

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 17<sup>th</sup> November, 2022

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

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

### PRAYER

### QUORUM CALL AT COMMENCEMENT OF SITTING

**The Deputy Speaker** (Sen. Kathuri): The numbers that we have do not make quorum to start the business of the day. Senate Majority Whip, make sure that we have the requisite numbers.

Meanwhile, let the Quorum Bell be rung.

*(The Quorum Bell was rung)*

We now have quorum. Let us now do some business.

We have several Statement pursuant to Standing Order No. 53 (1). Let us start with the Statement by the Senator for Kisumu County, Sen. (Prof.) Tom Ojienda, SC. He is not present. He had two Statements. His Statements are deferred

### STATEMENTS

#### DEATH OF CAGE FISH IN LAKE VICTORIA

#### CHALLENGES FACED BY SUGARCANE FARMERS AND DECLINE OF SUGAR INDUSTRY

*(Statements deferred)*

Sen. Shakila Abdalla, make your Statement. Why are you travelling 50 kilometers from where you were?

**Sen. Shakila Abdalla:** I want to travel.

*(Laughter)*

**The Deputy Speaker** (Sen. Kathuri): Proceed.

LAND ACQUISITION FOR THE LAPSSET  
CORRIDOR PROGRAM

**Sen. Shakila Abdalla:** Thank you, Mr. Deputy Speaker, Sir. I rise, pursuant to Standing Order No. (53) (1) to seek a Statement from the Standing Committee on Lands, Environment and Natural Resources, concerning Land Acquisition for the LAPSSET (Lamu Port, South Sudan, Ethiopia Transport) Corridor Program.

In the Statement, the Committee should-

(1) Provide a report detailing the Land acquisition process for the LAPSSET Corridor Program, including the exact land placement, acreage, amount paid per acre and the justification for the project.

(2) Inform the Senate whether all the organisations that vacated their land for the LAPSSET Corridor Program have been compensated, and if not, state the reason why.

(3) State the land requirement for the Lamu Special Economic Zone and Industrial City.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kathuri): What is it, Sen. Cherarkey?

*(Sen. Cherarkey spoke off the record)*

Yes, proceed.

**Sen. Cherarkey:** Thank you, Mr. Deputy Speaker, Sir. I thank Sen. Shakilla Abdalla for that Statement. The issue of land acquisition is a constitutional matter. The Constitution is very clear and specific, that when you do compulsory land acquisition, you must pay the market price promptly. That is what the Constitution says.

This LAPSSET Corridor Program is an elephant in the room. I remember in the last Parliament, we debated a situation where one of the roads that was being upgraded to a murrum road, the Kenyan Government was paying Kshs80 million per kilometer to put murrum on that road. This part of the LAPSSET Corridor Program has been riddled with graft or corruption. Therefore, this issue must be addressed.

Land is an emotive issue. There are many people with land issues. The Government must take this issue seriously with the attention it deserves. The newly appointed Cabinet Secretary (CS) in the Ministry of Lands and Physical Planning and the Chairperson on the Standing Committee on Lands, Environment and Natural Resources, must tell this nation the truth.

We are dispossessing someone's property, therefore, they should be paid promptly. That is what the Constitution says. It is not an Act of Parliament, nor a policy nor a statement that you make in any baby shower or anywhere else. This is a constitutional issue that must be done as it should be.

The LAPSSET Corridor Program is a good project. However, if we allow Kenyans to be dispossessed of their property without compensation as per the law, then it does not make sense.

I remember, a Committee of this House investigated the Ruaraka Land issue. It is high time that we must be told the truth. The Government acquired a public land in the guise of being a private land. Therefore, we must be serious, re-awaken and go back to investigate on land matters, including, the Ruaraka land scandal. These are emotive issues.

Finally, we do not want to create a situation where we are creating infrastructural evictees, where people are being evicted because an infrastructure is being developed. We already have forest evictees and Internally Displaced People (IDPs) – People who have been displaced because of civil strife. We must avoid infrastructural evictees. It is good that my lecturer and neighbor, Sen. (Prof.) Tom Ojienda, SC---

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kathuri): Sen. (Dr.) Khalwale, what is your point of order?

**Sen. (Dr.) Khalwale:** I am very sorry that I am interrupting Sen. Cherarkey. However, did you hear him say that there are forest evictees? Can he explain who a forest evictee is? How did that person find himself in the forest? Did the forest come to his home? Is Sen. Cherarkey in order to mislead the country that there is anybody called a forest evictee when we want people to keep out the forest?

**The Deputy Speaker** (Sen. Kathuri): Sen. Cherarkey needs to inform the House who came first. Is it the forest or the evictee?

*(Laughter)*

Sen. Cherarkey, proceed. You have been asked to substantiate.

**Sen. Cherarkey:** Mr. Deputy Speaker, Sir, I will substantiate. The East African Court of Justice (EACJ) ruled the other day that there are the people who have been evicted from the forest. It has been defined by our East African Legislative Court.

The Senate Majority Whip should look for me in camera, so that I can give him the full citation and share with him what it means. I can also take him to where people have been evicted from some of the forest for him to see who they are if he wants a live example.

The infrastructural evictees that I was talking about are seen in cities and towns; where people get evicted when a project is upcoming. We do not want to have such in the LAPSSET Corridor Program.

In conclusion, the LAPSSET Corridor Program is a good vision. However, it should not be used at the guise of fighting human right. In fact, this issue is a human right matter. It should go to the Joint Committee of Committee on Lands, Environment and Natural Resources with the Committee on Justice, Legal Affairs and Human Right.

When you are dispossessing someone of their land without compensation yet the law is very clear, these are human rights issues. We have dealt with such issues. For those reasons, the Ruaraka land scandal must be brought before the Senate. The former

Minister of Interior and Co-ordination of National Government, Dr. Fred Matiangi, was mentioned. We will not fear mentioning people who have participated in corruption in this Republic.

**Sen. Faki:** Bw. Spika, niko na hoja ya nidhamu. Hoja yangu nikwamba Seneta wa Kaunti ya Nandi, anazungumzia ripoti ya Ruaraka iliyoletwa katika Bunge la Kumi na Mbili.

Yeye ni mmoja kati ya wale Maseneta waliopiga kura kuangusha Ripoti hiyo. Je, ni haki kuzungumzia Ripoti ambayo yeye mwenyewe alikuwa ni mmoja wa wale ambao walipiga kura kuangusha?

**The Deputy Speaker** (Sen. Kathuri): Sen. Cherarkey, proceed.

**Sen. Cherarkey:** Mr. Deputy Speaker, Sir, we shall not allow people like Sen. Faki to protect---

**The Deputy Speaker** (Sen. Kathuri): Sen. Faki is not 'people'. He is a honourable Member of this House and Senator of Mombasa County.

**Sen. Cherarkey:** Mr. Deputy Speaker, Sir, we shall not allow the Senator for Mombasa who was a good Member in the Committee on Justice, Legal Affairs and Human Rights which I chaired in the last Senate to mislead the House.

I voted against corruption because the Report that was tabled did not nail the real suspects, allegedly, the former Cabinet Secretary for Interior and Coordination of National Government who was being mentioned. Sen. Faki must tell the nation whether he intends to protect the lone land grabbers in this Republic.

The other day, he brought to the House the issue of Buxton Housing Project and we went and defended the citizenry of Mombasa County. We shall not allow the honourable Member to mislead the House. In Conclusion---

**The Deputy Speaker** (Sen. Kathuri): Sen. Cherarkey, I am talking to you. Did you hear what Sen. Faki spoke about? He stated what you did at that time and did not defend anybody. You were to defend yourself by stating whether you voted against the Report. Sen. Oketch Gicheru, proceed.

**Sen. Oketch Gicheru:** Mr. Deputy Speaker, Sir, the point of order that Sen. Faki rose on was simple. We would want to know whether the Senator for Nandi, Sen. Cherarkey, voted for the Report or not.

**The Deputy Speaker** (Sen. Kathuri): Sen. Cherarkey, this was a straightforward matter.

**Sen. Cherarkey:** Mr. Deputy Speaker, Sir, the good Senator of Migori County, Sen. Oketch Gicheru, should acquaint himself with what the Report he was talking about. You cannot be a preacher if you do not understand the Bible. Sen. Faki does not know the contents of the Report. Unless he has another way of proving the contents and conclusions of the Report, then we can discuss. Can I conclude?

**The Deputy Speaker** (Sen. Kathuri): No. Sen. Faki, proceed.

**Sen. Faki:** Mgogoro huu wa shamba la Ruaraka ulichunguzwa na Kamati iliyoongozwa na Seneta wa Homa Bay, Sen. M. Kajwang'. Baadhi ya mapendekezo kwenye Ripoti ya Kamati ilikuwa wote walihusika katika malipo ya ile ardhi ya Ruaraka wachunguzwe na wafunguliwe mashtaka kutokana na ulipaji wa pesa taslimu billioni moja na laki tano za Kenya kwa ardhi ya serikali.

Walikuwa ni aliyekuwa wakati huo Waziri wa Wizara ya Masuala ya Ndani na Uratibu wa Serikali, Mhe. Matiang’i, Bw. Swazuri na mfanyibiashara mmoja ambaye alikuwa akiitwa Mburu

Wakati huo, Sen. Cherarkey alikuwa upande wa serikali. Walisema kuwa hawatakubali Ripoti ambayo inahusisha Waziri kupita katika Bunge hili, kisha wakaiangusha. Akubali kuwa alipiga kura ama asikubali. Ikiwa hatakubali rekodi ya Bunge inaweza kuitishwa ili tuone jinsi alivyopiga kura.

**The Deputy Speaker** (Sen. Kathuri): Let us get the other point of order. Members should specify the Standing Order they are rising on. Sen. Thang’wa, you have the Floor.

**Sen. Thang’wa:** Thank you, Mr. Deputy Speaker, Sir. Is Sen. Cherarkey on trial? I understand that you cannot discuss a Member of this House without a substantive Motion. Why are we questioning the Senator when he is contributing on issues pertaining a Statement that was presented here? Protect the Member.

**The Deputy Speaker** (Sen. Kathuri): Sen. Thang’wa, Sen. Cherarkey is safe. If he needs any protection, I will be there for him. Proceed and finish up your remarks. Choose your words carefully because we do not want further point of orders on your statements.

**Sen. Cherarkey:** Thank you, Mr. Deputy Speaker, Sir, for that guidance. It is known and on record that I am one of the Senators who make Solomonic decisions even when the country is at crossroads. Sen. Dullo can bear me witness. Sen. Faki should always apprise himself. I am a man who make decisions based on the facts presented.

In conclusion, when you look at a book authored by my good lecturer and my neighbor Sen. (Prof.) Tom Ojienda, SC, called “*Conveyancing*” –, he says “land is an emotive issue” then he puts a full stop on the preface of the book. However, he sells that book very expensively. Land is an emotive issue.

Yesterday the Senate Minority Leader brought a Statement to this House on the issue of evictions in his county. Therefore, Kenyans who lost their land in the Lamu Port-South Sudan-Ethiopia-Transport (Lapsset) Corridor must be compensated. With those remarks, I congratulate and wish Sen. Shakilla Abdalla well.

I hope the Lands, Environment and Natural Resources Committee shall look into the issue. We also have land issues in Nandi County. Before elections, I went with the then Chair of the Committee, Sen. Mpaayei, to the county.

Kenyans are suffering because their land has been illegally and irregularly dispossessed. I hope the Senate rises to the occasion and address this issue once and for all.

Thank you.

**The Deputy Speaker** (Sen. Kathuri): Thank you. There is no other request. Let us have the two Statements from Sen. (Prof.) Tom Ojienda.

**Sen. (Prof.) Tom Ojienda, SC:** Thank you, Mr. Deputy Speaker, Sir, for indulging me. I have two Statements but the first Statement is on a current issue on cage fish farming in Kisumu County.

## DEATH OF CAGE FISH IN LAKE VICTORIA

**Sen. (Prof.) Tom Ojienda, SC:** Mr. Deputy Speaker, Sir, I rise, pursuant to Standing Order 53(1), to seek a Statement from the Standing Committee on Agriculture, Livestock and Fisheries regarding the massive death of cage fish in Lake Victoria, Kisumu County.

In the Statement, the Committee should -

(1) Investigate the cause of the recent large-scale death of fish in Lake Victoria that has resulted in devastating losses for fish farmers in Kisumu County, stating the number of cage fish that have died.

(2) Provide a record of cages in the Kisumu County section of Lake Victoria as well as that of cage fish farmers and state the financial implications of the sudden death of the cage fish.

(3) Outline the measures the County Government has put in place, if any, to mitigate the losses incurred as a result of the massive death of fish as well as mitigating the environmental causes of such death in the long term.

(4) State the legal framework or regulations that the County Government of Kisumu has adopted to govern and regulate cage fish farming and whether there is a legal recourse for cage fish farmers' recouping of loss of investment.

**Sen. (Prof.) Tom Ojienda, SC:** Mr. Deputy Speaker, Sir, the second Statement is on the sugarcane farming and the sugar industry within Kisumu County.

CHALLENGES FACED BY SUGARCANE  
FARMERS I AND DECLINE OF SUGAR INDUSTRY

Mr. Deputy Speaker, Sir, I rise, pursuant to Standing Order 53(1), to seek a Statement from the Standing Committee on Agriculture, Livestock and Fisheries regarding the challenges faced by sugarcane farmers and decline of the sugar industry in Kisumu County.

In the Statement, the Committee should-

(1) Investigate allegations of persistent challenges surrounding policy formulation and implementation, management of the sugar factories and financial woes that have led to the decline of sugar production and resultant closure of sugar factories in Kisumu County.

(2) Address the plight of sugarcane farmers within the County who wish to experience productivity in sugarcane farming as an economic enterprise;

(3) Cause the County Government of Kisumu to address the perennial challenges plaguing sugarcane farming in the County;

(4) Undertake a site visit to the various sugar factories to ascertain their status, functionality and productivity and the various measures, if any, adopted to address the plight of the farmers internally; and

(5) Summon the Cabinet Secretary in charge of Agriculture to explain the measures taken by the national Government to ensure productivity and profitability of

sugar manufacturing factories in Kenya and any incentives that have been created with a bid to ensure this goal is achieved.

I thank you

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kathuri): Is it a point of order or you want to make a comment on the Statement?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, it is a point of order.

**The Deputy Speaker** (Sen. Kathuri): He is already done with the Statement. Is it concerning the Statement or a different matter?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, it concerns the Statement.

**The Deputy Speaker** (Sen. Kathuri): Then make a comment on the Statement and not a point or order.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, you have just made a precedence. You allowed the Senator for Mombasa County, Sen. Faki, to interrogate what Sen. Cherargei did in yester-years. Using the same latitude, could you allow me to congratulate Sen. (Prof.) Tom Ojienda SC for his concern about financial woes facing the sugar industry? As he does so, is he prepared to go and explain to the farmers of Mumias Sugar Company on the role his clients and himself played in occasioning the same problem in Mumias Sugar Company?

**The Deputy Speaker** (Sen. Kathuri): Hon. Members, you are taking the wrong route. You are interrogating your own colleagues in the Chamber. I think you are opening a Pandora box.

Sen. (Dr.) Khalwale, do not go that route because you might be asked some serious questions which you will not be able to answer.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Deputy Speaker, Sir. I am most obliged.

**The Deputy Speaker** (Sen. Kathuri): You made your case. We will hear from Sen. (Prof.) Tom Ojienda.

**Sen. (Prof.) Tom Ojienda SC:** Mr. Deputy Speaker, Sir, the plight of sugar cane farmers, which is a national question, would apply across the counties. It applies to sugar cane farmers in Mumias, Miwani and any other sugar planting county. Most of them have not been paid and the policy question of privatization, collapse and revival is a cross cutting one.

