

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 30th October, 2014

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

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

PRAYERS

PAPERS LAID

Sen. Billow: Mr. Deputy Speaker, Sir, I want to seek a Statement from the Senate Majority Leader on the Mining Bill (National Assembly) Bill No.9 of 2014.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Billow, we are not yet on Statements. We are on Papers. I thought you had a Paper to lay on the Table.
Sen. Kivuti.

REPORT ON MASONGALENI SETTLEMENT SCHEME IN MAKUENI COUNTY

Sen. Kivuti: Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate.

A Report on the Ministerial Statement on Masongaleni Settlement Scheme in Makueni County.

(Sen. Kivuti laid the document on the Table)

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Members, you will recall that we have dealt with the Masongaleni issue before and further information was sought from the Chairperson of the Committee. This is not a Paper in the ordinary sense that is laid on the Table of the House to be discussed as a Motion. This is just further information. If you want to know anything more on what happened to the settlement scheme in Masongaleni then you can take the Paper, read it and understand. However, in the usual way of Statements, if you wish to seek any clarification from the Chairperson of the Committee, you can do so. I just want to clarify to you that normally when Papers are laid on the Table of the House, it is followed by a Motion which is then debated. This is different because it is further information. If you are interested in following it up, then

you are quite free to do so. Otherwise, you can peruse the Paper and get the information you may want to have.

Sen. Mutula Kilonzo Jnr., are you rising on this issue or a point of order? You look uncertain. What exactly do you want?

Sen. Mutula Kilonzo Jnr.: It is your inquiry. It looks like I should not have asked. I apologize. Do I have the Floor?

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

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, the Chairperson should clarify because there were supplementary questions that were supposed to be responded to. If that Paper seeks to answer those supplementary questions, that clarification should be given so that the matter is dispensed with. I sat in the meetings with the Cabinet Secretary and the National Land Commission (NLC). There were certain issues that were brought forth by the both the Minister in charge of Lands, Housing and Urban Development and the National Land Commission. I have a feeling those issues are not in this report. If they are there, the Chairperson should tell us.

Secondly, I would like to know if he was going to bring these supplementary answers for our interrogation.

(Sen. Sang stood up in his place)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Sang, is it on this issue?

Sen. Sang: Mr. Deputy Speaker, Sir, I have some Papers to lay.

The Deputy Speaker (Sen. Kembi-Gitura): Your time will come because you are in the appendix. There is no other intervention on that issue.

Sen. Kivuti, what do you have to say?

Sen. Kivuti: Mr. Deputy Speaker, Sir, I have another Paper to lay, but now that Sen. Mutula Kilonzo Jnr. has raised the issue of what is contained in the Paper, I would request that he be given time to interrogate it because the recommendations therein touch on the investigations that we did. I would like to bring it to your attention that the Senator was always with us when we were doing investigations. That is very good for the House. We could not stay forever looking for each and every other thing, but the report in itself is full.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I think that answers my question. I will ask for a copy of the report. If I have any other issue, I would raise them through the normal manner.

The Deputy Speaker (Sen. Kembi-Gitura): What I think we should do because this is important and I recall that there was a lot of interest in it, is that anybody who is interested in the report can go through it. On Tuesday next week, Sen. Kivuti, the Senators who wish to raise any issue on that report can do so through interrogation or interventions. Is that reasonable?

Sen. Kivuti: Mr. Deputy Speaker, Sir, the committee is engaged in another matter in Naivasha on Tuesday. Therefore, I would request the Chair to give us an alternative date within the week.

The Deputy Speaker (Sen. Kembi-Gitura): The Clerk's office will note that and it will come up when you are here. It would be good if you would be here on Wednesday afternoon so that it can be interrogated.

Sen. Kivuti: Very well, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): You said you had another Paper to lay?

Sen. Kivuti: Yes, Mr. Deputy Speaker, Sir.

REPORT ON CHEPCHOINA SETTLEMENT SCHEME
IN TRANS NZOIA COUNTY

Sen. Kivuti: Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate.

A Report on the Ministerial Statement on Chepchoina Settlement Scheme in Trans Nzoia County.

(Sen. Kivuti laid the document on the Table)

Mr. Deputy Speaker, Sir, this also falls in the same category as the other Paper I have just laid.

The Deputy Speaker (Sen. Kembi-Gitura): Who had sought the Statement?

Sen. Kivuti: Mr. Deputy Speaker, Sir, it was sought by Sen. Mukiite. We were involved in the deliberations with her and the Senator for Trans Nzoia during our meeting with the Ministry.

The Deputy Speaker (Sen. Kembi-Gitura): The order will be the same. Now that you have laid the paper and it is a bulky document, let anybody who wants to look at it do so then it can be interrogated on Wednesday, next week.

Sen. Kivuti: Most obliged, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Are there any more Papers to lay?
Sen. Sang.

PAPERS ON GENERAL REGULATIONS

Sen. Sang: Mr. Deputy Speaker, Sir, I beg to lay the following Papers on the Table of the Senate.

1. The Inter-governmental Relations General Regulations, 2013.
2. The County Governments General Regulations, 2013.
3. The Urban Areas and Cities General Regulations, 2013.
4. The National Construction Authority Regulations, 2014.

(Sen. Sang laid the documents on the Table)

The Deputy Speaker (Sen. Kembi-Gitura): I assume there are no more Papers to lay.

Next Order!

STATEMENTS

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Billow, you can now seek your Statement.

THE NEED FOR THE MINING BILL TO COME TO THE SENATE BEFORE ASSENT

Sen. Billow: Mr. Deputy Speaker, Sir, I rise to seek a Statement from the Senate Leader of the Majority on the Mining Bill; this is the National Assembly Bill No.9 of 2014.

Mr. Deputy Speaker, Sir, this Bill was passed by the National Assembly and is reportedly headed to His Excellency, the President for assent. The Mining Bill touches on counties in every aspect and in particular regarding the revenue sharing between the national Government, the county governments and communities. Consequently, in that regard, the Bill should come to the Senate pursuant to the provisions of Article 110.

Sen. (Dr.) Zani has a Bill called the Natural Resources Benefit-Sharing Bill, 2014, that also addresses similar issues regarding benefit-sharing from natural resources which touches on issues also raised in the Mining Bill. In view of the above, my request is: Could the Senate Majority Leader undertake to assure that House that the Mining Bill comes to the Senate before it is assented to by His Excellency the President in accordance with Article 110 of the Constitution and that the President be advised immediately that assenting to that Bill before it is debated by the Senate would be in breach of the Constitution?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Mutula Kilonzo Jnr., do you have an intervention? Are you on a point of order?

Sen. Mutula Kilonzo Jnr.: I do not know whether I pressed the right button, but I want to raise a supplementary question to what Sen. Billow is addressing.

The Deputy Speaker (Sen. Kembi-Gitura): Senate Majority Leader, before you do so, are you going to give an instant answer or are you going to pend it? I just want to understand from you how you propose to proceed on this issue.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, it is a complicated matter. Neither of those two options---

The Deputy Speaker (Sen. Kembi-Gitura): Order! You are not standing there to give an answer now.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I am standing here to respond to that request.

The Deputy Speaker (Sen. Kembi-Gitura): That is the point I want to know. Are you going to respond now?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Then let us take points of order first.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, the matter raised by Sen. Billow raises very serious issues. From my reading of the Bill, the preamble itself quotes Article 66 of the Constitution. Article 66(2) states that:-

“Parliament shall enact legislation ensuring that investments in property benefit local communities and their economies.”

Mr. Deputy Speaker, Sir, there cannot be anything more clearer than Article 66(2) which states that Parliament, which includes this Senate, shall have an interest in any legislation passed which would regulate use of land in counties or interest over right of land. So, in just fortifying what Sen. Billow has said, this Statement and whatever the Senate Majority Leader is going to say, would have a bearing on what we, as this Senate, should do.

Sen. (Dr.) Zani: Mr. Deputy Speaker, Sir, this is a Bill that clearly touches on counties. Right from the beginning, concurrence should be sought between the two Speakers.

The Deputy Speaker (Sen. Kembi-Gitura): Are you rising on a point of order?

Sen. (Dr.) Zani: I am rising on a point of order and adding on to the Statement as well.

I was saying a classification should have been made whether this is a Bill concerning counties. We need clarification about that status so that moving forward, we will know what went wrong and why the Bill did not come to the Senate.

Hon. Senators: On a point of order!

The Deputy Speaker (Sen. Kembi-Gitura): I have all your points of order. They are on the screen.

Sen. Sang: On a point of order, Mr. Speaker, Sir. Further to that and close to the point of order and further clarification sought by Sen. (Dr.) Zani, is to ask the Senate Majority Leader to confirm whether the two Speakers sat and agreed on the status of that Bill. More importantly, he should tell us whether the other Bills before the National Assembly went through that constitutional process of the two Speakers sitting down and making a decision on the same.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Sang, you know very well that many Bills have by-passed that Article 110(3). So, I would propose that we only deal with issue raised by Sen. Billow because there is no point of be-labouring the fact that all of us know that there are very many Bills that have been assented to without coming to the Senate or without having gone through Article 110(3). I have heard you and I am addressing your request for the other Bills which are now Acts of Parliament.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, this matter is so serious because it begs the question, do the two Speakers of the two Houses of the Republic of Kenya ever exercise Article 110(3) of the Constitution of Kenya? If they were, then it would have occurred to the Speaker of the National Assembly that the Natural Resources Benefits-Sharing Bill, sponsored by Sen. (Dr.) Zani, which has already gone through the First Reading, that they sat sometime with the Speaker of this House and made a determination that the Bill is a matter concerning this House.

I have read both Bills and the Mining Bill emanating from the Lower House seems to be speaking on some of the issues, but leaving out many other issues that Sen.

(Dr.) Zani captured in her Bill. The Speaker of the Lower House would have told the Lower House that this matter is already in the Upper House. This might be difficult for the Senate Majority Leader to speak to it, but this concerns me. However, I want to ask him; concerned with the challenges we have been faced over Article 110(3) I moved on and drafted a Bill called the Determination of Bills Concerning Counties Bill.

Mr. Deputy Speaker, Sir, the Senate Majority Leader should tell us why he has refused to give life to that Bill which has been pending for over eight months. This is serious. We have to be very loud because some people want to belittle the Senate. This is, obviously, a matter that is---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, I will not allow you to debate. Your intention is to ride on the question or statement sought by Sen. Billow Kerrow. You are now taking longer than him in seeking the statement.

You must wind up. I have quite a number of points of order.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, this is not a one-off thing. This House, you will all remember, passed a Motion that spoke to the need for us to establish universities in every county. We passed it over one year ago. I was shocked that this week, the same matter came before the National Assembly and it was discussed. It costs money for business to be transacted in either House. Why are the Speakers sleeping? Why are they not consulting because public funds are being lost?

The Deputy Speaker (Sen. Kembi-Gitura): The only reason I have allowed you to speak for long is because of the importance of the issue before the House right now. I would like us to ventilate it as seriously as possible. Normally, I would not allow you to take long on a point of order or on an intervention of somebody's statement.

Sen. Obure: Thank you, Mr. Deputy Speaker, Sir. The issue which has been raised by hon. Billow Kerrow is of grave concern to the counties. Only yesterday, there was a public hearing in respect to the Bill brought by Sen. (Dr.) Zani. If you attended that meeting, you would be amazed by the amount of enthusiasm demonstrated by the counties. The emphasis was on the need for harmony and coordination in the exploitation of natural resources.

What is about to happen does not add up to harmony and coordination that we are thinking about or what the general public was thinking about yesterday. This will create a lot of problems going into the future. Therefore, I want to request the Leader of the Majority and, indeed, the Office of the Speaker to ensure that every effort is made for the Constitutional process to be followed to the later to avoid unnecessary conflict and to problems in the smooth management of that sector.

Sen. Elachi: Thank you, Mr. Deputy Speaker, Sir. While I want to agree with Dr. Zani, it is important for the Speaker's Office to guide us on whether there was concurrence on the same and if we should proceed with her Bill. I also want to draw her attention to Article 69 which says clearly that;

The State shall-

(a) ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits."

If you look at the Bills, you will see that Dr. Zani's Bill dwelt so much on the research to ensure that the benefits that are accrued within this county are shared.

The other Bill talks about national issues. Therefore, it will be important, even before we ventilate, for the Speakers Office to guide us. Was this a pure national Bill that was in the National Assembly or is it a Bill that they did not agree on and, therefore, moved on? The Clerks-at-the-Table must help the House. I heard the Senator saying that there was a Bill, which I also remember very well. When I watched them debate yesterday, I left thinking that, probably, we are not sharing information with both Houses to show that this is something that has already moved on. Therefore, we do not need to replicate some of the efforts as we move on.

Sen. Nabwala: On a point of order, Mr. Deputy Speaker, Sir. I just want to add my voice to this issue. I was a Member of the *ad hoc* committee that was set up last year. It has been in the public domain that Sen. (Dr.) Zani had brought a Bill on natural resources to the Floor of this House.

The Bill has taken the Committee Members to various counties to determine the benefit sharing of royalties. We went up to Australia. The Government has spent money to finance us to travel. Therefore, I do not think that we should wish away this Bill. The Speakers need to sit together so that we look at sealing the gaps in the other Bill. We should see how we can enact the Bill that targets the benefits sharing of royalties by Sen. (Dr.) Zani.

The Deputy Speaker (Sen. Kembi-Gitura): The Senate Majority Leader, you have heard the concerns of your colleague, Senators. You should now deal with Senator Billow Kerrow's issue.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I take this opportunity to thank Sen. Billow Kerrow for requesting this statement. This matter is not new to this House. We have debated the matter before and statements around this issue of determination of Bills have been sought and provided before. I just want to emphasize that the fact that this matter has been raised again, is a testimony that it has not gone away. The issue is very alive with us. It is also a testimony of what we must do, perhaps, what we have not done before so that we deal with it, once and for all.

Having said that, the question of Bills coming either to the Lower House or this House, is not a function of either the Senate Majority Leader or the National Assembly Majority Leader. We need to understand that, first and foremost. Initially, you will remember that in one of our *Kamukunjis* before, we demonstrated the pervading notion that this is a function of the Attorney-General or the Executive arm. Once the Bills reach Parliament, the Constitutional responsibility of deciding and determining which Bills go to which House is that of the Hon. Ekwee Ethuro, Speaker of the Senate together with the hon. Justin Muturi, Speaker of the National Assembly.

Therefore, if there is any failure, stalemate or lack of movement and progress on this matter, the blame must lay squarely on the doorstep of Justin Muturi and Ekwee Ethuro, jointly and severally.

Mr. Deputy Speaker, Sir, this issue is not looking nice on us even in the eyes of the Republic. It is not looking nice on the Lower House and it is also not looking nice on the Senate. I want to take this opportunity to say that, once again, I will do whatever I

can, including advising the President not to sign this Bill. This is because it is unconstitutional to sign a mining Bill passed by the National Assembly without the input of the Senate of the Republic of Kenya. This time round, that advice will be in writing for the record because we have to move to another level, and that way, we are able to cushion everybody. I think we have had blame games for a long time.

Mr. Deputy Speaker, Sir, although it is not my responsibility to determine which Bill goes to which House, I will be interested in seeking information from the two Speakers and report to this House on Tuesday on this matter of the Mining Bill. I beg that I be allowed up to Tuesday, next week. I know that the matter is urgent, but just for the avoidance of doubt between now and Tuesday, I will have reached the President and given my advice on this matter in writing and orally.

