

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 29th October, 2024

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

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

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

The Speaker (Hon. Kingi): Clerk, do we have quorum?

(The Clerk-at-the-Table consulted the Speaker)

Serjeant-at-Arms, kindly ring the Quorum Bell for 10 minutes.

(The Quorum Bell was rung)

I am informed we do have quorum now. Serjeant-at-Arms, you may stop the Bell. Clerk, proceed to call the first Order.

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION FROM THE INSTITUTE OF ECONOMIC AFFAIRS

Hon. Senators, I would like to acknowledge the presence in the public gallery this afternoon of a visiting delegation from the Institute of Economic Affairs. The delegation is undertaking an education visit in Parliament.

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

I will allow the Senate Majority Leader to extend a word of welcome under one minute.

Proceed, Senate Majority Leader.

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The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Speaker, Sir. On behalf of the House, I do join you to welcome this visiting delegation from the Institute of Economic Affairs.

I have noted in the past that this is one of the institutions that continue to regularly send their critiques and analysis of Bills that are before this House, especially on economic matters. When I served in the Committee on Finance and Budget, I used to look forward to the analysis of the Division of Revenue Act (DORA,) County Allocation of Revenue Act (CARA) and so many other Bills, especially during the Annual Budget review process.

Mr. Speaker, Sir, I want to urge them to continue doing that good job on behalf of Kenya, because the country is better because of the contribution of institutions such as them. I wish them well as they undertake their study here in the Senate.

I thank you.

SUBSTANTIATION OF UTTERANCES
BY SEN. PERIS TOBIKO, MP

The Speaker (Hon. Kingi): Hon. Senators, as you may recall, at the morning sitting of the Senate, held on Wednesday, 18th September, 2024, I directed Sen. Peris Tobiko, MP, to substantiate utterances made in the course of her contribution on a supplementary question to the Cabinet Secretary for Roads and Transport.

The direction was as a result of a point of order by the Senator for Uasin Gishu County, Sen. Jackson Mandago, MP, pursuant to Standing Order No.105.

In the point of order, Sen. Jackson Mandago stated as follows:

“Sen. Tobiko has just mentioned the State House Comptroller. Is it in order for her to make that allegation, unless she substantiates and brings evidence to this House?”

A reading of the HANSARD indicates that the statement which requires substantiation by Sen. Peris Tobiko, MP, was as follows:

“A rogue public servant has gone on record publicly to say that this road will never be constructed as long as the current Member of Parliament for Kajiado South, hon. Parashina, is the MP. These utterances were made by the State House Comptroller.”

Hon. Senators, Standing Order No.105 (1), states as follows:

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

Further, Standing Order No.105(2) states as follows:

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“If a Senator has sufficient reason to convince the Speaker that the Senator is unable to substantiate the allegations instantly, the Speaker shall require that such Senator substantiates the allegations not later than the next sitting day, failure to which the Senator shall be deemed to be disorderly within the meaning of Standing Order No.121 unless the Senator withdraws the allegations and gives a suitable apology.”

Hon. Senators, at the sitting of the Senate held on 18th September, 2024, Sen. Peris Tobiko, MP, was not able to substantiate her statement as required under Standing Order No.105 (1).

Sen. Tobiko subsequently requested the Speaker to provide the evidence at the next sitting day in accordance with Standing Order No.105 (2).

Hon. Senators will recall that at the sitting held on Thursday, 19th September, 2024, I invited Sen. Peris Tobiko, MP, to table the evidence in support of her claims made on Wednesday, 18th September, 2024.

Thereupon, Sen. Tobiko proceeded to table a document titled “*Katoo Anguruma*” and a flash disk drive containing a recording, as evidence to substantiate her claims. I subsequently undertook to review the evidence and to give a ruling on the matter, as it was not practical to make a determination then.

As you may recall, in my Communication to the Senate made on Thursday, 16th November, 2023, I indicated that any document or evidence tabled by a Senator in the Senate as evidence for substantiation of any allegations made under Standing Order No.105-

(1) Must be evidence tabled from a source which by parliamentary practice is official and admissible; and,

(2) Must relate to and verify the claim that was made and for which substantiation was required.

Hon. Senators, that being the case, the first parameter to which I subjected the documents or material tabled was whether the evidence tabled was from a source which, by parliamentary practice, is official and admissible.

A review of the document titled “*Katoo Anguruma*”, indicated that it contained a statement “*Ni Katoo tu anajua ni lini tutapata Amboseli na barabara ya Illasit–Taveta, hayo mengine mnayosikia ni fununu*”.

The document has the logo of Kajiado Television (TV) affixed on it. However, it is not authenticated by the TV station. Further, the document is undated.

With respect to the Universal Serial Bus (USB) flash drive, it contained a one-minute video clip file, titled “*Amboseli*”. The undated video clip, ostensibly captured by Kajiado TV, featured Hon. Katoo Ole Metito addressing what appears to be an outdoor public gathering at an undisclosed location. The utterances by Hon. ole Metito are in the Maa language, which unfortunately, I am not proficient in. There is no translation or caption from the Maa language to either Kiswahili or English.

Hon. Senators, as you are aware, the established practice in the Parliament of Kenya and in comparative jurisdictions, is that extracts from newspapers and other media

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may not be tabled as evidence for substantiation of claims. This is buttressed at Standing Order No.55(1), which provides that-

“The facts on which a request for Statement is based may be set briefly, but extracts from newspapers and other media or quotations from speeches shall not be admissible.”

Having subjected the evidence to the first parameter, I find that the evidence tabled, being the document titled “*Katoo Anguruma*” and the USB flash drive, to be inadmissible.

As regards the second parameter, which is whether the evidence relate to and verify the claim that was made and for which substantiation was required, this question does not arise in view of my foregoing ruling on admissibility of the evidence tabled.

However, I must point out to hon. Senators the provisions of Standing Order No.92(1) of the Senate on the official languages permissible for parliamentary business. The Standing Order states that all proceedings of the Senate shall be conducted in Kiswahili, English or in Kenyan Sign Language. In light of the above, I find and rule that in respect of the point of order by Sen. Jackson Mandago, MP, Sen. Tobiko has not tabled evidence to substantiate the claim as required.

In accordance with my findings and the failure to meet the threshold for substantiation pursuant to Standing Order No.105(2), I now direct Sen. Tobiko to withdraw the claim and apologize. I caution, as provided for in Standing Order No.105(2), that failure to withdraw and apologize will result in Sen. Tobiko being deemed to be disorderly within the meaning of Standing Order No.121.

Sen. Tobiko, you may proceed.

Sen. Tobiko: Thank you, Mr. Speaker, Sir, for the chance. I know the clip that I tabled in this House has evidence. The Maa language can be translated. It is not Greek that cannot be understood by people. There are Kenyans who can translate that.

The Speaker (Hon. Kingi): Sen. Tobiko, I did not give you an opportunity so that you explain yourself. I have already ruled on this matter.

Sen. Tobiko: Mr. Speaker, Sir, the people of Kadiajo understand that clip.

The Speaker (Hon. Kingi): There are two things you need to do, Sen. Tobiko; you either withdraw and apologize or sit and I rule that you are disorderly and proceed to ask you to leave the Chamber. So, are you going to withdraw and apologize?

Sen. Tobiko: Mr. Speaker, Sir, I presented a clip which has evidence.

The Speaker (Hon. Kingi): Which is not admissible. I have already ruled.

Sen. Tobiko: Well, Maasai language is not Greek.

The Speaker (Hon. Kingi): Are you withdrawing or apologizing?

Sen. Tobiko: Neither.

The Speaker (Hon. Kingi): Pursuant to Standing Order No.121, Sen. Tobiko, I rule you out of order and ask you to withdraw from the Chamber for the rest of today's sitting.

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(Sen. Tobiko withdrew from the Chamber)

Hon. Senators, I have a further Communication to make.

(An hon. Senator spoke off record)

We will come back to that.

RESOLUTIONS ON THE CURRENT STATE OF THE NATION

The Speaker (Hon. Kingi): Hon. Senators, as you may recall, on 24th July, 2024, the Senate passed a Motion on the Current State of the Nation. The Motion was necessitated by the pressing issues that emerged during the nationwide protests, which brought to light significant concerns affecting our nation.

The demonstrations highlighted the frustrations surrounding the high cost of living, rampant corruption, and the opulent lifestyles of public officials that was in stark contrast to the struggles faced by our people. Additionally, the public's outrage over wasteful expenditures in government institutions underscored the growing demand for accountability and reforms.

Consequently, the Senate sought to address these concerns through the Motion, which made actionable recommendations aimed at addressing the root cause of discontent by our people.

(Sen. Cherarkey concentrated on his phone in the Chamber)

Senator for Nandi, listen to the Communication.

In the resolution, the Senate resolved-

(1) That the National Police Service (NPS) acknowledges and apologizes for all the deaths resulting from the peaceful demonstrations.

(2) That all victims of police brutality related to peaceful protests, between 2023 and 2024, be compensated by the Government of the Republic of Kenya.

(3) That NPS extends amnesty to all the peaceful protesters who are unlawfully detained during the peaceful protests.

(4) To call upon the Director of Public Prosecutions (DPP) to withdraw all the cases in court involving peaceful protestors against the Finance Bill.

(5) That the Independent Police Oversight Authority (IPOA) moves with speed to investigate and recommend appropriate action against police officers found culpable of brutality against peaceful protestors.

(6) That the NPS submits to Parliament the revised standard operating procedures on the management of protests, demonstrations and the use of force to contain demonstrations.

(7) That Parliament puts in place guidelines on actualization of Article 37 of the Constitution with respect to how citizens can enjoy the right to picket without resulting in the loss of life or property.

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In the same resolution, the Senate directed the following Select Committees of the Senate to urgently engage relevant stakeholders including members of the public and consider the following issues-

(a) Public Debt and Public Finance Management.

The Standing Committee on Finance and Budget-

(i) in consultation with the Parliamentary Budget Office (PBO) to independently audit the national debt and present the actual status to Parliament;

(ii) engages the National Treasury to submit a roadmap on its strategy to reduce the public debt to not more than 55 per cent of the Gross Domestic Product (GDP) in present value terms in compliance with Section 50(2)(c) of the Public Finance Management Act; and,

(iii) engages the National Treasury to identify and implement sustainable strategies to reduce the high cost of living.

The Standing Committee on Justice, Legal Affairs and Human Rights-

(i) repeals Sections 2 and 12A of the national Government Administration Laws (Amendment) Act that establishes Chief Administrative Secretaries;

(ii) introduces a legislation to cap the number of Principal Secretaries (PSs) appointed pursuant to Article 155 of the Constitution of Kenya;

(iii) establishes a legal mechanism for the merger of parastatals and State agencies that perform duplicate functions with a view to achieve a lean government.

(b) Security Sector Reforms

The Standing Committee on National Security, Defense and Foreign Relations-

(i) engages with the NPS on matters of security and standard operating procedures for handling demonstrations;

(ii) engages the government to compensate all persons whose property, both movable and immovable, were damaged or lost due to the demonstrations;

(iii) engages the NPS to fast-track insurance compensation to police officers who either lost their lives or suffered injuries, as a result of the demonstrations;

(iv) engages with the Directorate of Criminal Investigations (DCI) to have investigations undertaken to ascertain the identity of persons or organizations funding and coordinating the violence during protests and demonstrations in the country.

(c) Fighting Corruption.

The Standing Committee on Justice, Legal Affairs and Human Rights engages the Ethics and Anti-Corruption Commission (EACC) on matters corruption and action to be taken to scale up efforts to deal with corruption, especially in county governments.

(d) Equal opportunities for all Kenyans.

The Standing Committee on National Cohesion, Equal Opportunity and Regional Integration-

(i) engages the Public Service Commission (PSC) and the National Cohesion and Integration Commission (NCIC) to audit the state of employment in the public service, including county governments and propose strategies to adhere to meritocracy, equality and equity of opportunities across the Public Service as espoused in Article 232 of the Constitution on the values and principles of Public Service; and,

(ii) engages the Public Procurement Regulatory Authority (PPRA) to audit compliance with Section 53(6) of the Public Procurement and Assets Disposal Act by all public procurement entities, with a view to establish a roadmap to ensure compliance of the said provisions of the Act.

(e) Effective Public Participation and Stakeholder Engagement

The Standing Committee on Justice, Legal Affairs and Human Rights-

(i) puts in place a mechanism to ensure that broader concerns for citizens especially the youth are received, considered and taken into consideration in making decisions on public affairs; and,

(ii) puts in place mechanisms that integrate “new media” as a medium for public participation in legislative processes.

(f) Health Sector Reforms

The Standing Committee on Health to-

(i) Expedite and facilitate public participation in the re-enactment of the Social Health Insurance Act, the Digital Health Act and the Primary Healthcare Act in compliance with the judgement of the High Court Petition No.E473 of 2023; and,

(ii) engage with the Cabinet Secretary for Health and the Council of Governors (CoGs) with a view to standardize human resource policy for health workers across all counties.

(g) Education Sector Reforms.

The Standing Committee on Education to liaise with the Ministry of Education and other stakeholders with a view to resolving the concerns raised regarding Junior Secondary School (JSS) education, the new funding model for university education and the acceptability of Competence-Based Curriculum (CBC).

Hon. Senators, pursuant to Standing Order No.225, on 24th July, 2024, the Senate resolution was conveyed to the relevant Standing Committees of the Senate and other Government agencies.

Standing Order No.225 states-

“(1) The Clerk shall, within seven days of a resolution of the Senate or adoption of a report of a Select Committee, convey the resolution and where applicable, a copy of the report, to the relevant Cabinet Secretary, independent Commission or holder of an independent office under whose portfolio the implementation of the resolution falls.

(2) Within sixty days of a resolution being conveyed to the relevant Cabinet Secretary, independent Commission or holder of an independent office under paragraph (1), such persons shall provide a report to the relevant Committee of the Senate, in accordance with Articles 153(4)(b) and 254(2) of the Constitution.”

In view of the above, hon. Senators will note that the 60-days period from 24th July, 2024 expired on 12th September, 2024.

In this regard, I direct the said Standing Committees to follow up on the status of implementation of the recommendations with the government departments, agencies,

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commissions and independent offices to which they oversight and also prepare reports to the Senate on the status of implementation of the recommendations of the resolution by utilizing the mechanism provided for under Standing Order No.56(1)(a) and report to the Senate between 29th to 31st October, 2024.

I thank you.

Proceed, Senate Majority Leader, then Sen. Boni.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I thank you for the very well-reasoned-out, Communication and update to the House. Just by way of notice, this matter has come up at the Senate Business Committee (SBC). Senators were concerned about what happened to this very important Motion that we carried the country with when the Senate made discussions.

The clarification I am seeking from you is in regard to Standing Order No.225(2) which states-

“Within 60 days of a resolution being conveyed to the relevant Cabinet Secretary, independent Commission or holder of an independent office under paragraph (1), such persons shall provide a report to the relevant Committee of the Senate, in accordance with Articles 153(4)(b) and 254(2) of the Constitution.”

Mr. Speaker, Sir, I know you have expanded this further and allowed the Chairpersons of the various Committees to provide that report to the Senate. Would I be in order if I request you, for further emphasis---

Occasionally, Committee Chairpersons give updates to the House. The next update period will be in the next two or three weeks. Before giving any other report, the Chairpersons that you have listed for Committee on Education; Committee on Justice, Legal Affairs and Human Right; Committee on National Cohesion, Equal Opportunity and Regional Integration *et cetera*, to lay on the Table of the Senate their findings on these issues that they were charged.

That is a report that will be tabled back to us, as a House, because it is the entire plenary that requested these Committees to undertake this exercise. We can then report back to the country and give explanation of what we have done since we spoke at that particular time. There are very weighty issues that are being raised, for example, on public debt and merging of parastatals. We expect the Committee on Finance and Budget to lead us by way of legislation to commence some of those exercises.

The humble request that I make to you is to not just report, but also lay in the presence of the Senate a documented report of what they would have achieved at that particular time that you will allocate. I would really appreciate if that can be done before we break for the long recess.

I thank you.

The Speaker (Hon. Kingi): Senate Majority Leader, if you listened carefully, to my last sentence, I gave the Chairpersons between the 29th and 31st October. That period is before recess. Therefore, the concerned Committees that had been tasked with the implementation of these resolutions, have between now and Thursday to table reports on the status.

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You may still be in process, but we need to know how far you have gone in the implementation of these resolutions. No chairperson of these Committees will be allowed to transact any business other than this. So, dispense with this business before you give us a report on other businesses that you have been undertaking as a Committee.

Proceed, Sen. Boni.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir, for hearing me out. The clarity I seek is that when you watch proceedings in our courts, the legal philosophy that helps them to make decisions appears to have changed. I now see that videos are admissible. In fact, the courts are now embracing social media to the extent that service to attend court or receive legal notices is admissible on *WhatsApp*.

Mr. Speaker, Sir, also in this House, we have on various impeachment proceedings admitted videos from county assemblies. In view of this, I was wondering, going forward, how do we want to treat videos and evidence based on social media, so that we are in tandem with the legal practice in the jurisprudence in our courts?

The Speaker (Hon. Kingi): Proceed, Sen. Sifuna then Sen. Enoch, so that I take them in the same breath.

Sen. Sifuna: Mr. Speaker, Sir, you have been more than clear on the expectation of the Chairpersons of the Committees pursuant to the passing of a Motion in this House on the state of the nation. However, my reading of Standing Order No.255(2) enjoins not only the Committees.

Mr. Speaker, Sir, if you look at the Motion, there were things that the committees were supposed to do; things that the Government was supposed to do, things that the independent commissions were supposed to do, and even holders of independent offices.

By way of example, the very first resolution there is that we needed an apology from the National Police Service (NPS) for all the deaths from peaceful protests. So, there is an expectation that the NPS also needs to respond to us.

There is a question of compensation, and the wording of the Motion is compensation from the national Government for victims of police brutality. Then, of course, there was the question of amnesty for prosecutions, which was also an expectation of the NPS, and a withdrawal of the cases from the Office of the Director of Public Prosecutions. Our Standing Order enjoins even those independent offices to be able to implement the resolutions of this House.

I was in Kisumu over the weekend, and one of those young people was telling me that they are still facing cases in court. It is also not lost on us that there continues to be complaints of abductions by unknown people suspected to be security officers across the country. Even as we speak, there is a famous case of a lady called Maverick Aoko, who has been missing for a few days.

