

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 13th November, 2024

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

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

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

The Speaker (Hon. Kingi): Clerk, do we have quorum? Serjeant-at-Arms, kindly ring the Quorum Bell for 10 minutes.

(The Quorum Bell was rung)

The Speaker (Hon. Kingi): Hon. Senators, we now have quorum. We will proceed with today's business.

Clerk, you may proceed to call the first Order.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM TANA RIVER COUNTY ASSEMBLY

Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery this afternoon, a visiting delegation from the County Assembly of Tana River. The delegation consists of members of the committee on delegated county legislation who are undertaking a benchmarking visit to the Senate.

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

- (1) Hon. Abdulhakim Ware Shehe - Member of County Assembly (MCA).
- (2) Hon. Maka Maimuna - MCA
- (3) Hon. Mahmud Gabo - MCA
- (4) Hon. Masha Boru - MCA
- (5) Hon. Hamid Babusa - MCA

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- (6) Hon. Ismail Kadobo - MC.
- (7) Mr. Timna Komora - Legal Counsel
- (8) Mr. Bashir Nadhir - Clerk Assistant.
- (9) Mr. Hussein Hirsi - Serjeant-at-Arms
- (10) Mr. Jeremia Barisa - Aide
- (11) Ms. Brenda Komora - Hansard Officer

On behalf of the Senate and on my own behalf, I extend a warm welcome to the delegation. I wish them all the best for the remainder of their visit.

I have another communication.

VISITING DELEGATION FROM KISII UNIVERSITY

Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery this afternoon, a visiting delegation from Kisii University. The delegation consists of 10 students from the Faculty of Law who are visiting the Senate to gain first-hand experience in the law-making process.

On behalf of the Senate and on my own behalf, I welcome the delegation and wish them a fruitful visit.

Under one minute, I will call upon the Senator for Kisii County to extend a warm welcome to the delegation from Kisii University and the Senate Majority Leader to extend a warm welcome to the delegation from Tana River County in that particular order.

Proceed, Sen. Onyonka.

Sen. Onyonka: Mr. Speaker, Sir, thank you for giving me the opportunity to welcome this delegation of young Kenyans from Kisii University in Kisii County. I want to inform them where they are seated in this building is called the Speaker's Gallery. You can see where the Speaker sits and where all of us sit around this place.

I hope that you will be watching, observing and listening to the procedures of the House. The information I have is that three of you are lawyers. Most probably, you might end up getting a job in this House as a clerk or become Members. I welcome you.

Once you are done, you could ask me to take you to the coffee shop where we drink our coffee. I will be glad to receive you.

Mr. Speaker, Sir, thank you for allowing these brilliant minds to come and see for themselves what this House stands for.

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

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, it would be remiss of me if I do not recognize the comrades from Kisii University. Therefore, I join the Senator for Kisii County in welcoming them to this august House. I hope they will drink to their fill and enjoy all that they came to find out when they set out from Kisii to come to this House.

Second and equally importantly, is to appreciate the delegation from Tana River County: the MCAs. The collaboration between county assemblies and the Senate is at the heart of success of devolution. Each time we have a delegation from any of our 47 county assemblies coming to the Senate to learn a thing or two, we feel immensely proud.

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I know that by the time they leave this House, they will have learnt a lot that they can implement in their county assembly which will help us to enshrine and celebrate devolution.

Their Senator, Sen. Danson Mungatana, is not here, but they know that this House elected him to be a member of the Pan-African Parliament. He, therefore, juggles his duties between Nairobi and South Africa where the continental Parliament sits.

One thing about Tana River is that it is a very special county to those of us that are members of the United Democratic Alliance (UDA) party. That county gave us the leading anthem in our campaign in 2022. There is a duo that sang a very catchy song called *Ruto Tosha*. If you, the MCAs, know the singers, please tell them that the Senate Majority Leader has invited them to this House. The last time I saw them, they were complaining that nobody has reached out to them after the campaigns.

Thank you.

The Speaker (Hon. Kingi): Next Order.

PETITION

WINDING UP AND LIQUIDATION OF THE TUK STAFF RETIREMENT BENEFITS SCHEME

Hon. Senators, pursuant to Standing Order 232(1)(b), I hereby present a Petition that has been submitted by Mr. Fred Saweja and other petitioners regarding the winding up and liquidation of Technical University of Kenya's Staff Retirement Benefits Scheme (TUK-KSRBS).

As you are aware, Article 119(1) of the Constitution states-

“Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.”

The salient issues raised in the Petition are as follows-

(a) That the Retirement Benefits Authority (RBA) which is mandated to regulate the pensions sub-sector in Kenya, petitioned the Milimani High Court in 2017 in the matter of insolvency of the Technical University of Kenya Staff Retirement Benefits Scheme case number HCIP/14/2017 to protect the scheme's members from losing their retirement savings.

(b) That on 5th July, 2024, the RBA obtained orders from the Milimani High Court to wind up and liquidate the pension scheme which resulted in approximately 2,000 scheme members being at risk of losing their lifelong savings accrued from years of hard work and potentially downgrading them to a life of poverty in their later years.

(c) That the scheme deducted members' contributions. However, these amounts were not remitted to the fund manager.

(d) That some officials at the university through acts of commission or omission, failed to account for and remit the funds leading to uncertainty and distress amongst staff. Further, a number of officers have left service, and the ones in the office may not be familiar with the case:

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(e) That as a result, some members have lost their lives while others have suffered illness due to psychological stress caused by this situation.

(f) That the scheme owns its members billions of shillings that remain unaccounted for, supporting the claim that it may have been undertaking fraudulent operations.

(g) That the Technical University of Kenya has failed to protect its members, stakeholders, and assets due to lack of efficient and effective oversight of affairs of the university;

(h) That the members of the scheme have made efforts to address this matter with the university management, the university council chairperson, the RBA and the Ministry of Education, all of which have been unsuccessful.

That the petitioners, therefore, pray that the Senate investigate this matter with a view to do the following-

(i) Ensure that the assets of the scheme and contributions owed to members are safeguarded, including the transfer of members to other schemes, where possible, to ensure the continuation of the pension contributions.

(ii) Ensure that the circumstances that led to the poor financial performance of the scheme and its subsequent insolvency are addressed, and that the responsible persons are held accountable.

(iii) Formulating legislative interventions aimed at preventing similar occurrences in retirement schemes in the country.

Hon. Senators, pursuant to Standing Order No.238(1), I commit the Petition to the Standing Committee on Labour and Social Welfare for consideration.

In terms of Standing Order No.238(2), the committee is required in not more than 60 calendar days from the time of reading the Prayer, which is today, to table its report in the Senate for consideration. The Senate shall, thereafter, consider the report of the committee.

Thank you.

Next order.

Proceed, Senate Majority Leader.

PAPERS LAID

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Wednesday, 13th November, 2024.

LEGAL NOTICE ON SUSTAINABLE WASTE MANAGEMENT (EXTENDED PRODUCER RESPONSIBILITY)

The Sustainable Waste Management (Extended Producer Responsibility) Legal Notice No. 176 of 2024.

LEGAL NOTICE FOR VARIOUS REGULATIONS ON
ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION

The Environmental Management and Co-ordination (Water Quality) Regulations, Legal Notice No. 177 of 2024.

The Environmental Management and Co-ordination (Waste Management) Regulations, Legal Notice No. 178 of 2024.

The Environmental Management and Co-ordination (Sand Harvesting) Regulations, Legal Notice No.179 of 2024.

The Environmental Management and Co-ordination (Air Quality) Regulations, Legal Notice No. 180 of 2024.

The Environmental Management and Co-ordination (Management and Control of Plastic Packaging Materials) Regulations, Legal Notice No. 181 of 2024.

The Environmental Management and Co-ordination (Management of Toxic and Hazardous Chemicals and Materials) Regulations, Legal Notice No. 182 of 2024.

Mr. Speaker, I beg to lay.

(Sen. Cheruiyot laid the documents on the Table)

The Speaker (Hon. Kingi): Next Order. Statement pursuant to Standing Order No.53(1).

Proceed, Sen. Esther Okenyuri.

QUESTIONS AND STATEMENTS

STATEMENTS

FEMICIDE, ARBITRARY ARRESTS AND ABDUCTIONS OF KENYAN YOUTH

Sen. Okenyuri: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.53(1) to request a statement from the Standing Committee on National Security, Defense and Foreign Relations regarding the alarming rise in incidences of femicide and troubling trend of arbitrary arrests and abductions of youths in the country.

In the last 90 days alone, the country has witnessed the tragic deaths of 97 women due to violence. This serious trend of femicide has reached crisis levels, devastating families and communities and undermining our societal fabric, thus demanding immediate investigation and action by this House. It is imperative to strengthen legal frameworks and enforcement mechanisms to protect our women and hold perpetrators accountable.

Moreover, there are alarming reports of youth abductions, which are equally distressing as many young people disappear under mysterious circumstances, often resulting in tragic outcomes. This is not just a crime against individuals, but an assault on our nation's future.

Noting the severity of the above incidences, I request the committee to-

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(1) Furnish the Senate with a report on the immediate steps taken to thoroughly investigate the incidences of femicide and the alleged abductions of youths.

(2) Outline the comprehensive strategies that have been developed to address the root causes of such violence and insecurity affecting our women and youth and to ensure non-recurrence of the same.

Thank you.

STATE OF STREET AND MARKET LIGHTING
IN KISUMU COUNTY

The Speaker (Hon. Kingi): Senator for Kisumu County, Prof. Tom Ojenda.
That Statement is dropped.

(Statement dropped)

Proceed, Sen. Chimera Raphael.

MKATABA WA UCHIMBAJI TITANI WA
KAMPUNI YA BASE IRON LTD

Sen. Chimera: Asante, Bw. Spika. Langu ni ombi la Kauli kuhusu uendeshaji wa kampuni ya Base Iron Limited au Base Titanium Limited katika mradi wa Madini ya Kwale Mineral Sands eneo la Msambweni, Kaunti ya Kwale.

Nimesimama kwa mujibu wa Kanuni ya Kudumu ya Bunge Nambari 53(1), kuomba kauli kutoka kwa Kamati ya Kudumu ya Ardhi, Mazingira na Mali Asili kuhusu uendeshaji wa Base Iron Limited katika Mradi ya madini ya Kwale Mineral Sands uliopo Maumba, Eneo Bunge la Msambweni, Kaunti ya Kwale.

Katika taarifa hiyo, Kamati inapaswa-

(1) Kutoa nakala za awali za mkataba wa ununuzi wa Mradi wa Kwale Mineral Sands ulionunuliwa na Base Iron Limited mnamo Agosti, 2010, kwa ajili ya uchimbaji wa madini ya titanium, pamoja na mikataba mingine yoyote ya ziada iliyofuata, inayohusiana na mradi huo.

(2) Kueleza jumla ya fedha ambazo kampuni ya Base Titanium Limited imetowa hadi sasa kwa jamii inayohusika kwa mujibu wa kifungu cha 183 cha Sheria ya Madini ya mwaka 2016 kwa shughuli za Uwajibikaji kwa Jamii na kueleza iwapo kuna kiasi chochote cha fedha ambacho hakijatolewa kufikia sasa.

(3) Kufichua maelezo ya mkataba wa maendeleo ya jamii kati ya Base Iron Limited na jamii ya eneo la Maumba, Msambweni, pamoja na kutoa taarifa ya hali ya utekelezaji wa mkataba huo na orodha ya miradi yote iliyotekelezwa na Base Titanium Limited kulingana na mkataba.

Asante.

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

CONTEMPT OF SENATE COMMITTEES' INVITATIONS
BY COUNTY GOVERNORS

Sen. Cherarkey: Thank you, Mr. Speaker, Sir. I hope all Members will listen to this very critical Statement.

I rise pursuant to Standing Order No.52(1) to make a Statement on an issue of general topical concern and national importance, namely; contempt of Senate Committee's invitation by county governors.

Mr. Speaker, Sir, in carrying out our oversight mandates over county governments, Committees of the Senate issue invitations to county executive governors to deliberate and interrogate matters within the mandates of respective committees.

A trend has developed where some governors have consistently failed to honour invitations by committees. In so doing, they request for postponement of meetings without justifiable reasons. The frequent request for postponement of meetings has greatly derailed the effective discharge of committees' mandates, thus negatively impacting on the oversight mandate of the Senate.

Notably, the Governor of Kisii County, His Excellency Simba Arati, has on three invitations in the current calendar year failed to appear before the Senate County Public Accounts Committee (CPAC) on the grounds of traveling outside the country, without the reason as to why he is traveling outside the country. It is just to avert appearing.

Further, the Governor of Isiolo County, His Excellency Guyo has failed to appear to various committees, specifically the Committee on Devolution and Intergovernmental Relations. He only sends written responses without communication on his non-appearance and even issues in-person threats to some of the Senators. These governors should be ashamed of what they are doing.

The prevalent disobedience of committee invitations amounts to the contempt of the Senate authority, which enjoys the *quasi*-judicial mechanism of status of the High Court. If unchecked, it will negatively erode the confidence bestowed on the House by the great people of Kenya.

Mr. Speaker, Sir, whereas committees have applied Sections 18 and 19 of the Parliamentary Powers and Privileges Act to compel witnesses to appear, the penalties imposed by the Act are not deterrent enough.

In conclusion, in order to realize optimal cooperation by the entities, the Senate may consider amendments to Article 125 of the Constitution of Kenya and the Parliamentary Powers and Privileges Act to provide higher penalties for violating the Act.

Further legislative interventions be developed to empower the Senate to be conferred with original jurisdiction to initiate impeachment of a county governor for gross violation of the law and failure to comply with accountability frameworks provided under the law.

Mr. Speaker, Sir, I am issuing this Statement on behalf of the Senate CPAC as the powerful Vice-Chairperson. The Chairperson and I enjoy a cordial working relationship unlike other institutions.

With those very many remarks, I thank you.

The Speaker (Hon. Kingi): This session on reactions to statements will last for 15 minutes.

Proceed, Sen. Joe Nyutu.

Sen. Joe Nyutu: Mr. Speaker, Sir, I want to comment on the statement raised by Sen. Essie Okenyuri on abductions. This is a matter that should concern every Kenyan of goodwill and wants to see a country that has a developing democracy. Anybody given power in this country must exercise it in the right way and for the benefit of Kenyans.

Police officers are trained to arrest anybody in broad daylight and, of course, prefer charges against them if need be.

Mr. Speaker---

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

The Speaker (Hon. Kingi): What is your point of order, Sen. Eddy?

Sen. Oketch Gicheru: Mr. Speaker, Sir, I am rising under Standing Order No.1. You have ruled that this session will last for 15 minutes. However, I keenly noted that you do not rule out what a Senator's time could look like. Given that a number of us would also want to chime in, would you please give guidance, perhaps we take two minutes or so.

The Speaker (Hon. Kingi): I am aware of that. Proceed, Sen. Joe Nyutu.

Sen. Joe Nyutu: Thank you, Mr. Speaker, Sir. I also want to let Sen. Eddy know that the Speaker knows his job, just in case.

(Laughter)

I was saying that it is a matter of concern about these abductions and hooded police officers arresting people. We should not allow this in this country.

The Statement by Sen. Cherarkey also cannot go uncommented on. We have the right to oversight our county governments. Any governor that does not honour the invitations by the Senate must be called to order.

I support in total the Statement and the plan by Sen. Cherarkey to see to it that we reign in governors. As was said by the former National Assembly Majority Leader, Hon. Aden Duale, *Pesa walizo nazo sio za mama zao*.

Thank you very much.

The Speaker (Hon. Kingi): The Senator for Kisii County, Sen. Onyonka, you may proceed.

Sen. Onyonka: Mr. Speaker, Sir, I support Sen. Cherarkey as my Vice-Chairperson in the CPAC. This matter is not simplistic. We have been sitting on the CPAC; nobody should be interpreting and thinking that our agenda is to disagree or make noise at the governors with whom we disagree. That is not the issue here. There are some governors whom we have invited and they have come on time and also sent their documents on time. The Standing Orders require that some of the documents be delivered to us at least 14 days before the period that we meet the governor.