Sen. Billow: Mr. Deputy Speaker, Sir, I want to thank the Senate Majority Leader. It is a very interesting answer. First, this House has a leadership that comprises the Speaker, the Senate Majority Leader, the Senate Minority Leader and others. I want to remind Members of this House that there was a statement issued by the Senate Majority Leader here a few months ago before we went on recess that there were discussions with the Attorney-General and other people in the Executive. This was the reason why I targeted this Question to the Senate Majority Leader because there was an undertaking here and the HANSARD can bear us out. However, my statement specifically is not about the concurrence because that level is already gone with respect to this Bill. The Bill has already been concluded and it is going to the President.

Could the Senate Majority Leader representing the Government in this House undertake to make sure that the President does not assent to this Bill? If it comes to him, he will refer it back to this House in accordance with the Constitution, because he undertook to abide by the Constitution. I appreciate the concern of the Senate Majority Leader that he will get to the President as soon as possible. However, I want him to assure the House that he is really going to do that in writing and we will get that Bill here.

Thank you.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I rise on Standing Order No.157 concerning the presentation of Bills for assent to the President. Since the public is watching, may I read the provisions of that order? It says:-

“The Speaker shall sign a Bill certified under Standing Order No.153 (*Conclusion of Consideration of amendments by the National Assembly to Bills originating in the Senate*) and shall refer the Bill to the President for assent within seven days of its passage by the Senate.”

When the Senate Majority Leader who we all respect very much as a professor of law tells the country that he is going to prevail upon the President so that he does not give assent to the Bill that emanated from the “Lower House”, is he right to mislead the House knowing very well that he has no *locus standi* whatsoever in law to advise the President on the fate of a Bill that has been concluded in this House or in the “Lower House”?

Mr. Deputy Speaker, Sir, because we are building institutions in this House, I want to disagree with the Senate Leader of Majority that the days of KANU when Kariuki Chotara would brag how he would advise Moi and so on are over.

The Deputy Speaker (Sen. Kembi-Gitura): Order Sen. (Dr.) Khalwale! You are discussing things that are not before this House and it is not necessary to make that address that you are making now. The Senate Majority Leader, rightly or wrongly, and I dare say rightly, has said that because this matter is urgent, he will come back to the House to give an answer to the House. If the House is not satisfied with the answer that he will give, then you will have another chance to intervene. I do not want anybody to take us down history lane on those issues because this is not the correct platform for that.

The Senate Majority Leader has made it clear how he proposes to proceed. If I heard him right, he did not say that he is going to prevail upon the President, he said that he is going to write to the President and give his understanding of Article 110 (3). I did not hear him say that he is going to prevail upon the President. So, I think the line you are taking is not helpful in the circumstances. I am not going to allow that point of order because it is not a point of order. You only want to make an address to the House and I am not going to allow you.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I have risen on Standing Order No.157.

The Deputy Speaker (Sen. Kembi-Gitura): I read it with you when you were reading it and it is quite clear that the Speaker of our House will send the Bill to the President within seven days for assent.

Sen. (Dr.) Khalwale: Exactly!

The Deputy Speaker (Sen. Kembi-Gitura): But there is no Bill emanating from this House. We are not quoting the “Lower House” Standing Orders, but our own Standing Orders. There is no Bill emanating from this House at the moment.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, debate in this House is also---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale. Do you want us to engage in an argument, because I have already made a ruling that I will not allow that point of order?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, you should rule me out of order if Standing Order No.157 that I have quoted---

The Deputy Speaker (Sen. Kembi-Gitura): Maybe I have taken too long to tell you that you are out of order because the Senate Majority Leader has said that he is coming back on Tuesday to deal with that situation.

Sen. (Dr.) Zani: On a point of order, Mr. Deputy Speaker, Sir. Mine is a general comment and concern about the way the two Houses are operating and that the systems are not working. I remember sometime back, one step forward we agree--- There was a time we actually had all the Bills coming and we were given paper work to show us which Bills had been agreed to and which ones were going to the National Assembly and then to the Senate. Then all of a sudden that seems to have disintegrated.

I think we need to find a way forward so that we have a sustainable solution to this, so that it does not go on forever. This is a critical issues and it hinges on the image of the Senate. We almost feel that we wish we could handle our own Bills and sent them for assent to the President, which is impossible as it stands. This is a matter of grave concern that we need to address, once and for all. Maybe as the Senate Majority Leader

seeks direction in this particular matter, we need to seek long term direction with regard to interaction between the two Houses.

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, if you listened carefully when Sen. (Dr.) Khalwale was raising his point of order, he referred to the Senate Majority Leader as Kariuki Chotara; God rest his soul in peace. However, is in order to throw the name of the Senate Majority Leader in bad repute? Whatever his assessment was of Kariuki Chotara, I think he should withdraw because this is on record.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, did you refer to the Senate Majority Leader as Kariuki Chotara?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I do not understand whether the Standing Orders of this House have a meaning on two points. One can only be challenged the way the hon. Member is doing immediately after an assertion has been made. Secondly, when I stood to catch your eye, I specified the Standing Order. The Standing Orders of this House should work unless some people have an attitude.

Sen. Elachi: Mr. Deputy Speaker, Sir, is my Senator in order---

The Deputy Speaker (Sen. Kembi-Gitura): Who is your Senator?

Sen. Elachi: The Senator for Kakamega County, Sen. Boni Khalwale. Is he in order to say that people have an attitude when we are doing very serious business? He is taking us on a side show and instead of the media getting the true story; they will get the side shows. We must be serious with this institution. We are dealing with a serious issue here.

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

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

Sen. (Prof.) Sang: Mr. Deputy Speaker, Sir, Sen. (Dr.) Khalwale has made a claim that some people have an attitude making reference to either the Senator who raised the point of order or the Chair. Can he substantiate who in this House he referred to as "people" and what attitude is he talking about?

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, the onus and really the responsibility of the Speaker of this House is to determine whether a point of order raised should be replied to immediately or even after. Is Sen. (Dr.) Khalwale in order to assert upon himself the powers of the Chair when we know he is a back bencher here?

(Sen. Haji stood up in his place)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Haji, do you have a point of order?

Sen. Haji: Mr. Deputy Speaker, Sir, I have a point of order. Sen. (Dr.) Khalwale is totally out of order. This is an honourable House. It is not proper all the time to refer to KANU and Kariuki Chotara who is dead. People should come up with ideas that will unite this country. I agree with Sen. (Dr.) Machage that Sen. (Dr.) Khalwale should withdraw and apologise because this is really not in order. This is not the first time. If we say certain things people will jump up because KANU is no longer there, it was *Baba na Mama*. He would not have been educated without KANU. He should be grateful.

Sen. Obure: Mr. Deputy Speaker, I want to make an appeal based on what Sen. Elachi said. We were discussing very serious matters. We seem to have deviated a little bit. I would like to request that we refocus on where we were rather than these other issues.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. Obure. We are and will refocus. The only trouble is that we cannot leave out an issue that is pending.

Sen. (Dr.) Khalwale, Sen. (Dr.) Machage says that you referred to the Senate Majority Leader as the late Kariuki Chotara. I do not know in what context. You have used the words “some of us here have an attitude.” I do not know whether you were referring to your current Chair or other Members contributing. If you did, I would find without hesitation that, that is dishonourable conduct that you need to withdraw and apologise. Having said that, I am not very clear on what is in the HANSARD, at the moment, as I sit here. I do not want to judge you or anybody else harshly or wrongly because you are the one who knows the words you said. I will check the HANSARD. This matter will be revisited on Tuesday at 2.30 p.m. If you used those words, then you will withdraw and apologise at that time. If you did not, checking from the HANSARD, then of course, there will be no need to withdraw and apologise. In my opinion, and I have said this on many occasions, we need to respect the House and each other. All of us are honourable Senators of the Republic of Kenya.

When you say, because I heard this, that some of us have an attitude, without indicating who it is, then I think it is very unfortunate coming from an hon. Member of this House. So, we shall keep this matter pending up to Tuesday. Depending on what the HANSARD says, when it is produced, then of course, there will be the consequences of either withdrawing and apologizing or letting the matter rest if, indeed, you did not use those words. At the moment, I leave it to your conscience to decide what is good for you and for this House when we conduct the business of this House.

The matter rests at that. I will not entertain---

Sen. (Dr.) Khalwale: On Tuesday, Mr. Deputy Speaker---

The Deputy Speaker (Sen. Kembi-Gitura): What about Tuesday?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I just want to bring it to your attention that I apologise to the office of the Speaker because on Tuesday, I will be unable to attend the House. I will not be able to attend the whole of next week. If the matter can come up the week after.

The Deputy Speaker (Sen. Kembi-Gitura): The matter of the HANSARD will come up on Tuesday.

Sen. (Dr.) Khalwale: But then I will not be in the House to respond.

The Deputy Speaker (Sen. Kembi-Gitura): Order! I said the matter of the HANSARD will come up on Tuesday. The Speaker will make his ruling at that point. If you are not in the House, nobody will penalize you. I assume that all of us will know where you are. So, the matter of the HANSARD will come up on Tuesday, then the others will be dealt with thereafter.

Sen. (Dr.) Khalwale: Thank you, Mr. Deputy Speaker. I stand by my words. I did not make any adverse reference to any Member or the Chair.

The Deputy Speaker (Sen. Kembi-Gitura): Order! Sen. (Dr.) Khalwale, the matter is closed for now.

We are still on the Order on Statements. Sen. Mositet, do you have a statement?

RECRUITMENT OF THE VICE CHANCELLOR OF
THE UNIVERSITY OF NAIROBI

Sen. Mositet: Mr. Deputy Speaker, Sir, I stand to seek a statement on behalf of the Senator of Murang'a County, Sen. Kembi-Gitura, who is the Chair now.

I wish to seek a statement from the Standing Committee on Education on the advertising, short listing, interviewing and appointment of the Vice Chancellor, University of Nairobi. There have been many reports both in the electronic and print media about the appointment of the Vice Chancellor of the University of Nairobi. It appears that before and after the interview for the position, crucial information leaked from the University's Council on how the candidates scored before the same information was relayed to the candidates and the Cabinet Secretary in the Department of Education. It is also obvious that a lot of pressure is being put on the Cabinet Secretary on who to appoint or recommend for appointment to the position. The pressure appears orchestrated to force the appointment of a specific person.

In the statement the Chairperson should report on the following:-

(a) Whether he is satisfied that the Council of the University of Nairobi acted correctly in conducting the interviews itself instead of having an independent body conduct the same as has been the norm in the past? Did the Council have the capacity to interview for such a crucial position? If so, why has there been so much acrimony?

(b) Whether he is satisfied of the foregoing notwithstanding that the interviews were conducted fairly and that all the candidates were treated equally and that there was no conflict of interest from among the Council Members?

(c) How crucial information on the interviews leaked before it reached the candidates and the Cabinet Secretary? If the leakage was from the Council itself; whether he is satisfied that the Council has the moral authority to continue being in place?

(d) Whether the whole process should not be annulled and the position advertised anew to allow for a fair and transparent process leading to the appointment of the Vice Chancellor?

The Deputy Speaker (Sen. Kembi-Gitura): Who is from the Committee on Education?

Sen. (Prof.) Lesan: Thank you, Mr. Deputy Speaker, Sir. This is a current event and a very important and serious issue for that matter as it touches on the integrity of individuals. We are going to take about two weeks to give an answer to the House, if that is acceptable.

The Deputy Speaker (Sen. Kembi-Gitura): I think two weeks would be too long, do you not think so? Considering it, it is topical. As you said, these are issues that are being discussed throughout the country today.

Sen. (Prof.) Lesan: Mr. Deputy Speaker Sir, I was thinking that maybe there would be hesitance to give us an answer immediately by the powers that be because the matter is ongoing at the moment.

Sen. Billow: Mr. Deputy Speaker Sir, there cannot be “powers that be” when you are talking of Parliament which enjoys the will of the people of Kenya. Giving an answer two weeks hence would be locking the stable too long after the horse has bolted. The Senate must exercise its power to demand an immediate answer as a matter of urgency so that before the matter is concluded the Senate can give appropriate direction on the matter. That is the whole essence of this question.

Sen. Sang: Mr. Deputy Speaker, Sir, my point is exactly as the one raised by Senator Billow Kerrow; four days should be enough for the Committee to respond. This is an urgent matter. We do not want to receive an answer once the entire process is done.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, similarly I represent the University of Nairobi and two weeks is too long. There is a lot of anxiety both by the students and the teaching faculties. Therefore, the determination of this is very critical. I plead that he is given less time.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Prof.) Lesan, that Statement is sought by the Senator for Murang’a County who is also sitting here. As Sen. Billow Kerrow and Sen. Mutula Kilonzo Jnr. have said, you may be closing the stable long after the bulls have bolted. Why can you not give this answer on Wednesday, latest Thursday or assure us that nothing will happen between now and then?

Sen. (Prof.) Lesan: Thank you, Mr. Deputy Speaker, Sir. As I said, it was a topical thing. At the moment, I am alive to the fact that this is a continuing issue. I take the sentiments of the Members of the Senate for the need to have this answer urgently. I will consult very quickly with the Chairperson of the Committee and mention the urgency of this matter and, hopefully, get this answer within a week.

The Deputy Speaker (Sen. Kembi-Gitura): It is ordered that the answer will be given on Thursday, next week.

Sen. (Prof.) Lesan: Thank you, Mr. Deputy Speaker, Sir. I will try to do so.

Sen. Billow: On a point of order, Mr. Deputy Speaker, Sir. On a similar matter that came before the National Assembly last month, the House ordered that, that exercise be halted until the Senate Committee looks at the matter and reports. Would it not be appropriate given the fact that the Statement is raising concerns on the integrity of the process for the Chair to give, with the help of the Speaker direction that that exercise not be concluded until the Senate satisfies itself that the process has been checked? We have the power and I think it is better that he takes that action.

Sen. (Prof.) Lesan: Thank you, Mr. Deputy Speaker, Sir. Maybe you can give us some guidance whether the Committee on Education has the powers to interfere or stop the Executive from carrying out its role as it is, at the moment.

The Deputy Speaker (Sen. Kembi-Gitura): What you need to do, because the concerns are several and you have heard them, I had indicated that you should give an answer on Thursday, next week. May I request that you give us a holding answer on Tuesday, next week, so that we are able to consult with the office of the Speaker on what can be done in the circumstances? You have the whole of tomorrow and Monday so that

you give us an answer on Tuesday afternoon, not Thursday. The HANSARD is corrected on that very urgent issue. Tuesday, next week, shall be the 4th November, 2014 at 2.30pm.

Sen. (Prof.) Kindiki, do you have a Statement to make?

STATEMENTS

BUSINESS FOR THE WEEK COMMENCING TUESDAY 4TH NOVEMBER, 2014

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Deputy Speaker Sir. Mine is the weekly Statement under Standing Order No. 45 on the Business of the Senate next week.

Tuesday at 12.00 noon, we shall have the Rules and Business Committee (RBC). On that day, any business which is not concluded today will be scheduled subject, of course, to directions and prioritization by the RBC. On the same day, we expect that the Public Finance Management (Amendment) Bill will come before this House in the Committee of the Whole stage. I want to take this opportunity to request all Senators to be present on Tuesday at 2.30p.m, because we cannot transact the Business of Committee of the Whole if we do not have at least 24 delegations present.

Mr. Deputy Speaker Sir, hon. Senators, other than the Public Finance Management Bill, there are two other Bills which could not proceed yesterday at the Committee stage which we would also like to take through the Committee of the Whole on that day. These are:-

The Public Procurement and Disposal (Amendment) Bill, National Assembly Bill No. 31 of 2014 and The National Honours (Amendment) Bill, Senate Bill No.16 of 2014.

Mr. Deputy Speaker Sir, the RBC will schedule Business for Wednesday, but some of the Motions of priority, since Wednesday is a Motions day, include:-

Resumption of debate on the Motion by Sen. Henry ole Ndiema on challenges facing health services that have been devolved in accordance with the Fourth Schedule to the Constitution.