Mumias Sugar Company was my client and, in fact, the Senator for Kakamega County will be surprised that I defended Mumias Sugar Company successfully against claims. I never sued it because it was my client. Unfortunately, the politicization of some of the questions around the political period when the plight of Mumias Sugar Company was brought forth never brought out the real question.

That is why it is important that Sen. (Dr.) Khalwale addresses any particular question that he might have. That includes the issues that are under litigation in court which have anything to do with the process of privatisation of Mumias Sugar Company and other companies for the benefit of *mwananchi*. I not only defended Mumias Sugar Company but I would confess that I also defended my clients in the Ruaraka Land Saga. I defended them on the basis of violation of rights then.

The plight of sugar cane farmers in Mumias, some of whom are my friends, is the same as the plight of the other sugar cane farmers. A policy that will benefit the sugar cane farmers in Kisumu County would also benefit sugar cane farmers in Mumias, West Kenya and Ramisi, Kwale. I say that because we also have clients from Ramisi where we have Kwale International Sugar Company Ltd developing sugar for the benefit of the people. We are defending cases involving the sugar cane farmers and the factories.

The entire framework of the policies that we seek to interrogate under Agriculture and Food Authority (AFA), which is the framework legislation, basically benefits sugar cane farmers. The sugar factories also benefit from a framework of privatization that would ensure that the development of cane is a process that ensures that there is cane for the factory but the sugar cane farmer is also paid in good time.

Right now, most cane farmers in Mumias, Miwani and Muhoroni remain unpaid. It takes a long time for them to access money from the factories even after their cane has been harvested. A policy should be in place to ensure that these poor farmers are compensated, they get their money in good time for them to reinvest the money in farming.

**The Speaker** (Sen. Kathuri): Make your comments, Sen. Cherarkey.

**Sen. Cherarkey:** Thank you, Mr. Deputy Speaker, Sir. I come from the region that depends mostly on sugar; Chemilil, Chemase and Tinderet Sub-county. We also have Mosop Sub-County where we have just started planting sugar cane. We do have similar problems with the other sugar cane farmers.

My brother, Sen. (Prof) Tom Ojienda SC, there was a Kenya Privatisation Commission. The nucleus of Chemilil, Miwani and other parts of nucleus was supposed to be privatized. I remember his party leader held a meeting in one of the hotels to the exclusion of farmers from Nandi County. That is why we are in the High Court in Eldoret. They wanted to privatize Chemilil Sugar Company yet part of the nucleus of the sugar factory within that sector includes Nandi. That is why I want him to look at the privatisation issue of the sugar industry before it comes to the Floor of the House.

We need to add the issue of privatization of the---

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

**The Speaker** (Sen. Kathuri): There is a point of order, Sen. Cherarkey. Yes, Sen. Dullo.

**Sen. Dullo:** Thank you, Mr. Deputy Speaker, Sir. This is a Statement but we are reducing it to a debate on the Floor of the House. Is it in order?

**The Speaker** (Sen. Kathuri): I have allowed Senators to make comments in one or two minutes but I indulged the professor because he was explaining a pertinent matter.

**Sen. Cherarkey:** Mr. Deputy Speaker, Sir, the Senate Minority Whip should listen to the debate keenly. Sen. (Prof.) Tom Ojienda SC, never included the issue of privatization of the sugar sector in the Statement.

Standing Order No. 53(2) says that the Speaker can allow additional comments. That is why I am requesting that when the Statement goes before the Committee on Agriculture, Livestock and Fisheries they should look at the issue of privatization of nucleus that affects the other places.

Finally, on the issue of Kenya Sugar Bill that is before this Parliament, I think it is in the Senate, those are some of the issues that we must look at---

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

**The Speaker** (Sen. Kathuri): Just a minute, Sen. Cherarkey.

**Sen. Kinyua:** Mr. Deputy Speaker, Sir, it was ruled in the morning by the Speaker that one can add information if they are doing so for the purpose of the Committee. I, therefore, believe that what Sen. Cherarkey is doing is in order.

**The Deputy Speaker** (Sen. Kathuri): Sen. Cherarkey proceed and finish up.

**Sen. Cherarkey:** Thank you, Mr. Deputy Speaker, Sir. In an upshot, I am just giving additional information. The sugar Bill is before the Senate and we need to relook at it before the lapse of the last Session.

We have running issues in Kericho County, where Sen. Cheruiyot comes from; Nandi, Kisumu, Kakamega, Vihiga and Bungoma counties. We need to relook at that issue because we are stakeholders in this sugar bill. As this matter comes before the House, we must look at the status of the Kenya Privatization Commission (KPC) on the privatisation of sugar companies.

We know people who brought individuals from some areas and wanted to privatise sugar companies. In that privatisation, they wanted to give out Chemelil Sugar Company without telling us who was taking over and what they were going to do with it. We wanted that nucleus to remain as a sugar belt. Somebody would have taken the lease and maybe planted potatoes or tomatoes, yet that was not the wish of the farmers from Kisumu County.

I am happy Sen. (Prof.) Tom Ojienda, SC is now facing and holding the bull by the horns. I am afraid that his Party Leader might not be on the same page with him but let us hope for the best in future.

**The Deputy Speaker** (Sen. Kathuri): Sen. Joe Nyutu, proceed.

**Sen. Joe Nyutu:** Thank you, Mr. Deputy Speaker, Sir, for this opportunity. I rise to support the Statement by Sen. (Prof.) Tom Ojienda, SC, regarding the decline in sugar production in his County.

I do not come from a sugar growing area. I come from Muranga County but I support that Statement because the issue affecting low production of most agricultural goods cuts across. It is mostly about the cost of production. This affects not only sugar but also coffee and tea. These are major cash crops in Murang'a County where I come from.

I am glad that the current regime has promised that it will ensure the cost of production comes down. As the Committee addresses that, the major thing we should do is to fast-track the reduction of production cost.

The issue of cartels in marketing of agricultural commodities must also be addressed as we look at the low production. Farmers are demotivated because of the low income from their agricultural products.

Sometime last month in Murang'a County, we had some professionals who told us why the farmer was not benefiting from his sweat. We got shocked that some companies have registered as coffee marketers using one name. The same people then

register another company as a buying company. So, the seller becomes the buyer and the price is compromised.

I do not know whether that is the same thing happening with sugar but as the Committee looks at that, this is something they may want to find out whether the same is happening. Somebody converts themselves into a seller and again into a buyer, using another company. As the issue is looked at, let us see the cartels being arrested so that the farmers of sugar, coffee, tea and milk can gain from their sweat.

I support the Statement more especially on low production of sugar farmers in Kisumu and everywhere as this is a cross-cutting issue.

**The Deputy Speaker** (Sen. Kathuri): It is now okay. Kindly proceed.

**Sen. Mumma:** Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to contribute to this.

I rise to support the Statement by Sen. (Prof.) Tom Ojienda, SC, my Senator from Kisumu County. As I support, I urge the Committee that will look at this issue to, for once, depoliticize addressing the problems of farmers in the sugar industry.

Sugar farmers in this country, whether from Kisumu, Homa Bay, Migori, Kakamega, Busia, Bungoma or Nandi counties, are all suffering because we have politicised the management of the sugar industry. As we speak, the parastatals around the sugar factories collapsed. Most of these sugar factories are leased to private actors, who are not better than what the parastatals were.

Every time we stand as politicians to speak about the sugar industry, we speak at each other. The Statement is asking the Governor to give some answers that he may not have. As you know, the sugar industry in Mumias, Nzoia and Busia were in the hands of the national Government. By the time devolution came, most of them had collapsed.

We are yet to know what the Kenya Sugar Research Foundation (KSRF) found out on the viability of farming sugarcane in the manner that we do in Kenya. We have not done that. We politically cheer on farmers to proceed and plant sugarcane in acreages that are not viable. We assume they are going to make profit when we know they are not going to make profit because it is not politically correct to tell them they will not make profit.

We have not put enough funds in research to be able to design our sugarcane farming in a manner that it can be profitable like in Mauritius. We must stop the political blame game across politicians who do not know how to farm. In fact, they farm as telephone farmers and cut the queue and get paid because they are politicians. We have farmers who are suffering.

I suggest that the Committee should take this issue seriously. It should do proper historical research on what happened to KSRF and the Kenya Sugar Authority (KSA), how the sugar factories were transitioned, what is owed to the farmers, how much land of the nucleus has been grabbed. Let us have this information candidly looked at.

I am finalizing because I know you want to caution me. I just thought I should put in that we must not mislead our farmers by giving the impression that by exchanging with each other, we will resolve their issues. We need to look at these fundamentally. The Committee that will look at it, should not take it as a small job. It should take it as a serious job and look at all of them.

**The Deputy Speaker** (Sen. Kathuri): Thank you, Sen. Mumma.

Hon. Senators, we made some resolutions while in Mombasa and agreed that Statement hour is strictly one hour.

We have several requests but we only have 10 minutes to 3.30 p.m. When I allow you to speak, kindly make your comments brief.

When the Committee summons the Cabinet Secretary (CS) for Agriculture and Livestock Development, you can attend that meeting, so that you can execute your issues as it was clearly put by the Senator for Isiolo, my good neighbour, Sen. Dullo. She is a veteran and knows that we cannot execute issues here when the CS is not around.

So, Sen. Olekina, you have two minutes to make comments.

**Sen. Olekina:** Mr. Deputy Speaker, Sir, I consider sugarcane as a poor man's crop. I will be a happy man the day farmers in Kenya, and particularly in Kisumu, will move away from sugarcane planting.

Why am I saying that? Although I support the Statement by the distinguished Senator for Kisumu, we have a big challenge in this country. This is why I want to challenge the Committee.

In as far as my colleague has requested for about five issues to be looked into, I want to further request the committee to extend by finding out whether we have done enough research on how we can utilize everything in the sugarcane industry.

Firstly, we have the bagasse. In this country, we have never found a way of utilizing all the different products that we can get from the bagasse like building materials. That is what will help the sugarcane industry to thrive.

The challenge that we have now is that sugarcane is a seasonal crop. So, those factories will collapse because it is a seasonal crop. That is why I call it a lazy man's crop. When a farmer plants sugarcane, they wait for 18 months before the sugarcane can be crashed.

When it comes to crashing sugarcane, we have got the same problem in Narok. I hope when the Committee on Agriculture, Livestock and Fisheries investigates issues raised by my colleague, they will extend to Narok County because it affects the entire sugar belt.

If we move away from sugarcane and start coal production, we can produce enough animal feeds for our country. In that case, a farmer will not have to wait for 18 months before their sugarcane to be crashed. We are using old technology to crash sugarcane and the cost of production is high.

Even the way we transport sugarcane is inefficient. The only way we are going to make meaningful decisions in this country and even formulate policies that will help sugarcane farmers is by agreeing to accept the fact that when it comes to the issue of Mumias Sugar Company or sugar factories in Kisumu, there is a time that equipment becomes obsolete.

So, we need to remove them, adopt new technologies and also think of adding value. That is the only time we will not have this problem that my colleague, the distinguished Senator for Kisumu, is talking about here.

Mr. Deputy Speaker, Sir, I support.

**The Deputy Speaker** (Sen. Kathuri): Kindly, proceed, Sen. Osotsi. You also have two minutes.

**Sen. Osotsi:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to also support the Statement by my neighbor and friend, Sen. (Prof.) Tom Ojienda, SC, the Senator for Kisumu, to say that this particular Statement is timely.

As you may be aware, and I congratulate my neighbour and friend, Sen. (Dr.) Khalwale, Mumias Sugar Company is now doing some minimal production. I thank him for supporting that effort.

As one of the leaders in the region, I also support and encourage other leaders to support that initiative, in order to bring back Mumias Sugar Company to full scale production of sugar so that our farmers can benefit. However, these kind of assignments have been done in this House and also in the National Assembly. Many reports have been produced with good ideas but nothing is happening.

What we lack in this country, when it comes to matters sugarcane, is the political goodwill of reengineering the sugarcane business. This is not there because some of the policy makers are the ones who import sugar since it is profitable. They do not want the industry to thrive because they will lose business.

We want to see some serious action by the Kenya Kwanza Government. They should stop sugar barons from importing sugar, so that we can revive our sugar industry. We cannot revive our sugar industry if we continue allowing sugar barons to import sugar. Some of them even pretend they produce sugar when they are simply importing, packaging and selling it to Kenyans.

As a leader from the Western region, I fully support the initiative to bring back Mumias Sugar Company to life. I encourage many other people to do what Sen. (Dr.) Khalwale did last weekend, by going to Mumias Sugar Company to inspect what is being done there and supporting it.

We expect the support of President William Ruto. One of the things he promised in the Kenya Kwanza Coalition Pact was full revival of Mumias Sugar Company.

I thank you.

**The Deputy Speaker** (Sen. Kathuri): Kindly proceed, Sen. (Dr.) Khalwale. You have two minutes.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, the issue of Mumias Sugar Company is emotive and a matter of life and death. As I speak, I want to tell this House that Dr. Evans Kidero and Sen. (Prof.) Tom Ojienda, SC, almost killed me in court because of Mumias Sugar Company.

*(Laughter)*

Mr. Deputy Speaker, Sir, I know the rules of debate. I would like to invite the Hon. Senator to release the Kshs280 million that was deposited in his account for services that were not rendered, which he has been covering, hiding and gagging the Ethics and Anti-Corruption Commission (EACC).

Mr. Deputy Speaker, Sir, I would like to add on that Statement, that they should come up with an answer to tell us how they are going to recover the billions of shillings

owed to Mumias Sugar Company by perpetrators of graft and economic crimes as I have described above.

**The Deputy Speaker** (Sen. Kathuri): Yes, Sen. (Prof.) Tom Ojienda.

**Sen. (Prof.) Tom Ojienda, SC:** Mr. Deputy Speaker, Sir, it is good that Sen. (Dr.) Khalwale is falling into the bracket of rumour-mongers and individuals who speak to facts that they cannot verify and that is unfortunate.

May I remind you that Sen. (Dr.) Khalwale is referring to a report that was released in 2018. That report was released to the public without an investigation or interrogation on Mumias Sugar Company then. The report stated that a sum of Kshs200 million had been deposited to my account and the account of Dr. Evans Kidero. I do not know where that came from.

At the time in question, I was a lawyer in the panel of Mumias Sugar Company. The total legal budget of Mumias Sugar Company for the 13 law firms in the panel was Kshs50 million per year. I had been in the panel of Mumias Sugar Company for about five years. Even if I was the only law firm paid for defending cases, that would have been Kshs150 million.

The total sum of money paid to my law firm by Mumias Sugar Company in the entire period that I defended Mumias Sugar Company was Kshs50 million for about eight years. Against that, the company owes me in excess of Kshs150 million unpaid to date and in respect of which there is a receivership proceedings going on.

The Senator for Kakamega has no facts. He is behaving like any other politician who is rumour-mongering in the marketplace.

Senator, just get the facts.

Mr. Deputy Speaker, Sir, the issue in question was investigated by Ethics and Anti-Corruption Commission (EACC) to finality. It was a subject of litigation in court, decisions were made on that question. This has questions of facts. You cannot carry Kshs200 million in a bag. There has to be a transfer process. There has to be transactions and it is very easy to trace. The Senator knows that that is the procedure.

I will invite you, Senator for Kakamega County, to visit me and I will show you the way. The people of Mumias Sugar Company have benefited from the legal services rendered by my law firm and at a fair gross under value for services.

