipelekwa jela na kufungwa. Wanaiba usiku na mchana na bado wanatembea barabarani. Wengi wao wamepata vitambulisho na tiketi za kuwania uchaguzi. Huo ni wizi mtupu.

Bw. Spika, Bunge hili na mengine yatakayokuja yanafaa kuhakikisha kuwa kazi inafanyika na kuona kwamba mali ya umma inatunzwa.

Sen. Cheruiyot: Mr. Speaker, Sir, thank you for giving me this chance. I would like to make my comments in regards to the Petition by the Governor of Nairobi County, Dr. Evans Odhiambo Kidero, concerning the debt owed to Nairobi County by the national Government. This morning, I happened to have tuned to one of the local FM stations and the guest being interviewed was one Jonathan Mueke, the Deputy Governor of Nairobi County. During question time, when I asked him why Nairobi was dirtier than it was when they took over, he told me to show up in the Senate this afternoon because there would be a petition that would give me the answers.

I was looking forward to a petition that would give further details about the incompetence in Nairobi County Government only to be told that there is some debt owed to the County by the national Government. I do not know how that correlates but I will be looking forward to peruse through and get deep into the details. I will keenly want to know what goes into that case.

The Speaker (Hon. Ethuro): Sen. Ndiema.

Sen. Ndiema: Thank you, Mr. Speaker, Sir. It is very encouraging that we are finally seeing petitions coming to this House from members of the public and governors. This is perhaps an indication that finally they have woken up to the reality that the Senate is there for the purpose of defending, protecting and championing the interests of the counties. They should also be able to avail themselves to account for the funds that the Senate allocates to them. The Petition from Makueni County is very pertinent and it raises issues of accountability. I hope the Committee that has been tasked with that responsibility will act quickly to ensure that accountability is ensured in Makueni County and other counties.

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. There must have been a reason why the drafters of the Constitution, deliberately, in Schedule 4, maintained that this particular function that we are discussing remains with the national Government. Although Gov. Ongwae is right on behalf of his people; that they should have a second factory, where do they expect the rain to come from?

Supposing that the people of Kakamega also do the same to Kakamega Forest, the people of the Mau Water Tower and the Aberdares Water Tower also do the same; we are going to finish all our forests. It is critically important that this Petition be defeated. We cannot make it easy for people to exercise deforestation. A forest is a very important thing and how could it be that in your own country as a speaker you have a Senate that is endorsing the destruction of the forest? This is a useless Petition and it must be defeated. If we want to grow more sugarcane in this country we can go to the Tana Delta and many

other areas. We are not going to make this country a desert just because people are dying for factories.

I oppose this Petition.

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! Neither I nor your colleagues have endorsed the Petition. That is why it is here for further discussion. Your views, just like theirs, will be taken on board by the relevant Committee. There is no petition that is useless.

Sen. Njoroge: Thank you, Mr. Speaker, Sir. As I rise to support to this Petition by Gov. Kidero and noting that I am an outgoing nominated Senator and incoming governor for Nakuru County, I would caution the governor that he needs also to be held responsible for many other monies that have been misused in Nairobi County. Thank God that the Government of Kenya has that huge debt which has not been paid because it might end up paying for it in the next term, whereby it will be in safe hands. I think the delay by the Government was a good timing that the money never ended up in “loose” hands.

The Speaker (Hon. Ethuro): Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr: Thank you, Mr. Speaker, Sir. Being an environmentalist I have great difficulty in agreeing with the excision of forests as a principle. This is because one prominent person in this country was charged because of selling excised forest in Ngong'. Whereas we are supposed to be at 37 per cent of forest cover, we are at 3 per cent. That Petition is, therefore, very strange to me.

Secondly, on the Petition from Makueni County, we have had a problem and maybe the next Senate will find a method where we will audit county employees. I remember we found petitions in Bomet County about the governor employing his relatives and he found no wrong reason employing his relatives. A principle must come out clearly on how we should deal with employing relatives.

On Gov. Kidero's Petition, I am aware that the county government of Nairobi is demanding for rates for government buildings including where we are. There are tremendous challenges about the Rating Act. I would like to know the principles under which Kenyans should continue paying taxes or rates in relation to the services they receive. The law says that county governments will get rates from any person including the national Government.

The Speaker (Hon. Ethuro): Your time is up Sen. Mutula Kilonzo Jnr. Sen. (Prof.) Lonyangapuo.

Sen. (Prof.) Lonyangapuo: Thank you, Mr. Speaker, Sir. I join my colleagues in noting that some of the petitions that have come here instead of looking at the targeted policies that we have, they almost want to deviate from them. The one which stands out as peculiar is the one for Kisii where they want to replace a forest with a cash crop. My colleague, Sen. Ndiema, can tell you that Kitale Town which had a mighty forest surrounding it is now looking awkward just because all the trees were cut down. The rains we used to have near the town have simply not been good. We now have a lot of soil erosion because of that.

We should give targets to these counties to ensure that at every year there is a forest cover that they have planted trees on in order to redeem our forests. They should report to this House what they are doing in restoring forests.

About Nairobi County, they inherited these bills they are asking for. It is true that counties must be supported but they also need to tell us how they have used the money that they have been given and what they collected, otherwise, we will interrogate and the Committee will look at the merits and demerits of the same.

The Speaker (Hon. Ethuro): Sen. (Prof.) Anyang'-Nyong'o.

Sen. (Prof.) Anyang'-Nyong'o: Thank you, Mr. Speaker, Sir. I want to make two comments. One is on the bills that the national Government owes the devolved units. In our Committee on Public Accounts and Investments, we were given a promise by the Technical Committee on Intergovernmental Relations headed by Prof. Karega Mutahi that by March they will give us a report on what the Government is doing to settle these debts, so that counties are not hamstrung for too long because without money, services cannot be rendered. Unfortunately, up to now that report has not come. Apparently, that is one of the things that we shall hand over to the next Senate. There should be a very strong word to the national Government that when such promises have been made by institutions of governance, they should be respected.

Lastly, regarding afforestation, notwithstanding that we have an organisation called NEMA which is much more concerned about collecting NEMA rates than afforestation; we should learn from the history of USA. In 1971 and 1972 when Richard Nixon was the President, they were faced with tremendous deforestation and they started the Environmental Protection Agency which literally marked out the country and focused on where afforestation was to take place and what trees to be planted and gave a time action plan for this. A country which was being destroyed by deforestation; today when you go along the highways in the USA from any city, you will be surprised at how many trees you will find.

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

Hon. Members, the Petition by the Governor of Kisii County, under Standing Order No. 227(1), stands committed to the relevant Standing Committee. In this case, it is the Standing Committee on Finance, Commerce and Budget.

On the Petition by the Governor of Nairobi City County, the Committee on Finance, Commerce and Budget will have to respond to the petitioner by way of a report. The report will be addressed to the petitioner and laid on the Table of the Senate as per Standing Order No. 227(2).

On the Petition by Mr. John Kimani Gitau, the Standing Committee on Labour and Social Welfare will respond to the petitioner by way of a report addressed to the petitioner and laid on the Table of the Senate.

On the Petition by Mr. Justus Mutunga Mutuku, the Standing Committee on Labour and Social Welfare will submit a report under Standing Order No.227(2) to the petitioner and table it in the Senate.

Next Order!

PAPERS LAID

REPORT OF THE JPSC ON ELECTION OF MEMBERS OF EALA

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to lay the following Report on the Table of the Senate today, Thursday 25th May, 2017.

Report of the Joint Parliamentary Select Committee on the election of members to the East African Legislative Assembly (EALA).

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

The Speaker (Hon. Ethuro): Sen. (Dr.) Machage, do you have a Paper to lay on the Table?

REPORT OF THE MEDIATION COMMITTEE ON
THE HEALTH BILL

Sen. (Dr.) Machage: Mr. Speaker, Sir, I beg to lay the following Report on the Table of the Senate today, Thursday 25th May, 2017.

Report of the Mediation Committee on the Health Bill (National Assembly Bill No. 14 of 2015).

(Sen. (Dr.) Machage laid the document on the Table)

NOTICES OF MOTIONS

ADOPTION OF REPORT ON THE ELECTION OF
MEMBERS TO EALA

The Speaker (Hon. Ethuro): Are there any Notices of Motions? Could we hear from Sen. (Prof.) Kindiki?

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

THAT, the Senate adopts the Report of the Joint Parliamentary Select Committee on the election of Members to the East African Legislative Assembly (EALA) laid on the Table of the House on Thursday, 25th May, 2017.

ADOPTION OF MEDIATION COMMITTEE REPORT
ON THE HEALTH BILL

Sen. (Dr.) Machage: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, the Senate adopts the Report of the Mediation Committee on the Health Bill (National Assembly Bill No. 14 of 2015) laid on the Table of the Senate on Thursday, 25th May, 2017 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate Standing Orders, approves the mediated version of the Bill.