The second one is the Motion by Sen. Sammy Leshore on the establishment of National Aids Control Council Offices in counties.

The third one is the Motion by the Chairperson of the *ad hoc* Committee on the adoption of the Report on Legislation on Harambees.

The fourth Motion is the Motion by the chairperson of the *ad hoc* Committee on adoption of the Report on Establishment of a Public Compensation Bureau. The fifth Motion is the Motion by the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries on the status of food security in Baringo County.

Finally, the Reports of the Kenya Delegation to the African Carribean and Pacific and European Union (ACP-EU) Joint Parliamentary Assembly meetings held in 2013 and 2014.

Mr. Deputy Speaker, Sir, on Thursday, 6th November, 2014, the Senate will continue with the debate of any business not concluded on Tuesday and Wednesday; in

particular deliberating on Bills at Second Reading and Committee of the Whole stages and any other business that will be scheduled by the RBC.

Mr. Deputy Speaker, Sir, as I conclude, I just want to kindly repeat that on Tuesday, let us all be here because we have not less than three Bills that we want to take through the Committee of the Whole. That process cannot move forward unless we have at least 24 delegations present. Where a Senator cannot come, he or she should do the usual thing; kindly delegate your vote to a Member of your delegation. Senate Majority and Minority Whips, kindly assist us on Tuesday so that we can conclude these important businesses.

I now lay this statement on the Table of the House.

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

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Senator.
Proceed, Sen. Elachi.

COMPLIANCE IN USE OF IFMIS ACCOUNTING SYSTEM BY COUNTY GOVERNMENTS

Sen. Elachi: Thank you, Mr. Deputy Speaker, Sir. One month ago, I raised a request for a Statement on the Compliance in Use of the Integrated Financial Management Information System (IFMIS) accounting system and the measures put in place to ensure that local revenue is collected according to the law by county governments. Since the Chairperson is here, I would wish to hear his response on the same.

Sen. Billow: Mr. Deputy Speaker, Sir, I want to seek the indulgence of the House. This statement sought by the hon. Member regarding the revenue collections of the county governments is a very important one. This is because there are serious concerns all over the country that county governments are underperforming significantly according to the report of the Controller of Budget. I, therefore, want to seek the indulgence of the House for a couple of weeks because we want to interrogate this statement which was supplied by the Controller of Budget because it is very insufficient. We have also not had an opportunity, as a Committee, to look at it. I just got a copy of the statement at the entrance to the House when we were coming in. We would want to be given some time, two weeks at least.

The Deputy Speaker (Sen. Kembi-Gitura): How much time?

Sen. Billow: Two weeks.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Elachi, is two weeks okay?

Sen. Elachi: Mr. Deputy Speaker, Sir, I think two weeks will be too long. Is it possible for him to do so in one week because it has taken a while and you can see there are already challenges? Even Nairobi County last week decided to borrow again another Kshs4 billion and when you look at their status, it is very wanting. So, I think the

Chairperson of the Committee on Finance, Commerce and Budget needs to help us also so that we can help the assemblies to deal with the matter.

The Deputy Speaker (Sen. Kembi-Gitura): I think two weeks is fair in the circumstances, considering that the data has to be collected from all the 47 counties. This will also allow the Committee to prepare one comprehensive answer so that we do not have to keep on going to and fro. So, the statement will be given two weeks from today.

I believe that brings us to the end of Statement Time. Sen. Janet Ong'era is not here. She had sought a statement, but she is not here.

Next Order!

BILLS

Second Reading

THE GOVERNMENT PROCEEDINGS (AMENDMENT) BILL, (SENATE BILL NO. 10 OF 2014)

(Sen. Mutula Kilonzo Jr. on 29.10.2014)

(Resumption of Debate interrupted on Tuesday, 29.10.2014)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Prof.) Anyang'-Nyong'o was the last to speak. He had 13 minutes left, but he is not here. So, he forfeits his time. I have no request for speakers.

Sen. Billow, do you want to contribute to the debate?

Sen. Billow: Mr. Deputy Speaker, Sir, I rise to support the Government Proceedings (Amendment) Bill, Senate Bill No.10. It is important to appreciate that the county governments have a lot of assets and liabilities, many of which are yet to be documented. In the transition to the county governments, there was a legal requirement that the Transition Authority (TA) audits and makes an inventory of the assets and liabilities. There are huge debts that have been taken over by county governments from local authorities. As we speak, the County Government of Nairobi has pending bills in excess of Kshs25 billion and there are many others. Remember this House passed a Motion to that effect that those debts be audited.

Mr. Deputy Speaker, Sir, what I am trying to say is that in view of all those debts and in view of the lack of registration of the assets and liabilities of these entities, under the current law, it would be risky. What would happen is that the county governments would have their assets attached and county government officials would be liable in their own capacities. I think it is important to bring these amendments so that these institutions can be protected.

Mr. Deputy Speaker, Sir, I also want to mention, at this stage, that one of the challenges we have at the county governments today is the one of debts – not just debt that has been taken over, but also debt that is being incurred by county governments today. Last week, we were informed that the County Assembly of Nairobi approved a

debt from a commercial bank of about Kshs4 billion for the County Government of Nairobi. The law is very clear that, except for short term borrowings like overdrafts to cover payroll exposures, the county governments are not mandated to borrow any long term finance, specifically for development or related activities, unless those debts are guaranteed by the county government and in this regard, by the national Government. In this regard, we are aware that the Treasury is still working out an appropriate legislation with regard to loans or borrowings by the county governments. Therefore, it would be inappropriate for any county assembly to purport to approve a loan of that size for development programmes without the appropriate legislation in place.

Mr. Deputy Speaker, Sir, this amendment is critical to protect the interests of the county governments. These are institutions that have come in recently and they have many challenges and risks, not just by predators from this era, but also predators from the previous era who want to maximize on the lack of records and accountability in the previous dispensation. So, it is very important and I want to lend my support to this Bill that we should provide appropriate protection. This is the mandate of this Senate to protect the interests of the county governments and the interest of the counties. So, it is a very important Bill and I stand to support it.

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

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

The Temporary Speaker (Sen. (Dr.) Machage): Okay; I see no other request, I call upon the Mover to reply.

Sen. Mutula Kilonzo Jnr: Mr. Temporary Speaker, Sir, thank you.

I want to thank the Senators who have contributed to this amendment and I also want to bring to the attention of the Senate the importance of the same.

Mr. Temporary Speaker, Sir, this morning we read in the newspapers that a member of a county executive has been committed to civil jail on account of a debt which was accrued by a municipal council prior to the commencement of the county government as envisioned by the law. Therefore, I think this amendment has come at the appropriate time.

Mr. Temporary Speaker, Sir, part of the amendments which were highlighted by the Senators - which I would also like to highlight in my reply - is that other than civil proceedings and other proceedings, it talks about arbitration. Therefore, Senators, in an attempt to protect counties we are also telling the counties that even in the contracts they are signing, they will include an arbitration clause. I am happy to announce that the Cabinet Secretary in charge has now gazetted the guidelines on private-public ownership. As your county Governors enter into contracts with private parties, they will include an arbitration clause. This way, county governments will be protected in terms of proceedings that are commenced even in arbitration.

Mr. Temporary Speaker, Sir, I would like to thank Sen. Kagwe, because he mentioned something very critical that is important and which I would like to lay emphasis on. Although he mentioned tractors, he came short of mentioning ambulances,

which are also assets of counties. Counties are spending resources buying tractors and ambulances. These are part of the assets that can be attached to satisfy a debt that had been accumulated by a previous municipal council; alternatively, the predecessors of the county governments. Most Senators do not know that most of the debt problems that Nairobi County Government is facing were incurred by the previous Nairobi City Council. This County is not protected. A large portion of the money we are sending to them in terms of shareable revenue is being used to settle debts which, in fact, should not be paid.

Mr. Temporary Speaker, Sir, more importantly, other than the settlement of debt, is the protection. Even if the Nairobi County Government does not have funds to pay for a debt, this county and its officials would sleep easy knowing that a person or an auctioneer will not wake up early one morning and pull the cars out of the parking lot or the ambulances out of the hospitals parking bay. As Sen. Kagwe mentioned, the auctioneers who operate in this country appear to be different human beings from the ones we know. They are ruthless and will be ruthless irrespective of whether it is an ambulance or a tractor that is rendering public service.

Mr. Temporary Speaker, Sir, I am happy that Sen. (Prof.) Anyang'-Nyong'o and Sen. Hargura brought this to the fore by stating that the Fourth Schedule of the Constitution, recognised two levels of government; the national Government and the county level. However, the County Governments Act and Government Proceedings Acts do not give that recognition or protection that is required to be given to the county governments in terms of civil proceedings or any proceedings commenced against a county or an arbitration commenced against a county.

For the Senators who were not here, it is fair that I inform you - for purposes of understanding the reasons behind this amendment - that Bungoma County, in January this year, was compelled by a court to pay a debt that was incurred in 1991, with interest. They were also compelled to give vacant possession of a piece of land for an issue that arose in 1991; way before even the clamour for a new Constitution had come to the fore.

Mr. Temporary Speaker, Sir, the amendment that I am seeking to put forth in the Senate will put squarely the protection that every county requires so that they can function. We have not stated, but the reason this law is there is because of the recognition that Government cannot default. So, if Government cannot default, there is no reason you should go and pull an asset or attach a building belonging to a county to satisfy a decree or a judgment that has been granted to a private or public entity in satisfaction of that decree.

Mr. Temporary Speaker, Sir, I am happy because the contributions and also the persons who did not contribute - the ones I have spoken to - agree that this is something that we should have done before. We also recognise that as we amend this law, we must appreciate that the last Parliament, the National Assembly, in an attempt to comply with the law in terms of the transition and the Schedule of the Bills that were required to put the county governments in place made omissions which may not have been deliberate. Even so, they left the county governments exposed. I am urging this Senate and I am sure the Senate Majority Leader will agree, because he has also proposed a law that seeks to repeal one of the Local Government's legislation, Cap 272. As we continue to amend the

laws, we must ensure that the protections that were granted to the previous entities are extended to county governments.

In the case of Cap 272, the protection that was given to the employees of the defunct local governments in terms of pension, should also be extended to the new proposed law or any other law so that those employees are not disenfranchised. This is because any law that seeks to take away a right that already existed is inconsistent with the Constitution or common law because it is not allowed.

Mr. Temporary Speaker, Sir, I am happy that this has come to the fore and has passed. As I mentioned in my contribution, we must encourage and urge all Senators, like we mentioned in our *Kamukunji* to make a point of travelling to all counties across the board. I expect Senators to visit the county of Makueni so that such issues can be addressed. As I mentioned, the judgment that I quoted as the basis of the amendment to the law to protect counties under Section 21, was forwarded to me by a judge of the High Court.

Mr. Temporary Speaker, Sir, in conclusion let me highlight, for purposes of the Senators who are present here today and anybody who might read what we are doing to understand, that the protection granted to the Government under Section 21 of Cap 40 requires certain procedures be followed in Section 21(1), which says:

“Where in any civil proceeding by or against the Government, or in connection with any arbitration in which the government is a party, any order (including order for costs) made in favour of any person against the Government, or against a Government department or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiry of twenty-one days from the date of the order, or in case the order provides for the payment of costs or costs required to be taxed, at any time after the cost has been taxed, whichever is later, issue to that person, a certificate in the prescribed form containing the particulars of the order.”

This section will apply to our county governments equally.

“Provided that, if the court so directs, a separate certificate shall be issued in respect of costs (if any) ordered to be paid to the applicant. This will apply to county governments.

2. A copy of a certificate issued under this sub section may be served by a person in whose favour the order is made upon the Attorney-General. It will equally apply with the necessary modifications and amendments.

3. If the order provided for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department shall, subject as hereinafter provided, pay to the person entitled to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon:

Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending the appeal or otherwise, payment of the whole or any amount so payable, or any part thereof,

shall be suspended, and if the certificate has not been issued may order such directions to be inserted therein.”

This will equally apply to county governments if this Senate approves this amendment for:

“(4) Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government or any such money or cost as aforesaid, and no person shall be individually liable under any order for the payment by the Government or any other Government department or any other officer of the Government as such, of any money.”

Mr. Temporary Speaker, Sir, we are now including number five by saying, this section - all the ones I have read - shall with necessary modifications apply to civil proceedings by or against a county government in any proceedings or in connection with any arbitration which a county government in Kenya is a party.

I am happy today to report that if this Senate approves this, we will today sleep easy knowing that the money that we have worked very hard, as the Senate, to provide to counties will not be taken away through corrupt practices. This binds county governments to ensure that by the time they are making a payment, and then the payment complies with this section.

There must be a certificate and an order. It must state the amount so that the people who want to take shortcuts in an attempt to skim money out of counties and officers of county governments who think it is their time to eat know that the time has virtually come to an end by virtue of this amendment.

I am asking fellow Senators to support this amendment because this is one of the ways that we can protect our counties and bring on board and inform county governors that this Senate stands for prudence under Article 207. We stand for accountability under the Constitution and forever, we will keep to our mandate in protecting counties notwithstanding any disputes or altercations we may have. Therefore, they must understand where we are coming from. Therefore, in an attempt to win them, as we agreed, we must use a soft approach to talk to governors; they are part and parcel of our mandate. They should understand that when we sit in the Senate, we are not sitting to fight with them, but sitting to protect their turf. Therefore, they should know that as their partners, any of the issues that we have raised, particularly on this matter must be forwarded to this Senate, so that we do what we are mandated to do under Article 96(3).

If you allow me, I would like to request that you defer putting the question in terms of Standing Order No. 54(3) as there appears to be no requisite delegations to vote.

The Temporary Speaker (Sen. (Dr.) Machage): It is so ordered. Let us move on to the next order.

*Second Reading*THE PERSONS WITH DISABILITIES (AMENDMENT) BILL
(SENATE BILL NO.24 OF 2014)

Sen. Njoroge: Mr. Temporary Speaker, Sir, I beg to move, that the Persons With Disabilities Bill be now read a Second Time.

The Bill before this House today amends the Persons with Disabilities Bill. We all know that history is filled with frightening narratives revealing how people's disabilities came about.

(Loud consultations)

The Temporary Speaker (Sen. (Dr.) Machage): Order, just do your presentation as you had planned. Do not listen to sidekicks.

Sen. Njoroge: Mr. Temporary Speaker, Sir, this Bill seeks to amend the Persons with Disabilities Act so as to compel the National Council for Persons with Disabilities to submit an annual report to the Senate.

The Temporary Speaker (Sen. (Dr.) Machage): Does it seem to amend or does it amend? Give us the proper term. What do you want the Bill to do? Do you want to "seem to amend" or do you want it to amend?

I am just guiding you.

Sen. Njoroge: Mr. Temporary Speaker, Sir, I want this House to amend. The National Assembly should ask the Cabinet Secretary responsible for matters relating to persons with disabilities to come before it and respond to matters relating to the Ministry's activities in that financial year; the extent to which the county and national governments have complied with the provisions of the Constitution.

This Act is on matters relating to persons with disabilities. The steps proposed to be taken in the new financial year ensure compliance with the provisions of the Constitution. This acts on matters relating to persons with disabilities and any other relevant information. This one provides that the national and county governments shall reserve, at least, five per cent of state and public service positions for persons with disabilities and provide for positions by the national and county governments of the necessary facilities to persons with disabilities.

Mr. Temporary Speaker, Sir, as I had said, history is filled with frightening narratives revealing how persons' disabilities were created. Sometimes, these people are rejected, humiliated, undermining their dignity and respect. While some persons with disabilities have gained through sheer struggle to overcome their disability situations, millions are still wearing out without much hope for a decent living.