Some of them have come with their officers and we have been satisfied with some of the good work that they are doing. In reality, our responsibility is to oversight the county governments and even the national Government. We should not allow this precedent of

allowing governors to unilaterally come up with some flimsy excuses and justification why they cannot come.

We need to interrogate their books publicly so that their voters and citizens can know whether they have been doing a good job or not. Their refusal is unconscionable and unacceptable. I would like, therefore, to thank Sen. Cherarkey for standing firm.

I do not take some of these issues lightly. We know that Sen. Dullo who has been the Senator for Isiolo County, has received death threats. It is on video.

We have seen where many of these governors who have got impunity telling us how they feel there is nothing we can do. I will be one of the people who will support the amendments which are going to come. Let us be honest and ask ourselves what happens to a governor who deliberately decides they will not appear before the committees of this House?

What happens to a governor who once has been summoned and pays a fine of Kshs500,000 ten times? What then do you do with that? How do you create deterrence? I hope that all the governors will listen to what we are saying. We are user-friendly; we are not their enemies. We are not saying they have done anything wrong.

We just want the facts and the reality to be put on the table so that the public can build confidence in our capacities as leaders and as the people who are overseeing both the national Government and the county government.

Thank you.

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

Sen. Miraj: Asante, Bw. Spika, kwa kunipa fursa hii kutoa mchango wangu kwa taarifa zilizoitishwa. Kwanza, ningependa kuchangia taarifa ya dadangu, Sen. Essie Okenyuri, kuhusu kutekwa nyara kunakoendelea. Ningependa kuzungumza na sisi viongozi na wananchi kwa jumla.

Pindi mwananchi anapotea, tusiwe na haraka ya kushuku kwamba ni Serikali imemchukua mtu kama yule kwenda kumfanyia labda mambo mabaya. Dhana ile inafanya wahusika wanaopaswa kufanya upelelezi wa kule aliyepolekwa yule aliyetekwa nyara kuwa ngumu kwa sababu tayari tumekwisha kunyoosha kidole cha lawama dhidi ya taasisi fulani.

Bw. Spika, pili, nachangia katika taarifa ya ndugu yangu Sen. Cherarkey. Mimi kama Mwanakamati wa County Public Investments and Special Funds Committee (CPISF) tumekuwa tukiita magavana mara kadhaa. Kama tulivyozungumza awali, tunapowaita magavana kama hawa kuwauliza maswali, sio kwa nia mbaya. Kusudi ni kuweka uwazi katika yale mamlaka tumepewa na Seneti.

Kwa mfano, tumewaona Seneta wa Isiolo na wa Kisii. Magavana ambao tumekuwa tukiwaita katika Kamati yetu ya Leba na Ustawi wa Jamii, ama CPISF wanakataa kisha wanaenda kwa mitandao ya kijamii kusema kwamba hawatakuja kwa sababu ya tetesi za kisiasa. Sisi hatuko hapa kisiasa. Tuko na majukumu kama Maseneta wa Taifa la Kenya kuona zile pesa tunatetea kwenda kwa kaunti zetu 47 zinatumiwa kwa usawa na yale mapendekezo tunawapa, wanayafanyia kazi. Hatuna sababu nyingine.

Ningependa kuwaambia viongozi wa kisiasa katika taifa letu la Kenya ya kwamba watu wanapotekwa nyara, tuweni makini kutonyoosha vidole vya lawama kwa sababu

tayari tunapeana mwelekeo labda usio sawa. Haiwezekani Serikali iendelee kupoteza wananchi wake ilhali ndiyo imetwikwa mamlaka ya kuyalinda maisha yao.

Asante.

The Speaker (Hon. Kingi): Sen. Beatrice Ogola?

Sen. Ogola: Thank you, Mr. Speaker, Sir. I rise to support the Statement by Senator Essie Okenyuri. On humanitarian grounds, all of us must be concerned about the recent killings, especially of young girls. The most amazing thing is that most of these deaths seem to be executed by people who are known to these victims.

We are called upon everybody, including family members, to be on the lookout. Let us discuss with our young sisters and young girls on how to go about some relationships and also share with everybody that even when people disagree, there is always a way in which we can sort out most of the issues.

Secondly, I support the Statement by the Senator for Nandi. As Houses of Parliament, we have a duty to execute our mandate. Governors must know that just as they are elected by the people to lead those counties, Senators are equally elected to oversight them and represent Kenyans all over the country.

Mr. Speaker, Sir, it should not be a decision of a governor to choose when to appear before a committee or when to come because they do not have that choice. Once they swore to serve their people and protect the Constitution of this country, they must live up to the expectations of the same Constitution.

They are not doing anybody a favour by coming to the Senate or appearing before the committees. These are constitutional offices. If people feel that they can operate at their whims, they have the option of stepping aside, so that we get leaders who can support and work for the people as per the expectations.

The Senate must stamp its feet. Governors have no option. They must appear before committees because even Senators are just doing their work. We must represent the people and oversight and governors have no choice.

I support.

Sen. Cheptumo: Mr. Speaker, Sir, I would like to comment on two statements. The first one is by Sen. Cherarkey. After elections, normally, Senators, Members of County Assemblies (MCAs) and Members of the National Assembly go through induction. It appears our governors also require to be inducted by the Intergovernmental Relations Technical Committee (IGRTC), so that they get to know that when they are invited to the Senate or committees, they need to honour. It is not a favour for them to come to the Senate.

Our job is to do oversight, representation and legislation. So, we need to work closely because Senators are champions of devolution. The resources they get pass through this House. We are surprised that some of them give flimsy reasons such as being away or engaged elsewhere.

They need to know that when they are invited to the Senate, it should be priority number one and not other engagements. They need to work for the people and we need to follow up on what they are doing because that is our mandate.

In the CPISF and even other committees, we get some funny reasons like what we got in the morning from one of the cabinet secretaries. That was the Cabinet Secretary for Tourism and Wildlife. She said that she went to witness putting of a device into a rhino

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instead of coming to this House. The Senate adjourned early because of some flimsy reasons. That is something they can even send the Director General of Kenya Wildlife Service (KWS) or even the Principal Secretary, instead of wasting the Senate's time.

It is unfortunate that we are losing our young girls through femicide. Like Sen. Beatrice Ogola said, some of this could be relationship-related. Others could be some criminals who are after organs. We need the Inspector General (IG) of Police to stamp his foot and authority and ensure those who are carrying out abductions and killing our girls are brought to book.

I do not know why they take a lot of time and end up saying that they do not know, yet they have intelligence and resources? The Ministry of Interior and National Administration is the most resourced. They need to use those resources. Let them use also technology. We have technology that can assist in terms of ensuring that those who are doing these activities are apprehended.

With that, I support.

Sen. Dullo: Thank you, Mr. Speaker, Sir, for this opportunity. I wish to thank my Vice-Chairperson of the CPAC for his Statement.

I remember you saying that this is the time for taking action and there is no time for lamenting. We have had an experience where some governors are taking cue from the Governor for Isiolo in various committees. That has to stop.

I have been around for some time, but I have never seen a governor take a committee of the House to court just because of appearance. It has never happened.

Secondly, some summonses have been issued to the Governor of Isiolo. There is also another one where the Committee on Labour and Social Welfare has instructed the IG of Police to arrest and bring him before the committee or the House.

I hope that is going to work. If it does not, we will have proved the Governor of Isiolo right because he has been going around saying that there is nothing the Senate will do to him. Even if he fails to appear many times, the Senate will do nothing to him. That is impunity of the highest order.

I have even been discussed at the Council of Governors (CoG) meetings that I am rogue. Let me be rogue because of doing my work.

Before we went on recess, I raised a Statement on the Floor of this House. Let me be open. Ten members of staff from the county government of Isiolo sat in the boardroom with the governor and discussed how to eliminate me. I have a clip and photos of those members of staff.

He has the audacity of telling members of the public and media houses that I am lying. He has been going around saying he knows everybody in the Government, including top officials in the Directorate of Criminal Investigations (DCI) and the Ethics and Anti-Corruption Commission (EACC). Therefore, nobody can do anything to him.

This is a rogue governor who does nothing. He operates from Nairobi and he is never in Isiolo. Secondly, he has no respect at all for the Senate. We discussed this matter yesterday. The MCAs are in the governor's pockets. We must have a solution to this problem where the Senate can act on rogue governors.

Sen. Wafula: Bw. Spika, nashukuru sana kwa kunipa nafasi hii. Wakenya wanatazama kwa makini sana yale yanayojiri katika Bunge hili. Jana katika vyombo vya

habari tuliona viongozi shupavu wa Seneti wakitetea kaunti ili fedha sisiwe chini ya Kshs400 bilioni.

Haiwezekani kuwalisha mamba na baadaye watule sisi. Haiwezekani tukeshe kila kuchao tukitetea wananchi wa kaunti zetu ili wapate pesa ilhali kuna viongozi ambao wana dhana kwamba sisi ni kama wanaosukuma rukwama kwa niaba ya watu wetu. Hatutakubali.

Sen. Dullo amesema kwamba sekta ya afya imedorora. Wengine hapa wametuambia kwamba sekta za kilimo na elimu zimedorora, ilihali tukiita viongozi hao katika kamati zetu hawaji. Wanajipiga vifua na kubwata maneno yasiyoeleweka. Wakati umefika tuonane jicho kwa jicho. Kule mashinani, tunasema *mundu khu mundu*.

(Applause)

Bw. Spika, haitawezeka kuwa Wakenya ambao wanadai kila siku ushuru unapanda lakini unaporudi katika mikono ya magavana, wao ni kufurahia na tunapowaita wanasema wako katika safari za ng'ambo. Mimi najua ng'ambo ni sayuni peke yake. Iwapo wanataka kwenda sayuni, tuonane baadaye. Kunao wanaohudumia Wakenya na ni lazima waje wabebe misalaba yao na kwa vinywa vyao wakiri dhambi zao. Iwapo wana makosa, lazima wabebwe hobela hobela na kuwekwa korokoroni.

Naambia magavana popote walipo kwamba tunafungua ukurasa mpya wa ugatuzi Kenya hii. Kama hawanioni wataambiwa tuliyoyasema. Unapopewa pesa nyingi, uwajibikaji ni wa hali ya juu. Tutawaandama kushoto na kulia, kwenye handaki na mlimani, kote tutafika ili ugatuzi---

Sisi ni wasanii wa nyimbo za mavoka, halmashauri tunasema, "tutaanguka na wao". Tukishaanguka nao, "*tutafinish kumalo*". Hiyo ndiyo lugha vijana mashinani wanaelewa. Kwamba ni lazima ugatuzi ufanye kazi na magavana wawajibike. Ndugu yangu wa Migori, ni lazima tufanye kazi.

Asante.

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

Sen. Wambua: Thank you, Mr. Speaker, Sir. I associate myself with the Statement made by Sen. Okenyuri on the matter of abductions and killings in the country. A time has come and now is that Kenyans must begin to demand real justice for the people that are being killed and abducted. That demand goes to the Government of the day.

The number of killings happening in this country must begin to scare everyone. If the intention of the killers was to scare this nation, then it is getting scared. Hardly a day passes before we hear reports of people killed, bodies recovered and people disappearing. Something must be done.

On the matter of governors as espoused by Senator for Nandi County, we must all admit that this country is facing a crisis of governance. Two years into a Government, we have so many impeachment proceedings against governors and their deputies. In fact, in the history of this country and region, two years into a Government, a Deputy President has been impeached. We must admit that there is a problem and a crisis of governance.

I say this because governors have become so emboldened that they think they own counties and what they say is law. I am one person who likes using the issue of

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impeachment very sparingly. However, on this and to save the image of this House, lessons must be sent to governors that we mean business.

(Applause)

As Sen. Dullo has said, for a governor to bring together leaders in his cabinet to plot the assassination of a Senator who is doing what she is elected to do, shame on him. We should never allow these things to happen. I will stand with my colleagues to demand that the Governor of Isiolo County be brought in this House. Let him---

The Speaker (Hon. Kingi): You can conclude, Sen. Wambua.

Sen. Wambua: Thank you, Mr. Speaker, Sir. Let the Governor of Isiolo County be brought before this House. If this is how best he deals with these things, let him organise the assassination of the 67 Senators of the Republic of Kenya. It cannot be that when Senators ask questions on how money is being used, they become enemies of governors. It is weird. We have been in this House before.

Mr. Speaker, Sir, you have been a governor and have been asked questions about how you have used resources of the county government of Kilifi. I have never heard anybody saying that you have threatened them for asking questions. These governors have become semi-gods. They have elevated themselves to a level of semi-gods that they can never be asked anything.

A time has come that this Senate must restore the dignity of this House. I say this well aware of the things happening in Nandi County today. I have seen there are things happening in Nandi and Nyandarua counties. I want to call upon MCAs to demand nothing less than accountability from their governors.

I thank you.

The Speaker (Hon. Kingi): Sen. Abass, proceed.

Sen. Abass: Thank you, Mr. Speaker, Sir. First and foremost, I join my colleagues to support the Statement by Sen. Essie. This House has discussed issues to do with the disappearance of Kenyans many times. It is a very unfortunate situation. The security of this country is going out of hand. It is high time that the security officers took charge of the security of this country.

There are so many foreigners who have made Kenya a heaven, enjoying and doing things in their own way. There are so many people who ran away from their countries and hiding in this country. They are investing in this country with money looted from other countries.

It is a high time we audited the people in Kenya so that we can be safe. As it is, we keep on hearing of people being killed and disappearing every day and we do not know who is doing it. It is high time the security officers took charge of this country. We must also know the foreigners and Kenyans because we are not able to know who is who.

Concerning the case of governors, as the Chairperson of the Committee on Devolution, what is going on is a very unfortunate situation. The Senate is there to oversight counties. It is our mandate. The governors must appear to answer questions on whatever is happening in their counties even if they are called a hundred times. Otherwise, what is going on in this country today is that we struggle hard to get more money to go to

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the counties by fighting for their rights, but unfortunately, they see the Senators as unfriendly. That should not be the case.

I know it is not all the governors that behave that way. Some of them are law-abiding. However, what is happening in Isiolo County is very unfortunate. The other day, I received a call from MCAs of Isiolo County. Some of them have been removed from committees by the governor and his team. That is stooping too low. The governor has no business in micro-managing the assemblies. We still have lacunas in the County Government Act that we needed to look at and rebuild so that we can take action against the governors.

Even on impeachment, the governors are impeached, but they run to the courts. They continue to work and are free. We have to review the law.

With those few remarks, I beg to support Sen. Cherarkey's Statement.

Thank you.

The Speaker (Hon. Kingi): Sen. Oketch Gicheru, proceed.

Sen. Oketch Gicheru: Thank you, Mr. Speaker Sir, for this opportunity. First, I wish to comment on Sen. Okenyuri's Statement.

As a young person in this country, it breaks my heart when it constantly seems as though we cannot contain the problem of abduction of young people. I want to enquire whether there is anything this House can do for resolutions that we have passed at a presidential level. That is not followed through.

Mr. Speaker Sir, in July, we passed a resolution here at the heart of chaos in this country. Those resolutions went to the President of this country. Among the issues that were supposed to be dealt with apart from the compensation of young people who were affected during the Gen Z movement, we also strongly implored upon the President that the issue of abductions be responded to.

The reason why I am bringing this up is because the abductions that are happening in this country are happening at two levels. One is within structured authorities of governance in this country. Number two, outside those structures. If there is a force in dealing with the issues of abductions within the structure of security in this country, there will be an equal response to those who are doing it outside the structure.

Mr. Speaker, Sir, I want to enquire if perhaps the Senate Majority Leader can help us with this. If we end up having some resolutions in this House that can pick on some of these issues that we are seeing in terms of abductions in the country, that sometimes end up affecting the security infrastructure, could we know how, if they are not responded to--

-

The Speaker (Hon. Kingi): Sen. Oketch Gicheru, conclude.