The Speaker (Hon. Ethuro): On Order No.6 I have directed that the two Bills referred to us from the National Assembly, under Order No. 2, should also be read under that Order.

BILLS*First Readings*

THE CONSTITUTION OF KENYA (AMENDMENT)
BILL (SENATE BILL NO.1 OF 2017)

THE SACCO SOCIETIES (AMENDMENT) BILL, 2016

THE LIVESTOCK AND LIVESTOCK PRODUCTS
MARKETING PROMOTION BILL, 2016

*(Orders for First Readings read – Read the First Time and
ordered to be referred to the relevant Senate Committees)*

34. **The Speaker** (Hon. Ethuro): Instead of the next Order, we will go to Order No. The Senate Majority Leader.

MOTION

ADOPTION OF REPORT ON THE ELECTION OF
MEMBERS TO EALA

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

THAT, the Senate adopts the Report of the Joint Parliamentary Select Committee on the election of Members to the East African Legislative Assembly (EALA) laid on the Table of the House on Thursday, 25th May, 2017.

Mr. Speaker, Sir, as the Hon. Senators are aware, the Joint Parliamentary Select Committee on the election of Members to EALA has been sitting for the last couple of days, if not weeks. The current term of EALA expires on 4th June, 2017, that is, next week on Sunday.

According to the East African Community (EAC) Treaty of 1993, the successive EALA is supposed to be in place before the expiry of the current Parliament. It is for that reason that the process of electing new Members to EALA has been taking place during the month of April and the better part of May. It started with the formation of the Committee of both Houses of Parliament; the National Assembly and the Senate. We have had very successful deliberations in that Committee.

Prior to that, there have been nominations from the various political parties which were determined as follows:-

1) The Jubilee Coalition, being the majority party, nominates five out of the nine representatives from our country.

2) The CORD coalition, which is nowadays known as NASA, nominates four representatives to the East African Legislative Assembly (EALA) to represent our country.

The question of independents was also considered, but it was found that if the independents were to be given any representation, that representation, when computed against their numbers, was coming to 0.086 of a person which is no person. It is for that reason, Mr. Speaker, Sir, that the Committee met to consider the list of nominees. I do not want to waste a lot of time because it is a straightforward matter.

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

Sen. Kivuti: Thank you, Mr. Speaker, Sir. May I request through the Chairman of the Committee that the Report be distributed so that as the Mover is moving the Motion, we can be able to follow because I believe this is a very straightforward motion as Sen. Kindiki has put it.

The Speaker (Hon. Ethuro): Order Members! Sen. Kivuti, the Report should be made available, but you know how to get it if you really want it. Proceed, Leader of Majority.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir. I had already laid the background to this report, but one thing that stands out clearly is that time is of the essence because by 4th June 2017, the nominees from all the partner states of the East African Community (EAC) are supposed to have been elected. The other thing that I ought to have said is that the Electoral College for the EALA Members is the two Houses of Parliament. So, the two Houses of Parliament will be constituted to be a polling station for the purpose of elections on the basis of one person, one vote methodology.

We only have between now and next Sunday to finish this process. It was hoped that the Committee, under the rules adopted earlier on by the two Houses of Parliament, by now ought to have brought the Report. That has not happened. The Report on the recommendations on who should be the nominee is not ready. What we are having is a Report that gives progress on what has been achieved by the joint-select Committee. For the purposes of record, it is important to commend the Members of the Senate who represented us in that Committee including the Deputy Minority Leader (Sen. Abdirahman), Sen. Mutula Kilonzo Jnr. and Sen. Murkomen. I thank them for doing a good job.

The issue of sharing of slots has become problematic and that is what is contained in this report which recommends the following:-

First, the slots for EALA should be shared on the ratio of 5:4 between the Majority Party and the Minority Party. The independents will not be able to get a slot because their ratio is less than 0.1 per cent.

Secondly, in future, there will be need to amend the rules on the election of EALA Members to clarify the issue of independent candidates. The rules are not very clear. Therefore, there is need to clarify how independent candidates are likely to be considered for election in future in accordance with Articles 85 and 99(1) of the Constitution of Kenya.

Thirdly, the Report recommends that the Minority Party to submit additional nominees. During the pre-nomination meeting which was conducted by the presiding officers, who are the Clerks of the National Assembly and the Senate----. The pre-

nomination meeting was held in the premises of Parliament and attended by the leaders of Majority and Minority of both Houses. It was made clear that the rules envisaged that the parties should nominate more than the slots available to provide the two Houses of Parliament with multiple choices. This requirement came from a judgment of the East African Court of Justice in 2006, the famous case of Sen. (Prof.) Peter Anyang'-Nyon'go and others versus the Attorney General of Kenya and others.

In that decision, it was held that what Kenya had done during the election of the previous term was not in accordance with the law because Parliament, which is the Electoral College, was not provided with an opportunity of choosing because an election envisages choice. Because of that ruling, Kenya was found to be in violation of the Treaty. It is for that reason that the rules of this year and going forward have provided that Parliament must be provided with an opportunity to have more than one choice per slot. That is what would constitute an election because if you provide names that are exactly the same as the number of slots available, Parliament will just be rubberstamping as opposed to electing members.

This Report recommends that pursuant to the ruling of East African Court of Justice, in the case of Sen. (Prof.) Anyang Nyong'o and others versus the Attorney General and others, the Minority Party submit additional nominees. In this case, their number is twelve, so they can compete for the four slots available for the Minority Party.

This list is supposed to emanate from the list of 41 applicants who had applied to become Members of EALA by the time the deadline elapsed. That is the key plank of the recommendations of this Report.

The other recommendation is that in future the rules be amended, especially Rule 61, to give effect to the precedence from the East African Court of Justice ruling to clarify further the requirements of that judgment.

Mr. Speaker, Sir, the other recommendation is that the presiding officers who are in this case the Clerks of both Houses of Parliament to appoint a new nomination day to receive further nominees from the minority party to bring the number to twelve as opposed to the five nominees that the minority party had brought.

The other recommendation is that after receipt of the further nominees, the presiding officers to submit the additional names from the minority party to the joint Select Committee of the Houses in accordance with Rule 13.

Finally, the speakers of both Houses of Parliament to make a determination, pursuant to Rule 25, to extend the timelines for elections to a date not later than 4th June, 2017. Therefore, the House also needs to resolve because the deadlines which had been set in the existing rules have been overtaken by events because of that challenge which I have highlighted; that the nominees of the minority party did not offer the choice anticipated in the 2006 ruling of the East Africa Court of Justice.

We need this House and its Speaker and of the National Assembly to make a determination as to the extension of the nomination date. However, as I said, in accordance with the treaty and other enabling legislation of the East African Community, we cannot extend the date beyond 4th June, 2017 which is Sunday next week.

Mr. Speaker, Sir, this report is just asking for the resolution of this House to get additional nominees from the minority party and for an extension and the setting up of a new nomination day and a new election day which should not exceed 4th June, 2017.

I do not want to add more than I have already said. The only request I will make other than thanking colleagues for making time during this difficult moments to come and do this important national duty---

I want to request that we do not politicise this matter any further. I request we make sure that this time our country is compliant with the regional law, so that we avoid protracted litigation as we have had in the previous election.

I pray that we comply with the judgement, pass this report, have further nominees, have an election and by 4th June, 2017 we will have a new Parliament in Arusha where our country will be fully represented, noting the importance of this Legislative Assembly. It is very critical for our region and for Kenya.

As a leader, in this region, Kenya should not be the one always to be whipped into compliance with the treaty.

I want to stop there and plead that we do not politicise this matter any further. I also plead with our colleagues on the minority sat to just comply and we move on.

The Jubilee Party has already submitted enough names. We submitted 15 names and whichever are chosen will be people from this country. Whoever will not be chosen will be chosen in another context. So, let us not colour this with small interests, if I may say so, with the greatest respect to our colleagues in the Opposition.

I request the Senator for Wajir County who is the Deputy Senate Minority Leader to second this Motion.

I beg to move.

Sen. Abdirahaman: Mr. Speaker, Sir, I stand here to support the Motion regarding the election of members to the East African Legislative Assembly (EALA) very eloquently expressed by my brother the Senate Majority Leader, Sen.(Prof.) Kindiki, on the other side.

The recommendations on the other side are fairly explicit from the joint committee. As he has rightly put it, we know that this is a political process; that if we as much as possible try to avoid bringing in issues that may negate the process or progress further, we may not really meet the deadline that is fairly clear as well.

EALA members are a very important group in terms of enhancing the legislative function with regard to the harmonising of the various laws in our member states.