Sen. (Dr.) Khalwale, you have commented on Dr. Kidero and the suit. There was a defamation suit between Sen. (Dr.) Khalwale and Dr. Kidero, those are matters that are in court---

**The Deputy Speaker** (Sen. Kathuri): Distinguished Senator for Kisumu County, let me assist you.

**Sen. (Prof.) Tom Ojienda, SC:** Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kathuri): Sen. (Dr.) Khalwale, be advised that, if you want to discuss our colleague, Sen. (Prof.) Tom Ojienda, SC, use Standing Order no. 114. Bring a Motion to discuss those matters. Then you can discuss issues concerning your colleague Senator.

Secondly, you have mentioned other Kenyans out there who cannot come to this House to defend themselves. Kindly, bring a substantive Motion to mention their names. They can appear before a Committee and clear their names.

Let us give justice.

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

Sen. (Dr.) Khalwale, just sit down. Why are you unsettled? Relax. I will give you time.

What is it, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Thank you, Mr. Deputy Speaker, Sir, for this. I respect the rules of debate. Sen. (Prof.) Tom Ojienda, SC, has challenged me that I am proceeding on this matter---

**The Deputy Speaker** (Sen. Kathuri): He has challenged you after you mentioned his name.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, correctly so, that I do not have facts. I will move under the Standing Orders to bring the substantive Motion.

**The Deputy Speaker** (Sen. Kathuri): Bring the Motion first. Do not add anything on that.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, not now.

**The Deputy Speaker** (Sen. Kathuri): Next week.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, so that the record remains clear, on 18<sup>th</sup> March, 2015---

**The Deputy Speaker** (Sen. Kathuri): Sen. (Dr.) Khalwale, no, you cannot proceed that way.

**Sen. (Dr.) Khalwale:** The Chief Magistrate of Kibera ordered that Sen. (Prof.) Tom Ojienda, SC account at Standard Bank should be investigated---

*(Sen. (Dr.) Khalwale's microphone was switched off)*

**The Deputy Speaker** (Sen. Kathuri): Sen. (Dr.) Khalwale, you are out of order.

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

*(Loud consultations)*

You now risk being shown the door.

Yes, Sen. Cherarkey, you may have the Floor.

**Sen. Cherarkey:** Mr. Deputy Speaker, Sir, to allow the House to proceed, could you rule that Sen. (Prof.) Tom Ojienda, SC and Sen. (Dr.) Khalwale are out of order as per the Standing Order 103.

This is because what they are discussing are matters sub judice. We are aware that receivership proceedings are ongoing in court. They are bringing alive matters before this House. I request that you rule both Sen. (Prof.) Tom Ojienda, SC and Sen. (Dr.) Khalwale out of order.

By the way ---

**The Deputy Speaker** (Sen. Kathuri): It is only Sen. (Dr.) Khalwale who is out of order not Sen. (Prof.) Tom Ojienda, SC.

**Sen. Cherarkey:** Mr. Deputy Speaker, Sir, Sen. (Prof.) Tom Ojienda, SC has also brought matters that are under receivership and are being litigated in court. Therefore, he is also out of order as per Standing Order no. 103.

**The Deputy Speaker** (Sen. Kathuri): He was provoked beyond reasonable parameters.

**Sen. Cherarkey:** Mr. Deputy Speaker, Sir, the Standing Order does not say; when you are provoked beyond reasonable doubt or beyond emotional limit, you must retaliate.

They should therefore be ruled out of order.

**The Deputy Speaker** (Sen. Kathuri): Sen. Oketch Gicheru, you may have the Floor.

**Sen. Oketch Gicheru:** Mr. Deputy Speaker, Sir, I rise under Standing Order No. 98(4) and urge you to request the Senator for Kakamega County to leave the Chamber. This is because you have ruled on a matter twice and he persistently continues to rattle and insist to discuss the same matter even when you have ruled that it should be brought as a Motion. He still goes ahead and prosecutes the matter. Is he in order?

In fact, what Sen. (Dr.) Khalwale has done is not only a gross violation on a point of order but also, disrespect to the Chair.

Pursuant to Standing Order No. 98(4), may you ask the Senator for Kakamega to leave the Chamber.

Thank you.

**The Deputy Speaker** (Sen. Kathuri): Sen. Olekina, you may have the Floor.

**Sen. Olekina:** Mr. Deputy Speaker, Sir, I am standing on Standing Order No. 1 but I am very sure there is also another relevant Standing Order only that I cannot remember.

We are discussing a Statement that has been brought by the distinguished Senator for Kisumu County. Earlier on, your brother, the Speaker, gave us directions on what we should do when it comes to debating statements. In fact, if I remember very well, he directed that when it comes to contributing to statements, we limit our contribution to what we want the Committee to carry out and investigate.

I seek your indulgence on this matter so that we can proceed. Earlier on, you limited our time for debate to two minutes. We are now moving into personal issues. The distinguished Senator for Kakamega clearly stated that this is an emotive matter

Mr. Deputy Speaker, Sir, I beseech you that we do not tolerate this matter anymore. Can you give us directions on these statements so that we can move forward?

**The Deputy Speaker** (Sen. Kathuri): Resume you sit, Sen. Olekina.

The two Statements are referred to the Senate Standing Committee on Agriculture, Livestock and Fisheries.

Sen. Cheptumo, you may have the Floor.

**Sen. Cheptumo:** Mr. Deputy Speaker, sir, my colleague, Senator for Narok County, has stated my sentiments.

It is wrong for Sen. Cherarkey to allege that Sen. (Prof.) Tom Ojienda, SC has spoken about the matter in court when he only said that there are proceedings in court. So

that we utilise our time more productively, it is important you proceed as proposed by my colleague so that we deal with other issues.

**The Deputy Speaker** (Sen. Kathuri): Sen. Cheptumo, I gave you time to speak on a different matter, not on this issue.

**Sen. Cheptumo:** Mr. Deputy Speaker, Sir, I thank you.

My point is to guide my colleagues in the House. My Committee has received a number of statements on matters drought and food distribution.

Yesterday, the Cabinet Secretary in charge of the East Africa, Arid and Semi-Arid Lands (ASALs) and Regional Development, appeared before my Committee to answer questions touching on the issue of relief distribution and so on. What we learnt in that session is that, the Department of Special Programs under Executive Order No. 1 is now squarely in the Ministry of Labor and Social Protection.

Mr. Deputy, Speaker, Sir, to make this clear so that as my colleagues continue to raise questions, they should refer to the Executive Order No.1 so that they direct the questions to the relevant departments.

My brother, Sen. Osotsi, raised an issue on the same subject which was read in the morning. I felt it was good for me to state that as a responsible Chairperson and to assist my colleagues so that in future, they raise questions on relief distribution to the Ministry of Labor and Social Protection. That will save Members' time rather than, directing questions to my Committee, then we write to you. We lose a lot of time.

That is all that I wanted to clarify today.

Thank you.

**The Deputy Speaker** (Sen. Kathuri): Thank you, Sen. Cheptumo. I hope Members are now well advised that issues on relief should be directed to the Committee on Labour and Social Welfare, which is now in charge of the food distribution and not the Committee on National Security, Defence and Foreign Relations.

The Senate Majority Leader, make your Statement under 57(1).

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Deputy Speaker, Sir, sugar is a very important cash crop in my county. It is the next big earner after tea. Therefore, I had a small comment on the Statement made by my neighbour.

**The Deputy Speaker** (Sen. Kathuri): Then, make your comment. It is Sen. (Dr.) Khalwale who digressed and that is why I was forced to cut that debate on the sugar issue.

**The Senate Majority Leader** (Sen. Cheruiyot): However, Mr. Deputy Speaker, Sir, the matter has been ably handled by yourself. This is an important matter.

Looking at the issues that have been raised by colleague Sen. (Prof.) Tom Ojienda, SC, his biggest relief to the people he represents in this House is for him to walk to the Director of Legal Services, either in the Senate or the National Assembly, extract a copy of the Sugar Bill that was developed by the National Assembly and come push it in this House.

We have talked about all these matters for the last 10 years in this House. It is a shame as leaders that we have not been able to do this. Last Parliament we formed a caucus of Senators from tea-growing counties and we were able to fight together until we

came up with a revolutionary Act of Parliament that increased the earnings of our farmers though there is still a lot to be done.

I urge Sen. (Prof.) Tom Ojienda, SC, to gather Senators representing counties that have sugarcane-growing farmers and we will work together. There is nothing in this Statement that cannot be addressed by that particular Bill. This is a very important industry in our economy.

Mr. Deputy Speaker, Sir, I wish to add that we must expedite the process of privatization. The reason Uganda continues to produce more sugar than us is because 20 years ago, Uganda took the decision to privatize what were public mills. Since then, they have become extremely profitable. They have a surplus and that is why they feed us.

That is why on many occasions when we block sugar from Uganda, within two weeks President Museveni or his Minister for Finance and Trade arrive here in Nairobi. That ought not to be the situation. If the Taskforce concludes on that exercise and the Privatization Commission has done all the studies, then we will know the value of the mill and the nucleus estates across all the 18 publicly owned sugar factories in the country.

Mr. Deputy Speaker, Sir, we need to take a decision and inform or call the CS to this House to give us the roadmap especially those of us who are interested parties, representing farmers that continue to wallow in poverty.

I do not agree with the statement made by Sen. Olekina, that sugar is a poor man's crop. It is not true. That is a statement based on ignorance. I know for a fact that in my county, it is all about the ability to develop your cane well. If you invest well, put the correct amount of fertilizer, irrigate properly and allow it to mature, without using any shortcuts, you have better earnings than in any other crops.

*(Sen. Olekina spoke off record)*

No, do not call my farmers lazy. They are very hardworking. I was in Kilgoris three weeks ago. I know a lot about this sector because I am an investor in the sugar industry. I was in Sen. Olekina's county. Kilgoris would become a ghost town if he dares encourage his farmers to move away from sugarcane farming. They rely on it 100 percent. That town revolves around sugar.

Mr. Deputy Speaker, Sir, I look forward to Sen. (Prof.) Tom Ojienda, SC, inviting us and forming a sugarcane caucus of Senators representing those counties. All of us can sit down and expedite the Bill so that our farmers can enjoy.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 22<sup>ND</sup> NOVEMBER, 2022

Mr. Deputy Speaker, Sir, I move to the Statement by the Majority Leader. Pursuant to Standing Order 57(1), I present the business of the Senate for the week commencing Tuesday, the 22<sup>nd</sup> November, 2022.

On Tuesday, the 22<sup>nd</sup> November, 2022, the Senate Business Committee (SBC) will consider and approve the business for the day. This is projected to contain business

that will not be concluded from today's Order Paper and any other business scheduled by the SBC.

The Order Paper for Wednesday, 23<sup>rd</sup> November, 2022 and for Thursday, 24<sup>th</sup> November, 2022, will contain business that will not have been concluded in the previous day respectively as well as Petitions, Statements and any other business scheduled by the SBC.

Mr. Speaker, Sir, in terms of legislative business, two Bills are awaiting the Second Reading Stage. These Bills are the County Vocational and Training Bill, Senate Bill No.3 of 2022 by Sen. M. Kajwang' and the County Governments Additional Allocational Bill, Senate Bill No.4 of 2022.

The County Governments Additional Allocational Bill has been scheduled in today's Order Paper. There is need for both Houses of Parliament to expeditiously consider and pass the Bill preferably before we break for the long recess and before the House rests for the Christmas holidays.

Mr. Speaker, Sir, as I had explained, it is unfortunate that this Bill is locking hundreds of billions of donors funding and other conditional grants to our counties.

I want it to be known in the public domain that the Senate has been ready and we have done our best. We are awaiting the report of reconciliation from our engagement with the Treasury. That is the information I got from Sen. Ali Roba, the Chairman of Committee on Budget and Finance. As of this afternoon, when we resumed our Sitting, the National Treasury had not sent that report. It is the Treasury that is standing in the way of this Bill.

I say that because any Governor that I bump into nowadays and those that have access to my phones or are known to me personally, the one thing they call to tell me is that we expedite this Bill because it is clogging up county resources in terms of development funds.

I urge Sen. Ali Roba to still continue pursuing people from the National Treasury. If the report comes today in the afternoon, we can consider it. We shall be here up to 6.30 p.m. If he is ready and his Committee meets to consider it, then we are ready to transact business.

We can even do an extension of time because we are here to work. We can conclude on the Second Reading and then wait for Tuesday, 22<sup>nd</sup> November, 2022, to conclude on the Third Reading.

I urge Hon. Senators to be available in the House during debate and subsequent Divisions as the Bill will require the necessary threshold for passing. The new Senators understand the magic number of 24.

If we do not have 24 delegations, this Bill is not likely to pass. Imagine the kind of shame we will find ourselves in if the report from the Committee is ready and yet we cannot raise the requisite delegations to pass this Bill.

Mr. Deputy Speaker, Sir, I will continue to remind people that the stage and the platform of Parliament is a premium stage. I cannot find any other place where you can speak to the issues that affect the people that sent you this House.

You are paid well to be a Member of Parliament. I have never understood why on an afternoon like today, you cannot find Members of Parliament in the House speaking

about issues. These things we are debating about sugar and others are important. Citizens should feel they are part and parcel of them because they affect us in one way or another.

There are also three Bills which are undergoing the concurrence process contemplated pursuant to Article 110(3). We may soon be bolding that Section. The Deputy “Speaker”, Ms. Eunice Gichangi told me the other day that in her Constitution booklet, Article 110(3) was beginning to fade off.

**The Deputy Speaker** (Sen. Kathuri): Senate Majority Leader, are you taking my position and giving it to the Deputy Clerk?

**The Senate Majority Leader** (Sen. Cheruiyot): No, Mr. Deputy Speaker, Sir. I was referring to her. I have not given her any instructions.

**The Deputy Speaker** (Sen. Kathuri): No problem.

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Deputy Speaker, Sir, if you get a copy of her Constitution, Article 110(3) has begun to lose ink because of the number of times she has read it. This is at the heart of our operations.

I am happy that this morning, we had a discussion between the Hon. Speaker of the Senate, the Hon. Speaker of the National Assembly and the team that is working on the concurrence process. It is my sincere hope that we can conclude that process by the end of next week.

The three Bills are -

- (1) Parliamentary Powers and Privilege Bill
- (2) Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, (Senate Bills No.7 of 2022)
- (3) Natural Resources Benefits Sharing Bill.

The National Resource Benefits Sharing Bill was pushed last time by one of our colleague Senator. It was very important for Senators that come from counties that have natural resources like mining.

Mr. Deputy Speaker, Sir, with respect to other business of the House; there have been numerous Statements pursuant to Standing Order No. 53(1) and 52(3), sought from Standing Committees. I urge the respective Committees to expedite consideration of the business before them and table reports pursuant to the Standing Orders.

Mr. Deputy Speaker, Sir, this is something that we are looking forward to because each afternoon for the past three or four weeks, I have seen Senators bring before this House Statements. As expected, responses are yet to be tabled. Many of those matters are still before our Committees. I plead with Chairpersons of Committees to push on this particular business and ensure Statements brought by Members are considered and response tabled.

Finally, I applaud Hon. Senators who have filed Motions and Statements on various issues and those who have taken up Bills that lapsed during the end of 12<sup>th</sup> Parliament. The Bills are being processed and they will be scheduled in the Order Paper, after the concurrence process is completed, in view of Article 110 (3) of the Constitution. We are pushing hard for conclusion, so that we avoid these afternoon sittings where we do not have any business to consider.

