

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 11<sup>th</sup> May, 2022

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

*[The Speaker (Hon. Lusaka) in the Chair]*

### PRAYER

### PETITION

#### REPORT ON PETITION: CONTINUOUS EXCLUSION OF PWDS IN MIGORI COUNTY BUDGET

**The Speaker** (Hon. Lusaka): The Chairperson Standing Committee on National Cohesion, Equal Opportunity and Regional Integration is not in the Chamber. Therefore, the Petition is deferred.

*(Petition deferred)*

Next Order. Proceed, Senate Majority Leader.

### PAPERS LAID

#### REPORTS ON FINANCIAL STATEMENTS OF VIHIGA COUNTY EDUCATION FUND

**The Senate Majority Leader** (Sen. Poghismo): Mr. Speaker, Sir, I beg to lay the following Papers on Table of the Senate today, Wednesday, 11<sup>th</sup> May, 2022:

Report of the Auditor General on the financial statement of Vihiga County Education Fund for the year ended 30<sup>th</sup> June, 2016.

Report of the Auditor General on the financial statement of Vihiga County Education Fund for the year ended 30<sup>th</sup> June, 2017.

Report of the Auditor General on the financial statement of Vihiga County Education Fund for the year ended 30<sup>th</sup> June, 2018.

I thank you.

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

**The Speaker** (Hon. Lusaka): Next Order. The Chairperson, Sessional Committee on Delegated Legislation.

### NOTICES OF MOTION

#### ADOPTION OF THE REPORT ON CONSIDERATION OF THE CONTROLLER OF BUDGET REGULATIONS, 2021

**Sen. Faki:** Thank you, Mr. Speaker, Sir. I beg to give notice of the following Motion-

THAT, the Senate adopts the report of the Sessional Committee on Delegated Legislation on its consideration of the Controller of Budget Regulations, 2021, laid on the Table of the Senate on Tuesday, 10<sup>th</sup> May, 2022 and pursuant to Section 18 of the Statutory Instruments Act, 2013, annuls the Controller of Budget Regulations 2021.

I thank you.

#### ADOPTION OF THE REPORT ON THE INQUIRY INTO THE ECDE LANDSCAPE

**The Speaker** (Hon. Lusaka): This notice is supposed to be given by the Chairperson of the Standing Committee on Education.

Senate Majority Leader, do you want to do it on behalf of the Committee?

**The Senate Majority Leader** (Sen. Poghisio): Mr. Speaker, Sir, I beg to give notice of the following Motion:

THAT, the Senate adopts the report of the Standing Committee on Education on the enquiry into Early Childhood Development Education (ECDE) landscape in the country laid on the Table of the Senate on Tuesday, 10<sup>th</sup> May, 2022.

I thank you

**The Speaker** (Hon. Lusaka): Next Order.

### STATEMENTS

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

**The Speaker** (Hon. Lusaka): What is it, Sen. Farhiya?

**Sen. Farhiya:** Mr. Speaker, Sir, Sen. (Dr.) Musuruve requested me to read the Statement on her behalf.

**The Speaker** (Hon. Lusaka): Okay, Proceed Sen. Farhiya

#### WORLD PRESS FREEDOM DAY

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**Sen. Farhiya:** Mr. Speaker, Sir, I rise pursuant to Standing Order 47 (1) to make a Statement on a matter of general topic of concern; namely, World Press Freedom Day.

Mr. Speaker, Sir, hailed as the fourth pillar of the democracy, journalists have time and again risked their lives and reputation to reveal the details behind social happenings such as accidents, numerous events or even scandals. In a bid to appreciate their hard work every year, 3<sup>rd</sup> of May is observed as World Press Freedom Day. The special day celebrates the spirit of journalism and recognizes the dedication of journalists towards ensuring an informed populous.

This day is an opportunity to celebrate the fundamental principles of press freedom, assess the state of the press freedom across the globe, defend the attacks on media independence and pay tribute to journalists who sacrificed their lives in the line of duty.

This year's theme is "Journalism Under Digital Siege." The theme highlights the ways that endanger journalism and its consequences on public trust over digital communication. It focuses on risk phase by journalists as a result of their surveillance and digital mediated attacks.

Mr. Speaker, Sir, as we celebrate this day, it is important to realise that press freedom is one of the surest ways of ensuring that there is some sense of security for all. Press has a major role to play in society majorly through gathering and dissemination of information. The purpose of a free press is to ensure that people are free to receive and convey information that is not manipulated, or serving a particular person, entity or interest.

Hon. Speaker, as we mark this day, I want to take this opportunity to applaud our remarkable journalists and reporters. Mr. John Allan Namu, who won the Cable News Network (CNN) multichoice African Journalist Award in 2009 was influential in covering post-election violence and has exposed corruption in high echelons of power. He has exposed other ills in the society, including but not limited to terrorism and drug trafficking.

We also celebrate Jeff Koinange who has hosted many invigorating shows on Kenyan television. Hon. Mohammed Ali who has risked his life severally due to investigative journalism. Other noteworthy journalists include Julie Gichuru, Johnson Mwakazi, Victoria Rubadiri, Kwendo Opanga, Makau Mutua and Grace Kuria, among others.

Mr. Speaker, Sir, although journalists and reporters play a big role in the society, they face a myriad of challenges. These challenges include intimidation, physical or cyber bullying, surveillance, kidnapping, threats, arbitrary arrests, assault and lack of access to public facilities, authorities or data.

As we mark the World Press Freedom Day, I call upon the media houses and owners to:

- (1) Ensure protection/security of all media personnel while on duty.
- (2) Provide attractive remuneration for members of the fourth estate.
- (3) Have a benefiting insurance cover for reporters, especially investigative journalists.

- (4) Ensure adequate cover and security, especially during the electioneering period and while covering other sensitive issues.
- (5) Allow media personnel the latitude of reporting without any fear of intimidation.

I call upon the county governments to partner with the media fraternity in guaranteeing dissemination of balanced impartial information at a country level with a view of ensuring national goals and other values reach everyone and all citizens are well informed.

Mr. Speaker, Sir, I thank you for the opportunity.

**The Speaker** (Hon. Lusaka): Sen. Poghio, please proceed.

**The Senate Majority Leader** (Sen. Poghio): Mr. Speaker, Sir, I beg to support this Statement on World Press Freedom Day. It is a very important day all be it the facts that the Statement is coming albeit late after the day and after a lot of debate has already gone on.

I must commend Sen. (Dr.) Musuruve for her insistence on reminding us of these days that are marked all over the world. However, we should also start thinking about how the most recent celebrations are stronger than the ones which have been gone for weeks. I would like to mention a few things. I have been in this space of journalism in my training. I have trained journalists in this country. I belong in that sector.

Personally, I have said that a lot of the threats for journalists---

*(Sen. Wambua consulted loudly)*

I wish Sen. Wambua would listen.

Mr. Speaker, Sir, protect me from a journalist in this House. We are trying to see how to protect journalists, but this one is a threat to us.

I have two things to say about the internal threats that journalists face. It is not necessarily external, or from being imprisoned or threatened, it is the very threat of their survival. Sometimes, the journalists have been under paid and overused. Journalist do not have a way of expressing themselves. It is the threat from the media houses that is sometimes worse by not giving them confidence.

Journalism must be strong from within and that is one of the areas that needs to be made very clear. We would like our journalists not to be beggars. The correspondence in the rural areas do a lot of work and you will find that they depend on other people to support them. We need to empathize with such journalists. I have been a Minister on that docket, so I know the issues that affect the journalists and I have raised these matters with the employers.

At times even the sending of journalists to harm's way is internally generated. If you are sending a journalist in a place where there is danger and you do not give them the equipment and the necessary support in order to survive in those areas, you are endangering them.

Apart from the external effects, forces and dangers that all media personnel face, I would like to address those internal ones so that as we grow journalism and freedom therein, we also give the journalists the ability and capacity to survive. There are very

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few on top who get very rich, who make a lot of money. Correspondence journalists are very poor and need to be supported.

I support the Statement.

**The Speaker** (Hon. Lusaka): Sen. M. Kajwang', please, proceed.

**Sen. M. Kajwang'**: Mr. Speaker, Sir, I rise to support this Statement by Sen. (Dr.) Musuruve. When the toll is done at the end of this Parliament, it might turn out that Sen. (Dr.) Musuruve is one of those Senators who contributed to the greatest extent on matters of topical interest. On 3<sup>rd</sup> May, 2022, the world marked the World Press Freedom Day. Even though we are a few days late, it is not too late to acknowledge those people who tell our stories.

I started my career in the journalism space many years ago when I was still at the university. I was an intern at the *Weekly Advertiser*. It was a free publication of the Nation Media Group. It was given out free the same way we are giving out the *People Daily* newspaper free today. It carried out a lot of advertisement. Our job was to put out features and stories that would make people grab it on the streets. Later, I worked with Wahome Muchiri when he pioneered one of the first talk show programmes in Kenya; *Up close and Candid*. I was one of the researchers on that show.

Mr. Speaker, Sir, I hail the journalists in Kenya and all those who are involved in that space who have despite lots of frustration put their lives on the line to ensure that we get to hear the stories of what is going on in this country.

Mr. Speaker, Sir, although in the past we had issues like the Artur brothers that invaded some of the media houses, we have not seen aggressive Government interference with the rights and freedoms of the media. I would like to thank and congratulate the Government for that, even though there is still some salient suppression. For instance, if the Government decides not to advertise with some of the major media houses, then it is a way of crippling and killing them without violence. As they said, peace is not just the absence of war.

So, even though we are not seeing the Arturs and the Armenians invading media houses, the Government should still ensure equitable distribution of advertising revenues to the major media houses.

Mr. Speaker, Sir, I hope in the next Parliament, we shall take stock of the achievements of *mygov.go.ke*, which was one of the innovations the Government came up with to centralise advertising and reduce the expenditure on advertising across the Government. We will need to check whether it has resulted in killing of media houses or brought about efficiencies that have helped media houses.

Mr. Speaker, Sir, we cannot ignore extrajudicial killings of journalists. Sen. Faki here from Mombasa has been the voice of this House on extrajudicial killings. Many a time, it is not just human rights activists. Sometimes it is journalists who disappear without trace or notice. In my county, there was a highly publicized matter of the killing of a young lady. One of the media persons who was involved in that has never been seen to date. We need to protect our journalists from that.

Finally, Mr. Speaker, Sir, the media industry must prepare itself for the digital disruption. Just the other day, Charles Onyango-Obbo, one of the most acclaimed

journalists from the region, talked about the disappearance of the new stand as a result of the COVID-19 pandemic.

If you reflect, you can no longer get the *Daily Monitor* and the *New Vision* from the corners that you could get them here in Nairobi. If you are looking for the *The Economist*, there are probably just four or five places you can get them in the entire Nairobi, yet a few years back, you could get it at the Norfolk, Village Market, Yahya Centre and several petrol stations.

Mr. Speaker, Sir, our journalist friends must be prepared for that and know that everything is going digital. Those people we see on television must also be prepared. Already the television antennae has disappeared. When we were young and Gor Mahia FC and AFC Leopards were playing a match, we would be sent to the roof to align the antennae towards Ngong Hills or towards the direction where the Kenya Broadcasting Corporation (KBC) was transmitting from. Nowadays, young people do not have that luxury of being the centre of attention when there is a serious game going on.

We must prepare ourselves for the disappearance of the radio set. The radio set actually has disappeared because even in the village, the fishermen listen to radio using their mobile phones while in the lake waters.

We must prepare ourselves for the advent of citizen journalism, where citizens tell the story themselves. The risk of citizen journalism is that sometimes it is difficult to separate propaganda from the truth. It is difficult to separate fake news from actual professional journalism and reporting.

I think it was Ochieng who said “I accuse the press.” Despite all these, there are still issues that we must be candid with our journalists. We agreed with them to self-regulate, but despite that, we are still seeing the media abusing the agenda-setting role. Everyday when you wake up, you find headlines about opinion polls that are meant to set the agenda which is meant to provoke debate. Let them allow the politicians like Sen. Wambua to set the agenda, not the media houses themselves.

Mr. Speaker, Sir, finally, the issue of brown envelope journalism is a disease that has refused to leave. However, I believe that that disease will be solved once Baba the 5<sup>th</sup> becomes a reality.

I thank you.

**The Speaker** (Hon. Lusaka): Sen. Wambua, please, proceed.

**Sen. Wambua:** I thank you, Mr. Speaker Sir, for this opportunity to add my voice to the Statement by Sen. (Dr.) Musuruve on the World Press Freedom Day.

It is worth noting that yours truly is a journalist by training and practice in this country. I would like to join my colleagues both locally, in the region and across the globe, to celebrate this day that is celebrated on 3<sup>rd</sup> of May. We are a bit late, but it is never too late.

Mr Speaker, Sir, I will begin by calling upon every journalist in this country to take note of the cardinal principle that a free media is a nation talking to itself. The responsibility of a journalist who works in any media house, whether electronic, print or virtual, has a duty to inform, educate and entertain. Anything else beyond that cardinal principle becomes abuse of the media space.

In this country, there is one thing that we, as journalists, have fought so hard for. That is the issue of regulation of the media space. It is only in the media industry that other people that are not journalists would want to come in and regulate it. You will never see a journalist going to an association of medics, teachers or lawyers and try to regulate their operations.

This far, I would like to applaud the Government because I rarely do so. I think it has done well as far as opening the media space in this country and allowing a measure of self-regulation. However, the problem that we are faced with is two-fold. First, is the issue of self-censorship where individual journalists fear publishing or broadcasting certain stories for reasons that are not directly related to the public right to know. The other challenge that we face today in the media space in this country is quite in line with the theme of this year's World Press Freedom Day, which is 'Journalism Under Digital Siege'.

Mr. Speaker, Sir, as I conclude my contribution, journalists and media houses must come to terms with the reality that the media space as we knew it is shrinking and a lot of it moving to the phone. Therefore, there is need for innovation by media houses to know that it does not make any sense these days to get a story and hope that you break that story the following day in a newspaper.

Media houses and journalists must invest heavily in investigative journalism. Otherwise by the time newspapers come out the following day, or by the time it is two hours to prime time news, the story that you wanted to sell or publish will have already been spread across the nation through the phones. We

Lastly, Mr. Speaker, Sir, this is important, especially in Kenya, that we must continue to draw the line in media houses between commercial interests and the right of the public to know. I know of many cases where journalists have been unable to publish well-researched investigative pieces to protect commercial interests because some organisations and institutions have huge budgets for advertising.

For journalism to play its rightful role in this nation, that line must be clear, that there must be a difference between commercial interests of a newsroom and the public right to know which is held by practising journalists.

Mr. Speaker, Sir, I support the Statement.

## COMMUNICATION FROM THE CHAIR

### VISITING DELEGATION FROM MACHAKOS COUNTY

**The Speaker** (Hon. Lusaka): Hon. Senators, I have a communication to make. Sen. Pareno, please, take your seat.

Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon of visiting former university students who are residents of Machakos County. They are at the Senate for a one-day study tour on the request of the Senator of Machakos County.

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Hon. Senators, in our usual traditional of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

I thank you.

Sen. M. Kajwang' you may proceed.

**Sen. M. Kajwang':** Mr. Speaker, Sir, as is the traditional of this House, I join you in welcoming the students from Machakos County. The only problem is that we cannot see them.

**The Speaker** (Hon. Lusaka): They were up here in the Public Gallery.

*(Members consulted loudly)*

**Sen. M. Kajwang':** Thank you, Mr. Speaker, Sir. In that case, I join you in welcoming them and in congratulating the Senator for Machakos County who is one of the newest entrants to this House for inviting these students to this House.

I believe and pray that either of them sitting in that Gallery will one day be sitting on the Floor of this House and will be addressing the nation from the Floor of this House.

*Karibuni.*

**The Speaker** (Hon. Lusaka): Thank you so much. Sen. Farhiya, please, proceed.

**Sen. Farhiya:** Thank you, Mr. Speaker, Sir. I also join you in welcoming the delegation of students from Machakos County. Let them know that they have a great Senator in this House who over-represents them. In fact, she does a lot of contribution and oversight on the counties.

It is my request on behalf of the Senator for Machakos County that when the election comes, you support her in getting back to this House because she does a great job.

I thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Sen. Wambua, you may speak.

**Sen. Wambua:** I thank you, Mr. Speaker, Sir, once again and I would like to join you and my colleagues to warmly welcome the visiting delegation of former university students from Machakos County. I do this on my own behalf, and on behalf of the great people of Kitui County. I stand in the gap for Sen. Kavindu Muthama to welcome them.

As Sen. Farhiya has alluded, Sen. Kavindu Muthama is the latest elected Senator in this House. She has been here for barely one-and-half years. During that short stint, she has distinguished herself as a true servant of the people of Machakos County.

My message to the people of Machakos County, through the delegation that has come, is that you please find it in your heart to give Sen. Kavindu another chance to serve you in this Senate.

I thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Sen. Faki, you may proceed.

**Sen. Faki:** Asante sana, Mhe. Spika. Ninajiunga na wewe kuwakaribisha wageni kutoka Machakos katika Seneti. Pia, tunampongeza Seneta wenu Sen. Kavindu Muthama kwa kuwaalika ili muweze kuona vile Bunge la Seneti linafanya kazi yake.

Sen. Kavindu Muthama ni makamu wa Mwenyekiti wa Kamati ya Delegated Legislation na anafanya kazi nzuri sana. Kwa hivyo, ni wajibu wetu sisi pia kumuunga mkono wakati ana jambo lake.

Vile vile anapokwenda kujiunga na Wakenya wengine katika kushiriki katika uchaguzi mkuu ujao wa tarehe tisa mwezi wa nane mwaka huu, tunamtakia kila la heri. Tunaomba wakaazi wa Machakos mmrejeshe tena kwa sababu amefanya kazi kwa mwaka mmoja pekee na kazi yake ni nzuri.

**The Speaker** (Hon. Lusaka): Thank you, Sen. Faki.

Let us now move on to the next Order. We have a statement by Sen. (Dr.) Musuruve online.

## STATEMENTS

### COMMEMORATION OF MOTHER'S DAY

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for giving me the opportunity.

I rise pursuant to Standing Order No.37(1) to make a Statement on a matter of general topical concern namely Mother's Day.

Celebrations of mothers can be traced back to the ancient Greeks and Romans who held festivals in honour of the mother goddess Rhea and Cybele. However, the origins of Mother's day as we now know, it dates back to the 19<sup>th</sup> Century. It can be traced back to 1907 when Anna Jarvis wanted to mark the death of her mother Anne Reeves Jarvis, an artiste who cared for injured soldiers from both sides during the American Civil War. Following her mother's death in 1905, Anne Jarvis conceived of Mother's Day as a way of honouring the sacrifices mothers made for their children.

Mr. Speaker, Sir, the first official Mother's Day Celebration was held in Grafton, West Virginia in May 1908. After initial success at the local level, Jarvis set her sights on making the day a national affair.

She argued that American holidays were too biased towards male achievement and initiated a region campaign to push for the cause to celebrating mothers. By 1912, Mother's Day was recognized in towns and states across America. In 1914, it was officially established as a federal holiday when President Woodrow Wilson signed an Executive Order that declared the second Sunday of May be a national holiday in the United States of America (USA).

Since then, this holiday has been celebrated in many countries around the globe. The day is thus celebrated by honouring the mother or matriarch of the family and individuals that are mother figures in society. It is also a celebration of the special role of motherhood as well as maternal bonds and the influence of mothers in society.

Mr. Speaker, Sir, the importance of motherhood cannot be overstated and disrespected even in religion. In certain traditional branches of Christianity, the holiday is strongly associated with revering the virgin Mary. In many Eastern Catholic and Orthodox churches, a special prayer service is held in honour of the Virgin Mary.

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In Islam, there is no concept of Mother's Day, but the Quran teaches that children should give priority to loving their mothers over their fathers. Mother's Day is equally celebrated in Hindu Religion, especially in Nepal where mothers are honoured with special foods.

As we mark this day, I would like to emphasize that mothers play an integral part in our lives. A mother's love throughout the lifespan remains unconditional and she stands by our side like a strong pillar. Mothers can raise families even if they are alone and make any house beautiful and loving with their presence.

I celebrate all mothers who are widows and have struggled to keep their families together, educated their children singlehandedly and have not abdicated their motherly role. These mothers have chosen to be there for their children and have played a dual role of being both a mother and a father at the same time in equal measure.

In the same breadth, I celebrate my mother, Damaris Kavuyayi, who has been a pillar of our family since 2005 when our father Mzee Inima passed on. She has remained steadfast in the home and has held us together even in her aging moments. We continue to cherish her presence and we wish her a long life.

Mr. Speaker, Sir, I celebrate mothers of children with disabilities who have selflessly been the pillars of their children. Some of them have been divorced, isolated and discriminated against together with their children, but they continue to be there for them. Some mothers who have children with disability have literally left their jobs to take care of their severely disabled children.

Worth celebrating too is a category of mothers who are abandoned by their loved ones because they have a disability and their children and loved ones are ashamed of them. Some of them are on the streets of major towns begging in order of eke a living.

I also celebrate single mothers who have children, but are not married for whatever reason. They take care of their children singlehandedly and go through many struggles in life to ensure that these children have all the basic needs in life.

A mother's role in any family is clearly seen as that of a nurturer. Her responsibility and role begins from the onset of pregnancy all the way through maintaining a human life in the womb and eventually giving birth to the child with possible risks of losing her life. The mother is the light of the family. She takes care of the husband, children, home and household chores.

Together with their husbands, they help raise the children in instilling values as well as providing the basis in life.

As we celebrate this day in the years ahead, I would like each one of us to take time and reflect on the ways we have treated our mothers. I urge every Kenyan to shower their mothers with love and appreciation. For those who have mothers who are aged and less productive economically, I urge them to ensure that they provide for their mothers financially as well as physical wellbeing. For those with mothers who are ailing, I urge them to ensure that their mothers have medical provision and a tender loving care support system.

Mr. Speaker, Sir, I thank you for this opportunity and I wish a happy belated Mother's Day to everyone.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Faki.

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**Sen. Faki:** Mr. Speaker, Sir, I had not pressed the button. Thank you.

**The Speaker** (Hon. Lusaka): Next Statement.

THE STATUS OF MULTIMILLION SHILLING  
WATER PROJECT IN VIHIGA COUNTY

**Sen. Khaniri:** Mr. Speaker, I rise pursuant to the provision of Standing Order No.48(1) to seek a Statement from a Standing Committee on Lands, Environment and Natural Resources on the status of multi-million shillings water project in Vihiga County.

In the Statement, the Committee should-

(1) Disclose the terms of engagement between the County Government of Vihiga and the contractor, stating the terms of the project, the stipulated timeframe for its completion, the construction status so far as well as the expected date of handover;

(2) State the reasons for the delay in completion of this project which was launched in July, 2018;

(3) State whether the project was tendered, providing details of who won the award; and,

(4) Provide a detailed breakdown of how the Kshs2 billion provided by the Government of Belgium to the County Government of Vihiga for the completion of the project, has been utilized.

Mr. Speaker, Sir, this is a very important Statement for the people of Vihiga. We are aware that the Government of Belgium sponsored this project and gave a total of about Kshs2 billion for its implementation. Four years down the road, the people of Vihiga still do not have water.

Mr. Speaker, Sir, it is absolutely important for the Committee on Land and Natural Resources to give us a response in the stipulated time so that the people of Vihiga can know exactly where they stand in terms of provision of clean piped water which was fully paid for.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Thank you very much, Sen. Khaniri, for that very informative Statement. I am sure they will give a response so that the people of Vihiga can enjoy the water and know exactly what happened.

Next Statement. I can see the Chairperson of the Standing Committee on Energy is not here. Therefore, the Statement is deferred.

ACTIVITIES OF THE COMMITTEE ON ENERGY

*(Statement deferred)*

Hon. Senators, the Chairperson of the Standing Committee on Health is not here. The Statement is deferred.

ACTIVITIES OF THE COMMITTEE ON HEALTH

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*(Statement deferred)*

The Chairperson of the Standing Committee on Information and Technology is not here. The Statement is deferred.

ACTIVITIES OF THE COMMITTEE ON  
INFORMATION AND TECHNOLOGY

*(Statement deferred)*

The Chairperson of the Standing Committee on Labour and Social Welfare is not here. The Statement is deferred.

ACTIVITIES OF THE COMMITTEE ON  
LABOUR AND SOCIAL WELFARE

*(Statement deferred)*

The Chairperson of the Standing Committee on Land, Environment and Natural Resources is not here. The Statement is deferred.

ACTIVITIES OF THE COMMITTEE ON LAND,  
ENVIRONMENT AND NATURAL RESOURCES

*(Statement deferred)*

The Chairperson of the Standing Committee on National Security, Defence and Foreign Relations is not here. The Statement is deferred.

ACTIVITIES OF THE COMMITTEE ON NATIONAL SECURITY,  
DEFENCE AND FOREIGN RELATIONS

*(Statement deferred)*

The Chairperson of the Standing Committee on Tourism, Trade and Industrialization is not here. The Statement is deferred.

ACTIVITIES OF THE COMMITTEE ON TOURISM,  
TRADE AND INDUSTRIALISATION

*(Statement deferred)*

The Chairperson of the Standing Committee on Roads and Transportation is not here. The Statement is deferred.

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ACTIVITIES OF THE COMMITTEE ON  
ROADS AND TRANSPORTATION

*(Statement deferred)*

The Chairperson of the County Public Accounts and Investments Committee is not here. The Statement is deferred.

ACTIVITIES OF THE COUNTY PUBLIC ACCOUNTS  
AND INVESTMENTS COMMITTEE

*(Statement deferred)*

Next Order.

**BILL**

*Second Reading*

THE COUNTY ALLOCATION OF REVENUE BILL  
(SENATE BILLS NO. 1 OF 2022)

**Sen. Farhiya:** Mr. Speaker, Sir, I beg to move that the County Allocation of Revenue Bill (Senate Bill No.1 of 2022) be read a Second Time.

The County Allocation of Revenue Bill was introduced into the Senate Pursuant to the provisions of Standing Order No.182 (1) of the Senate Standing Orders. The Bill is sponsored by the Standing Committee on Finance and Budget.

The Bill was published on 8<sup>th</sup> of April, 2022 and subsequently tabled in the Senate for First Reading on 27<sup>th</sup> April, 2022. Thereafter, the Bill was committed to the Standing Committee on Finance and Budget for consideration pursuant to Standing Order No.140 (1) of the Standing Orders.

Mr. Speaker, Sir, Article 218(1) (b) of the Constitution provides that at least two months before the end of each financial year, there shall be an introduction in Parliament of a County Allocation of Revenue Bill which shall divide among the counties, revenue allocated to the counties, county level of government on the basis determined according to the resolution in force under Article 217.

The County Allocation of Revenue Act (CARA) 2022 devised among the counties the equitable share of the national revenue that is allocated to the county level of government as reflected by the annual Division of Revenue Act (DORA) for the Financial Year 2022/2023.

Mr. Speaker, Sir, upon the committal, the Committee invited members of the public and Stakeholders *inter alia*, the National Treasury, Commission on Revenue Allocation, Council of Governors, the County Assembly Forum, the Society of Clerks-at-the-Table (SOCATT) to submit their comments on the Bill. The Committee also invited non-stake actors who provided quite insightful views regarding the content of the Bill.

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The principle object of the Bill is for allocation among counties the share of revenue that is annually allocated to the county level of government for the next Financial Year 2022/2023 and to facilitate the transfer of county allocations from the Consolidated Fund to the respective county revenue funds.

Pursuant to Article 217 of the Constitution, the Senate in September, 2020, approved the third basis of revenue sharing among counties of the national revenue allocated to the county level of government.

Further, Article 96(3) of the Constitution require that the Senate determines the allocation of the national revenue among counties. The Bill provides the equitable allocation of revenue to counties based on this basis.

The Bill allocates Kshs370 billion among counties as this is the equitable share in DORA for Financial Year 2022/2023. The allocation among counties is set in the first schedule to the Bill.

Mr. Speaker, Sir, the Second Schedule outlines county governments budget ceilings for recurrent expenditure in Financial Year 2022/2023. This provision is meant to enforce adherence to Section 107(2) of the Public Finance Management Act, 2012.

The Bill proposes budget ceilings on recurrent expenditure in the Financial Year 2022/2023. The county executives' recommended ceiling is at Kshs28,486,731,674 and county assemblies' ceiling at Kshs34,493,121,001.

The Committee extensively considered the recommendations of the Commission on Revenue Allocation (CRA), requests by the County Assemblies Forum (CAF), Society of Clerks at the Table (SOCATT) and various county assemblies on the county level of Government recurrent expenditure ceilings for the Financial Year 2022/2023.

In considering the stakeholders' submissions, the Committee made several critical observations. First, the increase in the county executive recurrent expenditure ceiling from Kshs26.70 billion approved in the Financial Year 2021/22 to proposed Kshs28.48 billion for Financial Year 2022/23 is mainly due to the need to provide operational costs for the office of the County Attorney.

The decrease in county assembly recurrent expenditure ceiling from Kshs35.65 billion which was approved in the Financial Year 2021/22 to proposed Kshs34.49 billion for Financial Year 2022/23 is due to-

The salaries and associated benefits to Members of County Assemblies (MCAs) of the next assemblies will start at the base. This means that this is their first year of employment and the progressions will be less than the current MCAs who are at level five. The difference is between salaries for all the county assemblies from the first year to the five years as per this current financial year.

The determination of salaries of county assembly staff which includes salaries, pension and allowances by CRA was based on optimum numbers instead of the actual number of employees.

Notwithstanding, the decrease in the county assembly recurrent expenditure ceiling, the provision for training and induction of new MCAs have been adjusted from five to 10 per cent of the total personnel emoluments.

The Kenya Revenue Authority (KRA) penalizes county governments for a delay in filing Pay As You Earn (PAYE) returns, even though the delay is occasioned by late

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payment of employees' salaries due to delay in disbursement of the equitable share by the National Treasury.

As the term indicates, PAYE is pay as you earn. You cannot pay taxes where no salary was paid because of late disbursement by the National Treasury. The arms of Government should speak to each other because KRA is a department of the National Treasury. Therefore, they should speak to each other so that no county assembly is penalized highly because of non-remittance.

PAYE as the name suggests becomes due when people have been paid their salaries. We have requested SOCATT to petition this House, so that the matter can be dealt with conclusively by the Committee on Finance and Budget.

A number of county assemblies had requested for upward adjustments of the recurrent expenditure ceiling to allow certain spending. However, it was noted that some of these spending would be classified as development expenditure. Many counties requested for the increase of the recurrent expenditure ceilings. When the Committee on Finance and Budget analysed those expenditures critically, we discovered that they were more of development nature than a recurrent cost.

Mr. Speaker, Sir, Garissa County Assembly requested to increase its recurrent expenditure ceiling by Kshs20 million. They said this was to enable them construct a chamber and restore equipment destroyed by fire.

Nairobi City County Assembly requested to adjust their recurrent expenditure ceiling to enable leasing of MCAs offices within the proximity of the assembly precincts. However, this expenditure would be quite expensive in the long run. Those were not accepted by our Committee.

The SOCATT requested to adjust the recurrent expenditure ceiling for county assemblies to provide for additional allocation. This additional allocation would cater for public participation, independent from the operations and maintenance. The Committee decided that this would only be achieved if mechanisms are put in place to ascertain the actual spending. In that case, the estimates were not clearly tabulated to determine whether those would be the correct estimates of the expenditure.

The Committee recommends that the House approves the Bill with the amendments, to the Second Schedule adjustments of county assemblies' recurrent expenditure ceilings by additional Kshs83 million to enable assemblies compensate the actual numbers of employees.

To minimize operational costs, county assemblies renting offices for MCAs while within the county assembly precincts should plan to construct or acquire such offices.

County governments should notify KRA of late payments of salaries due to delayed disbursement of equitable share. This is as a means to mitigate the imposition of penalties for delay in filing of PAYE returns.

