

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 23<sup>rd</sup> March, 2022

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

*[The Deputy Speaker (Sen. (Prof.) Kamar) in the Chair]*

### PRAYER

### PETITION

#### REPORT ON PETITION: PLIGHT OF SEED FARMERS IN TRANS-NZOIA COUNTY

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Members, I understand that there is a Petition from the Chairperson, Standing Committee on Agriculture, Livestock and Fisheries. He is not here yet. I will therefore defer it to a later time.

*(Petition deferred)*

Next Order.

### PAPERS LAID

#### REPORTS ON FINANCIAL STATEMENTS OF VARIOUS COUNTY FUNDS/COMPANIES/BOARDS

**The Senate Leader of Majority** (Sen. Pogishio): Madam Deputy Speaker, I beg to lay the following papers on the Table of the Senate today, 23<sup>rd</sup> March, 2022:-

The Intergovernmental Relations (Alternative Dispute Resolution) 2021 Regulations, (Legal Notice No. 4 of 2022);

Report of the Controller of Budget on the First Half National Government Budget Implementation Review for financial year 2021/2022;

The National Land Commission, Annual Report for Financial Year 2020/2021;

Report of the Auditor-General on the financial statement of Garissa County Investment Development Authority for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Busia Water and Sewerage Services Company Limited for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Bungoma County Assembly Car Loan and Mortgage Scheme Fund for the year ended 30<sup>th</sup> June, 2020;

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Report of the Auditor-General on the financial statement of Kisumu County Trade Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Kisii County Alcoholic Drinks Control Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Kisii County Assembly Car Loan and Mortgage Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Kisii County Executive Car Loan and Mortgage Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Kisii County Teaching and Referral Hospital for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Tharaka Nithi County Executive Municipality of Kathwana for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Lamu Water and Sewerage Company Limited for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Mandera Water and Sewerage Company Limited for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Kajiado County Assembly Car Loan and Mortgage Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of County Assembly of Nakuru Car Loan and Mortgage Fund for the year ended 30<sup>th</sup> June, 2014;

Report of the Auditor-General on the financial statement of County Assembly of Nakuru Car Loan and Mortgage Fund for the year ended 30<sup>th</sup> June, 2015;

Report of the Auditor-General on the financial statement of County Assembly of Nakuru Car Loan and Mortgage Fund for the year ended 30<sup>th</sup> June, 2016;

Report of the Auditor-General on the financial statement of County Assembly of Nakuru Car Loan and Mortgage Fund for the year ended 30<sup>th</sup> June, 2017;

Report of the Auditor-General on the financial statement of Nakuru County Bursary Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Nakuru County Emergency Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Central Rift Valley Water Works Development Agency for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Baringo County Elderly and Persons with Disability Fund for the year ended 30<sup>th</sup> June, 2016;

Report of the Auditor-General on the financial statement of Baringo County Elderly and Persons with Disability Fund for the year ended 30<sup>th</sup> June, 2017;

Report of the Auditor-General on the financial statement of Baringo County Elderly and Persons with Disability Fund for the year ended 30<sup>th</sup> June, 2018;

Report of the Auditor-General on the financial statement of Baringo County Elderly and Persons with Disability Fund for the year ended 30<sup>th</sup> June, 2019;

Report of the Auditor-General on the financial statement of Nyandarua County Emergency Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Vihiga County Education Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Nyamira County Education Support Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Maasai Mara Community Support Fund for the year ended 30<sup>th</sup> June, 2020;

Report of the Auditor-General on the financial statement of Meru County Executive Staff Housing Fund for the year ended 30<sup>th</sup> June, 2020.

*(Sen. Poghio laid the documents on the Table)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Senate Majority Leader. Next Order!

Hon. Senators, if you check your Order Paper, we have a report of the Standing Committee on Finance and Budget on the County Resources Development Bill (Senate Bills No. 45 of 2021). Is there any member from the Committee on Finance and Budget?

**Sen. Farhiya:** Madam Deputy Speaker, I beg to lay the following papers on the Table of the Senate today, 23<sup>rd</sup> March, 2022:

REPORT ON THE COUNTY RESOURCES DEVELOPMENT  
BILL (SENATE BILLS NO. 45 OF 2021)

Report of the Standing Committee on Finance and Budget on the County Resources Development Bill (Senate Bills No. 45 of 2021).

REPORT ON THE DIVISION OF REVENUE BILL  
(NATIONAL ASSEMBLY BILLS NO. 8 OF 2022)

Report of the Standing Committee on Finance and Budget on the Division of Revenue Bill (National Assembly Bills No. 8 of 2022).

*(Sen. Farhiya laid the documents on the Table)*

**The Deputy Speaker** (Sen. Prof.) Kamar): Thank you, Senator. You have actually laid both papers as required of your Committee.

Next is the Chairperson of the Standing Committee of Agriculture, Livestock and Fisheries. They have a Report on the Irrigation Amendment Bill (National Assembly Bills No. 12 of 2021).

Do we have the Chairperson or a member of the Committee on Agriculture, Livestock and Fisheries? Sen. Farhiya, can you, please, do that as a member of the leadership?

REPORT ON THE IRRIGATION (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILLS NO. 12 OF 2021)

**Sen. Farhiya:** Madam Deputy Speaker, I beg to lay the following Papers on the Table of the Senate today 23<sup>rd</sup> March 2022-

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Report of the Standing Committee on Agriculture, Livestock and Fisheries on the Irrigation (Amendment) Bill (National Assembly Bills No. 12 of 2021).

*(Sen. Farhiya laid the document on the Table)*

**The Deputy Speaker** (Sen. Prof.) Kamar): Thank you, Sen. Farhiya.  
Next Order.

### STATEMENTS

**The Deputy Speaker** (Sen. Prof.) Kamar): The first Statement will be by Sen. Faki.

#### NEW MOMBASA LAW COURTS BUILDING

**Sen. Faki:** Asante, Bi. Naibu Spika, kwa kunipa fursa hii. Nimesimama kuambatana na Kanuni 48(1) ya Kanuni Za Kudumu za Seneti kuomba Kauli kutoka kwa Kamati ya Barabara na Uchukuzi kuhusu ujenzi wa Mahakama mpya katika Kaunti ya Mombasa.

Bi. Naibu Spika, katika Kauli hiyo, Kamati inapaswa kuangazia yafuatayo:

(1) Kueleza kilichosababisha jumba hilo la mahakama kuwa na nyufa hata kabla ya kukabidhiwa rasmi kwa Tume ya Mahakama nchini.

(2) Kueleza aliyepewa kandarasi ya ujenzi huo na sababu za kutokuwa na usimamizi wa kisawasawa wa kandarasi hiyo. Kueleza japo jumba hilo limeidhinishwa rasmi na kaunti ilhali usalama wa watumiaji wa jumba hilo haujahakikishiwa.

(3) Kutaja hatua zitakazochukuliwa na Serikali ya Kitaifa kuhakikisha kuwa jumba hilo ni salama kwa matumizi ya maelfu ya wananchi ambao, wengi wao hutegemea jumba hilo kutafuta haki wanapodhulimiwa.

Bi. Naibu Spika, jumba hili lina historia kidogo, kwa sababu ile ardhi wakati fulani ilikuwa imenyakuliwa na mwekezaji wa kibinafsi. Mimi pamoja na mawakili wenzangu tulienda mahakamani tukahakikisha kwamba ardhi hiyo imerejea kuwa ya mahakama.

Itakuwa ni kinyume na matarjio yetu kwamba kutajengwa mahakama pale ambayo tayari imeweza kutoa nyufa kabla jumba hilo halijaweza kukaliwa.

Bi. Naibu Spika, ikikumbukwa kwamba mahakama ya kwanza Mombasa ilijengwa mwaka wa 1903, na mpaka leo mahakama hiyo iko na inatumika na vilevile ni thabiti kuliko lile imejengwa hivi sasa.

Asante, Bi. Naibu Spika, kwa kunipa fursa hii.

**The Deputy Speaker** (Sen. Prof.) Kamar): Thank you, Senator. The next Statement is from Sen. (Dr.) Musuruve under Standing Order No. 47(1).