Recently I had a chance to visit Dar es Salaam and I saw the number of laws that were passed by that Assembly. It would really help our people in developing a common vision for a better future in the various countries that form the east African member states.

There are a lot of interests regarding elections to the EALA. Unfortunately, a number of our people, particularly at the top leadership, may not choose the individual wisely because we just want to send people just because we think their term is over. For purposes of institutional memory, I know the names are not before us today, but it is very important that we have people who can carry on their mandate so that they are able to move us to the next level.

Mr. Speaker, Sir, I want also to support the sentiments expressed by my colleague in terms of the list of nominees from each of the sides. We do not have to be put into a box to say that certain eight or four people and we approve them as they are. I support the vision that we require more nominees to be added into the list even from our side, so that the Senate has a wider choice to elect the members.

I am particularly impressed because it is very rare for the Senate to have been involved in such processes. This one has also given us an opportunity to make an input on a very important assembly like EALA.

Mr. Speaker, Sir, my other comment is similar to the one by Sen. (Prof) Kindiki on independent candidates. We are not fair to them. There a quite a number of able Kenyans who understand issues of legislation, are well-educated and are able to represent our country at greater levels. However, they were kept out because these things are not in the rules. It is unfortunate that this has happened and in future we need to look at the rules.

We must conclude this process as envisaged by the 4th of June, 2017. I know that is possible because the Senate has worked in a bipartisan manner and there is very little in terms of distractions when it comes to issues that matter to the interests of the nation. All of us have the interest of the nation and our people at heart. I call upon the Senate, irrespective of the side you sit on, to pass these nominees in the coming week without any further delay.

I second.

(Question proposed)

The Speaker (Hon. Ethuro): Sen. Kajwang

Sen. M. Kajwang: Thank you Mr. Speaker Sir, I beg to move:-

THAT, this motion be amended by inserting the following words immediately after the word 2017-

“subject to the deletion of the recommendations, 3, 5, 6 and 7 appearing on pages 16 and 17 of the report”.

Mr. Speaker, Sir, the Senate Majority Leader and the Committee has made some very valid observations on the rules for nominations of persons to the East Africa Legislative Assembly (EALA).

On recommendation 6.1, the Committee has talked about the relevant clause that talks about the minimum and maximum numbers that political parties are entitled to nominate in this process. In the Report, the Committee has observed that under rule 6.1 of the rules, a party can submit a number of nominees ranging from the minimum number it is entitled to up to three times the number of such entitlement.

Mr. Speaker, Sir, it is very clear that rule 6.1 only imposes a maximum number; it does not impose a minimum number. The Committee has also observed that rule 6.1 has provided discretion to political parties as to the number of nominees that they would nominate as long as the number does not exceed the minimum number of entitlement.

The recommendation 3 made by the Committee purports to make references to a case by Sen. (Prof.) Anyang’-nyong’o and others. We are so fortunate that Sen. (Prof.) Anyang Nyong’o is a Member of this House and will be able to shed some wisdom and light on this particular case.

Mr. Speaker, Sir, the Committee attempts to set aside rules that have been endorsed by this House only in April. The Senate and the National assembly made changes to the rules relating to the nominations of persons to EALA and parliament did not touch 6.1. Parliament only amended the rules to reflect the bicameral nature of the Kenyan Parliament and to recognize the Senate and the National Assembly. Rule 6.1 still

remains and we cannot purport to set it aside on the basis of the 2006 case by Sen. (Prof) Anyang- Nyong'o and the Attorney- General. Recommendation number 5 singles out the CORD coalition and asks it to go back and change or add 7 additional nominees so that the CORD coalition can bring a maximum or a minimum of 12 . The rules are so clear under 6.1 there is a maximum number that has been prescribed, but there is no minimum.

Mr. Speaker, Sir, in recommending the deletion of 3, 5, 6 and 7, it is to remain faithful by the rules that this House has passed. We cannot attempt to change the rules to suit certain political appetites and certain political desires. I want to appeal to Members of this House that; if we are truly committed to the rule of law we should not set aside the rules that we have come up with.

I support recommendation 1 that is very clear of the number of nominees that the CORD coalition is entitled to. I also support recommendation 2 that says that 'if we want to set minimums then the rule must be amended to make clear unequivocal provisions on the matter of the requirement for the nominations.

I will support recommendation 4 that says that for the future rule 6.1 should be amended to require parties to submit three times the number of persons they are entitled to nominate under the rules.

However, before we change rule 6.1 we cannot sit in this Assembly and purport to set minimum numbers for political parties, that will be legislation pursuing mischief and partisan political interests. Political parties should be allowed to nominate the number of nominees that they deem convenient for them, where people say that it will be a sham election if the Coalition for Reforms and Democracy (CORD) only submits four names. CORD has submitted five names and yet its minimum or maximum entitlement is four nominees and so that means that we have got one extra name over and above the four that is our actual entitlement.

I appeal to Members of this House that as we look at this beautifully done crafted report let us take note of the recommendations. Let us take note that those who come to this House after 8th of August and those who will be in the "Lower House: after 8th of August, we will take it upon ourselves to review this rule and particularly to look at rule 6.1 so that if we feel it is extremely important to have a minimum number of allocations, we change the rules to reflect that. However, let us not use this opportunity when there is heightened political temperature for us to attempt to set aside the rules and the laws of this House.

Mr. Speaker I beg to move that we amend the Motion as earlier stated. I will be seconded by Sen. Sijeny.

The Speaker (Hon. Ethuro): Yes, Sen. Sijeny

Sen. Sijeny: Thank you Mr. Speaker, Sir; I second the amendment by Sen. M. Kajwang.

This is because this amendment puts the records very clear. So far, there is no justification whatsoever for giving the recommendations numbers 3,5 and 7. This is just a deliberate attempt to delay the nomination for the members of the EALA due to ulterior motives. It has nothing about trying to set the record straight or trying to abide by the law.

The majority side should not attempt to do work for the minority side, if the minority side has complied with this rule 6.1 who are they to come and do work for us? The Senate Majority Leader is trying to mislead the House and the whole country. The

fact is in the East African Court of Justice case which is famously known as “Prof. Anyang’ Nyong’o” were not the same.

I was one of the lawyers in that case and I know very well what happened. What the minority side has done is to comply with the law, they should listen. They have actually submitted all the documents. As long as the parties have followed the law there is no need for trying to delay this matter deliberately due to political reasons. Though some people are hanging in, those who lost the nominations and the party primaries want another opportunity so that their names can be submitted. This should not be allowed, I therefore, urge this house to move and support the amendments sought by Sen. M. Kajwang,

I beg to second.

The Speaker (Hon. Ethuro): What is it Sen. (Dr.) Machage?

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. According to our Standing Orders, there are certain regulations that are given in amending a Motion. A Motion can only be amended on the Floor of the House by the person who has provided the Motion but if a Motion is to be amended by any other party, then at least one hour’s notice should have been given to the Chair for that consideration.

Is Sen. Kajwang in order to move an amendment to this Motion in the manner he did?

The Speaker (Hon. Ethuro): Order, hon. Senators. I would like to respond to Sen. (Dr.) Machage. First, I commend you for the grasp of the Standing Orders and eagerness to ensure compliance unlike Sen. (Dr.) Khalwale who was questioning the process of excision of a forest when the procedures had been exhausted.

Hon. Senators, Standing Order No.56 states:-

“Amendments to be in Writing

(1) The proposer of an amendment to a Motion shall, before moving it, hand the proposed amendment in writing, signed by the proposer, to the Clerk at least two hours before the order is read.”

So, it is not one hour, it is two hours.

“(2) Despite paragraph (1), the Speaker may, in exceptional circumstances, allow a Senator to move an amendment to a Motion before the Senate at any time during consideration of that Motion.”

It is also true that the amendment on the Floor cannot just be brought by the proposer of the Motion. That is possible with a Bill. With a Motion, you are still subject to paragraph 56(1) and (2). There is no other provision.

So, despite paragraph (1), the Speaker may in exceptional circumstances--- If the Speaker determined that this is a Special Sitting, these are special circumstances. We do not have the luxury of adequate notices. Like the Petitions today, you know the time given and one Member raised that. It would not be long enough but Members will appreciate the time constraint and act accordingly if they are keen on those petitions.

Therefore, I allowed that amendment to be processed under paragraph (2).

*(Question, that the words to be inserted
be inserted, proposed)*

Sen. (Dr.) Machage: Mr. Speaker, Sir, the appointment of the EALA Members reminds me of an issue of operation by democratization where the minorities are always “sat on” because the majorities have it all. The political party issue as seen in Kenya always surrounds population or certain ethnic formations. If you look at the majority side, you can figure out what groups it entails. Similarly, if you look at the minority side, you will also figure out what groups it entails. The minorities are always left in abeyance. The treaty for the establishment of the East African Community (EAC) did not prescribe any rules on how the Member States will appoint or select membership to the EALA.