I would also want us, as a Senate, to ask those independent offices, their responsible or relevant Cabinet Secretary, in line with Standing Order No.255(2), so that they also brief this House on how far we have gone in terms of implementations of the resolutions of this House.

I have personally taken time to explain, especially to the Senate Majority Leader, who is now my friend.

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(Laughter)

That for us in the opposition, if these resolutions are implemented, we will have an easier time even having tea with the Senate Majority Leader, and he knows this.

I am being told that the Senate Majority Leader was distracted.

(Laughter)

I have taken time because we are in a period of people trying to understand what makes some of us tick, the Members of the opposition, and Members of Government.

I have explained to the Senate Majority Leader that for us in the opposition, and especially for ODM, for which I am the Secretary-General, if these issues that we passed here, on apologies and compensation for victims and an end to abductions of people in this country, are implemented, he will have an easier time calling me for coffee to discuss other things.

Mr. Speaker, Sir, I would plead with you, just like you have directed our committees to respond, all these independent offices and the Government itself must also tell us why it has taken this long; 60 days later, and we do not see any movement in terms of implementation of these resolutions.

The Speaker (Hon. Kingi): Sen. Wambua, you may proceed.

Sen. Wambua: Thank you, Mr. Speaker, Sir. On the matter of social media clips, and as a media practitioner, I just want to let us know that in this day and age, any institution that does not embrace social media as part of their day-to-day transactions, then may not be doing very, very well. I believe then that Parliament must have an alternative media policy that will guide how to interact with social media platforms.

On the more substantive issue of your communication, I want to thank you for it. I will say two things: First, remember we sat and made those resolutions at a time when this country was actually on the brink of burning; it was terrible.

Remember, we prided ourselves as the Senate, as the House of leadership, that sat through the crisis when the National Assembly took off and went to hide themselves. I would have expected, as a leader in this country, that these resolutions would be a lot more binding to not just the committees of the Senate, but to all the other institutions that were mentioned, and to which then commitments were given.

To begin with, the National Police Service (NPS), since we got a new Inspector of Police (IG) after the fact, I would have expected that the first call of duty for him would have been to apologize to Kenyans because of the crisis that we went through.

Now that has not happened, and because I still believe that these resolutions are still binding, as you have required the committees to give us an update report, which I believe Sen. Cheruiyot was talking about Standing Order No.56 when the Chairpersons are bringing their updates, they should do it between now and Thursday.

Mr. Speaker, Sir, I would urge you to consider requiring, I do not know through which means, the other institutions of Government; the NPS, and the Ministry of Health, to just appear before a Committee of the Whole, so that they can brief this nation on how far they have gone with the implementation of these resolutions.

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Lastly, we woke up this morning to a very scary media report on how police officers are accessing private communication through mobile phones and using that communication to track down people for abduction. That is a very serious matter and it informs the basis of one of the resolutions that we made at that time.

We must remind the IG of Police that the right to privacy is a Chapter 4 right under the Constitution. Article 31 of the Constitution of Kenya 2010 requires that the privacy of communication for every member of society must never be infringed.

If that report is true, because we have not verified it - if that information is true - then it is more reason that this House must summon the IG of Police to come and explain to Kenyans why they are tracking down Kenyans and abducting them using mobile phones.

This is also a call to order for a private institution, one that we respect and one that we have built with our own money and commitment. Safaricom must be put to order. It cannot be that they are going to misuse their monopoly to aid the police in breaking the law. This House must stand firm and say no to the infringement of people's privacy.

The Speaker (Hon. Kingi): Thank you. Hon. Senators, let us make progress on this matter. Allow me to take the clarification as sought by Sen. (Dr). Khalwale on the videos.

Yes, Senator, we have been receiving quite several videos, especially when we are handling impeachment proceedings. However, the difficulty that I had in this instant case, the Tobiko matter, is that the particular video was in the Maa language.

If it was translated, then at least I could have used my discretion to see whether it is admissible or not but it is in the Maa language. You know the language of Parliament; it is either English, Swahili or Sign Language. To that extent, then, I had to rule it was inadmissible.

It is true that in this term we cannot box ourselves in the traditional way of communication. Social media has visibly taken over the communication sector. However, you have to know that we have something called Artificial Intelligence (AI). I can assure you, Sen. (Dr.) Khalwale, that you can be put in a place where you are giving a speech, and when you see that video, you will be shocked because maybe you were never in that particular place.

We need to be very cautious in the way we handle these videos, but then, again, even if you were to go to that extent, at least, let it be in a language that we can appreciate as a Senate.

As far as Sen. Sifuna's intervention is concerned, we have tasked chairpersons with the implementation of these recommendations. It is upon those Committees to summon the independent office holders or commissions for purposes of making sure that our recommendations are implemented. If, for example, the Standing Committee on Justice, Legal Affairs and Human Rights or the Standing Committee on National Security, Defence and Foreign Relations wishes to summon the Inspector-General of the National Police Service, it is within their powers to do that. That is why I have said that before we go on recess, the latest being 31st October, 2024, we need to get progressive reports if not full reports on the implementation of these recommendations.

Hon. Senators, allow me to make the following Communication.

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(Sen. Osotsi stood up in his place)

Sen. Osotsi, please, take your seat.

REPORT ON THE 2024 BUDGET REVIEW
AND OUTLOOK PAPER

Hon. Senators, as you will recall, during the afternoon sitting of the Senate held on Wednesday, 23rd October, 2024, the Senate Majority Leader laid on the Table of the Senate a report by the National Treasury and Economic Planning on the 2024 Budget Review and Outlook Paper.

Section 26 of the Public Finance Management Act, 2012 states, and I quote:

“(1) The National Treasury shall prepare and submit to Cabinet for approval by the 30th of September in each financial year a budget review and outlook paper, which shall include the following-

(a) Actual fiscal performance in the previous financial year compared to the budget appropriation for that year.

(b) Updated macroeconomic and financial focus with sufficient information to show changes from the focus in the most recent Budget Policy Statement.

(c) Information on how actual financial performance for the previous financial year may have affected compliance with the fiscal responsibility, principles or the financial objectives in the latest Budget Policy Statement.

(d) Reasons for any deviation from the financial objectives together with the proposals to address the deviation and the time estimated to do so.

(2) Cabinet shall consider the budget review and outlook paper with a view to approving it with or without amendments not later than 14 days after its submission.

(3) Not later than seven days after the Budget Review and Outlook Paper has been approved by Cabinet, the National Treasury shall-

(a) Submit the paper to the Budget Committee on the National Assembly to be laid before each House of Parliament.

(b) Publish and publicize the paper not later than 15 days after laying the paper before Parliament.”

The 2024 Budget Review and Outlook Paper provides an overview of the Government's financial performance for the Financial Year 2023/2024, including compliance with the fiscal responsibility principles and the financial objectives spelled out in the Public Finance Management Act.

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It also presents a macroeconomic of projections and the sector ceilings for the Financial Year 2025/2026 and the Medium-Term Budget as well as information on variations from the projections outlined in 2024 Budget Policy Statement.

Hon. Senators, in accordance with the provisions of Standing Order No.228 (4) of the Senate Standing Orders, I refer this Report to the Standing Committee on Finance and Budget for consideration.

SUBSTANTIATION OF UTTERANCES
BY SEN. GODFREY OSOTSI, MP

As you may recall, at the sitting of the Senate held on Thursday, 24th October, 2024, I directed Sen. Godfrey Osotsi, MP, to substantiate utterances made in the course of his contribution to a Statement sought by Sen. Samson Cherarkey, MP, concerning the status of Moi University. The direction was as a result of a point of order by the Senator for Uasin Gishu County, Sen. Jackson Mandago, MP, pursuant to Standing Order No.105.

Standing Order No.105 provides, and I quote-

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

(2) If a Senator has sufficient reason to convince the Speaker that the Senator is unable to substantiate the allegations instantly, the Speaker shall require that such Senator substantiates the allegations not later than the next sitting day, failure to which the Senator shall be deemed to be disorderly within the meaning of Standing Order No.121, unless the Senator withdraws the allegations and gives a suitable apology, if the Speaker so requires.”

Hon. Senators, in the point of order by Sen. Jackson Mandago, MP, Sen. Godfrey Osotsi, MP, was required to substantiate claims that-

“We remember one Prof. Laban Ayiro, who is my constituent and a very renown Professor, who wanted to turn around Moi University. However, he was ejected from that university because of tribalism.

The Senator for Uasin Gishu should first of all declare conflict of interest in this matter. When the good Professor was being ejected from the university, he was the Governor of Uasin Gishu and was among the politicians who ejected the good Professor from that university---”

Hon. Senators, Sen. Godfrey Osotsi, MP, was not able to substantiate his statements as required pursuant to Standing Order No.105 (1), and subsequently, requested the Speaker to provide the evidence at the next sitting day in accordance with Standing Order No.105 (2). Having acceded to the request, I directed that the Senator substantiates the allegations at the next sitting day.

Pursuant to Standing Order No.105 (2), I now invite Sen. Godfrey Osotsi, MP to forthwith substantiate the claims as raised in the point of order by Sen. Jackson Mandago,

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MP, failure to which, the Senator shall be deemed to be disorderly within the meaning of Standing Order No.121.

In the absence of such substantiation, the Senator will be required to withdraw the statements and apologize to the Senator.

Deputy Party Leader for Orange Democratic Movement (ODM) party, the Floor is yours.

Sen. Osotsi: Mr. Speaker, Sir, thank you for this opportunity. Indeed, I am ready to substantiate the remarks I made last week in regards to the dramatic ouster of Prof. Laban Ayiro from Moi University in 2016.

I have provided evidence to this House to the audio office, and I have a copy with me. This evidence is in line with your directive this afternoon. The evidence I have is in form of videos, which have been sourced from a media house. I will proceed in this manner.

On 20th September, 2016, the North Rift leaders stormed Moi University in protest against the appointment of the acting Vice-Chancellor.

The Speaker (Hon. Kingi): Sen. Osotsi, just table your evidence and take your seat. Upon review, I will be able to pick the dates and everything else. Just table your evidence.

(Sen. Cherarkey spoke off record)

Sen. Osotsi: Mr. Speaker, Sir, I do not know why Sen. Cherarkey---

The Speaker (Hon. Kingi): Order, Senator for Nandi County. Why are you uncomfortable with the Senator for---

Sen. Osotsi, table whatever you have and take your seat. Just table your evidence. You do not need to explain.

Sen. Osotsi: Mr. Speaker, Sir, I will table the evidence. The evidence is a chronology of events which started in 2016 September to recently, September this year. The evidence is in form of a video and also a chronology of events. I also promise that tomorrow I am also going to give additional evidence.

(Sen. Cherarkey spoke off record)

The Speaker (Hon. Kingi): Order, Senator for Nandi County.

Sen. Osotsi, you know our Standing Orders. If you are not able to substantiate instantly, you proceed to request to substantiate the following sitting day, which is today. The evidence that you are supposed to lay on the Table, you cannot bring additional evidence from today.

Sen. Osotsi: Mr. Speaker, Sir, that is okay. I will table the evidence I have now. I was just saying that I have received overwhelming responses from Kenyans who want to give me additional evidence, including---

(Applause)

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The Speaker (Hon. Kingi): Order, Sen. Osotsi. The Speaker is not concerned about what you receive from Kenyans.

(Sen. Cherarkey spoke off record)

Senator for Nandi County, the Chair is speaking. Sen. Osotsi, the Speaker is not concerned about the many reports of views that you have received from Kenyans. The Speaker is concerned about what you have that you want to table now.

Proceed to table and take your seat.

Sen. Osotsi: Mr. Speaker, Sir, I have tabled the evidence I have now. This evidence shows the chronology of events from September 2016 to now. I table. However, when someone is substantiating, it is important to be heard. I am concerned that ---

(Sen. Cherarkey spoke off record)

The Speaker (Hon. Kingi): Sen. Osotsi, you have enough protection from the Chair. Senator for Nandi, I am cautioning you for the day. If you disrupt these proceedings any further, I will rule you out of order. You know the consequences that will follow. Allow Sen. Osotsi to table his evidence.

Sen. Osotsi, the big problem is that you are attracting all this because you are taking forever to table the document. It takes only a second. Do not explain; the video is self-explanatory.

Sen. Osotsi: Mr. Speaker, Sir, I table the evidence that I have. However, this House must take judicial notice of the conduct of Sen. Cherarkey because he has a personal interest in this matter.

(Sen. Osotsi laid the document on the Table)

The Speaker (Hon. Kingi): Hon. Senators, we are making progress.

Sen. Faki: Mr. Speaker, Sir, on a point of order.

The Speaker (Hon. Kingi): Sen. Faki, there is no Senator on their feet. How can you raise a point of order? Order, hon. Senators. I will allow Sen. Faki to seek his clarification, which is certainly not a point of order.

Sen. Faki: Thank you, Mr. Speaker, Sir. I was reading Standing Order No.105(2), which says that-

“(2) If a Senator has sufficient reason to convince the Speaker that the Senator is unable to substantiate the allegations instantly, the Speaker shall require that such Senator substantiates the allegations not later than the next sitting day, failure to which the Senator shall be deemed to be disorderly within the meaning of Standing Order No.121 (Disorderly conduct) unless the Senator withdraws the allegations and gives a suitable apology if the Speaker so requires.”

Mr. Speaker, Sir, you have allowed Senators to table evidence. This evidence has not been shown to the Members present. We need to see that evidence to confirm whether the allegations have been substantiated or not because we shall keep on rising on points of order.

(Sen. Cheruiyot spoke off record)

(Sen. Cherarkey and Sen. Orwoba consulted loudly)

The Speaker (Hon. Kingi): Order, hon. Senators. Senate Majority Leader ---

Sen. Faki: There is no one wasting time here. Could he withdraw that remark?

The Speaker (Hon. Kingi): Order, Sen. Faki, to observe decorum. The Senate Majority Leader, the Chair knows exactly how to guide this House. Let the hon. Member seek his clarification, and the Chair will give directions.

Sen. Orwoba, you do not shout across the aisle. Senator for Nandi, I have just said that you should not do the work of the Chair. For the last time, you disrupt the proceedings, and I will throw you out.

Sen. Faki, conclude.

Sen. Faki: Mr. Speaker, Sir, we wanted to hear Sen. Osotsi's evidence so that we know whether he has substantiated his claims. However, the onus is on you to rule. We needed to listen to what Sen. Osotsi had to say about those allegations.

Thank you.

The Speaker (Hon. Kingi): Sen. Faki, I will review the video and rule on it. I will communicate the video's contents to the House.

Sen. Sifuna, proceed.

Sen. Sifuna: Mr. Speaker, Sir, matters of interpretation of rules, laws and Standing Orders are controversial. The clarity we seek is because there are Members who tend to think that when you are substantiating, it is to the satisfaction of the Speaker or explain to the Speaker.

The question of substantiation arises in the cause of public debate. A pronouncement is made, and somebody raises a point of order. In fact, it is not the Speaker who requires substantiation; it is the Member who feels that the point is not factual and requires substantiation.

The word 'Speaker' is mentioned twice in Standing Order No.105(2). In none of those instances, the word is not mentioned on the Senator convincing you that they have substantiated.

The point we would like clarification on is even when you give a ruling on the Nominated Senator, Sen. Tobiko, it is important for the House to see and interact with the tendered evidence, so that when you make the decision, it is a decision of the House.

For instance, because it arose in the course of debate, the sentiments of Sen. Osotsi arose in the course of public debate. What is the evidence he is seeing? If you go and review the video alone - we are not saying that you might not have the capacity on the judgement - it is important as a House to have a citation of the evidence, so that your ruling has some level of context among the Members.

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The Speaker (Hon. Kingi): Hon. Senators, this is not the first time we are handling videos. I do not know why this particular case has elicited so much interest. The flash disk has been laid on the Table by the hon. Senator. The Speaker will review this video and explain its contents.

The first thing the Speaker will do is to rule on its admissibility. This ruling cannot come from the Floor of the House or the plenary. I will then proceed to rule whether it answers the allegations that have been made. This ruling rests on the shoulders of the Chair, not the Plenary. Otherwise, how then will we proceed on such matters if every time we need to play the videos on the screen, a Motion is drafted for me to put a question? This is the only way the Plenary makes a decision, which is through a vote.

Are we, therefore, saying that for us to rule on the question of whether an allegation has been substantiated or not, we will be drafting a Motion? I propose a question for Hon. Members to debate and, thereafter, put a question for the hon. Members to vote. Certainly, that is not the neatest way to go. That is not the spirit behind our Standing Orders.

The Chair has constitutional responsibility for reviewing the contents of this video. The contents will be made public to the Plenary, and through that, a ruling will follow, which will settle the matter.

Let us move on this particular matter the way we have always done. Next Order. Senate Majority Leader, proceed.

PAPERS LAID

Sen. Orwoba: Thank you, Mr. Speaker, Sir. On behalf of the Senate Majority Leader, I beg to lay the following Papers on the Table of the Senate, today, 29th October, 2024-

THE COB REPORT ON ANNUAL COUNTY GOVERNMENTS BUDGET IMPLEMENTATION REVIEW FOR FY 2023/2024

The Controller of Budget (COB) Annual County Governments Budget Implementation Review Report for Financial Year 2023/2024.

REPORT ON STRATEGIC FRAMEWORK FOR IMPLEMENTATION OF REFORMS IN NPS, KPS AND NYS

Ministry of Interior and National Administration Report on the Strategic Framework for the Implementation of Reforms in the National Police Service, Kenya Prisons Service and the National Youth Service.

(Sen. Orwoba laid the documents on the Table)

The Speaker (Hon. Kingi): Next Order.

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NOTICES OF MOTIONSALTERATION OF DATES FOR SITTINGS OF
THE SENATE IN BUSIA COUNTY

The Speaker (Hon. Kingi): Senate Majority Leader, proceed.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I rise to give Notice of the following Motion-

THAT, AWARE that on 11th July, 2024, pursuant to Article 126 (1) of the Constitution, the Senate resolved to hold its Plenary and Committee sittings in Busia County, from 23rd to 27th September 2024.

FURTHER AWARE THAT on 18th September, 2024 the Senate resolved to alter the dates for the *Senate Mashinani* in Busia County from 23rd to 27th September, 2024, to 28th October to 1st November, 2024.

ACKNOWLEDGING THE recommendation of the Senate Business Committee to defer the holding of the sittings in Busia County.

NOW THEREFORE, the Senate resolves to defer its plenary and committee sittings (*Senate Mashinani*) in the counties until the Fourth Session in 2025.

Let us go to the next Order.