In conclusion, the Committee acknowledges all stakeholders and members of the public who made insightful contributions and recommendations to the Bill. Particularly, the Committee acknowledges the following stakeholders who have been quite instrumental in the operations of the Committee: the National Treasury, CRA, CoG, CAF; SOCATT, the Institute of Certified Accountants of Kenya (ICPAK), the

International Budget Partnership (IBP- Kenya Chapter), and, The Institute of Social Accountability (TISA).

In addition, the Committee thanks the Offices of the Speaker and Clerk of the Senate for the support extended to it. Further, we appreciate the Committee secretariat for facilitation in the execution of its mandate.

Mr. Speaker, Sir, I appreciate all Members of the Committee for their patience, sacrifice and commitment to public service. This has enabled the Committee to complete the assigned task within the stipulated time.

I beg to Move and request Sen. M. Kajwang' to second.

**Sen. M. Kajwang'**: Mr. Speaker, Sir, I rise to second and support the County Allocation of Revenue Bill that has been moved by the Senate Majority Whip.

When this House passed the Division of Revenue Bill which was later assented to, we agreed that county governments would share Kshs370 billion. Getting to Kshs370 billion was not a walk in the park. It caused this House several weeks of deliberation. It caused this House many days of brinkmanship to force the national Government to cede ground to county governments.

Mr. Speaker, Sir, if you recall county governments were stuck at Kshs320 billion. When we got into the debate on the third basis for revenue sharing, we realized that they could get more. As a result of the fight of this House, counties got Kshs50 billion more.

It is noteworthy that the allocation to counties has remained stagnant in two financial years. That has been explained by the difficulties that the economy faced during the COVID-19 pandemic and the post-COVID-19 recovery phase, the pressure on debt and other fiscal deficit matters.

If this House passed the Bill that was proposing to amend the Constitution to allocate at least 35 per cent of national revenues to county governments, then we would be talking of a completely different amount. We would be talking of figures close to Kshs500 billion going to counties.

This money we are sharing today amongst the 47 counties will go to counties at a time when we are in transition. These are transitional allocations because the financial year will start in July and elections will be held in August. Therefore, the new governors who will run the counties will get to work in August or September having had the previous governors manage this budget for one or two months.

It is important that the Committee on Finance and Budget and this House pronounces itself on the matter of pending Bills. If all counties have received their allocations, why should any county hand over pending bills to another government?

In the few days remaining in the life of this House, there are two things that we must deal with. These are the issues of pending bills and delayed remittances to counties. We should not leave this House when there is any money that is owed to a county government. That is against the Disbursement Schedule that this House has passed. We should not leave this House when there is a county that is still reporting billions of shillings in pending bills.

When I read the report by the Committee on Finance and Budget, even county assemblies now have pending bills. I saw Busia County Assembly saying their ceiling needs to be raised to take into account certain pending bills coming from the county

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assembly. Why on earth would a county assembly have pending bills when the county assembly makes requisitions on the basis of a budget that has already been approved? We will do this House and the nation great service if we sort out this matter.

Last week, we had a meeting with contractors in Homa Bay County. They are extremely concerned that the county government is shutting down without paying their pending bills some of which are running into billions of shillings. The fear is when a new administration takes over, the first thing they do is to set up a taskforce to verify the pending bills of the previous government which takes time.

If a contractor was seen to have been close to the outgoing governor, chances are that they will not be paid. We have seen this and we now have experience. We have seen it from the first transition. Let this House not allow that situation to apply in the second transition for county governments.

This House has a responsibility to oversight the Kshs370 billion that we are proposing to divide amongst county governments.

Mr. Speaker, Sir, if we were to get a scorecard on our experience in oversight of financial matters, probably it would not be a favourable one. All of us here, as Senators, every time we go to the counties to ask for a fresh term or mandate, we will be asked what we did as far as financial management in our respective counties is concerned.

I have been told that this House has been elegant in representation, speaking good English and in legislation. However, I am told it has failed Kenyans when it comes to financial oversight. That is because of the inadequacy of the tools that we possess as a House.

I propose that going forward in the next Senate, let us go for value for money based oversight rather than transaction based oversight. For the last 10 years, we have been looking at crunching numbers and transactions and asking why they are in the Integrated Financial Management Information System (IFMIS) or not.

We have been looking at procurement processes and asking why they procured bic ball pens when they could have procured other types of pens. That is not the business of this House. That is the business of the auditors in the counties and every county has internal auditors. That is the business of internal audit committees in county assemblies.

This House must come back refreshed and reenergized to start asking these questions. With this allocation, we will push the allocation to Kshs2.7 trillion. We must ask ourselves how much of that money has gone into health and not just payment of salaries. It should be the infrastructure, systems and services involved in healthcare provision. How much of that has gone into roads or agriculture?

My colleagues who will come back to this House, I plead that let that be the focus of our oversight. Rather than just calling our governors here to ask them why numbers are not adding up, let us query them on what they have put in the devolved functions and what outcome and impact it is making in the lives of our people.

Earlier in the term of this House, we came up with a fiduciary risk report or approach to look at some of these issues coming from the counties. We did the first fiduciary risk report. I hope that the next Senate will continue with that tradition. That will give us a holistic view on how this Kshs370 billion is making a difference in the lives of the people in the counties.

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There are ceilings that have been proposed for county assemblies. I am concerned. Even though I second and support this Bill, in the Public Finance Management Act and the subsequent regulations, we had said that county assembly allocation should not exceed 7 per cent of the equitable share due to a county government. With time, county assemblies have petitioned the Senate. They have cried out against county executives that have been seemingly denying them funds to do things.

If you look at what has been proposed as a ceiling for county assemblies, it is close to 10 per cent of what is going to county governments. In some counties, it is close to 13 per cent. More money should go to development. Legislation and representation is important. However, at what point did we creep from 7 per cent all the way to 13 per cent?

There is the Peter's principle that says work expands to fit the time allocated. It is the same case with money. The more money you have, the more activities you want to undertake. We must revisit this issue of ceilings. In some county assemblies, it has been the reason for constant fights and constant ouster of clerks and speakers.

At one point, the Speaker of the Senate made a decision to go do an outreach to county assemblies. Homa Bay County was one of the first county assemblies the Speaker had agreed to visit. When it came to visiting Homa Bay County, there was a fight. The Speaker was impeached and Members were punching each other because they were fighting for the money that was allocated to them.

What the Senate has done is to introduce a ceiling that leaves such a big surplus that whoever is the Speaker or the Clerk becomes an instant billionaire if they are not checked properly.

I hope that the next Senate will look at these ceilings. I want to thank the Committee on Finance and Budget for not budging when it comes to the ceilings. We as, a House, have always supported the county assemblies. Is strengthening the county assemblies' equivalent to giving more money? I do not believe so.

Mr. Speaker, Sir, of the 47 county assemblies, it does not make sense for each county assembly to attempt to replicate the Senate. I want to put the proposal that in our regional economic blocs, county assemblies must start looking at themselves from that perspective. If you are going to get some unique skills, for example, fiscal analysts or forensic auditors, you probably will not get 47 of them.

You could organize or group yourselves so that some of those skills that are hard to come by like legislative drafters, for example, we do not have enough legislative drafters in this country to serve the 47 county assemblies and the National Assembly. So, it is foolhardy to say each county assembly wants an allocation that can make it look and function like the Senate. That has always been the argument for increased allocation for county assemblies. Strengthening county assemblies is about the people, the systems and the capacity to deliver. It is not just about money.

Mr. Speaker, Sir, as I support this Bill, I would like to mention it has proposed to allocate to Homa Bay County close to Kshs8 billion. I am glad to note that because when I took over as the Senator for Homa Bay County, in the Financial Year 2014/2015, Homa Bay County was only getting Kshs4.9 billion.

If my scorecard was anything to go by, is that every single year that I have sat in this House and I have faithfully participated on the debates on Division of Revenue Allocation Bill (DORA) and on County Allocation of Revenue Bill (CARA); the two most important pieces of legislation for Members of this House; the DORA and on CARA and the basis for allocation for revenue. I have sat here and all the Members I can see in this House today have sat faithfully to ensure that the voices of their constituents are heard.

Mr. Speaker, Sir, with that I would have expected that the indicators around maternal mortality, improvement of health, access to markets, agricultural productivity would have increased. We must find a framework so, that when we are getting some of these reports from the Auditor-General, it is also accompanied by a Report from the Kenyan National Bureau of Statistics (KNBS) to see how some of those indicators have responded.

Mr. Speaker, Sir, one thing worries me. Today, there are many political parties in Kenya. Every region in this Republic has a governor who owns a party. This is not hearsay. If you go to Rift Valley, Gov. Lonyangapuo and the former Governor of Bomet County, Hon. Isaac Ruto, are leaders of parties. If you go to Western Kenya, the Governor of Bungoma County is a leader of a party. If you go to Nyanza, Gov. Obado is a leader of a party. If you go to Central Kenya, Gov. Wairia is a leader of a party. In Eastern, it is even worse because Gov. Kiraitu, Gov. Wambora, Gov. Ngilu, Gov. (Prof.) Kibwana and Gov. Mutua all have got political parties. If you go to the Coast, Gov. Kingi is a leader of a party. In North Eastern, Gov. Roba is also a leader of a party.

Mr. Speaker, Sir, what is it that is making governors who previously were just rank and file members of other political parties become political party leaders? It is because they are looting the money that we are sending to the counties. It is because we have given them the space to use this money for things that are not devolution related. We are giving them money to use for political mobilisation.

That is why many of them want to sit on the table when national coalitions and formations are being made. They keep listening and benchmarking. They want to find a space where their corruption shall be entertained. When they hear that the conversation in a coalition is not that, that favours corruption they switch allegiances. They will be in a marriage today, divorce tomorrow and marry again. It is because they are looking for a House that will not haunt or follow them. This phenomenon is worrying.

Mr. Speaker, Sir, how many Senators here have got political parties? Does it mean that the Senators in this House have got no political gravitas? Does it mean that the Senators in this House are incapable of political mobilisation?

This is why the nation thinks this Senate has let them down when it comes to oversight of the resources that go to counties. Some governors have got choirs and others are inspecting guards of honour as if they are the Presidents of the Republic of Kenya. All this is financed by this Kshs370 billion that we are sending out to counties today.

Mr. Speaker, Sir, when we come back to this Senate for those of us who will be lucky enough to be elected back here, we need to address some of these issues and make sure we tighten the loopholes that exists. We should make sure that those who will

become governors are not other gods or demigods. They should be people who will be driven to serve the people that have voted them into office.

I pray that when we come back to this House, we will have a sober conversation on how to increase the allocation to county governments. We have talked of making it 35 per cent of national revenue, I still believe that 35 per cent of national revenue is not too much for devolved functions. If we have truly devolved roads, health, agriculture and all those functions in the Fourth Schedule, 35 per cent of the national revenue is not even enough to spur that kind of broad based grass root productivity that we so desire.

When we come back to this House, we could have stricter scrutiny on own source revenue. Unfortunately, some of the decisions of the courts have tied the Senate's hands when it comes to oversight of own source revenue.

I want to congratulate the various Committees of the Senate, particularly the County Public Accounts and Investment Committee (CPAIC) led by Sen. (Dr.) Ochillo-Ayacko, Sen. (Prof.) Ongeru and I was also there before. We have insisted that any amount of money that appears in a counties consolidated financial statements, the Senate shall oversight it. In the counties consolidated financial statements we have got equitable shares, conditional grants and own source revenue.

We must always stand for the right thing. This House has got a role when it comes to oversight of own source revenue. There is no other Republic called 47 counties. There is one Kenya and these 47 counties operate in this one Republic. One House that represents all these counties is the Senate.

Mr. Speaker, Sir, how can we optimize the own source revenue? Some governors have taken very lazy approaches. Lazy approach would mean that through their finance Bill, they want to increase their taxation rates. If they are going to increase the taxation rates, they should also increase the rate at which they are providing services. Why should I pay more tax in Nairobi City County if garbage is still all over the place? Why should I pay more taxes in Kisumu City County when perhaps I cannot get access to clean water? Why should I pay more tax, property rates in Homa Bay County when I cannot get a road for a truck bringing cement to my construction site?

I want encourage our third generation of governors to focus on improving productivity. If we improve and enhance productivity in our counties, then there will be more money flowing and there will be more to tax. I want to give one example. In Homa Bay County, we have allowed a private player to establish a fish cage plant. What this person does is to put cages in the lake, puts fish fingerlings and he takes care of them until they mature. They are applying science in that process. Within a short time, these people are doing a revenue of Kshs3 billion every year. That investor is employing close to 800 persons, most of them women who are involved in removing the scales, cleaning the fish and packaging them for distribution.

Mr. Speaker, Sir, even if you look at Kshs3 billion and you say that the county was to impose a small tax of one or two per cent that is money the county could use to provide health services. Let us ensure that there is productivity. There should be economic activity in our counties. Let us tax on the basis of increased productivity rather than taxing on the basis of increased rates.

Mr. Speaker, Sir, everyone is talking of valuation rolls, rates, taxing everyone for everything. If you want to cut a tree in Nairobi City County, you have to pay something. I want to encourage those of us who are in here such as Sen.(Prof.) Onger, the distinguished Speaker and others who I believe that God listens to their prayers and who will be fortunate to run counties, that let us improve productivity in our counties.

\*\*\*The formula for revenue sharing that we spent a lot of time in this House trying to agree on, to be honest we did not get an elegant solution. I remember sitting with Sen. Wetangula at the Parliament bar and on the other side we were with Sen. Mutula Kilonzo Jnr., Sen. Sakaja. After the third round of whisky, we asked ourselves what are we fighting over. On the fourth round, we said let us agree on something and then on the fifth round we agreed on something. That is not how to write laws and come up with formula for revenue allocation. I do hope that the next Parliament will revisit that.

Mr. Speaker, Sir, I second.

**The Speaker** (Hon. Lusaka): Thank you. Before I propose the question, I encourage you to look into the counties that spend a lot of money on functions that are not devolved. There are national functions that counties are busy doing.

*(Question proposed)*

Sen. (Prof.) Onger please proceed.

**Sen. (Prof.) Onger:** Thank you Mr. Speaker, Sir, for giving me the opportunity also add my voice on this rather very important subject of the CARA which is a subject of debate this afternoon.

One of the most important things is that this Senate as a whole and through the Committees, we have successfully fought for the allocation of funds from the national Government to county governments at a respectable rate and position.

We have taken positions that have sometimes put us at loggerheads with the Executive and others but at the end of it all, county governments have been beneficiaries of huge sums of money.

I remember we were haggling over allocation of Kshs310 billion in the Division of Revenue Bill. We had a heated debate and it was raised to Kshs370 billion finally, notwithstanding conditional grants that are not included in the overall revenue shared between the national and county governments.

One of the most interesting and intricate ways is that the Committee on Finance and Budget has analysed and allocated funds by basing the equitable share among the 47 county governments using the formula that was approved by Parliament in September, 2020. It is arrived at by using one-half of the equitable share allocated to counties in Financial Year 2019/2020.

It is very intricate because it is from one year and goes back again to the other year. I believe they were looking for the most suitable way of balancing it out. Therefore, the balance of Kshs211 billion out of Kshs370 billion, after having netted out Kshs158,000,025,000 to be equitably shared among all the counties equally, they have

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netted out Kshs211,000,075,000. For the population, it is 18 per cent, health is 17 per cent and agriculture is 10 per cent. I will pause there.

If you look at the population, some of the counties are highly populated like Kisii, Nyamira, Homa Bay and Vihiga. They may not have a geographical landmass but they are heavily populated.

Unfortunately for us, some of our population is migratory. They may be counted in Kisumu when actually they stay in Kisii, or they may be counted in Nairobi yet they stay in Kisii most of the time. At the time of the census, they might have been captured when they were either in Nairobi, Mombasa, Nyeri, Kitale, Eldoret and other places.

Therefore, we lose out as a county when it comes to population dynamics. I have my eyes on the ball to vie as the governor of Kisii County. For avoidance of doubt because there are those who are thinking that I am not going to be on the ballot, I will definitely be on the ballot. That should serve a warning to those peddling rumours instead of saying the truth. Sam Ogeri, through the Democratic Action Party of Kenya (DAP-K) will be on the ballot.