The Speaker (Hon. Ethuro): Order, hon. Senators! You are supposed to be speaking to the proposed amendment. So, I do not think those kinds of reminders are specific to deletion of certain recommendations.

Sen. (Dr.) Machage: Mr. Speaker, Sir, I am coming to that.

The Speaker (Hon. Ethuro): Then go to it straight away.

Sen. (Dr.) Machage: Mr. Speaker, Sir, let me hit on it straight away. I have listened carefully to the suggestions by the Senate Majority Leader and the opposition by Sen. M. Kajwang. It is all hinged on Section 6(1) of the rules of appointment of these Members in this Parliament.

Mr. Speaker, Sir, if it were so, and we start with the suggestion of the recommendations in the report by the Majority Leader, then we should not even accept this report in total plus the membership therein. It means that the report should go back to be done afresh with different membership. If we will support the request as put forward by Sen. M. Kajwang, then we have to reject this report because it is being opposed so that it is made afresh.

So, whichever way you see it, there is an anomaly; a big one for that matter because the mischief in it is that some people in this country want to lord it over Kenyans in giving gifts to their sycophantic supporters. That is the truth. This report should be taken back and members from the border communities like the Kurias, Taitas, Subas, those from Mt. Elgon and the Luhyas should be the only members to this Committee.

The Speaker (Hon. Ethuro): I will therefore put the question.

Hon. Senators, this is a voice vote and is not a matter affecting the counties. So, each and every Member has a vote.

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

(Resumption of debate on the original Motion)

The Speaker (Hon. Ethuro): Order, Members. We will proceed with debate on the Motion without amendment.

Sen. (Prof.) Anyang’-Nyong’o.

Sen. (Prof.) Anyang’-Nyong’o: Mr. Speaker, Sir, I want to clarify why we took that case to the East African Court of Justice (EACJ)

The election to the East African Legislative Assembly (EALA) is provided for in the Treaty. Therefore, when we elect Members to the Assembly, we must follow the provision of the Treaty. That is a fundamental principle to the Parliament of Kenya, which is composed of two Houses; the National Assembly and the Senate. In the case of

the other members of the East African Community (EAC), the division of parliament into two Houses does not exist.

In that case, when Kenya is electing Members to EALA, we must tell the Community that our definition of Parliament involves two Houses. Therefore, when we are electing Members to EALA, we must develop a principle of electing these Members within the context of the two Houses. I hope we are in agreement on that issue.

As a House and Parliament, we must proceed on matters of law on clear principles. Once that is settled, we can move to our case.

What was the merit of our case? Our case argued that we do ---

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Anyang'-Nyong'o. Did I hear you ask whether we are clear on our bicameral process?

Sen. (Prof.) Anyang'-Nyong'o: What I am saying is that we must be very clear on the bicameral process.

The Speaker (Hon. Ethuro): I may wish to know which Member of this House does not have such clarity.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I am just laying down the principles of my argument. I hope that we will not debate this Motion without those two clarities in mind. Otherwise, we shall be making false arguments regarding how to elect these Members to the Assembly.

The Speaker (Hon. Ethuro): Very well, proceed.

Sen. (Prof.) Anyang'-Nyong'o: The third issue is, as Members of Parliament, we must also recognise how Parliament is constituted. The Parliament of Kenya is constituted by political parties. They nominate candidates to the Independent Electoral and Boundaries Commission (IEBC) who vie for elections to come to parliament. In parliament, they will either be in Government or the opposition.

Our Standing Orders and the Constitution recognise two sides of Parliament; the Majority side and the Minority side. In electing Members to the EALA, the Kenyan Parliament must recognise its composition and decide how it is going to elect Members to the Assembly and who will represent them regarding the majority and the minority sides.

What happened in the year that we went to EACJ, when the Membership of the Assembly was elected is that notwithstanding the Majority and Minority composition, the composition of Parliament in terms of political parties was not fully recognised. The Majority political party found itself to be the Minority party and the Minority political party found itself to be the Majority party in the Assembly. That is the point of contention we took to the Assembly. We said the Assembly cannot reflect the opposite of the manner in which political parties nominate their candidates, through the IEBC, to the Assembly. In the end, the EACJ ruled in our favour.

Therefore, if this Motion is going to use our case in the Assembly, it must say on what basis we will nominate Members. These parties must present nominations to Parliament which can elect on the following basis: It can approve the nominations by the political parties instead of voting for individual Members.

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

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

Nomination does not mean that every Member must be voted on. It means that, if political parties have chosen those who will go to the EALA and brings them to Parliament for approval, Parliament will either approve or not approve them. That is the way I understand it, and that is the point I wanted to make. I will not appreciate myself as a Member of this House who took the case to the EACJ if the issue is misunderstood from the point of view that the decision that was made by the EACJ should be part and parcel of a decision made by this House in electing the Members of EALA. If you are going to quote that case, please, quote it in terms of substance and not in terms of form.

Thank you, Mr. Temporary Speaker, Sir.

Sen. (Dr.) Khalwale: Thank you, Mr. Temporary Speaker, Sir. I rise to support this Report. I want to congratulate - using very strong words that I will not mention - the Committee for coming up with these recommendations.

Equally, I would like to congratulate this House for having rejected the strange amendments from a youthful Senator, Sen. Moses Kajwang. I do not understand how the Coalition for Reforms and Democracy (CORD), and more recently the National Super Alliance party (NASA), that has been preaching inclusivity and equal opportunity for all Kenyans, can dream that the popularly elected Senator for Kakamega, voted for by 700,000 people, can rubberstamp the names and not be given an opportunity to elect.

There shall be no selection in the process of identifying leadership in this country that represents our interests in the East African region. Our youths must be given an equal opportunity. This opportunity can only be seen to have been given to the youth and the rest of the people by the CORD fraternity if the 41 applicants are allowed to participate in this election. I, therefore, commend the Committee which has recommended that the new names be added to this list.

I would like to speak to the hearts and minds of the “President in waiting”, Hon. Raila Odinga, his deputy, Hon. Kalonzo Musyoka and the other three co-principals, Hon. Isaac Ruto, Sen. Moses Wetangula and Hon. Musalia Mudavadi, who might not know these things. We know these things. When a similar matter came up in the EACJ in the year 2005, I was the Assistant Minister for East African Community.

The Temporary Speaker (Sen. (Dr.) Machage): Order, Senator. I have been thinking over your statement of “President in waiting”. You could be riding on matters of treason. We have not had an election in order to have a President in waiting. What are you referring to?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, had I called Hon. Raila ‘President elect’ I would be breaking the law. But if I say “President in waiting”, he could be waiting for two years or two weeks. For now, he is just waiting until 8th August, 2017.

(Laughter)

At the time when this matter came up at the EACJ - the principals may not know - I was there as the Assistant Minister of East African Community. The late Sen. Mutula Kilonzo in this first Senate under the Constitution of Kenya, 2010 was one of the prime movers of this matter at the EACJ. If for nothing else, let us honour him. I was there when he defeated Sen. Amos Wako when he was the Attorney-General. Sen. Wako spoke a lot of English but he could not manage, we were defeated. Those of us who were serving in the

EAC used to live with the embarrassment of being asked by representatives from the other partner states: “What is wrong with Kenya? Can you not sort out your issues?”

It had to be sorted out by the East African Court of Justice. So, if anybody thinks that you are going to force this because you want Mr. X to make the list, please, be informed; we will decide that. With all due respect, we would be doing it in futility.

Mr. Temporary Speaker, Sir, communication through the social media is becoming rapidly advanced. I remember doing a tweet to Rt. Hon. Raila Amollo Odinga and to the former Vice-President, Hon. Kalonzo Musyoka, and the tweet really trended. I just told them, “My seniors and my bosses, are you saying that for all that we have been fighting for, you want to ask us to elect a son and a brother?” I posed that question. The tweet circulated and amongst the people, things were added. I want to congratulate Hon. Dr. Oburu for pulling out of the race.

I know young Kennedy Musyoka is a pleasant professional and when I look at him, left on his own, that boy is going to fly. I want to encourage him to open himself to competition amongst his age mates. If, for example, I want all my sons – I have got two big ones and one of them is a lawyer – If I want them to get anything, I will allow them to compete just like they competed in primary and high schools and at the university. It is healthy. It is called equal opportunity and we should not look down on that principle.

In fact, many of us here have gone through circumcision. During circumcision, your parents release you to face the circumciser. After circumcision, you live in seclusion with your agemates and they do not know whether you will heal. That is how we grew up as African children.

Personally, I am going to vote for Kennedy Musyoka but with questions marks because they should have allowed the boy to compete. The only way is for the list of the CORD Coalition to be expanded so that each position can attract at least two people and we have minimum eight and maximum 12. If we do that, we will look very good, mature and we will look like a Parliament, but anything else reduces us to a rubberstamp.