QUESTIONS AND STATEMENTS**STATEMENTS**

The Speaker (Hon. Kingi): We will start with Statements pursuant to Standing Order No.53(1). The first Statement is by the Senator for Meru, Sen. Kathuri. Since he is not here, that Statement is dropped.

INTERNSHIP OPPORTUNITIES BY THE
PUBLIC SERVICE COMMISSION

(Statement dropped)

The Speaker (Hon. Kingi): Proceed, Sen. Lemaletian.

LAND OWNERSHIP DISPUTE OVER
OLJORAI FARM, NAKURU COUNTY

Sen. Lemaletian: Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Land, Environment and Natural Resources regarding the long-standing land ownership dispute over the Ol jorai Farm in Eburru/Mbaruk Ward in Gilgil Constituency, Nakuru County.

In the Statement, the Committee should-

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(1) Specify the reasons for non-implementation of the 1998 directive by the then President, the late Daniel Moi, regarding the allocation of 14,000 acres of land in Ol jorai Farm to the Maasai and other minority communities residing in the farm and the allocation of land in the Agricultural Development Corporation (ADC), Mutara Ranch in Laikipia and ADC Ndabibi Farm in Naivasha to the Ruyobei Group.

(2) Outline the steps taken to revoke the 1997 illegal and discriminatory sale of 8,000 acres of land in Phase 1 of Ol jorai Farm to the Ruyobei Group from Solai, Baringo County, which was done without consultation and consent of the residents.

(3) Provide a status update on the demarcation of Ol jorai Farm, indicating when title deeds have been issued to the resident Maasai and other minority communities who have already developed homes, schools, markets, roads, and other permanent infrastructure on the farm.

(4) Outline measures put in place to ensure that the residents of Ol jorai Farm are informed and consulted on decisions affecting the farm.

(5) State the reasons for the delay in resolving the long-standing land ownership dispute over the Ol jorai Farm, outlining further initiatives by the Government to end the dispute.

Mr. Speaker, Sir, I beg the Committee to treat this matter with the urgency it deserves.

I thank you.

The Speaker (Hon. Kingi): Let us go to the next Order.

MOTION

NOTING OF REPORT ON THE EXTRAORDINARY SESSION OF THE SIXTH PARLIAMENT OF PAP

THAT, the Senate notes the Report of the Kenya Delegation to the Extraordinary Session of the Sixth Parliament of the Pan-African Parliament (PAP) held at the Gallagher Convention Centre, Midrand, South Africa, from 20th to 27th March, 2024, laid on the Table of the Senate on Wednesday, 24th April, 2024.

(Sen. Mungatana on 9.10.2024)

*(Resumption of Debate interrupted on 23.10.2024
– Morning Sitting)*

The Speaker (Hon. Kingi): I need to put the question.

Clerk, are we at that stage? Kindly confirm whether we have the requisite quorum. We do? Thank you.

The Mover is not present to reply. So, we will move straight away to put the Question.

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Hon. Senators, kindly take your seats. We only need 15 Senators to put the question on this particular matter. Since it is not a matter affecting counties, we do not need the 24 minimum delegates.

Sen. Tabitha Mutinda, please, take your seat.

(Sen. Tabitha Mutinda resumed her seat)

Hon. Senators, I will put the question.

(Question put and agreed to)

Let us go to the next Order.

(The Clerk-at-the-Table consulted with the Speaker)

Hon. Senators, for the convenience of the House, allow me, pursuant to Standing Order No.45(2), to re-arrange the sequence of today's Order Paper. We move to Order No.16, and thereafter, resume normal flow of the Order Paper of the day.

Clerk, you may proceed to call that Order.

BILL

Second Reading

THE COUNTY GOVERNMENTS ELECTION LAWS
(AMENDMENT) BILL (SENATE BILLS NO.2 OF 2024)

(Sen. Crystal Asige on 23.10.2024)

*(Resumption of debate interrupted on 23.10.2024
– Afternoon Sitting)*

The Speaker (Hon. Kingi): When debate was interrupted, the Mover was on her feet moving this particular Bill and she had a balance of 50 minutes.

Sen. Crystal Asige, you may continue moving the Bill.

Sen. Crystal Asige: Mr. Speaker, Sir, I appreciate another opportunity before the House to continue moving this Bill that I began moving last week. Unfortunately, I was cut short due to adjournment of the House. There is a silver lining to that because there are more Senators in the House today, who will listen to this Bill proposal and hopefully consider the provisions that I seek therein.

The County Governments Election Laws (Amendment) Bill (Senate Bills No.2 of 2024) seeks to amend the Elections Act, Cap 7, and the County Governments Act, Cap 265, to increase representation of Persons with Disabilities (PWDs) in the county

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assemblies by ensuring that at least 5 per cent of Members of a County Assembly (MCAs) are PWDs.

This is geared towards addressing the historical exclusion of PWDs from decision-making processes by ensuring adequate representation of us in local governments, that is, county governments, thereby ensuring that our voices are heard and our interests and needs are taken into account in decision-making across all the 47 counties.

Article 177 of the Constitution provides for the composition of a county assembly, as we know. Specifically, Article 177(1)(c) provides that a county assembly shall include members representing marginalised groups, including PWDs and the youth, as well as marginalised groups, as prescribed by the Act of Parliament.

With a view of implementing Article 177(1)(c) of the Constitution, Parliament has enacted two laws since then; the County Governments Act and the Elections Act, that prescribe the number of members to represent marginalised groups, as well as PWDs and the youth in our county assemblies.

Whereas Section 7(1)(a) of the County Governments Act provides for six seats for marginalised groups, Sections 36(1)(f) and 36(8) of the Elections Act provide for only four seats. This is where the discrepancy or confusion lies that I wish my amendment Bill proposal to remedy.

Mr. Speaker, Sir, last week when I was moving the Bill, I gave the House a list of County Assemblies that right now have zero representation of PWDs and I wish to go through that list for the sake of Members once again. The counties which did not nominate members to represent PWDs in the last election include, Kwale, Kilifi, Taita Taveta, Wajir, Marsabit, Isiolo, Meru, Tharaka Nithi, Machakos, Makueni, Turkana, West Pokot, Trans Nzoia, Uasin Gishu, Baringo, Laikipia, Narok, Kericho, Nyamira and the capital city of Nairobi. I hope that the Senate Majority Leader is listening because his county, Kericho, is on this list as having no PWDs in the County Assembly.

The counties which did not nominate members to represent the youth include, Machakos, Makueni, Kirinyaga, Kiambu, Nandi and Kisii. Counties which did not nominate any Members to represent other marginalized groups include Garissa, Murang'a, Elgeyo-Marakwet, Narok, Kakamega and Kisii.

You will find that from these three lists, there are some counties which have no representation for the two out of the three marginalized groups that they should have representation for, including counties like Kisii and Kakamega, which have two groups that are missing in their county assemblies. This then creates a huge gap in terms of representation and for our needs at the county level to be represented and looked into by the assemblies.

Mr. Speaker, Sir, in light of the considerations I have outlined as a quick background, I will then highlight the salient features of this Bill. It has three clauses.

Clause 2 seeks to amend Section 36 of the Elections Act to provide that:

(a) Political parties will be required to submit a list that includes two candidates representing the youth, two candidates representing marginalized groups and two candidates with disabilities; reflecting the diversity of persons with disabilities in our wards across the respective counties.

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The reason I wish to de-cluster the six that are provided for in the two Acts I have highlighted is because, when you just have a blanket number of six to represent these three different interest groups, there is some mischief that sometimes is seen. Different parties can decide on their own how many of the six will be given to PWDs, how many of the six will be given to youth and how many of the six will be given to marginalized groups.

However, my amendment seeks to de-cluster the six and expressly say that two out of the six will go to PWDs, two out of the six will go to the youth and two out of the six will go to marginalized groups. This is to remove that confusion or that gap that we see today. The party list for candidates with disabilities must also consider different categories of disabilities including physical, hearing, visual and neuro-diverse disabilities.

Mr. Speaker, Sir, the reason this amendment comes in my proposal is because, we have seen historically that disability is often just seen as people with mobility impairments. Maybe, a wheelchair user for example, because the international symbol for PWDs is a wheelchair. That is a symbol that we all see and know that identifies with disabilities.

However, when we just focus on wheelchair users, for example, or those with physical impairments, we forget that our counties need representation of other diverse disabilities. There are hundreds of disabilities and I believe that with the amendment that I am seeking and by expressly saying that there has to be diverse disabilities that are represented in the counties, this will hopefully remedy when it comes to the time of nominations in within the parties.

I would love to wake up one day to a country that is proud to embrace diversity, its governance systems and its leadership. I want to live to see a person of short stature as an MCA and that be normalized or MPs from the deaf community and that is normalized. Perhaps, a governor with autism and that becomes the norm.

Perhaps, one day even a visually impaired president, a VIP, which may sound far-fetched but 2024, if anything, has shown us that nothing is impossible in this country. The IEBC will select from candidates with disabilities to ensure that at least 5 percent of the members of a county assembly are PWDs in my Bill proposal and following the order provided by the party.

Mr. Speaker, Sir, also Clause 3 seeks to amend Section 7 of the County Government's Act to provide that members of the county assembly contemplated under article 177 of our Constitution, shall comprise a man and a woman nominated to represent the youth; and a man and a woman nominated to represent marginalized groups and 5 percent of the total number of members in the assembly to represent the youth and marginalized groups and comply with the two-thirds gender principle nominated to represent PWDs. I repeat that 5 per cent of the County Assembly as envisaged in the Constitution should be PWDs at the local level in these amendments that I propose.

Mr. Speaker, Sir, Clause 3 further seeks that nominees of the 5 per cent of PWDs shall ensure representation of the various categories of disability. Again, physical, hearing, visual, and neuro-diverse disabilities to ensure that the face of our county assemblies replicates or mirrors the face of Kenya, because we are not homogeneous in

terms of disability. There are hundreds of disabilities that also need representation at the local level.

It is imperative that we transform these constitutional and legal mandates into tangible actions. In my view, ensuring that PWDs, the youth and marginalized groups across the country are given opportunities to actively participate and contribute to our nation's governance and leadership.

I wish to highlight that even at the national level, even though this is the County Government's Act that I am seeking to amend, right now in this House, as we speak, we are not 5 per cent of PWDs. Out of 67 Members, 5 per cent of PWDs should be at least three.

We have also seen in the last few weeks the back and forth that can happen when you do not follow specific increments that are provided for within the Constitution. Sixty-seven us means that 5 per cent should be PWDs, but right now we are only two in this House. Even more so in the National Assembly, where there are only about 12 PWDs represented out of 349 MPS, which is far below the 5 per cent envisaged in the Constitution.

Technically, at the local level and also at the national level, we are not complying with the Constitution as per Article 54. I will leave it there so that I can allow the rest of the House to give me their opinions and share their views on this Bill's proposal. I hope that they do come with suggestions and contributions that will help me to refine and to enrich this particular Bill proposal because it affects every single county.

Mr. Speaker, Sir, I named all the counties when I moved this Bill. It is absolutely incumbent on all MPs and Senators in this room to help and ensure that PWDs, youth and marginalized groups across the different counties they represent are fully and meaningfully included in matters of governance at the local level.

Mr. Speaker, Sir, with those few remarks as I close, I do beg to move and call upon Sen. Mungatana--- I am told he is not here.

I wish to call upon my Senate Majority Leader of the House to kindly second this Bill.

Thank you.

The Speaker (Hon. Kingi): The Senate Majority Leader, you may proceed to second.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Speaker, Sir. I beg to second this Bill. This is an important piece of legislation. In fact, it is personal to me because after every party nomination for the last two elections in my county, both in 2017 and 2022, there is normally a demonstration against the Senator.

As the senior-most leader from the county, every time there is a party list that does not include members of the Person with Disabilities (PWD) community or the marginalized, they keep asking, and justifiably so.

In fact, there is a time that they staged almost near a hunger strike in my office in Kericho, demanding that as their Senator, there was something that I could do to ensure that they have representation in the County Assembly.

Mr. Speaker, Sir, I am extremely proud of Sen. Crystal Asige because I have kept on telling her many times that, if she dared leave this House before providing clarity to

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Article 177(1)(C) of our Constitution and ensuring that we finally settle this matter so that the Independent Electoral and Boundaries Commission (IEBC) can no longer have the latitude with which to make the determination and leave out certain sections of what would alternatively be. It was not the constitutional design, for any of the three groups to be left out.

Mr. Speaker, Sir, if you read Article 177(1)(C) - I want to refer to it before even going into the Bill - you will understand the reasoning behind the drafters of our Constitution.

It states-

“The numbers of the members of marginalized groups, including persons with disabilities and the youth prescribed by an act of Parliament.”

Mr. Speaker, Sir, it is clear, that there is no group that has been ranked higher than the other, of the three groups that are described. It is also abundantly clear, that none of this group should be left out. Therefore, I do not know where the IEBC got this idea that in every County Assembly, they normally pick two out of three, such that you will find in certain counties, they will pick the marginalized group and the youth, leaving out the PWD, or pick out PWD and the youth, leaving out the marginalized groups or members of the society.

I appreciate that, finally, with this legislation, upon its successful consideration in both Houses of Parliament, the IEBC will have better clarity, and that, every time political parties sit down to draw up their nomination list, they will do so confidently knowing that these members, as described in Section 36 of the Elections Act, reflect the following-

(1) Two candidates, one representing the youth.

(2) Two candidates representing a marginalized group, because there are marginalized groups in every part of the country---

Sen. Crystal, I know that this will be subject to debate and interpretation, because you will be asked what is a marginalized group. Can a person of a certain tribe, for example, arise and say, since we are not a dominant ethnic group in Nairobi City County, allow us to be nominated? Anyway, the IEBC have the requisite experience and knowledge on this matter to make the determination.

(3) Candidates with disability reflecting the number of wards in the respective county.

Therefore, the party list that will be referred under Subsection 1(F)(3) shall take into account the various disabilities, including physical, hearing, and visual impairments.

It is important that this Bill has been drafted by somebody who understands PWD issues deeply. I could not be prouder of Sen. Crystal Asige than how she has taken time to draft this particular Clause, distinguishing for us that disability is not just disability, that there are various forms and types of it. That, there is severe disability, hearing and visual impairment, and many others.

Mr. Speaker, Sir, that is something that the IEBC also will have to take into consideration. I therefore would like to urge Members of this House that we cannot

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afford to go to the next election with this mess as has always been. Many of our county assemblies, and 21 of them, do not have PWDs, but there is an equal number also that do not have youth representation. There is an equal number also that do not have representation of the marginalized groups. That was not our constitutional design.

I believe that it will be unfair of us as a House to have come back for the third time, or for the first time like Sen. Crystal. People like Moses Kajwang' cannot say anything about this particular law because we have been here. We know this problem so well, and we must be proud and buy Sen. Crystal Asige a drink of her favourite choice at the most expensive restaurant in Nairobi, upon the passage of this Bill, because she has sorted a problem that we have not been able to do so, the last two terms of the Senate, yet it is extremely important for county assemblies to be properly constituted.

Otherwise, Mr. Speaker, Sir, we run the risk of our courts of law, very soon, on one day, declaring them unconstitutionally constituted, for lack of proper representation as per the dictates of Article 177.

Mr. Speaker, Sir, this is a fairly straightforward matter. I do not intend to be long at it, but appreciate the industry of Sen. Crystal Asige and the rest of the people who will take time to speak to this particular matter, so that we can be quickly done with it, send it to the National Assembly, and have it signed into law, so that as we go into the next election in 2027, we know full well that our county assemblies, are properly constituted as expected of our Constitution.

With those remarks, I beg to second.

The Speaker (Hon. Kingi): Thank you, Senate Majority Leader.

I will now proceed to propose the question.

(Question proposed)

Hon. Senators, the Floor is open.

Hon. Okoiti Andrew Omtatah, you may proceed.

Sen. Omtatah: Hon. Speaker, Sir, I support the Bill. However, I would like to contribute to the issue of the Bill that has just been moved by Sen. Asige.

It is extremely important, and as the Senate Majority Leader has rightly observed, it is an area that sometimes escapes proper attention, and in disability, you also have invisible disability.

There are disabilities that are invisible, that have not been categorized and captured by even the State in terms of regulations. So, this Bill calls for quite some extensive work, and maybe we might need a heavy input by experts in the area, so that we can deal with it.

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

[The Temporary Speaker (Sen. Abdul Hajji) in the Chair]

Recently, I got a Petition from Narok town in Narok County, of people living with invisible disabilities, and how they are having problems being recognized and being assisted.

Through this Bill, I have no doubt that we will be able to address this important issue that is touching on the livelihoods of important Kenyans. I would urge that we give this Bill the support and attention it requires, and the Senate goes out of its way to ensure that maximum resources are availed to address the question of disability.

Even in schools, we have had kids who have performed poorly because they have disabilities of sight that are invisible. Perhaps, they are not seeing what the teacher is teaching on the blackboard, or not hearing well. These kids sometimes are classified as stupid and dumb, yet they are challenged in terms of being able to comprehend, just by the census, what is going on.

Maybe we will need also to have assessments early in life, to establish these disabilities in school, so that these kids can be adequately supported. Sometimes, some of these disabilities when arrested early, as they begin to develop, can be mitigated.

The Bill may need to look at how do we mitigate and go out to identify these disabilities that maybe gradually get to a point where they are not reversible, but maybe if identified early, they can be reversed. That is one thing I would appreciate this particular Bill to do.

I congratulate Sen. Asige, the strong lady who stands on her principles. She has demonstrated that not once, but many times and is passionately committed to the constituency that elected her through special nomination into this august House.

I am very proud to be in the same House with Sen. Asige. We remember that, recently, she was voted among the top 100 honchos in the world. We are sitting with one very strong person in this Senate. It is not by fluke or accident that she has done what she has done. It is very deliberate and focused and is aimed at solving major problem in this country.

I had the opportunity of employing one of my workers in the constituency office who has visual disability. However, she is one of my top performers because she is a stickler for detail and she performs very well. Sometimes you might think that somebody is disabled just by looking at them, but there are other abilities that come in.

Now the question is: How do we harness these special abilities that people have? How do we facilitate and equip them to be the best they can? That is the challenge that we have. I think as a country that makes law, and as a country of law, we have the obligation and the duty to go out of our way and make sure that these very critical members of society are facilitated and are enabled to do the best they can.