I was saying that population is a critical factor in the allocation of resources to any county. Health is a fully devolved function but unfortunately almost 90 per cent of the budget is held in the Ministry of Health. It should be devolved to the county governments to use the funds in the health sector. Agriculture is allocated 10 per cent, urban is allocated 5 per cent, poverty has 14 per cent, land area has 8 per cent, roads has 8 per cent and basic share is 20 per cent.

Mr. Speaker, Sir, the point I am making is that this is a lot of money which should be properly planned for. For example, I have looked at what Kisii County will get. Kisii stands to gain a total equitable share of Kshs8,894,274,509. The County Assembly will have to earn 0.05 per cent of that, which is Kshs3,892,950,000.

This money is a lot and can be used to spur development and attract national and international investments to counties in order to elevate their economy and help in infrastructure development and setting up the manufacturing sector whose net effect can raise up the Gross Domestic Product (GDP) of any county and the overall GDP of the nation.

This nation's projected GDP was about 7.5 per cent. When you analyse that GDP projection, it is mainly on the infrastructure development, which is on the Expressway from the Airport to Kileleshwa and Westlands. That does not affect the common *mwananchi* who is stuck at the poverty line by practicing agriculture at home and in the urban centres.

I would like to see that kind of GDP growth and spread throughout other sectors of the economy, particularly touching the poor, whom we shall be dealing with as our sons and daughters in urban settings. We will certainly represent urban counties that need more money.

Mr. Speaker, Sir, I believe when you and I become governors, one of the things we shall be asking the Senate to do for us is to ensure speedy release of funds from the National Treasury. This has been one of the biggest headaches. The exchequer release issues have been a headache for county governors. They have literally been camping at the National Treasury in order to get money for their use.

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I suggest that one of the things that the Senate must do is to ensure that exchequer releases to the county governments are timely because they have a net effect of distorting and delaying salary payments with attendant levies like taxes and various items. This is painful to the county governments because they pay penalties which should not be there in the first place.

When they appear before the County Public Accounts and Investments Committee (CPAIC), we pin them down further. We must find a common ground of understanding so that the National Treasury releases money on a timely basis in order for them to get funds to deal with the development of other areas.

I foresee a problem but I hope it is provided for in this budget. Pending bills, which are a big headache for all governments, whether at the national or county level, must be provided for, so that we start on a clean slate. It is not fair to pass over pending bills to an incoming government without settling them. If it were possible, they should be settled in this financial year which ends on 30<sup>th</sup> June. That is less than two months from now.

If that was the case, when another financial year starts, all those who will be in office will start on a new slate, whether at the national or county level. The only thing that this Senate can do is to push the National Treasury to ensure that pending bills are settled in one way or another.

Mr. Speaker, Sir, with the county, the Council of Governors can come to an arrangement both at the National and the County level on how the pending Bills must be cleared.

With those few remarks, I support this County Allocation Bill (CAB) which eventually becomes County Allocation of Revenue Act (CARA). I sound a warning that those who receive this allocation for the next financial year should not squander it.

They should not squander whatever they have left for this financial year. They should use it for settling the pending bills and also for doing things that are within their budget, the Annual Development Plan (ADP).

I thank you Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Let us now listen to Sen. Omogeni.

**Sen. Omogeni:** Mr. Speaker, Sir, I also rise to support this Bill and congratulate members of the Finance and Budget Committee, for coming up with this Bill that will guide the allocation of money to our counties in the Financial Year 2022/2023.

The main purpose of this money - and I am making this statement to appeal to our brothers and sisters who are managing counties - is to assist counties to provide the services to the people through development project and provision of services. As Sen. M. Kajwang' has ably put it, this money is turning out to be like pocket money for our governors, which is really unfortunate.

The people who enacted the 2010 Constitution for the Republic of Kenya had expectation and hope that if we devolve some of most critical services such as health to our counties our people will access quality and affordable health care back at the counties.

However, I do not know about other counties but the reality on the ground from the County of Nyamira where I come from, is that this money has not touched the lives of

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the people on the ground especially on provision of services. If you compare teaching where we have teachers paid by the national Government in primary and secondary schools and teachers paid by county Governments for Early Childhood Education (ECD), the ones paid by county governments at the ECD level are the most miserable.

They do not have good conditions of service. Most of them are serving on contract; not on permanent and pensionable terms. They do not have the medicare and those whose contracts come to an end are never paid their gratuity. It is sad and very unfortunate.

We appeal to our chief executives at the county level to have it at the back of their mind that the money that we send them year-in, year-out, is meant to take services close to our people and to touch the lives of the people we represent.

Mr. Speaker, Sir, I will give you a sad case. On Sunday I was at home and heard of Purity Nyakundi who went to deliver at Gesima Hospital. She spent three days at Gesima Health Centre without being attended by any medical officer. By the time she was delivering, because of stress she died and also lost her baby. It is very sad.

In our community when somebody goes to give birth the community back home waits to ululate the birth, not to mourn. That is the sad situation that is prevailing on the ground that we are not even able to have sympathy even for our women, our mothers, who go to hospital to give birth. We cannot provide such a basic service to our people and it is really sad.

The main role of Senators as Sen. M. Kajwang' has ably pointed out is to ensure that we put in place a formula that ensures that all our counties are given money that can support their services. The first point of call for oversight are our Member of County Assembly (MCAs).

I have sat in this Senate where we have seen impeachments of at least three governors and in each of these cases. Without the role of MCAs invoking Article 185(3) of our Constitution there is no way this Senate would have impeached those governors. There has been this very misleading notion from most of the residents in counties that oversight is the role of a Senator.

Senators even in the US sit as judges. We sit here as judges. You cannot be the one investigating, prosecuting and passing judgement at the same time. The people who must be on the lookout, the first point of call for oversight, are our MCAs. They are the ones who pass this budget. Once we send this money to our counties the people who are going to sit down and ensure that the money is allocated for development project are our MCAs.

The people who should have committees on implementation, committees on oversight again are the MCAs. If there is any misuse of money, the MCAs should be able to take action and investigate these governors. Where there are good grounds to impeach, impeach them and send files to us as Senators to sit as judges and send home those who should be sent home.

We are approaching elections and most governors think that the money that is being sent to them should be used for campaigns. I urge that our bodies that are there to ensure that we use our money for intended purposes in a prudent way. The Ethics and

Anti-Corruption Commission (EACC) and the Director of Criminal Investigation (DCI) should be on the lookout.

We want to see action being taken from EACC and from DCI on governors who are engaged in malpractices, corruption, diversion of money that is meant to cover development projects but is diverted for campaigns,

As I conclude, we passed this Third Allocation Formula under very stressful circumstances. If there is a time I have spent in this House that was most agonising, it is when we debated this Third Revenue Allocation Formula. That was the time I was crying that my friend from Homabay, Sen. M. Kajwang' had abandoned the people of Nyamira.

I thank God that finally we were able to come together and agree that none of the counties should lose money. I thank the Senators who stood by me and the people of Nyamira, including Sen. Farhiya in ensuring that my county did not lose a whopping Kshs600 million, which I was going to lose.

Today, I am speaking as a happy person that my County of Nyamira was able to fight very hard through their Senator here, and ensure that Kshs600 million was retained by the County of Nyamira. The only request that I am making to my Governor, is that this should translate to some services and development projects that are tangible on the ground.

I support.

**The Speaker** (Hon. Lusaka): I can assure you that you are not the only one. Even the Speaker for the first time also had it very rough.

*(Laughter)*

I was threatened with impeachment. In fact, at some point, I decided to change route, because I was being waited for in a corner. I agree that this money must be used properly. They must touch and change the lives of our people in the counties.

Let us listen now to Sen. (Dr.) Ali.

**Sen. (Dr.) Ali:** Mr. Speaker, Sir. It is good that we did not go that far.

*(Laughter)*

Some of us were very annoyed those days. If we did not commit any crimes here, then we are happy and all went well. We should not forget the President who also bowed to what we wanted. Even if nothing much came out of it, all in all at least, it solved the quagmire.

All in all, at least it solved the quagmire; I was happy, Sen. Omogeni and Sen. M. Kajwang' were happy and the Speaker was not impeached. We were all winners. I am happy that that happened.

Mr. Speaker, Sir, some of us, with the help of God, are hoping that we will become governors if it works out well. However, I would not want to be associated with the type of governors we have now, who are creating and causing many problems in our counties.

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In some areas, if you check the recommendations of the Committee and the recommendations of the CRA, the monies are all allocated and there is always a purpose for where this money should go to.

You are told that there is this amount for salaries, this amount for allowances, this amount for MCAs including their political appointees; those people who are working for them; there is money for them but these things do not happen. The civil servants, the executives have allowances, there is money for maintenance. There is money for everything. However, these things are not done that way.

What shocked me is that at one time, I decided to follow up on some issues in my county and found that some people were given contracts and their names were sent to the Controller of Budget. When I went to the Controller of Budget and I got the list, I decided to follow up with IFMIS to find out how this money was paid. It is shocked me that none of the contractors or names of the companies which were sent to the Controller of Budget were paid their dues.

When I got the IFMIS printout and I compared it with the one from the Controller of Budget, I noted that only one company out of 24 was paid their money. The money for all the others was diverted and some other people were paid.

I was with Sen. Farhiya and we even went to the CID. We were told: "This is fraud. We will take action". To date, nothing has been done. I took the complaint and our letters to EACC but to date, nothing has been done.

Mr. Speaker, Sir, how do you expect Senators to just make a lot of unnecessary noise here; we fight ourselves here and we are about to kill one another, as we said, fighting for resources to go the counties but when the money goes to the counties that is what happens? It is totally misappropriated. It is very sad.

If I am lucky enough to become governor, I will try my best to make sure that that money is used according to the prescription, which is given here and in accordance to the way it is supposed to be done. For those governors who do not use the money appropriately, the Senators should look for a way out even if it means changing the laws.

I do not know what is wrong with the National Assembly. Whenever we want to make things stick so that governors are worked on, they always oppose it.

When we talk about money to the counties, they will always oppose it. I wonder where they come from; whether they live in Mars or whether they come from counties. They say they represent the national Government. We have no problem with the national Government. The national Government is part and parcel of the counties. The counties form the national Government.

The Members of the National Assembly come from counties. If their counties get more money, they will also benefit because they will say we played a role; it is not only the Senator. So, this issue of rivalry when it comes to monies for counties should be avoided totally because this money is for the benefit of our people.

Mr. Speaker, Sir, even if governors have misbehaved, still when you go to the counties, you will notice a change that was not there at the time when there was no devolution.

I have been in Wajir all my life. I have worked in Wajir, I have been a Member of Parliament for a Constituency in Wajir and when compare the amount of money coming

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from the national Government now and what we used to get in the past, you cannot believe it.

There is a time we are talking of Kshs200 million coming to the whole of Wajir County, now we are talking of Kshs10 billion. Those people including myself who fought for devolution and all those other national figures who fought for devolution should be congratulated. We should also congratulate ourselves as Senators because our job is to protect devolution. That is what we did when we were fighting to the Third Allocation of the CRA formula.

At present, Wajir County gets close to Kshs6 billion or Kshs5 billion Development Vote. I do not know where it goes. We have 30 wards and we have been told that some of the wards received hundreds of millions while others cannot even get Kshs30 million. You cannot compare.

What is the difference from the way it was those days of the national government when the money was released from here piecemeal and we were not getting anything? Now you will be told a ward has received Kshs1 billion when another one did not even get Kshs30 million. Even the one which got Kshs1 billion, you do not see anything. This is the problem.

Senators can talk about these issues. They say the MCAs do not really take action most of the time like what we did. We impeached our Governor. The Motion was brought here and the Senators impeached him but what happened? He is back in office. These are the contradictions of Kenya and the so-called different organs of Government. If the court says that whatever we did here and whatever the MCAs did is null and void, then that is the end of the story. It cannot work like that.

If something happens and whatever the legislature does, I beg the courts to stay away from them because it is some sort of unnecessary interference. If it was that wrong, then at least they can say something, but look at what happened. Every time you talk of impeachment at least what happens in that county is something which you cannot even look at.

Mr. Speaker Sir, regarding some of things, I think the problem is ours. The organs which are supposed to monitor and deal with these things do not perform their functions.

I urge the DCI and the EACC to follow up issues like these. If we do not stop corruption, this country is going to the dogs and that is why we are in this mess right now.

You go to an office, you cannot get any service; you want to go and ask somebody for some help in employing somebody; you do not get any assistance. *Mpaka utoe kitu kidogo*. This *kitu kidogo* is killing this country. If this continues, the county government will do the same, the national Government is worse.

You are aware of our debt level right now. I do not know what we are going to do about it. Sen. Omogeni was talking about the pending bills in the counties. Wajir has close to Kshs5 billion to Kshs6 billion in pending bills.

If I get the opportunity to be the governor, I do not know where I will get that money from. How do I pay those people? It is impossible. What are you going to do? Will you be paying pending bills for the next five years? No development, no nothing! If

you do not pay, you are told: you are not doing the right thing; people have suffered, our money was misused, somebody took our money.

I do not want to be too personal but some of the things which happen in my county, *Mungu saidia tu. Mungu saidia sisi*. God will never help you if you do not help yourself. What is happening is so sad but let me just leave it at that.

It is not only my county; it is literally happening in all counties even in the best counties which some of us were looking up to and saying: "These ones have performed." I do not want to mention names but if you ask their Senator, there are still complaints. What is going on with this country? How can we resolve these issues? As far as I am concerned, devolution is a blessing for the people of Kenya if it is done properly.

I was asking people in my county recently, if we use this money, forget about 100 per cent, even 70 per cent of the devolved funds if used properly---

Mr. Speaker, Sir, about 30 years ago when I was a civil servant, I had an accountant who once refused to sign an imprest for me. His reason was that the money was too much. I asked him where this country would be if every Authority to Incur Expenditure (AIE) holder in this country, used 70 per cent of the money they are given the way they are supposed to.

Do you know what he did? He looked at me and signed that imprest warrant and said that we would be devolved by now. So, I am just urging anybody who is an AIE holder, please, let us use our money prudently for the benefit of our people and change this country for the better.

If the people vying for presidency now keep saying that they will revisit whatever has been done, how will we move forward? We cannot. Sometimes we have to forget what happened. I mostly believe that corruption can only be stopped in this country, if we start from a fresh slate. I am sorry to say this because some people might not agree with me.

The Somali say that if you follow your morning footsteps backwards, you know where they will take you. You know, we are nomads and we do not have toilets. People go to the bush in the morning. You can interpolate that.

*(Laughter)*

If you follow the footsteps of everybody in this country backwards, we are going to land into big problems.

If I had the mandate and the opportunity, I would set free whoever has stolen on condition that they bring back all the stolen money. However, I would make it clear that henceforth, anybody who would be involved in corruption would be killed the Chinese way and not jailed. You will be taken to Uhuru Park and shot in public. Within a very short period, I am sure Kenya will change.

However, if we are talking of corruption and you still want to harass somebody who stole yesterday while sparing the ones who stole the day before, you cannot do anything. This is because everybody has a dossier on the other one. I am one of the few people who can claim to be closer to being a bit clean. However, if I am to be followed, I will be in trouble. Forget about the others.

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Therefore, there is no need to talk about corruption in this country. People are corrupt to the core. The only way you claim to fight corruption is to run after a policeman who took Kshs100 or 200 from a *matatu*. Mind you they have been on the road through a rainy night and his mum at home does not have anything to cook.

On the other hand, when somebody steals billions of shillings, no action is taken. He will never be taken to jail. Some of them will be taken to court but because they have the means and the way the legal professions do things in this country, everybody will have to protect their client, even if they know that they are murderers and thieves. I am sorry, I am not referring to the lawyers here.

This is common internationally but others at least think about it. They do not go beyond 10 per cent. Ours goes more than 50 per cent. So, how can this country ever develop? With the current debt burden, I do not know how we are going to pay.

With those few remarks, I beg to support.

**The Speaker** (Hon. Lusaka): Sen. (Rev.) Waqo, proceed.

**Sen. (Rev.) Waqo:** Thank you, Mr. Speaker, Sir. I stand to support this Bill; the County Allocation of Revenue Bill (CARA), (Senate Bills No.1 of 2022). I support it because we believe through this, the money will go to the counties.