Sen. Oketch Gicheru: Thank you, Mr. Speaker, Sir. It starts by making sure that the abductions that happen within this country's security infrastructure are dealt with once and for all. We want those who are doing it outside the security infrastructure to take it more seriously.

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

Sen. Oketch Gicheru: You are raising a point of order and yet young people are dying outside here. Young people are being abducted. We are becoming uneasy when there is no security infrastructure in the country.

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The Speaker (Hon. Kingi): Order, Sen. Eddy. What is your point of order, Sen. Orwoba? We have heard you enough. What is your point of order?

Sen. Orwoba: Mr. Speaker, Sir, I rise pursuant to Standing Order No.105. I have listened to Sen. Oketch Gicheru talking about abductions happening within the structures of Government and outside other structures. There is an allegation being placed there; I am not even sure whether he is targeting an individual in the Government because he has also mentioned the President at one point. Can he substantiate these structures within the Government where he is saying that they are being used for abduction?

Perhaps he knows of a particular unit that he can mention so that we, as Senators, can come out and call it out. We would like to know what the unit inside the Government is. If he cannot substantiate, he must apologise and withdraw because this is the 'Upper' House. This is not the National Assembly. This is a House of records and procedure; we carry ourselves with facts. Let him substantiate.

The Speaker (Hon. Kingi): Sen. Oketch Gicheru, proceed. You have made certain allegations, which you have to substantiate, regarding the structured abductions.

(Sen. Cherarkey spoke off record)

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

Sen. Oketch Gicheru: Mr. Speaker, Sir, I was clear about the document, which is a resource of this House that has gone to the President. In that document, we were clear about a number of issues that we complained about.

Unless Sen. Orwoba was not in this House to listen to what was being discussed, allow me to say this; maybe she is comfortable because none of her family members have ever been abducted. Nonetheless, the abduction of young people in this country must stop. They happen within the structure of this country as well as outside the structure of the security apparatus in this country.

You might make noise as much as you want, but I can assure you that one day, your family member or relative will be abducted and you will not be sitting pretty. We must stop the abduction of young people in this country. It must stop.

The Speaker (Hon. Kingi): Order, Sen. Oketch Gicheru. Order, hon. Senators. Senator for Nandi County, take your seat.

(Sen. Cherarkey resumed his seat)

(Sen. Orwoba consulted loudly)

Order, Sen. Orwoba.

Sen. Eddy, you are supposed to address the Chair, but not your colleagues. You have been called upon to substantiate an allegation that you have made.

(Several Senators stood in their places)

Sit down, Senators. Sen. Eddy, where are you going? Sit down. The Chair is speaking.

(Sen. Oketch Gicheru resumed his seat)

Senator for Kilifi County, let the Chair handle this. Sen. Orwoba rose on a point of order regarding the allegation that you have said, that there are structured abductions within the system. So, you have been called upon to substantiate those allegations. What did you mean by structured abductions within the Government?

Instead of responding to that, you have been shouting back at your colleagues. Proceed, Sen. Eddy, to substantiate. If you are not in a position to do so today, you know exactly what to do.

(Loud consultations)

Order. Can the Senator be heard in silence?

Sen. Oketch Gicheru: Mr. Speaker, Sir, it is not my role as Senator for Migori to focus on Sen. Orwoba in this House. I referred to a resolution of this House, which is a property of the House passed by all of us.

If you read that resolution, it talks about abductions and killings that this Senate was tired of addressing to the Government. If it is addressed to the Government and it has not been responded to---

(Sen. Korir spoke off-record)

The Speaker (Hon. Kingi): Order, Sen. Joyce, I caution you. If you proceed; I will throw you out of the Chamber.

Sen. Eddy, look for that document and read the particular resolution that you are relying on. I will allow you to do that tomorrow. You may not get the document right away. Look for that document and read that particular resolution that supports your allegation.

Have a seat, Sen. Oketch Gicheru. Sit down.

Sen. Oketch Gicheru: Mr. Speaker, Sir, I have not finished. They ate into my time.

The Speaker (Hon. Kingi): Order. Sit down. Take your seat. Senator for Kilifi, there is no Senator on their feet. You cannot raise a point of order.

(Sen. Madzayo spoke off record)

I did not refuse you. You did not catch my eye.

Proceed, Sen. Okiya Omtatah.

Sen. Okiya Omtatah: Thank you, Mr. Speaker, Sir, for the opportunity. The question of abductions is a very serious one. Kenya is a Republic; a Government of law. We have institutions that have been mandated to take care of the security of the citizen. In terms of civilian order, these institutions are basically, the police. Our streets cannot be an

area where people can abduct or disappear others, run illegitimate detention centres and then release them without consequences.

I have not heard of any incident where the abductees have been guaranteed security or the Government security apparatus summoning them to a de-briefing to try and identify where and why they were being held. That points to collusion by the police in the ongoing abductions. To make matters worse, it is a matter of fact that the capacity of the police to investigate these kinds of activities, if at all they involve the police forces, has greatly been eroded.

This was deliberately done under the last command of Inspector General (IG) Koome. Officers who are trained to deal with this kind of matter and were housed at the Internal Affairs Unit (IAU) of the National Police Service (NPS) were systematically transferred out of station. However, the unit was starved of funds. It is a pale shadow of what it was when it was set up with the intention that should any security forces step out of the law, they would be dealt with by the fellow policemen.

Mr. Speaker, Sir, if the Government is not taking action to debrief those who have been abducted and released, to establish where exactly they were being held, or determine who was holding them, then the only conclusion you can draw is that the security forces have failed in their mandate. For lack of a better word, they are complicit in the abductions.

The circumstantial evidence that avails itself to an inquisitive eye is that our abductions are being conducted either by the police or with the full knowledge of the police command and---

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

The Speaker (Hon. Kingi): What is the point of order, Senator for Nandi County?

Sen. Cherarkey: Mr. Speaker, Sir, I rise under Standing Order No.105. While I agree that the issue of abductions is a very serious issue in the country, you cannot allow Sen. Okiya Omtatah to get away with what he is saying that the abductions that are happening within the country are either state-sanctioned or police-sanctioned and talk of defunding a unit.

Can the Senator of Busia County table evidence to show that there is complicity or the police are tolerating the abductions that are happening currently in the country so that we can move forward? If he can table, then we move forward because he is a litigant. He knows that you do not carry gossip before a court of law. He must substantiate. This is not a market.

(Loud consultations)

This is not a marketplace, where you bring the gossip. Mr. Speaker, Sir, can you protect me? This is not a heckling arena.

The Speaker (Hon. Kingi): Senator for Nandi County, you have made your case, kindly take your seat.

Sen. Okiya Omtatah proceed to substantiate your allegations.

(Loud consultations)

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The Senate Majority Leader (Sen. Cheruiyot): On a point of information, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): To whom? To inform whom?

The Senate Majority Leader (Sen. Cheruiyot): There is a point of order.

The Speaker (Hon. Kingi): Just let Sen. Okiya Omtatah proceed to substantiate.

Sen. Okiya Omtatah: Mr. Speaker, Sir, the word ‘substantiate’ seems to be an exciting word to some people in this House. When I submitted, I said circumstantial evidence. I pointed to the circumstantial evidence that should not be ignored. The circumstantial evidence is that none of the people who have been abducted and released have been called to the police for debriefing to establish what has happened.

Sen. Cherarkey: Mr. Speaker, Sir, that point of order has been selective---

Sen. Okiya Omtatah: Secondly, it is a statement of fact. There have even been complaints about defunding IAU of the police.

Sen. Cherarkey: Which evidence?

Sen. Okiya Omtatah: Mr. Speaker, Sir, point number three, the IAU has had its officers transferred and this happened under IG Koome’s reign. As far as I am concerned, you do not substantiate the obvious.

Sen. Cherarkey: On a point of order, Mr. Speaker, Sir. This guy is not Human Resource---

Sen. Okiya Omtatah: You cannot table evidence that something did not happen.

The Speaker (Hon. Kingi): Sen. Okiya Omtatah, you will not exchange with the Senator for Nandi County.

Sen. Okiya Omtatah: I am not exchanging. I am instructing the Chair. I am choosing not to listen to a heckler.

The Speaker (Hon. Kingi): I am in charge of this House. If you need protection, I will listen to you. Just proceed.

Sen. Okiya Omtatah: Thank you, Mr. Speaker, Sir. I cannot substantiate what did not happen. I said the police have never called any of the people who were abducted and released to a debriefing in order to tell them where they were. The only thing that can happen is for Sen. Cherarkey to come up with evidence that the police have done that. When I say it has never happened, you cannot ask me to substantiate what never happened.

Sen. Cherarkey: No, you are being clever by asking---

The Speaker (Hon. Kingi): Order!

Sen. Okiya Omtatah: I am a clever man.

The Speaker (Hon. Kingi): Senator for Nandi County, I am cautioning you.

Sen. Okiya Omtatah: I have not said anything that requires substantiation.

The Speaker (Hon. Kingi): Conclude Sen. Okiya Omtatah.

Sen. Okiya Omtatah: Mr. Speaker, Sir, the issues of abductions are very serious matters. We, as a House, need to have a special sitting where we can summon our security forces. Recently it was reported in the media that the IG of Police said he was not aware of who was abducting people. We need them to be summoned to this House to come and tell us why the police have lost control of the security of this country. I thank you.

The Speaker (Hon. Kingi): Sen. Okiya Omtatah, I am afraid that your three minutes are up.

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Sen. Okiya Omtatah: Thank you, Mr. Speaker, Sir. I have nothing else to submit. I am happy to see the Senate Majority Leader very calm.

The Speaker (Hon. Kingi): Now, Hon. Senators, that marks the end of the intervention on the Statements. Now, allow me to pursue on to Standing Order No.45 (2) to rearrange today's Order Paper. We will move to handle Order Nos.15, 16, 17, 23 and 24 before we resume normal flow as contained in today's Order Paper.

Clerk, you may proceed to call those orders.

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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

The Temporary Chairperson (Sen. Abdul Haji): Order Hon. Senators.

Please take your seats. We are about to begin.

THE METEOROLOGY BILL (SENATE BILLS NO.45 OF 2023)

The Temporary Chairperson (Sen. Abdul Haji): The Senate Majority Leader, please, proceed.

Clause 3

The Senate Majority Leader (Sen. Cheruiyot): Mr. Temporary Chairperson, Sir, I beg to move-

THAT, Clause 3 of the Bill be amended by numbering the introductory paragraph as sub clause (1) and inserting the following new subclause immediately after the proposed subclause (1):

(2) For purposes of this section-
“commercial purposes” means the use of meteorological information acquired from the Authority for the purpose of generating income;

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

Clause 4, 5, and 6

(Question, that Clauses 4,5, and 6 be part of the Bill proposed)

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The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

Clause 7

The Senate Majority Leader (Sen. Cheruiyot): Mr. Temporary Chairperson, I beg to move-

THAT, Clause 7 of the Bill be amended in subclause (2) by deleting paragraph (j) and substituting therefor the following new paragraph —

(j) set standards, develop curricula, provide training in meteorology, operational hydrology and related sciences, examine and award diploma and certification in line with the World Meteorological Organization and other standards.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

Clauses 8 – 15

(Question, that Clauses 8, 9, 10, 11, 12, 13, 14, and 15 be part of the Bill proposed)

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

Clauses 16 - 25

(Question, that Clauses 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 be part of the Bill proposed)

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

Clauses 26 - 35

(Question, that Clauses 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 be part of the Bill proposed)

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

Clause 36

The Senate Majority Leader (Sen. Cheruiyot): Mr. Temporary Chairperson, Sir, I beg to move-

THAT, Clause 36 of the Bill be amended in Subclause (1) by deleting the words “any person” appearing immediately after the words “designate and appoint” and substituting therefor the words “an employee of the authority”.

(Question of the amendment proposed)

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The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

Clause 37

The Senate Majority leader (Sen. Cheruiyot): Mr. Temporary Chairperson, Sir, I beg to move-

THAT, Clause 37 of the Bill be amended by deleting-

(a) subclause (1) and substituting therefor the following new subclause -

(1) The Authority shall retain the intellectual property rights on any meteorology data and advisory services, computer programs, inventions, discoveries and improvements generated by the Authority.

(b) subclause (2) and substituting therefor the following new subclause -

(2) A person who obtains any meteorological data, information and other meteorological services from the Authority as a private good shall not, without the consent of the Authority, provide the same to a third party or cause it to be distributed.

(Question of the amendment proposed)

Clause 38 and 39

(Question, that Clauses 38 and 39 be part of the Bill proposed)

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

Clause 40

The Senate Majority leader (Sen. Cheruiyot): Mr. Temporary Chairperson, Sir, I beg to move-

THAT, clause 40 of the Bill be amended in subclause (2) by deleting paragraph (g).

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

Clauses 41- 51

(Question, that Clauses 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51 be part of the Bill proposed)

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

New Clause 8A

The Senate Majority leader (Sen. Cheruiyot): Mr. Temporary Chairperson, Sir, I beg to move-

That the Bill be amended by inserting the following new clauses immediately after clause 8—

- Regulatory powers of Authority.
- 8A. (1) The Authority shall regulate meteorological services in Kenya.
- (2) Without prejudice to the generality of subsection (1) the Authority shall—
- (a) ensure compliance with—
 - (i) international standards and practices in meteorological services; and
 - (ii) standards in installation and maintenance of meteorological instruments;
 - (b) approve and register meteorological stations; and
 - (c) monitor and supervise functions of meteorological operators.

(Question of the New Clause 8A proposed)

(New Clause 8A read the First Time)

(Question, that the New Clause 8A be read a Second Time proposed)

(Question, that the New Clause 8A be part of the Bill proposed)

New Clause 8B

The Senate Majority leader (Sen. Cheruiyot): Mr. Temporary Chairperson, Sir, I beg to move-

Permit.

8B. Any person who intends to undertake meteorological observations, weather forecasting activities or weather modification activities shall apply to the Authority for a permit as provided in the Regulations.

(Question of the New Clause 8B proposed)

(New Clause 8B read the First Time)

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(Question, that the New Clause 8B be read a Second Time proposed)
(Question, that New Clause 8B be part of the Bill proposed)

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

New Clause 8C

The Senate Majority leader (Sen. Cheruiyot): Mr. Temporary Chairperson, Sir, I beg to move-

Prohibition of meteorological activities.

8C. (1) No person shall engage in any meteorological observations, weather forecasting activities or weather modification activities unless that person obtains a permit from the Authority.

(2) A person who engages in any meteorological observations, weather forecasting activities or weather modification activities without a permit commits an offence and shall be liable upon conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or both such fine and imprisonment.

(Question of the New Clause 8C proposed)

(New Clause 8C read the First Time)

(Question, that New Clause 8C read a Second Time proposed)

(Question, that the New Clause 8C be part of the Bill proposed)

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

First Schedule

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

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

Second Schedule

The Senate Majority leader (Sen. Cheruiyot): Mr. Temporary Chairperson, Sir, I beg to move-

THAT, the Second Schedule of the Bill be amended by inserting the following new paragraph immediately after (5)-

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(5A) The provision of meteorological services and information to the general public upon request.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

The Third Schedule

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

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

Clause 2

(Question, that Clause 2 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

The Title and Clause 1

(Question, that The Title and Clause 1 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.
Hon. Senators, we are now moving to the next Order.

THE NATIONAL CONSTRUCTION AUTHORITY (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS NO.59 OF 2022)

Clause 2

(Question, that Clause 2 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

New Clause 1A

The Temporary Chairperson (Sen. Abdul Haji): Proceed, Majority Leader.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Temporary Chairman, Sir, I beg to move-

THAT, the National Construction Authority Act be amended in Section 2 by inserting the following new definition immediately after the definition "Registrar"

—

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“start-up” means an entity seeking to be registered under section 17 in the category NCA 6, NCA 7 or NCA 8;

(Question of the New Clause 1A proposed)

(New Clause 1A was read a First time)

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

(Question, that the New Clause 1A be part of the Bill proposed)

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

The Title and Clause 1

(Question, that the Title and Clause 1 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.
Hon. Senators, we are proceeding to the next Bill, the Cancer Prevention and Control (Amendment) Bill (No.2) Bill (National Assembly Bills No.45 of 2022).