#### THE WORLD METROLOGICAL DAY

**Sen. (Dr.) Musuruve:** Thank you, Madam Deputy Speaker, for giving me this opportunity.

I rise pursuant to Standing Order No.47(1) to make a Statement on an issue of general topical concern on the World Metrological Day.

Madam Deputy Speaker, the World Metrological Day takes place every 23<sup>rd</sup> March and commemorates the coming into force on 23<sup>rd</sup> March, 1950 of the Convention establishing the World Metrological Organisation.

The day showcases the essential contribution of the National Metrological and Hydrological Services to the safety and wellbeing of society and it is celebrated with activities around the world.

Additionally, this day enlightens people on their role in protecting the earth's atmosphere. The theme for this day reflects topical weather climate or water related issues. Specifically, this year's theme turns the focus on the intensive weather patterns due to climate change.

It is worth noting that climatic conditions propel people's decisions and policymakers to behave in certain ways. Any predicted information on climate change, when disseminated in good time, helps farmers and people of all walks of life prepare themselves adequately for the future. For instance, when the condition is rainy or sunny, people will dress according to the state of the area. When travelling to a different location, proper prediction for the climate conditions will help in choosing the right wear.

Knowledge of climate conditions in a region, on the other hand, will help farmers know when to till land and plant. This, in turn, provides important information for traders and middlemen in a region. This indicates the important role play by meteorologists in examining and planning the spread of extreme weather beforehand and offering advice accordingly.

Madam Deputy Speaker, just to illustrate the silent role meteorologists play in the information they give, the Director of the Kenya Meteorological Department announced the patterns of rainfall in various parts of the country, hence alerting farmers to be ready for the planting season.

Northern Kenya is predicted to remain dry until early April. This means no planting or harvesting of water will be there. This information enables the Government to make interventions where necessary, including giving incentives to farmers such as fertilizer, as well as advising farmers on times to harvest.

As we celebrate this day, I wish to urge the national Government to invest more resources in the Meteorological Department in order to help in giving appropriate, predictable climate patterns and changes for Government interventions. Further, I urge the Government to deliberately ensure that the department is devolved and locals are trained in making appropriate predictions on the climate change in their counties.

In conclusion, I also urge county governments to take necessary measures towards weather prediction to avoid any form of predictable disaster that may retrogress the economy of people in certain regions.

Additionally, I also urge universities to consider the inclusion of climate change as a core unit in the curriculum of colleges and universities which will be useful in disseminating information on climate change effectively.

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

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Senators, we do not see Sen. Wambua online. So, we will skip his Statement. If he reapplies tomorrow, he will get it.

THE UNBEARABLE COST OF LIVING

*(Statement dropped)*

There was another Statement from Sen. Shiyonga.

DEMISE OF THE SPEAKER OF THE  
PARLIAMENT OF UGANDA

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. Shiyonga is not in the House and she is not online. Again, we drop it until she reapplies.

*(Statement dropped)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Senators, next Order.

**BILL**

*Second Reading*

THE DIVISION OF REVENUE BILL  
(NATIONAL ASSEMBLY BILLS NO.8 OF 2022)

*(Sen. Poghiso on 22.03.2022)*

*(Resumption of debate interrupted on 22.03.2022)*

*(Division)*

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

**The Deputy Speaker** (Sen. Prof.) Kamar): Hon. Senators, we are going into Division and we are looking for the Whips to tell us whether we are ready for that; both online and in the House.

Hon. Senators, we have done the roll call both inside and online and the Whip has confirmed that she is not ready for Divisions. So, I would like to reorganise the Order Paper as follows-

Order Nos. 8, 9, 10, 11, 12, 13, 14, 15 and 16 are all deferred.

Next Order!

**BILLS**

*Second Reading*

THE DIVISION OF REVENUE BILL  
(NATIONAL ASSEMBLY BILLS NO. 8 OF 2022)

*(Bill deferred)*

*Second Reading*

THE LANDLORD AND TENANT BILL  
(NATIONAL ASSEMBLY BILLS NO. 3 OF 2021)

*(Bill deferred)*

*Second Reading*

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL  
(SENATE BILLS NO. 29 OF 2020)

*(Bill deferred)*

**MOTION**

ADOPTION OF AUDIT REPORTS FOR COUNTY EXECUTIVES FOR FYS 2018/2019,  
2016/2017, AND 2017/2018 (VOLUMES I, II AND III)

THAT, the Senate adopts the Report of the Sessional Committee on County Public Accounts and Investments on consideration of the Reports by the Auditor General on the Financial Statements of the following County Executives for the Financial Year 2018/2019- Embu; Homa-Bay; Kericho; Kilifi; Kirinyaga; Kisii; Kwale; Machakos; Mombasa; Nandi; Baringo; Bomet; Garissa; Kajiado; and West Pokot as contained in Volume 1 of the Report and the following County Executives- Isiolo; Kakamega; Kisumu; Laikipia; Mandera; Marsabit; Nakuru; Narok; Nyandarua; Samburu; Taita Taveta; Trans-Nzoia; Uasin-Gishu; Vihiga; and Wajir, as contained in Volume 2 of the Report , Laid on the Table of the Senate on Thursday 2<sup>nd</sup> December, 2021.

*(Motion deferred)*

**COMMITTEE OF THE WHOLE**

THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL,  
(SENATE BILLS NO. 37 OF 2021)

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

THE LAW OF SUCCESSION (AMENDMENT) BILL,  
(SENATE BILLS NO. 15 OF 2021)

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

THE PRESERVATION OF HUMAN DIGNITY AND PROTECTION OF ECONOMIC  
AND SOCIAL RIGHTS BILL (SENATE BILLS NO. 21 OF 2021)

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

THE LIFESTYLE AUDIT BILL (SENATE BILLS NO. 36 OF 2021)

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

THE SPECIAL NEEDS EDUCATION BILL  
(SENATE BILLS NO. 44 OF 2021)

*(Committee of the Whole deferred)*

**BILLS***Second Reading*

THE ELECTION CAMPAIGN FINANCING (AMENDMENT) BILL  
(SENATE BILLS NO. 51 OF 2021)

**The Deputy Speaker** (Sen. (Prof.) Kamar): Proceed, Sen. Olekina.

**Sen. Olekina:** Thank you, Madam Deputy Speaker. I beg to move that the Elections Campaign Finance (Amendment) Bill (Senate Bills No.51 of 2021) be now read the Second time.

Madam Deputy Speaker, elections in this country are matters of national interest. They are not only matters of national interest but also global interest. How a country finances elections dictates whether it will be held hostage, be independent and whether global leaders respect its sovereignty.

When you read the Elections Campaign Financing Act as it is, it makes very difficult for candidates, in any election, to carry out their financing in a more sober and



accountable manner. It also makes it difficult for the Auditor-General or the Independent Electoral and Boundaries Commission (IEBC) to carry out their work.

The amendments that I am proposing today will bring discipline, accountability and protect the integrity of this country from money laundering. These amendments will make it easy for anyone to run a campaign and not have to be born from wealth families.

If you read the Elections Campaign Financing Act as it is, it calls for the Auditor-General to audit every single candidate in this country. For example, how and where they get their money and who financed them.

You know very well that even in this House, we have got accounts for the 47 counties that are yet to be considered by this House and the Auditor-General is still lagging behind. So, will the Auditor-General stop auditing Government agencies and counties, then start to audit each and every candidate?

I will go straight to the point. I do not wish to belabour on this matter because these are very simple issues. I believe that once my colleagues go through them, they will support.

The object of this Bill is to make provision for the IEBC to regulate the amount of money that may be spent by a candidate or on behalf of a candidate, or a political party in respect of any election.

Madam Deputy Speaker, I will skim through and raise the issues that I have proposed that we do away with.

If you look at Section 2 of the Elections Campaign Financing Act, it is referred to us the principal Act. We want to amend it by deleting the following items-

- (1) Expenditure account;
- (2) Expenditure Committee; and,
- (3) Expenditure report.

Today, if you look at State agencies that require private entities to report to them, they do not require you to submit to them audited financial statement. They require you to submit to them quarterly reports on where you get your money from.