Last Sunday when I was going to my church at Don Bosco Catholic Church, the Gospel of Mark was read. According to the Gospel, there was this blind person by the name Bartimaeus who heard that Jesus was somewhere. He began calling out. The crowd around him tried to shut him down and do whatever to hold him. He persisted, and in his persistence, Christ told him his faith had saved him.

So that question of marginalisation of people with disability can be seen in the Gospel of Mark. He was being denied the chance to reach the Christ. He had heard of the Christ around, but he could not reach him. The only thing he had was a voice, but even

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that being suppressed so as not reach the Christ. That is what is happening for many people who are disabled in this country. They have been denied the chance to move, the chance to be what they can be.

So, when Christ tells the son of Bartimaeus that “your faith has saved you” as we read in the Gospel last Sunday, I am telling you that is what Sen. Asige is trying to do in this House. She is trying to ask society to allow her, and people like her, who have got various challenges, to be the best they can be. Most of the time, we push them aside, shut them down and deny them the chance to reach the promise that this Republic has.

When you look at our National Anthem, that promise in our National Anthem should reach everybody, including those who are challenged. This should not just be a question of creating institutions and whatever, but institutions that are proactive, that go out before and identify people. They should not be institutions that wait for the people with the physical challenges, or physically challenged, to come to them.

They should be able to go into society and identify these people. Right now, we know that many people associate physical disability not with natural causes, but sometimes with supernatural causes. They can claim maybe your parents did whatever, and even Christ was asked whose sin was it that a certain blind man was born blind.

So, this stigmatisation that you can see in the Gospel is the same that we find in our people today in society. People hide their children because they have disabilities and deny them a chance to go to school. They do all these things.

We need to come up with a law that will make the State go out into every home, into every heart and ensure that nobody is denied the promise of this Republic simply because they have got a physical challenge. With technology today, most of these physical challenges are totally overcome.

I am telling you, we are in a generation whereby even people who have got a visual disability can drive because we now just have driverless cars. So, this aid and this tool should be able to come around. When we build our buildings, when we do whatever, we must make them friendly to address the question of physical disability.

So, we are here at the call of history. We are here like in the days of the Prophet Jeremiah. Whom shall I send? That is the call Sen. Asige is asking us. Will this Senate say, here am I, send me by passing this very important Bill? Let us embrace and enrich this Bill.

At the stage of public participation, the Committee that will consider it, must get very deliberate and go out and tap into the scientific knowledge we have around the subject. Invite people who have got knowledge around those issues so that we can come up with a Bill that is for the modern times. That is a Bill that will address future needs and aspirations.

We even have Gen Zs who have got physical disabilities. The debate never came up for them. Nobody spoke out about Gen Zs with physical disability. We spoke about Gen Zs, who are physically enabled like most of us are, whom society leaves out.

As I mention the Gen Zs, we are now getting into a state whereby the State is causing disability. We want to see a reduction in police brutality. We want to see a reduction in the way the State conducts its affairs so that we do not keep on maiming, killing and dismembering members of our citizens.

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There is a lot of desire like the last political education we had on our streets by the Gen Zs. When they were doing political education on the Finance Bill, most of them were violated, injured and hurt.

As I speak about that, I also want to speak about what was in the media today. We saw in the media that people are disappearing. In this country, people are being abducted and violated.

Mr. Temporary Speaker, Sir, for me, I would like to draw the attention of this House to an important Article of the Constitution which lays the blame where it should be. I request you to allow me to read Article 131(1) (2), and part of Article 132(1) says-

The President—

(a) is the Head of State and Government;

(b) exercises the executive authority of the Republic, with the assistance of the Deputy President and Cabinet Secretaries;

(c) is the Commander-in-Chief of the Kenya Defense Forces;

(d) is the Chairperson of the National Security Council; and

(e) is a symbol of national unity.

Article 131 is on the authority of the President. It says-

The President shall—

(a) respect, uphold and safeguard this Constitution;

(b) safeguard the sovereignty of the Republic;

(c) promote and enhance the unity of the nation;

(d) promote respect for the diversity of the people and communities of Kenya; and,

(e) ensure the protection of human rights and fundamental freedoms and the rule of law.

We also went ahead and you will see that in Article 132 (1) (c), which states-

“Once every year –

The President shall report in an address to the nation, on all measures taken and the progress achieved in the realisation of the national values, referred to in Article 10”

I am not aware of this happening under President Uhuru's reign, and I have not seen it happen today. What I am saying is that the buck stops with the President. Kenyans are disappearing on the streets. They are being abducted. According to this provision of the Constitution, the political responsibility belongs to the President.

The Temporary Speaker (Sen. Abdul Haji): Sen. Okiya Omtatah, I really do not want to interrupt your submission. However, what is the relevance of what you are telling us regarding this Bill?

Sen. Okiya Omtatah: There have been disabilities caused on the streets of Nairobi by rogue police officers. Human rights have been violated and that is why I am saying that the President is responsible for those things. He is supposed to ensure that the Bill of Rights is upheld. That is why I am bringing the relevance of the Bill to this thing.

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People have been maimed and they are now disabled. Some of us also have invisible disabilities. When it comes to chewing bones, we cannot chew bones like Sen. Sifuna can. Therefore, we will pass bones over to Sifuna to benefit because we lost our teeth.

(Laughter)

Mr. Temporary Speaker, Sir, the buck stops with the President with what is happening in this country, where there is a total disregard for the rights of the people. All this disregard for the rights of the people who are affected to the point that some of them are dysfunctional---

I have talked to people who had been abducted and kept in some detention centres where they say they saw many other people who are still there. When they come out, they tell you, "I do not want to engage with anybody." They are traumatised and they are dysfunctional. Consequently, those are among the invisible disabilities that we have.

I am pleading that as we pass this Bill, we must make sure that the President accounts for that. The Bill of Rights on minorities and PWDs is also a responsibility of the President. When you look at Article 131(2) (e), it states that –

“The President shall ensure the protection of human rights and fundamental freedoms and the rule of law.”

There is an obligation placed on the President to make sure that this Bill of Rights--- This is the cry that our beloved Sen. Crystal Asige is calling upon us to help ensure this law is supported. It should get the real support of the President, so that it becomes law that will help him enforce this Bill of Rights.

Mr. Temporary Speaker, Sir, I can see you smiling and I am happy that you are smiling and not calling me to order. This is a sign of an agreement. However, I think it is time we held the President to account for his responsibilities in this Article, so that this country can be run like a republic.

I want to tell you that when Americans got their Constitution, there was one old man who was 80 years old and was suffering from gout. He was called Benjamin Franklin. He had been pushing for it when it was eventually accepted. Among the crowd, people approached him and asked him, "What have you given us? Is it a monarchy or a republic?" Benjamin Franklin answered, "a republic, if you can keep it."

A republic does not just exist, a republic is an ongoing concern. It is a duty. A republic is a duty upon us. It is a call of duty, if you read our Constitution under Article 3 (1) and our National Anthem. Thus, in the words of Benjamin Franklin, all Kenyans are called to keep this country a republic and a republic we must keep. Accordingly, in keeping this country a republic, it is the call by Sen. Crystal Asige, that all Kenyans must be carried on board. Nobody should be left behind or fall through the cracks.

We are going to make this law to ensure that all Kenyans enjoy the promise of the republic. We keep Kenya a republic and a republic being a government of law, not a government of men; a government of the law, where all are subject to the law.

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Thank you, Mr. Temporary Speaker, Sir. I like when you smile at me.

(Laughter)

The Temporary Speaker (Sen. Abdul Haji): Thank you, Sen. Okiya Omtatah. Proceed, Sen. Ali Roba?

Sen. Ali Roba: Thank you, Mr. Speaker, Sir. I rise to support this Bill by Sen. Crystal Asige, and I would like to start with something that should really touch all of us.

In my role of leadership at the county government level, I have witnessed a lot of realities of life. The line between ability and disability is very thin. Sen. Olekina can be very healthy, perfectly in shape this minute and after a few minutes, he ceases to be, on the basis of other conditions God sent in terms of sickness or accident that is likely to happen to any one of us.

Sen. Crystal Asige is trying to persuade the Senate to rise to the occasion as the leaders of today for the generations of today and tomorrow. This is by making sure we legislate, knowing very well what we are legislating can easily be for your children and the children of your children.

The opportunity you have today as a Senator seated in this House with the capacity and the legal mandate to legislate, you may not have it tomorrow. You will probably not be in this House as a legislator to take advantage of such an opportunity.

Sen. Crystal Asige is trying to sensitise the Senate and the legislature as a whole to understand that there is a critical mass. They are critical because when we undertook an audit of Persons Living with Disabilities (PWDs) in Mandera County, we were shocked. The number of PWDs hidden within communities and homes because of the stigma or the inability to provide for them properly is alarming.

We should feel challenged by Sen. Crystal Asige's proposal to extend this proposal to require the National Public Service Commission (NPSC) and County Public Service Boards (CPSBs) to make deliberate considerations in terms of employment and by reserving positions particularly for PWDs in this country.

This reality should inform all of us. Recently one morning, a Member of my Committee, Sen. Oketch Gicheru, was very healthy. He went to play soccer and for two months, he was in crutches; he could not move. These are the realities that need to inform us. Today, you are well, tomorrow, you are not.

Sen. Crystal Asige, I wish to congratulate you and challenge you further because sometimes the wearer of the shoes knows where it pinches the most. It is you to sensitise this Senate, so that we can bank on the Senate's 100 per cent support that we are going to stand by you. This is to make sure that the laws that favour persons disadvantaged in whichever way are going to get remedies through legislation that forces the Government, not only the national Government, the county government and their managers but also the parastatals and companies to conform with the law.

We need to pass legislation that are going to compel private entities to be able to conform to certain norms prescribed in law, that should they advertise X number of positions, they need to reserve a certain number for persons who are disadvantaged in society particularly PWDs.

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I support.

The Temporary Speaker (Sen. Abdul Haji): Proceed, Sen. Olekina.

Sen. Olekina: Thank you, Mr. Temporary Speaker, Sir. Let me begin by saying that I support the Amendment to the County Government Elections Laws (Amendment) Bill (Senate Bills No.2 of 2024) by Sen. Crystal Asige.

Mr. Temporary Speaker, Sir, being included in any society should be our main principle in this House. It should be what we advocate for. I just got back from Wajir County and this county is one of the most progressive counties in this country. It has billionaires, the residents of Wajir County own their aircraft that fly daily. There are two flights daily to Wajir County. However, because of being excluded from the national grid, that county is not able to achieve the same potential as a county like Nairobi City County.

Marsabit County suffers the same consequences. Mandera County suffers the same consequences. So, today, when I am seated here and trying to absorb the submissions by my sister, Sen. Cristal Asige, I am beginning to appreciate the fact that it is only her who can give us real insights into what people with disability can help this country on the experiences, the challenges that they go through when it comes to issues of policy-making.

Yes, the Constitution is there. If you read the object, a memorandum of her Bill, it talks clearly that the purpose of this Bill is to achieve the requirements under Article 54(2) of the Constitution that at least 5 per cent of the Members of the County Assembly are persons with disabilities.

This is a progressive implementation tool that Sen. Cristal Asige wants us to be cognizant of its benefits and what it can do for future generations. We must become realistic.

I was seated here and Sen. Oketch Gicheru came and said something to me, which I have been agonizing with, and said, "This is an interesting Bill". If hypothetically one day everyone who is elected to office from a particular county assembly is disabled? Then what does the law say regarding other able people?

When I read the Constitution, I started laughing and smiling at the drafters of the Constitution because they had seen what Sen. Oketch had seen. So, this is a matter of being progressive, slowly by slowly, for us to achieve for future generations.

The Independent Electoral and Boundaries Commission (IEBC has attempted to do this, but they have not been able to do that because of lobbying. Every single day someone goes and lobbies, and before you realize it, someone who has been brought here cannot even be able to advocate for any person who is disabled. So, it is imperative as we contribute to this Bill, we see how far we can go in defining what disability is all about.

My brother, Sen. Okiya Omtatah, was arguing that he is also disabled because, for one reason or another, he is not able to chew bones. Maybe he is right. What I saw lacking in this Bill, and I kept on asking myself, is that since this Bill is essentially for advocating for inclusion for people with disability in elected positions, what about people who are dyslexic?

Are those people who are dyslexic also considered disabled? Do we only consider people who are physically disabled? Or do we consider people who cannot hear? Or do

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we have to extend this issue of disability to be able to define it? How pragmatic can we be to ensure that we achieve what the Constitution has set out?

So, as I support this Bill, I challenge my sister to further define disability when it comes to this country. If you go to most counties, buildings are erected. Maybe we might have an expert in Nairobi who can come and say, “before you build this building or before you give out permits or approvals for a building, make sure that building can be accessed by someone who is physically challenged.”

I actually do not like using the words “disabled”. I like using the word “challenged” because, I have seen people who are considered by society as being disabled, and they are much capable of doing more things that most of us are not able to do. They can reason out. Some of us who are 100 per cent fit cannot even reason.

So, as I support this Bill, I would like to be a bit realistic as well. We are in a society in which we talk too much, but we do nothing. How realistic are we going to be to ensure that at least we can achieve the 5 per cent of all the elected MCAs being people who are disabled?

I have looked at Clause 8, the proposed amendment of this, where it says: -

“For Section 1(f)(iii), the commission shall draw from the list such members of special seat Members in the order given by the party, necessary to ensure that at least 5 per cent of the Members of the county assembly are persons with disabilities.”

I would like to persuade my sister to change that so that we make it mandatory, because the mischief that you are attempting to cure cannot be cured with such language. The people there will still choose whoever they want to choose. So, I think we must expand that provision further to be discreet, to say this and this person ought to be the one given priority.

I am sure my brother, Sen. Sifuna, who is the Secretary-General (SG) of the Orange Democratic Movement (ODM) Party, can attest to what I am saying and can speak directly on these issues because those are the challenges we face.

Today, when we do not have an IEBC, some people who had been appointed and then reappointed elsewhere and are no longer in Parliament, the IEBC will just go back to the list.

What will happen if at all maybe in the National Assembly, there is a person who is supposed to replace Hon. Mbadi? Can this Bill help the IEBC to choose the right person, or will it be an issue of lobbying? Sen. Olekina would be lobbying for his brother or sister to be appointed. We need to be descriptive, and I would like to suggest that you relook at Clause 8 so that we avoid that mischief.

Finally, I want to reiterate the importance of you redefining the categories of disability. You need to be elaborate so that we do not only look at people with physical, hearing and visual impairments. I want us to look at other people who are also challenged, who are dyslexic. Some people are extremely intelligent.

All of us here, in one way or the other, have some form of dyslexia in us. What measure do we use so that we also include those people? They are the only ones who can be able to explain the challenges they go through. I will try to demonstrate.

There are people who when they read, you will find them reading on a zigzag line. That is a form of dyslexia. I do not know how much the Senate Majority Whip knows about dyslexia because of being a medical doctor. I can attest that for my own family, I have people who are challenged by that but they read. They could say “two nominated”, and then they go straight to “marginalized.”

If you have this Bill, please, go to Clause 3(1). They will read: -

“the members of a county assembly contemplated under Article 177(c)---
They will go to (c), because their mind has told them, to rush to (c).

We need to be descriptive in nature so that those people are not left out, but they are included.

Mr. Temporary Speaker, Sir, as I summarise, this is one of the Bills that we can fast track, especially now that we are fighting to get a new Independent Electoral and Boundaries Commission (IEBC). When that new IEBC comes in place, it should have the thoughts of Sen. Crystal Asige in mind, to replace anybody preparing for the next election.

Finally, let me again appreciate the work of Sen. Crystal Asige. I hope that she can continue enlightening us on the uniqueness of the challenges that People with Disabilities (PWDs) go through.

I thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Abdul Haji): Sen. Khalwale, proceed.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, thank you for this chance. Allow me to congratulate the nominated Senator, Sen. Crystal Asige, for this piece of work. I acknowledge her for her hard work and even more for her demonstration for the indomitable spirit of a human being.

(Applause)

As a medical expert, I can confirm that disability is poorly documented in this country. It is grossly misunderstood and under-reported. When you tell the politicians to give an opportunity to PWDs to come to these Houses and our county assemblies, they just look at loss of limbs, eyesight, hearing and probably stop there. However, we have a greater population of PWDs that are unable to come out and talk about it.

Let me give you an example of the issue of infertility in women. There are many women who have serious problems of infertility and there is no greater disability in a woman than infertility. Every woman would want to be called *mama*. These women who do not have the physical opportunity to get a child are women living with disability. So that women do not think that I misunderstand human beings, we also have men with aspermia, who cannot get children. If we document these things carefully, we can easily get a beautiful young woman here who has no visible physical disability, but is living with infertility and would deserve to be nominated.

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Mr. Temporary Speaker, Sir, before I go to the real challenge of this Bill, let me speak to my own experience. We have to be very careful when we are growing up children and fellowshiping with the society. We need to look at legislation to support PWDs to mean giving them an opportunity, but not profiling them as people who are lesser human than the others.

Why do I say this? It is because the man who taught me Mathematics, Mr. David Mgaisi Asutsi, was living with disability. He taught me Mathematics and helped me to get Distinction One in Mathematics. I thank him, and may his soul rest in eternal peace. He helped me to get 100 per cent in Mathematics in that exam, the alternative is A.

In my office in Kakamega, I have employed Mr. Ignatius. Mr. Ignatius is a one-legged youth, but I have never seen a greater bullfighter than that boy. He can go into bullfighting, what we call mongara. Mongara is the equivalent in rugby, where you go in the most dangerous circle. Mr. Ignatius will go in and come out of bullfighting with no injury, yet he has one leg. He is a great bullfighter.

Mr. Temporary Speaker, Sir, because of the challenges of politics, I was attacked by goons in my home and they went for my son and gouged out his eye when he was five years old. Today, we have grown him up so that he does not believe he is a lesser human being because he lost his one eye. We told him that he can be what all other youths can be. Today, the boy is a high-profile auditor employed by the National Government of Kenya, in charge of one of the counties here in Kenya. He even holds a Master's degree in that profession.

Mr. Temporary Speaker, Sir, I now want to plead with Sen. Crystal Asige. Sen. Crystal Asige, listen to your Bill. You are saying you seek to amend Section 177 (c) of the Constitution of Kenya. Right?

(Sen. Crystal Asige spoke off record)

That is now where I am going and I want us to work together.

The Temporary Speaker (Sen. Abdul Haji): Sen. Khalwale, should I remind you?

Sen. (Dr.) Khalwale: I will speak through you. Thank you.