When we talk about County Allocation of Revenue, we know what we have gone through and many Senators have already touched on that. It means a lot for the counties. Of course, getting funds available is a big thing. In the past five years, counties have not been receiving their allocations on time because the National Treasury has not been releasing the money on time. That has also worsened the situation on the ground.

We all know that devolution was meant to transform people at the grassroots. Unfortunately, the money that was meant to bring a lot of transformation in every area, has gone into people's pockets. This is especially the executives. The county Chief Executive Officers (CEOs) have looted a lot of money and want people to worship them as small gods.

This has affected the performance and progress of everything at the ground level. It is also interfering with the campaigns now because the money that they looted is being dished out at this time. Voters are compromised.

It is my prayer that as we pass this Bill, the money that will go to different counties will go to the right places and used well. I believe county governors are hearing us, although I know they are busy campaigning and waiting for this money so that they can threaten their opponents.

Mr. Speaker, Sir, I congratulate the Committee because they have done some good work. They have put everything into consideration. We know that they have done enough public participation and involved all the stakeholders. That means that when we pass the Bill, we are passing it at the right time that Kenyans need it.

Going back to counties, the county executives need to be more serious. For the past 10 years, money has gone to counties. For example, my county has received over Kshs50 billion. However, nothing much is happening on the ground. In fact, when you go to the hospitals, you are asked to go and buy even Panadol. Sometimes they send you to private hospitals or clinics where they have connections. In the end, that money still goes back to those people who are in the corrupt system.

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It is my prayer that the governors who will come in future, will be good stewards of the resources that God will place in their hands and that our people on the ground will not continue to suffer.

Right now, everyone wants to become a millionaire or billionaire. When you get some work as a contractor, people get excited. They take loans and sell their properties to do some job. However, at the end of the day, people have lost their property just because counties cannot pay them for their services.

There are so many contractors who are frustrated and even developed terminal illnesses as a result of frustrations. Some have become poorer just because counties do not pay the common mwananchi for services rendered.

Mr. Speaker, Sir, it is my prayer that we pass this Bill as soon as possible, so that the monies can go down to the people. As we pass the Bill, I request for proper use of the money. I also pray that the officers there will be good stewards of the resources. Again, we pray that the money will be released to them at the right time.

I support.

**The Speaker** (Hon. Lusaka): Sen. Olekina, proceed.

**Sen. Olekina:** Mr. Speaker, Sir, I rise to support this Bill. I am happy to see you because I have not seen you in a long time.

Mr. Speaker, Sir, it is quite evident that this House played a critical role in terms of fighting for revenue that goes to our county governments.

Last year, we exhibited joint efforts and commitment in defending devolution in this country.

Mr. Speaker, Sir, every so often, I ask myself, what does it really mean for us, as Senators, who spend most of the time fighting?

I am very proud of being a Senator during this time, because I was able to double the money that went to Narok County from Kshs4 billion, which the former, Sen. Ole Ntutu, was sending to Narok to Kshs8.4 billion.

Mr. Speaker, Sir, we have a couple of issues that are not addressed in this Bill. One, there seems to be a recognition, that at some point, the county government may transfer functions to the national Government and also that the national Government could transfer functions to the county government. I am yet to see that point happening.

However, when you read this Bill in the way that it has been drafted, there are some double standards, which defeat the purposes as to why we are here fighting for devolution and passing this Bill at this time.

Mr. Speaker, Sir, if you read from Clause 6 of this Bill, you will understand the double standards which are there. These double standards have come in as a result of Nairobi County Government; where several functions were transferred to the national Government.

Mr. Speaker, Sir, I will read Section 6(1) of this Bill in line with Article 187 of the Constitution. It says-

“Where a county government has transferred functions to the national Government pursuant to Article 187 of the Constitution, the county executive, in consultation, with the national Government shall determine the cost of the transferred functions.”

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I have no problem with that.

I hope that Senior Counsel, Sen. Omogeni, would listen to this because there is some sort of inconsistency in this Bill. Section 6(2) states that-

“The respective county assembly shall appropriate such monies as may be required for the transferred functions in accordance with the determination made under subsection (1) and the allocation shall not be less than the amount appropriated by the county assembly in the preceding financial year.”

Then it proceeds in Section 6(3) to state-

“The monies appropriated under subsection (1), shall be transferred to the national Government.”

Mr. Speaker, Sir, if you read Article 187, the constitutional responsibility of that transferred function remains with the government that has been assigned by Section 4 of the Bill.

So then, why does the county government transfer money into the national Government for it to carry out that function? If the county government is to transfer that money to the national Government, Clause 6(4) of the Bill continues to say that-

“A national Government entity to which a county government function has been transferred shall submit a quarterly report to the Senate and the respective county assembly on the status of the discharge of the devolved function.”

Mr. Speaker, Sir, what happened to the executive and the county governor? It is not the assembly. It is the county governor who has the responsibilities of delivering those functions. What happened to the issue of constitutionality? If you report to the county assembly because it will double check, what about the county governor, who has to carry out those functions?

Mr. Speaker, Sir, I hope that this can be clarified. When I read this, I am a little bit concerned. Furthermore, it says in Clause 6(5) that-

“The Auditor-General shall, no later than, three months after the end of a financial year, prepare a special audit report on the financial and non-financial performance of an entity to which a county government function has been transferred.”

Mr. Speaker, Sir, we did not see anything like that in the last financial year.

In my view, I could be wrong. One thing that ought to be done is that the county government that transfers function to a national Government should submit a status report to the executive of that county government, of the function that they have carried out. That would then be combined and carried out as per Section 35 of the Public Audit Act.

You now have two audits being carried out. One audit is on the functions that have been carried out by the national Government and the other is on the functions that have been carried out by the county government.

Mr. Speaker, Sir, then you bring the question of Own Source Revenue (OSR), where other people say that the Senate cannot oversight. You bring the question of those functions of the national Government. The people who are supposed to oversight the national functions is not the Senate but the National Assembly.

Mr. Speaker, Sir, I hope that this matter can really be clarified. There is a lot of confusion in both the way these functions are transferred and who is supposed to oversight them.

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I hope that the Committee would look at that issue. I have no problem with the county government transferring money to the national Government. However, if you transfer that money to the national Government, what happens to the constitutionality responsibility of those functions as per the Constitution? The learned Senators in this House can dig deep into that issue and look at the way the Bill has been drafted, its constitutionality and see how we can remove the double standards.

Mr. Speaker, Sir, the second issue that is a big concern is that, in every financial year, county governments have been crying that the ex-chequer releases are delayed or sometimes they do not get their money.

If you read Section 17(6) of the Public Finance and Management Act which this Bill refers to says-

“The National Treasury shall, at the beginning of every month, and in any event not later than the fifteenth day from the commencement of the month, disburse monies to county governments for the expenditure of the following months”

Mr. Speaker, Sir, this Bill also clearly mandates the Cabinet Secretary (CS) in charge of National Treasury.

Clause 4(2) of the Bill says that-

“Each county government’s allocation under subsection (1) shall be transferred to the respective County Revenue Fund (CRF), in accordance with a payment schedule approved by the Senate and published in the gazette by the Cabinet Secretary in accordance with Section 17 of the Public Finance Management Act, 2012.”

It again mandates the Cabinet Secretary to release that money immediately. If the National Treasury is unable to release that money on time, it is then about time we amend the Public Finance Management Act and give the National Treasury the leeway to disburse the money when they have it. Let us amend the Public Finance Management Act, so that we can give them a leeway when they say that they do not have the money.

Mr. Speaker, Sir, secondly, I was listening to Sen. (Dr.) Ali, when he was talking about the issue of pending bills. He said that if God allows him to become the next governor, he may not be able to pay the Kshs5 billion which is owed to suppliers.

Mr. Speaker, Sir, if the law in this Bill that we are passing requires that certain ceilings be put in place and it also says that first in, first out, why should we be having pending bills?

My advice is that, instead of doing any development, the new governors who will be coming into devolution for the third time should now decide not to do any development for that one year, including yourself, Mr. Speaker, Sir. I wish you all the best. Go and pay all the bills that you either incurred and never paid when you were the governor or the one that your successor has incurred. God willing, you will also become his successor. It is the only way we will have sanity in these matters of devolution.

I support this Bill but I hope that we can clean up those inconsistencies and require that whereas the national Government has transferred any function to the county governments, it is also treated the same way a county government transfers function to the national Government.

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The issue of this money leaving the county government into the national Government should not be the case because of the constitutionality. It should just be treated as another contract that you have just transferred, pay them and not transfer all the money. There is some mischief here. It is because of lessons learnt in this issue of the Nairobi Metropolitan Services (NMS), which I have always clearly stated was a mess in this country.

The current governors will not access the money we are sending to the county governments because their time will be over. Realistically, by the time the Exchequer will release the money, the elections will be over. I want to tell my sister, Sen. Shiyonga, that she should not be afraid that this money will be spent by the current governors. In fact, by the time this money goes to the county governments, it will be sometime in September or October, which is a violation of the Public Finance Management (PFM) Act, 2012.

I support and I hope that this money can go and help Kenyans. I thank you.

**The Speaker** (Hon. Lusaka): I now call upon the Mover to reply.

**Sen. Farhiya:** Thank you, Mr. Speaker, Sir, for allowing me to reply. I wish to thank Sen. Kajwang', Sen. (Prof.) Onger, Sen. Omogeni, Senior counsel, Sen. (Dr.) Ali, Sen. (Rev.) Waqo and Sen Olekina for supporting this Bill. They have addressed some of the sticking issues that the Committee on Finance and Budget has been discussing up to now, do not have a solution.

I have the benefit of sitting in both the Committee on Delegated Legislation and Committee on Finance and Budget. When the Controller of Budget was trying to come up with a regulation on their Bill, we requested them to do an amendment that will address the pending bills issue. I had the benefit of sitting in both committees. One of the recommendations was that they acknowledge the fact that - what my Senator was talking about - People request the Controller of Budget with a list of suppliers to be paid. By the time that money is released to the county, the people who are paid are totally different from those whose names were requested on their behalf.

Mr. Speaker, Sir, the names of genuine contractors who did all the work are being used to request for payments from the Controller of Budget because there is evidence that work has been done. However, when the money is released by the National Treasury to the county governments through the Exchequer, totally different suppliers who have not delivered what they were required to are the ones that get paid. I am talking about what happens in my county. If that is not fraud, then tell me what it is.

Why would they use these people's names from the beginning when they have no intention of paying them? This is not something that has happened only once. It happens time and again especially in my county and I have been following it. This means that corruption has been condoned from the county governments all the way to the Office of the Controller of Budget. Things are not done in a consequential manner and there is no consequence for that.

As we leave this House, I request people like Sen. Kajwang' who might be lucky enough to come back to this House to request the Commission of Revenue Allocation (CRA) that in the fourth generation formula, there should be criteria. The development stages in this country are different. There are some places that the railway did not pass

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through from the colonial time and even with successive Kenyan Government, no development has been done. Some counties, due to their climatic challenges, their potential to generate revenue is lower than those which are endowed by nature or as a result of Sessional Paper No.10 of 1965, all investments were done in those counties.

According to the capacity to generate revenue done by CRA- and supported by the World Bank, Nairobi City County can comfortably generate a minimum of Kshs60 billion every year. Some of the reports put it at Kshs76 billion. If they have the potential, in the formula, they should have an inverse formula whereby if you are able to generate more, then you should be given less. That is the only way counties will generate more revenue and account for it. Counties such as Nairobi City County already have capacity to generate revenue. Why should the national Government continue funding them more? Those are some of the issues that need to be considered by this House so that the appropriation is done correctly.

Sen. Kajwang' has rightly pointed out that the Senate concentrates more on fiduciary risk reports rather than transactional type of reporting. What is the impact? Unless we use other Government agencies to collect data, does this House have the ability to monitor and evaluate the impact of the money that was allocated *vis-à-vis* the money each county has been spending? Such a move will show us whether the money allocated is commensurate with the money that was given.

What was the poverty index of that county *vis-à-vis* many years ago? Nobody does this kind of analysis. One of the Bills that I sponsored was talking about the county statistics, which would have established such issues within the counties. As much as the Kenya National Bureau of Statistics (KNBS) might be doing something like that, they look at the countrywide data. If there were county officials who were taking care of that with some matrix reporting to the KNBS, then that would have been a favorable report or an indictment of a governor because it would have established the poverty index of a county when they took over versus the poverty index when their term ends.

That data would have had a very big impact to ensure that counties deliver on their mandate.

In terms of ensuring that counties develop well, there is accrual basis instead of cash basis used by the Government. If we used accrual basis, what would have happened is that in a financial year, if a contract is done up to certificates being issued, even when they are not paid, that should be an expenditure which should be captured in the system.

That means that when the next exchequer releases are made in the following financial year, whatever had accrued should be paid. However, how it is accounted for does not help because it affects the following year's budget. So, counties might have under-delivered, although I know that counties never lose whatever is not released by the Exchequer.

That would have been a neater way of ensuring that the expenditure is properly captured in the financial year they are incurred. It means that once money is released, anybody with pending bills should get paid directly from the accruals account instead of the expenditure account, which is subject to abuse like in the cases where I referred to where people request for money for one supplier but pay another.

Mr. Speaker, Sir, I say this in every submission that I do. We have six elective positions in this country and each one of them is extremely important, from the Member of County Assembly (MCA) all the way to the President. If there is a candidate who never talks about corruption despite knowing the level of corruption, we have in this country---

You elect the same person because they either come from your county, ward or tribe. Why should they be accountable to you when in the first place they never committed to fighting corruption? In this country, people are known for lamentation. They never take care of voters' cards in their hands to ensure that they elect the right person.

Look at all the three impeached governors! All of them are now seeking elective positions. Kenyans do not even shudder at the thought of the same thieves coming back to seek elective positions. We just laugh about it!

What was the use of the process we had in this House where we said that a certain person is not fit to hold office yet the Independent Electoral and Boundaries Commission (IEBC) will still give them a certificate to go and contest? Why do we even have that in the Constitution?

There is no court of law that pronounced itself that to say that the process was not right. We even have a governor who was reinstated on the basis of a report which said there was no public participation. As we all know, some of those decisions were politically motivated. They were not the right decisions to make. Sometimes you are left to wonder.

I think a Kenyan voter is a masochist. Masochists are people who inflict pain on themselves year-in, year-out. We have 47 governors who are sadists as well, inflicting pain to their voters, but there is no consequence in terms of political decisions and the weapon that every county has in electing the right MCA, Women Representative and Member of the National Assembly.

Most of the people who come to this House do not have resources. They therefore fight for their counties. We also have presidential candidates. Even an MCA is equally important person.

If you elect an MCA who listens to everything that a governor says, the decisions they make will depend on the whims of the governor and will do what the governor wants. So, why did you elect him in the first place?

Mr. Speaker, Sir, in this country, the 2022 General Elections should have a different discussion. Kenyans are hardworking people even when they go to work in other countries. There are many people in the diaspora who bring a lot of resources to this country but with no expectation that things will improve.

How long will we be singing the same song? I urge Kenyans to use their votes prudently to get rid of any leader with iota of corruption in their track record and ensure that the right people hold offices, so that this country is able to move forward and develop. I am sure with the level of education of people in this country, if we get rid of corruption, this country will develop in leaps.

Mr. Speaker, Sir, I beg to reply. Pursuant to Standing Order No.61(3), I request that you defer the putting of the question on this Motion to a later date.

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**The Speaker** (Hon. Lusaka): Thank you for your contribution. Somebody said people get leaders they deserve. It is up to Kenyans to make a choice. Sometimes democracy is very expensive but people have to make informed decisions as they make choices of the leaders that will take them to the next level. I agree with you that there should be scrutiny at the ballot box.

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

Hon. Senators, for the convenience of the House, I want to defer Order Nos. 9 up to 26.