I will give a very good example of the Communication Commission of Kenya (CCK). It calls for reports to be given to it by every media house. It does not require them to submit an audit or send the Auditor-General to audit those accounts. They do it on a quarterly basis, so that it encourages accountability.

Some of the proposals that I am proposing will allow each political party to prepare their donor list, source of money and put in discipline. In the event that the IEBC suspects that there is some fraud somewhere, that is the only time that they can call for an audit. However, the way the Act is, it is calling for the Auditor-General to audit accounts of every candidate in this country.

Today, we read in the news that one of the political parties has 5,700 candidates. Maybe, another one will have about 6,000 candidates. So, will it be humanly possible for the Auditor-General, who is still lagging behind, to audit over 11,000 candidates?

So, the proposal that I am making is to make it simple such that each political party is tasked with the responsibility of preparing their financial statements and records properly and submitting them to the IEBC in line with the Political Parties Act which we recently amended, on a quarterly basis.

There is another big issue that we have, which I am proposing some amendments to. I hope that my colleagues will take some time and read. It is a basic but well thought out amendments. It has to do with where the money comes from.

If you look at Section 12 of my proposal, I am proposing to amend the Principal Act by deleting that Section and substituting therefore with the following new Section-  
Restriction to contributions  
and donations

11. (1) A political party shall not accept a donation if-
  - (a) the donation is not made or permissible; or
  - (b) the party is unable to ascertain the identity of the donor.
- (2) For the purposes of that subsection (1), the following are permissible donors-
  - (a) an individual registered as a voter;
  - (b) a registered body corporate carrying on business within Kenya;
  - (c) an unincorporated body of two or more persons which does not fall within any of the preceding paragraphs but which carries on business or other activities wholly or mainly in Kenya and has its main office in Kenya;

This is because the moment you allow foreign donors to donate to each and every candidate, then, that candidate would be held hostage by that foreign donor.

Clause 14 states very clearly that a candidate or a political party or a referendum committee, shall not receive any donation made directly from a foreign government. In most cases, you will find that Non-Governmental Organizations (NGOs) from the United States of America (USA) or the United Kingdom (UK) have an interest in meddling in foreign governments politics.

This proposal seeks to bar those institutions from interfering with the sovereignty of this nation. No political candidate or political party shall be allowed to solicit money from a foreign government.

I also propose deletion of Section 15 of the principal Act and amend it by deleting sub section (1) and substituting (2) by deleting paragraph (c) and inserting a new sub section immediately after sub section (2).

The request under sub section (2) shall be specific. The authorized signatories of the company's financial account opened by the organization shall be the authorized persons under this Act. That is to make it easy such that every political leader or candidate shall open an account and deposit all the money that they solicit from the public.

These amendments will give the Independent Electoral and Boundaries Commission (IEBC) the power to set limits of how much a Member of County Assembly (MCA), Member of Parliament (MP), presidential, or gubernatorial candidate can fundraise. That money must be deposited in an account. This amendment that I am proposing will ensure a fiducially duty or responsibility on the part of the committee that manages those funds.

I had already spoken about safekeeping of records and making sure they are returned to the electoral body. Most importantly, it will not be a requirement for the Auditor-General to audit each and every candidate as it is in the Act currently. That is a very tedious exercise.

Finally, I have introduced a Clause that says that a political party that does not intend to have a candidate for a particular general election, need not to make any reports under this Section. We have almost 200 political parties, most of which are out there by name. They are supposed to prepare financial documents and take them to the IEBC even if they do not have any candidate. In this proposal, they will not need to do that.

They can continue enjoying the name of their political party and hold offices. It is not a must for them to have any candidates in this era of coalitions. So, they do not need to be held responsible in terms of keeping records.

Keeping of records in any company requires a treasurer, secretary and a management committee. In the proposed amendments, these three individuals will work hand in hand to ensure the affairs of a political party or the candidates are set in a way that will encourage accountability in this country.

Madam Deputy Speaker, with those few remarks, I beg to move and request the Senate Majority Leader to second.

**The Senate Majority Leader** (Sen. Poghio): Madam Deputy Speaker, I beg to second.

This is one in a series of Bills that have come to this House seeking to deal directly with issues of elections. It is in the interest of all of us who will be running and probably those who run political parties that political parties and individuals running for office be guided in as far as controlling the limits of financing and spending in campaigns is concerned.

As my friend Sen. Olekina has stated, it should be possible for anybody in Kenya to run for any office. Right now, you must be wealthy in order to run for office. This Bill seeks to amend the existing laws, so that it is possible to control spending and that is why it is here.

The purpose of the Bill is to remove some requirements for us to have a committee in charge of spending, the request for expenditure reports, the committee on referendum spending and also limit powers of the Auditor-General seeking to audit. Once you have controlled the limits, it will not be necessary to have regular audit of those funds by the Auditor-General.

The objective is for us to support this Bill as part and parcel of the general consensus on how elections should be limited in terms of the expenditure. Right now, you can get your money from anywhere. You can get money from other places and there is no reporting.

We need to control the influence of external forces financially from entering into our political system, so that we do not have interference from foreigners or foreign countries dealing directly with our elections. This is what the Mover of this Bill is trying to help us understand.

For those of us who sometimes are unable to raise much money, we should be controlled by the IEBC by stating the upper limits for those seeking to be MCAs, MPs, and Governors. This will ensure no abuse of the system.

I would like to urge Members to consider and pass this Bill. I do not know if it will help in the forthcoming elections, but I am sure it will make a contribution to the electoral processes in the cycles to come.

With those few remarks, Madam Deputy Speaker, I congratulate my friend Sen. Olekina for bringing these very practical amendments to the Elections Act. We should begin thinking seriously about financing ourselves.

It recommends that we raise our money locally. The way Kenyans are used to raising money for schools, our sick people to go overseas, or to support families in *chamas*, *harambees* and things like that, we can raise funds locally and run our own elections. By this, we do not have to be guilty and not standing firm because somebody outside there supported your election.

I commend this to Members. I second.

*(Question proposed)*

**Sen. Madzayo:** I was not prepared properly. I am just coming back.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Proceed, Sen. Faki.

**Sen. Faki:** Asante Bi Naibu Spika, kwa kunipa fursa hii kuchangia Mswada wa Marekebisho ya Sheria ya Uchaguzi. Uchaguzi ni gharama kubwa sio kwa serikali pekee yake lakini pia kwa wagombea tofauti ambao wanagombea viti tofauti katika uchaguzi huo.

Kuna haja ya kudhibiti matumizi wakati huu wa uchaguzi kwa sababu kuna wengine ambao wako tayari kununua uchaguzi ili sauti ya wale ambao wana haki au wale wanyonge isiweze kusikizwa. Kwa hivyo Mswada huu umekuja wakati muafaka, wakati tunajitayarisha kuenda katika uchaguzi mkuu wa tarehe tisa mwezi wa nane mwaka huu. Itasaidia pakubwa sheria hii ikipitishwa ili kuweka wazi na kudhibiti matumizi wakati huu wa uchaguzi.

Tumeona kwamba sheria iliyoko sasa ina mapungufu fulani kwa sababu ni vigumu kwa Auditor-General au Mkaguzi Mkuu wa hesabu za serikali kuweza kuwakagua wanasiasa wote ambao wanagombania viti katika uchaguzi.

Tumeelezwa hapa kwamba chama kimoja tayari kina wagombea 5,000 wakati Mkaguzi Mkuu inamchukuwa zaidi ya mwaka kuweza kuwakilisha ripoti za kaunti 47 na mabunge ya kaunti 47 ambayo yako katika inchi yetu. Kwa hivyo, watu 5,000 au zaidi ya 10,000 ambao watagombania viti tofauti, itakuwa ni shida sana kwao kumpata Mkaguzi Mkuu wa serikali ili akague na kuona ya kwamba hesabu zao ziko sawa sawa. Kwa hivyo, kuna haja ya kudhibiti sheria hii ili tuone kwamba watu hawapotezi nafasi zao au kutumia matumizi zaidi ya yale ambayo sheria inasema.