Before a person with disability benefits from the idea of employment part of the bad treatment and challenges that they go through, as we have seen, results from myths and false perceptions about disabilities coupled with ignorance on how to handle a variety of disability conditions in society. Whereas neglect and lack of awareness on the conditions of the persons with disabilities persist, lack of disability friendly policies to

clearly mitigate the issues of persons with disabilities together with inefficiency, implementation of existing legislation has been a major hindrance to the nature and quality of service delivery.

Mr. Speaker, Sir, over the years, a great many concerns towards persons with disabilities have been raised converging into now the all important United National Conventions on the Rights of Persons with disabilities. The convention endorses defence and safeguards equal enjoyment of all human rights and liberty by persons with disabilities.

The World Programme of Action to implement the UN Convention is a strategy with a clear cut purpose to secure disability prevention, rehabilitation and equalisation of opportunities. Numerous negative encounters by person with disabilities are still persisting on a wide scale. Despite such great efforts, human rights for person with disabilities are also under-affirmed with equitable access to resources obstructed by lack of responsive policies and efficient implementation arrangements.

Access to essential services such as hospitals, roads, malls and educational institutional facilities among others infrastructures are in many instances out of the way. This exposes old and unproductive thinking that has yet to appreciate the peculiar needs of persons with disabilities. It is very problematic to comprehend the scale of the difficulties the persons with disabilities undergo in full. The numbers of people with disabilities are globally an estimated one billion, but without proper country practicable data details on the type of disability. On the nature of acquisition and even geographical spread, no functional service delivery is assured.

The joining agents of poverty, disability and suffering are nothing. The problem is deep rooted in the world as is now structural violence, systematic customs in which public structures hurt and draw back persons with disabilities in an elusive manner with great danger of causing disability or extending it. We need to imagine how emergencies, natural or human driven, which usually impact the foundation of human existence mainly to persons with disabilities who have special needs. Their little resilience can be reduced to void.

Mr. Temporary Speaker, Sir, as I continue to persuade the House to support this amendment, it is not possible to exhaust here the host of issues facing persons with disabilities which gradually undermine inclusion, enjoyment of fundamental rights and confidence. The persons with disabilities (Amendment) Bill, (Senate Bill No. 24 of 2014), straight forward purpose is to enhance the quality of lives of person with disabilities acknowledging that it is possible to overcome disability. In the new Kenyan Constitution which was promulgated in 2010, Article 21 in particular, gives important obligation to state organs to protect and promote the rights and fundamental freedom in the Bill of Rights. It mandates all state organs to address vulnerable group's needs extending to person with disabilities.

Furthermore, Article 54 of the Kenyan Constitution recognizes specific rights related to treatment with dignity and access to important social amenities and infrastructure, including educational facilities and communication facilities among others. These are matters that are also well articulated in the United Nations Convention (UNC).

The Persons with Disabilities (Amendment) Bill, (Senate Bill No.24 of 2014) is forthwith to revitalize the services to persons with disabilities in time and dignity. While the existing Persons with Disabilities Act 2003, Section 3, established the National Council for persons with disabilities with broad mandate guarantying that rights and privileges rendered to persons with disabilities are grasped and given and was instrumental to bringing The National Development Fund which works towards the welfare of persons with disabilities. There are limitations the 2003 Act tends to look at the implementation in a progressive manner without reckoning the timing of services in an immediate and realistic form. It is a good contribution for the country to have laws, but it is important that the laws provide a monitor and able guide.

Mr. Temporary Speaker, Sir, the Persons with Disabilities Act 2003 and other policy efforts have tended to look at the implementation of the existing laws in a very gradual sequence. This extended to protract the time frame in which services to persons with disabilities need to be delivered. Consequently, this makes accountability for service provider performances an equally long grown out practice. The Persons with Disabilities (Amendment) Bill, (Senate Bill No.24 of 2014), is addressing this short fall. It provides timelines within which submission of reports to respective offices is due. This will enable state organs like the National Council for Persons with Disabilities (NCPD) and other state institutions with the duty for the implementation of our Constitution to be more proactive. The Bill will also facilitate timely performance reviews and compliance to providing the necessary tools and response plans to enable full functioning of persons with disabilities services.

As I conclude, the Bill re-affirms our duty to Kenya as the Senate to provide legislative direction towards the improvement of the lives of our fellow people. Although the Government has done much - and also our partners in Kenya, including international Non Governmental Organization (NGOs) - in resource mobilization and support for persons with disabilities, we are now operating within a new development Government. It is expected and I am confident with this Bill, exceptional needs of persons with disabilities, including employment will be addressed better within the national and county governments in a predictable manner and appraisals conducted in reasonable timelines which is immediate rather than unnecessarily lengthened.

Mr. Temporary Speaker, Sir, this Bill does not legislate powers nor does it limit fundamentals rights and freedoms. Since the Bill concerns county government in terms of Article 110(1) (a) of the Constitution, the amendments that are proposed are intended to promote and ensure the full realization of the rights of persons with disabilities at the national and county levels of government.

For that matter, because of the quorum issue, -----

The Temporary Speaker (Sen. (Dr.) Machage): Order! If you have finished, just name who you want to second your Bill.

Sen. Njoroge: I want to request my sister, Sen. Elizabeth Ongoro Masha, to second the Bill.

Thank you, Mr. Temporary Speaker, Sir.

Sen. Ongoro: Mr. Temporary Speaker, Sir, I stand to second this Bill. To start with, I want to take all us back to the Constitution of Kenya which ushered in a very good

and positive development. One of these positive developments in the new Constitution as enshrined is the affirmative action which for the first time ensures that women, people living with disabilities and other groups that have not been given attention before can now be treated with dignity and respect.

I listened carefully to the Mover who has very elaborate data that he has presented to the House and going by that data, you realize that we are dealing with quite a substantial number of persons within our community.

Good policies are not enough if you do not have effective structures to ensure their implementation that will impact positively the target groups. That is what this Bill is aiming at. We already have this provision enshrined in the Constitution. We have a set of very good policies, but this amendment seeks to ensure that the laws and policies that affect this group directly will now be directly implemented by ensuring oversight and accountability. Henceforth after the passing of this Bill and I am positive that all Senators are going to support this Bill, we will not have data presented just like that without proof that what is being presented is the actual fact.

Mr. Temporary Speaker, Sir, after the passing of this Bill, every section will now be required to deal with deliverables as far as ensuring that people living with disabilities are given their rightful quarter in terms of employment and other opportunities. With the oversight and accountability measures that this Bill seeks to put in place, I am sure that we are not going to deal with cases where you read elaborate and fantastic reports of Ministries having given this quarter to the right people, but when you actually visit those offices, you find that the quarter that was meant for people living with disabilities has been taken up with able bodied people; persons whose disability cannot be proven unless it is completely hidden.

I support.

(Question proposed)

Sen. (Dr.) Zani: Mr. Temporary Speaker, Sir, let me start by thanking Sen. Njoroge for bringing this important amendment. I think it comes from the fact that from his observation, the bodies that have been entrusted by the Constitution to make sure that the interests of disabilities are executed, probably, have not been given enough teeth to bite.

The National Council of People with disabilities, therefore, in the new amendment that is being sought are actually being given direction in terms of what they can do. I think this is correct because it is enshrined in the Constitution. The Constitution is very clear in protecting the interests of different groups, especially those with disabilities. Section 27(4) that deals with equality and freedom from discrimination states:-

“The State shall not discriminate directly or indirectly against any person on any ground including, among others after age, disability, religion, belief, culture, dress”.

Article 54 emphasizes that the dignity and respect of every person must be upheld. It gives provisions about how the life of the people with disabilities can actually

be enhanced to make their life easy. Some of these things are not very difficult. It is really a question of coming up with policy and putting it into place and just being very focused on it. I think this initiative to beam the light to a specific area to ensure that this happens is very critical; for example, issues that are dealt with in Article 54; reasonable access to all places, public transport and information. Really as a person and a human being, you cannot be productive socially or economically if you cannot move. I know there are different types of disabilities, but I think in this particular session, we are dealing with physical disability. It is very sad. If you have the right equipment, you should be able to move from one place to another.

Mr. Temporary Speaker, Sir, I remember in one of the Committees when we were dealing with one of the cases that came up about an airline that had not made provision for a particular prominent Member to be able to move. The way he talked about it and the way that he felt, it was very clear that such provisions should be made and should be respected and nobody should ask or beg for it. We know, for example, in the developed countries, they have made a lot of progress. In Kenya, you will still go to a building and find that there is no ramp. That is the case even within the buildings of Parliament. Last week we had a meeting on the First Floor and one of our Members could not make it there. We had to move the meeting to this Chamber to enable her join the meeting.

Somebody somewhere should be responsible. In Sen. Njoroge's submission, the NCPD should be able to push for this agenda together with parliamentarians. Accessing materials and devices overcome all these constraints and it should be made possible for people with disabilities to be able to do that. With such provisions being put into place, it will make life very easy. I think this provision should not just start in adulthood; it has to start in consideration with all the institutions. How is disability handled, for example, within the family? We know that some of the children with disabilities have been hidden and not taken to school. How should it be handled within the institutions of education? What about the integration of people with disabilities into schools so that their issues can actually be dealt with? What about in religious and economic institutions?

The whole issue of employment is actually what is addressed in this particular Bill. As per the constitutional provision, 35 per cent be given in the Constitution. Article 54(2) provides it as progressive implementation. I think in the Bill, Sen. Njoroge is talking about it as being implemented immediately. I do not see any contradiction if it is possible and that certain oversight bodies like the NCPD are careful that before appointments are made, at the shortlist, a provision and some sort of stratification should already have been put in place so that we know from this particular sector we are going to have this number of people who will put into those positions immediately.

Mr. Temporary Speaker, Sir, we should make sure that right from the beginning, we are preparing to have these positions taken. It would be foolhardy to want the 5 per cent to have that uptake, but not to prepare in terms of capacity building; making sure that the right education has been given, the right schools have actually been able to help members who have a certain level of disability be able to contribute to the society. We have to be very careful that when we talk about such provision, it is not just visible disability; even those who have mental disabilities; schizophrenia, for example, or disabilities are not very clear.

I think we should also be pro-active and go a step further by saying that the NCPD must be very pro-active in identifying and letting people know what sort of disabilities exist and how they can be handled to bring them out to prominence and to give some sort of education to say that disability is real. This is something that we should shy away from. We should be able to talk about it and actually look for a way to facilitate the disabled.

As per the amendment in this particular Bill, the focus is to ensure that the NCPD contextualizes and really focuses on the activities that they are meant to do and the reports that they are meant to give. I would suggest that the reports should be given to the national Government, county governments, the National Assembly and to the Senate. I think the inclusion of the Senate is very key so that we also get a chance to quiz, bearing in mind that under Article 96, the Senate is in charge of counties. Therefore, the interests of those counties becomes very important for us to even cascade downwards to each of the counties and see whether the distribution is proportionate to Article 54(2) that gives the 5 per cent and whether that has been upheld and also to ensure compliance with these particular figures.

Mr. Temporary Speaker, Sir, mechanisms then would have to be put into place by the NCPD to ensure that each provision has actually been adhered to as accurately as possible.

Kenyans have a way of making themselves to be something they are not to get certain provisions. If some unscrupulous Kenyans know that there is a 5 percent provision for people living with disabilities and it has not been well defined, you might find somebody pretending to have a disability just so that they can get into a position. So the council would have to be very careful to ensure that the provision is actually given to a database of people who are already known to have those specific disabilities.

Sen. Njoroge's assertion in terms of the timeframe is also very clear and very good through the financial year to ensure compliance. Given a timeframe for this to happen, will also enable this sort of legislation to be meaningful and to have a way of applying it in a more straight forward way. I do not think that there is any reason why the provision that has already been given for this 5 percent should not be upheld and all efforts must be done. This Bill is really timely; that the National Council for Persons with Disabilities needs to be more proactive because the moment you are not proactive, a law is just a law. It is written, it comes to life according to how much effort you put into it and how many systems you put into it to ensure that it is actually adhered to. This Bill is trying to do exactly that.

Mr. Temporary Speaker Sir, with those comments, I beg to support.

Sen. Kagwe: Thank you very much, Mr. Temporary Speaker, Sir. From the outset, I wish to also join my colleagues in congratulating Sen. Njoroge for being proactive and indeed living up to the mandate which he was given by being nominated to this Senate.

(Applause)

He came here to protect the rights of the disabled persons and he has not disappointed them. He has done exactly that. In fact, he has begun the journey in a long walk that we will walk. I can promise him that those of us in this Senate who appreciate what he is trying to do will walk all the way with him.

There was an English writer called John Locke who said at his time that “the most able must provide the least requirements for the least able”. When we look at those who are challenged in our society, be they physically challenged or otherwise, John Locke’s idea comes to bear because what we must never do – if we are going to be a civilized nation and if we are going to join the ranks of those countries that are respected globally – is that we must never leave behind any of our citizens for any reason. Not too long ago, a black man in the United States of America (USA) and other parts of this earth was seen as virtually unable to help himself. A black person was a second class citizen and even today in some parts of the world, a black person is seen as being just below other human beings. That is how far discrimination of persons can go. When you think about anybody that you know – you and I included – if you think about anybody thinking that you and I can be slightly below anybody walking on this earth who is a human being like yourself, you can see the pain that one would have. That is the pain that I believe that persons who are physically challenged or who are disabled for whatever reasons would feel when we do not focus and take care of them in our society.

Mr. Temporary Speaker, Sir, we have heard Sen. (Dr.) Zani contribute here and say that indeed it is true that there are persons within our families who actually hide those persons who are disabled; we have seen it on television (TV). We have seen persons being removed from a house where they had been locked in for years and years. Some persons were born never to be seen again until ten years later. This discrimination and this scourge that is the thinking process that some of our people have about a challenged individual is something to be ashamed of.

Nobody decides that they want to be blind, that they do not want to walk, and that they do not want to hear; nobody decided those things; they happen to them. In the USA and in other places where there is warfare, there are very many people who were born one day like you and I but, today, they cannot walk because bombs; cannot see because of shrapnel. People who, yesterday, were exactly like you and I go through an accident and subsequently the next morning; join those who are physically disabled. It is, therefore, foolhardy for us not to take care of our physically challenged persons. In fact, it is enlightened self interest that we should make sure that systems are in place to take care of those kinds of people because you do not know whether you are going to join their ranks tomorrow. It is not anything strange and it happens every day on our roads and elsewhere in our society.

Therefore, Mr. Temporary Speaker, Sir, from the outset, I want to say that I believe sincerely and in all honesty that a person who is challenged is exactly the same as myself. The only difference is that, for whatever reasons, for whatever decision that was made by God, the Almighty, it was decided that that person is going to be physically challenged or otherwise. The NCPWD is severely challenged in this course and I believe that part of the performance contract that the Council should sign is to ensure that this provision that Sen. Njoroge has brought to the House has been followed. Their appraisal,

as to whether they have executed their mandate or otherwise, should be predicated on whether they have met this part of the provision of the Bill that is going to be law soon. It is my view that in order for them to monitor this particular provision, the NCPWD should have either;

- a. A branch in every county ; or
- b. A representative of the Council in every county

Indeed just to ensure that this is what is going to happen, I believe – I wish that Sen., Njoroge had included this in the amendment – that it should be mandatory for the NCPWD to have branches in the counties in order for these laws to be performed.