Mr. Temporary Speaker, Sir, I am inviting the Senator to move with me. The fact that you want to amend Article 177 of the Constitution, means you want to amend the Constitution of Kenya. The process of amendment of the Constitution of Kenya is provided for in Article 255. It does not say you can amend the Constitution through amending an Act of parliament.

I am bringing you to this because in Article 255(2) of the Constitution, they show you the areas you can only amend through a referendum. One of those areas in Article 255 (2) (i) is the objects, principles and structure of the devolved government. The devolved government is the county assembly and the executive. Those are the structures of the devolved government.

So, if you attempt to amend anything about the county assembly the way you are doing, you are amending the structure of the county assembly and therefore, the county government. This Constitution in Article 255 says not the Senate or the National

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Assembly or Sen. (Dr.) Khalwale or Sen. Crystal Asige can amend. To do that, you have to go back to Kenyans so that they say so through a referendum.

What am I saying? In the spirit of your amendment, you are more than 100 per cent right, Senator. You want to give equal opportunity to all Kenyans, including those living with disabilities. You are right. However, in the letter where you are attempting to amend the Constitution through an Act of Parliament, you cannot do it. We must do what you are doing, but take this proposal to Kenyans to vote and decide whether they want to change Article 177 to invite the amendments.

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

The Temporary Speaker (Sen. Abdul Haji): There is a point of order from Sen. M. Kajwang’. What is your point of order?

Sen. M. Kajwang’: Mr. Temporary Speaker, Sir, ideally, it ought to have been a point of information.

Sen. (Dr.) Khalwale: Inform me.

Sen. M. Kajwang’: I want to inform Sen. (Dr.) Khalwale that Article 177(1)(c) envisages that there shall be an Act of Parliament that will define the number of members of marginalised groups, including persons with disabilities and the youth.

Therefore, this amendment intends to amend the Act of Parliament referred to under Article 177(1)(c) rather than amending Article 177(1)(c) itself.

I thought that needed to be made clear because I was also a bit confused by the proposal that Article 177(1)(c) of the Constitution shall include, and then there are sub-clauses (1), (2) and (3). Ideally, that should be sitting in the Act of Parliament. So, it is an amendment to an Act of Parliament that is required under article 177(1)(c).

Initially, I was convinced that this was an impossible amendment, but having read this, I realize that Sen. Crystal Asige needs to clean up that amendment, so that it does not look like we are amending the Constitution.

Sen. (Dr.) Khalwale: When I see and listen to this level of debate seeing the contribution by Sen. Crystal Asige and hearing the point of information from Sen. M. Kajwang’ is when I wish Members of this Senate and the National Assembly would know that participating in parliamentary business does not end with Questions and Statements. The real business of the House is what we are doing now.

It is this kind of debate that makes you a legislator. Sen. M. Kajwang’ I am attempting to interpret the Constitution. What you have done by informing me, you are interpreting the Constitution.

Interpretation of the Constitution is so difficult that even two lawyers do not always agree. So, what did the framers of the Constitution do? Because they knew the difficulty of interpretation of the Constitution, they said that, yes, you can hold whatever opinion, but the final person to say you are right in your interpretation or you are wrong is only the High Court’. Sen. M. Kajwang’, it is just a matter of time. I was sounding to caution.

You will find that we can allow Sen. Crystal Asige to do such good work that will help my son, my other friends, and their children. We can help her kill it without sounding out what I am seeing.

Sen. Crystal Asige, consult; you will not die from it. Consult experts, and I can fairly say that I am an expert in legislation. I have been around for 20 years. We want to give life to this. We want to do more.

We want to remove the fate of People with Disability from the hands of political leaders. They get an opportunity because political leaders of political parties then give them some form of support.

We should tweak the law so that People with Disabilities can elect themselves. Sen. Crystal Asige, you can still win an election. You do not have to rely on the national party leader of the Orange Democratic Movement (ODM) for you to come here. We can say that in this election, People with Disability will vote for themselves so that the People with Disability find their way into this House of privilege. The Senate is a House of high privilege. The National Assembly and the County Assemblies are positions of high privilege. We cannot leave that in the hands of leaders of political parties.

The People with Disability can agree amongst themselves on a model of the election, or we can legislate a model of the election that will be used with People With Disability.

One of the reasons why I do not like the way we identify affirmative action--- Women who come to the two Houses are because of this same problem. Two, the reason I do not recognise the affirmative nature of the 47 county women in the National Assembly is because the wrong people voted for them.

If we wanted women to elect a county MP to represent them, what business would we have in voting in that election? We should have, under this Constitution, now that we have the benefit of hindsight, drafted the election laws so that on voting day, we men do not participate in electing the county MP; women do it. It is this thing that I want us to push through so that we do not rush it. Sen. Crystal Asige, do not forget you are my brother's daughter, and I cannot harm your industry. I want you to achieve more. Not so much because it is good, but also because you have proven that those of us who have been here for 20 years have been sleeping on the job. Why did we not think innovatively the way you have done?

With those many remarks, I support.

The Speaker (Sen. Abdul Haji): Sen. M. Kajwang', proceed.

Sen. M. Kajwang': Madam, Mr. Speaker, Mr. Speaker, Sir.

(Sen. (Dr.) Khalwale spoke off record)

I quickly corrected myself.

Mr. Temporary Speaker, Sir, and my Speaker of choice, I rise to support the County Government's Election Laws (Amendment) Bill of 2024 that Sen. Crystal Asige has sponsored. This is an important amendment, and I hope that this House and the other House will see it fit to pass this because it seeks to clear some inconsistencies in law that have caused problems in the past.

Sen. Crystal Asige has demonstrated exemplary industry, knowledge of legislative affairs and rare intellect. Through her diligence, she has become an idol of many people and a model of what a legislator should do.

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We have even considered co-sponsoring the public participation Bill together, but we have been delayed by the passage of the Sessional Paper on public participation. As you have seen, almost every other process in this country has been held hostage by concerns about public participation. I do hope that we will put our thoughts together because Sen. Crystal Asige wanted to inject the disability aspect into public participation.

This Amendment Bill seeks to give effect to Article 177(1)(c) of the Constitution of Kenya.

Article 177(1)(c) says –

“A County Assembly shall consist of the number of members of marginalised groups including persons with disabilities and the youth prescribed by an Act of Parliament.”

The Act of Parliament that has made that prescription is not one, but two.

The Elections Act under Section 36(1)(f) and 36(8) has defined the number of Members of the County Assembly to represent marginalised groups as four. The County Governments Act under Section (7)(1)(a) has defined the number to be six.

The Independent Electoral and Boundaries Commission (IEBC) has decided to take the provisions of the Elections Act. It has been implementing the four seats per county assembly rather than the six seats that have been prescribed under the County Government's Act.

When the County Government's Act was enacted, it was hoped that this would be the Bible on matters to do with devolution. Indeed, I want to encourage the Committee on Devolution and Intergovernmental Relations, which has been doing a review of the County Governments Act, that it is time for a comprehensive assessment and review of that Act.

You have seen many scenarios that are avoidable but cannot be resolved because of the County Governments Act. There are small things, like relationships between governors and their deputies, county assemblies and the kind of powers they have, and procedures for impeachment.

I want to encourage that this House goes for the upper threshold when it comes to representation of marginalised groups, and not the lower threshold that has been picked by the Independent Electoral and Boundaries Commission (IEBC).

Sen. Olekina, while speaking to this matter, was wondering whether certain forms of inability are considered to be disability. This is such a sensitive matter that cannot be left to personal interpretation.

That is why the Ministry of Health in 2022 came up with Disability Medical Assessment and Categorisation Guidelines and they are very clear on the types of disability that are recognised. They talk about physical impairment, visual impairment, hearing and speech impairment, mental health disorders, chronic progressive disorders, maxillofacial disabilities and others. They are all there.

Sen. Ogola and I have a mutual friend who used to be an MCA. He has a stuttering condition. In those guidelines, even stuttering is defined as speech impairment. Someone who stammers is qualified for nomination as a representative of PWDs.

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We looked at another example of a gentleman who was very famous where I come from. He had a mischievous name; Otieno Omande. He was proposed for nomination in the inaugural County Assembly of Homa Bay. Otieno Omande's disability was a hunchback and Sen. Ogola---

Sen. Ogola: On a point of order, Mr. Temporary Speaker, Sir. I happen to know the gentleman being mentioned by my Senator, Sen. M. Kajwang'. However, I thought it would be wise that the Senator goes ahead to explain to the House the meaning of his second name. It will be fair if he explains that to the House.

Sen. M. Kajwang': Mr. Temporary Speaker, Sir, Sen. Ogola has chosen not to divulge very important information, that this particular gentleman is her brother-in-law. In my culture, you might have a personal relationship with a brother-in-law.

I think there is conflict of interest in that question. Furthermore, if I were to describe the second name Omande, I would fall into the trap of unparliamentary language. I am safer calling it in the Luo language.

Mr. Temporary Speaker, Sir, Otieno Omande was a very famous gentleman and a staunch Gor Mahia supporter. He was not of great height. He was of a fairly short stature and had a hunchback.

When he was proposed to be an MCA to represent PWDs, people went to court and moved the court to declare that a hunchback was not a disability within the definition of the law. Mr. Otieno Omande was struck off the list of potential MCAs and somebody else was put in his place.

When he died not too long ago, many of us regretted because we thought he would have represented the interests of PWDs. However, that was then before the 2022 Disability Medical Assessment and Categorisation Guidelines had been put forth.

We are all potential PWDs. Even if you are born with both legs, with Nairobi City County having gone on autopilot, you never know when you will drop into a manhole in this City or get knocked down by a motorbike.

In many of our hospitals, especially county hospitals, there is great pressure arising from accidents caused by *boda boda* riders. One day, someone is of good health and has all their faculties running. The next day, someone suffers physical impairment because of situations that we have failed to manage.

The issue of *boda bodas*, the accidents they cause, and the inevitability of disability that many people face in this city and across many towns is a result of our low standards as a society. It is a result of mediocre thinking and planning on the part of the leadership, technocrats and bureaucrats who are supposed to ensure that there is public safety in this Republic.

There are countries and capitals like Abidjan in Ivory Coast where you cannot find motorbikes zooming and flying around in a dangerous manner. I was fortunate to be in Windhoek, Namibia, for a climate conversation last week. You cannot find those dangerous contraptions.

In our case, we have chosen to educate our sons and daughters, but later on condemn them to a life riding on motorcycles calling that true employment and in the process, endangering the lives and the ability of many of us. All of us in this House must

stand up to be ambassadors and spokespersons for inclusion of PWDs because nobody knows what is going to happen tomorrow.

A census was carried out on disability in Kenya and the findings were quite interesting, that out of our total population, 2.2 per cent suffer from one form of disability or another. The county that had the highest figures on disability was Embu at 4.4 per cent, followed by my county of Homa Bay at 4.3 per cent, Makueni at 4.1 per cent and Siaya and Kisumu in that order.

Mr. Temporary Speaker, Sir, sometimes when you look at the statistics on disability, there is a direct proportion to the rate of neglect and marginalisation of some of these counties. Counties like Homa Bay, Siaya, and Kisumu are in the leader's bracket.

You will find that some of the counties with the highest instances or incidences of disability in Kenya also suffer a greater burden when it comes to other communicable and non-communicable diseases. That tells you that there has been neglect as a result of regressive policies of past governments that have led to greater instances of disability in those areas.

One of the main causes of disability in the past used to be polio but because of modern medication, polio vaccine is now available. However, due to lopsided Government policies where certain areas are left out, you still find that in some of these counties that I have mentioned, such as Homa Bay, Makueni, Siaya and Kisumu, there is still higher instances of polio infection.

The formula that has been proposed by Sen. Crystal Asige requires that at least 5 per cent of MCAs are PWDs. I support and I agree with that figure because in Homa Bay County, the disability prevalence is 4.3 per cent.

We must also ask ourselves, what is the best ratio to impose in law? If the national disability incidence rate is at 2.2 per cent of the population, is it fair to insist on a 5 per cent representation of PWDs in county assemblies, or it would be reasonable to benchmark it with the national rate?

Sen. Crystal Asige: On a point of information.

The Temporary Speaker (Sen. Abdul Haji): Sen. M. Kajwang', do you want to be informed by Sen. Crystal Asige?

Sen. M. Kajwang': I will be glad to be informed.

The Temporary Speaker (Sen. Abdul Haji): Proceed, Sen. Crystal Asige.

Sen. Crystal Asige: Mr. Temporary Speaker, Sir, I would never want to interrupt a fantastic flow of thought by the Senator for Homa Bay. The only information I want to put forward to him, as well as the rest of the Members is that 5 per cent was not a number that I arrived at on my own or in consultation with stakeholders which are the county assemblies.

This 5 per cent comes directly from the Constitution, in Article 54, which says that every elective and appointive position in the country should be given to PWDs at the rate of 5 per cent. That is where I got the inspiration to add in this amendment.

Mr. Temporary Speaker, Sir, as Sen. M. Kajwang' continues with his wonderful contribution, I wanted to inform him about that provision.

I thank you.

Sen. M. Kajwang’: Mr. Temporary Speaker, Sir, I agree with Sen. Asige that the Constitution under Article 54(2) says that the state shall ensure the progressive implementation of the principle that at least 5 per cent of the members of the public in elective and appointive bodies are PWDs.

At least 5 per cent but we have a 2.2 per cent disability prevalence in the country. There is what the Constitution aspires to and there is the reality. The problem then would be for you to fully realize or actualize Article 54(2), you would probably be having the same PWDs sitting in various elective positions so that the number can get to 5 per cent. This is because, you have a 2.2 per cent incidence. The Constitution requires a 5 per cent representation. I am well guided and this is a debate we can have on whether it is something to be realized immediately or progressively.

Mr. Temporary Speaker, Sir, I will conclude my contribution by encouraging Sen. Asige to reach out to the other House and ensure that she finds a co-sponsor for this Bill, so that it can move fast. I do note that the requirement for representation of PWDs in the National Assembly is a constitutional provision and therefore, we should find friends in the other House who can fast-track it. This is one of those Bills that we do not need to talk a lot. Even when we talk to it, we are just talking to the spirit of it so that we can encourage Sen. Asige and commend her for the excellent work she is doing.

At the end of the day, she is one of those Senators who is doing what brought her to this House – to represent the interests of marginalized groups and PWDs. She has, however, gone beyond it and has represented the youth very well, even though I am not sure whether she is still a youth.

Mr. Temporary Speaker, Sir, I support.

The Temporary Speaker (Sen. Abdul Haji): Sen. Cherarkey.

Sen. Cherarkey: Mr. Temporary Speaker, Sir, I thank you for this opportunity. From the onset, I commend Sen. Asige, but on a light note, I saw *team mafisi* say that she is single on social media over the weekend.

I said on a light note---

The Temporary Speaker (Sen. Abdul Haji): Sen. Asige, do you have a point of order?

Sen. Crystal Asige: Thank you, Mr. Temporary Speaker, Sir. I appreciate the opportunity. Under Standing Order No.105 on statement of fact, the substantive Speaker earlier in this sitting told us that matters with regard to social media have to be taken carefully.

If Sen. Cherarkey can substantiate, although I do not know how he will do that without me being involved, but if he can, I would appreciate that substantiation.

The Temporary Speaker (Sen. Abdul Haji): Yes, Sen. M. Kajwang’ what is your point of order?

Sen. M. Kajwang’: Mr. Temporary Speaker, Sir, is Sen. Asige in order to close the market so soon because Sen. Cherarkey does not have to prove anything? In fact, that ambiguity should be strategic and it will bring attention and will give some of us hope. So, it might not be appropriate for Sen. Cherarkey to substantiate so that we remain hopeful that we could fill that void in the life of the distinguished Senator.

(Laughter)

The Temporary Speaker (Sen. Abdul Haji): Sen. M. Kajwang', you are out of order. Sen. Asige is challenging Sen. Cherarkey to substantiate the statement he has made on what he saw in the social media in terms of her status. If the opportunity is closed, are you asking Asige to re-open it right now? That is out of order.

Sen. Cherarkey, you have to substantiate this matter.

Sen. Eddy, what is your point of information?

Sen. Oketch Gicheru: Why am I not being given the microphone? Is it because I am in the same category?

(Laughter)

Mr. Temporary Speaker, Sir, I only wanted to inform Sen. Cherarkey that this is not social media propaganda. It was on the social media page of Sen. Asige. We saw it on her social media page. It is a verified page and she knows that. She is a buddy and that is her page, unless she rejects that, that is when Sen. Cherarkey will substantiate.

The Temporary Speaker (Sen. Abdul Haji): Sen. Eddy, may I caution you again. You are talking about a page and Sen. Asige is asking that information be substantiated. We have to move on.

Sen. Cherarkey, you have to substantiate this matter on the status of Asige.

Sen. Cherarkey: Mr. Temporary Speaker, Sir, I have received information and I appreciate that. I only said that *team mafisi* said that Sen. Crystal Asige is single and even the verified page that belongs to Sen. Asige---

(Sen. Nyamu spoke off record)

Please, protect me from Sen. Karen Nyamu. I did not see her in Ndumberi where many songs were being sung.

Mr. Temporary Speaker, Sir, that was on a light note, and I believe Sen. Asige agrees that.

The Temporary Speaker (Sen. Abdul Haji): Very well.

Sen. Cherarkey: I wish to thank Sen. Crystal Asige and wish her well as I encourage people like Sen. M. Kajwang' to pursue their thinking.

As I support this Bill, over the weekend, I saw Sen. Ledama Olekina saying that there is an intention to connect most of the Northern Frontier counties, and it is a privilege that you are sitting as the Speaker today. Counties like Mandera, Wajir and Garissa should be connected to the national grid of Kenya Power. That is significant. I thank Sen. Ledama Olekina who is our Minority Whip. We support this because we want access to power to be easier. The only part I do not support is when he becomes specific on the person to do it, but I hope these issues can be resolved.

Mr. Temporary Speaker, Sir, the County Governments Election Laws (Amendment) Bill (Senate Bills No.2 of 2024) is very direct. As my colleagues have said, under Article 54(2), the state shall ensure the progressive implementation of the principle

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of people living with disability; that at least 5 percent of the members of the public in elective and appointive bodies are persons with disabilities.

This is provided and is an affirmative direction for both elective and appointive. I therefore encourage Sen. Crystal Asige that next time, she should give us a status implementation report of the appointive of the 5 per cent within the national and county governments so that we do not only talk about elective because the Constitution is very subjective. It is not only elective or appointive. We would like to know if appointive positions meet the criteria of the PWDs. That can be found at Article 54.