Tumeona hapo nyuma ya kwamba hivi sasa tayari wagombea tofauti wameweza kutumia fedha kinyume ya sheria. Utaona kwamba wengine walianza kampeni mwezi ya sita mwaka wa jana na pia utaona mabango sehemu tofauti; wengine nao walianza miaka tano iliyopita wakisema kumi yako, kumi yangu. Kwa hivyo, tayari sheria imekiukwa lakini nafikiri kuwepo kwa sheria hii itasaidia pakubwa kuweza kuweka laini mambo ya fedha ya kila mgombea.

Kulingana na sheria hii, haitakikani Mkaguzi Mkuu akuje kukuambia utoe hesabu zako. Inavyopendekezwa katika sheria ni kwamba kila chama kitaweza kupeleka hesabu zake na hiyo itasaidia pakubwa kupunguza ile kazi ambayo Mkaguzi Mkuu wa serikali angeweza kufanya.

Kwa hivyo, naunga mkono sheria hii na ninaomba Maseneta wote waizingatie ili tuweze kuipitisha kwa haraka ili iweze kusaidia na iwe ni mchango mkubwa kuleta uchaguzi ambao utakuwa wa haki na usawa katika inchi yetu.

Asante Bi. Naibu Spika.

**Sen. Khaniri:** Thank you, Madam Deputy Speaker, for giving me the opportunity to make my remarks on the amendment Bill that was brought by my good friend, the Senator for Narok.

I think he is proposing three major amendments. Just before I comment on those amendments, I want to say that the Election Campaign Financing Bill is a good law because what is happening in Kenya now is that elections have become a preserve of the “who is who” people who have money, people who can finance elections. Therefore, we must come up with a legislation that can provide a level playing ground for all Kenyans.

There are so many Kenyans out there who can make extremely good leaders but they do not even dare to vie for an elective seat because they simply cannot finance the elections. Running for elections has become an elites club for the “who is who” and those who have the means to run a campaign.

I fully support these amendments by Sen. Olekina, first, because it is not practically possible to audit all candidates participating in elections. He put it very well. I have sat in the County Public Accounts and Investments Committee of this House and I know the overwhelming work that the Auditor-General has in auditing the National Government its Ministries and departments; the county governments and the county assemblies.

As we sit right now in this Senate, we are looking at accounts of two to three years ago. We are not even a year behind. We are doing a post-mortem simply because the reports came in late. So, we cannot on top of that, task the Auditor-General to start auditing individuals who are participating in elections. That deletion of that particular article of that legislation should be effected so that they can only audit a candidate or an individual who is suspect; maybe something has been reported or something of that nature.

The second amendment that my brother is seeking is to bar political parties and even candidates from receiving donations from external forces so as to participate in local elections. I fully concur with that because if we continue with that then we will be reintroducing neo-colonialism. We do not want to have leaders who will be held hostage by foreign forces simply because they were supported to come to office by those foreign forces.

Therefore, we must ensure that this particular amendment goes through so that if you want to seek for support or financing for your election, then do it locally from Kenyans that you seek to lead not from external forces. Therefore, I support that second amendment fully.

If I got him right, the third proposal was that only political parties participating in elections should be subjected to submitting their financial records and financial reports to the registrar of political parties. Indeed, we know that the main purpose of forming a political party is ascending to power and seeking power through those political parties.

There are those briefcase political parties, people who register parties just for speculations. Maybe even as we effect this amendment that my brother is proposing, that

is the only one that I did not fully support because some political parties can be formed maybe even for money laundering.

Currently we have about 82 political parties that have been cleared to participate in the election and 87 that are registered. All the parties are 87. Therefore, if we pass this amendment of subjecting only political parties participating in elections to submit their financial records, then we must come up with another Clause in the law so that if you form a political party and it is not participating in any elections - as you know elections come and go - then you are not worth being a political party.

Then we must come up with another clause in the law so that if you form a political party and it is not participating in any election; elections come and go and the party does not participate, then you are not worth being a political party.

We must come up with a law where such political parties must be scrapped. What was the purpose of forming those political parties?

I will vote for these amendments. I know this law might not apply in this coming election but legislation is a process. This brings good hygiene even if it does not benefit this particular election. I am sure, if passed, then it will benefit future elections.

I support.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you Senator. Any other Member? I do not see any other Member. Since the amendments are as few as the Members who have contributed I would like to allow the Mover to respond. The amendments are straightforward and clear.

**Sen. Olekina:** Thank you, Madam Deputy Speaker. Let begin by thanking my two honourable colleagues; Senator for Mombasa Sen. Faki for supporting this amendments and Sen. Khaniri for demystifying what these amendments are for.

I thank them so much because what we seek to do is come up with legislation for posterity. He got it well and I want to sum it up. It is quite clear and there is only one thing I did not mention when I was moving the amendments. One of the other objectives is to remove the requirement for independent candidates.

Political parties and referendum committee to establish campaign expenditure committees to manage campaign funds on their behalf. This was a tedious requirement. If it was a political party, you would be required by the governing council to nominate a body that manages the finances. If you are an independent candidate, you set up the expenditure committee for them to manage all the finances.

This is tedious and bars a lot of people because not everyone would like to offer in kind services or voluntary services. Other people require you to pay them. If you are trying to look for money to run a campaign and yet the law requires you to set up a committee of people who will manage your resources for you, it makes it tedious.

I am grateful for the comments made by Sen. Khaniri. I would like to clarify on the requirements of a political party that does not have any candidates in the election. What I meant is that a political party that does not intend to have candidates for a particular general election need not make reports under this Section. There are those reports which are required by this amendment to be submitted on a quarterly basis.

Section 27(a) of the proposed amendment says-

“The treasurer of a political party shall prepare and submit to the Commission a report with respect of each of the following periods— (a) January to March; (b) April to June; (c) July to September; and (d) October to December

(2) Despite subsection (1) during a general election period, every political party participating in an election shall prepare a report under this subsection in respect of every thirty days commencing from the date of publication of a notice by the Commission for the general election and ending on the date of gazettement of the election results.”

The report is submitted not to registrar of political parties but to the commission which is the Independent Electoral and Boundaries Commission (IEBC).

I saw that requirement being very tedious. If you own a political party but because of the realignment that we have currently, you do not end sponsoring any candidate the Act still requires you to submit a monthly report. This is the point I wanted to clarify.

I hope that my colleagues will support this so that it can become neat. I thank my colleagues because they reiterated the point that I raised earlier, on the importance of creating a level playing field when it comes to all the candidates in this country.

There are people who are born out of wealth and others who are struggling to make a living but can make good leaders. In other democracies like in the United States of America, if you a presidential candidate, if you get a donation of USD\$250 it is matched dollar to dollar. We need to be more progressive when it comes to the issue of financing for an election.

I would hope that in future so long as you are nominated the party that you belong to end up funding all the activities. Currently, people pay political parties for you to be nominated. There are those who do not go through nominations and you will see political parties end up making a lot of money. That does not really help out.

I hope that my colleagues will support these amendments and that in the next election because it will be too late for them to manage this election. If you read the Elections Campaign Act and go back to the tough regulations and guidelines that the IEBC gave when it come to financing at this particular time, it will be too late because there are timelines.

We want to remove the timelines and make it possible for future elections for anyone to carry out a campaign, receive the little money they can and go out there and seek the mandate. I will take the comments which were made by my dear brother Sen. Khaniri seriously and see how we can tweak that at the Committee stage amendments to see how it can be in line. The issue of accountability is important.

I beg to reply.

Also, I request that the putting of the question be deferred to a later date pursuant to Standing Order 61(3).

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you Sen. Olekina. We will put the order in the Order Paper tomorrow so that we can vote on it.

Next Order!

*(Putting of the question on the Bill deferred)*

*Second Reading*

THE COTTON INDUSTRY DEVELOPMENT BILL  
(SENATE BILLS NO. 55 OF 2021)

**The Deputy Speaker** (Sen. (Prof.) Kamar): The Chairperson of the Committee or a Member? We do not have either and will skip that.

*(Bill deferred)*

Next order!

*Second Reading*

THE EMPLOYMENT (AMENDMENT) BILL  
(SENATE BILLS NO. 54 OF 2021)

**The Deputy Speaker** (Sen. (Prof.) Kamar): We do not see Sen. Cherargei both online and in the House so we drop the order!

*(Bill dropped)*

Next Order!