THE CANCER PREVENTION AND
CONTROL (AMENDMENT) (NO.2) BILL
(NATIONAL ASSEMBLY BILLS NO.45 OF 2022)

Clause 2

The Temporary Chairperson (Sen. Abdul Haji): Mover.

Sen. Cherarkey: Mr. Temporary Chairman, Sir, I beg to move:

THAT, Clause 2 of the Bill be amended in the proposed new definition of the word “e-health” by inserting the words “including telemedicine” immediately after the words “and information technology”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

Clauses 3 and 4

(Question, that Clauses 3 and 4 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

The Title and Clause 1

(Question, that the Title and Clause 1 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.
Hon. Senators, we proceed to Order No.24, the Election Offences (Amendment) (No. 2) Bill (Senate Bills No.28 of 2024).

THE ELECTION OFFENCES (AMENDMENT)
(NO.2) BILL (SENATE BILLS NO.28 OF 2024)

Clause 2

(Question, that Clause 2 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Abdul Haji): Mover.
The Senate Majority Leader (Sen. Cheruiyot): Mr. Temporary Chairman, Sir, I beg to move-

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

Amendment
of section 6

of Cap 66. 2. Section 6 of the Election Offences Act (hereinafter referred to as “the principal Act”) is amended —

(c) by deleting paragraph (h) and substituting therefor the following new paragraphs

—
(h) where required under Article 138(10) of the Constitution to declare the results of a presidential election within seven days after the presidential election, fails to declare the results of the presidential election within the seven days;

(ha) where required under section 39(1) of the Elections Act to declare the results of an election immediately after close of polling, fails to declare the results of an election immediately after close of polling;

(d) in paragraph (k), by inserting the word “person” immediately after the words “colludes with any”; and

(e) by inserting the following new paragraph immediately after paragraph (m) –

(o) knowingly interferes with, alters, destroys or conceals an election material or declared result, or knowingly causes another person to interfere, alter, destroy or conceal an election material or declared result.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

New Clause 3

The Temporary Chairperson (Sen. Abdul Haji): Senate Majority Leader.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Temporary Chairman, Sir, I beg to move-

THAT the Bill be amended by inserting the following new clauses immediately after clause 2 -

Amendment

of section 13 of Cap 66. 3. Section 13 of the principal Act is amended -

(a) in paragraph (b) by deleting the words “of withdrawal of any other” appearing immediately after the words “any false statement” and substituting therefor the words “about a candidate, political party or of withdrawal of a” immediately after the words “any false statement”; and

(b) in paragraph (f)(i) by inserting the word “sex, marital status” immediately after the words “religion, gender”.

Amendment of section

(New Clause 3 was read a First time)

(New Clause 3 read a Second Time)

(Question, that New Clause 3 be read a Second Time, proposed)

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

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

New Clause 4

The Temporary Chairperson (Sen. Abdul Haji): Senate Majority Leader.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Temporary Chairman, Sir, I beg to move-

17 of Cap 66. 4. Section 17 of the principal Act is amended by inserting the following new paragraph immediately after paragraph (i) –

(j) willfully communicates electronically, either directly or indirectly, with a person or any other person who knows the person knowing that their conduct is likely to —

(i) induce or compel the person to refrain from becoming a candidate or to withdraw if they have become a candidate;

(ii) induce or compel that other person not to vote for the person or the person’s political party; or

(ii) impede or prevent the person from being nominated as a candidate;

be now read a second time.

(New Clause 4 was read the First time)

(New Clause 4 read a Second Time)

(Question, that New Clause 4 be read a Second Time, proposed)

(Question, that New Clause 4 be part of the Bill proposed)

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

The Title and Clause 1

*(Question, that the Title and Clause 1
be part of the Bill, proposed)*

The Temporary Chairperson (Sen. Abdul Haji): Division will be at the end.

THE METEOROLOGY BILL (SENATE BILLS NO.45 OF 2023)

The Temporary Chairperson (Sen. Abdul Haji): The Senate Majority Leader, move to report.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Temporary Chairman, Sir, pursuant to Standing Order No.153, I beg to move that the Committee of the Whole do report to the Senate its consideration of the Meteorology Bill (Senate Bills No. 45 of 2023) and seek leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

THE NATIONAL CONSTRUCTION AUTHORITY (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS NO.59 OF 2022)

The Temporary Chairperson (Sen. Abdul Haji): The Senate Majority Leader, move to report.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Temporary Chairman, Sir, pursuant to Standing Order No.153, I beg to move that the Committee of the Whole do report to the Senate its consideration of the National Construction Authority (Amendment) Bill (National Assembly Bills No.59 of 2022) and seek leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

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THE CANCER PREVENTION AND CONTROL (AMENDMENT)
(NO.2) BILL (NATIONAL ASSEMBLY BILLS NO.45 OF 2022)

The Temporary Chairperson (Sen. Abdul Haji): Sen. Cherarkey, move to report.
Sen. Cherarkey: Mr. Temporary Chairman, Sir, pursuant to Standing Order No. 153, I beg to move that the Committee of the Whole do report to the Senate its consideration of the Cancer Prevention and Control (Amendment) (No.2) Bill (National Assembly Bills No. 45 of 2022) and seek leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

THE ELECTION OFFENCES (AMENDMENT) (NO. 2) BILL
(SENATE BILLS NO. 28 OF 2024)

The Temporary Chairperson (Sen. Abdul Haji): The Senate Majority Leader, move to report.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Temporary Chairman, Sir, pursuant to Standing Order No. 153, I beg to move that the Committee of the Whole do report to the Senate its consideration of the Election Offences (Amendment) (No.2) Bill (Senate Bills No. 28 of 2024) and seek leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

(The Temporary Speaker (Wakili Sigei) in the Chair)

PROGRESS REPORTED

THE METEOROLOGY BILL (SENATE BILLS NO.45 OF 2023)

The Temporary Speaker (Sen. Wakili Sigei): Hon. Members, we are proceeding to report the progress of the Committee of the Whole and I call upon the Chairperson to report.

Sen. Haji: Thank you, Mr. Temporary Speaker, Sir. I beg to report that the Committee of the Whole has considered the Meteorology Bill (Senate Bills No. 45 of 2023) and seeks leave to sit again tomorrow.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said report and request ~~Sen. Cherarkey to second.~~

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Sen. Cherarkey Seconded.

(Question proposed)

(Question put and agreed to)

THE NATIONAL CONSTRUCTION AUTHORITY (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS NO.59 OF 2022)

Sen. Haji: Thank you, Mr. Temporary Speaker, Sir. I beg to report that the Committee of the Whole has considered the National Construction Authority (Amendment) Bill (National Assembly Bills No. 59 of 2022) and seeks leave to sit again tomorrow.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said report and request Sen. Cherarkey to second.

Sen. Cherarkey Seconded.

(Question proposed)

(Question put and agreed to)

CANCER PREVENTION AND CONTROL (AMENDMENT)
(No.2) BILL (NATIONAL ASSEMBLY BILLS NO. 45 OF 2022)

The Temporary Speaker (Sen. Wakili Sigei): We shall proceed to the third Bill for consideration. I call upon the Chairperson to report.

Sen. Abdul Haji: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered the Cancer Prevention and Control (Amendment) (No. 2) Bill, (National Assembly Bill No. 45 of 2022) and seeks leave to sit again tomorrow.

The Temporary Speaker (Sen. Wakili Sigei): The Mover?

Sen. Cherarkey: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee of the said report, and I request Sen. Chute to second.

Sen. Chute: I second.

(Question proposed)

(Question put and agreed to)

THE ELECTION OFFENCES (AMENDMENT) (No.2)
BILL (SENATE BILLS NO. 28 OF 2024)

The Temporary Speaker (Sen. Wakili Sigei): The next Bill for consideration, Hon. Senators for reporting is the Election Offences (Amendment) (No. 2) Bill (Senate Bills No. 28 of 2024). I ask the Chairperson to report.

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Sen. Abdul Haji: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered the Election Offences (Amendment) (No. 2) Bill, (Senate Bills No. 28 of 2024) and seeks leave to sit again tomorrow.

The Temporary Speaker (Sen. Wakili Sigei): The mover. The Senate Majority Leader?

The Senate Majority Leader (Sen. Cheruiyot): Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said report. I request Sen. Chute to second.

Sen. Chute: Mr. Temporary Speaker, Sir, I second.

(Question proposed)

(Question put and agreed to)

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

The Temporary Speaker (Sen. Wakili Sigei): Hon. Senators, we will now revert to the normal order as per the Order Paper.

Clerk, call the next Order No.8.

MOTION

ADOPTION OF REPORT ON CONSIDERATION OF AUDIT REPORTS OF VARIOUS WATER SERVICE PROVIDERS

THAT, the Senate adopts the Reports of the Select Committee on County Public Investments and Special Funds on its consideration of the Audit Reports for the year ended, 30th June, 2019, 30th June, 2020 and 30th June, 2021 of the following Water Service Providers-

- i.) Amatsi Water Services Company Limited - Vihiga County;
 - ii.) Bomet Water Company Limited – Bomet County;
 - iii.) Gusii Water and Sanitation Company Limited – Kisii/Nyamira Counties;
 - iv.) Kisumu Water and Sanitation Company Limited –Kisumu County;
 - v.) Kwale Water and Sewerage Company Limited – Kwale County;
- and
Nyeri Water and Sanitation Company Limited – Nyeri County and the Audit Report of the Wajir Water and Sewerage Company Limited for the year ended 30th June, 2021, laid on the Table of the Senate on Thursday, 23rd November 2023.

(Sen. Osotsi on 23.10.2023)

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(Resumption of debate interrupted on 12.11.2024)

The Temporary Speaker (Sen. Wakili Sigei): Hon. Senators, when the House adjourned on 12th November 2024, Sen. Osotsi, who is the Mover of this Motion, was to reply. I now call upon him to proceed to reply.

Sen. Osotsi: Thank you, Mr. Temporary Speaker, Sir. First of all, I want to start by thanking the Members who overwhelmingly contributed to this important Motion on matters of water service providers. A number of issues came up which I would like to quickly address before I reply.

There was the matter of late submission of documents, which is guided by Section 62 of the Public Audit Act. This has become a problem, where certificates for audit reports are issued by the Office of the Auditor General (OAG).

Then when they appear before Senate committees of County Public Investments and Special Funds Committee (CPISF) and County Public Accounts Committee (CPAC), they carry big files of evidence. Most of those documents are questionable. So, on the matter of late submission of documents, we have agreed that moving forward, we will not accept evidence in the form of documents which are submitted during the Senate hearing. Those documents need to be submitted within the audit circle.

There was also the issue of how to mitigate the high non-revenue, which in most counties is beyond 25 per cent. Members felt that there is a need to automate the metering system by having smart metres, and also the need to apply Geographic Information System (GIS) solutions in terms of managing water networks.

[The Temporary Speaker (Sen. Wakili Sigei) left the Chair]

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

There was also the common problem of errors in financial statements, which are attributed to capacity issues and training within the Finance Department. We have the Public Sector Accounting Standards Board (PSASB) that prescribes the format in which the financial statements should be submitted. We have recommended that moving forward, all counties must align their financial statements to the PSASB.

There was also the common issue of non-remittance of statutory deductions by these companies. This is a compliance issue and an offence. We have directed the counties involved to make sure that they submit their financial statements on time.

The matter of the transfer of assets and liabilities for these water companies was also a major issue. Inter-Governmental Relations Technical Committee (IGRTC)) has been handling this matter but it is taking too long. I think it is important for these water companies to have their assets in their name so that their financial statements are not overstated.

There was also the matter of declustering and clustering, which we reported that Bungoma and Trans Nzoia are now in the process of completing their declustering process so that they have separate water companies. The same applies to Kisii and Nyamira.

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The specific issues that came up, for example, for Bomet County, was the matter of a project by the name Kamureito Water Supply, which we referred to the Ethics and Anticorruption Commission (EACC) for investigation.

There was also a serious problem with unremitted statutory deductions amounting to about Kshs12.9 million. The issue of accuracy and recoverability of outstanding trade receivables amounting to Kshs219 million. This matter, again, has been referred to EACC for further investigation, because we cannot have this huge amount of money not recovered, and whose supporting documents are not available.

The matter of the stalled Chebunyo-Siongiroi Water Project, which has stalled for many years amounting to Kshs17.5 million, again, this matter was referred to EACC.

Gusii Water and Sanitation Company Limited which serves Kisii and Nyamira counties had a whopping Kshs39.6 million as trade payables. Again, we recommended that these trade payables be reduced. Non-revenue water in this particular company is one of the highest at 46 per cent with a wage bill of 69 per cent.

Mr. Speaker, Sir, Kisumu Water and Sanitation Company Limited is one of the most successful water companies. That aside, we had issues with internal controls especially on the matter of exhaust revenues, how ticketing is done, and how movement of the exhaust is managed, leading to loss of company funds, unrealistic budgets and plans, and of course, high non-revenue water.

Regarding Kwale Water and Sewerage Company Limited, the issue that was noted was lack of budget control and performance, which resulted to a revenue shortfall of Kshs40 million. There is also the issue of high non-revenue water that stands at 57 per cent. Again, there was the matter of unsupported debt with the cost of water services amounting to Kshs180 million.

Mr. Temporary Speaker, Sir, in Vihiga County, Amatsi Water Services Company Limited was noted to have long outstanding receivables of Kshs63 million and inaccurate trade and other payables amounting to Kshs50 million. This matter was noted and passed to the EACC for further interrogation and investigation.

In Nyeri County, there is Nyeri Water and Sanitation Company Limited which had outstanding debts totaling Kshs237 million. That has been outstanding for a long time. Again, this is linked to the Water Works Company.

Mr. Temporary Speaker, Sir, I commend Members who participated in this debate. This is the first report on water companies that my Committee has submitted to this House. We still have other five more Motions to go on this matter. I hope we will have those Motions debated and adopted by this House before we go for recess, so that next year the committee can start handling current issues, that is, for Financial Years 2022/2023, 2023/2024, and 2024/2025.

I want to commend Members of my committee because this is the first report of a committee of the Senate on audit reports for water companies. Due to that, we are beginning to see some improvement in the governance of water companies in our counties. However, we still have challenges.

Mr. Temporary Speaker, Sir, regarding the issue of ownership of the companies, we have ensured that almost all water companies are now owned by county governments.

Before, these water companies were either owned by groups in our counties or people who were not in the county governments.

Through the intervention of the committee, I am happy to report that most counties have now complied. I am also happy to note that one of the water companies that was being run by private individuals in Murang'a, that is Murang'a Water and Sanitation Company, which is one of the most successful water companies, has now been reverted fully to the county government of Murang'a. There are many other cases.

I know there are cross-cutting issues that we identified. They are not necessarily audit issues but that will be presented to this House in a separate report on matters of water management in our counties.

Mr. Temporary Speaker, Sir, I do not want to go beyond that. I beg to reply and request that putting of the question be rescheduled to another date, pursuant to Standing Order No.66(3).

(An hon. Senator spoke off record)

You are asking me about Garissa County. That is in a different report which is coming.

The Temporary Speaker (Sen. Abdul Haji): Thank you, Senator. It is so deferred.

(Putting of the question on the Motion deferred)

Hon. Senators, I will further rearrange the Order Paper, so that we go to Order No.25.

Clerk, please call it out.