Thank you, Mr. Deputy Speaker, Sir. I hereby lay the Statement on the Table of the House.

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

**The Deputy Speaker** (Sen. Kathuri): Thank you, the Senate Majority Leader. Let us proceed to the next Order.

## BILL

### *Second Reading*

#### THE COUNTY GOVERNMENTS ADDITIONAL ALLOCATIONS (NO. 2) BILL (SENATE BILLS NO. 4 OF 2022)

**The Deputy Speaker** (Sen. Kathuri): Proceed, Sen. Ali Roba.

**Sen. Ali Roba:** Thank you, Mr. Deputy Speaker, Sir. I beg to move that the County Government Additional Allocation (No.2) Bill (Senate Bills No. 4 of 2022) be now read a Second Time.

Mr. Deputy Speaker, Sir, the County Government Additional Allocation (No.2) Bill (Senate Bills No. 4 of 2022) was published vide Kenya Gazette Notice No. 163 of 26<sup>th</sup> October, 2022. It was introduced in the Senate by way of First Reading on Tuesday, 8<sup>th</sup> November, 2022. Thereafter, the Bill stood committed to the Senate Standing Committee on Finance and Budget, pursuant to Senate Standing Order No. 145(1).

Mr. Deputy Speaker, Sir, the primary object of this Bill, is to provide for transfer of conditional and non-conditional allocation from the national Government sharable revenue, under Article 202(2) of the Kenyan Constitution. Its other object is to provide for additional allocation from the proceeds of loans and grants from development partners, in line with Article 190 of the Kenyan Constitution, for county governments to benefit from this additional allocation in the Financial Year 2022/2023.

Mr. Deputy Speaker, Sir, we have since progressed well as a Committee. We have had stakeholder engagement, comprising of written submissions. A Publication was made in the Daily Nation newspaper on Wednesday, 9<sup>th</sup> November, 2022, inviting members of the public and other stakeholders, to present their memoranda on the Bill to the Committee. That has already happened.

The Committee also sent invites to other stakeholders ---

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

**The Deputy Speaker** (Sen. Kathuri): He is moving the Bill. Is it a point of order on the Bill? You will have time for contribution, either to support it or not. Proceed, Sen. Ali Roba.

*(Sen. Cherarkey spoke off-record)*

**The Deputy Speaker** (Sen. Kathuri): What is it? Which Standing Order are you using? How does it read?

*(Sen. Cherarkey stood in his place)*

**The Deputy Speaker** (Sen. Kathuri): Wait a minute, Sen. Ali Roba.

**Sen. Cherarkey:** The Party Leader is smiling. He should know that what is coming is not a smiling matter.

Mr. Deputy Speaker, Sir, I rise under Standing Order No. 148. I have heard Sen. Ali Roba move the Bill. However, I am pointing this out for neatness and order in the House. His Committee has not tabled the report. He says that an advertisement for stakeholder engagement was published in the Daily Nation. We are not aware.

I wish the Report on this matter was tabled for us to follow what he is moving. It is a matter that was considered by the Committee as per Standing Order No. 148. I know he has 30 calendar days but as he moves the Bill, can he at least tell us that he will table the report later on and conclude?

Mr. Deputy Speaker, Sir, I seek clarification.

**The Deputy Speaker** (Sen. Kathuri): Thank you, Sen. Cherarkey. You have interrupted him but from where I sit, I know he will mention about the issue which you are raising. Do not interrupt him. Please listen.

**Sen. Ali Roba:** Mr. Deputy Speaker, Sir, thank you for the protection. I was going to share the same in subsequent discussion. This Bill is important and I thought giving a little background was critical.

We have engaged critical stakeholders and various input have been brought to light. As previously shared by the Senate Majority Leader, the stakeholder's contribution has shade some variance on the published Bill. Subsequently, we have invited the National Treasury, to expound on the same. They had promised to respond by the end of day yesterday but it did not happen. That is why the Report is not ready. We shall table the Report upon receipt of requisite input from the National Treasury and subsequently amend the Bill as necessitated, for purposes of reconciling the numbers in the Bill and input from external stakeholders.

Mr. Deputy Speaker, Sir, I beg to move and request Sen. (Dr.) Khalwale to second. Thank you, very much.

**The Deputy Speaker** (Sen. Kathuri): Proceed, Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Deputy Speaker, Sir. I rise to second this Bill. Whereas Sen. Cherarkey is perfectly right, we are doing this in the interest of fast-tracking.

This Bill is a vehicle for transferring additional funds to our counties. Funds that became due as a result of grants and loans from development partners, in accordance with our Constitution.

This being the case, I would like to appeal to the House for patience. Once the National Treasury releases her thoughts to us, then at an appropriate time, either during the Third Reading, we will make the necessary adjustment to avoid any further delays and subsequently succeed.

We are fast-tracking this Bill because in the previous Bill, the equalization fund was carried along with additional allocations, serving as a speed governor. It was a speed governor to the extent that the courts had made their determination that the money could not be spent until the government formed a board for equalization fund.

Secondly, Mr. Deputy Speaker, Sir, it is not entirely agreed which counties should be the beneficiaries for the Equalization Fund. There are those people who believe that the counties to benefit are the ones that strictly suffered under Sessional Paper No.10 of 1965. This Paper denied Mandera, Marsabit, Wajir, Garissa and Turkana counties, access to development funds due to poor policy.

**Sen. Faki:** Point of Order, Mr. Deputy Speaker, Sir!

**Sen. (Dr.) Khalwale:** However, because the Constitution corrected this and the application of the Equalization Fund is being---

**The Deputy Speaker (Sen. Kathuri):** Just a moment, Sen. (Dr.) Khalwale. What is your point of order, Sen. Faki?

**Sen. (Dr.) Khalwale:** I cannot concentrate.

**Sen. Faki:** Bw. Naibu wa Spika, nimesikia ndugu yangu Sen. (Dr.) Khalwale, akisema kwamba kaunti ambazo zimetengwa hazijakubalika.

Swala la awamu ya pili ya kaunti ambazo zimetajwa kutengwa, lililetwa katika hili Bunge Muhula uliokwisha. Kaunti hizo ziliongezeka ninafikiri 14 hadi 32 au 34. Hizo ndizo sasa zinatambulika kama *marginalized counties*.

Kwa hivyo, Sen. (Dr.) Khalwale anapoteza Bunge hili anaposema kuwa kaunti zilizotengwa hazijakubalika. Inafaa arekebishe swala hili.

**The Deputy Speaker (Sen. Kathuri):** Nikiongeza kidogo, Sen. (Dr.) Khalwale hakuwa Bungeni Muhula uliopita. Ningependa kumweleza kuwa siku hizi utaratibu wa *marginalization* unaenda hadi kwenye kata ndogo na zinainishwa. Iwapo kuna eneo fulani la Kaunti ya Kakamega lenye umasikini, hilo eneo linachukuliwa na kupewa hela za kutengwa.

*(Sen. (Dr.) Khalwale remained standing)*

Sen. (Dr.) Khalwale, unapopewa Hoja ya nidhamu, unatakiwa kuketi halafu ikimalizwa, unasimama tena. Huo ndio utaratibu wa Bunge hili. Endelea sasa.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Deputy Speaker, Sir. I was standing because you were not on your feet. Otherwise, I would have sat down immediately.

I appreciate what you are saying. However, I was speaking to the letter and spirit of the Constitution, 2010. It was meant for a short period of only 20 years and to right a wrong against Kenyans, who live in those areas that I have tabulated.

There has been further wisdom and this has been expanded to include areas that are marginalised. It is going to call upon this House to reflect on this matter very seriously. It is because at the end of the day, we might as well call the entire country marginalised.

There is no county in Kenya today, that does not have a region, village, sublocation or location, which would not require support from marginalisation. Even the great Nairobi City County, has got Mukuru kwa Njenga and Kibera slums. Automatically, you would record it as a marginalised area.

These are the things that we are supposed to speak to with honesty, maturity and a lot of reflection. We should feel pain like the Turkana, Somalis in Garissa, Pokots and Pokomos. These are people who have really been disadvantaged because of a policy. So,

we needed it in the Constitution so that that policy could be corrected and a sunset close was put.

I can comfortably tell you that there are places in Mandera County today, that are richer than some places in Kakamega County. However, because the people of Kakamega County were not treated badly through bad policy – like the people of Mandera at that time – we would not mind if it is righted for a short period of 20 years. For your information, due to this haggling, already 12 years of the 20 are over. We are remaining with a mere eight years.

Members, I request that we all move behind my Chairman’s Bill. If we do that, this money can arrive to the food tables of these families and the villages for development. It will be used in houses and villages and their offspring will benefit too.

Mr. Deputy Speaker, Sir, in the same breath, we should also encourage the Chairman to lead us in the manner he has led us, to ensure that again, the Equalization Fund is fast-tracked. It is now holding Kshs15.88 billion which is just lying there and can be due for development.

Development touches our people especially when it goes to education of their children. In matters of hunger, our villagers will struggle and keep quiet. However, when it comes to education, they cannot take it because they have discovered that education is a social equalizer. They would not sit back knowing a child in Vihiga County, has a better chance of doing well in school than one, shall I say in Tana River County?

Therefore, I appeal to Members of this Senate and the National Assembly and Members of County Assembly (MCAs), that we should all unite and defend the education of the children of Kenya, whether from rich or poor families.

This new policy of the Competency Based Curriculum (CBC) that is attempting to replace knowledge-based curriculum, will create a class. It is because the requirement for CBC is such that the ordinary woman in Shinyalu, Luakhakha and in a village in Tana River County, cannot afford.

We should fight CBC so that if somebody thinks it is good, they should start by declaring that they are going to make access to CBC free of charge. For as long as parents are involved, nobody can afford. For as long as we continue asking parents to do homework for their children, it cannot succeed because some of the parents are actually illiterate. How will they do homework for their children? It is a bad policy, it is defeatist, divisive and it must fall. We must fight it and win for the sake of the poor.

I second.

*(Question proposed)*

**The Deputy Speaker** (Sen. Kathuri): I now allow Senators to make their comments. Proceed, Sen. Olekina.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir. I rise to support the County Government Additional Allocation Bill (No.2) Bill (Senate Bills No.4 of 2022). Two years ago, we had to vote about five times, when we were fighting for the revenue sharing formula, to determine how much money would go to counties. During that time, we had an interesting debate on whether the money should be divided based on the land

size or the number of people but wisdom prevailed in this House. We divided the money following a formula that all of us developed in order to support our counties.

During the debate, when we were all fighting for about Kshs342 billion, we received some information that our money had been increased to Kshs370 billion. So, all of us were excited. Little did we know that all conditional grants were now being calculated as part of the division of revenue for us to get about Kshs370 billion.

When we had gone through the Budget Policy Statement (BPS) and when we were considering the Division of Revenue Bill, to divide revenue between the two levels of government, that is when it dawned on us that the reason the money had gone up to Kshs370 billion, based on the formula had been approved by this House, was because the National Treasury and all the people who were fighting had hatched a plot which took into account all the conditional grants in the formula.

A big debate started and it ended up in litigation. Finally, the court agreed with the Senate that you can co-mingle the funds or divide conditional grants. That is why we came up with a law.

I am giving this background because I was sitting here and listening to the Majority Whip, Sen. (Dr.) Khalwale, seconding the Bill. He, however, deviated completely and started talking about Marginalization Funds. I knew it is important for us to talk about the Equalization Fund and that is why this Bill is important. This is the Bill that is going to support us.

I thank the Supreme Court for giving this Senate the authority to oversight these Funds. Members of the Senate and the National Assembly used to fight on even the title of this Act. Initially, it was called Conditional Grants Bill. However, we agreed to refer to it as the County Governments Additional Allocations Bill.

So, the importance of this Bill is double-fold. Firstly, it will aid this Senate to carry out its oversight mandate. Secondly, it is also to ensure that, every year when we deal with the Division of Revenue Bill, or when the National Assembly makes the budget, we can also consider more money going to the counties. That is money that comes in form of grants, loans from the World Bank (WB) and donations.

The Bill is very clear. The title is; the County Governments Additional Allocations Bill. That is different from the Division of Revenue Bill or the County Allocation of Revenue Bill.

The reason I stand here to support this Bill is because Narok County will get an additional Kshs512 million. There is a clear schedule and I hope it is in this Bill because I am debating based on that memory.

I invite the Majority Whip, Sen. (Dr.) Khalwale, to look at page 69. If you look at page 69, the total amount that Narok County will get is Kshs1 billion. That is why I am excited, because it will be more than Kshs8 billion that we receive based on the Division of Revenue Bill.

Kakamega, where my good friend comes from, will get a lion's share. Which number is Kakamega County? Please, always use large fonts *kwa sababu nimeanza kuzeeka*. That is for the Equalization Fund. However, there will be additional revenue allocation in terms of grants.

*(Sen. Sifuna spoke off record)*

It is interesting and I thank Sen. Sifuna for informing me about this. I have seen that they have also added the Equalization Fund money here, which is good. Once we have the Equalization Funds here, we should legislate on all those Funds as additional allocations.

I must say that was ingenious of the National Assembly. They did not want a process where we have back and forth in terms of regulations, even though we passed the regulations on the Equalization Funds. The most important thing about this Bill is that all grants even from World Bank will be factored.

Today I had lunch with Kisumu County Governor, Hon. (Prof.) Anyang'-Nyong'o, and he raised concerns about projects that are funded by the World Bank. You will find money for the first phase having been sent. However, during the second phase, the money does not reach the counties. This is because we do not have a legislative framework to ensure that the money is released on time and all those conditions set by the donor agencies are met. This is a Bill that I request all 47 delegations to be present to pass it.

I thank the Chairperson of the Standing Committee on Finance and Budget for moving expeditiously to bring this matter so that we can debate. I understand the challenge we have in debating when we do not have a report. However, I believe that we will still have Third Reading. If we pass this Bill in the Second Reading, it is like a conveyor belt. We are moving one step at a time.

I plead with my colleagues because Sen. Cherarkey was concerned that he has not read the report. For us to have business in this House, any time we have a Bill, we should move fast, so that before we go to the Third Reading, if there are concerns, we can discuss them on this Floor when we get an opportunity to read the report. I appreciate the work that the Standing Committee on Finance and Budget is doing.

Mr. Deputy Speaker, Sir, without deliberating too much on this issue, I support.

**The Deputy Speaker** (Sen. Kathuri): Proceed, Senate Majority Leader.

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Deputy Speaker, Sir, I appreciate the Committee on Finance and Budget; a committee that I respect and admire. I have served there for many years and I appreciate its contribution. Every time they are challenged, like we have challenged them to work expeditiously, sometimes they burn the midnight oil in order to process certain urgent matters.

It is easy for somebody to ask why the committee has not given us its report or say that they have not concluded reading the report and so on. However, over the years, experience has taught me that money issues are not agreed on easily. On many occasions, we end up agreeing the last minute when we strike a deal and pass it as it is.

That is why, unlike all the other Bills that come before this House, including those by the Committee on Finance and Budget, are brought late and in a hurry. Sometimes they are not fully baked for processing before the House.

However, according to our Standing Orders, it is not a must to have a Report to inform our debate. Debate is informed by the Bill itself and not a report that we get. It is

during the Third Reading when you get the justification from the committee report of why they propose certain amendments.

We do not debate but give justifications or dissatisfaction on proposed amendments during the Third Reading. At that time, you can say that you do not agree with certain Clauses and give reasons. Somebody else may also give the justification.

The reason we are proposing this amendment is because of a, b, c or d that holds to for the people that I represent in this House and therefore, I support that particular amendment.