**MOTION**

ADOPTION OF THE SPECIAL AUDIT REPORT ON UTILIZATION  
OF COVID-19 FUNDS BY 28 COUNTY GOVERNMENTS

**The Deputy Speaker** (Sen. (Prof.) Kamar): That is the Chairperson Standing Committee on Health.

Sen. Olekina, please, move the Motion as a member of the Committee.

**Sen. Olekina:** Thank you, Madam Deputy Speaker. I beg to move: -

THAT, the Senate adopts the Report of the Standing Committee on Health on the special audit report on utilization of COVID-19 funds by 28 county governments, laid on the Table of the Senate on Wednesday, 9<sup>th</sup> February, 2022.

Madam Deputy Speaker, the COVID-19 pandemic taught us many lessons. It brought down not only the economy of Kenya but the procuring entity of the Government, which is the Kenya Medical Supplies Authority (KEMSA).

When the pandemic hit us, people became creative instead of finding a way to come out of that pandemic. This was not only in the 28 county governments that we invited to give us a report, following the Auditor-General's report on how they spent the money. This is actually a problem globally.

We had a chance to sit down with county governors of Isiolo, Kakamega, Kisumu, Laikipia, Mandera, Marsabit, Nakuru, Narok, Nyandarua, Samburu, Taita Taveta, Trans Nzoia, Uasin Gishu, Vihiga, Wajir and other counties, which I have not mentioned. It was clear that these county governments had enough money to help the



citizens of each of those counties, to cope with the challenges brought about by the COVID-19 pandemic.

Some counties spent the money wisely to some extent. Some set up COVID-19 centres, while others decided to improve on their facilities. However, most of them ordered supplies that they could not pay for yet they still had money. It was very challenging listening to county governors trying to explain how they spent the funds. In most county governments, most of those things were just put up in a rush. There was no well thought out ideas on how to maintain them.

A case in point would be the sanitation booths, which were adopted by so many counties and yet they had not looked at the health implication of those sanitation booths. They did not also look at where they would come from and what impact they would have on the economy of that county.

Madam Deputy Speaker, most of these booths were leased and they to continue supplying sanitisers. No one really cared about how safe they were for the citizens of those counties. Those are some of the challenges that we saw.

However, the amount of money that was spent was not fully thought out. It is just that the National Government had given them enough money to build COVID-19 Centres. Other counties had 300 bed facilities for isolation. However, no thought was put into how those facilities would be merged with the existing health facilities.

Madam Deputy Speaker, I will go quickly to some of the recommendations that we made as a Committee. This is in terms of the issue of management of resources that are sent to the counties.

First, the Committee recommended that the National Treasury should ensure timely release of funds to county governments, in line with the Cash Disbursement Schedule approved by the Senate. The Committee also further recommended that county executives should map out revenue streams and automate revenue collection points.

This was a challenge because you have been given some money by the national Government but you are supposed to match this money with your own sharable revenue. You will find that the Exchequer does not release money on time. So, if you are building a facility for 300 beds, you only end up building the facility and not equipping it with beds. In that case, you do not solve the problem.

The other recommendation was that county executives should strictly adhere to budget ceiling for development and recurrent expenditure, as stipulated by the annual County Allocation Revenue Act. In line with this, we also recommended that accounting officers must strictly adhere to Section 154(1) of the Public Finance and Management Act.

*(Sen. Olekina hesitated)*

This must be the wrong--- Are you making me look like the Governor of Embu County? You are giving me the wrong file. I am reading these ones and they relate to the County Public Accounts and Investment Committee (CPAIC).

So, I will just be very brief on some of the recommendations that we came up with. Although, some of those recommendations that I have read out there cut across even on this other report.

One of the observation that we made was that county governments did not consider the donations that they received, either from the national Government or other donors, as part of their big budget. They had not foreseen that this was a pandemic and had not done a supplementary budget.

Therefore, we made a recommendation that future disbursements of COVID-19 pandemic funds, should be in addition to the County Revenue Allocation (CRA) allocation criteria, based on realistic work plan developed and approved by the respective county governments. This would then provide an effective and efficient framework for utilization of the funds to mitigate against value for money risks.

Madam Deputy Speaker, we noted that most county governments did not plan well on how to utilize that money. It is because it was not part of their budget but a pandemic. So, they did not have work plans on how they would spend the money that they were given. They hurriedly spent the money. After spending, they would now create new work plans. That was a big challenge in all the 28 counties that we went through.

The second recommendation that we made in relation to how the COVID-19 pandemic funds were spent, was that appropriate sensitization be done for the county public finance management officers, on public finance and risk management during crises and health pandemics. This will improve the capacity of county human resource to respond to COVID-19 pandemic and other related risks in an efficient, effective, economical and ethical manner.

Madam Deputy Speaker, earlier on, I raised a point on people who took advantage of COVID-19 pandemic, where the prices were hiked. In fact, here in the Senate, we were told many stories of dead stock which is still lying in KEMSA. So, it is important that all the 47 counties start training their personnel on how to behave in the event of any risk or pandemic, in terms of management of resources.

You will find many people who would want to support a county government. However, if you are not trained on how to behave in an emergency or pandemic, then you will end up spending money as if it is just free for all and you will not be accountable for.

Our third recommendation was that appropriate consultation should be held between the two levels of governments, to ensure accurate disbursement of the frontline health workers allowances. This would help mitigate against labour unrest and fiscal risk in the county government. The county government should also ensure they operate a single integrated payroll management system to ensure efficiency in payroll management.

Madam Deputy Speaker, during the COVID-19 pandemic – although we are still in the pandemic – there was a lot of labour unrest and threats. I remember sitting down and trying to reason with clinical officers, nurses and the Union and it was very difficult. In fact, we held a joint meeting with our colleagues in the National Assembly. We asked these people to go back to work, so that they help navigate this Covid-19 period. However, since the county governments were not very clear on how to pay their allowances, some of them downed their tools. They said that they could not continue to go through hardship and yet they were not being compensated. It was a very difficult period. We made a recommendation that it is imperative that county governments invest a lot in their human resource, for example, nurses.

Today, we are talking about the United Kingdom (UK) seeking to recruit 40,000 nurses in the country. However, we do not pay our nurses well and do not create a good

environment for them. Therefore, during a pandemic, all of them will go to the UK and be paid £1,000 a month, which is better than what they would be paid here. The Exchequer will delay in sending their money and so, they will not be paid. Therefore, we must navigate these challenges to ensure that we run our counties in a more mature and accountable manner.

The other recommendation is that the public finance management capacity of Level 2 and Level 3 health facilities need to be strengthened to ensure efficient and effective planning, budgeting and utilization of funds, especially during a pandemic. This will strengthen county governments' responsibility and responsiveness to Covid-19 and other pandemics.

Madam Deputy Speaker, I reiterate that point again; that, the capacity in Level 2 and Level 3 hospitals is very low. Governors should start to run these county governments as if they are businesses that intend to make profit. You will have to care about every income stream of any departments that you run. If you run a department and it is always in the red, there is no way to navigate an emergency or a pandemic.

On the issue of public management, they are very simple legislations. If each county government takes time to ensure that the staff in those county governments understand, we can run this country in a better place.

One is the public auditor; second, the Public Finance Management Act; and, third, the Constitution of the Republic of Kenya. Once accounting officers who are Certified Public Accountants of Kenya (CPA (K) are conversant with what is allowed and what is not allowed by these pieces of legislations, then this country will run in a better way.

Sometimes when a person is given a department to run, they run it as if it is the beginning and the end of their world. Whatever you get, you grab as much as you can, but you are not accountable. We noticed a lot when we went through all those audit queries, which were raised by the Auditor-General in relation to how the Covid-19 funds were spent.

The other recommendation is that all county governments should automate the stock management system and strengthen capacity of officers managing inventories. I do not remember whether it was Kakamega County or Isiolo County, where the records of the goods which were bought from either Kenya Medical Supplies Authority (KEMSA) or donations which were given to deal with the Covid-19 pandemic, things like masks and sanitizers were not kept well.

You will find that the delivery note states that X amount of materials, which translates to X amount of shillings. However, when you go to the stores, those items never got there, yet KEMSA will say that they delivered. This is because either the staff who work there do not know how to keep the records, do not have a system that can record what they received or do not know how to manage their inventory.