BILL

Second Reading

THE ELECTIONS (AMENDMENT) (NO. 2) BILL (SENATE BILLS NO.29 OF 2024)

The Temporary Speaker (Sen. Abdul Haji): Senate Majority Leader, proceed.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Temporary Speaker, Sir, I beg to move that the Elections (Amendment) (No.2) Bill (Senate Bills No.29 of 2024) be now read a Second Time.

This is a very interesting legislation. I have been at the Bomas of Kenya in 2013, 2017, and 2022 either as a party operative or candidate who had been declared to follow up on the presidential election. This is a culmination of all the agitation that we normally get at the Bomas of Kenya.

If you follow through our electoral process, immediately after Members of Parliament (MPs), MCAs, governors, and Senators have been announced, we all troop to

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the Bomas of Kenya, where for the next one week the whole country comes to a standstill. That is a barbaric behaviour. It is really unfortunate.

I am speaking like this because we just watched elections in a first world country. Elections were held where more than 130 million people voted. After about five hours, you could get an indication of who took the lead. In fact, if you have an interesting candidate like the President-elect of the United States of America (USA), he did not even wait for other states to declare their results.

Once it became apparent that he was going to garner the magical 270 electoral college votes, he went ahead and gave his victory speech. The losing candidate also held back for a while. Eventually, in less than 24 hours after the election, she gave her concession speech and life moved on. In even more advanced democracies because a few months ago, I was in the United Kingdom (UK) when they were voting, even on the election day, you could hardly tell that there was any ongoing electoral process.

This intense litigation, agitation and fights that we have at the Bomas of Kenya are all a product of a trust deficit. The many legislations that we have passed here over the years in this House, most of the time just a few days before election, are to address some of these fears. One of the things I must appreciate about this Bill that came out of--

Mr. Temporary Speaker, Sir, I must, first, declare that this is one of the so-called National Dialogue Committee (NADCO) Bills that came out of a negotiated dialogue process at the Bomas of Kenya, where yours truly was part and parcel of the team that sat there. We had representation from Azimio la Umoja One-Kenya Coalition and Kenya Kwanza Coalition.

There are many issues that Kenyans raised about our electoral processes when they came and made presentations before us. You will listen to some of the proposals.

Mr. Temporary Speaker, Sir, listening to some of the proposed amendments that are being added into our election laws, if we are not careful, our election law book may end up being the largest in the world very soon. This caused by the principle of putting in writing the minutest of procedures; things that are obvious to other countries. However, given that we are an extremely litigious country and our Judiciary does not help our cause because they agree with people that consider nuisance litigants by raising issues that are so mundane, we ended up litigating on every minute details of our electoral processes.

In other countries, they are not things that people argue about. In typical fashion of our Judiciary, sometimes they agree with them that it is not written in law or our Constitution and therefore the petition succeeds. However, given that this is our home and we do not have another home, we have to learn to live with each other.

Mr. Temporary Speaker, Sir, there are about 39 Clauses in this Bill addressing many of the issues that have been of concern to Kenyans. As we read and give proposals to Bill, I hope the House will agree with us and put this in legislation.

The last thing I appreciate about the genius of this legislation before I get into the details of the Bill is that in all other elections from 2017 and 2022, we have fought in this House while trying to amend election laws a few months to election time.

If you read part of our election management processes, what forms the basis of many of the electoral processes is the so-called Kriegler and Waki Report that came up after the disputed 2007 Elections. One of the quoted phrases and recommendations in that

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report is the fact that the Parliament was indicted for changing electoral management processes laws a few months to the electoral cycle; and that, we do deals last minute that make it impossible or difficult for election managers to conduct elections to the satisfaction of the country.

You know very well that we have the highest standard of election expectation in comparison with the rest of the world. We expect a near-perfect process, let alone the fact that it is run by human beings, who many a times enter these results deep in the night, having not slept for more than three hours. However, we argue none the same.

It is important to note that this time we have made the decision to make these laws more than three years before a general election. That is quite commendable because it means that the Independent Electoral and Boundaries Commission (IEBC) will have sufficient time to acquaint themselves with all the provisions of our laws as they prepare to take the country to an election. They will have learnt all our expectations, unlike has been the case previously where we have amended election laws two or three months before an election. Subsequently, after that election, we have gone ahead to fight and ask the IEBC why they did not do certain things, ignoring the obvious and basic fact that they did not have sufficient time to prepare.

Let me get into the provisions of the Bill. Clause 2 of this Bill proposes to amend Section 2 of the Election Act, 2011 by providing a new definition of the term “nomination”. Remember what I mentioned earlier, that we argue even on some of the basic things. That instead of just prescribing and saying that you need a Kenyan passport to vote, we want to propose it further and say that it must be valid and be put it in law.

I do not think there is any other country you will find this in their legislation. However, this is Kenya and I have given a good history of how we find ourselves with these kinds of arguments. We therefore want to make it clear in black and white that if you are using your passport as your primary tool of identification, then it must be valid. That is rather too obvious for me, but that is who we are as a people.

Let us proceed. Clause 3 of the Bill is an amendment to Section 5 of the principal Act, which provides for registration of the voters at a point where there is a by-election. That is another very--- I lack the proper English vocabulary to explain this, but we have to do it anyway. Like I have said, this is Kenya. I am not sure if Sen. (Dr.) Khalwale has sufficient vocabulary for this as well. Neither does my good friend, Sen. Crystal.

When there is a by-election, we freeze the registration of voters in that electoral area. That is part of our election regulations, but there was the feeling that you must make it an issue of statute and not just a regulation. People should know that anytime there is a proposed by-election in a certain area, you freeze registration of voters in that region to provide clarity.

Listen to this, Sen. Crystal. That the restriction is only in the geographical area where that by-election is to take place. That is Kenya for you. Clause 3A provides that a person who registers as a voter during the period when registration of voters is suspended for the purposes of a by-election as contemplated under subsection 1 (b) shall not be eligible to contest in electoral area affected by the by-election.

Clause 4 of the Bill seeks to amend Section 6 of the principal Act, which provides for inspection of the Register of Voters. We are deleting subsection (1) and (2) and

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substituting them with new subsections providing for the inspection of the Register of Voters by members of the public and rectification of particulars of voters, as well as exceptions when IEBC shall not be expected to rectify the particulars of the voters.

This is the usual process where they normally pin the list of registered voters in a particular polling station for clarity purposes. I have pointed earlier that some of these things are either definition or going deeper into the law to make it more appealing.

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

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

Mr. Temporary Speaker, Sir, Clause 5 is amending Section 8A of the principle Act, which is a deletion of subsection (3) and provides for audit of the Register of Voters by a professional reputable firm for purposes of first general election after the commencement of this Act. We have argued about the validity of our Register of Voters.

I do not know if other countries have this. I know for a fact that you have come from observing elections in some land very far away from this place. I do not know if you had any conversations about audit of the registered list of voters in your conversations or exit report.

Therefore, because we do not trust our independent institutions or for some reason want to confirm, we have provided that a professional audit firm upon the passage of this Act to conduct an audit of the Register of Voters. Sen. Osotsi, that is why our elections are extremely expensive. In other countries that trust their independent institution, this is work that can be left to IEBC to do on their own and clean it up. However, trust is an expensive affair.

I had explained why many of these issues stem from mistrust of the electoral process and the players in between. You can imagine how much it will cost the IEBC to hire a firm to look into the list of registered voters, who are about 20 million, if I am not wrong. Kenyan taxpayers will pay quite a tidy amount for that provision. However, let it be as it may.

Clauses 6, 7, 8, 9, 10, 11 and 12 and 13 of the Bill is an amendment of Sections 14, 16, 17, 19, 22, 23, 24 and 25 by deleting the words “nomination” and substituting it with “registration of candidates” so as to differentiate the role of IEBC and those of the Registrar of Political Parties. Remember, there is confusion in how the Act is presently drafted.

Additionally, Clauses 7 and 9 delete the submission of party lists with respect to parliamentary and county assembly nominations to the IEBC by political parties. Further, Clause 10 of the Bill proposes to delete Section 22 and set out education requirements for a Member of Parliament or County Assembly.

These requirements, remember, have been declared unconstitutional in *Wambui and 10 others versus the Speaker of the National Assembly in Constitutional Petition No. 28 of 2021*. Eventually, we will remove those things that were provided for education qualifications.

We are representing people, and, therefore, many of the people you represent, Sen. (Dr.) Khalwale, there are no medical doctors like you. They have voted for you because

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they feel that you can represent them. It was the feeling of Kenyans, and the courts have finally agreed with them, so we do not need to push this point further.

With regard to Members of a County Assembly (MCA) and Members of Parliament, Kenyans want to elect their own. The Bible says to each their own. If they feel that they want to elect a fellow who perhaps does not meet what we would know as at least a basic standard of a competent person to legislate and represent them, as I have said, we are only humble servants of the people. Therefore, we will allow them to have it as they wish.

Clause 14 of the Bill proposes to amend Section 27 by inserting a new subsection to provide that “a coalition party shall within 14 days of registration submit to IEBC a copy of its nomination rules certified by the Registrar of Political Parties.”

Remember this issue of the coalition party. We argued here on the Floor of this House about coalition political parties and the same. I am sure after the election, Sen. Omogeni has since changed his views as opposed to what he had then because of their challenges in trying to run as a coalition political party. You remember the debate that was here. However, at that time, you are like me. What you accuse me of being nowadays is what you were at that particular time.

Clause 15 of the Bill proposes to amend Section 31, which provides for the nomination of political party candidates, by deleting subsection 2(b),(c),(e) and (f), which provides that –

“The IEBC shall, upon the request of a political party, conduct and supervise nomination of candidates by the political party for presidential, parliamentary or county elections in accordance with Article 88 of the Constitution.”

It is just our feeling that there can be a time when political parties will have matured to the level of allowing the IEBC to conduct nominations for them. Who knows? If we were able to agree at the political party's level, we could actually end up making it mandatory for all our political parties to do this.

Nonetheless, it is a decision of the political party, a right that you may not want to take away from them. However, we wanted to provide it in law so that if a political party feels that they do not have the internal capacity to conduct a nomination process, then they let it go to IEBC. Of course, I know it will be a costly affair.

I know this because I have run for the nomination and participated in the management of the nomination of a political party, the United Democratic Alliance (UDA), that conducted nomination exercises in about 40 counties. This is an expensive affair.

Part B is you submit to the IEBC the names of the person contesting the party primaries and the date of the party primaries for publication of this information in the Gazette Notice. You require also that the Parliament shall appropriate monies for the effective implementation of the section.

What that means basically is that the Kenyan public will fund this exercise because they belong to these political parties. The only challenge is that we have provided the resources, but we have not made it mandatory for the political party to carry out its primary using the IEBC. So, the funds will be there, but the political party will decide whether to use IEBC or not.

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I almost laugh when I remember a certain political party that conducted its nomination electronically. There was a big fight about “password”. They questioned the use of “password”? I am sure Sen. Ogola knows a thing or two about that “password” conversation that ensued in certain regions. IEBC has that mandate provided for by law, but at the request of the political parties.

Clause 16 proposes to amend Section 32, which provides for the approval of a symbol for independent candidates, by deleting the words “nomination day” and “nomination” and substituting them with the words the date of registration and registration, respectively.

This is just about independent candidates making sure that the process upon which they submit is complete. Remember, when independent candidates want to submit a symbol that they are going to use in the election, it is quite a long process.

Clause 17 of the Bill proposes to amend Section 33, which provides for the nomination of independent candidates. These are a few clerical things to ensure that we clean that up. I do not intend to spend a lot of time on it.

Clause 18 proposes to amend the Act by inserting new Section 33(a) to provide for publication in the Gazette of party candidates and independent candidates as registered to contest in a by-election. I said some of these provisions are rather too obvious, but we still must do the same.

Clause 19 of the Bill proposes to amend Section 34, which provides for the nomination of party-list members, by inserting new Sections 8(a) and 8(b) to provide that

—

“a person can only be nominated as a Member of a County Assembly. If such a person is a registered voter in a ward within a county, the person is to be nominated, and the need to ensure equitable representation from all wards comprising the respective county as regards nomination.”

This provides clarity, which is part of what Sen. Crystal Asige was trying to do a few weeks ago by ensuring that all Persons with Disabilities (PWDs) and special interest groups are nominated.

Furthermore, there is a practice by political parties, including my political party, of imposing people who are not residents of a particular county to form part of the members of a county assembly of that county. I find this to be completely unfair to the residents of that particular county. Therefore, I appreciate this new provision in law.

So, it is now abundantly clear that you can only nominate members of the county assembly from registered voters of that particular county. This takes away powers from the big boys of our political parties, but I feel it is a good provision.

I know stories and we have had petitions, including Petitions brought to this House, where the only time a certain MCA was ever seen in a county assembly is the day when they went to take the oath of office. In fact, on the day of the swearing-in, they were seen in certain towns asking for directions to the county assembly because they did not know where the county assembly of that particular county was yet, they were members of a county assembly. I want to urge members to support this so that political parties can only nominate voters from that particular county.

Clause 20 of the Bill proposes to amend the Act by inserting new Section 38(a) to provide for the designation of polling stations by IEBC and publishing them in the Gazette at least three months before the date of any election.

We have argued before about the creation of polling stations. Sen. Eddy has a thing or two to say about this. I read some of the things he said about the IEBC elsewhere. We are making it a provision in the law that three months before the election, IEBC must publish the list of all the polling stations by Gazette Notice.

Kenyans will be able to check so that we do not have issues arising like the creation of certain polling stations just like that fellow, Jose Carmago.

Clause 22 of the Bill proposes to repeal and replace Section 39 which provides for the determination and declaration of results and substitute it with a new section.

The new section proposes that results at the polling station shall be final and the Presidential election shall be tallied, announced and declared and electronically transmitted before all other elected positions. Further, the new section has omitted provisions providing for-

(IE) where there is a discrepancy between electronically transmitted and physically delivered results, the Commission shall verify the results which is an accurate record of results tallied, verified and declared at the respective polling station shall prevail.

(IF) Any failure to transmit or publish election results in an electronic format shall not invalidate the results as announced and declared by the respective presiding and returning officers at the polling station and constituency tallying center respectively; because this is technology, things happen.

Part C is a requirement for Independent Electoral and Boundaries Commission (IEBC) to establish a mechanism for live streaming of results as announced at the polling station to facilitate public information. This is part of the public trust building mechanism. IEBC has part of its system that would allow somebody to visibly check and confirm results after the declaration of the Presidential election results at Kapmaso Primary School in Kabianga Ward where I vote.

Unless you have somebody, who was at Kapmaso at the time of declaration of that result, or at Bomas of Kenya, sometimes it is difficult to verify. Therefore, the easier thing to do is to make this information public so that I can easily check and confirm. If they announced that candidate X secured 400 votes, that is what is reflected in the IEBC portal.

Clause 23 of the Bill proposes to amend Section 44 which provides for procuring technology. It proposes that the Commission shall ensure that the intellectual property to the technology is vested in the Commission. Sen. Oketch Gicheru should know why this forms part of that conversation.

A supplier of the technology to be used shall not be found guilty of violating any procurement law or committed any crime anywhere in the world. Additionally, this is about open the server conversation. In 2017, the conversation was that the servers were asleep somewhere in France. This is a part of addressing and providing clarity to that.

Clause 24 of the Bill proposes to amend Section 44A which provides for the complementary mechanism for identification of voters by inserting the words ‘transmission of election results and mandating IEBC to make regulations for better carrying into effect provisions of Section 44A. This is part of what I had mentioned earlier.

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Clause 25 of the Bill deletes Section 45 which provides for the conditions under which a Member of Parliament (MP) may be recalled. These provisions were declared unconstitutional in the Katiba Institute and another versus the Constitution Attorney General (AG) in the constitutional Petition No.209.

Clause 26 proposes to delete the provisions of Section 46(1)(b) that requires the petition to recall a MP must be signed by a petitioner who was registered to vote in the election in respect of which the recall is sought and that the petition must be accompanied by an order of the High Court. These provisions were also declared unconstitutional.