For that reason, I urge colleague Senators who are in the House to read the contents of this Bill. This is perhaps one of the most important Businesses that the Senate gets to transact each and every financial year. It is important that we place some history how we ended up with this Bill. Previously, we used to carry conditional and unconditional grants as part of the annual Division of Revenue Act (DORA) and County Allocations Revenue Act (CARA) Bill. However, there have been litigations in court of people not agreeing.

Mr. Deputy Speaker, Sir, the history of Conditional and Unconditional Grants begun around 2015 when it was realised that about five counties had absolutely nowhere they could call a county headquarter. Part of them are still beneficiaries in this Bill today. The decision was then made at our Committee then to give them an unconditional grant for them to build their county headquarters.

I know of Nyandarua County where Sen. Methu comes from, Tharaka Nithi County and I cannot remember which other one, over the years, those counties have been getting resources over and above what we share and distribute outside of the revenue formula.

Unfortunately, over the subsequent years, the so-called National Treasury mandarins, the “deep states” and the “systems” found a way of securing projects and other “sweeteners” to certain well-connected counties, passing it before both Houses of Parliament and passing for it as either Conditional or Unconditional Grants.

You would find that a particular project was started yet when you take a keen look at it, you could note that on most occasions, it was the same counties that were always benefiting from the conditional and unconditional grants. What was more worrying was that there was no proposed formula for distribution of these projects. It rested upon the feelings of the Cabinet Secretary (CS) of the National Treasury.

Therefore, people started being concerned and said they needed to find a mechanism upon which conditional and unconditional grants would be sent out to all the 47 county governments. After lengthy drawn court battles, this decision was arrived at. This is the first Bill that we are considering under additional allocations to our County Governments over and above that which we distributed.

There is good justification. There are unique circumstances that end up giving us donor funded projects. For instance, today, I know Mr. Bill Gates was meeting the Council of Governors (CoGs). Based on whatever grants or gifting that Mr. Gates may want to give to certain county governments, if some of those are by way of loans that are being advanced to counties, if say they are meeting the donor community, then there is

justification for the Senate to agree to a particular formula and a distribution that does not favour certain counties over others.

Mr. Deputy Speaker, Sir, I appreciate the work that this Committee has done. I know they have not reached an agreement with the National Treasury. Perhaps that is part of the reasons the report is not here. I strongly believe that by Tuesday, when you are likely to conclude on the Third Reading of this Bill, they will have given us the justifications for the amendments that they want us to separate between this one and the Equalisation Fund because it is part of the proposal that is coming. We should treat it separately.

When we get that justification and read the report, we will then begin to appreciate and understand the genius and importance of this Bill. Colleague Senators need to go through the column of the appendixes of the Bill in the third schedule of what is due to their counties in the Equalisation Fund and also what is due as additional allocations to their counties under Appendix 3.

For example, Kericho County, which I represent, for the last two financial years, has not accessed close to Kshs700 million. That is a lot of money. Narok County is number 33, theirs should be somewhere in excess of Kshs1 billion if you add all the columns from (a) to (m). Sen. Olekina, that is a lot of money that your county has missed out on.

That is why we need to be in this House. That is why earlier we were wondering where colleagues are when dealing with some of these matters. You need to speak, read the column and appreciate our county Governors. On many occasions, we do not agree with our Governors. However, when they say, "Senators you are delaying us", I agree with them and say we should have done better. A figure of Kshs700 million in a county like Kericho and Kshs1 billion in Narok County can change lives. I am sure in Nairobi City County, Mombasa County and all other counties that are represented here, the figure could be way bigger.

The beauty of it all, the information that we have and the presentation from National Treasury is that this money is in existence and in the County Revenue Fund (CRF) account of many of these counties only awaiting the provident legislation which is here for counties to access.

Mr. Deputy Speaker, Sir, I appreciate the good work that colleague Senators have done. I emphasize that, if possible, we push through and ensure that we conclude on Second Reading today. When this House resumes on Tuesday next week, I believe the Committee will be ready with their report so that we proceed to Third Reading and send the message to the National Assembly.

The two weeks that they have should be sufficient for them to conclude on this Bill so that by the time we break for December holidays, counties are able to access these funds. Citizens are beginning to get restless; I have seen them beginning to ask Governors questions on why they are taking too long yet they promised so many things. The citizens are saying, 'We need drugs in our hospitals, better roads, Early Childhood Development (ECD) classrooms,' and all those devolved functions that many of our county Governors promised.

If you go to many of the towns, some of these conditional grants are under Danish International Development Agency (DANIDA) projects and Kenya Urban Support Program. It is vision for simple projects such as repairing town roads and ensuring that our towns are well maintained. In many of our towns, especially those outside of Nairobi City County, you will find many roads are dilapidated especially those maintained by the county governments. I have seen the same problem even in Nairobi City County. The county governments are held back because they are unable to access these funds.

There is good justification why we need to process this Bill. I appreciate the struggle that has gone there. For me, over and above the Kshs700 million that Kericho County is going to get, is the fact that Senate stood firm. If you read the report of the Committee of Finance and Budget, all through since 2015 when we did the first Conditional Grant up to 2021, we kept making a resolution as a Committee that National Treasury needs to provide a formula upon which they decide on the Conditional and Unconditional Grants to each of the counties.

We spoke and made noise about it until finally, the courts came to our rescue as a Senate and insisted on no more release of this fund. Despite the fact that there has been delay for two years and counties have not been able to access these funds, it is for a good reason.

Over 40 counties would never have accessed this money if it would have been left to be donated like cookies by the National Treasury. Today, if you like a certain county government, you give them, if they did not vote for you, you deny them. That is what was happening. However, because of this law and the Senate standing firm through its Committee on Finance and Budget, all the 47 County Governments are assured of an equal distribution of conditional and unconditional Grants.

That is the genius in this Bill. It is also the spirit and the principle that I celebrate as we pass this particular Bill. I know colleague Senators have a lot to say and would wish to say much on this Bill. I therefore rest my case at that point and celebrate the Committee on Finance and Budget for a work well done.

**The Deputy Speaker (Kathuri):** Sen. Oketch Gicheru, please proceed.

**Sen. Oketch Gicheru:** Thank you, Mr. Deputy Speaker, Sir. I think this is the most important Bill as has been echoed by the Senate Majority Leader, Sen. Cheruiyot. If this Bill succeeds, then we will help our counties get Kshs34 billion to 37 billion in addition to what they already get.

I thank the Committee on Budget and Finance - of which I am a Member - led by our able chairperson, Sen. Ali Roba for work well done.

This has been one of the busiest Committees in the past two weeks. Through the committed leadership of the chairperson, we have engaged the stakeholders who have given us insight on the Bill. Being a Member of the Committee, my comments might be preemptive but I will be cautious not to exhaustively pronounce myself on this.

A few Senators have passionately spoken about the Equalisation Fund which is established in our Constitution under Article 204. There is a lot of passion around this.

There are some emerging issues of legality that have come from the Committee, this is not to pronounce myself on this but to indicate that given the weighty issues on Equalisation Fund, the Committee is considering separating the Bill into two. These are-

the County Revenue Additional Bill as well as the Equalisation Fund Bill as well as the Equalisation Fund Bill.

The Equalisation Fund has got sunset clauses that are critical to examine it in detail and also to look at some of the pending funds that have not been allocated to this. This will come in the Report and we will discuss further. I will not commit myself on the Equalisation Fund conversation.

However, I wanted to stress that the additional revenue we are allocating to counties is critical. In this Bill, we are honouring Article 202(2) of the Constitution which says that –

“County governments may be given additional allocations from the National Government's share of the revenue, either conditionally or unconditionally”.

From the National Government revenue side, the Bill seeks to add some money on the issues that are eminent. One of them is the issue of county headquarters. You will agree with me that some of our counties are very inefficient and ineffective in carrying out their duties because of lack of proper facilities to harmonise their operations.

Therefore, this Bill seeks to empower some of the counties such as Migori County, where I come from, that do not have county headquarters and proper operations.

This Bill also seeks from the national Government Revenue side to energise the resources that have been put into the medical facilities in our counties. You will agree with me that one of the most stressed functions of counties is health care, which has been suffering.

It is critical that healthcare is well taken care of. We have talked so much about this Bill aiming at unlocking more access to loans and grants from the development partners through the national Government.

I appreciated the Senate Majority Leader talking about critical issues that form emerging complexities of our time. It is critical that Members understand that the money we are looking for is for five key areas that are critical at the moment. If we are able to unlock these monies to counties we can deal with some of the problems, we are seeing affecting the country today and making our people suffer.

For instance, this Bill seeks to empower agriculture. Secondly, which I will not talk much about, this Bill seeks to support urban development which the Senate Majority Leader has talked about passionately. However, the remaining three areas are the ones that I am keenly looking at. One of them is climate change mitigation.

Majority of the statements made in this House today, are on issues that emanate from climate change affecting communities. It will be critical to look at how we can fast-track this Bill to deal with the issues of mitigation and adaptation of climate change, which can help local communities deal with climate change.

Mr. Deputy Speaker, Sir, This Bill also endorses money that is going to come directly to support drought and famine. I have seen endless conversations from different esteemed colleagues in this House on drought that is affecting people in the North and every corner of this country.

It is critical for Members to know that this is one of the Bills which will directly respond to the issues we are seeing on the ground with regards to drought and famine, affecting this country today.

Over the last two years, we have seen the menace of locusts in different places. The aftermath is still affecting a few areas in this country. This Bill will seek to address that. I want to invite all Members of the House to pay keen attention to this Bill.

We will be tabling the report soon through the leadership of Sen. Ali Roba. Then we can fastrack the Bill to make sure our people get additional money to help them deal with these issues.

Lastly, having been a Member of this Committee, one of the things that has been very irritable to me is not the formula of sharing these monies. One of the biggest factors that has frustrated us in the Committee is the fact that counties do not receive these monies on time.

The allocations are passed; laws are created but money does not go to counties. For instance, in the Equalisation Fund, we realized that there were lots of monies that were never put aside by National Treasury to be given to the counties that are in need and are deserving. Yet, these are issues of humanity.

I urge the House to find a mechanism through the Bill on how we can compel if not encourage the national Government to release these funds to counties. I hope Sen. Ali Roba will invite a few caucuses. The delay in the receiving of funds in the counties brings lots of problems.

Today if our counties are not able to pay the workers, you will find a county borrowing money from the bank. It is sad that our counties are crowding out the Small and Medium Enterprises (SMEs) in terms of borrowing in the counties which should not happen since, this is where the current Government is seeking to induct some policies that can build SMEs.

When these counties borrow these monies, they end up being fined or paying more interest on the loans without clarity from the national Government or the Senate on how they are going to pay the fines.

Who pays for the loans if counties are not getting their allocation and are borrowing and paying high interest on the loans? We will end up shrinking the amount of money that the functions we are keen on supporting in the grassroots should get.

I plead with the chairperson of this Committee, who is my friend and my very good mentor, to find a way that above just the allocation of the funds, the monies will reach the counties.

Mr. Deputy Speaker, Sir, with this I thank you and support the Motion in the House Today.

**The Deputy Speaker** (Sen. Kathuri): Thank you, Senator.

Sen. Okenyuri, please, proceed

**Sen Okenyuri:** Thank you Mr. Deputy Speaker, Sir, for giving me this opportunity. I also want to support this Bill and appreciate the Chairperson of the Committee for the extensive work done.

Even as we legislate over more resources to counties, I would like to implore the county chiefs to also embrace their Own Source Revenue Allocation for them not to only rely on what we are pushing for from up here. A case in example is Kakamega County which has its Own Source Revenue and it has proven to be very successful.

Away from that, more funds to the county governments will be of great help. Kisii County workers have not been paid for the month of October, which is worrying. Those people are supporting families, they have their own chores and assignments to do. I am looking forward to the release of these funds to assist the counties especially my interest areas; reproductive health sector and the Technical and Vocational Education and Training (TVET) sector.

I come from Bomachoge-Borabu where we have Bogimonge Health Centre whose maternity rooms are congested. There are many cases of cerebral palsy in those areas because women take a longer time experiencing labour due to congestion. It has affected the women from the area where I come from. So, I am looking forward to more funds going to Kisii County and trickling down to my Sub-County to aide in the expansion of health centres in that area.

Finally, I also want to urge the county chiefs to ensure that they use the resources effectively and efficiently to avoid wastage. It should not just be about pushing for more resources but there should also be accounting for the minimal resources that we are pushing for.

I thank you.

**The Deputy Speaker** (Sen. Kathuri): Thank you.

Sen. Sifuna, you have the Floor.

**Sen. Sifuna:** Thank you, Mr. Deputy Speaker, Sir. I also rise to support the Bill just as many of my colleagues who have spoken before me have done.

I was a bit surprised by some of the submissions that I heard from my senior brother, Sen. (Dr.) Khalwale, the Senator for Kakamega County. I do not know where he has disappeared to. I wanted to take him through how to understand what a Bill is supposed to do.

At the very back page of the Bill, there is a Memorandum of Objects and Reasons. It sets out clearly that the principle object of the Bill is to make provision for the transfer of Conditional Allocation from National Government Share of Revenue and from development partners to the county governments for the Financial Year 2022/2023

We are lucky that we have people who have a historical background of how we arrived here. When they were teaching us law, they told us that laws are sometimes passed to correct a very specific mischief. So, cannot want to understand why a Bill is being proposed or passed yet you do not want to read the memorandum of objects and reasons like my brother. You should ask yourself; what mischief is this particular Bill or law trying to cure.

I am happy that Sen. Olekina has given us a background. He has told us that there were some people who were being mischievous trying to sneak in this conditional grants and loans as extra allocation for us to feel that they were supporting devolution. If there is further confusion, you can look at Clause 3 of the Bill which states out the object of the Act.

When we were in Mombasa, I had the occasion to visit the Governor of Mombasa County. I invited him to come to our retreat and all the Senators were present. He said that county governments were suffering because these conditional grants were not included in the funds that were transferred in the last financial year because of the maters

raised by Sen. Olekina. The Supreme Court's decision made it clear that we needed a separate instrument for us to transfer these conditional grants and loans.

In fact, it states under Section 3 that the object is to facilitate the transfer for Conditional and Unconditional Allocations made to counties under this Act from the Consolidated Fund to the respective county Revenue Funds.

The counties cannot wait a second for this money to be transferred because as you can see from the schedule it even incorporates money for two financial years. That means that many counties have put up with non-allocation of this funds for a long time.

I am also happy that the Bill has provided a mechanism for the National Treasury to be the one to facilitate the agreements between a county government and a development partner. This means that the National Treasury will facilitate a governor who goes out there together with the leadership of the county to secure an agreement with a development partner. The agreement or the arrangement between the county and the developing partner where the county will require a specific grant for supporting a specific matter that is unique to them will be facilitated by the National Treasury.

I like the use of the word "shall" because we have had a lot of complaints in the past. The counties would negotiate agreements with certain institutions in matters such as waste management but the National Treasury would be an impediment to some of those agreements being reached between county governments and the donors. I know these are matters because I have been involved deeply as the Secretary General of Orange Democratic Party (ODM).

I am also in support of the fact that we now have a schedule for the Equalization Fund under Article 204 of the Constitution of Kenya. I want to start with that particular schedule because this is a matter that was very dear to us, at least in the Azimio Coalition, when we were campaigning. In fact, it is public knowledge that we had proposed to extend this particular fund for a further 30 years. That was one of the promises that we made.

I am happy that even though we did not get to implement some of these proposals that we had made, I can see that there is a lot of agreement from both sides of the aisle on the importance of this particular fund. I doubt that I will meet with much resistance if I were to bring a Bill under Article 204(7) to extend the time frame for this particular fund.