**BILL**

*Second Reading*

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

*(Division)*

*(Bill deferred)*

**BILL**

*Second Reading*

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

*(Division)*

*(Bill deferred)*

**BILL**

*Second Reading*

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

*(Division)*

*(Bill deferred)*

**BILL**

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*Second Reading*

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

*(Division)*

*(Bill deferred)*

**BILL**

*Second Reading*

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

*(Division)*

*(Bill deferred)*

**BILL**

*Second Reading*

THE SUGAR BILL (NATIONAL ASSEMBLY  
BILLS NO.68 OF 2019)

*(Division)*

*(Bill deferred)*

**BILL**

*Second Reading*

THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT)  
BILL (NATIONAL ASSEMBLY BILLS NO.32 OF 2021)

*(Division)*

*(Bill deferred)*

**BILL**

*Second Reading*

THE SACCO SOCIETIES (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILLS NO.55 OF 2021)

*(Division)*

*(Bill deferred)*

**BILL***Second Reading*

THE SUSTAINABLE WASTE MANAGEMENT BILL  
(NATIONAL ASSEMBLY BILLS NO.22 OF 2021)

*(Division)*

*(Bill deferred)*

**MOTION**

ADOPTION OF AUDIT REPORTS FOR COUNTY  
EXECUTIVES FOR FYs 2018/2019

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.

*(Division)*

*(Motion deferred)*

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

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

*(Division)*

*(Motion deferred)*

**COMMITTEE OF THE WHOLE****THE INTERGOVERNMENTAL RELATIONS (AMENDMENT)  
BILL (SENATE BILLS NO.37 OF 2021)**

*(Division)*

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE****THE LAW OF SUCCESSION (AMENDMENT) BILL  
(SENATE BILLS NO.15 OF 2021)**

*(Division)*

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE****THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT  
OF ECONOMIC AND SOCIAL RIGHTS BILL  
(SENATE BILLS NO.21 OF 2021)**

*(Division)*

*(Committee of the Whole deferred)*

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

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*(Division)*

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

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

*(Division)*

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

THE MENTAL HEALTH (AMENDMENT) BILL  
(SENATE BILLS NO. 28 OF 2020)

*(Division)*

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

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

*(Division)*

*(Committee of the Whole deferred)*

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

**BILL**

*Second Reading*

THE NATIONAL COHESION AND PEACE BUILDING BILL  
(SENATE BILLS NO.19 OF 2021)

**The Speaker** (Hon. Lusaka): Sen. Pareno, please proceed.

**Sen. Pareno:** Thank you, Mr. Speaker, Sir, for allowing me to again move this Bill. I will be brief because this is a Bill that had already been processed in this House but

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it was affected by the court ruling and it has therefore come back for reprocessing. I hope that we will process it within the time that is remaining for this Senate.

Mr. Speaker, Sir, I beg to move that the National Cohesion and Peace Building Bill (Senate Bills No.19 of 2021) be now read a Second Time.

When I first moved this Bill that was the time that we had the Building Bridges Initiative (BBI) starting the proceedings led by the late Sen. Haji. It was relevant at that time and it is still relevant at this time especially now that we are moving to elections. This Bill is about peace, cohesion, one nation and our togetherness as a nation.

Mr. Speaker, Sir, the National Cohesion and Integration Act that is in existence has had issues in its application and needed to be amended.

However, we moved in and had stakeholders discussions. It was agreed that instead of the amendment I proposed in this Bill that we repeal and replace it with this current Bill as now drawn from consultations from all stakeholders including the Directorate of National Cohesion and Values that is housed at the Presidency.

We then have the several stakeholders, the secretariat, the National Cohesion and Integration Commission (NCIC) and the National Commission on Human Rights(NCHR) and others who have contributed to enriching this Bill.

There are issues that this Bill seeks to bring forth. First, there seems to be a very active Directorate under the President's Office that deals with peace alone. Then we have the NCIC that deals with issues integration and cohesion.

Indeed, you will find that there is always peace building. At the time we were discussing with the NCIC, they were lamenting that they are underfunded because the Directorate is more funded. The Directorate is usurping the powers that, if we were to strictly follow our Constitution, it should be under the NCIC.

We thought we could cure that using this Bill. This Bill seeks to justify that you cannot separate peace building and cohesion and integration unless you just do not want to have the Commission working.

One of the proposals in this Bill is to cure that so that we have all issues of peace, integration and cohesion housed under this law and not having one arm at the Directorate and another arm at the Commission.

It also seeks to sort out the issue of the budget where a lot of budget goes to the Directorate while the Commission is just staying idle without work. To me, the Directorate cannot be superior to a constitutional Commission.

If only we can cure that using this Bill if it passes, that would actually respect the provisions of our Constitution that brought forth commissions that were to settle a lot of issues such as cohesion in this country. This Bill therefore seeks to make it easier for us to run the Commission smoothly and to have all issues of peace and integration under one roof.

This Bill also seeks to give more teeth to the NCIC, giving them funding, bringing all their activities under one umbrella. At the same time making provisions for them to be able to make use of the provisions of the Act to punish the offenders. Most of the time, we just have complaints about hate speech and discrimination but all the can do is just talk about it. At most, they are not able to move forth to ensure that people are punished for their wrongs.

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The functions of the Commission are therefore redefined again in this Bill being that Clause 7 of the Bill provides that the functions of the Commission.

These include to formulate and implement strategies, plans, programmes or promotion of national unity, collaborate with institutions and stakeholders to give effect to the policy relating to cohesion and integration, identify factors inhibiting the attainment of harmonious relations amongst social origins that put in place measures to address these problems.

Clause 7 (2) (a), (b) and (c) specifically include other powers which are –

(a) issue prohibition notices directing persons or entities involved in actions or conduct contrary to national cohesion, integration and peace building within seven days to cease such action or conduct;

(b) summon witnesses and call for the production of books, plans, and other documents and to examine witnesses and parties on oath;

(c) publish the names of persons or institutions whose words or conduct may undermine or have undermined or contributed towards undermining good ethnic relations, or who are involved in ethnic discriminations or propagation of ethnic hatred.

This redefining of their mandate is to ensure that they are able to perform unlike the provisions that we had previously in the Act that we seek to repeal.

Mr Speaker Sir, the act of naming and shaming has been there. The provision has been there but has never been effected. We seek to give teeth and more provisions on how they will perform their work.

The Bill provides that apart from having just offices and headquarters in Nairobi, it shall have branches throughout the country. Clause 8 of the Bill as proposed has now provided for branches through out the country. This will ensure that they are able to perform functions. As I said, we should give them more motivated staff to enable them do their work.

At this time of elections, I am sure the Commission would want to have effective branches monitoring how we are conducting ourselves and how we have non-violent conduct and how the Commission can effectively get reports from all over the country. They cannot sit and be able to monitor the whole country from Nairobi.

We therefore propose that they have branch offices across the country so that they are able to perform. Of course, that goes along side with the funding which we are insisting should be moved from that Directorate to the Commission for them to be able to perform.

Another problem that we seek to solve as we introduce this new Bill is how commissioners are appointed. I sit in the National Cohesion and Integration Committee of this House. We noted that for quite sometime there was no Commission in place. It took so long and a lot of wrongs were going on and there was nothing that could be done.

As a Committee, we summoned the Commission Secretariat. They told us they could not act because they did not have commissioners in place. For some reason, there was no clear provision that had been provided on how to pick the commissioners. That was until the court had to make a ruling that there was no compliance in as far as the commissioners' appointment was concerned because this was just a constitutional

Commission like any other. For some reason, there was no provision on how they were going to be appointed.

At that time, there was no commissioner and no action could be taken against any act that were violating our peaceful co-existence. This Bill seeks to make a provision as to how commissioners are going to be appointed just like every other commission. It also seeks to even restructure by bringing in a more structured office with fewer commissioners. The term is also to be restructured so that they serve for five years. Commissioners are reduced unlike in the previous Act, which provided for a higher number of them.

It provides for a non-renewable term, not for the commissioners but for the secretary to the commission which is renewable once. It also provides for the qualification of appointment for the Secretary to the Commission and also for the Chief Executive officer and accounting officers of the Commission. The Bill also gives a term for the commissioners.

Mr. Speaker Sir, Clauses 32 and 42 are provisions that deal with discrimination, hate speech, negative ethnicity. We have new terms that have been introduced that were not there in the original Act and for purposes of effectiveness of this Commission.

There are also issues of inclusivity in terms of appointment.

There is a provision that is 38(2) that says:

“It shall be unlawful for any State or public officer, while in charge of public resources and without justification to distribute resources in an ethnically inequitable manner”.

There is the issue of equity in terms of resources and employment because in this country, that has been something that brings a lot of friction between one community and another. You will find many of us complaining and saying that we have not been included in the Cabinet and that appointments are not done properly. That brings a lot of friction and it shall be unlawful if you are found, as a public officer, to have committed that public offence.

I am trying to be as precise as possible.

Mr. Speaker, Sir, all we are saying, as far as this Bill is concerned, is that we need to repeal the old one and replace it with this one, giving it more teeth and creating new offences.

I remember the other day; the human rights organizations were asking: “Why are you describing new offences? Why are you doing that at this particular time when we are just about to go to an election? Probably, you are looking at the election season”. That is the more reason we need laws that are very effective and precise, so that as we move on as a country, election should not be a season for violence and non-peaceful co-existence.

This Bill will serve to make things right not just for one individual or one community, but for purposes of the entire country for us to exist peacefully.

Mr. Speaker, Sir, since I had already moved this Bill previously, I now move that this Bill be read a Second Time and ask my colleague, Sen. Farhiya, to second.

**Sen. Farhiya:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to second this Bill. As it has been submitted by the sponsor of the Bill, this Bill was

discussed extensively and because of what happened between the National Assembly and the Senate, it had to come back.

I am of the view that for us to pass most of these Bills, instead of going on recess in May for two weeks, I think we should go for just one week, even if it means that we reduce the time towards the end by one week. When most of these Bills leave here, they have to go to the National Assembly. Therefore, instead of us being one week later than them after their recess, we should have the two weeks; reduce our recess by one week, then towards the end, maybe we close this House the same time with them.

Mr. Speaker, Sir, during this electioneering period, I am sure that this Bill is taking care of a lot of issues, but my question is: will we be able to pass this Bill, if the National Assembly passes it and it is assented to law, before both Houses do the final time of the 12<sup>th</sup> Parliament?

I also tend to believe that during this electioneering period, the people who are in charge of security apparatus should be very careful in terms of how they use information from the ground. Information from my county is that people are saying that these terrorists are coming towards the border from Somalia and plan to cause a lot of mayhem during the time of the election or prior. The Government apparatus should be very careful in terms of how they deal with information from the ground.

There is also a conflict created by us, politicians, for selfish reasons. We want to be the winners by disadvantaging another person through creation of a conflict. Such kind of politicians should be named and shamed by our systems.

Mr. Speaker, Sir, I also tend to believe that the Government should provide some funding. In my own county, from 1992 up to 1994, there was a conflict between three major communities that live in Wajir. The conflict was so bad that there were many people lost their lives. It took the intervention of some ladies; one of them is dead--- If you remember, she was even involved in the 2007/2008 before that eminent person came up with the “*nusu mkate*” government. There were ladies and gentlemen who were calling for a peaceful end to the conflict and asking people to come to the table. That lady is none other than Dekha Ibrahim.

She was also involved in ensuring that women are engaged in peaceful resolution of conflicts and that really worked for Wajir. The conflict ended because of the intervention from a group of women who were concerned about their daughters and sons dying as a result of those conflicts.

Even now, such intervention is necessary for communities that live in northern Kenya, all the way to Lamu, which border fragile states. Funding should be provided for women leaders to ensure that they are part of the process to mitigate conflicts that are about to happen as a result of this.

Section 33 states as follows: -

“A person who discriminates against another person by way of victimization of the person, carries out an act that is injurious to the well-being and esteem of the person by treating that person less favorably than other persons on grounds, the person discriminated against intends to or has”

(a) brought proceedings against the discriminator or any other person under this Act;

(b) done anything under this Act in relation to the discriminator or any other person;

(c) given evidence or information in connection with proceedings brought by any person under this Act; or,

(d) alleged that the discriminator or any other person has committed an act which would amount to a contravention of this Act”.

Mr. Speaker, Sir, persons who perpetrate discrimination and other acts that demean people and that can cause a conflict should be dealt with appropriately as per this law.

This House should pass all the Bills that are pending either tomorrow or next week, so that most of these Bills can proceed to the other House before Senators dreams are killed by not passing these Bills.

This Bill also talks about discrimination in employment and exception to discrimination in employment. I also believe that of the conflicts that people face are resource-based. It comes back to my point.

If county governments used those resources prudently, the people will never look at the national Government. They will be busy concentrating on which governor has more integrity, so that they elect him or her, as opposed to that Kenyan ‘*mtu wetu*’ syndrome at the high table. That would not have been an issue.

I feel that the Constitution foresaw devolution in general as part of mitigating conflict; the more reason we should elect Hon. Raila Amollo Odinga as the 5<sup>th</sup> President. He is the father of devolution that brought about dispersing resources.

**The Speaker** (Hon. Lusaka): I hope you are not using the Floor to campaign for any candidate. Otherwise, you will be ruled out of order.

**Sen. Farhiya:** Mr. Speaker, Sir, I am just bringing this in terms of conflict mitigation and the fact that he was the frontrunner in the new constitutional dispensation. As a result of the new Constitution, we now have devolution. In terms of conflict mitigation, resources have been shared equitably among counties and enjoyed at the source.

For example, Wajir Referral Hospital, in my county, is far much better now despite mismanagement compared to before. Getting even aspirin from that hospital was a tall order. There were no laboratory reagents. All the resources used to go to places where probably the executives used to come from.

I bring this context in terms of conflict mitigation. Hon. Raila Amollo Odinga was a frontrunner. Hence, we should reward him for that good job by electing him as the President.

**The Speaker** (Hon. Lusaka): You are repeating the same mistake. Just talk about a candidate who has fought without naming them. Otherwise, you will provoke others to also come and campaign for their candidates. We will then turn this House into a campaign platform.

**Sen. Farhiya:** Thank you, Mr. Speaker, Sir, for your guidance.

Another thing that is being canvassed here is conflict of interest and this Bill speaks volumes about that as well. Those with conflict of interest should put it on the table, so that people can make decisions based on that.

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This Bill is also very clear on who should be Commissioners and Secretary to the Commission. It also states their terms and conditions of service. Extensively, this Bill covers a lot of ground in terms of how to mitigate conflict. It is my considered view that unless we handle some of these things prudently, then we can only continue crying.

Sen. Pareno, the Sponsor of this Bill and I come from pastoralist areas. We normally have inter-clan or inter-village conflicts. While the rest of the country speaks about tyranny of numbers, people in pastoral areas kill each other to reduce their numbers further. You remember how the revenue share was being distributed before it was amended by this House. A good 76 per cent was based on population. Whether in terms of health, agriculture *et cetera*, it was somehow linked to population.

Therefore, if pastoral communities continue with the bad manners of killing each other, we will perish because we will have no numbers to influence anything in terms of resources. We will have ourselves to blame.

Mr. Speaker, Sir, I beg to second.

*(Question proposed)*

**The Speaker** (Hon. Lusaka): Proceed, Sen. M. Kajwang.

**Sen. M. Kajwang:** Mr. Speaker, Sir, I rise to support the National Cohesion and Peace Building Bill, brought to this House by Sen. Pareno. She has said good things about the Bill. The Secunder has also cited some of the good things about the Bill.

Therefore, allow me to be a bit critical, so that we can improve the Bill as it progresses. I also take note that this Bill has been before this House previously. It is because of the concurrence process that it has been brought back. However, it gives us an opportunity to maybe get a better understanding of what has been proposed.

Mr. Speaker, Sir, in that last Parliament, I was a Member of the Joint Parliamentary Committee on Cohesion. Back then, we had two Joint Committees of the National Assembly and the Senate, and this was one of them. I recall we were chaired by Sen. Sakaja and the Vice Chair was Sen. (Eng.) Hargura. Therefore, I have got a little bit of experience and background in dealing with the National Cohesion and Integration Commission.

This Bill intends to establish the National Cohesion and Peace Building Commission (NCPBC). We already have the National Cohesion and Integration Commission (NCIC); probably, a matter of semantics. Part of the objective of this Bill is to outlaw discrimination on ethnic grounds; provide an institutional framework for national cohesion and peace building; and, to give effect to Articles 10 and 27 on promotion of national unity and non-discrimination on ethnic grounds. It further proposes to provide a framework for promotion of national values and principles.