I have remembered one other recommendation, but I do not know whether it has been noted here. The inventory management system in relation to Covid-19 or any pandemic should be centralized. For example, from the dispatch, they would know that Mandera County received X amount and it must acknowledge for them to be cleared from the system. For example, if KEMSA is the one dispatching and Mandera County does not acknowledge, then, that item remains there until it is acknowledged.

We are in the era of technology. Today, when you go to a supermarket and pick a few items, the cashier or the check-out system asks you about your mode of payment. If you want to pay by M-PESA, you give out your number, and all of a sudden, you get a notification in your phone for you to put your password because they have already taken money. Why can we not come up with a system that when KEMSA or any other supplier of medical equipment or drugs sends them, the person who receives them must acknowledge and show that they were delivered?

There were many items that were not delivered to county governments. I do not know how they disappeared. I really hope that people will not start treating pandemics as situations to steal any money.

Madam Deputy Speaker, the other recommendation was that county governments should, in addition to governing financial reports generate non-financial reports on key milestones achieved in regards to the activities relating to Covid-19 pandemic.

There should be an integral financial and non-financial reporting for efficiency and effective monitoring to enhance accountability and public participation in management of funds. Such reports should be published for general public scrutiny.

Each and every county that we went through received money from individuals. We know what the Public Finance Management Act stipulates when it comes to money. In fact, Section 109 of that Act requires each county government to deposit all their money in one Revenue Fund Account and then request that money from the Controller of Budget, for them to spend it.

There was a county government that was given Kshs300,000 and it was impossible for them to deposit in the County Revenue Fund (CRF). This is because they were given that money and they had to spend it immediately. The Committee, therefore, saw it fit for the county governments to come up with all those reports for financial and non-financial management.

This is because if you are given Kshs300,000 and you have your revenue streams, how will you account for it? It was very important for us to really look at that. In future, we may need to amend the Public Finance Management Act to take account of pandemics or emergency situations, where county governments can receive funds and not be required to deposit into the CRF.

Section 109 of the Public Finance Management Act, as it is, only exempts funds that have been exempted by another Act of Parliament, for example, a hospital or an emergency fund. In a pandemic, unless it is specific, because there are regulations on how money deposited in any funds are spent, it becomes very difficult and challenging.

We listened to the governors explain how it was very difficult for them to deposit that money in the CRF and then call again for them to spend either to buy water, sanitizers *et cetera*, to help their people navigate the Covid-19 period.

The other recommendation that we gave was that the annual financial statements and reports of the county executive for the current financial year, which is 2020/2021, should include a comprehensive section on non-financial information in regards to the activity relating to Covid-19 responses.

Madam Deputy Speaker, this recommendation was directed to the Auditor-General; that, when they now go to the county governments and audit their financial statements, one of the most important thing they should do is realize that county

governments did receive donations. These donations were not to become the property of the governor or for them to run their business.

When providing financial statements, the Auditor-General should ask county governments and their accounting officers to provide his office with information on how they managed in-kind donations for COVID-19 during that period, so that we can enhance accountability in this country.

Madam Deputy Speaker, I still have two more recommendations. The committee observed that there is need to strengthen internal processes that may have experienced the reported deficiencies. Further, they need to continuously build the capacity of the County Public Finance Management (CPFM) officers. We observed that this is important and I reiterated this point. All those officers should be trained continuously on financial management.

Finally, the Committee, having observed that counties were in financial distress while responding to the effects of COVID-19 pandemic and having noted the borrowing of monies from other Government entities, recommended that the county officers endeavour to operate within the law when it comes to service delivery even in times of pandemic. Further, the Office of the Auditor-General should review the query in its subsequent audit circle to ensure refunds of the monies borrowed.

The Committee, having established the delays in Exchequer releases, this was a challenge that resulted to pending bills. It recommends that the matter of pending bills be retained in view of the subsequent audit circle. I suggest that in future, clerks drafting these reports should increase the fonts because they are too small to be seen properly.

Madam Deputy Speaker, in conclusion, what we observed while interacting with the 28 county governments is what happens when county governments receive money. There are people who supplied equipment and materials to help deal with COVID-19 pandemic. However, they have never been paid to date.

The issue of pending bills is something that any civilized nation or country should not entertain. When you come up with a budget, you are expected to do so with the money available to you. When you do a budget and do not have the money, it becomes problematic. You will end up killing businesses and people who have worked hard and even borrowed money to take advantage of a business opportunity. If you do not pay them, it creates a big problem.

Madam Deputy Speaker, I beg to move that the Senate adopts the Report on the utilization of the COVID-19 Funds by 28 counties.

*(Sen. Olekina consulted with the Clerks-at-the-Table)*

You will have to forgive me, Sen. Farhiya, because I had forgotten your name. Sometimes we forget names.

**The Deputy Speaker** (Sen. (Prof.) Kamar): You got it right, it is Sen. Farhiya.

**Sen. Olekina:** I am bothered with the situation in Tanzania, and so, I forgot. When my brothers are in distress, I forget.

Madam Deputy Speaker, I beg to move and request Sen. Farhiya to second.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. Farhiya, proceed.

**Sen. Farhiya:** Thank you, Madam Deputy Speaker, for giving me this opportunity. I wish to thank the Senate Committee on Health for their Report.

Many things that have been said in this Report. Most of them are to do lack of knowledge on how to do this or that. I do not think there is lack of knowledge. This is a deliberate attempt by governors, through their offices, as they play innocent, yet they know what is going on.

I belong to the accountants' profession and people know their numbers and how to keep proper records. Unless the county governments are not employing members of my institute, then that can be the problem. Otherwise, there are people who are trying to steal money from a public ravaged by COVID-19 pandemic. In addition to that, where I come from, we are being ravaged by drought and yet, they are still stealing from vulnerable people.

Madam Deputy Speaker, sometimes I ask who cursed people in this country. You have a voter's card and the Constitution of Kenya has given you powers to elect the right people to govern you.

When we established county governments, we felt that we had arrived. We knew we were going to govern ourselves and do what the Constitution expected us to do and serve people who elect us. However, that is not what is happening in the counties.

The Committee recommends that they should have systems for recordkeeping. If you are serious and want to keep records, you can even use a simple Excel sheet to keep everything you have. The only thing you need to do is take a little bit of time the first time when you are keeping records and ledgers. Once that is done, it is a matter of updating when new stock is in. What is hard about that?

I would like to give an example of my own County of Wajir. They have already busted the personnel threshold of 35 per cent. The last time I checked, the percentage had reached 60 or thereabout. Who are they recruiting and paying and who is keeping proper records? Despite the increase in allocation to counties by Kshs53 billion, there is still no improvement in recordkeeping or getting the right drugs in the stores. That is not happening.

This is an electioneering period. You will find people electing the wrong people again and spend the next five years lamenting. If county governments work the way they ought to, with the cash flow coming at the right time, then most people who live in counties should not depend on the national Government.

For example, with the kind of capacity to collect revenue in Nairobi and Mombasa, why would they still depend on the national Government for money to perform their functions?

People are talking about price increases, especially for petroleum products. Yesterday, I heard one of us complaining about the increase in price having been brought because of the "handshake".

We all know that there is a crisis in Russia, which is one of the highest oil producing countries in the world. As you are aware, the cost of fuel contributes to the cost of almost everything else.

As we struggle to get voters to support us, let us not deceive people of this country because they are educated and are intelligent too.

Madam Deputy Speaker, what I do not understand is why people claim to be innocent. One of the culprits is my own county of Wajir. They always say that they did not know that, that was the requirement; they do not know how to do this or that. I am requesting the Committee on Health to do a little bit more probing instead of buying the explanation of “we do not know what was happening” or “we did not know how to keep the records.”

Right now, there is drought in Wajir County; there is no water. There is a lot of despondency to a level where instead of people taking their problems to the county government to help them, they are holding fundraisings to help those affected by the drought.

Madam Deputy Speaker, why should the national Government send money to the counties if you look at it that way? I am not saying that the national Government is any better because we all know what is happening, but why should the taxpayer pay money just for county governments to defraud their own citizens of their hard-earned income?