Sometimes when we say these things, people might be quick to say, “Who are you speaking on behalf of?” On this one, I know there are millions of youths who are salivating to either be the Members of County Assemblies (MCAs) or Members of Parliament (MPs) or Members of the East African Legislative Assembly (EALA). Therefore, as a self-proclaimed *mtetezi wa wanyonge*, I would want to say that I am speaking for all those *wanyonge* who are being denied an opportunity---

The Temporary Speaker (Sen. (Dr.) Machage): What are you talking about?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I am speaking on behalf of the millions of humble Kenyans.

The Temporary Speaker (Sen. (Dr.) Machage): So keep to one language; that is what your Standing Orders say.

Sen. (Dr.) Khalwale: Thank you, Mr. Temporary Speaker, Sir. On behalf of those humble Kenyans, I will push this agenda the way I do.

In conclusion, for anybody who thinks it is a joke, only this week our youths were presenting application documents for some position that had been advertised by Parliament. My brother, Sen. M. Kajwang, who moved this amendment and my sister, Sen. Sijeny, who seconded the amendment, how I wish you had seen the queue that was there for just a few positions. The queue is still there for very few positions and yet, for a juicy position like being a Member of the EALA, you want to restrict our youths from

competing. Where will they go? Do we want them to become Members of EALA through Uganda?

Mr. Temporary Speaker, Sir, the way I see it, having been a former Member of the Cabinet and specifically responsible for the East African Community, you would have been the first to say that you want your son to make the list of becoming an MP. This is not the route to go for this country. In this country, the route is only one; inclusivity and giving our children equal opportunities.

With those many remarks, I support the Report and I see no problem whatsoever in the recommendation that says that we give a new date for nomination. Will it kill us if we are given a new date? I see nothing that will kill us if we add more names. They would still lose if they have to lose and a few will make it.

Finally, I do not want to end without saying that FORD-(K) is not asking for too much, we just have got one little girl from Siaya called Caroline Achieng, let her be elected.

I thank you.

The Temporary Speaker (Sen. (Dr.) Machage): Order! Your conclusion is completely out of order. I would order that that conclusion is expunged.

Sen. Billow: Thank you, Mr. Temporary Speaker, Sir. I rise to support this Motion. I have gone through the report by this Committee, but I have issues with the Report.

(Sen. (Dr.) Khalwale consulted loudly)

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale! You have done your part and everybody has listened. So, give a chance to others to be listened to.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, thank you very much.

Sen. Billow: Mr. Temporary Speaker, Sir, this is a very important institution – the East African Legislative Assembly. It is the key institution that drives the integration of East Africa; a process that is political integration and economic integration. This is a process that has stalled because some of the protocols developed by this Assembly have not been domesticated or approved by our Parliaments. This is because also we do not give enough teeth or power to that institution. However, given what is happening in the European Union (EU) and other regional Parliaments, this is an important institution that we need to strengthen. One of the ways in which we can strengthen this institution is to put people of a high caliber, based on merit who can make a difference in that institution.

Unfortunately, as my colleague the Senator for Kakamega just said, the process of determining who goes to that House is still fraught with danger. Why? This is because it is largely determined by principals or the leaders of the political parties. What we are being asked to do when we come for the nomination will be nothing but to rubberstamp a list that has literally been handpicked.

Even as we speak now, this list that we see attached in this Report has been dictated by the political party leaders, unfortunately. If you look at the 99 names of the applicants who were received and see the list that has eventually been developed by the

political parties of Jubilee and CORD, it is a shame. It is a shame! The rules that have been developed by this Committee have not been followed.

Mr. Temporary Speaker, Sir, I want Senators to indulge us on this. If you look at Page 7 of this Report, you will see that the first rule says that the National Assembly of each party state shall elect not from among its Members. However, if you look at this list, you will see that there are people who are serving as Members of Parliament (MPs) on the list. How do we select a person serving as an MP yet in the same rules that were developed by the committee, we are told that the people to be nominated should not be MPs?

The reason why this is being done is because leaders from the Coalition for Reforms and Democracy (CORD) and Jubilee are doing nothing but rubberstamping lists forwarded to them by political party leaders. They have taken these Houses for granted. Members should know that we should not go by any list but by our own conscience and look at people who have applied and determine the appropriate persons to serve in that important institution.

Jubilee has a list of 15 people and tomorrow we may be told that the bosses want X, Y, Z or five people to be selected. I want to tell the people in Jubilee, because I was elected on a Jubilee ticket, that we will not go by any list from any party leader. We will not because you cannot have rules here and you break them in broad daylight.

If you continue reading the same rule, it says that nine Members shall be elected who shall be represent as much as it is feasible the various political parties represented in the Assembly, shades of opinion, gender, and other specialised interest groups. When you look at the list that has been prepared by political parties, it is in complete disregard of that provision because special groups have not been looked at. Special groups consist of the youth, people with disability, the marginalised and minorities like the Speaker's Community, but they have not looked at any of these. That is political expediency.

That is the way nominations have been done in the National Assembly. It is "who is who" that comes in. They look at who is whose brother, son or girlfriend. It is that kind of list that we are being given today. So, as Members of the Senate, we should not entertain that because there are certain leaders of political parties who are determined to destroy this country.

We have seen what has happened in the recent past. Luckily, I was not a candidate and therefore a victim of their foul play, but we saw what happened in central Kenya, Rift Valley, Nyanza and some other areas of Ukambani.

Mr. Temporary Speaker, Sir, what is happening will destroy this country. Considering the manner in which primaries have been conducted and forgetting about other institutions, even this Senate is being set up for shut down in the next Parliament because all the brains and key persons have been locked out. There is a systematic way in which people who can serve the interest of party leaders should be in Parliament so that the constitutionalism we have in this country is not destroyed. We must safeguard constitutionalism and principles and rules in which institutions like EALA have been set up.

Mr. Temporary Speaker, Sir, lastly, it will be a shame if such kind of leaders come to power. Fellow Senators, you must be cautious. It is not just about corruption. There are people who do not want to see law and order but want to take a shortcut to

everything. These are the people preparing themselves not just for 2017 but for 2022. We must be alert and careful in 2017 and beyond.

Mr. Temporary Speaker, Sir, the CORD, a party which wants to be the alternative government, must lead by example. They cannot expect this House to support them when they are supposed to be complying with the rules. Members of the Committee have insisted they must bring 12 names. For heaven's sake, there are 40 million Kenyans looking for jobs. We will only select the four they are entitled to but they should give us more names. In fact, the rule is very clear. It says "not exceeding three times the number." They should give us at least 12 names and consider a minority from Kuria, a youth and people who live on top of mountains.

Mr. Temporary Speaker, Sir, I urge the CORD to lead by example if they want to be the next government. They should comply with the requirements of the rules. When we come to select the names next week, let us not be bound by dictates of those who simply want to have people who they can direct to be in parliaments in this country.

Mr. Temporary Speaker, Sir, I thank you and support.

Sen. Muthama: Mr. Temporary Speaker, Sir, we have just concluded party nominations and there is a great deal of outcry all over the country. What stands out is that many political parties, including leaders themselves, have chosen candidates. As a result of that, the country has been divided more than ever before.

Considering where we are coming from; despite the fact that leaders and the top leadership on daily basis in this country keep on talking about a united country; a country that is free of tribalism, but what we witness at the end of the day is the other way round.

Mr. Temporary Speaker, Sir, I have been on the forefront and I can be quoted having fought against tribalism. I have gone ahead to criticise the current system by saying that they Government should not be formed on the basis of two communities because these are the communities that supported the current system. I have made it clear that at any given time, a president of this country would be elected from a certain community. Once the president is elected, he becomes the president of 40 million Kenyans. Sometimes I have been accused of attacking a certain community. I want to make it clear here that I have been fighting for justice for Kenyans and I will continue doing the same as time allows.

Mr. Temporary Speaker, Sir, my Coalition, the National Super Alliance (NASA), is now in the line of fire. It is because the leadership sat down and selected those who could manage to go and sit down with the top leadership and bargain for their positions. Those who were selected are cousins, fathers and sons to others but those who could not manage to get there were left out yet salaries being paid to Members of the EALA in Arusha are a contribution by all Kenyans. The leadership is now being placed in the hands of few selected people.

Mr. Temporary Speaker, Sir, we are fighting tribalists but allowing impunity. Which is worse than the other one? Should we allow and usher in impunity by criticising tribalism where you find a Mkamba being appointed from Kitui and another one from Machakos? We call that tribalism but when a cousin appoints a cousin, a brother takes care of a brother, or a father appoints a son, we want to close our eyes and call it democracy.