Clause 28 proposes to repeal Section 74 of the Act which provides for the settlement of certain electoral disputes by the IEBC since the mandate is now a function of Political Parties Disputes Tribunal (PPDT) as provided in the Political Parties Act of 2011, just to provide clarity.

Clause 29 of the Bill proposes to amend Section 75 which provides for the county election disputes by deleting the requirements that appeals to the High Court shall be on matters of law only and inserting New Section 5 to provide that the decision of the High Court on appeal on the validity of the election of a Member of County Assembly (MCA) shall be final.

Clause 30 proposes to amend Section 82 of the Act which provides for the scrutiny of votes by providing that a court may extend a scrutiny of votes beyond the polling station or areas mentioned in the pleadings.

This is a rather obvious provision but those who practice law in our courts like you, know that the limitation of many election petitions; where perhaps the given that election petitions are time-bound and sometimes a lawyer either forgets to file-in many of the contested election results, later on in the court process they are denied the opportunity to provide for scrutiny even when it becomes rather too obvious that an opening of a particular voting station will help the court in making the determination.

Clause 32 of the Bill provides to amend Section 85A which provides for appeals to the Court of Appeal in respect to Members of the National Assembly, Senate or the office of the county governor by deleting the requirements that appeal shall be on matters of law only and inserting a new Subsection 5 to provide that the decision of the Court of Appeal shall be final. I am sure Senior Counsel Sen. Omogeni- who shall be seconding this and was part of the National Dialogue Committee (NADCO) process shall expound more on it.

Clause 33 of the Bill proposes to insert new section 87A, 87B and 87C to provide for the appointment by Parliament of an independent firm to carry out an evaluation of the electoral process after a general election.

The evaluation shall include the review of the legal framework, processes and costs associated with the electoral process and propose new provisions require preparation of a report and submission to Parliament within 90 days of the appointment of the independent firm. Just to ensure that at the end of every election, we provide a firm to audit the process in its entirety and lead Parliament in passing legislation such as this.

Sen. Olekina, you are not in the House but I mentioned earlier that mistrust is what we are trying to cure in most of these proposals that are here. Otherwise, in other parts of the world, many of the proposals that are here will appear like obvious things.

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Therefore, to clean up our processes, the Bill is proposing that after every electoral cycle, IEBC procures the services of an independent audit firm to audit the entire process from the start; the preparation of the election, election day to declaration of results and also what it costs the taxpayers.

They will finally then submit a report to Parliament so that Parliament can make independent decisions of how to further clean up our electoral processes or review certain costs or decisions that are provided for in law that make it extremely expensive to run our elections. Remember, our elections costs are legendary and we have mentioned the reason behind it.

Therefore, as I conclude, I wish to state that this is a very important Bill and therefore urge Hon. Senators to support it. This is about what brings you to this House and the people that you represent. Elections are extremely important because they are the tools which form the chance for the citizen to speak and exercise Article 1 of our Constitution directly.

We are duty-bound as Parliament to provide and make it possible for them to exercise that constitutional provision with a lot of clarity. Sen. Omogeni was part of the NADCO-2 team at Bomas of Kenya. I know Sen. Olekina was part of the first one, and therefore has a good understanding of this Bill as well. Therefore, I want to grant him the opportunity, to second this Bill.

I thank you.

The Temporary Speaker (Sen. Wakili Sigei): Senate Majority Leader, before the Senior Counsel seconds your Bill, I want to give you comfort that part of what you said in the process of moving your Bill, is an inquiry to a return or an exit report from the observation of the elections that have just been conducted in the United States of America (USA).

The issue is about the trust which that Report will speak to and it will answer a number of the concerns which we are trying to cure in this particular Bill. I would like to give you the comfort that, the team indeed represented the House in doing what it was sent to do.

Sen. Olekina has confirmed that he was in National Dialogue Committee (NADCO) 1, where yours truly was also a member and so, we participated in this process leading to the NADCO 2, where now I would like to ask Senior Counsel (SC) Okongo Omogeni to second the Bill.

Senior Counsel Okongo Omogeni, please, proceed.

Sen. Omogeni: Thank you, Mr. Temporary Speaker, Sir, for giving me an opportunity to second this Bill that has been moved by the Senator for Kericho County.

Mr. Temporary Speaker, Sir, for the record, I went to a school that is in a village where Sen. Cheruiyot comes from, in Kabianga. So, it is my pleasure to have served with him in NADCO.

Without the spirit of give and take we would not have reached where we are today. I, therefore, would like to thank him and the Members that represented the United Democratic Alliance (UDA) coalition for coming with the spirit of give and take.

We did not get everything that we wanted as the Azimio la Umoja–One Kenya Coalition Party and I am also sure that there are positions that were not representing the UDA coalition, but they agreed to accommodate in the spirit of give and take.

Mr. Temporary Speaker, Sir, the spirit in NADCO was to ensure that when we go to the next elections, the person who wins the confidence of Kenyans and garners the majority of votes does not face a contestation in the Supreme Court. We hope that we will reach a situation where we love the person losing an election conducting himself like Biden.

In the United States of America (USA), last week, within two days, President Biden who was not a candidate, but whose party, the Democratic Party, had lost an election, placed a call to President Trump who had won through the Republican Party and said, in a democracy there must be a winner and a loser. He welcomed him to the White House so that he can assist in managing the transition.

Hon. Senators, I hope that you will support these amendments to the elections laws, which are trying to make it easy, transparent and the path to declaration of a win in a presidential election much easier and more transparent.

Mr. Temporary Speaker, Sir, one of the issues that we really fought about was what is Clause 39 of the Bill. In the United States of America, you will start predicting the winner in a presidential election going by results coming from the states.

This Bill is proposing that we allow polling stations to have returning officers so that if you are in Ikolomani, by the time we are done with counting and tallying of votes in that polling station, the Returning Officer will give final results and declare the winner from that polling station, so that by midnight, we should be getting results telling us, Sen. Boni Khalwale, if he will be a candidate in 2027 - I do not know whether he has presidential ambitions - has taken Ikolomani. If Sen. Cherarkey will be running for Gen Zs, we are told in Borabu Constituency, Sen. Cherarkey was number three or one.

That is the spirit behind these proposed amendments, so that we do not need to wait for the commissioners in Nairobi to tell us who has won in Ikolomani. If in Borabu we have tallied votes from all the polling stations by the close of the day, we should see a 411 telling us that Candidate A has taken Borabu. By the time we wake up in the morning, we should be knowing from all our constituencies, 290 of them, who is leading in a particular constituency.

That makes the voting, counting and tallying of results more transparent than what we have now, where you wait for returning officers to walk all the way to Nairobi before the Independent Electoral and Boundaries Commission (IEBC) can declare who is a winner.

Hon. Senators, this is a game-changer in that, even if you want to contest a presidential election you can narrow down to the polling stations that are contested. You do not need to sue the Chairman of the IEBC. You can actually select the few polling stations which are contentious and move to court challenging results on those particular polling stations.

Mr. Temporary Speaker, Sir, because of the high stakes in presidential elections, we are making it mandatory that the first election that should be counted and tallied is the presidential election results. So, if we close the voting in a polling station, the first seat that

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should have votes counted is the seat of the President. Once it is done, you move to the County Governor, Senator, Member of National Assembly, County Women Representative, and then finish with Member of the County Assembly (MCA), in that order. That is what we are proposing in this Bill.

It is all in the spirit of making it transparent, so that we adopt the system that we see in the USA, where at midnight, you will be told Trump or Harris has carried Florida and that becomes the end. Next, you will be told Texas has gone to Candidate X.

Mr. Temporary Speaker, Sir, secondly, we need to adopt technology. What makes the results to trickle in as quickly as we saw in the USA is because they are using technology. If you employ technology, you get your results faster. I do not know what the experience of my fellow hon. Senators is, but in my seat, Senator, Nyamira County, I waited for two nights. Since people are doing manual counting, you wait for two nights and if you are not sure about your victory you cannot even break to go and have a meal or bath.

However, if we embrace the technology, we can do our tallying much faster and get our results the following day. Why should we vote on a Tuesday and you are being declared on a Thursday? That waiting is too long. So, I hope when we get new commissioners in IEBC, they will bring in technology that brings real change.

In Brazil, you conclude elections and in the next three---

(Sen. Cherarkey spoke off record)

Sen. Cherarkey went to Brazil, I think in the company of Governor Mutula, who was then a Senator, SC, James Orengo and they saw real-time. The problem in this country is that once people get positions, like a commissioner in the IEBC, they think more of how they can make money from that technology, instead of looking at bringing in a technology that will make the running of elections more efficient.

If Brazil can use technology and declare elections within three hours, why not Kenya? Are we cursed? Are we a cursed country, yet we use more money? If you follow, you will find that we are paying more money for that technology than those other countries.

I have heard Sen. Asige telling me that even in the USA, it took few hours. I think within two hours after the close of elections, results were trickling in. When we get a chance to vet the new commissioners to the IEBC, we should vet and ensure that the people who are getting a chance to serve in that Commission are men and women of integrity, who can put public interest ahead of selfish interest or wanting to enrich themselves. We do not want to hear those scandals we read some times ago about the IEBC.

Mr. Temporary Speaker, Sir, I fully support the proposed amendments that makes nomination of Members of County Assemblies as proposed in Clause 19, to be people who are registered in those wards.

The only thing we did not agree on, and I hope we can come to an agreement, is that this should also be extended to our constituencies and our counties.

If you are being nominated to represent a constituency in West Mugirango in Nyamira or Starehe Nairobi City County, you should ordinarily be a member who votes in

that constituency. If you are being nominated, you should be somebody registered in that constituency.

I have had agitation. Yesterday, I was confronted by Sen. Crystal Asige here, pitching that a nominated Senator should have money for county operation offices. If you need that money, we should ensure that you come from that county.

For instance, if you get money to run your office, it should be Sen. Tabitha Mutinda, Nairobi, running her office in Nairobi; Sen. Crystal Asige from Mombasa, running her office in Mombasa; Sen. Ogola from Homa Bay County, running a county office in Homa Bay.

Ordinarily, you should be somebody who votes in that county, constituency or in that ward. Perhaps, I will be asking the hon. Senators to reconsider whether Clause 13 should be extended, so that we do not just say “Member of County Assembly (MCA) voting in that ward.” Let us extend that spirit and intent to be also applicable in constituencies and in our counties. I think it is a fair thing to do.

The other point I want to make is appointing polling stations as proposed in Clause 20, which is amending Section 38A of the Act. I was privileged in 2017 to be one of the lawyers who was appearing for Hon. Raila Amolo Odinga, in a Presidential Election Petition.

Some of the issues that cropped up in that Election Petition is a situation where returning officers would tell us that they decided to set up a polling station in a certain place because nomads had moved. There were no people in the designated polling station. We cannot do that. Polling station should be known by voters.

This amendment to Section 38A is proposing that the Independent Electoral and Boundaries Commission (IEBC) must appoint a place that is publicized and known to the voters. If you are in Nairobi and they say the polling station is in Starehe, that should be what the voters in that constituency know and that is where they should go and vote. If you are in West Mugirango and you say one of the polling stations is Girigiri Primary School, that should be gazetted, publicized and known to the voters.

We should not have a situation where capriciously Electoral Commission Officials can set up polling stations that are not known to anybody.

Mr. Temporary Speaker, Sir, you know you practice as a lawyer and we have had serious problems with time. You are doing a Presidential Election Petition and you know the time within which you must sit, sift through cartons of documents, prepare your petition and file. Thereafter, when you appear before the Supreme Court, they will tell you that you cannot do scrutiny in a polling station that you did not name in your Presidential Election Petition.

Lawyers are also human beings. We are not machines. Thus, we are giving leeway to the Election Petition Courts to look at the issue of allowing scrutiny in polling stations beyond the time that is given. This is to ensure that you do not need to restrict a counsel and say if you did not name your polling stations where you need scrutiny within seven days, we will not allow you.

We want to give our judges an opportunity to hear lawyers and exercise judicial discretion. If they think a basis has been laid, then they can extend time and allow scrutiny.

The spirit of Article 159 of our Constitution is to do substantive justice and not to pay undue regard to technicalities of procedure. I know those who practice law in this House such as you Mr. Temporary Speaker, understand how important this amendment will be to lawyers.

Additionally, they proposed amendments to Section 82, on access to information including technology used in an election. We are trying to cure the problems that we all saw during the Election Petition that was filed ensuing from the 2022 general election.

Mr. Temporary Speaker, Sir, if you can recall, in 2017 the Supreme Court issued an order for that technology to be released. We were told that the lawyers in France had not woken up. When the lawyers in France woke up, we were told the technology is also hosted in the United States of America (USA). The lawyers in USA were asleep. We waited till 8.00 p.m. which in US was about midday and still the technology was not availed.

Mr. Temporary Speaker, Sir, we are making a proposal here that the Commission should ensure that there is access of information including any technology that is used in an election. This is a public money. When we employ technology, we are using the taxpayer's money. We want Kenyans to have easy access to information so that everything is transparent.

The spirit in Articles 80, 81 and 82, is that our election should be transparent and verifiable. There is no way an election can be verifiable if we are not making technology available. That is in the spirit of making Kenyans to have faith and confidence in an electoral process.

It was our prayer in the National Dialogue Committee (NADCO), that in the 2027 elections, we should not have a dispute. Everything should be so transparent that at the time we conclude the elections and a candidate is declared, every Kenyan should accept that truly that was the choice of the people.

The other problem and I am sure most of us who are candidates have experienced is delay which is being addressed in Clause 39. The proposal there is that each polling station should have a returning officer and once you tally the votes you make a declaration. However, there has been a problem before.

You are aware that you can have a polling station that is the closest to the constituency tallying centre. Nonetheless, there can be unreasonable delay in releasing results. You finish counting even at 8.00 p.m. but the presiding officer will tell you that they are unable to announce results until the following day.

In Clause 4, we are saying that the results should be tallied within two hours. Within two hours results should be released, everything fed into the electronic system and everybody has access to the results. If you unreasonably delay announcement of results, there should be consequences.

In 2013, I did an Election Petition for a candidate in an election in Nyaribari Chache. While we were looking through the transmission of results to the tallying centre at Gusii, we discovered that the polling station that was closest to the tallying centre, was the last one to declare and transmit results.

When we requested the court and the court ordered scrutiny, we found that there was a lot of tampering of results from that polling station. At times presiding officers delay

release of results deliberately, so that they can manipulate the result and interfere with certain document before the results are announced.

Mr. Temporary Speaker, Sir, this idea of giving the presiding and returning officers time is to ensure that there is no opportunity given to the presiding or returning officers to manipulate the outcome.

As I conclude, I know we have not prescribed in these amendments that the IEBC should assist political parties in carrying out nominations. However, time has come for political parties to allow IEBC to conduct their nominations. There are many regions where nominations mean everything. If you win, you are as good as a MP.

Lawyers will tell you, including you and Cherarkey, that the Law Society of Kenya (LSK) conducts its elections using the IEBC. It is not prescribed in any law, but because they want transparency and build confidence in that process, they have invited IEBC to preside over and conduct elections on behalf of the LSK.

Why should my party, the largest party in Kenya I believe, the Orange Democratic Movement (ODM), not allow the IEBC to conduct its nominations? Why should the United Democratic Alliance (UDA) not allow the IEBC to conduct its elections? In the same spirit, all other public bodies, including the Central Organization of Trade Unions (COTU) headed by my friend, Atwoli, should allow the IEBC to assist in conducting elections of officials of those bodies. Atwoli is a popular person. Why should you go to Tom Mboya Labour College, where people come and shout, and then you become the secretary general? Allow the IEBC to set up mechanisms in all counties. Our mzee Atwoli, who is very popular within the labour movement, will be elected in elections that enjoy the confidence of the workers of Kenya and any other person.

I, therefore, urge my colleague Senators to support this Elections Offences (Amendment) (No.2) Bill (Senate Bills No. 28 of 2024) that was developed through a bipartisan spirit with the Majority and the Minority Sides trying to do a clean-up in our electoral process. It will also ensure that as we gear towards 2027 elections, we will create a legal regime that will have transparent, verifiable and uncontested elections.