Under Article 204 of the Constitution of Kenya, there are four main areas that this equalization fund is supposed to address; water, health, roads and electricity. It is to address those areas to bring up the quality life in the identified counties to what we, in the other counties, are enjoying.

I am happy to see an allocation of Kshs178 million under the equalization fund for Homa Bay County. My good friend, Senator for Homa Bay County is not here but I can testify on his behalf that Homa Bay still relies on a generator in places such as Mfangano, which we were discussing here the other day. I am sure that this allocation will go a long way.

Kajiado County has an allocation of Kshs562 million. This county has very serious issues with access to water and my neighbour and Sen. Tobiko can bear me witness. Kitui County is to get Kshs538 million and Mandera County is to get Kshs1billion for water. Narok is to get money for water and health services.

I am a believer in devolution and I believe that this Bill cannot wait for another day. The Bill has identified about 11 loans or grants from development partners and I am happy that my county, Nairobi City County, is one of the counties that enjoys a few of those grants.

On page 66 of the Bill, you will see that Nairobi City County has been enjoying the grants from Denmark Development Cooperation (Danida) for primary health care in devolved context of about Kshs33 million. There is another one of Kshs11million from the World Bank Credit Financing for locally led climate action.

There is another Kshs20million for the agricultural sector development support programme from Sweden. Most importantly, the World Bank Kenya Informal Settlements Improvement Project II (KISIP II) has about Kshs350million.

Mr. Deputy Speaker, Sir, these are resources that are already there. All we needed was a mechanism to get it to counties. I am happy this Bill has finally seen the light of day.

Lastly, let me talk about this First Schedule. This is the conditional allocation to county governments from national government revenue, in the FY2022/2023. It is specific to the grants in respect of the conditional grant for leasing of medical equipment. For this FY2022/2023, each of the counties is getting Kshs110,000,638 to pay for the leased medical equipment.

Although there are complaints from governors, some of which I support, they need to re-look at the entire equipment leasing scheme. They would want some input on some of these issues.

Today, I met somebody who I met during the campaigns. She told me that she was supposed to take her child to Kenyatta National Hospital (KNH) for a test to determine whether the child has sickle cell anaemia.

Would you know that in the entire Nairobi City County, there is only one machine at KNH that can do that particular test and it is a donation? The problem is that the person who donated this machine insists on being the one to supply the reagents.

From May when I was campaigning to be the Senator until today, this woman who was referred to a private hospital, Nairobi Hospital, has not been able to take the test. She came to me and I could not believe the story. I called KNH and they confirmed having the machine and that there is no other public hospital in Nairobi City County with the same. They ran out of reagents six months ago and the Ministry that is supposed to purchase these reagents, has not done so.

Mr. Deputy Speaker, Sir, it broke my heart. I could not believe that a matter like that can subsist for this long for us to resolve very basic health care needs in our counties.

I welcome this allocation. Perhaps there is consideration for depreciation. The Chairman of the Committee can shed light on why in the FY 2021/2022, the amount was higher than what is being allocated in the FY 2022/2023.

I do not think we can procrastinate on this particular matter anymore. We need to move as a Senate to provide this mechanism, so that these resources can reach our counties. As the Senate, we will support this move so that we can clearly distinguish between these loans and grants and what is coming to the counties under the division of revenue. With that, we can still push for greater allocation to the counties for other things.

My colleague, the Secretary General from the United Democratic Alliance (UDA), can confirm that we were both in agreement during the campaigns, that we want increased allocation to the counties.

When such a matter comes here, I expect some bipartisanship. Let us increase the resources being allocated to counties. Other than that, let us try and ring fence them so that it is specific that these extra resources do not go back to do recurrent expenditure.

For example, here in Nairobi City County, we are almost at 56 per cent in terms of what we have spent from what we were allocated. Most of it goes to recurrent expenditure, especially salaries and wages. We can ring fence the additional allocation to go only to development so that we can achieve what we set out to achieve under devolution.

With those few remarks, I support the Bill.

**Sen. Faki:** Thank you Mr. Deputy Speaker, Sir, for giving me this opportunity to support the County Governments Additional Allocations No.2 Bill of 2022.

The release of more resources to counties cannot be gainsaid. These resources are long overdue. We are now into the second quarter of the FY 2022/2023. Already, there is some delay in terms of release of these resources. The delay has been partly because when we passed this Bill in the Senate and it was taken to the National Assembly, they delayed to pass it before adjourning *sine die*. Therefore, the Bill lapsed upon the adjournment of the Parliament sometime in June this year.

These funds are meant to cover several programmes run by county governments. The resources address various programmes of intervention in the development of our counties and the country in general. Programmes such as climate change resilience are very important in our counties.

Mr. Deputy Speaker, Sir, as we all know, there was this climate conference in Egypt last week, where issues of conservation of our climate and the environment in general were discussed. Some of the resources which are being covered by this Bill, will go into mitigating some of the climate change experiences that our country is undergoing.

Secondly, drought mitigation has been covered by some of the funds that are meant to be released by this Bill. As you are aware, more than half of the counties are reeling under the drought situation at the moment. The Government and private sector are busy raising funds, yet there are funds within the Government that are lying idle. These funds should go a long way in mitigating and minimizing the suffering that our people are undergoing. The earlier we pass this Bill, the better for everyone especially those who are in the drought-stricken counties and depend on aid to survive.

The Bill also covers the Medical Equipment Scheme (MES) which has been going on for the last seven years. This Scheme has made many changes to the many counties. It has improved healthcare facilities in those counties. Many counties have used this equipment to generate revenues for their counties. For example, Mombasa County has raised a lot of funds from the use of these equipment such as x-ray, scans and dialysis machines given in the first allocation of this fund.

However, in the first allocation, most counties were allocated machines they did not need. Therefore, in this third round, counties need to be vigilant and take equipment that they require. In the first contract, counties were just flooded with equipment in their

counties. Now, they should be given the equipment on a need basis, so that each county chooses which equipment they want for their hospitals.

The donor funds covered by this Bill are very essential. Contracts have been negotiated and signed but the funds are not being released because we have not passed this law to enable the Government to release the funds. This discourages the donors who have done a lot to facilitate the availability of those funds to county governments. They have been impeded by the failure to pass this law.

This is a separate Fund. Therefore, there is need to prepare a different Bill to operationalize the Equalization Fund.

Mr. Deputy Speaker, Sir, as you are aware, the Fund is provided for under Article 204 of the Constitution. It is a distinct Fund. Therefore, we cannot lump it with the County Governments Additional Allocations Bill, 2022. This is because the utilization of these Funds is not based on any conditions. There are no conditions imposed as a result of utilization of the Equalization Fund.

The Fund also creates a 3 per cent Monitoring Fund, which is also not provided under the Equalization Fund. Therefore, there is likely to be a conflict if it is included in the County Governments Additional Allocations Bill, 2022, for passage by Parliament.

It is, therefore, my humble plea that we pass this Bill as soon as possible. This Bill was supposed to be passed together with the Division of Revenue Allocation Bill and the County Allocation of Revenue Bill, which were passed way back in May of this year. Therefore, any delay will further delay provision of services by our county governments.

Finally, I want to commend the Chair of the committee, Sen. Ali Roba, for guiding the committee in the deliberations and all the Members. We have had a full House whenever we discuss the Bill. That is commendable considering the fact that we are only about two months old in this Senate.

Therefore, Mr. Deputy Speaker, Sir, we are all eager to consider any legislation that comes up from our committees and assist this House in passing the Bills that come before us.

I thank you.

**The Deputy Speaker** (Sen. Kathuri): Let us now listen to Sen. Cherarkey.

**Sen. Cherarkey:** Thank you, Mr. Deputy Speaker, Sir, for this opportunity. Just a quick observation based on the interest of time, as we wait for the report under Standing Order No.148 of the Senate Standing Orders.

There is push and pull. I would like to inform the former governor of Mandera, United Democratic Movement (UDM) party leader and the Senator for Mandera, Sen. Ali Roba, that we are used to such theatrics by the National Treasury. We hope we will start on a clean slate because we have been fighting over this. There was a time when conditional grants were being given to counties without proper legal framework.

I am happy that our struggle by the National Assembly and the Senate is almost bearing fruits of having a legal framework because conditional grants, loans and any other resources as envisaged under Article 202(3) are now been reinforced legally. Before, it used to be like food which handed over to counties and they used to decide without legal framework.

As Members of the County Public Accounts Committee, these are some of the audit queries that we handled in the previous financial years in the run up to the past five years in this House and 10 years after devolution.

The committee has done tremendously well. We shall be keen to look at the amendments that the National Treasury shall propose. As a guiding principle, we will need to look at Article 96 on the need to protect the interests of counties as the Senate.

I am happy that when I look at all the categories of conditional allocations, Nandi County will likely get more Kshs263 million, in addition to grants of Kshs208 million. When it comes to Equalization Fund, we will get Kshs158 million in FY 2022/2023. In total, over Kshs629 million will go to Nandi County in form of conditional grants and additional funds as envisaged under Article 202 of the Constitution.

We had what we call Sunset Clauses in terms of financing county headquarters but I do not know why the committee did not consider that. I have seen a number of counties that are still being allocated county headquarters development funds, yet there is no allocation for the county speakers' houses.

I find it strange because we had given ceilings for a financial year. Maybe they can guide as on that. We had agreed that financial years before the recent general elections were to have Sunset Clauses, where counties were to be allocated money for construction of county headquarters. Those allocations have been done and I know that is being ring-fenced.

Some counties argued that county headquarters are not their priority. For example, in 2013 to 2017 when in Nandi County we had Governor (Dr.) Cleophas Lagat, they started building headquarters. The current governor who has served from 2017 up to now did not find it necessary. So, is important we ring-fence that.

There is a time that, as a committee, we visited Nyamira County and realised that they do not have space. In as much as our governors want to be popular, these are facilities and that are amenities needed.

For example, in my county, we pay Governor Sang between Kshs200,000 to Kshs500,000 per month to rent in Eldoret. If we had constructed a house for him, we would have saved that Kshs500,000 per year. That is the same case for the Governor of Nairobi. Governors should appreciate.

The reason we need county headquarters to be constructed is to save on rent. Some governors squat in national Government buildings that are being controlled by the National Government Administration Officers (NGAO).

They are squatting, yet we have given them money to construct county headquarters, governors' residences, and speakers' residences. Even counties assemblies are paying rents for their county speakers, yet we allocated money. County assembly chambers must be constructed.

It is not a luxury to cherry-pick simply because you want to appear popular amongst your voters. These are necessary amenities.

In future, the Committee on Finance and Budget should issue a caveat, that if any county has not finished constructing their county headquarters, the governor's residence, the speaker's residence and the county assembly chamber, they must be surcharged and sanctioned.

We should not pay rent for people to perambulate. That is a heavy English word. How can we be paying rent? It is very expensive. Just like the Senate and the National Assembly, we have official residences. You can imagine if we were renting State House for our President, it is inconveniencing and expensive.

Mr. Deputy Speaker, Sir, we still have a strange animal which we have been fighting for the past five years. I remember the Cabinet Secretary for Interior and National Administration was the Deputy Speaker. It appears that seat is a preserve of Meru and Tharaka Nithi County.

He directed that we investigate the issue of Medical Equipment Services (MES) but I am surprised. The Senate had taken a position that the leasing of MES be re-looked at. However, it is still rearing its ugly head.

The sad thing is that money for the MES is deducted at the source. So, before money is allocated to the counties, it is deducted at the source. It is not even given to the counties. That is why every county is crying about conditional grants. The money that goes to MES is Kshs110,638,298.

There were several reports by the Senate Committee on Health, the *Ad Hoc* Committee, and Joint Committee on Health and Committee on Justice, Legal Affairs and Human Rights.

We discussed this issue and agreed that this is a rip-off. In fact, there are many reports that even the governors and other agencies have declared the leasing of MES an outright rip-off.

Mr. Deputy Speaker, Sir, it is sad that I have to say this. In that report, you will find that gloves were being leased. How can you lease gloves? They were leasing bed sheets and syringes. We need to be serious.

I expected the Standing Committee on Finance and Budget of the Senate led by Sen. Roba to write a caveat on this medical equipment supplies. How do you lease a syringe or an apron?

We know the companies that were given tenders to supply the medical equipment. Some of them have been blacklisted in the world. There is one from the United States of America (USA), some local companies and many others. This Senate has taken a position that the medical equipment supplies was an outright rip-off. Who are these people who before allocating money to Meru County must deduct it at the National Treasury? Who gives them power? It is not even in the Constitution. These Cartels must be called out. Senators are sitting pretty yet we should be vigilant. In fact, the Senate should push that we immediately stop and cancel the earlier medical leasing agreement.

Mr. Deputy Speaker, Sir, you heard Sen. Sifuna talk about the complete blood count (CBC) analyzer machine that is used to test Sickle Cell Disease. When you consider the totals that have been paid over the years, it is a lot. There was a time they were paying billions of shillings. If you give Ksh110 million or Kshs200 million per year for counties to purchase dialysis, cancer or CBC machines, it would have been cheaper than leasing. It is therefore very expensive. The National Government is micro managing health yet under the Fourth Schedule, health is a devolved function. In other words, there is a problem that we really need to address.

I hope the Chairperson of Committee on Finance and Budget will look at my Solomonic submission and ensure that we do not travel in that direction. This is a very serious issue. We are aiding and abetting corruption. If this will be investigated, they will be shocked. When somebody will walk through this door in future, they will be surprised that the Senate sat and said this is a public rip-off but they went ahead and approved for finances to medical equipment as key.

Another point is on the accountability aspect. I have talked about this with governors. They should be aware that it is not optional to be accountable when the money goes to the counties, including the conditional grants.

Mr. Deputy Speaker, Sir, on the equalization fund; I know you served in the National Assembly and we really grumbled on this issue of the equalization fund. Who qualifies? How do we use it? What is the criteria? How is it compounded?

We had a discussion between the National Assembly and the Senate. We agreed that, marginalization does not happen only in North Eastern. You can have marginalization even in Nairobi, Meru, Nandi Counties and anywhere else. When a report was tabled here during the fight on the revenue formula; I have heard my brother alluding to - those days, I was for “one man, one vote, one shilling” This is because I believe money should go to where the people are. The more the people the more the money. At the end of the day of course, the Senate fought and came up with a win-win situation.

At that time, a report was tabled by Kenya Bureau of Statistics (KBS). The report stated that poverty is not only in North Eastern or in Mandera, poverty is domiciled in Busia, Kakamega and many other parts of Kenya. Whereby, traditionally we had perceived that the marginalised areas are poorer. We realised that the areas that are not being perceived are worse including areas like Migori County.

Therefore, the issue of equalization fund in terms of marginalization in the concept of the Constitutional provision, must be re-looked at. I am happy that the equalization fund, Nandi County got around Kshs158 million. That is for a number of locations and sub-locations levels that are within Tinderet Sub County.

The rules and regulations for the equalization fund under article 204 must be re-looked. The Committee on Finance and Budget should be futuristic because the marginalization scheme changes. By the way, with the Housing Program the President has; I confirm to the Senator for Nairobi City County, Sen. Sifuna that, after sometime, we will change the face of Kibera. The living standards of Kibera will change. What does it mean? It might move away from the marginalised and now become economically stable. Somewhere else within Nairobi City County might develop to something that might create marginalization.

We need to re-look on how we allocate the equalization fund going forward.