Of course, these are very important issues, which we dealt with during the Building Bridges Initiative (BBI). We also dealt with them when we were making certain proposals to amend the Constitution. It is because we realized that the greatest threat to the prosperity of Kenya, as a nation, were issues of division that were introduced as a result of competition for resources.

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I want to compare those objectives with the job description of the President that is in the Constitution. Article 131 of the Constitution lays out what the President is obliged to do. Remember these functions cannot be changed by Parliament; it is only by Kenyans through a referendum.

The President is the symbol of national unity. The duty of the President is to promote and enhance national unity. The President shall promote respect for diversity on ethnic and racial grounds. Those three points stick out in the job description of the President. In fact, we are moving away from a President whose job is to ensure that budgets are implemented and roads are built. The job description of the President in our current Constitution is heavy on national unity.

Article 132 goes further and mandates the President to report to Parliament annually, on the measures taken on realisation of national values and principles. I thank President Uhuru because he has done it faithfully. He has come to Parliament every year and made the Address. Sometimes he comes and we harass him. Despite that, he has not stopped delivering his Address and coming back the next day.

My question is: with such a clear job description for the President as the symbol and promoter of national unity, do we need the National Cohesion and Peace Building Commission?

If I were the President, I would make sure that the duty of national unity – uniting Kenyans, promoting that sense of nationhood and ‘*Kenyanness*’ – is a function that resides in the Office of the President and not a Commission. This is because NCIC does not come back to report to Parliament. It is the President that is obliged to come back to Parliament and report on the realisation of national values and principles.

Mr. Speaker, Sir, we must reflect on the circumstances that led to the establishment of NCIC. It was as a result of a negotiated consensus when Kenyans were killing each other.

The issues that the National Cohesion and Integration Commission (NCIC) was dealing with then, should we still segregate them and leave the Commission to deal with or they should be enmeshed in the DNA of every state officer?

I believe that time has come for us to have a candid conversation and ask ourselves whether this should be a stand-alone responsibility or of everyone holding a state, public or private office in this Republic.

What are the causes of strife? I recall when former Speaker, Hon. Ole Kaparo, was chairing NCIC. We realized that when we talk about hate speech and what goes on in social media, is nothing compared to shedding of blood in places like northern Kenya, where the triggers of conflict are competition for resources such as water that we take for granted. You have water on this table and no one is taking it. However, in northern Kenya, people are killing each other because of access to water, pasture and land.

Laikipia is a ticking time-bomb. There are people sitting on thousands of lands of conservancies and the indigenous population whose cattle is dying under their watch.

In this law, we are writing that it will be criminal to talk about these matters that way. Who owns the conservancies? Are they Kenyans? Are they politicians? Most of them are colonial relics. If we describe them as such, this law will make it criminal for us to stand up and fight for our rights as indigenous Kenyans.

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This law defines discrimination in various ways. One is on ethnic grounds. It makes it criminal for any public entity to have more than one-third of an ethnic community in public offices.

It means that all the 47 counties are criminals who should be charged. Unless the good Senator corrects me, the offence under the Act is a fine of Kshs200,000 or imprisonment for one year or both. Therefore, the Governors will be more than happy to pay that. I do not know whether there is a specific fine that applies to an offence under that Act. Even if you say, not more than one-third should be from one ethnic group, what some clever people will do is that senior management will speak one language and then the rank and file can be from all over the country. The rank and file can be contractors, junior level employees, drivers and messengers; while the managers and those who make executive decisions will come from one area.

You have seen the mess that is happening in our public universities where ethnicity should not feature. For example, the Luos feel that Rongo University is theirs. The Kalenjins think Moi University is theirs and the people from the Coast think Pwani University is theirs. There is a problem. I do not know whether we will cure it using the law or by ensuring there is proper and equitable distribution of resources across the country.

There is another ground for discrimination is this Bill. I must agree with Sen. Pareno that this is not new because it is in the Act that she is proposing to replace. However, it deserves some attention.

Clause 38(1) says-

“Public resources shall, as far as is practicable, be distributed equitably, geographically, taking into account Kenya’s diversity, population and poverty index”

Sen. Pareno has just given us the basis for revenue allocation. Next time, we will not have to fight taking into account Kenya’s diversity, population and poverty index. The speaker who seconded had a problem making population a critical factor in allocation of resources.

Clause 38(2) says-

“It shall be unlawful for any state or public officer, while in charge of public resources to distribute resources in an ethnically inequitable manner”

Today, all the campaigns are about ‘our man’ who will bring resources back home. Everyone wants a President who will bring resources back home. Someone has defected from one coalition to the other saying that it is the other coalition that will bring things back home to their people. Our politics is messed up. If we do not fix it, this law will not fix it.

It goes ahead to define circumstances under which public resources will be deemed to have been applied in a manner that is inconsistent with the Bill. Look at school infrastructure funds. I brought a Statement to this House in the last Senate. How has the Ministry of Education, Science and Technology allocated school infrastructure funds across the country?

When Dr. Belio Kipsang was the Principal Secretary (PS) in charge of that fund, you could clearly see a pattern of allocation of those funds. Right now, the PS is a

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gentleman from my county. Do you know what my people are telling me? Senator, go and talk to the PS, he comes from your county; let him divert funds to Homa Bay County. They do not know that it is criminal. The whole notion of taking advantage of a tribesman to bring development to your region is itself impunity.

Last week, I was with a group of teachers reflecting on the changing face of academic results in the country. We never used to hear of St. Patrick's, Iten. When I was in high school, we never met Kapsabet Boys in anything because I was in a national school. We thought they were probably in the volleyball league because we were in the rugby league. Today, Kapsabet is a school that every parent wants to take their children to. If you look at the critical success factors, it is because these schools have benefited – I do not want to say unduly – from proper infrastructure funding. The more children they take, the more they are able to absorb. Whereas in other parts of the country, the old schools like Maseno, Shimo la Tewa, St. Mary's Yala, have remained in static position.

Are water projects across this country applied properly or with an ethnic bias? The people of central region are castigating their President for not doing enough to develop the region. The President in his defence has said he has invested billions of shillings in doing the *Mau Mau* roads.

Last week, I was in Suba South Constituency in a very prosperous, bustling fishing village called Nyandiwa. There is no road that links from Mbita all the way to Sori. A vast area and important economically for fishing and for tourism has been left without a road since Independence.

When I hear politicians from a certain region castigating the President and saying *Mau Mau* roads are not enough, I wish he would bring some of those roads to places where they would be appreciated. The driving motivation for some of these politicians is that the President coming from a certain community should have done more for that community. This should be criminalized.

In fact, to that extent, I agree with Sen. Pareno. The only problem is how do you effect it? When people elect you, they expect that you will bring things back home. For example, the Arror and Kimwarer dams and the billions that were set aside.

Magwagwa Dam that was supposed to unlock the agricultural potential of the Western Kenyan Region, Nandi, Luo Nyanza and Gusii land was sacrificed and money was taken to Arror and Kimwarer Dams. Many think it was because of ethnic and political reasons.

Why are we bailing out coffee farmers and not cotton farmers? Is it ethnic or it is because of commerce? Why do we have interventions for tea farmers and not fish farmers? Is it ethnic or there is an economic basis? Is rural electrification being applied on ethnic and political consideration or on economic considerations?

In the book *Why Nations Fail*, Daron Acemoglu talks of extractive and inclusive systems. What we have built in our country is an extractive system, where when you are elected, be you a Senator, at the end of five years, you are asked how many children you have employed in the police service, Teachers Service Commission (TSC) and Parliament, where you work.

At the end of five years, you are asked the road you have helped build and the school you have built. Those are some of the reasons many politicians and those in state offices, would want to apply public resources in an ethnically inequitable manner.

But as I said, the National Cohesion and Integration Commission (NCIC) without the support of the Presidency, whose job is to ensure national unity, will not achieve much.

As I conclude, the Bill also criminalizes discrimination in property ownership, management and disposal. I was told that in certain towns in this country, if you have a building or a mall that is owned by a member of a particular community, tenants from that community are given huge discounts and are not required to pay goodwill, whereas tenants from other communities are expected to pay the full amount.

It is difficult to come up with laws to deal with willing seller, willing buyer relationships. It will be very difficult to catch someone in that situation. You can have a policy that no one should be discriminated against, but if I decided to sell my land to Mr. X rather than Mr. Y, and Mr. X comes from my community and Mr. Y from another community, it will be very difficult to convince people that I did it because of ethnic reasons.

On the basis of race, I am always conscious about reverse racism. ‘Black Lives Matter’ is a big issue that has triggered and consolidated global solidarity for us to look at racism straight in the face. Sometimes when we talk of racism, we fall into the trap of reverse racism. We become more bitter than the aggressor. We become more aggressive than the aggressor to the extent that we end up losing it. We need to be careful about that.

One final observation in this Bill is on the headquarters. Sen. Pareno says the headquarters shall be in Nairobi. We need to change this. If you look at the hotspots and the statistics from the National Cohesion and Integration Commission (NCIC), it is spending more time in places like northern Kenya, Turkana and West Pokot. Why should the headquarters be in Nairobi? Why not Isiolo? Nairobi is a continuation of the thinking of Sessional Paper No.10 that Sen. Farhiya has argued passionately against in the past.

If we put it in black and white, where the headquarters shall be, then that becomes restrictive. How I wish we could be sending more of this state agencies to places like Isiolo, which are at the center of the country. On penalties, Sen. Pareno, has proposed stiffer penalties on web administrators; fines up to Kshs1 million or five years’ imprisonment. On general offences under the Act, she has proposed a fine of Kshs200,000 or imprisonment for one year. May be I did not read the details properly, but there needs to be some consistency in terms of offences under the Act.

I support the thoughts around national cohesion and unity, but I think that there is need for a general rethink. If we get a good President who is committed to national unity and faithful to Articles 131 and 132, then we will not need another body called NCIC. We will also not need another initiative called Building Bridges Initiative (BBI) because the President shall know that it is part of his job description to unite the country and leave behind a united and prosperous country.

With those many remarks, I support.

**The Speaker** (Hon. Lusaka): Thank you very much. Before I call the Mover to reply, I want to add that it is true that at the county level, that percentage of other

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communities should be emphasized. The challenge sometimes has been that people from that particular county do not want anybody from outside to come and work there.

They want their own and yet, the law is very clear on that diversification. It needs to be focused on and implemented.

Proceed, Sen. Pareno.

**Sen. Pareno:** Mr. Speaker, Sir, I rise to reply and thank Sen. Farhiya for graciously seconding, and Sen. M. Kajwang' for coming out strongly to make proposals on how we can strengthen issues on conflict mitigation. I noted that. We have all agreed that conflict is caused mostly by distribution of resources.

I was checking how we distributed those resources today, looking at the allocation done with my County of Kajiado getting Kshs7.9 billion. If we could distribute everything in the manner that this Senate is doing, it will be good. That is almost 10 per cent of the trillions, we are getting as a country. Issues on how we can mitigate conflicts caused by improper sharing of resources is something we need to think about.

I have noted the concerns that have been raised by our Senators, on the description of the duties of the President. In this Bill, we are trying to run away from the President as an individual. Sen. M. Kajwang has made a proposal that can only be achieved if we have a good President. Suppose we do not have a good President? Let us not put these powers on an individual; let us put them in institutions. That is why we are proposing that the NCIC, being a creation of the Constitution, should be respected and strengthened. We should put the powers in an institution rather than an individual. Should we not have a good President, we will be in trouble as a country.

I have noted your submissions on the issue of a third on balancing ethnicity and appreciating our diversity in each of our counties. If each county is saying that this is our county; we want to employ everybody from the county, then what happens to the non-ethnic in that county? That is why we have strictly put that provision in the Constitution. We should embrace our diversity, values and principles as a nation. We will not have to chase those that are non-ethnic in that county.

I appreciate the concerns and comments by the Speaker. Let us look at that provision and effect it. Our Committee on National cohesion, Equal Opportunity and Regional Integration has been calling the relevant government officers to explain to us how this is happening, county by county, and how they are complying. When you name and shame them, as proposed, they will know this is serious business. We should have stiffer penalties when people do not comply in the counties for purposes of diversity. This is an issue we should make more criminal than we have done for us to have ethnic balance in our counties.

I have noted the issue of fines and consistency. We will look into that. The issues of the headquarters being in Nairobi did not sound bad, only that we have proposed that we devolve to branches in the counties. We can open it up for the commission to see whether they can relocate to any part of this country. At the moment, we have provided that we devolve by having branches in the counties and the headquarters in Nairobi. I appreciate the support for this Bill.

Mr. Speaker, Sir, now that we may not be able to proceed to the next level to process the Bill, I ask that you defer the putting of the question to a later date, pursuant to Standing Order 61(3).

**The Speaker** (Hon. Lusaka): That is in order. It is granted.

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

Next Order.

## BILL

### *Second Reading*

#### THE COUNTY E-HEALTH (AMENDMENT) BILL (SENATE BILLS NO.39 OF 2021)

**The Speaker** (Hon. Lusaka): Sen. Pareno, please, proceed.

**Sen. Pareno:** Mr. Speaker, Sir, I thank you again for allowing me to move this Bill; that pursuant to Senate Standing Order No.141(1), The County E-Health Bill (Senate Bills No.39 of 2021) be now read a Second Time.

This is the first time this Bill is coming for Second Reading. Initially, I had moved a Motion, which later on, we graduated into this particular Bill. Therefore, I will also not take lot of time canvassing what is in this Bill.

Mr. Speaker, Sir, I started thinking about this Bill when, through your permission, we had a conference and visited a referral hospital in Ghana. As part of fieldwork on the training we underwent, we went to a referral hospital in Ghana. We found a call centre, where attendants were attending to phone calls. You could see that they were receiving messages and there was some kind of communication going on.

In that call centre, we asked what they were doing and they told us that the call centre serves to coordinate and receive messages, clinical notes from upcountry local dispensaries. Therefore, they were able to communicate to the referral hospital without necessarily having to go all the way to Accra to present or refer their cases.

Again, I compared with the experience in Rwanda. The Republic of Rwanda being a partner state of the East Africa Community (EAC) is almost the size of Kajiado County. Actually, Kajiado County is slightly bigger than the Republic of Rwanda. We are told that in the Republic of Rwanda, a drone drops medicine from the centre, where they get medicine to the dispensaries in the country within 20 minutes.

Having been a Member of the East African Legislative Assembly (EALA) because we used to rotate, I know that there is Wi-Fi in every public place and hotel. You can get online any minute and access whatever you want. Therefore, we thought of a Bill.

Looking at what was happening in our universal healthcare systems, technology cannot be underrated at this particular age and time. I thought about this: suppose you have a call centre in every dispensary in our upcountry places, where we do not have nurses. At some point, the only person you can access is clinical official, or at most a nurse and there is no any other specialist.

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It is known and even recorded by the World Health Organisation (WHO) that Kenya is one of the countries that do not even have enough specialists in many areas in the medical field, to an extent that we do not have experts, and we brought them from another country. I remember the case of Cuban doctors coming to bring some expertise in our county hospitals to try, and address the shortage.

Sometimes you might be referred to Kenyatta National Hospital (KNH), but when you go there, you take time to get an expert that you need. If embraced, technology can make all this easy.

This Bill proposes that the County Executive Committee Member (CECMs) in charge of health in our counties will have to establish an e-system. That is about an integrated system and call centres, where you can access expert advice and treatment and transfer your treatment records to a referral hospital, where they are received in another call centre or coordinating centre and you are treated without necessarily having to be physically taken to that referral place.

Mr. Speaker, Sir, the gist of the E-Health Bill is to make medicine, treatment, and expertise advice accessible through e-systems that can be created in our county hospitals, and you do not have to physically move. You will have a choice of moving somebody physically to the expert, or the choice to use systems that have been integrated and created in our county hospitals to access medicine.

This Bill seeks to direct the creation of these centres in the counties and creation of integrated systems that can--- We can even have a pool of doctors that all of us can access differently through the e-system. If you have to physically see one doctor, who is accessible at a particular time, then there is always a delay and, at the end of the day, we end up suffering and lose many people because of lack of proper coordination and how quick you can access the expert.