Madam Deputy Speaker, it is an election year. I urge Kenyans out there to ensure that they deal with people who are above board as far as corruption is concerned. Do not vote in people who will give you money during the campaign period then disappear for the next five years, and you languish in poverty when you could have avoided it.

Madam Deputy Speaker, there is the issue of pending bills. There are Kenyans who have been made poor by the fact that they borrowed money from somewhere in order to deliver goods or services to the county governments or National Government, but they have not been paid. In this regard, I would like to urge the National Assembly to fast-track The Prompt Payments Bill because although it will not end this problem, it will solve half of the problem because it will break one end of the corruption chain.

I beg to support and urge the Senate to adopt this Report.

I thank you.

*(Question proposed)*

**Sen. Omogeni:** Madam Deputy Speaker, I want to begin by thanking the Members of the Committee on Health, who have done a fantastic job in auditing the money that was meant to respond to the COVID-19 pandemic. I want to applaud all the Members for the fantastic job. Well done!

Madam Deputy Speaker, I hope that this Report, like many others before, is not going to gather dust in the shelves, but some action will be taken. This is so that those who may have in one way or another misused money that was meant to respond to the unfortunate COVID-19 pandemic situation should be brought to book.

Any time Parliament comes up with such wonderful recommendations, there are a number of State agencies that should pick up from where the Senate stops. The way our constitutional order is structured, we cannot arrest and prosecute governors and their technical officers. I know that bodies like the Ethics and Anti-Corruption Commission (EACC) or the Directorate of Criminal Investigations (DCI) can make use of what has been unearthed by the Committee on Health, conduct further investigation and where need be, prosecution should follow.

Madam Deputy Speaker, health is everything. The people I represent in Nyamira County will never have smiles on their faces or go on with their day-to-day activities if

they are not sure that if something goes wrong in terms of their health, they will get quality and affordable healthcare.

Unless we fix healthcare, our people will remain unhappy, desperate and unable to access quality healthcare. That is why the framers of the 2010 Constitution saw it fit that health should be devolved, so that our county governments can give accessible healthcare to our people. However, that is not the case.

Just the other day, the world was given a report on the happiest countries in the world. One of the happiest countries is Finland, led by one of the youngest presidents in the world, a 34-year-old woman.

Madam Deputy Speaker, I am happy that you are occupying that Chair as I am making these remarks. She is 34 years old, but the statistics that have been released show that the Finnish people are one of the happiest people in the world. One of the indicators that is used to measure the happiness of people in a nation is access to quality and affordable healthcare.

If our county governments cannot wake up to this reality, they will continue dragging the country backwards. We will never attain this status. It is a shame that even Uganda that spent more than 15 years in war is ranked ahead of us. That is not what we want to see from our governors.

Look at what has come to the fore from this Report. A simple thing like having a payroll system is lacking in our counties, and yet, we are talking of counties that have been in place for the last nine years. If this was an audit carried out in the Financial Year 2013/2014, we could have excused the governors. How can it be that nine years after the onset of devolution, we still have counties that cannot have a good payroll system? It is very unfortunate.

Speaking for my own county, we are surviving on the goodwill of our neighbouring county. Most of the people I represent, when they have serious health issues, seek healthcare from either Litein Hospital in Kericho County or go to Tenwek Mission Hospital in Bomet County. This means that my Governor and his predecessor - may God rest his soul - the late hon. Nyangarama, have not been able to respond to the needs of the people of Nyamira in terms of healthcare.

You can imagine with the poverty levels that our people have; they have to travel all those kilometers in search of quality healthcare. It is very sad. I hope that the bodies that have been tasked with fighting corruption will do something. We need to see heads rolling. After all, what was the purpose of us creating independent commissions that are well resourced year-in, year-out? In a few weeks' time, we will go through the Budget cycle.

In a few weeks' time, we will be going through the budget cycle. We will allocate more money to the Director of Criminal Investigations (DCI), the Ethics and Anti-Corruption Commission (EACC) and the Assets Recovery Agency (ARA). However, we are not seeing any action. We want to see action. Unless we tackle corruption, we will never attain progress and development for our nation.

As I make these remarks I fully identify with the agenda of the *Azimio la Umoja* Presidential candidate, Rt. hon. Raila Odinga, who has given a personal undertaking of fighting corruption in this country. The other day we had reports from the Committee on County Public Accounts and Investments (CPAIC) and what we are seeing today is



replicated in those reports. We are not seeing action against governors. I do not know whether they have become small gods. We want to hear some answers.

I wish this Committee had actually summoned the heads of EACC to appear before us and give an update on what they have done regarding all the reports touching on misappropriation of COVID-19 pandemic funds because we are not short of laws. We enacted the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) that was supposed to track money that is taken from public coffers and illicitly acquired assets so that we can make corruption very unattractive.

As I said, we are not seeing action. We have recruited experts; Chief Officers (Cos) and CESs in counties. These are well educated people all with degrees. We even have directors. How come counties cannot even have work plans to respond on how to spend money advanced to them in response to a pandemic like COVID-19? It is really sad and what makes it sadder is that some of this money is being given to us by donors. How can you steal money given to us by donors to respond to a pandemic like COVID-19? Some of these people are cursed. You can steal money meant for something else, but not money meant to assist us in providing health response to our people.

This country is still analogue when everything is becoming digital, for example, with inventory management systems. I wish I had the opportunity to appear before this Committee. The biggest problem we have is that most counties receive drugs, but they end up in private chemists because there is no system. There is no inventory management system that is digital and that can help our counties manage drug supply system.

I do not know about Uasin-Gishu and Narok counties, but in most of them, for example, Nyamira County; people go to hospital, see the specialists and are given prescriptions to take to the chemists. Are we then a devolved health care system? You go to a hospital get a prescription and directed to the chemist.

The drugs you are going to get from the chemists are the same drugs bought by the county governments, but they find their way to those private institutions. We are stealing from poor Kenyans. By doing so, we are causing innocent people to lose their lives because we have greed for money. It is a shame.

I hope the Senators here who have expressed interest in vying for the governor seats will perform slightly better because they know what we have gone through here and the kind of unfortunate reports that we receive through the CPAIC. It is really a shame. We are not giving hope to the people we represent. Devolution was meant to bring smiles to our people. Instead, it has brought sorrow.

Looking at procurement systems in all the counties, there is none that does not have a director of procurement and several officers. However, they want to create weak systems, so that they can enable them to siphon and misappropriate public money. Anytime you want to undertake an audit, you will find a lot of weaknesses and loopholes around procurement.

We are making a special appeal to the EACC and DCI to please take action. I was reading a report yesterday about how much money we are losing as a country in sending people to seek medical care out of the country because our health system is not functioning. Every year, Kenyans are spending Kshs10 billion in sending patients to India to seek medical assistance simply because our counties cannot bring Magnetic Resonance Imaging (MRI) machines and cardiologists to deal with lifestyle diseases.

If you look at private hospitals such as Aga Khan; they receive close to 2,000 in-patients from across the region and more than 10,000 out-patients across the year from across East Africa. A friend of mine was telling me that he was with a former President of Burundi who had come to seek medical assistance in Nairobi Hospital. Why can we, as counties, not create the same standards that are there in the private sector? I am sure we have enough money sent to our counties. What is lacking is how to prioritize health care systems.

Madam Deputy Speaker, in supporting this report, I want to make a special appeal to our governors - their excellences - to please be sympathetic to the people that we all represent. You were elected by the people and so were we. Our people want to have good quality healthcare in our counties.

In conclusion, I thank the Committee for this good work. I hope this is not just ticking the boxes, and the Committee will make a follow up on these very good recommendations that are in the report so that we can see some action being taken.

I support.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you very much, Senator. With those good comments from the Members, I would now like to call Sen. Olekina on behalf of the Committee on Health to respond.

**Sen. Olekina:** Madam Deputy Speaker, I beg to reply THAT, the report on the standing Committee on Health and the Utilization of COVID-19 funds by Baringo, Bomet, Bungoma, Busia, Elgeyo-Marakwet, Embu, Garissa, Kakamega, Kitui, Laikipia, Lamu, Machakos, Mandera, Marsabit County Executives and a few other counties that I have not mentioned, be adopted.