On the fourth and final point as I finish on the issue of equalization, is the issue of accountability. We must re-look at ---

**The Deputy Speaker** (Sen. Kathuri): Sen. Cherarkey, the Senator for Migori county wants to inform you.

**Sen. Cherarkey:** Do I really trust the information?

**The Deputy Speaker** (Sen. Kathuri): Do you want to be informed?

**Sen. Cherarkey:** Mr. Deputy Speaker, Sir, not, at this point. I do not want to be informed. From the way he is smiling sheepishly, I do not trust him. As my junior, he should be taking notes while I speak and learning from the best.

*(Laughter)*

Mr. Deputy Speaker, Sir, in conclusion, on the issue of transparency and accountability, Sen. Sifuna; since he serves with me in the Public Accounts committee (PAC), the issue of accountability is not negotiable. Of course, I am extrapolating.

Part of our role under Article 96 is oversight. This money that we are giving out must be accounted for, from one shilling to the millions of shillings that we allocate. Governors must know that we are not allocating this money for free range or to play around with. They must account. The great Governor of Migori county, Sen. Ochillo-Ayacko, who was a Senator here and my chairperson in the County Public Accounts Committee (CPAIC), and now, my brother Sen. Oketch Gicheru, must know that Governor Ochillo-Ayacko does not have a free hand to use the money that has been allocated to the great people of Migori County. He must account for every shilling. If the funds come from the Denmark, Danish International Development Agency (DANIDA) or Kenya Urban Support Program (KUSP) that is allocated under World Bank in terms of Kenya Infrastructural Development Programs, it must be accounted for.

We want to improve Narok Town where Sen. Olekina comes from. If the World Bank allocates money on the Kenya Structural Improvement Program, we must account. I almost said Governor Tunai, *kumbe* you have a new Governor. Governor Ole Ntutu, he must account for it. There is no option about accountability. Every governor, even my governor does not have anywhere to hide. This money that is allocated to Nandi County, around Kshs700 million, must be accounted for. If you do not want to account for public money, why did you then run for that office?

I can see the temperatures are coming down in Meru County. The sugar levels were going through the roof but I am happy they have come down. I do not know whether you injected some drugs to cool the temperatures. For example, if Governor Bishop Kawira Mwangaza finishes 10 years or one term, she should be aware that she must be careful because of Article 206(5) will catch up with her. There is what we call personal responsibility.

*(Sen. Olekina spoke off record)*

Sorry, Article 226(5). Thank you, Sen. Olekina. Even if you run away.

Lieutenant General Mohamed Badi who headed the Nairobi Metropolitan Services (NMS) thinks that he handed assets and liabilities and that he will never be culpable. Governors Kananu, Tunai, Kidero and any other former governors must be aware that Article 226(5) is knocking on their door. I am not saying this in bad faith. All I am saying is in good faith. If you did not account for any money that was provided, you will be held accountable. The issue about Masai Mara collections by Narok county which came before our Committee, must be accounted for. It is no longer an option. All former governors in this country must be held accountable.

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Finally, before I cede ground to other colleagues, when we summoned the Ethics and Anti-Corruption Commission (EACC), I sat where you are sitting now. The EACC came and reported that they had only succeeded in convicting somebody who took a bribe of Kshs20,000.

That is like 200 dollars. They have only succeeded in convicting someone who offered a bribe of Kshs20,000, but people who have looted in county governments walk scot free. They walk to the Ethics and Anti-Corruption Commission (EACC) the way they want because they have manipulated it.

EACC carries out an ordinary morning raid, seizes documents and after some time, headlines are written. We know, our media is good at giving juicy headlines. They report how they have arrested Governor so and so with a Kshs200 millions case. After some time, it fizzles out.

EACC must tell us whether they are in bed with Governors or not; whether they are fighting corruption or aiding it. They could be aiding corruption or doing laundry. They could be doing “laundry” that considering there was someone in this country who was doing that laundry business. There has been somebody in this country doing “laundry” business but we do not want to mention names.

However, under Kenya Kwanza, that laundry service and the washing machines will be closed down. We will not allow any Governor to go scot free including Hon. Governor Otichillo. If he has misappropriated funds, he must be taken to court. We cannot allow that.

**The Deputy Speaker** (Sen. Kathuri): Sen. Cherarkey, there is another point of information. He is not your junior but is your agetate.

**Sen. Cherarkey:** Mr. Deputy Speaker, Sir, I can allow Sen. Osotsi.

**Sen. Osotsi:** Mr. Deputy Speaker, Sir, point of information. I want to inform my neighbour and Hon. Senator that when he talks about “laundry”, he should mention the people involved in that.

We know even this administration is involved in laundry, clearing people who have court cases and trying to frame issues before the court. He should mention that instead of blaming people that he cannot even mention by name.

**Sen. Cherarkey:** Mr. Deputy Speaker, Sir, that was not a point of information but a point of debate. Sen. Osotsi is a senior ranking Member of Parliament and he knows his party leader has been running laundry services in Capital Hill. It is in the public domain.

I know what he is alluding to on the issue of the court cases.

*(The red light was switched on)*

Mr. Deputy Speaker, Sir, please give me one minute to conclude.

Under the Constitution, the Director of Public Prosecutions (DPP) is not ordered by anybody. Sen. Osotsi knows that but when he comes here saying that DPP has been ordered to withdraw cases, who can order the DPP when the Constitution has given that office powers?

He is being mischievous, is out of order and his statement should be treated with the contempt it deserves.

In conclusion, I will look at the report of the National Treasury. If it is not in good faith, I might not agree with some of the amendments.

I Thank you.

**The Deputy Speaker** (Sen. Kathuri): Sen. Cherarkey, I did not want to interrupt but you made some good points. You are challenging this Kshs5.2 billion conditional grants, leasing of medical equipment. You are a legislator in this House and you are lamenting and wondering. Yet there are people out there whom you represent. Who will help the other? They brought you to this House and you are still wondering.

You have the power to inquire and do everything at your disposal, to know where this money goes because that is your work. Try and do something.

**Sen. Mungatana, MGH:** Thank you, Mr. Speaker, Sir, for giving me the opportunity to also make my contribution in this Bill that is before us. County governments get their resources from three main revenue sources. There is their own generated revenue resource, the equitable share which is a big revenue source and the one we are currently debating which is the Additional Revenue Allocation.

In the current financial year, the amount of money allocated under the equitable share is Kshs370 billion. The amount of money that we are passing in the additional revenue allocation has two headings. There is the amount of money that is given through the national Government. Apart from the Kshs370 billion, the national Government can decide to allocate more under the Additional Revenue Allocation Bill.

We also have loans and grants that come under this Additional Revenue Allocations. The national Government under the heading of Additional Revenue Allocation has decided to allocate five county headquarters and have also allocated money for leasing medical equipment which the previous speaker has referred to.

If this Kshs370 billion has already been allocated as Equitable Share and the national Government has further money to allocate to build five country headquarters and to counties to lease medical equipment, it means there is enough money that we can secure under the heading of Equitable Share.

The Constitution says that the county government is entitled - at the very minimal - to get less than 15 percent in terms of the Equitable Share. The point I am making is that at Kshs370 billion, we are at 26 percent and still the national Government has been able to find more money under Additional Allocation heading to give five headquarter buildings as well as to pay billions of Kenya money for medical equipment leasing. Mr. Deputy Speaker, Sir, instead of having the equitable share remain at 26 percent, under the new administration of His Excellency, (Dr.) William Ruto, county governments will see a huge leap from 26 percent to even 40 to 50 percent.

We are saying this because the National level is giving Kshs370 billion and under Additional Revenue, they shall lease medical equipment for every county. They shall also build for us county headquarters because these are the things we are complaining about. What is the logic of this?

Why cannot they not give county governments their own money in order for them to decide what to do with it? For those who are listening to this debate, the Senate is saying we raise this money from 26 percent to 50 percent.

Let us not have Kshs370 billion. This County Government Additional Allocation Bill is demonstrating that the national Government is remaining with more money, and they know it.

Mr. Deputy Speaker, it is wrong. The previous Senators have said that county governments are being forced to lease medical equipment but they never participated in the tendering and they do not know the suppliers. Moreover, they are given money to pay back to the same people, who negotiated with the national Government. It is an injustice and it is wrong. It is a disrespect to the second level of government.

As provided for by the Constitution, the people of Kenya want two levels of government and the two levels of government must respect each other. The Senate must put its foot down and ensure that contracts for health functions are not decided by the national Government. It does not make any sense.

We many not need some of the equipment we are being forced to lease; for example, in Tana River County Hospital, in Hola. They may force us, because of this arrangement, to take those machines but we do not have trained staff to operate the machines being taken to our county hospitals. Those machines are leased by some companies which are of dubious character.

Mr. Deputy Speaker, Sir, if one screw of those machines breaks down, we are not able to repair. We do not even have contacts of suppliers or at times when contacted, they do not respond. All they know is that money is given to county governments and it is deducted at the source. They are playing with our minds. We are leasing medical equipment and under it, we can see that we are receiving millions of shillings but that money is deducted at the source. People are disrespecting counties.

I urge the new administration; the President and his Cabinet Secretary in charge of the National Treasury, Prof. Ndung'u, to get away from the old habits of the previous administration. We must cut links with this kind of behaviour, where they decide for us what we should be leasing at the county level. I hope they are listening.

As defenders of counties, we are not happy. We are given equipment that we cannot operate nor service and we also do not have trained personnel to run them but money is deducted. It is indicated here that Tana River County has received millions of shillings, which they never saw because it was deducted at source. The new administration must properly devolve the functions, like they promised the people of Kenya. Let us respect county governments. Let us give them the requisite money, for service delivery to the people of Kenya.

Mr. Deputy Speaker, Sir, the County Government Additional Allocation Bill (No.2) of 2022, has various development partners. I can see the European Union (EU) is giving us conditional grants on devolution advice and support. The German Development Bank is giving us conditional grants for droughts. The World Bank is giving us grants for emergency locust response. There are many other grants.

Mr. Deputy Speaker, Sir, devolution has been with us for over eight years. However, development partners have not been very committed to discuss matters directly

with counties. This habit has developed because the National Treasury has encouraged it. There has been resistance from the national Government, to let go. They have created a mentality, that before you negotiate with Tana River County, you must go to Nairobi and speak to them, so that whatever is given must also be supported by the National Treasury.

This mentality must change. We have developed county governments. We are now living in the third tier since the first devolution. County governments entities must be respected. The Senate can encourage development partners to develop a habit of confidently discussing with our county governments. We should give them space because Section 38 of the Public Finance Management (PFM) Act, allows county governments to discuss grants and loans with development partners. In future, this should be the way forward.

*[The Deputy Speaker (Sen. Kathuri) left the Chair]*

*[The Temporary Speaker (Sen. Veronica Maina)  
in the Chair]*

Madam Temporary Speaker, prior to 2021, this kind of County Government Additional Allocation Bill was not there. Previously, the Division of Revenue Act (DORA) and the County Allocation Revenue Act (CARA) were used to feed in to the county government allocations. The county governors went to court and in Petition No. 252 of 2016, they got an order that the Division of Revenue Bill and County Allocation Revenue Bill should simply deal with the division of revenue between two level of Governments and across the 47 counties respectively and nothing more.

Mr. Deputy Speaker, Sir, that is why we had this county government additional ---  
**The Temporary Speaker** (Sen. Veronica Maina): Senator, Mr. Deputy Speaker has left and now, we have Madam Speaker.

**Sen. Mungatana, MGH:** I am sorry. My apologies, Madam Temporary Speaker. We should support this Bill, in accordance with the High Court ruling. It said that we cannot have the County Government Additional Allocation Bill being debated and passed within the Division of Revenue Bill or the County Allocation Revenue Bill.

Madam Temporary Speaker, I agree with the previous speakers, that we need to pass this Bill. Why is that? This Bill might look small but it is going to unlock Kshs32 billion that is hanging in the air. People have committed to do something for our county governments but the money cannot reach them because it has not yet passed under this Bill.

The difference between the recent County Government Additional Allocation Bill (No.2) and the one for the previous Financial Year 2021/2022, is that the present Bill has incorporated the Equalization Fund. The learned colleagues who have spoken before me have referred to this Equalization Fund.

Madam Temporary Speaker, yes, we need to pass this Bill to unlock the Kshs32 billion but we must pass it with amendments. Why is that? It is because we cannot force feed this Bill with the Equalization Bill. The Equalization Fund has its own management and staff.

Madam Temporary Speaker, the architecture of the equalization Bill is totally different from how we are supposed to manage the county government additional allocation. It will be wrong for this Senate to go ahead and pass the Equalization Fund here because we cannot even operationalize it as it stands. We must find the correct instrument for us to pass it.

This means that the Chair of the Committee on Finance and Budget must go back and come up with an instrument, which will be the Equalization Fund Bill so that we can debate it. It must fit within the already established structure, the board and management of the Equalization Fund.

I agree with the Senator for Nairobi City County, who said that the Equalization Fund, which is heading to its sunset, needs to have more years. When we passed the new Constitution in 2010, the Fund started operating in 2013 but we gave it a sunset year. After 20 years, that Fund dies. It is time we introduced a Bill under Article 204 of the Constitution, that provides for the extension for the Equalization Fund.

I pray that this Committee will go back and look at a possibility to bring back another instrument for the Equalization Fund to stand on its own; so that we do not have confusion.

We also pray that they will look at Article 204. If we have not operationalised it for the last 12 years and we only have eight to go; it is time to go back again and bring another extension. I am sure we shall get the numbers to get an extension to push it for even 30 years, like Sen. Sifuna has suggested, so that we can experience the benefit of equalization.

Why? It is because counties like Tana River have been left behind. I have complained here before that previous administrations and governments, even came up with economic papers justifying that they shall continue to fund development in certain areas and ignore others. More than 50 years after Independence, you will find that the number of tarmacked roads in Tana River County, are the ones connecting counties. They are inter-county roads. You will not find tarmac roads except just in the headquarters, which was done by the previous Governor.

We want the Equalization Fund to work and be a reality. More than 50 years after Independence, we have been left behind and it is by design of this Government. Senators in this House have argued that there is marginalisation in Nairobi City County and other big cities and so they are also entitled. I think this is a total misinterpretation of what the Equalization Fund is meant to achieve. This Fund is meant to bring up counties that were left out by design by the administrations of past governments. I pray that---

*(Sen. Mungatana's microphone was switched off)*

**Sen. Mungatana, MGH:** Madam Temporary Speaker, add me one minute, please.

**The Temporary Speaker** (Sen. Veronica Maina): You are granted the one extra minute. Proceed.

**Sen, Mungatana, MGH:** Thank you, Madam Temporary Speaker. When the instrument on the utilisation and application of Equalization Fund is brought to this

House through a Bill, I pray that the real reasons shall be achieved. The reason was to help far off counties that were left out deliberately by Government marginalization, so as to achieve some reasonable level of development.

It would be unfair, immoral and wrong for counties which already benefited from previous administrations, to argue that they are also marginalised and should be given a share of this Fund.

I pray that when the Committee brings this Bill, we shall be fair to counties that were left behind. I also pray we pass this Bill but with amendments in mind which will make it easy to implement. Let us have the Equalization Fund Act separate from this.

**The Temporary Speaker** (Sen. Veronica Maina): Thank you, Senator. Proceed, Sen. Tobiko.

**Sen. Tobiko:** Thank you, Madam Temporary Speaker. I rise to support this Bill and congratulate the Committee and its Chairperson, Sen. Ali Roba. They have done intensive work in order to have this Bill in place.

It is long overdue that additional funds is given a legal framework, which will then guide the counties as well as allocation of this money and its utilisation thereof.