Having said that, he would leave the management of the execution to them but it would be mandatory for them to see that this is done. Not just that, we also need to see county by county data. When we get this data that Sen. Njoroge is asking for – and this Senate will demand – I believe that it should be county by county. Let us not just have a vision and a report that says that 300 people in Kenya have been employed. Let us go county by county. What is the population of challenged persons in each county? How many of them have been employed? How many of them have been given business opportunities? Now that we are murraming roads all over the place and we know that there is a provision for the youth that is being given in the county businesses; we know that there is a provision for women and we know that counties are trying to meet the business aspect that is supposed to be provided for women. We also want to see that there is also a similar provision that has been given to the persons who are physically challenged.

Mr. Temporary Speaker, Sir, intentions are not good enough. Our stores in Government are full of all sorts of well-intended documents; beautiful and flowery ones with nice names. However, they are never implemented. The idea here is to ensure that we do not just speak or intend to do these things. We must get them done. This is the issue. In fact, most of the challenges and the reason our development process takes so long and is taking longer than we expect is there. The devil is in the details. The detail in this particular case is: How do you ensure that this is implemented? We say that communication is not complete until you get feedback. Until you know that something has been done, you must not assume that it has been done. Therefore, to me, what this amendment does is to ensure that we have communicated but we have also got feedback from that communication.

Let me also take this opportunity to say that when we travelled with Sen. Njoroge to Thailand and China, one of the issues that we raised with the government representatives in those countries was the possibility of having a conference here in Nairobi for the physically challenged and disabled Members of Parliament from various countries all over the world. In the Committee on Information and Communication, because that is where the idea came from, we are aware that this conference is planned. Sen. Njoroge has been in the forefront of ensuring that this happens. The Committee on Labour and Social Welfare where this issue will fall eventually is also asked to be in it to ensure that Kenya takes a strong position in terms of highlighting the plight of disabled persons across the globe. If this conference happens in Kenya it will be because this Senate created the idea and went on to implement it.

I would like to use this opportunity to ask that the Senate goes very strongly to support this effort. We have challenged that the global conference on Members of Parliament who are physically challenged be held here in Nairobi.

In addition to that, the Committee on Information and Technology Technology looks very strongly at how we can use ICT to assist create opportunities for persons with disability. If you travel to India and visit the call centres and other back office operations that India is famous for, you will find very many blind persons who have got earphones and communicating with people in America and all over the world. To speak to somebody else and explain something, one does not need to see. You just need to be able to hear. Being blind does not mean in any way that you are any lesser than anybody else in terms of mental capacity. Therefore, we believe that if we centralize and make ICT a singular part of the work that we are doing in our country, it will be possible to provide more than sufficient opportunities for persons who are very able to do some of the jobs that are created by use of information and communication technology.

I once again want to thank Sen. Njoroge. Last night, we discussed with Sen. Mutula Kilonzo Jnr, Sen. Kanainza, Sen. (Prof.) Lesan and other Members of the Committee on Information and Technology that we also intend--- If you look at this sitting, it is, in fact, a sitting of the Committee on Information and Communication except for one agriculturalist.

The Temporary Speaker (Sen. (Dr.) Machage): Order! This is the Senate of Kenya and not the Committee on Information and Communication.

Sen. Kagwe: Thank you, Mr. Temporary Speaker, Sir. It was only with a light touch.

We discussed yesterday and again, it is good to tell this House that, in fact, we intend to hold an ICT opportunities for persons with disability conference for all the representatives in the county assemblies. There are people nominated for that purpose. The Committee on Information and Communication is calling those people for a conference here in Nairobi so that we can be able to infuse them and for them to be champions on the use of ICT in the various counties in order to effectively meet this challenge of those who are challenged in one way or another. We will be able to see and discuss how we can use ICT, particularly the call centres, to see that the persons who are physically challenged are able to get jobs in those counties. Mr. Temporary Speaker, Sir, through this Senate, I am also asking the county governments to give emphasis and to think thoroughly about how we are going to move forward in supporting persons with disability.

I thank Sen. Njoroge and promise him that we are behind him all the way in supporting this amendment.

Sen. Nabwala: Thank you, Mr. Temporary Speaker, Sir. I stand to add my voice to this very important Bill which has been brought to the Floor of the House by Sen. Njoroge. The Bill is very thoughtful. He has moved very key amendments to the Bill. When you look at this Bill, it recognizes persons living with disability. When you go further and read Section 10, what the Senator has asked is for the Council to submit a report to the Senate, the National Assembly and the Cabinet Secretary responsibility for matters relating to persons with disability.

As we sit here and deliberate on this Bill, we do not have the statistics to show us how many people out there are living with disabilities. This is a group that is vulnerable and has been forgotten until our Constitution was promulgated in 2010. The Constitution has brought on board Senators like Sen. Njoroge who are now proactive and advocating for people living with disability.

Mr. Deputy Speaker, Sir, I fully support this Bill. Article 21(3) of the Constitution on implementation of rights and fundamental freedoms states as follows:-

“All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities.”

We know that persons living with disabilities have been stigmatized in families. You find that some families lock up their children because they are embarrassed. We need to roll out civic education to sensitize those families that a disabled person does not mean that he cannot be able to perform given the facilities. What I would propose is about facilitation. If we facilitate disabled persons they can be able to perform like any other person. A good example is Sen. Njoroge here. He is somebody who is very proactive and has even moved Bills. We even know of a disabled person who was nominated by the President as a Permanent Secretary. So it means that disability is not inability if we facilitate persons living with disabilities.

How do we facilitate these people? We have to give them facilities like wheel chairs. If, for instance, we advocate for education and the disabled people do not have wheelchairs to move around, how will they get to the classrooms? In Nairobi, for instance, you hardly see a disabled person in the streets because they do not have the means of movement. The key thing here is for counties to address this question of facilitation. They must tell us how many disabled persons are there per county so that we know what activities the disabled persons are doing.

The Bill also brings out an amendment where 5 per cent of the jobs must be set aside for persons with disability. How are we going to go about this? There should be special schools in every county. For instance, Kerugoya School of the Deaf; I remember one of my child's friends went to that school. Through the hearing aids, she was able to score a grade of C. The national Government in conjunction with the county governments should be able to promote the needs of the vulnerable people in the society who include the disabled persons.

I know that there is a special fund for the youth and persons with disabilities but can you expect a person with disability to compete with the youth? The youths are proactive and young but people with disabilities cannot even move from their houses to go and look for this fund in the counties. There must be a way on how to reach people with disabilities and we can do this through county governments. We must commit them every quarter or every year the way the Bill has suggested. County governments should give us statistics of people with disabilities, their activities and what they are doing. They should also tell us if they have established a school within their counties. I do not see ourselves moving forward if the people with disabilities are denied the right to

education. The Constitution is clear; everybody has a right to education without any discrimination. That is one issue we need to work on.

Mr. Temporary Speaker, Sir, I have talked about education, employment, facilitation, wheelchairs, lifts and even beds. The people with disabilities also have families. You can imagine a person with disability going to a hospital to give birth and maybe, when they get there, they give birth on the floor because they cannot climb that bed. This is a very big challenge to us, as leaders, and I think we need to do something as at yesterday to bring persons with disabilities on board.

There is another---

The Temporary Speaker (Sen. (Dr.) Machage): What is it? Do not play around with us. What is it, Sen. Kittony? I can see your intervention.

Sen. Kittony: Thank you, Mr. Temporary Speaker, Sir. I also---

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Nabwala. Two Members cannot be standing at the same time.

Sen. Kittony, continue.

(Sen. Nabwala and Sen. Kittony stood up in their places)

Sen. Kittony: Thank you, Mr. Temporary Speaker, Sir. I also stand to support.

The Temporary Speaker (Sen. (Dr.) Machage): I thought you rose on a point of order. That is what was here.

Sen. Kittony: No.

The Temporary Speaker (Sen. (Dr.) Machage): Then sit.

Sen. Nabwala, continue.

Sen. Nabwala: Mr. Temporary Speaker, Sir, this Bill seeks to establish a legal framework so that we can engage with the counties and the national Government concerning persons living with disabilities who are actually a forgotten society. I wish to thank Sen. Njoroge for being so thoughtful about our friends out there and for bringing up this Bill to the Senate so that we can enact it into law. However, the problem that we have is implementation. That needs to be followed up because it is a good Bill. We are going to touch the lives of many people out there. Working through our colleagues, Senators, we should be able to tackle this problem because in my county, Trans-Nzoia County, we have over 500 people with disabilities. They are all going on their knees. In fact, I have approached one of the Senators to see how I can get wheelchairs for my people in Trans-Nzoia County.

Thank you very much. I support the Bill.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Murungi Kiraitu.

Sorry, Sen. Kittony, you have just come. There are others who were waiting.

Sen. Murungi: Mr. Temporary Speaker, Sir, I rise to support this Bill and most sincerely commend and thank Sen. Njoroge for bringing this important Bill before the Senate. This Bill is clear testimony that there is logic in appointing people with disabilities to the Senate to represent the interests of the others in the country. Sen. Njoroge, I want to commend you for being a very effective representative of your constituency. That is the constituency of disability.

Mr. Temporary Speaker, Sir, this Bill seeks to implement the fundamental rights of this one special category of people, specially recognized under Article 54 of the Constitution. It is trying to implement those rights through a reporting mechanism. In fact, it is the usual United Nations (UN) way of enforcing such rights.

Mr. Temporary Speaker, Sir, disability had been treated in very different ways in different times in history in different communities. If you remember, in the old Sparta if you were born with disability, because that was a sporting nation, you had to be killed. Children born with disability were killed in Sparta and in many other communities including my own community. In the old Meru Community, we had no people with disabilities because disability was seen as a curse. Therefore, nobody talked about any child born with disability. The child disappeared. They were spirited off in the forest and they never returned. It clearly shows how far our society has come. This is because up to 2010, the old Constitution did not say anything about disability. I am very happy that Sen. Ong'era and Sen. (Prof.) Anyang'-Nyong'o are here because we worked very hard with them in the Secretariat to ensure that we have this new Constitution.

Mr. Temporary Speaker, Sir, I think the basic question which the new Constitution asks is whether a disabled person is a person. Once you answer that question in the positive that a disabled person is a human being, then that person is entitled to all the human rights that other human beings are entitled to, except those which might be limited by virtue of the nature of disability.

I support this Bill because we are all candidates of disability. You do not know who will be the disabled person tomorrow. You do not know who will be joining the ranks, that group or that category of Kenyans tomorrow.

I do not know whether you were in Parliament when the late Dr. Oki Ombaka returned from the United States of America (USA). He had been treated but in the process, he had lost his sight. So, he became blind. When he came and made a speech before us in the National Assembly, it was very moving because he said, "You, people, might see but I can see many things which you cannot see." He said that he had become more perceptive; that he could see even the unseen things. He thought he had become wiser by going through that process. He asked us not to pity him because he had learnt some new things. He later on started the constitutional process itself with Prof. Yash Pal Ghai and he did a commendable job until the last days of his life.

I am giving that example to show that even somebody like Dr. Oki Ombaka, who used to be our student leader at the university with a PhD from Harvard, a very competent and clever person could also become a disabled person in a matter of weeks. Therefore, everyone of us is a candidate and let us not say we are doing this for Sen. Njoroge or other people out there with disabilities. We are also doing it for ourselves because we do not know when that time will come. That time will come for us to say the bell tolls; it could be tolling for you; it could be tolling for Sen. Murungi or for some other person.

Mr. Temporary Speaker, Sir, the Bill before us seeks to implement Article 54 of the Constitution which clearly states that:-

(1) A person with any disability is entitled—

(a) to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning;

(b) to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;

(c) to reasonable access to all places, public transport and information;

(d) to use Sign language, Braille or other appropriate means of communication; and

(e) to access materials and devices to overcome constraints arising from the person's disability.

(2) The State shall ensure the progressive implementation of the principle that at least 5 percent of the members of the public in elective and appointive bodies are persons with disabilities.

Mr. Temporary Speaker, Sir, these are very fundamental, concrete and expansive rights. We should look at the structural discrimination that exists against people with disability. We might not think about it. But, for instance, now in our Committee on Agriculture, Livestock and Fisheries, we are discussing about the right to food and we are monitoring the distribution of emergency relief food to counties like Baringo and the others. What is shocking is that the most vulnerable groups – the people with disabilities – might die in their houses even when food is taken to those areas. This is because the food will be taken to the chief; the chief will call the people to a market and start distributing the food there. But who is that who comes for the food? It is the young people or the able-bodied people who will come and fight in the queues to be given the food. The people who really need this food are the people who cannot leave their houses; the disabled people. So, until we overcome those constraints by giving the food directly to those people in their houses, many of the disabled people are going to die despite our relief programmes.

Mr. Temporary Speaker, Sir, when I used to be the Minister for Energy, my office was on the 19th Floor of Nyayo House. For the seven years that I was there, I never saw a disabled person in my office because they could not climb the stairs. There were also constraints because even getting to the first floor, where you can take the lift, was also a problem because you could not get there on a wheelchair. So, although we are saying that we are going to give five per cent of the jobs to the people with disability, unless you overcome those physical barriers, then it will not be possible for us to give them that 5 per cent of the jobs.

(Applause)

Mr. Temporary Speaker, Sir, I have had occasion to travel with other Members of Parliament (MPs) to countries like Korea. In Korea, we found that all the massage jobs in hotels are reserved for blind people. If you want to get a massage, you book for one. That is a way of creating employment because when you massage somebody, you do not have to see that person. So, I saw it as a very innovative way for that government to support their disabled people by specifying that, that category of jobs should be done by the

disabled persons. Why can we not request the hospitality industry in Kenya also to offer training to the bright ladies in this country so that they can also offer massage in our hotels in Kenya? There are a lot of tourists who are coming to Kenya and who need those services; when Kenyans are tired, they also need massage services and this is a service which can be provided by this particular group. These days you are surprised; you can take a lift to any Government buildings and some of them are being manned by able-bodied people. You wonder why we cannot reserve these jobs of taking people up and down the lifts to people with disability. That is a job that does not require much because there is a seat in the lift. So, we can map out categories of jobs that we can reserve for people with disability instead of just saying “five per cent.” I think we need to break it down; what are those 5 per cent that we are giving?

Mr. Temporary Speaker, Sir, it is very good that the Bill is talking about the reports from the Council coming to the Senate and to the National Assembly. But I think we need to go beyond that. In the United Nations (UN), the human rights implementation mechanism through the reporting system has become a farce because there are mountains and mountains of reports virtually on anything. But the gap between what is said in those reports and what happens on the ground afterwards is as wide as the gap between heaven and hell. I think once those reports come to this Senate – and I am happy Sen. James Orendo has come in, who is the Chairperson of the Committee on Implementation – it is for the Senate to discuss those reports and follow up to ensure that if we have said that 5 per cent of the jobs should go to the disabled people, indeed, 5 per cent of the various organizations – they may be given up to 2016 or whatever – are actually taken up by the disabled people. So, I am calling for stricter implementation which goes beyond the reporting mechanisms.

Mr. Temporary Speaker, Sir, we are very good in rhetoric; we are very good in paying lip service and giving populist statements about what we are doing. But I think the time has come, especially for the Government, to be more serious in talking less and doing more. I think that is the only way that we can really support our disabled brothers and sisters. Many of them are very bright people. There is a school in my county – St. Lucy’s School for the Blind – which has the best choir in Meru County; but we only see them when they are singing in school. But after they graduate in Form Four, we do not know what happens to them; we do not know where they go to sing or whether they just disappear into the society. So, I think groups like those should be encouraged because they are talented singers; they can be supported by the Government. We do not just have to give jobs in the office; we can also encourage disabled entrepreneurs – like those who can sing and do such things – to continue entertaining and then they get paid either by the county governments or by the national Government. So, I am calling for more innovation in terms of thinking about what employment or jobs we can give to the disabled people in this country.