I thank the two Members who decided to be loyal and to be real Senators of unimpeachable characters whose dedication to the counties is quite evident by staying here to comment on matters that affect them.

Madam Deputy Speaker, Sen. Farhiya raised very pertinent issues for which I commend her. Professionals should adhere to the professional code of conduct. There is absolutely no reason why county governors should employ people who do not subscribe to the professional code of ethics.

The Committee observed clearly and even reiterated that there was either negligence or just complete utter disregard of the rule of law by the accounting officers. I hope that the Auditor-General can pull up her socks a little bit when it comes to really scrutinising these county governments.

What Sen. Farhiya stated is the frustration that the Committee observed when we were going through these reports of all these county governments and how they utilized COVID-19 funds. Those same frustrations have been raised by the good Senator for Nyamira County, Senior Counsel, Sen. Omogeni. Why would a county not have a record keeping system? Why would they not care for their employees?

One of the things that I did not remember to mention when I was moving this report is that some of these problems were trickling down from the national Government. There was delay in disbursement of the Danish International Development Agency (DANIDA) funds and the Kenya Devolution Support Programmes (KDSP) funds. So, when these funds were sent down there, coupled with the fact that county governments

did not have work plans, or did not factor in the issues of COVID-19 in their budgets, county governments ended up delaying the utilization of those funds.

When the county governments appeared before us, the Auditor-General had already raised the concern that the county governments did not utilize these funds. They said that they could not utilise the funds without proper work plans for those who did not utilize them. Others utilized them without going through the procedures. Others said they did not subscribe to a particular rule and had to follow the rules of the donors.

From what I hear from the two colleagues who commended Sen. Farhiya who seconded the Motion and Sen. Omogeni who contributed to this Motion, it is imperative that the officers and governors should be people of impeachable characters.

Madam Deputy Speaker, this is why sometimes I believe that if you have failed in one particular docket, why should you transfer your corruption to another docket? Today, there are so many governors who want to become Senators, but they have failed in delivering services to their people. If they could not even manage COVID-19 funds, so they want to come here and interrogate those reports?

I have to say it was an oversight on our part, that we did not invite the Auditor-General and the other independent institutions such as the EACC. Sen. Omogeni alluded to this when he was contributing. This was because of the challenges that we had when we were inviting these governors. In fact, some governors were apprehensive. Some said they did not need to appear before us. They questioned how they could appear before the Committee on Health and again before the CPAIC the following day. Yet this was specific to the Committee on Health because we were actually dealing on our mandate.

The issue where they were apprehensive and reluctant to appear before the Committee was because of lack of vision to ensure that by the time they are leaving the office, they would have done their bit satisfactorily. You can be accused of so many things, but do not let yourself be accused of not having taken care of your citizens' health.

It is true what Sen. Omogeni has said, that most of us – if not all – spend billions of shillings sending our citizens to other countries for medical treatment. Sometimes if you ask those who do so, they will tell you it is because the private hospitals here are in the business of making money. Public hospitals and the health function being devolved was supposed to help the people, but they are not helping. This is true.

Sen. Omogeni said that many hospitals do not have drugs. You are given a prescription and then directed to a private pharmacy to buy those drugs which were supposed to have been dispensed from public hospitals. The Auditor-General pointed out that these drugs did not reach where they were supposed to reach.

I appreciate the comments of my colleagues. If the term of this Parliament ends without our Committee following up on these matter with the governors, I hope that the subsequent Parliament will follow through to ensure that at least the recommendation of these reports are implemented.

We spend a lot of public money to go through call those governors and go through these reports. Every time a governor comes before this Committee, they come with their whole office. Sometimes they spend two or three nights here. They also spend a lot of money trying to make sure that everything goes well the way they want. That is

public money. That public money should be investigated so that at least people can get value for money.

Madam Deputy Speaker, we do not have a Committee on Implementation in this Parliament. I hope the subsequent Parliaments will come up with one and then take over these reports from each Committee of the House and follow through to make sure that recommendations are implemented. We have very good recommendations and I reiterated them when I was moving this report. They were advised clearly by the observations that we made.

If you find that there is a delay in the disbursements of DANIDA funds and then there is delay in the utilisation of those funds, then why do you not create a situation whereby when those funds reach the counties, they are immediately utilized? We hope that we can at least follow up.

The other day I saw the Chief Executive Officer (CEO) of EACC really coming out clearly and saying that they have not been sleeping on their job. That they are also required to get approval from the Director of Public Prosecutions (DPP). I hope these two offices and the DCI can actually work together. It is evil for certain public officers to enrich themselves using money which has actually been donated, set aside or disbursed to help people during a pandemic.

We saw what came out during the KEMSA investigations. I hope that we can be creative when it comes to amending the existing legislations to seal all those loopholes that were created by people who sponsored those legislations. I call upon all Senators to come and adopt this report. If we do that, it will not end up being a report moved by Sen. Olekina, seconded by Sen. Farhiya and commented on by Sen. Omogeni.

Madam Deputy Speaker, I pray that it will be a report of the Senate that took into account the good work that the Senate Committee on Health did. It will be noted that the Committee tried to put some sense into how funds were spent or even interrogated governors and recommended that they should actually follow certain steps.

All the comments which were made can really enrich their moving forward in ensuring that in future, when we have a pandemic or emergency and funds are allocated, those funds will be used properly. I am sure investigating agencies or even the Committee on Health can find these recommendations useful in the implementation of this report. Finally, I do not see one of the Whips on the other side. However, I hope the Senate Majority Deputy Whip will be able to whip Members so that we can adopt it.

Madam Deputy Speaker, pursuant to Standing Order No.61, I beg that putting of the question be deferred to another time.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Yes, we shall defer the putting of the Question pursuant to Standing Order 79 (1) since I find the subject matter to affect counties so that will be tomorrow.

*(Putting of the Question on the Motion deferred)*

The majority whip is here. We hope we can have the numbers tomorrow so that we can clear the backlog votes that we require in the House.

Hon. Senators, the next Orders are Committee of the Whole, Order Nos. 21, 22, 23 and 24.

For the convenience of the House, we shall defer the four Orders and reinstate them again tomorrow. We hope we shall be able to deal with both the Divisions and the Committees of the Whole tomorrow.

### COMMITTEE OF THE WHOLE

THE ELECTIONS (AMENDMENT) (NO. 3) BILL  
(SENATE BILLS NO. 48 OF 2021)

*(Committee of the Whole deferred)*

### COMMITTEE OF THE WHOLE

THE COUNTY RESOURCE DEVELOPMENT BILL  
(SENATE BILLS NO. 45 OF 2021)

*(Committee of the Whole deferred)*

### COMMITTEE OF THE WHOLE

THE IRRIGATION (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILLS NO. 12 OF 2021)

*(Committee of the Whole deferred)*

### COMMITTEE OF THE WHOLE

THE COMMUNITY GROUPS REGISTRATION BILL  
(NATIONAL ASSEMBLY BILLS NO. 20 OF 2021)

*(Committee of the Whole deferred)*

**Sen. Omogeni:** On a point of order, Madam Deputy Speaker.

**The Deputy Speaker** (Sen. (Prof.) Kamar): I see a point of order from Sen. Omogeni.

**Sen. Omogeni:** Madam Deputy Speaker, I have learnt that the Chairperson of this Committee wanted to engage me on Order No.12 that relates to the Intergovernmental Relations Amendment Bill. This is because I have lined up some amendments. Can I please request that this one be placed in the Order Paper next week, so that I look for the Chairman and engage him?

**The Deputy Speaker** (Sen. (Prof.) Kamar): Senator, it was there also the last time. So, we can only give you this one week because it was deferred for your sake earlier. So, please make sure that you consult.

I order that Order Number 12 does not appear in tomorrow's Order Paper, but it goes to next week.

**Sen. Omogeni:** Thank you, Madam Deputy Speaker.

### ADJOURNMENT

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Members, there being no other business on the Order Paper, the Senate stands adjourned until Thursday, 24<sup>th</sup> March, 2022 at 2.30 p.m.

The Senate rose at 4.43 p.m.