With those remarks, I second.

The Temporary Speaker (Sen. Wakili Sigei): Senior Counsel, Sen. Okongo Omogeni, in your reference to the political parties, you made reference to one party you called UDA. The name they prefer is UDA.

(Question proposed)

I will invite Members who are keen to contribute to this Bill to make their contributions. I will ask the hon. Senator for Nandi, Samson Cherarkey, to make his contributions to the Bill.

Sen. Cherarkey: Thank you, Mr. Temporary Speaker, Sir. I have listened keenly to the Members of NADCO move this Bill ably, although, remember, you denied me the right to appear before the NADCO team. I am happy that right now, I have the opportunity to have my views get heard in a neutral environment maybe because that opportunity was politically guided, unlike what we are doing here.

I am also happy that the Parliamentary Service Commission (PSC) Commissioner and the Senate Majority Leader have moved this Bill well. I also know that at one point, you sat as a member of NADCO. The PSC Commissioner who is also a Senior Counsel is here today. I do not know whether he is aware that the catering services are supposed to be outsourced and food for Members of Parliament will be brought from outside.

We do not know the security. I am told the person who is pushing the outsourcing of catering services is one of the members of the Parliamentary Service Commission (PSC), and we are watching keenly. We shall oppose such a move because we are the employees.

Now that you have mentioned Francis Atwoli as a popular unionist, we might need his services in this Parliament. You cannot outsource our food or catering services to individuals who want to use us as guinea pigs in giving things.

That was just on a lighter note for the--- You know it is rare to have a Commissioner of PSC in the House. Now that we have, he should know.

Secondly, the cost of elections in this country---

The Temporary Speaker (Sen. Wakili Sigei): Sen. Cherarkey, there is an intervention from the Senior Counsel (SC). He wants to inform you. Are you ready to be informed?

Sen. Cherarkey: Okay. I can be informed.

The Temporary Speaker (Sen. Wakili Sigei): Very well, Sen. Omogeni, proceed.

Sen. Omogeni: Mr. Temporary Speaker, Sir, yes, just to inform my good friend, Sen. Cherarkey. I am not aware of the alleged outsourcing of catering services by the PSC.

Also, make it clear to the people of Nyamira who may be watching that I am certainly not one of those Commissioners who are pushing for the outsourcing of catering services.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Omogeni, are you saying that there is a push, and at the same time you are not one of them?

Sen. Omogeni: Mr. Temporary Speaker, Sir, I am hearing it from Sen. Cherarkey. He seems to be highly connected to PSC Commissioners. I saw him enjoying a cup of tea prepared by our staff and I thought the food we serve is delicious and very tasty for our Members.

I am not aware. I just want that to be on record. If there was such a push, certainly, the Senator for Nyamira and the Commissioner representing the Senate is not one of the Members pushing the outsourcing of catering services for MPs. I just wanted that to be on record.

The Temporary Speaker (Sen. Wakili Sigei): That information was meant for you, but it will also affect the entire Membership of this House,

Sen. Cherarkey, proceed.

Sen. Cherarkey: Mr. Temporary Speaker, Sir, I want to confirm that it is at the highest level. Maybe Commissioner, Sen. Okongo, Omogeni, (SC) should be informed. I hope they will not allow that to happen because we will resist any such move.

Secondly, I am informed that the USA Ambassador Megan Whitman has resigned. I want to pass on our deepest appreciation for her tour of duty in the country and for being supportive of the Government. You remember under her tenure, the Kenyan Government

was able to work closely with the Haiti Government to bring peace and security. Also, she organized the U.S. State Visit.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Cherarkey, I want you to confine your contributions--- Yesterday, you were reminded by the Sen. (Dr.) Khalwale about the relevance of your comments to the Motion at hand.

Sen. Cherarkey: Mr. Temporary Speaker, Sir, the U.S. is one of the biggest donors to elections in this country. She was very instrumental. She was among the people who were in Bomas with you. I am surprised; you should be appreciated.

The Temporary Speaker (Sen. Wakili Sigei): I should do that. Let it be confined to this particular Bill.

Sen. Cherarkey: Mr. Temporary Speaker, Sir, yes, I am tying up with what is happening in the genesis of the National Dialogue Committee (NADCO). The U.S. is one of the heaviest funders, not only to peace and security, but to elections in this country. She was very supportive and we wish her well in her tour of duty.

Secondly, you have to appreciate the cost of election is very expensive. This has been my argument. In the last election of 2022, Kenya spent a whopping Kshs35.8 billion. That translates to Kshs2,000 shillings per voter, which is very expensive across the world.

Therefore, we must agree that the election business in Kenya should not be live and dead. You were in the U.S. and you saw people voting by mail. You saw people accepting results graciously. I am happy to hear my brother, Sen. Osotsi, talking about Biden inviting Donald Trump to the White House. Was it today? Therefore, we want a peaceful transition, where people go into an election contest, you lose fairly, and you accept.

Mr Temporary Speaker, Sir, what is happening - you have noted in some of your comments - is that, there is a deficit of trust among African countries and, more so, Kenyans. We do not trust each other. The only time Kenyans will trust each other about elections is when Jesus Christ will be the returning officer.

We are becoming too prescriptive and subjective on election laws in this country. We are prescribing even how a presiding or returning officer should sign the declaration form at the polling station, county tallying centre, or national tallying centre.

We are aware of what happened in 2007/2008 after elections were tampered with. The problem in this country is lack of trust in the institutions we have. People do not even trust Parliament, the Judiciary and the Executive. It behoves us to trust institutions that the Constitution has established. That is why the cost of election is very high in this country.

As I speak, there are pending bills that the Independent Electoral and Boundaries Commission (IEBC) has not settled. They include *matatu* operators and people who provided services and goods. The bills are a whopping over Kshs2.05 billion.

While I agree with several issues, I think this proposal is just a clean-up of the Elections Act. Having served as the Chair of the Committee on Justice and Legal Affairs in the previous Parliament, we did several amendments on elections, but there was push and pull between the National Assembly and the Senate.

Outside the basic issues that affect Kenyans, the most legislated matter in this House and spoken about generally in this country, is the issue of elections. When we go to an election and notice a problem, we come back and legislate.

The other day, we did not trust use of Information and Communication Technology (ICT) in elections. Now, we want to trust it. There is a time we were told that there was José Camargo somewhere. There is also a time we were told that servers were in France. You all remember the famous phrase, “*fungua server*”. Others said that it was in the USA, but we have a time difference.

I am happy that this Bill seeks to amend the Elections Act to include a Kenyan passport as a form of identification and registration of candidates, which is good.

In Clause 3(a), I agree that if people have not been registered as voters, registration, opening and inspection of the voters’ register should be suspended until a by-election or referendum is done. When the late hon. Sen. Mutula Kilonzo passed on, the victim was the sister to the current Governor of Makueni because she had not registered as a voter.

A by-election could be happening in Vihiga or Banissa, for example. If I come from Banissa but vote in Nairobi, the law should not allow me to participate in the by-election in Banissa. I agree with this provision, so that we do not have ambulance chasers for parliamentary seats.

The famous ambulance chaser is one, Baba Yao, hon. Ferdinand Waititi. He contested in Embakasi when unfortunately, the former MP from Kiambu who worked as a unionist was killed. When there was an opportunity to become the Governor of Kiambu, he went to contest. This provision will curtail such.

The former governor, hon. Sonko, was also trying to be an expert in that. After failing here, he wanted to run as the Governor of Mombasa, yet I am sure he was a voter in this City.

There are people like Sen. (Dr.) Khalwale who may want to become governors. We do not want to have a situation where somebody who is an MP in Nairobi wakes up one day and decides to run for Governor of Kakamega, yet those people do not know who they are. Let us bring sanity and hygiene to our politics.

I agree with Clause 6. I know that 60 days are sufficient to rectify your particulars as a voter. We know that happened in Banissa. There is also a ward in Kakamega that has a similar challenge after the MCA was killed. On the issue of referendum, I agree that 60 days are sufficient to enable one to rectify their particulars.

The fourth point I wanted to make is about Clause 27 on a coalition political party.

For example, before we went to the elections of 2022, some of us who served in the 10th Session were being pushed to amend the law and create a coalition political party. I remember Sen. Otsotsi was in the National Assembly. The proponents then were in power and came up with something called Azimio Coalition. I am happy that in the new Session, the definition of a coalition party became a challenge and we are where we were in the beginning. With the broad-based Government, those things are no longer relevant.

A coalition political party should submit a copy of their agreement to the Registrar of Political Parties. Are you aware that it is only Kenya-Kwanza Coalition agreement that was given to the Registrar of Political Parties and made public in the last session.

No one made public the Azimio Coalition Agreement to date, unless there is contrary information outside there. We want everybody to be equal before the law.

(Sen. Otsotsi spoke off record)

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Mr. Temporary Speaker, Sir, Sen. Ototsi, was in the ‘Lower’ House. He could not have been aware of what was happening. He is now in the ‘Upper’ House and can know what is happening. I am just informing him.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Osotsi, you know how to catch the Speaker’s eye.

Sen. Cherarkey, proceed.

Sen. Cherarkey: Mr. Temporary Speaker, Sir, as a Deputy Party Leader of the Orange Democratic Movement (ODM) and a senior Member of broad-based Government, he should hold his horses. We are, therefore, advising to have a clean-up and ensure that it is delivered.

(Sen. Osotsi spoke off record)

Mr. Temporary Speaker, Sir, Sen. Otsotsi should allow me to quickly finish. He can make his comments when he is contributing.

I agree with Clause 34. Can you believe we have a Ugandan MCA in Wajir County? He was however nominated from Nairobi. He does not know where Wajir County or the County Assembly of Wajir is. You will also find them in Kericho and Vihiga counties.

These political slay queens and kings must be stopped. I agree. Let us nominate women and People with Disabilities (PWDs) that come from that ward. Let them be registered voters of that ward. We do not want people who smile before the political party leaders and are vetted in hotel rooms to get the opportunity.

Mr. Temporary Speaker, Sir, we are aware of political party leaders who vet people in their hotel rooms in Santorini, to get an opportunity to be nominated.

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

The Temporary Speaker (Sen. Wakili Sigei): Sen. Cherarkey, there is a point of order.

Sen. Osotsi, what is your point of order?

Sen. Osotsi: Mr. Temporary Speaker, Sir, is it right for my friend, Sen. Cherarkey, to claim that it is bad for people to smile before party leaders? Does it imply that people are supposed to cry before the party leader?

(Laughter)

The Temporary Speaker (Sen. Wakili Sigei): Sen. Cherarkey, that statement on the the leaders of political parties is not the proper language to utilise.

Sen. Cherarkey: Mr. Temporary Speaker, Sir, let me rephrase it. It is good to smile to political party leaders and get angry at them. The Bible says that the guilty are always afraid. I have said that some political party leaders are known to vet the nominees in hotel rooms in Santorini. We are aware of that.

(Loud consultations)

I am using the word, “some”.

The Temporary Speaker (Sen. Wakili Sigei): Take your seat, Sen. Cherarkey. There is a point of order from Sen. Ogola.

Sen. Ogola: Mr. Temporary Speaker, Sir, is it right for the senior ranking Member, the Senator for Nandi County, to insinuate that it is only women and PWDs that can be nominated? Today, the current Cabinet Secretary for the National Treasury and Economic Planning is a nominee from the National Assembly and is a man. It is not only women who are nominated. In this House, we have Sen. Chimera and Sen. Mbugua who are nominated and are not women. I am also a nominated Senator. You cannot say that I got my nomination through a smile. I am beyond a smile.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Cherarkey, the Chair directs that you confine your contributions, check your language and withdraw the statement that refers to the Members having been vetted in hotel rooms. That is not Parliamentary. Confine your contributions to proper language. That is the direction of the Chair. I am warning you so that you do what is right as a ranking member of this House.

Sen. Cherarkey: Mr. Temporary Speaker, Sir, could I rephrase? I have said, ‘some political party leaders’. I did not say all. I have been in politics long enough to know some of these things. I might be young, but I know so many things that many people do not know. Anybody can be nominated by political parties to serve as a Senator or Member of Parliament.

I agree with the information from my sister, Sen. Ogola. If you know you are nominated on merit, why worry? I am calling out political party leaders who are political briefcase parties. When they get a chance to nominate, they go for other conditions, which my learned senior and law lecturer is smiling about because he knows them, as I have shared with him.

Finally, because I have spent a lot of time, let me conclude.

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

The Temporary Speaker (Sen. Wakili Sigei): Order, hon. Members. Allow Sen. Cherarkey to conclude.

(Sen. Ogola spoke off record)

Sen. Cherarkey: My sister, I have abandoned the statement. On the issue of the declaration of the Presidential election results, the chairman of IEBC should have the opportunity to declare the president-elect.

(Sen. Osotsi spoke off record.)

The Temporary Speaker (Sen. Wakili Sigei): Order, Sen. Osotsi. Allow the Senator to conclude.

Sen. Cherarkey: Mr. Temporary Speaker, Sir, we do not want to go where the ‘Cherera Four’ tried to do. I agree that the person who should declare the president-elect and deputy president-elect should be the chairman of IEBC.

We do not want to go to the ‘Cherera Four’ debacle, which almost brought this country to instability. I agree with the wisdom that you brought that at least the IEBC chairperson should declare the president-elect and deputy president-elect.

On the issue of electronically transmitting results, we are in the era of technology. Two hours is enough. If we are not careful with the current Gen Z technology, we can always know who is winning or who is not winning. I agree with the issue of electronic publishing of results.

The County Returning Officers could be hijacked as they come through Kericho County, somewhere in Awasi, and they could disappear with the results. On the issue of auditing, I agree that we should audit after one year. The Justice, Legal Affairs, and Human Rights Committee that you chair should give us the outcome of presidential and national elections within one year.

This is a good legislation. In conclusion, there are a number of MCAs who have been complaining that they were not given a chance. We need to rectify the issues that are present in elections. Let this country have trust in our institutions. I agree with your senior colleague who said that IEBC should even make nominations.

Can I get an additional 30 seconds? Some of the people have lost their seats because of bungled nominations. Many people who have seen nominations will tell you that it is not an easy process. Where you come from---

The Temporary Speaker (Sen. Wakili Sigei): I now call upon Sen. Osotsi to contribute.

Sen. Osotsi: Thank you, Mr. Temporary Speaker, Sir, for the opportunity to also make my contribution to this important Bill—the Election (Amendment) (No.2) Bill, No.29 of 2024. That is a product of the National Dialogue Committee (NADCO) process. I am happy that this House has already dispensed with the Political Parties Act, which is now supposed to go to a Committee of the Whole House. Now, we are handling the Election Amendments Bill.

I want to support the provisions in this Bill, although I have reservations about a few others. Let me start by looking at Clause 3, which states that people who register as voters during the by-election process should ideally not be eligible to contest elections in that electoral area.

You remember we had the long-drawn case of Keith Kilonzo, which many people are questioning why she was not able to contest. It is important that during that period, people who are keen to be candidates are stopped, because why is it at the last minute? That is a very progressive amendment and I support it.

I also want to support Sen. Cherarkey’s statement that elections in this country are very expensive. We conduct a very expensive election process and it must be looked into so that we do not derail other important national programmes.

Mr. Temporary Speaker, Sir, let me also comment on what is happening now. It is a pity that this country does not have an IEBC Commission. It is very risky too. We have a secretariat but no commission. It is important that the courts also take judicial notice of

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what is happening in the country, because without an IEBC, we run a major constitutional risk.

I am surprised that even a mere decision of coming up with a selection committee; people who will serve maybe for three months has dragged in court. Even after the court made a decision on that, some other people rushed to court. Why are the courts entertaining all this? They need to take judicial notice of what is happening to the country and of the fact that the un-availability of IEBC is a serious, problem and risk that can lead to a constitutional crisis.