Mr. Temporary Speaker, Sir, in Article 177 on county assemblies membership, this is a straight-forward matter on the 5 percent. It is disappointing that more than 20 counties have not met the threshold of PWDs and the youth. Today, the biggest challenge facing the country is the ballooning youth across the country. We need to hear their voices in county assemblies. We are lucky that some of us were elected to this House when we were youthful because before, it used to be referred to as *Nyumba ya Wazee*. We are however lucky to be sitting in this House giving voice to the many young people's agenda.

Even in the county assemblies, we want to see more young people running for elective seats but they should also be given chances through appointing. I am happy that the Secretary General of the Orange Democratic Movement (ODM) is in the House. We have their Deputy Party Leader and the Party Leader of the United Democratic Movement (UDM), Sen. Roba. We also have other people who run political parties in this House. There are other life members of ODM like Sen. Beatrice Ogola.

Mr. Temporary Speaker, Sir, we must come together - and I wish the SG of ODM was listening to me because what I am saying is very critical – that political parties need to consider PWDs even when running during nominations. They should be given priority because of the unique nature that the PWDs have unlike the able-bodied people.

The Temporary Speaker (Sen. Abdul Haji): Sen. Cherarkey, would you like to be informed?

Sen. Cherarkey: Yes, for the first time in the life of this House, today, I can allow Sen. Sifuna to inform me.

The Temporary Speaker (Sen. Abdul Haji): Sen. Sifuna, please proceed.

Sen. Sifuna: Hon. Temporary Speaker, Sir, I would like to inform Sen. Cherarkey that, in fact, the Mover of this Bill is nominated by the Orange Democratic Movement (ODM) to represent the Persons with Disabilities (PWDs). We, as a Party, continue to be very proud of her.

So, Mr. Temporary Speaker, Sir, when Sen. Cherarkey is addressing some of these issues and concerns about inclusion of persons with disabilities, perhaps, he should look behind his back and not on this side, because on this side, we are okay.

I thank you.

Sen. Cherarkey: I would like to thank the Secretary-General (SG) and Nairobi City County Senator for that powerful information. I would like to also commend the ODM Party for nominating Sen. Crystal Asige. I have taken judicial notice. I am also happy that, on our side, we have Sen. Mbugua, who is the Vice-Chairperson of the Senate

Standing Committee on Labour and Social Welfare, from Nyandarua Delegation. He has also been nominated by the United Democratic Alliance (UDA).

(Sen. Sifuna spoke off record)

Mr. Temporary Speaker, Sir, why are you allowing Sen. Sifuna to harass me? All Members are omnipresent in the House. You do not ask where they are. They are serving this nation in different issues.

As I was saying, the Vice-Chairperson of the Senate Standing Committee on Labour and Social Welfare is a person living with disability, or in other words, differently-abled.

I am happy with Sen. Crystal Asige. We used to sit together in the Senate Standing Committee on Labour and Social Welfare. I do not know what happened and I was moved from that Committee. I would like to say, her insightful comments have been important.

By the way, Sen. Crystal Asige is also an accomplished musician. I was lucky, alongside Sen. Karen, to attend her launch, which was wonderful and beautiful. So, the people living with disability can make a mark,

The third point that I would like to make is on the 5 per cent of the young people, where 20 counties must be called out.

I would like to challenge the Independent Electoral and Boundaries Commission (IEBC). I know the IEBC is not fully constituted as at now, but we need to call it out for approving these nominations without compliance of the Constitution. It is illegal.

When you see in over 20 counties, the PWDs and the youth are not represented. I saw in Nyamira County, they were also impeaching a youthful Speaker the other day. We need to encourage young people to be the Speakers of County Assembly. Unfortunately, most of the governors, Senators, and even Speakers, have not seen PWDs being elected. We need to change our value system as a country, that, people living with disability, the marginalized, and the minority, can lead this nation.

I remember when former President Daniel Toroitich arap Moi was appointed as the Vice-President. He came from a minority community, but went out to lead this nation for 24 years. Even Prof. Kithure Kindiki comes from a minority community. That is a challenge that, as a nation, we must look beyond.

Mr. Temporary Speaker, Sir, I know where you come from, there is still a challenge about clanism, where people look at leadership in terms of numbers, as opposed to competence. So, as a country, we must look beyond the differently abled people, that, they can be leaders. They can be governors or ministers.

I remember there was a Principal Secretary, who delivered in the last Parliament, Oyiela Mukobe, who was the PS in charge of education. She came from Western. We also had the late Prof. Godia.

I am happy in 2020, the Ministry of Health has defined what disability means. I would like to ask Sen. Crystal Asige to keep the fire burning and ensure that these interests are represented.

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In conclusion, I would like to say that the young people also have a chance. You saw the explosion of the Gen Z protests the other day. This is because they feel unrepresented. Most of the young people feel that they are not represented. However, I would like to challenge them to also run for these positions. You cannot be saying we are not represented when we have not tried.

Some of us came here fairly young, but we dared to try. So, I challenge the young people, wherever they are, that it is not enough to just say we are not represented. Can you go out and register, become voters and run for those positions? All these political parties are willing to incorporate young people and people living with disability, minorities and the marginalised to run for these elective posts. Apart from making their voices being heard outside there, the young people have a chance to be elected. You need to sell your manifesto.

In conclusion, the resolution we just made the other day is because of that Motion that we did contribute today, that most of the young people, at the moment, went into the Gen Z protest because they felt that they were not represented.

I am sad that there are allegations of abductions and extra-judicial killings, and most of the victims are young people. Sen. Kajwang' said, you can be born as an able person but get disabled. In the last Session, if you remember, when served with your father, the distinguished Sen. Haji Snr, I was temporarily disabled. I was only disabled in terms of my limbs, nothing else was disabled. However, I had a challenge. I realised that you can be disabled. You have heard even accidents happen. Anything can happen. Even Sen. Crystal Asige can tell her story. Everybody has an encounter.

We know even people were maimed because of Gen Z protests. There are allegations of abductions and people being followed. Today, in the news, I saw that there is a young man who cannot afford to pay for surgery.

I am disappointed that there are allegations that Safaricom Limited is sharing triangulation coordinates for the police and DCI to arrest Kenyans. That is infringing the right to privacy. I agree with you, that the Senate Standing Committee on National Security and Foreign Relations should invite the Inspector-General of Police. Why would you share the location, Short Message Service (SMS) and the coordinates of where a Kenyan is? That is infringing the right to privacy. To do that, you must get a court order.

What I saw in *The Daily Nation* Newspaper today is unfortunate. I have been a victim of data protection in the last one week. I have been called, received insults and praises. As we talk today, my phone has over 12,000 SMSs. I have close to 20,000 *WhatsApp* messages and so many phone calls. There is a data privacy breach that no one is addressing. They are '*salamiering*' me. By the way, I would like to report to the House that, even the email of the Senate is approaching half a million emails that reacted to my Bill. Kenyans are at 60-40. As of now, 60 per cent of Kenyans are supporting my Bill, while 40 per cent are opposing, in SMSs, *WhatsApp*, *Facebook* and X account.

So, I agree with Sen. Crystal that the issue of data privacy should be protected. Why would the police know that I slept somewhere and come to arrest and abduct me?

The Inspector-General of Police and Safaricom Limited must be called to order. The fact that they have privilege of our data should not be allowed to abuse. Why is the

Kenya Power and Lighting even sharing the data of where you live and the payments you have made in your houses?

I would like to challenge the Senate Standing Committee on National Security and Foreign Relations. The Vice-Chairperson of that Committee that should---

(Sen. Osotsi spoke off record)

Sen. Cherakey: Sen. Osotsi can inform me.

The Temporary Speaker (Sen. Abdul Haji): Okay, Sen. Osotsi, please proceed.

Sen. Osotsi: I would like to inform my neighbour and good friend, Sen. Cherarkey, that we are having challenges with the exposure of private data because of the inefficiency of the Office of the Data Protection Commission, which the Senate Standing Committee on Information, Communication and Technology has brought a number of statements here on that matter. So, for us to make progress on the issue of privacy of data, we need to start dealing with this office called the Office of Data Protection Commission.

Sen. Cherarkey: Mr. Temporary Speaker, Sir, in conclusion, as I celebrate this tremendous work by Sen. Crystal Asige, I agree as Members of the Committee on ICT, we should take it as a priority and also encourage Members. The way we are giving accolades to Sen. Cyrstal Asige, we should also give accolades to Sen. Cherarkey. I have seen my colleagues bashing me in funerals, birthday parties and baby showers over my proposals in the House. I would like to also appeal for love. I am also a human being, so you should not be hard on me. Can you be whispering some Solomonic wisdom when need arises?

Mr. Temporary Speaker, Sir, with those remarks, I beg to support this Bill and see it to fruition.

The Temporary Speaker (Sen. Abdul Haji): Thank you, Senator.

Sen. Omogeni, please proceed.

Sen. Omogeni: Thank you, Mr. Temporary Speaker, Sir. I wish Sen. Cherarkey had consulted seniors in the House before he came up with his proposed Bill on the extension of the term limit. My advice is that till we vote on that Bill, keep House. There are some areas we should not visit.

I first want to pass my congratulations to Sen. Asige for this Bill that has been sponsored by her, which addresses some of the concerns in Article 177 of our Constitution. Let me be on record by saying that it has been a joy to serve in this House with Sen. Asige. What a brilliant mind.

(Applause)

Every time Sen. Asige makes contributions on this Floor, I normally revisit the videos just to listen to her wisdom. You are such a blessing to this House. I have no doubt that Sen. Asige has inspired many within the disability sector. She has been brilliant. She has performed so well that we should even remove the word disability.

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You out-perform even those who do not have disabilities. So it has been really a joy. We encourage you, Sen. Asige, to continue doing the good work you do, both in contribution and on the Bills that you bring to the floor of the House.

I hope the people of Mombasa will think seriously. If you ever offered yourself to seek an elective seat, they should consider electing you almost unopposed. She has done so well. When you go upcountry, there are many people who stop you and they say, “by the way, when you go back to Nairobi, pass our greetings to Sen. Asige.” So receive greetings from many of my constituents in Nyamira who are extremely impressed with the good work you are doing.

This Bill is very timely. If there is an Article that has been abused by the Independent Electoral and Boundaries Commission (IEBC), it is 177. The only guiding laws that we have had over the years are the regulations that were enacted by IEBC.

The provision in this Article that the number of special seats should ensure that not more than two-thirds of the membership of the same gender has resulted in serious abuse. If you go to my county of Nyamira, we elect 20 Members of the County Assembly (MCAs), IEBC nominates another 15, giving us 35 MCAs.

I do not know how they read this Article because it makes nonsense the idea of people electing or picking their leaders through a popular vote. If you have 20 MCAs and then you have 15 nominated, it means you have turned it around to say you will nominate two-thirds of elected MCAs. It is not more than two-thirds but that you are picking another two-thirds to constitute MCAs. I have never understood it.

I raised that issue before the Floor of this House. In the last Parliament we had 16. In this Session, my Assembly has 15 nominated MCAs. I mean, it cannot be. If you are talking about not more than two-thirds, at least we should not have more than eight nominated MCAs.

It is expensive to maintain an MCA. They get their mortgages, car grants, allowances and salaries. When you make the number too bloated, it becomes a threat to the fruits of devolution because we spend most of the money that we get to maintain our MCAs.

I will be proposing several amendments to this Bill so that we make it also very clear that the number should not exceed a third of the elected MCAs so that, we do not make it a blank cheque for IEBC to pick their friends.

I hear I am not saying I have any proof, but I hear rumours that there are people who have now become experts. They carry money, after an election is declared, they find their way into the list. How it can be that even parties that only had one elected MCA, just one Member still end up with another Member being nominated to the county assembly? So I hope that we can ride on this Bill that has been sponsored by Sen. Asige to clean up the procedures of nominating members to the county assembly.

Two, there is no better way of re-emphasizing the role that our youths play in our politics. You know, the youths are really our future leaders, and we must affirm support for them. They are our children, brothers and sisters. We must hold them in their hands and walk with them to the future.

There are many people, even out there, who became elected leaders at a very early age, and they proved themselves and performed very well. Lyndon Johnson was the first

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guy to break the ceiling in the Senate by becoming the majority leader without being a ranking member of the Senate. So we can have youthful leaders who can make very good contributions to the country.

So it is good to note that if this Bill is passed, and I hope it will, we will have two candidates reserved for the youth. That is commendable. So that we know that each county assembly will have a minimum of two youths--- Others can also vote and win. Then, of course, marginalised groups. Every county has marginalised groups. Even in Nyamira, I have about three polling stations inhabited by my neighbours, the Luos, who are marginalised. They have never been lucky to get a nominee MCA to the county assembly, despite them being clearly marginalised. So I fully support the idea of also picking the marginalized.

For the first time, I had an opportunity to visit Lodwar. I had never been to Lodwar before. When I saw the harsh weather condition, I would never at any one time oppose anybody who comes up with a policy to support the marginalised or those who come from hardship areas.

The temperatures were 35 degrees centigrade. I did not see any green vegetation within Lodwar. Then I just remembered that there are people who are proponents of one man, one shilling, who want to take away the little that people of the Northern Kenya Frontier are getting. We can never be such inhumane in our approach. So, people who are marginalised in one way or another, ought to be supported affirmatively through legislation as what we have before us.

While on it, let us build a country that respects the rule of law. People who are suspected of having committed any crime should be arrested by police officers who must identify themselves as those suspects and be taken to court.

I do not support this culture of abducting people at all. As a lawyer, I believe strongly that the best way to build a country is to have people who respect the law and do not want to break it. That is achieved by applying it fairly to everybody.

Mr. Temporary Speaker, Sir, we are human beings. I was watching the news yesterday about Boniface Mwangi. What are his children thinking of their country? What is the spouse of Mr. Mwangi thinking of our own country?

I understand there is another activist called Aoko who has been missing since last week. That should not be allowed to happen. Our security bodies such as the Directorate of Criminal Investigations (DCI) and the National Police Service Commission (NPSC) know what the Bill of Rights says. If somebody has been arrested, they should be presented before any court of law within 24 hours. They should inform their families. Those suspects have a right to contact their lawyers.

[The Temporary Speaker (Sen. Abdul Haji) left the Chair]

[The Temporary Speaker (Sen. Mumma) in the Chair]

Madam Temporary Speaker, today, it would be Mwangi or Aoko, but if we allow it to become a culture, you will be the next one and I will also be the next one. Let us not cheat ourselves that because we are hon. Members of the Senate or Members of

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the National Assembly, the misuse of police power cannot be meted on us. It can be. The Swahili people say “*ukiona cha mwenzako chanyolewa, chako kitie maji.*”

We will be the next victims. We must call out the police and tell them to stop bringing this country to shame. If we continue this way, you will find us being discussed adversely in international forums. We are a country that has passed a very progressive Constitution.

Madam Temporary Speaker, you midwived the implementation of this Constitution. We must remind the police that this Constitution, which has a very progressive Bill of Rights, must be respected by everybody, including me, as a Senator, the police officer, a Cabinet Secretary and so forth.

I am looking for an opportunity when we will bring the Inspector General (IG) of Police and DCI to the Floor of this House, so that they can explain to us whether that will be the norm. We will then know that our police officers cannot guarantee the security of Kenyans. How can we live in a country where each day you wake up and you are told people are being abducted? It is not right at all.

Madam Temporary Speaker, we have not had the Independent Electoral and Boundaries Commission (IEBC) for a long time. As I speak, I am told there are Kenyans again who will go to court and obtain an injunction against the selection panel that was meant to jump-start the selection of commissioners to the IEBC.

We are daring fate. In my county of Nyamira, I have two wards that have been without the Member of County Assembly (MCA) for over six months now. Unfortunately, we lost one MCA of Nyamaya Ward through a road accident.

I was there on Sunday being asked hard questions by the residents of Nyamaya Ward. They want to know when will they be allowed to elect their MCA? They do not have roads. There is no medicine in hospitals yet there is nobody to be asked these questions because they do not have an MCA. The same thing with my own ward, where I live in Nyansiongo. The election of the MCA was nullified. We are unable to conduct a by-election because we do not have IEBC.

Kenyans have a right to file cases in court. We cannot stop them. However, let the courts hear these cases expeditiously so that if there are any issues, let them be resolved. If we need to begin all over, we do so. We fast-track the process, then we have the IEBC.

As I speak, I was watching TV on issues around the impeachment of Gachagua that are featuring in court. The IEBC is being mentioned in one way or another. I appeal to the judiciary and we know we can never direct the judiciary to conduct their cases. However, we hope that those cases can be heard and concluded as soon as possible so that we make progress.

In conclusion, as I support this Bill, I hope we will also introduce an amendment that can bind nominated MCAs to abide by the policies of their parties. That was a discussion we had during the National Dialogue Committee (NADCO). It is a discussion that has been with us for a while. You cannot be nominated, for example, by the Orange Democratic Movement (ODM), but you identify with the policies of United Democratic Alliance (UDA), with the hope that in the next election, you will be nominated by UDA.

We should put a clause that if you are elected by ODM, then you should skip being nominated by another party in the subsequent election. You cannot cause

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difficulties to your own party like what I have seen in Nyamira, where a nominated MCA of ODM, does not identify with elected and other nominated Members of ODM party. That is making our politics to be very untidy.

All over the world, political parties have aspects of discipline. Members of political parties must be disciplined. I support this Bill. At the right time, I also hope that I will ride on it to introduce some amendments. As we pick Members to various commissions, I hope we can have the face of Kenya in those commissions and stop this idea of people hoping from one commission to the other. Let us give Kenyans a chance to serve in these commissions.

When we passed this Constitution, we put a limited period of six years so that you serve, exit and give a chance to others. If you have been removed from office because of integrity issues, you cannot again tomorrow move and apply to the other commission. It is one Government, one country.

With those remarks, I support.

The Temporary Speaker (Sen. Mumma): Proceed, Sen. Nyamu.

Sen. Nyamu: Thank you, Mr. Speaker, Sir. From the outset, I want to thank my friend ----

The Temporary Speaker (Sen. Mumma): Sen. Nyamu, it is not 'Mr. Speaker.'

Sen. Nyamu: My apologies, Madam Temporary Speaker. I think I will look at your face every time I say that, lest I forget.

Thank you, Madam Temporary Speaker. I want from the onset to thank my friend, Sen. Crystal Asige, for this very key amendment to the County Government's Election Laws (Amendment) Bill (Senate Bills No.2 of 2024).