The Bill proposes that the CECM establishes a county health registry containing health records with respect to all patients receiving treatment in the hospital, falling within the mandate of the respective county government. They also have to strengthen the existing framework in respect to health records management, which will be vital in facilitating the e-health services. In addition, this provision will facilitate referral of patients to either ordinary face-to-face appointments, with a doctor or e-health services, where you do not have to meet the doctor face-to-face.

The Cabinet Secretary will establish a framework for inter-operationability of systems and devices necessary for implementing the e-health system. That is at Clause 20. Then, synchronizing the system and devices is vital to ensure the success of e-health services. Once they do that, then it will be easy for all the citizens to access medicine.

We have been hearing about MYDAWA and that you can dial a number and talk to a doctor. However, without proper frameworks to do that, there is the issue of privacy and how the data is going to be used. That system has to be saved in a way that information relayed is not leaked.

What if we adopt the system used in Rwanda, where you they use drones to drop medicine to dispensaries? If someone is referred and treated through the e-system, the medicine can as well be dropped by drones. If Rwanda can do it, then we can do it.

Mr. Speaker, Sir, as we were going round as Members of the *Ad Hoc* Committee on Managed Equipment Services (MES), where I sat, during a visit to Tana River County, we discovered that there was lack of a radiologist. As a result, they send the results to Kilifi County. Sometimes the results are sent to Nairobi for examination.

That will be a thing of the past because if there is no radiologist in a hospital, then you can refer someone through the e-system and get advice and treatment immediately. Instead of referring everyone to Nairobi where they have to wait, someone can be treated immediately.

This is one Bill that I am excited about because if it can happen in Ghana, then it can also happen in Kenya. It will make medicine and treatment accessible and it will save the lives of our people. It will even help us roll out the universal healthcare systems that we have been talking about.

Mr. Speaker, Sir, I beg the move that this Bill be read a Second Time and request Sen. Farhiya to second.

**The Speaker** (Hon. Lusaka): Sen. Farhiya, please, proceed.

**Sen. Farhiya:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to second this Bill. Kenya is one of the countries where technological uptake has been high compared to most developing countries. Sen. Pareno submitted that she saw an example where e-health is being practised in Ghana and decided to replicate that idea here.

People learn from seeing examples. In life, you do not have to rewind the wheel, but can always have your own starting point. However, if you see others doing better than you, you can copy and move forward, so that you get many ideas and combine them.

Mr. Speaker, Sir, in this country, we have brilliant papers. I am told that people from Botswana came to Kenya, looked at our livestock policy, went and implemented it and are beating Kenya because their systems work better. However, we, the people who thought of those ideas, are still grappling with how livestock marketing is done and other things that would have benefited us out of the business of livestock. People copied our ideas, went with them and are now reaping the benefits in folds.

In the formula, we passed a criterion on bed occupancy and hospital visits. It had a percentage. That is part of the criterion. I hope that within this Bill, there will be a way of recording that if there was no visit and somebody got the services, there will be a way of recording, so that it goes to the main database in an acceptable format and everybody gets to benefit out of that as well.

Mr. Speaker, Sir, in this world where technology has been and it makes a lot of difference in people's lives, the health sector cannot be left behind. I am glad that Sen. M. Kajwang, when submitting on the National Cohesion and Peace Building Bill (Senate Bills No. 19 of 2021), averred that water is a luxury. It is true.

The Senator, while speaking on behalf of his county, talked of a road leading from one centre to another, which are economic hubs. I am impressed because those are some of the things that make a difference in terms of development of a county.

In my county of Wajir, the county headquarters, that is, Wajir Town, is not linked to the national grid of electricity. It does not have a tarmacked road that links Wajir Town to the rest of the country. Some counties have been endowed by both nature and successive administrations that have ensured development reaches those areas.

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This formula is relevant to health considering that it is one criterion for allocating resources. It should be based on human development index. Those with capacity to get more resources should have an inverse formula in such a way that they get less from the national kitty. Those who do not have should get more to gain capacity to develop to the same level to enable them have ability to generate revenue.

Mr. Speaker, Sir, this Bill is an idea whose time has come. I support Sen. Pareno for this well-thought-out Bill. Senators should embrace this and ensure that it passes. That way, those people with less access to medical care can have access to health despite the ratio between doctors and the population being low.

If this health Bill is implemented, health will have a much wider reach. I also believe that the funding allocated by the national Government on all those devolved functions should, in my view, follow functions.

More resources need to come from the national Government to the counties, so that some of the dreams of the people who wanted devolution to work are realized. The public should elect the right leaders to implement them accordingly.

Thank you, Mr. Speaker, Sir. I beg to second.

*(Question proposed)*

**The Speaker** (Sen. Lusaka): Sen. M. Kajwang' proceed.

**Sen. M. Kajwang'**: Mr. Speaker, Sir, I rise to support the County E-Health Bill (Senate Bills No. 39 of 2021). I also laud the industry of the Members who have sat in this House patiently to ensure that this Bill is processed.

I appreciate the hon. Speaker for his industry and the manner in which he has guided us for the many days. It is difficult to concentrate in this House with the campaigns going on out there. The nation should know that we have a Speaker who puts the interests of the Senate first ahead of his own personal interests.

I will make brief comments to ensure that the Mover is able to reply. This is an excellent idea. I wish we had dealt with it much earlier in the life of this Senate. Sen. Pareno is calling for establishment of an integrated e-health system at national and county governments. E-health is all about the use of Information and Communications Technology (ICT) for health purposes.

Kenya has been an early adopter of technology in various functions and walks of life. The experience of Kenya with the use of M-Pesa in financial services is legendary and has been studied in Ivy League Institutions. The question has been asked why other jurisdictions are not able to do what we have done with M-Pesa.

Mr. Speaker, Sir, every time we are talking about Kenya's greatest innovation, we are told that it is M-Pesa. Others have studied what we have done with M-Pesa and gone ahead and integrated all sorts of things into the payment ecosystem, such that today you can make payments with your smart-watch or by swiping your phone.

I encourage our innovators that the success of M-Pesa, which was done 10 or so years back, should not blind us away from continually innovating. One matter that will need to be looked at when we come back to this House will be transaction costs.

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Today, I saw one of the leading contenders for the presidency talking about exorbitant interest rates that are charged on mobile loans. Unfortunately, that candidate made the wrong assumption that by reducing the interest rates, you will be able to double the economic growth. Reducing the interest rates is more of an equality management process. It does not follow that when you reduce it, you spur economic growth. You just get to bridge that inequality.

That was not the subject of this Bill. Let me come back to the Bill. Telemedicine has got a lot of potential in Kenya. We have got shortage of consultants and skilled experts in various ways. As we had argued earlier, we have got 47 counties with each county trying to have all the consultants domiciled in those counties.

The resources that go to counties are not sufficient for each county to have all the sets of skills that are required to deliver services to a specific county. It will follow then that we must have a pool of highly trained professionals sitting somewhere that can be tapped into by the county governments. Through telemedicine, it will be possible for someone to sit at the Ministry of Health headquarters or at Kenyatta University Teaching and Referral Hospital to provide consultancy services to a hospital in Marsabit, Turkana and Kwale.

Drones have been used with a lot of success in places like Rwanda. I see the application of drones and manned aerial vehicles in parts of the country that have got infrastructure challenges. The islands of Lake Victoria and Indian Ocean, the far-flung parts of the country, like Northern Kenya--- We do not have adequate blood banks.

In the Nyanza region, you will be surprised that we only have a blood bank in Kisumu. Therefore, when a mother requires blood in Sena on Mfangano Island, then that blood has to be brought by road. By the time the time that blood gets to the point where it is needed, chances are that the mother would have passed on.

Something else that our hospitals do not stock is anti-venom medication. In many parts of this country, you still have human wildlife-conflict, such that if you got into an encounter with a venomous snake, then, the anti-venom has to be procured and sometimes it is from the defunct provincial hospitals. By the time the anti-venom reaches, that victim would probably have died. However, with the use of drones, we can reduce the turnaround time greatly.

I do hope that the regulations that were brought by the Civil Aviation Authority on unmanned aerial vehicles are not those regulations that will stifle innovators in this area. There is a group that is currently doing a test run in Kisumu County, and I have also met a group of innovators who are willing to do a test run on the use of drones for distribution of pharmaceuticals and blood in Homabay County. I welcome and encourage them to use Homabay as a test bed for this innovation.

We must move to an *Amazon*-like system of procuring medication. This House has given the Kenya Medical Supplies Agency (KEMSA) a lot of latitude to do things. Unfortunately, KEMSA is not utilising the goodwill of this House. Every governor you meet and talk to tells you about the inefficiencies at KEMSA and delays by KEMSA to fulfil orders.

Of course, KEMSA also complains about payment, but what if we adopted the *Amazon* style because *Amazon* was primarily built for delivery of books? Why is it that

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the Government cannot encourage innovators to come up with an *Amazon*-style medicine and pharmaceuticals procurement system? It is so simple to do, and has been done elsewhere. What we need is a use case, and in this case, it will be applied towards ensuring that county governments and far-flung hospitals get medication pharmaceuticals just in time. That avoids stock piling and situations where drugs meet their expiry dates because a hospital ordered too many batches or cartons of paracetamol and anti-malaria drugs.

Another area where this E-Health Bill would apply would be on claims management. I hope that this will provide a framework for the National Hospital Insurance Fund (NHIF) to ensure that claims management is done, if not entirely electronically, but let the manual submission be the complementary mechanism, with the electronic being the primary mode of transmission of claims.

I say this because we have seen some dispensaries and clinics springing up in our backyards. Sometimes, they do very well and when you ask, you are told that as long as you have an NHIF card, if you come and you have got a headache, you will be admitted for three to four days, whether you have got a headache or not, so as to facilitate claims from NHIF.

If we make this electronic, it will be more transparent and cut out those people who want to cash in.

Mr. Speaker, Sir, I have always had a problem with how insurance companies price their medical products. Before I came into this House and the days that followed the demise of the former Senator for Homa Bay County, I was in the insurance industry. One of the products that I had been mandated to build was a medical insurance product. It was not easy because without proper actual information in the market, it is very difficult to price. It is very difficult to come up with riders and apply waivers.

The insurance industry needs a database to access data on health trends in the country. This way, the industry will not come up with a one-size-fits-all product. It will be able to price and build products on the basis of demography, age, gender and occupation. That can only be done if the entire national system is electronic.

The national Government was meant to ensure that there was fibre optic in all Level Four hospitals. When I last visited the Homa Bay County Teaching and Referral Hospital, I was told that the fibre had been dug up to the hospital, but there were issues with some routers and connecting devices.

I urge the Cabinet Secretary and the Principal Secretary (PS) of the Ministry of Information and Communication Technology (ICT) to make sure that all the 47 county hospitals are connected to the National Optic Fibre Backbone (NOFB).

Even with that connection, we still have to deal with the issue of power. Without power, those fibre optic connections will not be useful and this is where the regulator in the space of electricity generation. We must now move towards mini-grids. We must allow places that are not in the national grid to build mini-grids using solar, wind or other sustainable and renewable energy production capacities.

In one of the islands in my county, the community came together and started a diesel power plant. The island is so far-flung that it cannot be connected to the national grid. Unfortunately, the regulator came and shut it down without providing an alternative.

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No, it might not have been the best idea to go for a diesel power plant. Perhaps, we ought to have gone for solar or wind, but the problem is that the regulator is not concerned about the sustainability of your energy source. The regulator is concerned about dominating the entire space and ensuring full monopoly.

If we are going to get the hospital in Turkana to apply and plug into this *e*-health system that Sen. Pareno is proposing, we must have a different policy view towards mini-grids. Without electricity, the fibre optic cables will be useless and the *e*-health will not be achieved.

Mr. Speaker, Sir, as I finalise, we must also use technology for preventive and public health initiatives. We have a huge opportunity to use the emerging digital platforms, channels and networks to educate our people. There has been apathy towards vaccination, and I think such people are called anti-vaxxers in the United States of America (USA). For this, we could have creatively used some of the medium, where our young people are, to send the right information.

Of course, we do not generate a lot of original content and still consume content from the West. The Ministry of Health, particularly the Public Health, needs to ensure adequate systems and a strong team that can use emerging technologies to educate the public on how to take care of themselves. The team will disseminate information on how to prevent certain ailments. They will educate the public on how to build a certain lifestyle and make lifestyle choices that will then ensure that the Government is not overwhelmed when things go bad eventually.

Mr. Speaker, Sir, I hope that with the passage of this Bill, we will not want the Government to control this Bill.

We do not want the Government to control every aspect. However, we want it to just provide a framework that allows innovators to flourish.

If you look at the Grid Economy where today transport is driven by technology in terms of *Uber*, *Bolt* and *Taxify*, it was not the Government that came up with an e-Transport legislation; it was private sector players and innovators that came up with a solution, which now requires regulation.

If you look at hospitality and services, where people are now ordering on *booking.com* and *Airbnb*, we did not come up with an e-Accommodation solution.

I want to thank Sen. Pareno for thinking ahead. Sometimes, when the Government thinks ahead, it provides the four corners within which innovation should thrive. However, I hope that through regulation, this Bill shall not be static. If things need to be changed quickly, then the regulations shall provide that route. I encourage Kenyans that technology works only where there is trust.

Finally, Sen. Pareno has run the elections of the biggest political party in this country. When she ran the elections of that party, people were voting and doing nominations using the traditional method of ballot boxes and papers. Recently, because of some of the innovations that she had already put in place, this particular party decided to use electronic method for nominations.

Mr. Speaker, Sir, the fact that people can come to a tablet like this and choose their leaders and get a result, assures and makes people feel that they were part of the process. However, if there was no trust, then a villager will tell you there there was an

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algorithm in that tablet. In fact, you will wonder where they heard the word ‘algorithm.’ It is simply because the people who do not trust the system have peddled lies and rumours. If there is trust, we can have E-Health, E-Government and E-Elections.

Mr. Speaker, Sir, I support.

**The Speaker** (Hon. Lusaka): May I call upon the Mover to Reply.

**Sen. Pareno:** Mr. Speaker, Sir, I wonder when we will stop all these Covid-19 issues. Every time I speak, immediately, my throat goes sore.

I rise to reply. I thank Sen. Farhiya for seconding, and Sen. M. Kajwang’ for the contribution and the smart ideas that have come from him.

Sen. Farhiya indicated that we need to have resources follow the functions. We cannot put it any better. This is because even if we say all this be done, yet we do not have the resources, then those counties will not perform.

You know how we have severally spoken and debated in this House on how to allocate resources. However, we never get funding down to the counties, and if it goes, it gets misused. Today, we kept talking about how prudent we should be when it comes to the use of resources.

Regarding the M-PESA idea, if we were smart enough to do M-PESA, we can do all this. We can apply this new technology like other countries have done. On use of drones, Sen. M. Kajwang’ has told us that there are those who are already in the market asking that they use drones for some of these services. Therefore, it will not be magic, this country can do it.

*Amazon* style in distribution of medicine is another option that has come out. If *Amazon* could distribute books in their manner, they can still distribute medicine for us. We do not have to use drones. We can use every other means to drop medicine. Of course, the insurance companies have come in to also bring forth how they do their services.

Concerning issues of database and optic fibre to hospitals, there is a lot associated. If we do not have the resources to do all that, that is associated with a new policy on this like putting fibre and power connections and alternative sources of energy, like solar and wind, which we have abundance, then we will not realize. However, I am sure that this is one great idea that if implemented, we will have good health for all our citizens.

Mr. Speaker, Sir, I reply and request that you defer the putting of the question to another date, pursuant to Standing Order No. 61(3).

**The Speaker** (Hon. Lusaka): Okay.

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

## COMMITTEE OF THE WHOLE

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

*(Committee of the Whole deferred)*

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**COMMITTEE OF THE WHOLE**

THE KENYA MEDICAL SUPPLIES AUTHORITY  
(AMENDMENT) BILL (SENATE BILLS NO.53 OF 2021)

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

THE STREET VENDORS (PROTECTION OF LIVELIHOOD) BILL  
(SENATE BILLS NO.7 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)*

**ADJOURNMENT**

**The Speaker** (Hon. Lusaka): Hon. Senators, there being no other business on the Order Paper, the Senate stands adjourned until tomorrow, Thursday 12<sup>th</sup> May, 2022, at 2.30 p.m.

The Senate rose at 6.26 p.m.