It is important for us to have an IEBC, so that by-elections can be held and the people of Banissa and other several electoral areas who do not have representatives can have them. Some are even unable to get services, because they do not have either a Member of County Assembly (MCA) or a Member of Parliament (MP).

Clause 18 of the Bill is seeking to amend Section 33 of the Act which deals with the issue of gazettment of names of political party candidates and independent candidates to contest in an election. This is important, so that all these candidates even the independent ones are properly gazetted before an election.

The amendment to Section 34, which is contained in Clause 19, talks about the people nominated who must be natives of those counties. This is important because we have seen scenarios where people coming from other counties are nominated in a different county. That effectively discriminates against the locals of that area. For example, some time back we had someone from Kisii County who was nominated in Vihiga County.

I know in Sen. (Dr.) Khalwale's Kakamega County, we had people from North Eastern region and Siaya County, who were nominated. This amendment will heal that. On the requirement of nominating candidates, we must take into account the balance of wards in that county, so that we do not have all nominated slots going to a few wards, and you find the other wards being left out. That is a very progressive amendment, and I support it.

Mr. Temporary Speaker, Sir, Clause 20 of this Bill is seeking to amend Section 38 of the Act, that provides that the polling station shall be gazetted at least three months before the date of an election. This is important so that we do not have a scenario where we have late gazettment of polling stations that creates confusion, and where, during court processes we were told that some un-gazetted polling stations were involved in the election. So, it is clear, that at least three months before the general election, we must gazette all the polling stations in a particular electoral area.

If you look at Clause 22, which is seeking to amend Section 39 of the Act to state categorically that-

“The Commission should determine, declare, publish the results of an election immediately after the close of the polling station, and the results declared at the polling station shall be final.”

Mr. Temporary Speaker, Sir, this is a progressive amendment, and it is important that we also have transparency in those polling stations, so that we have election observers, political party agents and all the people who are supposed to verify.

Mr. Temporary Speaker, Sir, I would like to go back to the issue of political party agents. Kenya is among the few countries which are innovative in strange ways. If the

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electoral agency is performing its role and doing its work transparently, in an accountable manner, there should not be any burden on candidates to have agents in polling station. That should be the role of the Electoral Commission.

The idea of having agents in polling station to verify the results is a clear confirmation that our electoral system has something wrong, and that clearly puts a lot of pressure on the candidates. You can imagine, if you are a presidential candidate in this country with about 45,000 polling stations, putting two people in each polling station. That translates to 90,000 people manning your results, and you are paying each Kshs5,000 shillings. This means, even before you put your name on the ballot, you should have a budget of half a billion shillings, just to manage agents. That is ridiculous and undemocratic.

We need to reform our IEBC, such that, there is no pressure for candidates to have agents in the polling station, because the whole process is transparent, has clarity, and is protected by a functional Commission.

Mr. Temporary Speaker, Sir, I am also concerned about the amendment in Section 39(6), the one that Sen. Cherarkey was referring to. It states-

“The Chairperson of the Commission shall declare the results of the election of the President in accordance with Article 138(10) of the Constitution.”

Mr. Temporary Speaker, Sir, this is where we have a problem. This is one of the areas that I will be seeking amendments on. The ‘Cherera Four’ were complaining that they were not involved in the final verification and review of the results before they were declared. This provision must be enhanced further to say that the Commissioners will be involved fully before the Chairperson of the Commission declares the results, so that we do not have a scenario where some commissioners walk out and say that they were not involved in the final tallying and verification of the results.

Mr. Temporary Speaker, Sir, Clause 23, which seeks to amend Section 44 of the Principal Act that talks about matters of procurement of technology, in this case, Information Technology (IT) and the issue of intellectual property rights to the technology will be vested in the Commission.

This is very important because during the election, the IEBC cited in court that they could not allow access to its technology because it is an intellectual property of the technology provider. That can be an avenue to deny access to very important information by Kenyans who would wish to access that information.

This amendment is very progressive. Further to it, the supplier or the associate of this supplier, must not be people who are facing issues in their own jurisdiction. For instance, they are guilty of violating the procurement laws or committed a crime or have been involved in election malpractices in other countries. This Section 44 that has been amended provides for that as well.

Mr. Temporary Speaker, Sir, Clause 25 seeks to delete Section 45 of the Principle Act. This Section of the Principle Act, talks about the conditions for recall by the Republic, of Members of Parliament (MPs). The current Act makes it so difficult to recall an MP. This was deliberately put there by MPs, trying to safeguard and beat around the corners on the issue of recall. This Section has now been removed. It is going to be very easy to recall an MP including myself, if I am not performing.

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It goes on under Section 46, which has also been repealed, to deal with all the conditions of recall under Section 45 and 46. Clause 28, seeks to repeal Section 74 of the Act, to provide that disputes during nomination will be the mandate of political parties' tribunal and not IEBC.

During the elections we have seen that on one hand, the tribunal is dealing with matters of dispute in political parties. On the other hand, IEBC is doing the same. That is not the work of IEBC. This amendment will ensure that only political parties' tribunal will handle disputes between a candidate and his party or between political parties and not IEBC. The IEBC role is misplaced and that amendment heals that.

Clause 29 amends Section 75, to provide that the Election Petition will terminate at the High Court for county assemblies. We should not have a scenario where, the Election Petition for a Member of County Assembly (MCA), is taken all the way to the Supreme Court. This law now provides that the case will terminate at the High Court.

The same applies to Section 85A, which is amended under Clause 32 to provide that the Petition for MPs, Senators and Governors will terminate at the Court of Appeal. This is to enable the Supreme Court to perform the role that the drafters of the Constitution envisage them to do on specific things and not dealing with the election matters.

Clause 31 which also amends Section 82 of the Principle Act provides that -

“access to information upon a request to IEBC shall be granted within three days for Presidential Election and seven days for other positions.”

Since the Presidential Election has to be done within a limited time, three days is a long period of time. This should be reduced to one day considering the time constraint in Presidential Elections.

Mr. Temporary Speaker, Sir, Clause 32 seeks to amend Section 85(a) of the principle Act on the courts' decision of petition for Members of Parliament and I had talked about that. Clause 33, amends Section 87 to provide for the setting up of an independent firm approved by Parliament to evaluate elections and a host of other things, including, reviewing the legal framework, the register of voters, the role of the media and the voter counting procedures. This has to be done within one year after elections.

These are progressive amendments and they will cure many of the challenges we are going through. Elections are very important and I hope that this Bill will help us deal with the electoral challenges we have been having in this country.

Mr. Temporary Speaker, Sir, I will go back to the IEBC issue in order to address the courts. The courts have every right to receive and process cases but they should also listen to what is happening outside the courts. They should take judicial notice of what is happening outside the courts. This country will be in a crisis if there will be need to have the IEBC and yet, there is none. We will have a major constitutional crisis.

I, therefore, call upon the courts to help us expedite the setting up of our selection committee so that we can appoint the due commissioners who can conduct by-elections and prepare for elections. We are just about two years and a few months to the next general elections and we do not have an IEBC in place.

Mr. Temporary Speaker, Sir, remember the Kriegler Report said that all preparations to elections must be completed at least two years before elections. We do not even have an IEBC, and yet, we have not even started. Therefore, this is a very serious

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problem. There is also the cost of elections which must be looked at and the matter of transparency in elections.

I support this Bill except for the declaration of the results by the IEBC Chairperson. I believe that if we want to heal the problem of the Cherera 4, we must insist that the declaration of results by the IEBC Chairperson must be after concurrence with the other commissioners.

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

Sen. (Dr.) Khalwale: Thank you, Mr. Temporary Speaker, Sir. I strongly support this Bill, but with little tweaks here and there. However, I am surprised that Sen. Cherarkey and Sen. Osotsi, Members of this House whom I believe are seasoned and give serious thought to legislation, are complaining that our elections are too expensive. If you think democracy is expensive, please go and try dictatorship or military rule. You will know the difference.

I say this with maximum respect because I know that for Cherarkey, when the country went burst in 2007 because of flaws in the electoral process, he was probably in kindergarten. He, therefore, has no idea how your father, who was a senior Member of the House, fought hard to keep the country together.

Mr. Temporary Speaker, Sir, I would like to say that our process that looks expensive is because we are way ahead of many other countries in the world. They will play catch up and start doing what we are doing today.

I, therefore, want to thank the members of NADCO for this particular process that informed this Bill. I strongly believe that election laws should be reviewed regularly as a practice at the end of every electoral cycle because there are lessons that we learn from every election, that invite an opportunity for us to make the process better. We should, therefore, not get tired of reviewing our election laws over and over again.

It is agreed that an election starts and must end at a polling station. This was not only the intention of the Constitution, but it was also confirmed by the decision of the High Court, which has guided many petitions in this country, especially those of presidential elections. I, therefore, want to add my voice to this law that is now making it clearer that elections will start and end at a polling station.

Colleagues, let me tell you about the figure 500. If you are to take a count of 1 up to 500 and you are counting pieces of paper, 1, 2, 3, up to 500, it cannot take an hour. It is within that one hour that you can sort out the votes. For example, it can be said that Sen. Abdul got this and his opponent got this. After sorting, you can then count 1 to 500 and get the result in a polling station. From that, you can know what the Senator for Wajir County got *vis-à-vis* his opponent.

We should defeat the corruption that accompanies the voting process that leads to delay. In a place like Kisumu, the distinguished professor had to wait for three days before he could know his fate. I will tell you what annoys me based on my own experience. We have counting and tallying centre, and I usually know the results because I get feedback from my counting agents in every polling station. After knowing the results by around midnight, I am forced to stay for three days for the Returning Officer to announce what I

already know. We should make this the practice. I am happy that they have now put in the timelines and the results have to be announced within two hours.

We should insist further on this because the people who want to manipulate the electoral process usually count on our agents, at polling stations, becoming fatigued. How do you expect somebody to sit in the counting hall or tallying hall for three days non-stop and still be alert to guard against rigging?

I wanted to speak at length on this issue, but because of the request from the distinguished Senator from Nairobi City County, Sen. Tabitha Mutinda, I want to vacate my contribution earlier, so that she can have an opportunity to speak. I want to request her to allow me to speak so that I am stopped 25 minutes past. Can the clerks-at-the-table stop me 25 minutes past, for me to allow Sen. Tabitha Mutinda to do her bit?

Then Temporary Speaker (Sen. Abdul Haji): Hon. Senator, I have no problem with you spending less time than you are allocated. However, the procedure in the House is that after you speak, I have to give an opportunity to the other side.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I should gift Sen. (Prof.) Tom Ojienda. I want to appeal to Sen. Tabitha Mutinda to accept that because we are very proud of the professor.

Professor, the work you did in court was a study in the practice of law. There are jibes that you threw. Two young lawyers in my family, that is my daughter Vivian and my son Sonista, were very happy because of how you conducted yourself in court. Of course, you brought us the right to recite. Congratulations.

I want to speak to the problem of nominations. As stated earlier by my colleagues, nominations must cease being the decision of political party leaders. Members of political parties must vote to decide on the party list, so that, for example, after members of the Orange Democratic Movement (ODM) Party have voted on names of all the people who want to be nominated Senators, women who get the highest number of votes should be put on the party list in the order of the number of votes they got, so that it is not the decision of the political party leader.

You can see the misguided contribution of the Senator for Nandi, suggesting that party leaders conduct nominations from hotel rooms. I am surprised that he was not forced to apologise and withdraw.

We have Distinguished Senators here. They include people like Sen. Beatrice Ogola and Sen. Tabitha Mutinda who have families. What message are we sending to their families that they were nominated from hotel rooms? Shame on Sen. Cherarkey!

He even imputed further improper motives on male Senators like Sen. Chimera. Is he suggesting that they or their party leaders are homosexuals? It is unbelievable that we can degenerate to that level.

I have said it before, and I want to repeat. Persons with Disabilities (PWDs) should vote to decide who should represent them and not the decision of political party leaders. I also believe that we should continue amending the laws to ensure that women representatives are elected not universally in the county, but by fellow women because it is only women who know the best women who should represent them. If they do not want them to be women representatives, then we should amend the Constitution not to call them

as such. However, since they are referred to as women representatives by the Constitution, they should be elected by the people they represent; the women.

Mr. Temporary Speaker, Sir, having said that, I now want to give way for our good professor to inform us about his thoughts on this law.

I support.

The Temporary Speaker (Sen. Abdul Haji): Thank you, Senator. Sen. (Prof.) Tom Ojienda, you have the Floor.

Sen. (Prof.) Tom Odhiambo Ojienda, SC: Mr. Temporary Speaker, Sir, I will take a limited time to contribute to the Elections (Amendment) (No.2) Bill (Senate Bills No.29 of 2024), which seeks to amend various provisions of the Elections Act.

I agree with Sen. (Dr.) Khalwale on the timeous nature of this amendment Bill, especially on the need to continually amend the Elections Act for two reasons. Firstly, tallying at the polling stations has been the subject of various election petitions.

There is the time question that Sen. (Dr.) Khalwale has dealt with. That is about filling and signing of Forms 34A, B and C; Forms 35 and 37 for governors; Forms 38 for Senators; and Forms 39 for women representatives. All those speak to necessary timeframes. Elections must and should be concluded at polling stations. The issue of nominations has been sticky, with political parties, party leaders and perhaps technocrats having nominations for individuals from outside specific counties and constituencies. I am glad that this Bill seeks to rectify that anomaly.

If you are not a registered voter in a particular area, you will not be eligible for nomination. This question of importation must end. I laud that amendment because it seeks to cure that anomaly.

Mr. Temporary Speaker, Sir, I have litigated many election anomalies. This Bill is timeous because it comes to cure some of the problems that we have had in the process of conducting elections like time delays and possibilities of rigging elections.

I must also laud the timeframe for registration of voters and the need for IEBC to continue registering voters. However, we must speak to the need of filling the slots of Commissioners of IEBC available that have not been filled. This is because of the continuous manner in which the IEBC operates and the need for elections every other time. There is need to urgently ensure that the IEBC is fully constituted. I hope that our principals and players in the legislative sector and those responsible will ensure that this process is concluded. This will enable those court cases to be concluded so that we have a fully operational IEBC.

I thank you. I support the Bill.

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

Sen. Tabitha Mutinda: Thank you, Mr. Temporary Speaker, Sir, and my senior colleagues for managing the time. I appreciate. I start by supporting this Amendment Bill, especially Clause 19 that talks about the nomination slots for the MCAs. In the Senate where I am specially elected, it recognises the specially-elect through their delegations. That is determined by where you voted last. That applies very well in the Senate. That is important because it ensures you are familiar with your area. For my case, my representation is Nairobi County.

The Bill clearly supports that a person to be nominated as an MCA should be a registered voter in that ward. It is key and I support it. It also ensures that the MCA serving in that assembly maximally engages knowing the issues concerning the ward of representation are matters of concern that he or she familiarises with.

We have cases in Nairobi County where the MCAs have been nominated from far parts of this country and are not really familiar with the concerns of Nairobi and are not able to understand. Most of us go to *mashinani* during weekend. At times, it becomes difficult for some Members to go because they do not resonate with those areas because they are now serving in a different area. They have little input in the areas they are serving because there is no synergy in any way. It is important an amendment. These people must come from the areas they have voted. We do a lot of campaigns before voting. It is in those campaigns that we make manifestos and give promises to the people. It becomes easier when an MCA represents and is nominated from the area she voted. He or she will be in a better place to ensure the promises and the manifestos they did during the campaign trail are delivered, unlike when that happens in a different area.

The amendment on Clause 20 on appointment of the polling stations is very key. The voters need to familiarise with their voting polling stations at an early time. I find the three months' duration less; it should be more.

ADJOURNMENT

The Temporary Speaker (Sen. Abdul Haji): Hon. Senators, it is now 6.30 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until tomorrow, Thursday, 14th November, 2024, at 2.30 p. m.

The Senate rose at 6.30 p.m.