I witnessed it firsthand in 2022, how this grey area in the law affected our county assemblies. There is a lady called Miriam Opondo who I was with in the presidential campaign team and we traversed this country, campaigning for this Government. In one of the meetings where the then presidential candidate for Kenya Kwanza, His Excellency William Ruto, who is the current President, had a meeting with Persons Living with Disabilities (PWDs) and he made a promise in front of the whole country that he would nominate Miriam in the County Assembly of Nairobi as an MCA.

She made it in our party list. However, when it came to implementation, she did not make it and that was a story across the country in all our counties where PWDs made it to the various party lists, but ended up not being absorbed by IEBC. I remember they even threatened to take legal action. They actually sought legal redress, but that did not end up anywhere. This is because of the grey areas of the laws and that is what Senator Crystal Asige is trying to remedy.

This amendment will ensure that we do not derail the disability agenda in the country. When you mainstream the representation of PWDs in the grassroots level, which are our county assemblies, it keeps the disability agenda alive.

It mainstreams them in society as envisaged in our Constitution 2010. It is also part of fair democracy that all marginalized groups are represented. So, if we pass this amendment by Sen. Crystal Asige, it will ensure that the people with Disability (PWDs) are guaranteed representation at that very low grassroots level.

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As I speak, 21 counties have been allowed to continue without representation of any PWDs. That includes Nairobi City County, Isiolo, Machakos, Kisii and many others, 21 of them. So, I want to laud her for the good job that she is doing and let us ensure that we are not diminishing the advocacy of the various interest groups that we have in our society.

The Temporary Speaker (Sen. Mumma): Sen. Osotsi, you have the Floor.

Sen. Osotsi: Thank you, Madam Temporary Speaker, for this opportunity to also make my comments on this very important Bill, the County Government's Election Laws (Amendment) Bill (Senate Bills No.2 of 2024) by the distinguished Sen. Crystal Asige.

I must start by congratulating her for the excellent work she is doing bringing a number of Bills and also for the effective representation of the persons with disability in this House. This demonstrates that ODM is a party of quality when you look at this House.

Madam Temporary Speaker, I know you served as the Chairperson of the Election Board of the party. I want to say here that you did a good job because the quality of the persons who have been nominated in the National Assembly and the Senate for the ODM party is of very high quality.

The distinguished Sen. Asige---

The Temporary Speaker (Sen. Mumma): Sen. Nyamu, do you have a point of order? What is your point of order?

Sen. Nyamu: Madam Temporary Speaker, Sen. Osotsi is taking this opportunity to speak of his party---

The Temporary Speaker (Sen. Mumma): What is your point of order? Under what Standing Order?

Sen. Nyamu: Madam Temporary Speaker, I forgot the actual---

Sen. Osotsi: Madam Temporary Speaker, this is misconduct. She is trying to waste my time.

The Temporary Speaker (Sen. Mumma): Sen. Nyamu, can you just go straight to what your point of order is?

Sen. Nyamu: Madam Temporary Speaker, my point of order is that we are contributing to the amendment of the law; this is not an ODM meeting.

Sen. Osotsi: Madam Temporary Speaker, I will ignore that one because it is not a point of order. I am talking about nomination and the Bill is on the issue of nomination. So, there is nothing wrong with me trying to talk good about my party and also praising Sen. Crystal Asige for the good work she has been doing in this House.

Sen. Crystal Asige has made a very important amendment trying to put specifics to Article 177 of the Constitution which basically talks about the composition of the county assemblies.

The composition of county assemblies under Article 177 of the Constitution of Kenya talks about members who are elected in single-ward constituencies, single-member wards and also a certain number of special seats, which should ideally help the county assembly comply with the two-thirds representation. The gender balance in the county assembly and also talking about marginalized groups, which include PWDs and the youth.

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This Bill will give clarity because Sen. Crystal Asige is proposing that we need to be very specific that two of the people to be nominated must be youth. Secondly, two of the people to be nominated must be people representing a marginalized group and then 5 per cent of the representation in the county assembly should be people with a disability.

This is commendable and it will also give clarity to the Election Act, which, when it comes to making this determination after the election, we have had challenges at the IEBC, where you find that some of the people who are nominated under the youth are not youth. Some of the people who are nominated to represent the marginalized groups are not actually a marginalized group.

In some cases, persons who are nominated to represent PWDs are not strictly PWDs. So, this will give clarity to Article 177 of the Constitution and, therefore, enhance the number of people who are nominated, particularly for PWDs. This is commendable.

The increase of the number to 5 per cent is also commendable. However, allow me to also say something. Whereas I fully support this proposal, again we would like the people who are nominated to serve in the county assembly, the National Assembly and the Senate to be people who will effectively represent the party.

It is good to have people in these categories, but it is also another issue to have the right people representing the interests of these groups. It is very disappointing that in some county assemblies, you find people who have been nominated either under the category of gender, PWDs, or youth and they cannot even speak English. The only language they know is their mother tongue.

So, I encourage political parties who are nominating bodies to ensure that whereas it is important to comply with the law. It is also important that the persons who are nominated to represent political parties are capable people, people who can effectively represent those political parties, not people who have been taken there just to reward them for maybe relations with the key people in the party, or maybe because they are favoured in the party.

We would like to have people like Sen. Crystal Asige here, quality people representing the parties and that is how we will grow our democracy. However, if we end up nominating people who cannot speak, people who cannot perform their role, then it defeats the purpose of having Article 177 of the Constitution.

We also need to have legal clarity on marginalized groups because the law does not define who is marginalized. If you look at the Election Act, it is not clear who is marginalized. We need to be told that in law.

I would propose to Sen. Asige to include an amendment on the definition of a marginalized group because while nominating people, because of lack of that clarity, you may find that even maybe a particular profession in a county is marginalized.

For example, the number of doctors in a certain county is less than any other profession. Is that group not marginalised? We also have other groups within the county that could easily fall under marginalised group. You end up having the ideal marginalised group being left out because of this lack of clarity on who belongs to marginalised group. That definition is vital so that we ensure that there is fairness and transparency in nomination of people to serve in the county assembly.

Mr. Speaker, Sir, Sen. Omogeni has referred to IEBC---

The Temporary Speaker (Sen. Mumma): Order, Sen. Osotsi! You keep referring to me as ‘Mr. Speaker.’

Sen. Osotsi: Madam Temporary Speaker, I am very sorry. ‘Mr. Speaker’ is in our tongues, so we keep on--- I am sorry for that, Madam distinguished Speaker.

The challenges we have with IEBC must be resolved. The other day when the courts made a very important determination on the selection panel of the IEBC, we thought that this matter would be resolved. We are now being told that people have also gone to court. We are asking our courts to also look at the judicial interest in a matter before making some of these orders because having IEBC in this country is very important.

We need to have an IEBC like yesterday. We have so many places where by-elections are not being done and so many nominated people who have passed on, but have not been replaced because we do not have IEBC. I implore on the courts to make a decision reflecting what is happening in the environment. That the lack of IEBC is a big challenge. Some of these court cases are meant to derail this process further and ensure that we do not have IEBC in place.

Madam Temporary Speaker, let me also comment Section 7 of the County Government Act, which this Bill seeks to amend by giving clarity to the people who will be nominated under the youth. That one of the two people will be a man and another one a woman. Again, for those nominated under marginalised group, we also have a man and a woman.

The challenge with this is that considering that the elective seats in the county assembly in most cases are men, it may be very difficult to achieve the two-thirds gender rule. That means the size of this county assembly will increase. If we increase the number of men who are elected and nominated, it simply means the number of women who are nominated will also increase and, therefore, expanding the size of the county assembly.

That is one area that Sen. Crystal Asige can look at, so that we do not end up having a bloated county assembly. We have enhanced the number of either gender in the House and, therefore, necessity an increase in the number of the other gender leading to a more bloated county assembly, which means increased wage bill. That is an area that I would request that you look at keenly so that we are not told that we are having a bigger House when we should have a lean House that is representing both genders.

Allow me also to comment on the process that is done by IEBC after election to comply with Article 177 (3), where the filling of special seats under Clause 1B shall be determined after declaration of elected members from each ward.

We have had a scenario where the computation of how many slots a party is supposed to nominate is a formula that is determined administratively by IEBC. This has been misused by IEBC. You sometimes find that a party was supposed to get a higher number, but they get a lesser number in favour of another party. We need to change the Election Act so that we put it the formula for determining how seats will be allocated, instead of leaving it as an administrative issue to IEBC and, therefore, prone for misuse by those who are involved in allocating the seats.

Madam Temporary Speaker, for those few remarks, I support. I again commend VIP, Sen. Crystal Asige, for this wonderful job she has done. You are doing so well. You have justified your nomination by ODM to serve in the Senate.

I thank you.

The Temporary Speaker (Sen. Mumma): The Mover may reply.

Sen. Crystal Asige: Madam Temporary Speaker, I am extremely appreciative to all colleague Senators who have contributed to the County Government Election Laws (Amendment) Bill, (Senate Bills No.2 of 2024) that I am seeking support from the House.

By name, I appreciate Sen. Okiya Omtatah, Sen. Ali Roba, Sen. Olekina, Sen. (Dr.) Khalwale, Sen. M. Kajwang, Sen. Cherarkey, Sen. Omogeni, Sen. Nyamu and of course, my Deputy Party Leader, Sen. Osotsi.

A special thank you goes to my seconder who is the Senate majority leader, Sen. Cheruiyot, not only for the support that he gives me outside of this Chambers in my agenda as a PWD representing special interest groups, but also for the continued support in my work even outside of the Senate. I appreciate my seconder as well as all members who have contributed.

I have listened very keenly and have been taking notes on the different contributions, suggestions and ways to enrich this Bill that have been put forward by Members and I take them very seriously. I want to make sure that I highlight that I will and have listened to every single one and will use each of the contributions that have been put forth this afternoon to further enrich this Bill.

Matters of defining what a marginalised group is extremely important because we do not want to create another loophole and not close this loophole up in future by amending one problem, but then leaving another problem for interpretation in future.

I also heard on issues of how to clean up this proposal a little bit more. I have taken note of that proposal. I take note of the proposals made by Sen. (Dr.) Khalwale regarding how we can further empower PWDs at the grassroots level in the local county governments, even to the extent of having PWDs vote and elect their own representatives, rather than leaving that up to the wider society, who may not really understand issues that bedevil us.

These are issues that have been long-standing in our history such as systematic issues with regards to discrimination and stigmatisation of PWDs. That we should have the key constituent, which is a PWD vote for their representative. That was an interesting and a very powerful contribution from the Senator for Kakamega.

What I have enjoyed as well is listening to every single Senator contribute, not just on a technical level with regards to the provisions in this Bill, but also on a personal level.

As has been said in one way or another by every single person, everyone in this House understands the plight of PWDs, not because they might have one in this House, but because they have been directly impacted or have somebody that they know with a disability, someone they have employed with a disability.

Every single person in this House, every Senator, has PWDs in their county. I thank the elected Senators as well as the nominated Senators who have contributed on a

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personal level. Change will never happen without people understanding viscerally and literally, not just figuratively, the issues that PWDs go through in this country.

It is not just a technical matter; it should be something that every single Senator takes personally. Injustice must be taken personally. I continue to plead and beg for support throughout the next few stages of this Bill proposal from colleague Senators to remember that this is not just about words on a piece of paper, but it is about changing people's lives.

Madam Temporary Speaker, I get several calls from PWDs across this nation, even outside, asking me to support them, help them with their challenges and amend different laws so that they can be recognised and represented, not just quantitatively, but also qualitatively. I am only one person. I wish I could be everywhere and help absolutely every single person who reaches out to me.

Still through this amendment Bill that I am putting forth to the House, I am hoping that when there are more PWDs in the county assemblies who are, as my deputy party leader has said, people of calibre with disability. People who understand matters with regard to disability, who are experts in the field, not just somebody who has a disability, but somebody who focuses and keenly represents PWDs. Only then will people at the grassroots feel represented because I cannot do it alone on the national level.

Every single county must have quality and high-calibre representation in the county assemblies of people with disabilities, youth, and other marginalised groups within the counties. Otherwise, what we are doing at the national level will never be felt on the ground. Twenty-one county assemblies with no PWD representatives?

That should come as a huge shame, not just to the county assemblies, but to us at the national level, to county representatives who are the Senators of these 47 counties. For them, it should be their priority in this House because the county elects them to represent every person in their county and take this as a priority item.

If you are in Kwale, the Senator for Kwale should make this a priority item. Why is Kwale not complying with the Constitution? Why is Nyamira not complying with the Constitution? Why is Nairobi, the capital city with the highest population of not just Kenyans, but Kenyans with disabilities, not complying with the Constitution? That should not be something that should be left to just myself to try and legislate. It should be everyone's business. That is what I have tried my best to highlight in this amendment Bill.

I do appreciate the recognition by all colleague Senators that this is an item that needs to be resolved before the next general elections in 2027. Every day and month that we lose to enact this piece of legislation means that we are getting further away from what the Constitution envisioned in terms of full representation and meaningful participation of every single Kenyan because Kenya is not just yours as a non-disabled person. Kenya is also mine as a disabled person. It is also mine as someone with a neurodiverse disability.

Kenya also belongs to people with autism. It also belongs to people with cerebral palsy. It belongs to people with Asperger's, Down syndrome, epilepsy and stammering. It

belongs to absolutely every one of us. The more we continue ignoring that fact, the more we are leaving out a huge population, the biggest minority group in the country.

Let me also emphasise that when it comes to election cycles, every single candidate will come to us and then disappear once they get what they want. However, I want to remind those political aspirants, young and old, that our vote is not disabled. Why is it that when you come to us for our vote, you do not see the disability. However, once you get what you want, you forget that there are people with disabilities who support you to get to where you are. Our vote is not disabled. Therefore, you should not continue disabling us further in terms of lack of representation on both levels.

Madam Temporary Speaker, I also want to encourage PWDs in the country that this is for them. When they hear about this Bill, I do hope that they push their county assembly speakers and their county assembly representatives to make this a priority issue as well.

People in the public should go to their county assembly and ask: Why is it that you are one of the 21 county assemblies that have no PWD representation? That should be something that the public can absolutely take on and ask them, write letters, petition the county assemblies, ask them these questions and hold them accountable.

In addition, if you are in a political party, every single one of them, including my own, has a disability league. We should be asking these questions and ensuring that in the next elections, which are fast approaching, these issues are prioritized. These issues should be resolved to a level that will ensure that we do not continue to leave this huge minority group behind.

Madam Temporary Speaker, every single party, or at least my own party, the ODM, has a strong youth league. We need young people and other marginalised groups to speak out for themselves. However, we cannot do it alone because we are a minority. The majority of you who are non-disabled can also support us in this agenda in this campaign. We need full representation at the national and county levels.

I am touched by all the sentiments that have been shared about my work in the Senate. I really do not take that for granted because when I work, I want people to know that the narrative of disability can change and should change. I want to be one of the people or one of the many people who can help move that narrative forward.

We are not disabled, but we have exponential creativity; exponential brilliance and capacity to do the job, so long as we are given an up-level playing field. That is important for Kenyans and the world to know, especially in Africa because we are conditioned beyond repair.

It is unfortunate how PWDs are treated across African nations. They are not given leadership that will further our cause, our fight for equality and equity and the push for diversity in leadership.

I also take this opportunity, as I close, to thank my party, ODM, but more than that, I thank my party leader, Hon. Raila Odinga, for giving me this opportunity. I do not see it as something small. I never have because of someone like him, seeing somebody like me, a visually impaired person, the first Senator in this House to have a visual impairment, and him, as well as our elective committee, thinking or believing that I can

do what I am brought here to do, does not fall on deaf ears. It is not for me and not for disabled fraternity at large.

Madam Temporary Speaker, I am extremely grateful for the opportunity. I do hope that for the next few years, however long my stint in politics will last - for sure in leadership in general, which will last for a very long time if it is offered to me - I will continue to fly the flag high for PWDs. Hopefully, with the support of this House, it will start with county assemblies ensuring that we have full representation in all the 47 counties. None should be left behind.

There is no excuse in this day and age to say that we cannot find PWDs or we do not know what they can do. There are millions of us. The point that has been made is extremely important that we need to get away from the idea that disability is only one, two or three categories. There are several. That is why in this particular Bill proposal, I included neurodiverse disabilities, which include all the ones I listed as I was moving the Bill and as I make this contribution.

Like I said, maybe one day we will have a Governor with autism. Why not have that celebrated? Every one of us is affected by PWDs in one way or the other. We impact life in general, not just on a personal level. We can be innovators as well. We can be strong employees. We can support all types of systems and areas of development in this country if we are included.

I want to stop there. Again, I thank every Senator for their contribution. I will continue to work strongly in this field, not just in disability, but also the youth and women. This is because that is the intersectionality that I represent when I stand in this House; none of the three will be left behind if I have anything to say about them.

Disability, youth and women is not just the work I do; it is the life that I live. I believe that having experience always help to enrich and impassion things that an individual does.

In closing, Madam Temporary Speaker, I do wish under Standing Order No.66(3) to request deferment of putting of the question to a later date.

I thank you.

The Temporary Speaker (Sen. Mumma): That is deferred.

(Putting of the question on the Bill deferred)

Hon. Senators, pursuant to Standing Order No.45, I wish to reorganise the sequence of the proceedings, so that we move to Order No.25.

Senate Majority Leader, proceed.

BILL

Second Reading

THE COUNTY PUBLIC FINANCE LAWS (AMENDMENT) BILL (SENATE BILLS NO.39 OF 2023)

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The Senate Majority Leader (Sen. Cheruiyot): Thank you, Madam Temporary Speaker, for this opportunity. I beg to move that the County Public Finance Laws (Amendment) Bill (Senate Bills No.39 of 2023) be now read a Second Time.

This should be declared the day of the county assemblies because we have dealt with Bills that are extremely important to them.

It is extremely egregious that it has taken the Senate this long to consider the pieces of legislation that we are speaking about this afternoon. We have the one that has just been concluded by Sen. Crystal Asige on the constitutionality of the composition of our county assemblies, ensuring that those special interest groups are properly determined, so that we do not have county assemblies without full representation as per Article 177.

I remember this particular one quite well. The first Legislative Summit was the first gathering of Senators and MCAs at a public forum.

Madam Temporary Speaker, you will recall because I know you live in Kenya, that post-2013 when we had the first and the second Devolution Conferences, Senators protested. We protested because of how most governors were running their counties.