Mr. Temporary Speaker, Sir, if you elect Muthama as the president of this country and he appoints his son as the ambassador of Kenya to the United States of America,

what will you be telling Kenyans? When I fly to USA, it is my son to welcome me. That is why the discussion will not be about Kenya as country, but how we will build houses and transact other personal businesses. In that case, where will be the service to the country?

Mr. Temporary Speaker, Sir, I opted to stay out of these primaries because I did not want to be misused. I am an independent person. I want to demonstrate through actions and words that my party cannot just select candidates and expect me to support them. These candidates are not the choice of the party's supporters. I support that we adopt this report. I heard Sen. (Dr.) Khalwale say that he will vote for a certain candidate.

Sen. (Dr.) Khalwale: I might.

Sen. Muthama: I do not think he used the word "might", he said he will vote a certain candidate. I want to tell my brother to let another candidate be nominated from a poor background because---

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Muthama! If you listened carefully, I expunged that sentence. Therefore, it is not a matter of discussion.

Sen. Muthama: Thank you, Mr. Temporary Speaker, Sir. I stand to be guided. These positions should go to the children of the poor who have never been in leadership. When I visit those regions, I can say confidently that I voted for a child from a poor background so he might put food on his table. Let us not select, but elect leaders.

My sister Sen. Sijeny, is a lawyer and maybe one day she will be a judge or even a chief justice. I wish her all the best. However, I wonder how her judgements will be because when she stands here she is fighting for gender balancing, but at the same time, she is supporting a candidate who has been handpicked. How does she expect us to support the Gender Bill? I want to tell my sister that she should better be crucified than budge from the truth. I stand for one united Kenya, one community and fair distribution of resources. May God bless this country.

The Temporary Speaker (Sen. (Dr.) Machage): As a Temporary Speaker, that might be the best speech I have ever heard from Sen. Muthama.

Sen. (Prof.) Lonyangapuo: Thank you, Mr. Temporary Speaker, Sir. I want to join my colleagues in congratulating the joint Committee for coming up with the criteria that will be followed to nominate leaders who will serve in EALA. I support recommendations as indicated from number 1 to 7.

I support the proposal that CORD coalition present 12 names because according to law, for every position that falls vacant, 3 names must be submitted. Therefore, this Committee is in order to compel the CORD coalition to submit 12 names for the 4 vacancy slots. For the Jubilee Coalition, 5 names were submitted. We should have 3 more names that must compete appropriately to make it a total of 15 names.

How many political parties form the CORD coalition? I hope those names will represent all the parties that form that coalition. At least one person, per political party. Jubilee coalition is made up of 12 parties. Therefore, I expected each party to nominate one person.

The Temporary Speaker (Sen. (Dr.) Machage): Do those parties still exist under the law?

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, we are alive as a leadership and presidency of Jubilee courtesy of that formation. I would have liked to see that kind of representation to have been done.

Secondly, these positions are for the EALA which is a regional parliament. It has members drawn from the 5 countries which make the East African Community. One criterion which I expected to be put here in bold is that the persons we are nominating here must work for the community. It is not like the way we normally nominate people to come to the Senate or the National Assembly. This is a community that has interests. People have to send their persons who will take care of the interests of their respective countries.

Kenya has a population of over 40 million people. The 9 people we are sending to EALA must have the capacity, knowledge, expertise and experience that are associated with such position. You cannot send someone who will take one or two years to learn how EALA operates. This is because by the time his or /her, term will elapse on the third year and we, as a county, may not have benefitted.

In case of trade deals, members of the EALA should stand for the interests of their respective countries. In Uganda, for example, they normally send very experienced people who are well conversant with the law. In Kenya, if you look at some of the candidates proposed here, they are very experienced in many fields. For instance, in the ODM list; there is Prof. Chacha Nyaigoti Chacha who worked in the East African Community. This is one giant who will push for our agenda in EALA. If you look at Jubilee coalition, you will find Mr. Mutea Iringo who is a former Internal Principal Secretary.

These are people who know the agenda that we have in this nation with regard to the competition that we have with our neighbouring countries. It therefore calls for thorough relooking of the rules and who should be sent there so that we do not select people who lost in the party nominations and have been promised positions in the EALA. That is not the right place for such people. The right place for such is here in Kenya.

In one of the rules that was read here, ethnicity had to be looked at. There was need to consider some marginalized communities and people living with disability. When I look at the ODM list and considering that we are to open opportunities for young people, I think of a brilliant lawyer from my county. He is called Erick Changorok and his family has been consistent ODM followers. I am surprised that his name is not among those that have been proposed. I expected to see some names in the forwarded list.

If the political parties want to reach certain communities, they have to keenly position themselves where they almost have zero support. West Pokot is a KANU zone and there is this lonely and powerful family that supports ODM. Their son has not been considered yet he applied. The same thing is happening to my neighboring community in Turkana County. We have some people from that community who applied. We should look at this keenly and see how they can be assisted.

In the Jubilee coalition, we have Harry Kimutai who comes from Mt. Elgon. These are regions that should be considered for them to get proper representation. If you look at Mt. Elgon, they only have one constituency. When one Member of Parliament (MP) is elected in the National Assembly, they cannot have someone in the Senate. That means that they only have one elected MP and maybe four or five Members in the County Assembly. This is an opportunity to have such a community here. Communities such as Samburu and Pokot that are in Baringo County should also be considered. Equally, there are professors who have done a lot. They should also bring up their names.

As my colleagues have said, it is not harmful to include your friends in the list but we should look at the greater good of the nation. That is what we want. If you want to consider your friends, they can wait until you get to the throne of power. When that happens, you can then give them positions within your Government. In this case, we need people who are going to represent us. They are not representing political parties when they are in the East Africa Legislative Assembly (EALA). They are representing Kenya.

One criteria that they were using to select candidates for EALA is No.9(2)(e). It states that you should have had proven experience or interest in consolidating and factoring the aims and objectives of the community. This is very powerful criteria but if you read the names in the list, you will see that some of them were my students just the other day in the university. For some of them, this is going to be their first employment. It, therefore, calls upon us to thoroughly look at this because we are sending a product to go and represent our nation in the East African Community.

I concur with my colleagues who have said that we should look at this list in totality. CORD should bring 12 people who we will study. Jubilee should also bring 15 people. I requested that KANU should have been asked to give one powerful candidate who can represent everybody without looking at the individual interest that we may be having. We are waiting for the date when we can meet to examine the names and vote.

Sen. Omondi: Thank you Mr. Temporary Speaker, Sir. I want to oppose the report on EALA. I do not see the reason as to why we should open---

I know that the political parties have been given legal powers to nominate their candidates. People applied for the positions, they have been interviewed and we are now adopting the report. I want to urge my fellow Senators to adopt the report the way it is.

I oppose the extension of time so as to allow us to add more names. That will be cutting the powers of the political parties. If there is a Member amongst us who feels that he has a personal interest on why we should open this, let them come out clearly. This is something that has gone through the legal process and it has come to this House. Our work is to adopt the report unless otherwise.

I oppose.

Sen. Elachi: Mr. Temporary Speaker, Sir, I rise to support but I also want to question my party Jubilee which has forwarded 15 names. The most important thing that we need to ask ourselves as we nominate these candidates is whether women have been considered. This is because I know that many women have worked in these political parties.

These slots are not just to be given. They are to be used to appreciate those who have worked hard in their political parties. People have spent money to ensure that their political party functions. However, we are not afraid to talk about our political parties. All we want to do is to stand and listen to those who come and take things.

People go through nominations and they spend their money. When they do so, they are building the party. There is no fear or favour when a party says that it has chosen five names. There is a reason as to why they do that. It is for the party to decide. It is the party to ask itself if the five names are people who have worked for that party even when the party was in a storm.

If Jubilee brings 15 names, I would want to see 15 names of men and women who have sacrificed themselves. This is because nobody pays anyone salary in a political

party. You volunteer. Therefore, when there is such chance, it is important for those people to be appreciated.

It is true that they are going there to serve Kenya but the law is very clear that they must go through a political party. We do have independent candidates who can also apply. This is because we have independent people who have also sacrificed and they believe in one of those parties.

As we make recommendations and ask for more time, let us not ask for time to play side shows. If the political parties have someone who has worked diligently for the party for the last ten or five years, I believe that a woman or a man deserves to be nominated. This is a political party issue and until we change the law, it is the parties to decide. We should not start infringing on this because we want to show that we have the numbers.

I want to tell Jubilee that while we say that we have the numbers, we cannot interfere with EALA. In fact, the best Jubilee would have done to us was to bring the five names. Why should we put so many names and yet we know that it is so and so who is going to take it? When that is done, people go through a lot of anxiety yet you know very well that you are not going to pick them. I think it is fair to finish the process, present the five names and give reasons each of them deserves to be in EALA.