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

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, I would like to thank Sen. Njoroge for coming up with this Bill. The Bill is timely and in my own reading of

the Act that was passed in 2003, it appears as if Sen. Njoroge is on the right path because the Act, for all intents and purposes, is unconstitutional.

Before I contribute, I want to give my experience with this category of disabled persons. In 2001, I visited Ndia Constituency with the then former Member of Parliament – I cannot recall his name – to donate wheel chairs through the Rotary. After donating a wheelchair to one individual, this gentleman took off at high speed. I then asked why he had done so, and the answer I got was that he thought we may change our minds and for him that was a lifeline. That person had been locked in a dog kennel for over 15 years.

Since that time, I have been donating wheelchairs through rotary since 2001. At any given time, I have a wheelchair in my office. In fact, I also donated the wheelchair that Sen. Godliver uses through rotary. We are paying lip service to these Kenyans and people that we love. The experience I have had is tragic. I am happy that the Bill proposes to offer facilities to this category of persons who are our brothers and sisters.

Two weeks ago, a member of my county who comes from the University of Nairobi and disabled had a problem with his wheelchair. The wheelchair that they ended up getting cost Kshs15,200. It is sad that this category of persons can suffer so much and yet that equipment is very expensive. Somebody is making a profit when they should not. We must condemn this.

Part of the incentive is to ensure that the wheelchairs that we give or those that are imported are available, cheap and can be repaired. Some of them cannot be repaired. There is a group of persons called the Association for the Physically Disabled Kenyans (APDK) who are manufacturing local wheelchairs and facilities for persons with disabilities. These are people who should be given incentives by the Government. They should be given funding so that wheelchairs are availed. Members may not even know the extent of the disabled persons in schools. Members of the Rotary Club in Kenya organize every year the Sunshine Rally which we hold at Jamhuri Park for schools that cater for the disabled students in Kenya.

This is the only time when these children find time to come and play. The enthusiasm that you see in these children can break your heart. Therefore, in supporting this Bill, I will ask Sen. Njoroge to go back through this Bill with a toothcomb because there are many areas that are unconstitutional.

I will start with Section 13 which he seeks to amend. This one reads; “the Council shall endeavor to secure reservation of 5 per cent of all casual emergency and contractual positions in the public service sectors for persons with disabilities.”

Shame on us because for the last ten years, we have had a law that suggests that the only reservation we should give to the disabled persons is casual. This is an embarrassment. This is terrible. We should be embarrassed. However, Sen. Njoroge, this is an opportunity and we thank you. This is one of the ways of ensuring that this Constitution that we fought hard for is realised.

The other section that it seeks to amend is the one on employment. The proposal is that the national and county governments shall ensure that, at least, 5 per cent of all state and public service positions are reserved for persons with disabilities. I would like to speak to that because it is part of the issues that my coalition is raising with employment generally. While we look into the areas of 5 per cent national public

jobs to be reserved for persons with disabilities, we must go a step further and ensure that we balance this nation in the appointment of people in the public service. Therefore, Sen. Njoroge, we are on the right path. That right path is to say that other than persons with disabilities, we must ensure that other positions in public service are properly balanced so that every person in Kenya who calls himself a Kenyan is not discriminated, not only because of their disability but also because of their tribe.

The amendment to the Council under Section 10 is amazing. This law has been in existence for the past 11 years. This one says the Council shall prepare an annual report of its activities and all other Government agencies involved in the work of the Council. The most ambiguous clause says nothing and gives nothing and yet you wonder why disabled persons in this country feel as if they do not belong here. If you visit other areas in the world, parking areas reserved for the disabled persons are not used by other people. If you park and you are found, then the penalties are severe. However, what happens at the Junction, all supermarkets, at The Hilton and at Corner House, you will find that people who are able have parked their cars shamelessly.

Do we give way to persons with disabilities? We do not. Are our buildings accessible? They are not. Sen. Njoroge, I am urging you to go deeper. Other than facilities and jobs, we must also check out for the buildings so that persons with disabilities are not disadvantaged. Sen. Murungi said that for many years when he was the Minister for Energy, no disabled person could access his office. This is shameful. The construction of public toilets is done in a way that does not accommodate people with disabilities. I am suggesting that my good friend goes a little deeper.

The National Council of People with Disabilities is one that we need to know who it comprises of. Who are these people? They are defined under Section 4. This is everybody; under the Ministry of Culture and Social Services, Local Government, Health, Education, Devolution and Planning and Lands, Housing and Urban Development. These people are drawing their salaries, allowances and whatever else from public coffers. So, whom do they report to?

It is, therefore, good that Sen. Njoroge has thought, in his amendment of Section 10 that these people report their activities every financial year. It is clearly defined. They will report to the Senate and this is clearly defined. They will also report to the National Assembly and this is clearly defined. The extent to which they are working is also clearly defined. This should also be to the extent to which the national and county governments are complying with the provisions of the Constitution with regard to persons with disabilities. I am suggesting that we go further and define the persons clearly. I am suggesting that we even go further and define these persons clearly because disability is not just being physically challenged, there are other disabilities. Sen. Kagwe has said that in some countries, people who man call centres, receptions--- Therefore, there is no reason why we should not comply with the provisions of Article 15 (4) (2) that states:-

“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 appointed bodies are persons with disability.”

We must go a step further, because we have passed several laws here giving special provisions, for example, under the PFM Act 30 per cent should have gone to the youth in

the last financial year. Who knows whether 30 of the budget of counties went to the youth? Here we have reports from the Transition Authority that, in fact, a large number of counties have not even complied with the gender rule.

Mr. Temporary Speaker, Sir, we must go a step further; if counties can discriminate on tribe and other issues, and we know how the disabled category of persons in this country have been treated, we must put mechanisms in place to ensure that there are penalties for default. Therefore, in terms of names and figures, we must be able to see that 5 per cent represents both 5 per cent at the national level and the county level. We all know the counties are saying that they are suffering because 70 per cent or 80 per cent is going to emoluments. Would it not be nice to say that out of the 70 per cent they are paying salaries, their wage bill is so heavy but 10 per cent has been given to persons with disability? That is the way to go.

In supporting this Bill, I want to urge my colleague to actually go back to Article 54 in its entirety and ensure that there is complete provision to ensure that the persons with disabilities are treated with dignity and respect, have access to educational institutions and facilities, have reasonable access to all places; public transport and information and they have access to use sign language, Braille or other appropriate means of communication. Does this Senate have such facilities? Does this Parliament have such facilities? Does any Government institution have such facilities? Do we have schools with such facilities? Do we have an institution that can be accessed by a person who cannot see? Do we have facilities for people who cannot hear? Do they have access to materials and devices to overcome constraints arising out of their disability?

I suggest that Sen. Njoroge moves an amendment so that we either waive duty, levies on wheels chairs and materials that are used by persons with disability because that is the only way we can help. To tell the Government to offer these facilities is not good enough. For persons like rotary clubs in Kenya who are spending a lot of resources importing wheel chairs for persons with disabilities ought to bring containers upon containers without paying duty or levies so that we can help this country. Those wheelchairs that they have donated so ably since 2001, they have not paid for any but for them to come to this country, Rotary International has had to pay. That is discrimination and is not in keeping with this Constitution.

I beg to support.

Sen. Murkomen: Mr. Temporary Speaker, Sir, first of all, I would like to congratulate Sen. Njoroge for coming up with such an important amendment, but particularly as a person who is representing persons with disabilities in Parliament, this comes with great joy; that there is actual representation. Sometimes there are people who are in positions of influence, who would have helped the masses through their positions, but they sit on it. In the Bible, it was Mordecai in Esther 4:4 who told Esther: Who knows why you are in the King's court at such a time like this; it is for a responsibility to be able to do something to make a difference. I think Sen. Njoroge is playing his role to leave a legacy in his term as a Senator in this House.

I am also impressed by the contributions of Sen. Mutula Kilonzo Jnr. which have been done from an informed position, with passion and with some sense of experience. I agree with him that this should be one of the many amendments that should come to

anchor matters of persons with disabilities in the law and to ensure that we protect persons with disabilities. It is clear that there are many ways that people become disabled; others at birth while others immediately after. Sen. Kipchumba who used to be here before his term was ended prematurely used to remind us that because of medical reasons, he became disabled. However, there are people, just out of an accident; somebody falls in a bathroom or a car accident and becomes disabled. One Member of the National Assembly, hon. Tim Wanyonyi, was just like all of us here who fortunately are not disabled, but just because of an attack by merciless and heartless people, he became disabled.

Mr. Temporary Speaker, Sir, despite the fact that we sometimes treat persons with disabilities as an unfortunate lot in our midst, all of us have the potential of being disabled. We must always have in mind that persons with disabilities under the Constitution, Article 54 are not being done a favour. They are Kenyans, they are human beings created by God, and like we say that rights are not given by law, they are protected by law because there are people out there would use or misuse the opportunity to mistreat other people. The law was enacted to ensure that those rights are preserved and protected. Therefore, the rights of persons with disability are not given in the Constitution. They are not given by our Constitution, but protected by our Constitution. This very useful Article 54 provides that a person with any disability is entitled to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning.

It also goes ahead to say that they must access educational institutions and facilities, places of public transport and information, provided with sign language, Braille or other appropriate means of communication and access materials and devices to overcome constraints arising from a personal disability. These beautiful provisions of the Constitution are not just there for the purpose of us admiring them, they must be realized by those who deserve this protection. As I said, they are not given by law, but protected by law.

The Constitution is very clear that the State should ensure progressive implementation of the principle; that at least 5 per cent of members of the public in elective or appointive bodies are persons with disabilities. At least, there is a minimum that should be arrived at, but we should be able to go beyond that minimum and allow persons with disabilities to play the same roles because physical disability is not inability. The other day I saw a wonderful story of a gentleman who is an IT manager at Kenya Wildlife Service (KWS) doing wonderful things. I watched “Jeff Koinange Live” on television and you could see how he is able to write and he does not have the kind of hands some of us are lucky to have. I also saw a story of a girl who was writing using a leg. I have seen so many God given talents that are bestowed upon persons with disability and, therefore, we must be able to give them a chance to flourish in their lives.

Mr. Temporary Speaker, Sir, for us then, therefore, to realize these rights, and for the protection of these rights provided for in the Constitution, there must be measurable, tangible results that we can be able to see and say: Yes, this is what has been done. There must be effort.

Mr. Temporary Speaker, Sir, there was an amendment that was brought by Hon. Sakaja and it was debated by the other House about access to contracts by the youth together with persons with disability. The amendment stated that 30 per cent of the contracts in national and county governments must be accessible by the youth, women and persons with disability. There must be conscious effort. The one thing I like about this amendment is requiring that there are clear reports that we shall receive from national and county government entities about what they are doing; what opportunities have been given to persons with disabilities and what conscious effort is being applied for persons with disabilities. The moment we have such a provision, it becomes clear that in the performance contracts of every officer in the county or national governments, they have no doubt that there are certain measurable targets. We should even go further and amend this section to say that there will be a penalty for an institution. It must even be a ground for dismissal of a state or public officer presiding over an office that is not conscious to the needs of persons with disabilities.

This amendment, however, small it may look; I agree is a greater step towards realizing the opportunity for persons with disability particularly in our counties. Our counties are new entities. As new as they are, they must come with new things. We must do things in a new way. All the structures that are being built in the county governments must have mechanisms for ensuring that there is access to persons with disability. I have seen buildings even in my county that are two or three storied and there is no lift. I wonder how people access those buildings. That consciousness must be there. All engineers, architects and contractors must put in their bill of quantities and all the architectural designs that it is mandatory for every design that they are going to engage in, it must have a place for accessibility by persons with disability.

Mr. Temporary Speaker, Sir, I stand to support this amendment and to say that, let us take advantage of our opportunity here in the Senate, just like Senator Njoroge has done and Sen. Mutula Kilonzo Jnr has recommended, perhaps it is important for us, working with Sen. Njoroge as the Committee on Legal Affairs and Human Rights to relook at the whole legislation and see whether it is responding to the Constitution. Is it in line with Articles 27 and 54? Are we making conscious efforts to ensure that we support persons with disabilities?

Finally, the education system from the inception must be responsive to persons with disabilities. There must be a fund that must be put in place to ensure that free education is given to persons with disability. In Elgeyo-Marakwet County, all the institutions that are there for the education of persons with disabilities are being sponsored by the church. A few of them in my county are supported in Iten at a place called Mindiliwa and in Keiyo South at a place called Mokwa. These institutions are few, they are not more than five in the county. They rely on the church. Once in a while we are invited and they say: "There is a happy day in this institution." We make a small contribution and so on. But it must be put consciously because access to education by persons with disability is a right.

My suggestion would be that, to start with, we should have at least one school in every ward in the Republic of Kenya that is focusing on training of children with disability, where they get their early childhood, primary and secondary education within

the same institution. There must be an institution of excellence in the 1,450 wards in this Republic that is focused on taking care of children who have disability. In many instances, because of cultural behaviors, many people who have children who have certain disabilities are stigmatized by society. They feel like they should not have got those children. Sometimes they hide them. We have seen cases on television where someone is chaining their child on a wall. When you ask them, they tell you: "There is no way I would have been able to let them free because they would go on a mission of self destruction." There are a lot of dehumanizing acts that we have seen against persons with disabilities.

Therefore, the state must step in. The best way to do it is by legislation. That is why we should further this amendment either in the Education Act or in the Persons with Disabilities Act so that we make it mandatory. This Constitution says that some of those rights must be realized progressively especially the socio-economic rights to education, health and so forth. We must give ourselves a target that in five or ten years, we must have a school in every ward that is dedicated to persons with disability so that they have proper education, braille and other equipment that they may require so that they are able to carry forward their education.

I support this amendment. I urge Sen. Njoroge to continue in the same spirit. He should approach the Committee on Legal Affairs and Human Rights chaired by Sen. Amos Wako, of which I am a Member. Let us see how we can review the whole Act comprehensively so that the rights of persons with disability are achieved.

Sen. Ong'era: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity so that I may support this important Bill. From the onset, let me also join my colleagues in congratulating and thanking Sen. Njoroge for bringing this Bill that highlights and brings to light the plight of a very important constituency of our society and this is persons with disabilities. We know that there have been many provisions of law that have come about with regard to persons with disability and yet nothing has ever been done. We have very good writings under the Constitution and the Persons with Disability Act. There are also very good words that are mentioned in the UN Convention for Persons Living with Disability yet we see discrimination of persons with disability being exercised in our society. Mostly, we see barriers to persons with disabilities with regard to attitude and environment. We also have socio-cultural and infrastructural barriers that do not take into consideration the rights of persons with disabilities. This is a gross violation of their rights.

As we see this, it saddens us to see that this important constituency is not being considered. It is timely in the Bill that Sen. Njoroge is requiring that this data is brought to this Senate, which is the House of wisdom, and the National Assembly, so that we can ensure that, indeed, the Council is giving us necessary data that these barriers of discrimination are removed.

While I congratulate the national and county governments for ensuring that there is some semblance of equitability being brought by giving persons with disability contracts and business, it still behooves me to say in this House that what will stop a person who is not disabled from posing as one who is disabled and getting some of these contracts? We need a clear report that can be brought to the House so that we can know

that, indeed, these contracts are being given. Why do I say this? I say this from a point of experience. When I was the director of the largest party in this country, the Orange Democratic Party (ODM), I had put out a provision that in every branch executive committee, we should ensure that at least there should be one person with disability. It would sadden this House to learn, when we called for a large meeting of the national delegates, fully bodied men and women came. They were telling me they are persons with disability.

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

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

When I ask them “where is the disability?” They will tell me “O, you can see that guy; the leg is short; O, this person has a squinted eye.” Therefore, we need data that can be brought to this House whereby we interrogate and ensure that, indeed, the people who got these contracts are persons with disability.