As the House properly charged with the mandate to represent county governments and their interests, we felt that the behaviour of many of our governors fell short of the constitutional expectations of what public officers should be. Sitting with them in the first Devolution Conference, Senators actually staged a walkout. I had not joined the Senate at that particular time, but I was a keen follower of what was happening.

In 2016, we came up with what is referred to as Legislative Summit. The reason the name got lost in my mind is because I do not recall the last one we attended. For whatever reason, we have not had that gathering, not that it achieved so much, but because it provided us with an opportunity as the House charged with the constitutional mandate to represent the interests of our county governments and listen to the legislative side of county governments.

If you read through the takeaways after the conference that we had at Pride Inn Paradise Beach Resort and Spa in Mombasa, this particular Bill is one of the first requests that county assemblies made to us. They want financial autonomy, so that they operate devoid of intimidation, blackmail, and threats from governors.

It was not unusual, at that particular time, to find county assemblies staying up to three or four months without receiving salaries because they had disagreed with the governors who operate and have full control of the County Revenue Fund (CRF) accounts. As they say, he who pays the piper calls the tune. Therefore, it was extremely important.

That point on the need for the Senate to implement that particular legislation was conversed many times by speaker after speaker. It is unfortunate that eight years down the line, that is when it is about to see the light of day. I am just laying the basis why this legislation is extremely important.

Madam Temporary Speaker, I feel that we cannot afford to stay any longer. Senators will recall that in this particular session of the Senate, in every impeachment that has come before this House, the disputes that have clearly played out each time

counsels for county assemblies stand on the dock there and counsels for county governors take the floor are financial management of our resources at the county level.

One of the ways in which county assemblies are weakened is by the very basic fact that for them to even just get their salaries, something that is constitutionally and statutory guaranteed. Most time, our MCAs have to sing to the tunes of the executives. It is unfortunate. In fact, as a Senate, we owe them an apology for having taken long to free them from that kind of slavery.

We are completely unfair to our brothers and sisters in the county assemblies. As Parliament, we have our own votes. When we make our determination on issues, there is nothing that the Executive can do.

Despite the fact that we share resources given by the National Treasury, our requests do not go through anybody else. Once the Clerk of this House signs imprest warrants, they go straight to the National Treasury, we get our salaries, mileage allowances and whatever facilitation that we need to perform our constitutional mandate.

Madam Temporary Speaker, can you imagine the humiliation that a clerk of a county assembly has to go through when they apply through the County Executive Committee Member (CECM) for Finance? For example, they may be told that the previous week they did not like the kind of things they were saying. They may be asked why they are not respectful to the Governor or why their Majority Leader is insulting a particular CECM at public functions.

That was not the constitutional design of how county governments are supposed to function. That is why we made the decision at the Senate Business Committee (SBC) this afternoon, to give priority to this particular Bill. We want Members speak to it in order to conclude the process, find a champion for the same in the National Assembly, and if possible, before we break for the long recess in December, grant our county governments the financial autonomy that they have been yearning for too long.

Madam Temporary Speaker, that is why this afternoon, I invite the House to read through this very basic elementary legislation, which can be understood by even non-practitioners of law. We have to do this because we know what our county assembly members have to go through.

Madam Temporary Speaker, there is the office of the Controller of Budget (CoB) which has a representative in every county government. Just to digress a bit, I saw the new Cabinet Secretary for National Treasury and Economic Planning, hon. John Mbadi say something that I have always tried to canvass on this Floor, but no one seems to be paying attention. You will recall, that a few months ago, I asked, the substantive Speaker to invite Madam Margaret Nyakang'o, the CoB to come and have a conversation with the Senators.

The reason I wanted her to appear before this House was because I wanted to understand why we cannot decentralise the operation of her office to all the 47 county governments. Why is it that in this day and age, despite all the advancements in technology, CECMs have to travel from Lamu, Busia, Bungoma, Kericho and other counties to camp in Nairobi for two to three days and sometimes even weeks on end, for them to get access to the funds that are due to them?

Madam Temporary Speaker, I must say that is an extortion racket and it must be broken. She has to find the courage and the conviction that is needed of every constitutional officeholder to know that the Constitution never anticipated a scenario where, a public officer will create bottlenecks for constitutional fruits such as devolution. What is so difficult in having this office decentralised, the same way we are proposing here?

The reason why I speak to this issue is that despite the fact that in every county, there is an officer representing her office, those officers just do the clerical work of approving what has been expenditure, returning the monthly returns, but not on the final decision of whether or not to release the funds.

Sen. Sifuna and all the Senators who are here should speak to their CECMs for finance. Have a conversation with them and ask them what it takes after we have passed the Appropriation Bill in this House. You would expect that money will go directly to Nairobi City County after they have met the constitutional provisions. There is a whole process and CECMs for finance are looking up to us, to provide direction.

That is beside the point. However, I felt that it was important to establish ways in which devolution continues to be undermined by various institutions and individuals that we have granted power to ensure this best innovation in this country since 1963 does survive and live up to the expectation of Kenyans as envisioned in the Constitution, 2010.

Madam Temporary Speaker, this Bill has very few clauses like I pointed out already. Its principal object is to amend the PFM Act, which is CAP 412(A) and establish what is being referred to in this Bill as the County Assembly Service Fund in order to anchor this fund in the PFM Act and ensure that our county assemblies have direct access to monies in the fund. The overarching objective of this amendment is to ensure that the legislative arm in our county assemblies, just like us who serve in the legislature, can effectively discharge their constitutionally guaranteed duties; devoid of any intimidation or threats from any quarters in our county. Part A of this Bill provides for the establishment of this County Assembly Services Fund.

Secondly, this fund will be used to defray administrative expenses of a county assembly for acquisition of proper maintenance of building grounds and other assets of the county assembly, pay salaries and any other purposes provided for in the constitution and any other written law. This fund will also provide for all received savings and accruals to the fund. At the end of each financial year, the balance of the fund shall be passed on to the County Assembly Services Fund and managed in accordance with all the provisions of our Constitution.

Madam Temporary Speaker, it further provides that the Appropriations Bill for a respective county shall be accompanied by a schedule setting for the county's monthly disbursement to the fund from the County Revenue Fund (CRF) and, therefore, ensure that the CoB will have viewer rights. I like this - viewer rights - to see how much is there, but not to provide another control platform whereby, county assemblies again will be told that, instead of just the CECM for finance traveling to Nairobi until they resolve that particular issue, even clerks will now be forced to come to Nairobi to access those funds.

I do not think that was the design of our Constitution. Wherever Madam Margaret Nyakang'o is watching from, the House of the Senate demands that she decentralizes the

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operations of her office so that CECMs do not have to physically travel to Nairobi and stay in her office for two or three weeks trying to get access to funding. That is not what this Constitution expects of that office.

Madam Temporary Speaker, each financial year, a county government entity holding appropriated money that was withdrawn from the county exchequer account or the County Assembly Service Fund, but has not spent it, shall repay the unspent money to the county exchequer account or the County Assembly Service Fund and prepare.

That is the usual basic management of what happens to funds. At the end of every financial year, we also declare what we have not able to spend. Once you declare it, you provide the proper provisions of how you intend to honour those obligations.

What is the consequence of this Bill? This Bill intends to provide a channel through which monies allocated to the county assemblies will be disbursed with the intention being to ensure that the county assemblies are able to access the monies when need arises without solely relying on county treasuries.

Madam Temporary Speaker, I have explained Sen. Godfrey Osotsi why it is extremely wrong for us to sit here as Senators for the last 12 years and allow our colleagues in the county assemblies to go with a begging bowl to the county treasury accounts. It completely undermines their independence and completely exposes them to be manipulated in how they perform their activities and duties.

Madam Temporary Speaker, with this simple amendment to the PFM Act and setting up in place this fund, then our county assemblies will operate better than they normally do. Who will be the administrator? The administrator of the fund shall ensure that payments are made from this fund subject to approvals from the CoB. We are not saying that this is a fund which will be operated outside the confines of the law. We already know that the public finance management and our Constitution grants all powers of public expenditure to the CoB. Once those amendments are filed; they will be contained there. Financial reports will be submitted to the CRA and another copy to the COB.

Madam Temporary Speaker, it is also important that a copy be sent to the Senate and perhaps the committee that will handle this will send. The clerk of the county assembly may in writing authorize---

The Temporary Speaker (Sen. Mumma): The Senate Majority Leader, you have a maximum of 17 minutes to move the Bill.

The Senate Majority Leader (Sen. Cheruiyot): Madam Temporary Speaker, I am even concluding because my seconder is here, though I can see the time.

The Temporary Speaker (Sen. Mumma): You can finish it within the 17 minutes.

The Senate Majority Leader (Sen. Cheruiyot): Madam Temporary Speaker, we can go all the way to 6.45 p.m. I was concluding, I was reading the last remark.

The clerk of a county assembly may in writing, authorize a member of staff of the county assembly to incur expenditure for the efficient management of the county assembly. That is basically what our clerk here does. There are various authorized officers of the various funds of this institution where you can incur expenditure.

Finally, on 109(e), the county treasury shall at the beginning of every month and in any event, not later than the 15th of the month from commencement of the month, disburse monies to that Fund for the expenditure of the following month. Demanding it by way of constitution and by way of statute, so that nobody is controlled from other avenues.

Madam Temporary Speaker, with those remarks, I beg to move and urge my colleagues to support this legislation so that we can dispense of it.

The Temporary Speaker (Sen. Mumma): I hereby extend the Sitting by a maximum of 15 minutes to allow the seconder.

The Senate Majority Leader (Sen. Cheruiyot): Madam Temporary Speaker, I would like to conclude by saying that it is the only fair thing that we can do to our county assemblies. By the time we meet at the next Legislative Summit - I do not know why we have not reported any - we will have something positive to report as having made a significant contribution in making our county assemblies more efficient and perform their constitutionally granted duties in a more responsible manner.

With those remarks, Madam Temporary Speaker, I beg to move and request the Senator for Nairobi City County, Sen. Edwin Sifuna, to second.

I thank you.

The Temporary Speaker (Sen. Mumma): Sen. Sifuna, please proceed.

Sen. Sifuna: Thank you, hon. Temporary Speaker. I rise to second this Bill that has been brought by the Senator for Meru, the Hon. Kathuri Murungi.

Let me begin by saying that it has been my position that we, in this House, must bring legislation that responds to a specific question or problem in society.

This afternoon, I am extremely proud that the Bills that have been debated here address a clear and specific problem. I did not get an opportunity to speak to the Bill by Sen. Crystal Asige. However, as a leader of a political party, the ODM, I know for a fact that we have had problems in many county assemblies. That during the nomination process because it has been left to the IEBC to determine which one of the three categories referred to under Article 177(1)(c) ends up on the nomination list. You find county assemblies that did not have a single person with disability nominated to the House. So, that is a specific and clear problem that the Bill that was promoted by Sen. Asige seeks to address.

Madam Temporary Speaker, I do not know a single Senator who has not been approached by their MCAs and even the leadership of a county assembly to address the question of financial autonomy for the oversight body at the county assemblies.

The functions of the county assemblies are no different from the functions of the Senate and the National Assembly. It is oversight, representation and legislation. Even in this House, we have had conversations about enhancing the financial independence of the Senate. Just last week, I saw people expressing concern about this 'animal' called Parliamentary Joint Services (PJS). At some point, maybe we, as Senate, need to be divorced from that animal so that we can have our own resources to be able to run our affairs.

Imagine how difficult it is for the county assemblies because the Senate Majority Leader forgot to mention a famous form called Form C. At the county level Form C is the

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form that the County Executive Committee Member (CECM) responsible for Finance and Economic Planning must sign for you as a Clerk or the leadership of the Assembly to be able to access your funds.

We have been told even here in Nairobi City County by our own MCAs that the Form C has been used very punitively by the Executive, where you have to run around the entire country, even the world, looking for the signature of the CECM. You will be told today he is unwell, tomorrow he has travelled, tomorrow he is attending to a certain conference and that, he will not be able to come back to the county until a certain time.

Madam Temporary Speaker, if you are the people to oversight the Executive, you cannot be at the whims of the Executive when your operations money, even money for the salaries of the MCAs is at the whims of the Executive

So, I am proud and sure when we all shall go back to the counties, we will have something to report to the county assemblies. That these are things that we have done in order to enhance their capacity to oversight the county executive. The situation as it is right now is that county assemblies are extremely constrained in their oversight responsibilities because of the current obtaining situation.

It is why we have county executives. I do not want to mention names because people will start crying that want to even control the leadership of the Assembly. That if you do not co-tie to the wishes of the Governor in your Assembly, he can as well decide that this Assembly will run to a halt. All your activities will ground to a halt. I have cases where the county governor insists on even designating who is the Majority Leader, the whip, who is in the leadership or the Speaker of the House. If you are not towing to his life, he makes sure that life is extremely difficult for you.

Madam Temporary Speaker, we have been to county governments and county assemblies. Even this drinking water that we find plenty here at the Senate, you are told we do not have a budget to buy water, for the Members, forget about even salaries and parks. If you just look at the way the Assembly is operating, you know that they have been put on a very short leash by the Governor. If you are not playing ball, you will not get those resources.

For me, it is a day of pride. That we can pass legislation that frees the assemblies across the country to properly function, especially in their supervisory roles.

If I can go to the specific provisions of the proposals in this particular Bill, I will start by Section 34 where we are transferring the County Assembly Fund from the County Assembly Services Act by deleting it from there and entrenching it in the Public Finance Management Act.

If you read the language of the new section--- I will read it so that you see the difference and the distinction. The Bill provides for the establishment under Section 109(a) of the County Assembly Fund, and it is to be in the Public Finance Management Act. It starts at subsection (2) by saying-

“There shall be paid into the County Assembly Fund, such monies as may be appropriated by the County Assembly from the County Revenue Fund established for each county.”

Madam Temporary Speaker, if my gadget can allow me here, I will read to you the language of the current Bill and understand where the problem is.

The current Section 34 of the County Assembly Services Act says:

“There shall be paid into the County Assembly Fund, such monies as may in the future be appropriated from the Revenue Fund established for each county.”

If you listen to the language that is employed in this new Bill, it tells you that there is a step forward in terms of ensuring that the powers of the Assembly to appropriate will be returned to the House. That because it is the County Assembly just like the National Assembly appropriates money for the National Government, it will be the responsibility of the Assembly itself to appropriate those monies from the County Treasury or the County Revenue Fund into the County Assembly Fund. This is big progress in my view.

If you look at 109(e), it designates the administrator of the County Assembly Fund, to be the Clerk of the House. This is very important because of the desire for us to have autonomy of the Assembly over their own monies.

Madam Temporary Speaker, under 34(5), this amendment here proposes that the fund that we are talking about, shall be an account at the Central Bank of Kenya, and not a County Account that can be played around with here by the local politics.

It is, therefore, important for us to support the amendments that are being proposed here because it goes to achieve a specific role that we have fought for a long time.

Madam Temporary Speaker, at the County Public Accounts Committee (CPAC), we have also had problems of County Assembly funds appropriated to the County Assembly, being returned back to the exchequer once the Financial year closes. At the Senate CPAC, there were cases where the exchequer, the National Treasury, would release monies on the day of the closing of the financial year. We have had cases of county assemblies who have been given money, for instance, for construction of county assembly buildings, parking and other development projects at the county assemblies. Once the clock strikes midnight on the 30th of June, if that money is unutilized, it is swept back to the national government.

In this particular Bill, I would like to refer you to the specific clause. Clause 109(a) says:

“Any unutilized balances in the County Assembly fund shall not lapse at the end of the financial year, but shall be retained for the purposes for which it was established.”

So, if they had been set aside for the construction of County Assembly Chambers or improvement of any works around the County Assembly, they cannot be swept back.

Under Clause 109

The Fund shall be used-

(a) To defray the administrative expenses of the County Assembly;

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Which is something that the Senate Majority Leader has spoken about while moving the Bill.

(b) For the acquisition and proper maintenance of buildings, grounds and other assets of the County Assembly.

This is a step in the right direction to enable the Assembly itself to determine its priorities in terms of construction and the welfare of its Members.

Under Clause 109(c), there is another reiteration. It reiterates what I have read to you before. It states that-

“All receipts, savings and accruals to and the balance of the County Assembly Fund at the end of each financial year shall be retained in the County Assembly Fund and applied in accordance with the Constitution and this Act.”

I think that this is something that we should all support.
I have seen in Clause 109(e) that-

“The County Treasury shall, at the beginning of every month, and in any event not later than the fifteenth day from the announcement of the month, disburse monies to the County Assembly Fund for the expenditure of the following month.”

There will now be an Authority to Incur Expense (AIE) holder at the county assemblies to incur expenditure for the efficient management of the county assembly. This is something that is to be supported.

There are also provisions for guidelines on how that authority to incur expenditure shall be executed and, therefore, it is not a blank cheque to anyone.

This is a very vital proposal and I hope members of this House will take note of this proposal.

109(e) sets timelines for which the County Treasury must release money to the County Assembly Fund; not of the current but of the following month. MCAs will, therefore, plan for activities without having to run around chasing people.

It is also under Sub-clause 2 of that specific clause the county assembly will be required to pass cash disbursement schedules the way we pass in the Senate for the county allocation of revenue.

The problem is we have faced a specter where the National Treasury never respects the disbursement schedule that is passed by this House. All these stories we hear about left disbursement and so on, unfortunately for us, for us to make the evolution work, as a Senate, we must continue insisting that money needs to be provided for in time and under the disbursement schedule so that these counties can be able to operate.

I want to conclude on the question of viewer rights. It is something that the Mover spoke to; that the CoB shall have visibility or viewer rights on all transactions and they include even the transactions of the Executive.

I am looking for that specific clause. The Senate Majority Leader, I do not know if you remember where it is.

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The Senate Majority Leader (Sen. Cheruiyot): It is Clause 119(a).

Sen. Sifuna: Yes, it is here. Clause 119(a) states that-

“The Controller of Budget shall have viewer rights access to all bank accounts maintained by the county executive, the county assembly and all other county government entities.”

I am sure Sen. Osotsi will agree with me that that includes all the water service providers. So, I think this is a very progressive proposal.

I pray that Members will support the same. I second.

(Question proposed)

ADJOURNMENT

The Temporary Speaker (Sen. Mumma): Hon. Senators, it is now 6.45 p.m., and having concluded the business for which I extended the hours of sitting pursuant to Standing Order No.34(2)(a), the Senate stands adjourned until tomorrow Wednesday, 30th October, 2024, at 9.30 a.m.

The Senate rose at 6.46 p.m.