The other thing we need to bring to the attention of the parties is that if somebody has served for two terms, he or she has done the best. He or she can get another job and give an opportunity to other people. Sometimes we find ourselves so engaged in something that when it comes to handing over, we do not want to do so. We want to make it look as if it is a position that is reserved for a specific person. There is even a slot that has become a tradition such that if we remove it today, you will find the community from which that person comes fighting. It appears like that position is reserved for them. Those are some of the things we need to change.

We should think about what Kenya will achieve by having representatives at the East African Legislative Assembly (EALA). The person nominated by the party should sit down with their political party and point out some of the things that are not friendly to our country. Sometimes it is not just about giving a job but serving Kenya. We should appreciate that we send representatives to the EALA as Kenyans to serve our country.

As much as the Committee recommends that the Minority Party should bring twelve nominees and the Majority Party, fifteen, we are being unfair to our people. In the end, we are only going to pick five. The processes should be done within the parties after which they come to Parliament to tell us the particular names they have agreed on. If anyone has a petition, he has a right to bring it to Parliament. A name can then be changed after we look at the petition and agree. There could be an integrity issue that we have to resolve or any other issue arising.

However, as parties, let us not antagonize anybody, especially, now that we are going into the general elections. If we do not want a specific name we should sit down and agree because this issue requires consensus. If we follow this process, we will agree on the report. When the report goes to the National Assembly, it will not have an issue. However, we are to choose from 15 names, it will be very unfortunate to those who have applied.

Finally, it is important to look at those laws critically. Any Member of Parliament does not need to go for these positions because the law is very clear. Even on the

Majority side I have seen names of Members of Parliament. The law is very clear that they cannot go for the EALA positions. Even if they have only two months to serve as Members of Parliament, they are still Members of Parliament. The Jubilee Party should, therefore, be right on the process.

With those few remarks, I beg to support.

Sen. Sijeny: Thank you, Mr. Temporary Speaker, Sir. I do not agree with the recommendations of this Committee. I think they went beyond their mandate. After listening to what was being said, I believe there is no justification for giving all these recommendations. Political parties have been given the powers by the East African Court of Justice Rules, which they have abided by to the letter. A few leaders may feel that since the people they wanted were not nominated and they did not succeed through any other process to get what they wanted, the process must be canceled. That nullification is unfair and not legal at all.

Mr. Temporary Speaker, Sir, you listened to the submissions of most of our colleagues, and in your wisdom, expunged those proceedings. It is clear that the only reason the list of nominees to the EALA has been submitted to Parliament by various political parties is because they all have their personal views. Some have personal vendetta which, in my view, should not be settled in Parliament.

Take the scenario of a Kenyan, and more particularly, a youth who has applied for a position and met all the requirements. He has gone through the rigorous panel of interviews and vetting. Due diligence has been done and his integrity confirmed. The academic qualification befit and he has justified why he wants to join the EALA. He has demonstrated his passion and enumerated the things he has done for more than two years.

Just because you happen to be a son of a politician, it does not mean that you are condemned. I believe that is not the case. The Bill of Rights is there to protect everybody. Why should you discriminate someone just because their names are similar to that of a politician who is not even in Parliament? We know how Parliament has treated the same politician. However, that is not the issue. There should not be any discrimination. I would not want my children to work hard, get education, graduate and be barred from getting a job because I am a politician; whether former or current. I am also a child of a former politician who is deceased – may the good Lord rest his soul in peace - but I am here. If I had been denied a chance just because my father was a politician, that would not be justice.

I am certainly not in support of these recommendations at all. There is no legal justification. The facts in the Anyang-Nyong'o case are so different. Sen. (Prof.) Anyang-Nyong'o clarified that the facts are not similar to this. What we - and I was one of the lawyers - wanted to correct is not what was done here. The political parties here have followed the due process of what they ought to have done. It is not because there was a complaint and he has clarified the fact.

Misleading people and trying to settle personal scores, I repeat - When you are given the opportunity to do it within your political party and you do not because you are coming to the Senate or Parliament to exercise your muscles is, for me really, abuse of office. We cannot say that the youth cannot be empowered. We need to empower them irrespective of their background. This is just one job. Leaders should be creating more jobs. Just last weekend as a Committee on Delegated Legislation, we went to Mombasa to look at a series of regulations which had been brought to us by the Cabinet Secretary

(CS) Kazungu to support the Mining Act. There are several jobs which are going to be created once the Act starts being implemented. Those are the kind of things we should be doing, but not to fight people for only one job; the entire country cannot sit on that seat but one person at a time.

Mr. Speaker, Sir, I find it very unfortunate that we can stand and discriminate against our people, oppose things just for the sake of it and waste time because others want to buy time for their personal reasons. Kenya is again going to look bad when we have followed the due process. The law says that at most three times. I am a lawyer and most of these political parties have a panel of lawyers. Why did they sit and agree and bring it to Parliament then for others to start thinking that it was wrong? That has been the interpretation. Why can they not move to court if they want that proper interpretation to be done again?

The law is clear. These are the times if I was a lawyer going to court I would just be nodding without even working. The judge would just wake up and read and ask: "Why has that application been brought here while it has abided by the law? Dismissed off record." Why is the Senate trying to entertain injustice in the name of: "It is I who decides who to go where?"

I totally disagree and I do not support the recommendations and I find that the Committee went beyond their mandate, they acted *ultra vires* and they are subjecting innocent Kenyans who have worked--- They are going to make the youth to shy off from applying because one of their own is applying and is being subjected to all these.

If they wanted to put in gender, I speak for my party the Wiper Democratic, there was no woman who applied. How and from where are you going to get a woman? Are you going to break the law? That is what would have happened. If FORD-(K) or any other political party wanted to bring in a lady they had opportunity from the word go. Why wait till when the entire exercise has been done?

I beg to oppose.

Sen. Ndiema: Mr. Temporary Speaker, Sir, I am a Member of the committee which prepared this report and procedurally, therefore, I support.

The rules are clear. They talk of election and in any election process, there must be competitors. While the minimum number of people to be nominated by parties to vie is not mentioned, the spirit of any election and not approval, is that there must be more than the number required. This is a matter that had gone to the court and it ruled that an election cannot be an election unless there are candidates from whom the voters have to vote for.

I support the idea that the names should be increased to give opportunity to Kenyans to compete. While on the same, I think in future, we need to look at the rules and if need be, the Treaty itself in as far as election to EALA is concerned.

We in Kenya have a bicameral Parliament and it is said that Parliament elects Members but we know in this country we have two houses where neither is subject or junior to the other. Both have equal strength in terms of the Constitution and the law despite the numbers.

Mr. Speaker, Sir, to subject an election to universal suffrage to say each Member of the Senate and the National Assembly have one vote would therefore mean that more power is conferred to the National Assembly.

In the African scene, we always see that a cow is slaughtered when it is alive, meaning that it is divided when it is alive. The nine positions should have been divided by virtue of the county assembly and the National Assembly perhaps having more Members. May be, they could get five and the Senate allocated four. We both elect and then the list is presented for approval. However, basically the Senate should have its mandate clear because that is what the Constitution says. The question of jointly electing may not be so much in accordance with the Constitution of separating the roles of the two Houses. The positions should have been divided so that as much as we are now saying the parties should nominate, the two Houses are also separate and they should elect the numbers separately.

The Treaty and the rules are very clear; that shades of opinion should be considered. How we are going to achieve that from among the names that had been nominated after election---. What if after election, we find that we do not attain the one third gender rule or there is not even one youth featuring because they did not have money to campaign or to mobilize and so forth? This is because we have to campaign to be elected.

On regional balance, looking at the names that had been submitted by the two sides, we find that some regions were completely left out while others had several names. There was no single name from the former Western Kenya region and yet people from there had applied. Other areas had several names. There was no design to exclude the others. Probably this came about because there was no meeting by the two parties to agree on how to balance in terms of region, community, minority and to consider other interests before these appointments were done.

Mr. Temporary Speaker, Sir, political parties played a major role in these appointments. However, they blocked others from benefiting from these positions which was unconstitutional and this should be discouraged. The Constitution talks about democracy, transparency, inclusivity and cooperation. The list of the applicants from both sides does not show the criteria they used to exclude others. We should demand for the minutes showing why other Kenyans were denied opportunity to serve in EALA. We all know EALA is an assembly where our representatives champion our interests. We do not send people there to satisfy their political egos or their financial interests. These are our ambassadors out there. These are people of integrity and highly specialized in the various fields.

Mr. Temporary Speaker, Sir, it is a pity that every time we change our membership in EALA. This does not augur well because we are at risk of losing institutional memory. Among the list of nominees, there are members of EALA who are very active and we know them. It is sad that they are not on this list. In future, we should give a chance to those members who have served there because of institutional memory. For example, those who have served for one term should be given an automatic opportunity to serve again because they have experience. If we send a new team to go and learn, by the time they are done, their term elapses. This is not a college to send people to learn. We are sending them to champion the interest of our beloved country.