Mr. Temporary Speaker, Sir, the other issue that I want to raise is that we have not actually mainstreamed disability issues into our policies. We need to see to it that disability issues are actually mainstreamed and they become an integral part of our policy planning in this country.

Finally, Mr. Temporary Speaker, Sir, as we are aware, persons with disability are faced with multiple and aggravated forms of discrimination because of the very basis of their status. This is more so on women and children. They are the ones who face the greatest discrimination. Mostly, you will find that this discrimination is within the homes and sometimes outside. You will find that they face the greatest form of violence, sexual abuse, neglect, mistreatment and exploitation. As I said the other day, one of the constituencies of this group is children with Down’s syndrome. Many of us have these children in our homes and it will sadden us to learn that a majority of us hide these children under the mattresses; we do not want these children to be seen by the society. When such a report is brought, I would want to see what county governments have done to ensure that special educational institutions or special facilities, right from Early Childhood Development (ECD), have been established for children with Down’s Syndrome.

Mr. Temporary Speaker, Sir, it will amaze you to also learn that even within our prison setup, you will find that, indeed, prisoners who are normal are being mixed with people with mental disabilities and other disabilities. You know that persons with disabilities are a very special constituency and they require special treatment. I would not expect that they are treated the same way with able-bodied prisoners.

With these points, Mr. Temporary Speaker, Sir, I want to support Sen. Njoroge and assure him of our full support in executing this Bill and any other Bill that you will bring on persons with disability.

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

Sen. Kajwang: Thank you, Mr. Temporary Speaker, Sir. Earlier on, I was not sure how I was going to contribute; this is my confession, but after listening to Sen.

Murungi and Sen. Mutula Kilonzo Jnr., I have a very different idea of how I want to address this issue.

Mr. Temporary Speaker, Sir, let me start with some of the stories of my confessions. One of the persons I helped to nominate as a person with disability in Homa Bay County was a head teacher who was a little older than me, but we come from the same village. He was very fit until one morning when he could not feel his legs or even lift them. He told his wife that “I cannot go out for a short call.” The wife was shocked and she asked him why. He replied that he could not feel his legs. That was the beginning of his disability and up to now, he is on a wheelchair and crutches until his recent nomination. He represents the people with disability with a lot of passion because he knows how able-bodied he was just a few years ago and how it happened like lightning when he was asleep. So, it can even find you while you are asleep.

Mr. Temporary Speaker, Sir, the other confession I want to talk about is of another relative of mine; I will not mention names because he might be offended. He was fit until the other day when he sent me text messages that we should meet for a drink or two, because we are friends. The next day, he sent me another text message and he told me “I have been hit by a stroke and wheel-chair and cannot walk or stand.” I asked what has happened that, in a flash, he is on a wheelchair; a person who was fending for his family but he is in that confinement now.

I think it is Sen. Murungi who said that we are all candidates for disability. The MP for Kamukunji, until the other day was a very fit gentleman. In fact, when he was working with the Refugees Council in Geneva, I remember meeting him several times as a representative, not of Kenya, but he was working for the international body at a very senior level. When he came to Kenya, we elected him to Kamukunji and just because of some thuggery; you know that he is now confined to a wheelchair. So, it can happen to anybody. The women representative of Migori – a dynamic and very active young lady – we were campaigning with her during the aborted party elections of ODM just the other day. She was involved in an accident on the way home, was taken abroad for treatment and today when we met at the Orange House, she was on a wheelchair. So, it can happen to anybody, whether you are an MP, a Senator or whoever else you are.

Mr. Temporary Speaker, Sir, while making this law – and I think I want to quote the Speaker himself – we should not think that we are making it for somebody else; we are actually making it for ourselves and for this society. We need to protect our own, if not ourselves because it can happen any time. But I think hon. Members have said that enforcement has been very poor. We have written very beautiful words, as Sen. Ong’era has said, but enforcement has been a problem. I think we should look at enforcement other than reporting. Although the Members who are nominated into these Houses – whether it is the county assembly, the Senate or the National Assembly – have a duty to campaign for the enforcement of these rights, but they might end at campaigns.

We must find enforcement somewhere; I was thinking of the Ombudsman writing to these bodies to ask them what they have done. But even the Ombudsman is complaining that he receives numerous letters and, of course, he does a lot of correspondence. But because there is no enforcement – should I put it the other way – because there is no pain of non-enforcement which he can inflict, nobody bothers about

his letters. So, it is one of those offices which are very powerful; but power without the mandate to cause some discomfort is not power. I think it is only when you can deprive somebody of his job, confine them or fine them that you can say that you have some power.

Mr. Temporary Speaker, Sir, I was even thinking of how we will know that in Homa Bay County, for example, some of these contracts and jobs have been given to persons with disability. Who will report? I was thinking that there should be some officer designated and employed there even by the same county government to one to monitor and report. I do not know how, but we should think of that so that even the Governor or his own Ministers who give out these jobs and contracts would fear that a report made against them can cause some discomfort to them. Unless we have that, we are not going anywhere.

I will give another example which I was forgetting. When I was much younger – I think I was in first year at law school – a lady from my constituency who I think was the most beautiful head teacher - She was the Principal of Kisumu Girls at that time. She was threatening to run for the Mbita seat at that time. I am sure that if she ran, probably, we would have voted for her.

One time, she was travelling in a bus from Kisumu to Nairobi to conduct official work and the bus rolled. From then henceforth, she was on a wheelchair. I remember that she had to buy a car, after she got her compensation, which could be operated by hand not by use of the pedals down there. The legs would not help. The car had, therefore, to be operated like a *piki piki*. I used to see her in church whenever we met. For her to import that car, she had to pay duty. I remember that the President then had to intervene to say that such cars should be imported duty-free. I am echoing what Sen. Mutula Kilonzo Jnr. said about importation of wheelchairs and other equipment that is used by disabled people. This cannot result to a loss in revenue but it goes very far in giving our people access to what they need to survive.

I recently watched an artist paint with his toes. I saw a painter and his paintings were beautiful. The paintings were going for a fortune. However, at times, we allow them to let them to try doing what they can. Of course, once in a while, when they meet a politician, a photograph is taken and people get to know about them. However, we do not take these issues at the national level or even at the county level to support them so that they also earn a living from some of these things. I do not know how we can craft some compliance, sanctions or enforcement rules so that we go the route we want to take.

I would like to thank the second President of the Republic of Kenya, hon. Moi, for taking affirmative action in meeting these needs. Although he took the route of benevolence and Harambee, this did something. I am sure that hon. Njoroge will concur that some money is sent to him from that kitty every year. It may not be much but they have a building where they collect rent and share out the money. I remember receiving some wheelchairs from that organization. One of the Senators here was a Member of that council. I distributed the wheelchairs in my constituency.

However, we should take this seriously as a policy. It would be good if we could put this in our laws or Constitution. We should take it as a policy of the state and the

county governments as an area where we want to assist. We should put some money in it and this would help us go far.

There was a time that almost every telephone operator was a blind person. I do not know whether we still have telephone operators because it is long since I used public telephones. However, those days, telephone operators were blind but could manipulate those old machines and could connect you to whoever you wanted to talk to. These were some of the most pleasant telephone operators and the most efficient. Even when there was a lot of work, they were very kind. That was affirmative action and I do not know why we did not continue with it in other areas.

Jobs which can be done by persons with disabilities should be left for these people. People who are able bodied can do other jobs. That way, we would go very far. If you try to jump into a matatu today, you will face many problems if you are disabled. Matatus are for the fittest who are in a hurry. No tout will give you a chance to jump in. We used to have the Kenya Bus which was forced by practice to have some chairs reserved. I have gone abroad and taken bus rides. Whenever you try to sit on those chairs, you are forced out because they are particularly for the disabled. I think this is a good law.

I agree with you that after looking at it again, we should go back and come up with amendments. The way it is now, I am quite dissatisfied with the main Act. We should do a good job on the Bill so that we give meaning to the proposed amendments that our brother has brought. I want to thank him.

Thank you.

Sen. Gwendo: Thank you, Mr. Temporary Speaker, Sir, for giving me a chance to add my voice to this amendment Bill. I would like to start by congratulating Senator Njoroge. I would like to register my disappointment that despite the fact that in a House of 67 Members, it had to take a person living with a disability to bring a Bill or an amendment about disabilities.

Why should we wait to support him? Why did we not think about it? Sen. Njoroge, we support you and know that disability is not inability. In that case, I would like to refer to a paragraph in this amendment that says; this Bill seeks to bring out details about the extent to which the national and county governments have complied with the provisions of the Constitution and the Act on matters relating to persons with disabilities. To me, this will give persons with disabilities a lot of confidence that people are with them. It will give them confidence that people care about them. This is not just a saying. We read and see people with disability around us. We may not have them in our families but we see them around. You will visit a hotel and find that it is not disability friendly. You will complain about it once but what more can you do about it? However, when we pass legislation that will care and show concern about them, then we will be doing something about it.

We have funds that should be taking care of the disabled. However, do these funds take care of the disabled? We do not know. If this legislation is followed up and made to ensure that the money that is given to them is used appropriately and audited and justified, then we will be showing our humanly side by supporting people with disabilities.

We need to thank God, every day, that we have our two eyes, hands and can come to this Senate and go about activities. However, we do not know what the disabled feel like. We can only support them. We should support this legislation and ensure that it is passed. Issues meant for the disabled should be followed to the letter. This law will go a long way in showing that disability is not inability. We will be showing and supporting the ability to do things just the same way anybody who is not disabled can do.

Thank you, I support.

Sen. Muthama: Bw. Spika wa Muda, ninasimama kuunga mkono Mswada huu ambao umeletwa na rafiki yangu, Sen. Njoroge. Ninamshukuru Sen. Njoroge kwa fikra zake. Hii inaonyesha kwamba uteuzi aliopewa na chama kilichomteua kuja hapa, umeanza kuzaa matunda.

Jambo linalozungumziwa hapa ni jambo muhimu sana. Linaanzia kwa kutambuliwa kama “walemavu”. Kwa wale ambao wanataka kutumia lugha ya madharau, wanawaita “wasiojiweza”. Halafu wale wenye matusi ya juu wanawaita “viwete”. Watu hawa ni viumbe vya Mungu na hatujui tutamuita mtu nini ambaye ana ugonjwa wa roho au mtu ambaye ana vidonda vya tumbo. Lakini sisi sote kama binadamu, kuna sehemu fulani katika miili yetu ambayo inatubidi tukumbuke Mungu wetu na kumwomba. Lakini hatuna majina kamili tunayoitwa ila tu hawa wengine.

Bw. Spika wa Muda, tangu tunyakue Uhuru hapa nchini Kenya, watu ambao wana maumbile tofauti wamebaguliwa na hadi kufikia kiwango cha kujihisi kwamba hawastahili kuishi. Kuna mwimbaji mmoja kwa jina Daudi Kabaka ambaye aliimba wimbo akisema kwamba, ukizuru katika kila mji wa taifa letu la Kenya, katika barabara ya kila mtaa, utakuta mtu ambaye hajiwezi. Na kama ni mwanamke, utampata kwamba amepachikwa mimba. Daudi Kabaka anauliza: Je, mimba hii ni kutoka kwa mtu ambaye hajiwezi ama ni kutoka kwa yule anayejiweza na nia yake ni kumuumiza yule ambaye hajiwezi?

Haifai wanaojiweza kuwatusi na kuwadharau wale ambao hawajiwezi, hasa wanawake. Baada ya kuwapachika mimba, huwa wanawatoroka. Katika taifa letu, wakati kazi za kijeshi zinapotangazwa, huwezi kuwapata watu hawa katika mstari wa mbele wakitafula kazi katika jeshi, askari polisi au askari jela. Hawaajiiriwa katika kazi ambazo zinastahili mtu atumie nguvu zake. Lakini wao hulipa kodi hata wakiwa ni wa kuombaomba, kama mtu yeyote nchini. Akinunua sukari nusu kilo, analipia kodi. Lakini hata wakati tuna sherehe zetu za kitaifa, utashangaa kuona kwamba hao ndugu zetu, dada zetu na watoto wetu hawatengewi sehemu yao katika sherehe hizo. Iwe ni sherehe yoyote, sijaona hata kiti kimoja kilichotengewa watu hao. Kwa hivyo, watu hawa wamebaguliwa katika nchi yao.

Bw. Spika wa Muda, ninamshukuru Sen. Njoroge kwa sababu Mswada huu ukipita itabidi watu hawa wahesabiwe upya ili tujue idadi yao. Ikiwa wamefika milioni kumi ama ishirini, kiwango chao katika mgao wa mapato wa hii nchi ya Kenya ni nini? Leo ninasema haya kwa sababu mpango tunaoendesha wa “Okoa Kenya”, tumesema kwamba baadhi ya mambo tunayotaka – ningependa wanasheria wayasikie haya – tunasema kwamba katika kazi za Serikali, yale “makabila makubwa” wasipate zaidi ya asilimia 15 ya kazi za nchi yetu. Lakini wale ambao ni chini ya asilimia 3, tunasema wapewe asilimia 30 ili wao pia wajivunie taifa lao.

Pia, ningependa wale wanaorekebisha sheria yetu wahakikishe ya kwamba watu hawa wanapate asilimia fulani katika mgao wa kazi za umma ili wasitengewe pesa ilhali hatujui idadi yao na hawajulikani wanakoishi na vile wanavyojikimu kimaisha halafu zile pesa zinaenda kwa mifuko ya watu binafsi ambao hawana ulemavu wowote. Hakuna hata mtu mmoja asiyejiweza atafaidika ili ajiweze. Pesa nyingi zimepeanwa katika kaunti zetu ilhali hakuna kaunti katika nchi hii yetu ambayo inaweza kuonyesha kwamba imesaidia watu hawa. Nilimsikia Sen. Mutula Kilonzo Jnr. akisema kwamba yeye amewahi kuwasaidia kwa kuwanunulia viti ambavyo wanatumia. Kila mwaka, ninatoa zaidi ya viti hamsini kwa hawa watu ambao Mungu amewaumba tofauti nasi. Hivi sasa, nimeitishwa viti 30 na Mhesimiwa Mwikali kutoka kaunti ya Busia, kaunti ya Kitui nimeitishwa 20 na kule Machakos nimeitishwa 10. Kwa hivyo, ninatarajiwa kuwa na viti 60.

Sen. Moi: Mungu akulipe Muthama! Mungu akulipe!

Sen. Muthama: Bw. Spika wa Muda, hiyo pesa inatoka kwa mfuko wangu mwenyewe ilhali magavana hawajali. Kwa mfano, Gavana wa Kaunti ya Machakos juzi alifunga safari ya kwenda Kaunti ya Kitui ikiwa amebeba choo chake kwenye gari.

Hon. Senators: Aibu! Aibu!

Sen. Muthama: Anawabeba wapishi wake akienda Kitui. Pia anabeba kiti chake kwa sababu viti vingine vina chawa na hataki kubeba chawa. Anabeba mkeka mwekundu kama huu ili utandikwe akanyage. Haya yote yanafanyika katika kaunti ambayo watu hawajui wanaenda wapi. Ukiangalia miguu ya mtu huyu huwezi kusema kama anakula chakula. Fikiria juzi tuliona katika runinga mtu mmoja ambaye anaandika kutumia mguu wake, vidole vya miguu yake vinashika kalamu anapoandika. Huyo mtu anajifanyia kazi na hiyo miguu yake kuandakia lakini nchi ina Gavana, anatembea na magari 20. Nchi ambayo ina waziri ambao kila mmoja wao anapewa magari matano, walinzi 20 na nyumba zinalindwa. Mtu mmoja gharama yake kwa mwezi ni zaidi ya Ksh10 milioni na kuna mwingine ambaye hata viatu vya kutembelea hana.

Mheshimiwa Spika wa Muda, namshukuru Seneta Njoroge kwa kuleta Mswada huu. Mungu atakubariki. Tutachangia Mswada huu na tujitole kuona kwamba wale ambao ni wa nyuma wanaenda mbele na wale ambao walikuwa wa mbele wana rudi nyuma kidogo. Haya ninaongea hata katika siasa. Nikiongea watu wengine wanafikiri kwamba ninamlenga mtu fulani. Taifa ni letu na haki zote ni zetu. Mungu aliumba nchi hii iwe yetu. Haijailishi wewe ni nani. Nataka kumwambia Seneta Njoroge aendelee na kazi hii nzuri amefany hapa na wapiga kura wetu watatambua mchango wake. Kama baiskeli hampti, hakuna mmoja wenu anaweza kuwa rais katika Kenya. Hii ndio sababu ninapendekeza tubadilishe upigaji wa kura ili uweze kupigiwa kura sio kwa sababu kabila yako ni kubwa, yangu ni ndogo au ya Seneta Hassan ni ya kati kati, unaweza kupata kura za kaunti 47 na kuwa rais wa taifa letu bila kubaguliwa unatoka wapi au walala wapi. Mambo haya yatafanya Mungu atubariki na tuunganishe taifa letu.

Kama ingekuwa Mheshimiwa Moi ningesema alivyo kuwa akisema kwamba: “Na hapo ninafunga.”

Sen. Ong’era: Mr. Temporary Speaker, Sir, with due respect to my boss the Minority Chief Whip, did you see him addressing Sen. Njoroge directly instead of addressing the Chair? Is that in order?

Sen. Muthama: Mheshimiwa Spika wa Muda, nimetaja Seneta Njoroge, Seneta Hassan na Seneta Mutula Kilonzo Jnr. Nimesema kila mara nikitamka “Mheshimiwa Spika, kazi ambayo Seneta Njoroge amefanya ni nzuri” “Mheshimiwa Spika, Seneta Hassan hawezi kuwa rais tukitumia mpango wa upigaji kura wa ubaguzi.”

Naunga Mswada huu, Bw. Spika wa Muda.

The Temporary Speaker (Sen. Murkomen): Ingawa sijui kwa nini ulitumia jina la Seneta Hassan Omar kwa mfano wa urais. Sijawahi kusikia akisema anataka kiti cha urais. Pengine ungetumia jina la Seneta aliye karibu na wewe kwa sababu amewahi kusema---

(Laughter)

It is on a light note.

Sen. Hargura.

Sen. Hargura: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute and support this amendment to the Persons with Disabilities (Amendment) Act. The initial Act looks detailed and these kinds of amendments assist in making some parts of the Act to be actionable in the sense that the first part is on the Council reporting to the various institutions which do monitoring and oversight. Also, there are proposed amendments to Sections 11 and 13 which talk about the rights and privileges which also specifically set out what should be due to the persons with disabilities. This goes a long way in making sure that it is actually implemented. If a responsibility is not assigned to somebody and when to deliver, then that responsibility will actually not be realized. This amendment, short as it might be, gives responsibility to where it is due and ensures that these reports are supplied to the relevant oversight bodies like the Council.

Mr. Temporary Speaker, Sir, as the Vice Chairperson of the Joint Committee on National Cohesion and Equal Opportunities, we take the issue of equal opportunities in terms of persons with disability. We also, as part of our activities, intend to review the Act with a view of amending it so that we make it more actionable, specifically after our visit to the US where we checked how in that country the persons with disabilities are actually mainstreamed into the general public to make sure that they have access to all the facilities and have the necessary rights and privileges. For example, in a state where we visited, at the State Governors office, there is actually an officer who has a budget and who each year makes sure that the public facilities in terms of buildings are accessible to persons with disability. If it is the public facilities, then it is for the Government to provide funding to make sure that all of them are made compliant with access by persons with disability right from the road.

You could see if you are entering a public office or building, right at the road itself, the road is at a level such that a person with disability using whatever means of movement, if it is a wheel chair, can easily get into that building right from the road and within the building itself. That is enforceable. For you to enforce that kind of facilitation, you must have funds. That is why in that particular state, they had a compliance officer who is given funds not just to go around and check what people are doing but actually

could implement that in public buildings and facilities. The same law applies to private institutions. The same office does oversight so that whenever there is a plan of any facility such as a building, it has to be approved along that line. That way, you will make sure that the rights of the disabled to access any facility is guaranteed. This is an eight part Act which specifies, for example, it provides for a Council. We have to check that Council. Is it actually representing the people with disability? Is the membership of that Council sensitive to that or is it just people drawn from departments who are put there but who do not actually take care of the rights of persons with disability?

It also talks of the rights and privileges, but these rights and privileges need to be enforceable. So, we have to look at the Act to see whether actually those rights, as they are, are enforceable. They are talking of 5 per cent of the jobs – as the Constitution itself under Article 54(2) clearly states that:-

“The State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.”

How do we enforce that and all these other articles of the Constitution? So, I think the Act should actually go into details on how to enforce those rights and privileges. These rights are given and they are in the Constitution. The Act also talks about these rights, but why is it that persons with disabilities in this country are still exposed to hardships? On that one, we have to look at the whole Act and I invite Sen. Njoroge to our Committee meetings, because it is part of our agenda. One of the Acts we are working on is the review of the Persons with Disability Act, which is good. But we also need to go further and check all the Acts because right now, we are talking about the counties. As far as I know in my county, there is no institution for persons living with disabilities. My county is very vast and there are no such institutions. The nearest one for people with hearing disabilities is in Isiolo; if it is an institution catering for the blind, you have to come all the way to Thika. So, we are not sensitive to the plight of persons living with disabilities in this country.

Mr. Temporary Speaker, Sir, we need to have specialized institutions that cater for persons living with disabilities. I remember of a Motion which was passed in this House to that effect, but that Motion also needs to be implemented. This can be done by incorporating it into the amendment of this Act so that we have that in an enforceable condition. This will enable the counties to come up with schools catering for persons with special needs. That is not a case of discrimination; that is a case of facilitation. Somebody might think you are setting them aside. But you need to create an environment so that they can develop their talents and so that they can reach a level where they can participate in nation building. Maybe at higher levels, they have to integrate with others, but at some level, you need to give them proper attention; and that is what we are lacking. That is why you will find it being often reported that parents hide children with disabilities. More often than not, those parents are themselves struggling to make ends meet in life and they are poor.

For example, in pastoralist communities, it is very difficult for a family which is moving with their livestock from one area to another maybe every six months or so seeking pasture and water to be carrying along a person with disability. If that kind of an

institution is there, then that person will be better off there so that he or she can have the necessary facilities. If it is a blind person or if it is somebody with hearing problems, then they can easily learn in a specialized way. For example, if it is a blind child, he cannot go to the same school with children who have no sight problems. So, we need to mainstream this; we need to recognize it from the beginning so that they are always part of our planning even at the county level. That way, we can make sure that we are actually giving these Kenyans their rights. We are not doing them any favour; it is their right and as a country, we have to be seen to be giving them their rights, right from childhood.

We need to establish the necessary facilities so as to let them develop their potentials. Because when you talk of giving persons living with disabilities five per cent of jobs, yet you have not given them that chance to develop themselves like any other Kenyan so that when it comes to that level of entering the job market, they have the necessary qualifications. If we cannot give them that facilitation at an earlier stage, then when it comes to the job market, they will obviously not be there. So, let us start from the beginning, especially with this chance of devolution.

Let us see how each county can actually have specialized institutions to develop the necessary skills for these Kenyans to contribute to nation building. Similarly, when it comes to the incentives, because the Act still talks of relief and incentives, this also has to come out clearly. It has been said very clearly that there must also be some incentive when it comes to the materials or the facilitation they will need in terms of equipment, the special training needs or education tools. These materials should be imported duty free because we do not make any of this equipment.

So, all this needs to come out clearly and it should be enforceable at the level where they are able to join Kenyans, which should be at a higher level of learning. Similarly, all the institutions must be compliant with the needs of access by these persons living with disabilities. That is one way we can make sure that we are mindful; that we give all members of this country their rights. We also need to know that we are not favoring anybody here; they have the same rights we have as Kenyans. We have to be seen to be a mindful nation which creates the necessary incentives for all Kenyans so that we can all compete at the same level. It is only at that time that we can be seen to be a nation which cares for its entire people.

Mr. Temporary Speaker, Sir, I support the amendments and urge the hon. Members to join us when we will be deliberating on a comprehensive review of the Act so that we can have all the necessary amendments made.

Thank you, Mr. Temporary Speaker, Sir.

Sen. Hassan: Thank you, Mr. Temporary Speaker, Sir, for this opportunity. Before I delve into the substance of my contribution, I want to, first and foremost, state my extra ordinary admiration for Sen. Njoroge in terms of living up to the expectations of the constituency which the Constitution mandates him to represent. Do you know that the special category of Senators that are here have each been given a certain area of interest or responsibility? Those of us who have been in the human rights discourse in this country to ensure that every Kenyan is provided a fair opportunity, our extra ordinary worry was whether those who are actually elected or selected to represent this constituency will give it their best in terms of ensuring that those matters or issues that

bedevil that constituency are articulated in those platforms and fora. Therefore, this is one of the many Motions and amendments that Sen. Njoroge has brought to the Senate and to various stages of the Senate to ensure that he empowers the constituency that he is best suited to represent.

Mr. Temporary Speaker, Sir, there was a time in this country when addressing issues of disability was a matter of rhetoric; where political leaders thought that they were doing an act of extreme humanity or humane act to appoint a person living with disability into public office, but that is not the case anymore in this country. When we established an elaborate Bill of Rights under Article 53 which talks about persons living with disabilities, we actually graduated the arena of rhetoric to the arena of rights. Therefore, what is being proposed in terms of progressively articulating the realization of these rights for persons living with disabilities is no longer a matter of discretion, but it is a matter of right. Any county or national Government that does not ascribe to the provisions of the Constitution to ensure that they accord visible measures so that persons living with disabilities are dignified, then it is important to state that this would be an abrogation and a travesty to the Constitution of the Republic of Kenya. It provides for these rights. This one provides that persons living with disabilities be accorded certain rights and privileges. These rights, therefore, accrue and become a consciousness that this country must discharge so that we realise the full potential.

Speakers before me have spoken of how we have literally used disability and people living with disabilities to punish them in terms of actualising their full potential and competences. I think that other countries have done extremely well to ensure this discourse is properly relocated. Kenya has made its first step but it is still taking baby steps. I hear Government functionaries across the board wherever they go, they pride themselves of having the Disability Act in Kenya yet it is a piece of legislation in terms of domesticating the Convention. However, do we really believe in it?

Rights are not a matter of belief and conviction. In fact, I think that if every other part of the Constitution is mechanical, Chapter Four which is about fundamental rights and freedoms is not a mechanical chapter. It is an actual chapter. It is about the set of values and principles that guide us as a nation. Therefore, as nation, we have taken it upon ourselves that we shall accord persons living with disabilities with certain rights and opportunities. The fact that Sen. Njoroge has decided to translate what is in the Constitution into our written law means that we want to place a responsibility so that these aspirations are achieved with immediacy.

Mr. Temporary Speaker, Sir, preceding the enactment or the coming into effect of this provision, we would require an audit of all counties so that all counties give us a breakdown of persons under special category who have been employed by the county governments; be they women or the elderly. There is a point at which even the elderly to a certain extent are given those rights, member living with disabilities, the youths among others constituents so that we discharge and demonstrate that Kenya is trying or making progressive steps to ensure that the Constitution that we so proudly speak about is implemented.

There are various templates across the world about how disability rights are being actualised. Kenya, by and large, has acquired that template. It has domesticated the

convention. In so doing, there are also other things that are yet to be seen. We must turn them into law that compels our entire arena or formation of society. Why do I say that? Our Parliament today is fairly disability friendly. However, I know that there were certain constraints about holding certain committee meetings at certain times in certain boardrooms in this Parliament because Members living with disabilities could not access some areas of Parliament. This is a shame because Parliament should be the first institution to lead by example. There should be no place that Sen. Njoroge or any other Senator living with a disability cannot access. We must make it compulsory particularly for buildings that are being put up right now so that they comply with certain regulations to ensure access to persons living with disabilities.

We must make it mandatory for all public buildings to comply so that every other person can follow suit. Sen. Njoroge does not need sympathy from us. There is a misconception about persons living with disabilities. You are now thinking that you appointed Sen. Njoroge as a favour. You may be thinking that Sen. Njoroge needs sympathy from you; that is not the case. Our colleagues do not need sympathy or favour. These are rights. We must make sure that institutions comply with these requirements particularly in the arena that is provided for in the Constitution.

I have realised that many people living with disabilities have acquired quality education. They have excelled in various areas. The United Kingdom (UK), once, had a person living with disability as a Cabinet Minister. Many countries have followed suit. This is because we need to conduct effective public education so that people realise that we must evaluate persons living with disabilities on the basis of competence and they must be given the opportunities that they deserve. It is not a favour. We must tell parents who have children living with disabilities that that is not a condemnation. It is a situation that can be dealt with and that this country should provide the necessary support in terms of improving the living standards of people living with disabilities from the point of educating them, to providing them with adequate infrastructure, employment, elective politics and any other facet of our society.

Mr. Temporary Speaker, Sir, I hope the Kenyan public will be sufficiently informed and capacitated so that it is not only through nomination or special seats accorded to them that we get Members who are disabled to the Senate or the National Assembly, but through competitive election. They should be able to bring to the House a transformation agenda for this country. If we follow these steps progressively, in a few years time, we will not need to do anybody a favour; not the women, the youth or the disabled will require any favour.

I recall when you were elected, in one of your contributions, you said that it was a misnomer to think that the Senate was only reserved for a certain age bracket. That some of us despite our definition of being youth as described in the Constitution or by virtue that we are younger than quite a number of Senators, we are here by right. We hope that more people will find the strength to rise to this occasion and ensure that people who face certain disadvantages in life are accorded the necessary opportunities.

I hope this debate can also take place in the county assemblies. I am yet to see the robust nature of debates in county assemblies because they are supposed to be the reciprocal legislative organs with respect to complimenting the work of the National

Assembly. Members representing constituencies with special interests must also undergo a certain level of mobilization so that they can now realize what they are here for. I have seen people in special categories who forget – unlike the Senators for Elgeyo-Marakwet and Mombasa counties – they are under certain special obligation. They are not supposed to be sycophants of the political establishment or the nominating authorities, but to courageously and fearlessly represent those constituencies.

That is why we sometimes need to do an audit of these seats so that we place certain benchmarks for being nominated to certain seats. It should not just be a matter of loyalty, but a matter of competence. They should be able to deliver and that is why Senators have been talking about the criteria for being nominated to this Senate to represent a special constituency. Some of us get as rhetorical as the other 47 of us who were elected with a specific mandate to certain counties or party manifestos. This is a debate that should continue so that it does not appear that some of us want to strangle the special seats.

This will be a good initiative as we go into the next election for some of us to come up with criteria to guide political parties of who should be the individuals to represent special constituencies, so that it is key to being nominated. Otherwise, the constituency of persons living with disabilities and other constituencies will be greatly disadvantaged if we do not consider the merits of being nominated into these positions under certain---

ADJOURNMENT

The Temporary Speaker (Sen. Murkomen): Order, Sen. Hassan. The next time this Bill comes on the Order Paper, you will have two minutes to complete your contribution.

Hon. Senators, it is now time to adjourn the Senate; the time now being 6.30 p.m. The Senate stands adjourned until Tuesday 4th November, 2014 at 2.30 p.m.

The Senate rose at 6.30 p.m.