Kenya today is a leader in East Africa. Therefore, we stand to lose our leadership position if we do not nominate people with great experience and those who have the interest of this country at heart. We should not just nominate people who want to get those positions for the sake of earning salary and enrich themselves. We need not send

people there because they lost in the party nominations or they were told to stand down because they will be considered for nomination to EALA and yet they have no interest in matters of the EAC. Some of these people in this list have blessings of their party leaders. The truth is that most of them were rejected by the electorate. It is a pity that EALA has become a dumping ground for political rejects.

Some people in this list are not members of any party, but they are competent Kenyans. They are impartial, patriotic and can take up that responsibility. Why must we require somebody to be nominated from “our party”? Our Constitution recognizes independent candidates. Let them be given an opportunity to vie even if it is one candidate. There should be a guarantee that they will be given an opportunity. I know in the rules here---. They should be considered like any other party, but we have recommended that the rule concerning the independent candidates should be relooked into in future, so that they are catered for. There can be no coalition of independents because then it will be a party.

The way we are excluding the independent candidates drives us to a situation where it will be difficult for us to get out of it. Recently we were told “no party hoping” and we voted “yes” without considering the implications. We now have independent candidates. They are not really independent because they had offered themselves for party nominations. They lost. They are losers. They now have the opportunity to contest with rest of us.

Mr. Temporary Speaker, Sir, a river must flow, whether you build a dam; if you do not provide a spill-way, it will break. These issues of freedom of movement, freedom of association, choosing which party to belong to should be provided for. At any moment, Kenyans should be free to associate with any party, political opinion of any nature without being restricted because what has happened now is that; it is like there was no need for nomination because all those people who vied and lost are back to square one. The government will spend a lot of money printing long ballot papers.

Mr. Temporary Speaker, Sir, with those remarks, I support.

The Temporary Speaker (Sen. (Dr.) Machage): Senator Ong’era

Sen. Ong’era: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to make my contribution. From the onset, I rise to support this report. One of the reasons we set up EALA body was to ensure that we have high representation among the partner states within the East Africa region. We wanted to have a body which could legislate and make laws that would help run the East African Community.

One of the great reasons that we went to Arusha with regard to Sen. (Prof) Anyang’- Nyong’o’s case where I was one of the counsels with my sister here Sen. Sigeny and led by the late distinguished Sen. Mutula Kilonzo Snr, was precisely to ensure that the elections are held within political parties when they are making presentation to Parliament. It behooves that even within CORD to ensure that we have due process.

We are not saying that the names presented here by CORD Coalition are wrong names. These are distinguished people who have ‘died’ for the CORD coalition. They are people who have fought in the terrain and are loyal party members. For example, hon. Judy Pareno is someone who has really fought for ODM party. However, our concern here is due process. Did CORD hold due process?

I am a member of the National Executive Committee of CORD, but I was not called so that we could hold elections for these nominees. It is necessary for us, Members

of Parliament, not to be taken for a ride by CORD for just presenting four names. They are blocking us from making a right democratic choice of elections by limiting our choice to only four names. It is very clear in the rules that an election must be held. No elections have been held.

I would request, as this report says, let us defer this matter and get more representation so that we can have a range of choices. It might be right, but at the end of the day, these four nominees are people who will be elected. We would like to exercise our rights as legislators to choose and to elect because that is what an election means. By gagging our mouths as legislators then it can mean that political parties can just forward the names directly. We, as legislators, do not want to be used as a rubberstamp, we want to be given an opportunity to elect members to this distinguished august House which represents our region.

I support this Report and request our coalition; CORD, to look further into this matter so that we increase the space and create more opportunities for others.

Mr. Temporary Speaker, Sir, there is the question of regional balance. When I look at this list I wonder. A region like western is very big. In fact, the block of the votes for CORD, come from that region. We cannot see representation from that region yet I see that among the 41 applicants from CORD, there were many applicants from that region. It is necessary to include regional balance, gender and youth. I am happy that at least there is one youth and one woman but in terms of regional balance, I do not think we have met that criterion.

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

The Temporary Speaker (Sen. (Dr.) Machage): I see no other interested party. Therefore, I call upon the Mover to reply.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I am grateful to all the colleagues who have contributed. The majority, if not everyone, has supported this Motion. As I said, this is a matter where time is of the essence because of the dictates of the EAC Treaty and other provisions.

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

The Temporary Speaker (Sen. (Dr.) Machage): I will therefore put the question. This is not a county matter. So, voting is by acclamation.

(Question put and agreed to)

*(Sen. M. Kajwang entered the Chamber while
the Temporary Speaker was on his feet)*

Order, hon. Senator! You are out of the Bars. Stand there and freeze. Okay you can come in.

For technical reasons, I will defer orders No. 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 35.

COMMITTEE OF THE WHOLE

THE COUNTY ASSEMBLY SERVICES BILL
(SENATE BILL NO. 27 OF 2014)

THE COUNTY STATUTORY INSTRUMENTS BILL
(SENATE BILL NO. 10 OF 2015)

THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF
ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILLS NO. 8 OF 2015)

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL
(SENATE BILLS NO. 13 OF 2015)

THE NATIONAL CEREALS AND PRODUCE BOARD (AMENDMENT) BILL
(SENATE BILL NO. 15 OF 2015)

THE COUNTY EARLY CHILDHOOD EDUCATION BILL
(SENATE BILL NO. 32 OF 2014)

THE COUNTY GOVERNMENTS (AMENDMENT) (NO. 4) BILL
(SENATE BILL NO. 18 OF 2014)

THE MEDICAL PRACTITIONERS AND DENTISTS (AMENDMENT) BILL
(SENATE BILL NO. 2 OF 2016)

THE AGRICULTURE, FISHERIES AND FOOD AUTHORITY
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 17 OF 2015)

THE MICRO AND SMALL ENTERPRISES (AMENDMENT) BILL
(SENATE BILL NO. 12 OF 2015)

THE NATIONAL HOSPITAL INSURANCE FUND (AMENDMENT) BILL
(SENATE BILLS NO. 9 OF 2015)

THE SELF HELP ASSOCIATIONS BILL (SENATE BILL NO. 2 OF 2015)

THE PUBLIC APPOINTMENTS (PARLIAMENTARY APPROVAL)
(AMENDMENT) BILL (SENATE BILL NO. 9 OF 2016)

THE COUNTY GOVERNMENTS (AMENDMENT) (NO. 2) BILL
(SENATE BILL NO. 7 OF 2016)

THE TREATY MAKING AND RATIFICATION (AMENDMENT) BILL
(SENATE BILL NO. 5 OF 2016)

THE WAREHOUSE RECEIPTS SYSTEM BILL
(NATIONAL ASSEMBLY BILL NO. 12 OF 2015)

THE LOCAL CONTENT BILL

(SENATE BILL NO. 13 OF 2016)

THE IMPEACHMENT PROCEDURE BILL
(SENATE BILL NO. 8 OF 2016)

THE PARLIAMENTARY POWERS AND PRIVILEGES BILL
(NATIONAL ASSEMBLY BILL NO. 35 OF 2014)

THE ASSUMPTION OF OFFICE OF GOVERNOR BILL
(SENATE BILL NO.10 OF 2016)

THE BASIC EDUCATION (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 35 OF 2014)

THE PHYSICAL PLANNING BILL
(NATIONAL ASSEMBLY BILL NO. 46 OF 2015)

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO.43 OF 2013)

THE COUNTY STATISTICS BILL
(SENATE BILL NO. 11 OF 2016)

THE KENYA ROADS BILL
(NATIONAL ASSEMBLY BILL NO. 26 OF 2015)

(Committee of Whole Deferred)

BILLS

Second Readings

THE LAND VALUE INDEX LAWS (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 40 OF 2016)

THE COUNTY PENSION SCHEME BILL
(SENATE BILL NO. 20 OF 2016)

(Bills deferred)

MOTION

ADOPTION OF MEDIATION COMMITTEE REPORT
ON THE HEATH BILL

THAT, the Senate adopts the Report of the Mediation Committee on the Health Bill (National Assembly Bill No. 14 of 2015) laid on the Table of the Senate on Thursday, 25th May, 2017 and pursuant to Article 113 of the Constitution and standing order 155 (3) of the Senate Standing Orders, approves the mediated version of the Bill.

(Motion deferred)

ADJOURNMENT

The Temporary Speaker (Sen. (Dr.) Machage): There being no other business, the Senate stands adjourned until Tuesday, 13th June, 2017 at 2.30 p.m.

The Senate rose at 5.35 p.m.