This Bill seeks to provide for additional allocations in the FY 2022/2023. It also seeks to direct the proceeds of loans and grants as given by development partners. It also seeks to facilitate the transfer of conditional and unconditional allocations to counties, from the consolidated fund to the county revenue funds and special purpose accounts.

The Bill will also guide on the allocation of other funds as agreed upon by the Senate and the National Assembly. This is long overdue and needs to be implemented. This House should pass this Bill as soon as possible, with the necessary amendments.

I agree particularly with Sen. Mungatana, MGH, on the issue of the Equalization Fund. It is good that the Fund is mentioned as one that should be implemented since it is long overdue. However, it should also be given its own legal framework so that it gets the necessary attention and get directed to the right counties.

Madam Temporary Speaker, it is interesting that whenever people see resources or opportunities in our country, everybody wants to grab it. The 2010, Constitution had identified loopholes and omissions in areas of development. There were areas that were left undeveloped either by design, omission or whatever it was. It may also have been because of political processes or not having numbers such as minorities living in these neglected counties.

Therefore, it is important that the Equalization Fund be treated separately so that it benefits the right counties. Particularly at this time, more than half of the counties are facing the drought crisis.

Our people have become paupers because of the drought. We should come up with a way of mitigating the effects of drought. There is a need to embrace climate-smart agriculture. It is good that issues of water and sanitation are addressed in a county like Kajiado.

It is a pity that ten years after devolution, we are still talking about county headquarters and lack of offices in some counties. We do not know whether they are operating from kiosks or homes. It is unimaginable that we still do not have county headquarters in some counties in this country.

The issue of leasing of MES has been mentioned here. I concur with Senators who said that the Kenya Kwanza Government should delink itself from the ills of the Jubilee Government. We should have a fresh start as the Kenya Kwanza Government.

Madam Temporary Speaker, we must delink ourselves from the Kenya Medical Supplies Authority (KEMSA) cartels and the COVID-19 billionaires who are associated with milking resources from counties in the name of supplying them with obsolete medical equipment that have never worked. I am sure that our counties will be better equipped if they were allowed to do their procurements and have their medical plans according to their needs.

I support this Bill because funds from development partners will go direct to the counties. The National Treasury will be required to facilitate agreements between counties and development partners.

**Sen. Wambua:** On a point of order, Madam Temporary Speaker. It is not my intention-

*(Interruption of debate on the Bill)*

**The Temporary Speaker** (Sen. Veronica Maina): Sen. Peris Tobiko, please cede the Floor.

*(Sen. Tobiko sat in her place)*

*(Interruption of debate on the Bill)*

## PROCEDURAL MOTION

### EXTENSION OF SITTING TIME

**Sen. Wambua:** Madam Temporary Speaker, it is not my intention to interrupt Sen. Tobiko. However, pursuant to Standing Order No.34(4)(a) and 34(5), I beg to move-

That the Senate resolves to extend the sitting until conclusion of business listed at No.8 in today's Order Paper, and upon receipt of results of the EALA elections from the National Assembly.

Madam Temporary Speaker, I move and request Sen. Ali Roba to second.

**Sen. Ali Roba:** Madam Temporary Speaker, I rise to second the procedural Motion in accordance with the aforementioned Standing Order because what is being discussed is extremely critical issue that needs to be concluded.

We also have an agenda that we dealt with earlier on. That is election of Members to the EALA.

**The Temporary Speaker** (Sen. Veronica Maina): Hon. Senators, a Motion has been moved proposing extension of today's sitting until the conclusion of Order No.8.

*(Question proposed)*

*(Question put and agreed to)*

This sitting is, therefore, extended. Sen. Tobiko, you can continue with your contribution.

*(Resumption of debate on the Bill)*

**Sen. Tobiko:** Madam Temporary Speaker, I hope that also means an extension of my time.

I was saying that this Bill is important in that it seeks to address crucial and pertinent issues affecting our counties. Even as we emphasize regulating and giving a legal framework to conditional grants and additional resources to the counties, we must insist that counties prudently use and account for every revenue allocated to them.

Counties have found a way of accounting for resources received from the national Government from the sharable revenue. However, there is a loophole when it comes to own source revenues. That is money that people do not benefit from and yet it comes from their pockets.

This House must come up with a mechanism on how to regulate such monies and have the counties account for them. We should also encourage counties to generate their own resources and ensure there are proper systems for accountability.

Madam Temporary Speaker, as I support this Bill, we should go beyond this and come up with a framework of monitoring how the Equalization Fund is expended in counties. The Ali Roba Committee should also come up with some formal system of monitoring how counties account revenue generated in their counties.

I thank you.

**The Temporary Speaker** (Sen. Veronica Maina): Sen. Mumma, you may proceed.

**Sen. Mumma:** Thank you, Madam Temporary Speaker, for the opportunity to contribute to this Bill. It is good that we are putting in place a framework to bring order in the matters of financing county functions in this country.

Since the onset of devolution, we have had a lot of confusion around the issues of functional assignment, the national Government supporting activities that fall under county government functions, and development partners supporting activities that fall under the county government functions.

I happen to have worked at the Commission for the Implementation of the Constitution (CIC) during the initial years. In the first term of county governments, they suffered a lot. This is because several political partners literally refused to fund their functions. They believed that counties governments should not receive those funds, but instead they should be channeled through the national Government Ministries.

Madam Temporary Speaker, this Bill will help to account for all funds that the people of Kenya will receive as grants, loans and other funds that come from the development partners. Funds that come from development partners are public funds. They are not a charitable allocation that we should not account for. This Bill will bring a bit of sanity in ensuring that the people of Kenya are able to know exactly how much money has been deployed to counties towards the development of counties.

Madam Temporary Speaker, as I support the Bill, I would like to support Sen. Mungatana's proposal that we cannot mix the provisions of this additional funds and

those of the Equalisation Fund which are provided for under the Constitution. The Equalisation Fund was supposed to be operationalized, but the Jubilee Government completely refused to operationalise it. The issue of operationalising funds under the Equalisation Fund needs a special discussion on how we can recoup the 10 years that have been lost out of the 20 years that the fund was supposed to exist.

If we sneak the Equalisation Fund into this Bill, we will be undermining the very reason why we have it. I suggest that that Committee specifically set time to relook at how we can operationalise the Equalisation Fund to ensure that those funds are actually deployed towards what they were intended to be deployed for. Therefore, we should remove that provision within this Bill.

Madam Temporary Speaker, I would also want to add one more provision that the Committee should consider looking into. Within these additional funds, the Senate will have additional oversight mandate over these funds. I request the Committee to consider providing - even if it is just one clause that will require County Governments to submit their reports as part of the oversight - towards ensuring that the Senate carries out its oversight mandate in respect of these funds.

Possibly, in the Parliamentary Service Commission (PSC) regulations, we need to also include further regulations to ensure that additional responsibility that the Senate gets is clearly provided for in order for us to be able to adequately carry out those functions.

Madam Temporary Speaker, I would like to remind Members that during our induction, one of the issues that was raised was the need for the Senate to go beyond just looking at the figures in the Auditor-General's (AG) report. We were urged to try and come up with a mechanism that can enable us to also oversee through carrying out impact assessment activities that can enable us to appreciate and tell Kenyans how the funds that are being deployed to counties are impacting the lives of the people.

With those few amendments that I have proposed, I beg to support.

**The Temporary Speaker** (Sen. Veronica Maina): Sen, Osotsi, please proceed.

**Sen. Osotsi:** Madam Temporary Speaker, thank you for giving me the opportunity to make my comments on this Bill. From the onset, I support it. However, like other Members who have spoken before me, we will need to have some amendments on this Bill, particularly on the Equalisation Fund, which I find to be very misplaced. It should not be in this Bill at all.

I have also looked at the proposed schedule under Equalisation Fund and noted that that proposal in itself is discriminatory in the sense that we have 34 counties which have been listed yet we have not been told which criteria was used to do that allocation.

I can see my county is not included yet all the other neighbouring counties are included. Counties with lower levels of poverty like Kisumu, Bungoma, Nandi and Homa Bay counties are included. However, all other counties, including Vihiga County, within the Lake Victoria region are not on this list.

*[The Temporary Speaker (Sen. Veronica Maina) left the Chair]*

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

I will support any amendment to remove this particular schedule from this Bill. After all, it is misplaced and very discriminatory to other counties. To lump Vihiga County among the rich counties is very unfair. There are so many places in my county which qualifies as hardship areas.

I believe the Government needs to change the criteria of determining which areas are hardship and which ones are not. Clearly, we see some areas are listed as being non-hardship when, in fact, they are areas which have a lot of challenges with poverty and infrastructure like those other counties that have been given priority in this.

Madam Temporary Speaker, what is important is that this Bill is long overdue. It will unlock Kshs32 billion to the counties. I believe the Committee needs to move with speed so that we conclude this matter in this House before we go for recess. We hope that the National Assembly will do the same, so that this money is released to counties as soon as possible.

This money will go into various aspects of our county development, including improvement in health, agriculture, rural inclusivity, climate change, water and sanitation and even informal settlements. Counties have been waiting for this money. I believe we will do service to this country if we pass this Bill within the shortest time so that our counties receive this money.

I also want to concur with Sen. Tobiko on the issue of county headquarters. It is very strange that some counties are still constructing headquarters 10 years after devolution. This is really surprising. This matter has to be investigated further by the relevant Senate Committee to find out why there is a huge delay yet these counties have been receiving money.

Madam Temporary Speaker, this Bill also introduces very strong mechanisms of accountability on all the money that are taken to the county in form of grants, loans and from development partners. I hope that upon the passage of this Bill, we will have strong mechanisms on the ground to ensure that every single coin that is sent to the counties in form of additional allocation is used for its intended purpose and that there is value addition to the citizens of this country.

Madam Temporary Speaker, you are well aware that some of the counties have been misappropriating this money. To a large extent, I believe this Bill will help in enhancing transparency and accountability.

In fact, this Bill under Clause 9, proposes some mechanism of reporting where it expounds on the reporting to be done on matters of transfer on monthly basis. This will enhance information flow. As Senators, it will help us track the movement of monies to counties and oversight the funds effectively.

Madam Temporary Speaker, other colleagues have also talked about medical leasing. This is a serious matter that we have allowed to go on and on, yet the counties are not getting maximum benefits from it.

It is high time that this arrangement between the county and national Government is stopped so that our counties to continue getting money for the right purposes. Also, removing the possible misuse of public funds in form of medical leasing equipment arrangement between the county and national Government.

I do not have additional information to give on this. Nonetheless, I emphasize that we need to fast track the legislation on Equalisation Fund. We need to have a proper legal framework in place for determining the counties which are supposed to benefit from Equalisation Fund and also to comply with the Constitution requirement.

I hope this will be prioritized by the relevant Committee in conjunction with the National Assembly, so that we have a proper legal framework on matters to do with Equalisation Fund.

With those few remarks, I support.

**The Temporary Speaker** (Sen. Mumma): Thank you. Sen. Veronica Maina, proceed.

**Sen. Veronica Maina:** Madam Temporary Speaker, I rise to support the passing of this Bill and congratulate the sub-committee that has made this effort to ensure there is a Bill being debated. The Bill is not only useful to the House, but is also important and useful to all the counties. This is because import and impact of this Bill is to assign and allocate additional resources to the existing financial framework within the 47 counties.

This Bill speaks to improved healthcare through the provision of funds for lease of medical equipment which will definitely be required and very useful for all the counties across the whole country.

At this early opportunity, I will state that the lease of these medical equipment has been subject to certain conditions. It has been perceived as though even if the allocation and the assignment of this fund has been put on paper, counties tend to feel that the deduction is done at source. Therefore, they lose the control of what kind of equipment they need to have at the counties.

I believe this framework was set by the previous Government. There is room to improve the framework within which this medical equipment should now be leased to counties. The Kenya Kwanza coalition campaigned on the platform of improved healthcare for all Kenyans. The Bill as presented today clearly shows there is an affirmation towards contributing and solidifying this promise to Kenyans.

I believe the House is committed on both sides to pass the Bill. We call upon the county governments to hold discussions with the national Government on the best way to have the leased equipment.

This Bill gives the framework and introduces a legal platform within which these negotiations can be done and discussed. This is so that counties are allowed to participate in the decisions that bring the leased equipment into their respective counties.

Madam Temporary Speaker, the additional resources have also targeted the construction of county headquarters and like many of the Senators have said, there are counties that have not constructed a headquarter 10 years after they came into existence.

I believe that counties now have a challenge as they look at this new Bill; the Bill on County Governments Additional Allocations No. 2 of 2022, to find the need to have every county housed within a headquarter, to have sufficient facility for their governors and speakers. When that is done, we can check on the expenditure of every county. It will also ensure that the counties have expenditure patterns that are responsible, transparent and makes commercial sense.

It makes sense for every county to be hosted within its own premises to avoid rental expenditure that may be extravagant or that may not make economic sense.

I have noted that counties like Isiolo, Lamu, Nyandarua, Tana River and Tharaka Nithi are targeted to have an allocation toward the construction of their headquarters. Even as this Bill is being debated to be passed, we encourage all the governors to ensure that their counties have headquarters. It is over 10 years going to the 11<sup>th</sup> year now and the counties should have that as a bare minimum.

The national Government is rolling out the housing project in the counties. It will be a good procedure that any county that is getting the advantage of that housing should as well show good faith by making sure that they themselves are housed within a headquarters that has been constructed through the public resource.

The additional resources have also gone towards mitigating the effects of climate change. There is allocation of resources towards positive climate action. Once again, it propels good thinking on how counties and the people of Kenya can contribute toward a climate action that will mitigate the degradation that has caused us to be where we are in terms of climate change.

The resources assigned will give an opportunity to counties to participate and fully engage in taking climate action. They will teach the people and learn together with the citizens within the counties how they can mitigate climate change within the respective counties.

One of the frameworks within this Bill that brings a breath of fresh air is the framework for management of the donor fund that is going to the counties. I believe that any development partner who is listening to the proceedings in the Senate today should have a big smile on their face. That is because we now have a framework that will ensure transparency and accountability, which sets a very good form of engaging further.

It also makes it easy for them to entrust the counties with more resources toward building, not just the social economic activities of the people of Kenya, but also alleviating the poverty that has been widespread.

I rise to support the passing of this Bill and to say to the Committee that has presented this Bill through the Senate Majority Leader that they have set a good pace in the House. This House can now have more Bills debated by the 13<sup>th</sup> Parliament.

Madam Temporary Speaker, I support the passing of this Bill.

**The Temporary Speaker** (Sen. Mumma): Thank you, Senator.

Sen. Seki, you have the Floor.

**Sen. Seki:** Thank you, Madam Temporary Speaker. I rise to support the Bill presented to us this afternoon by the Committee on Finance and Budget. I believe that it has come at the right time where we want to give more resources to the county governments through the County Additional Allocation Bill No. 2 of 2022.

I congratulate the Committee led by the Chairperson, Sen. Ali Roba, the United Democratic Movement (UDM) Party Leader. Most speakers have supported the need for county governments to be more transparent and accountable to such monies.

Own-source revenue from county governments have never been well accounted for by governors all over the country. First, they have been having issues of over-

allocating more money in their budgets, which introduces issues such as overspending and pending bills.

We request the Committee on Finance and Budget and other relevant Committees to put some restrictions on county administrations. The revenue allocation and own-source revenues will need to have good structures to prevent such things.

Secondly, we have these additional conditional allocations, which we have introduced today. We need to approve as soon as possible because the Bill will help counties unlock many problems, particularly on health, roads and other things.

I support this Bill for immediate approval. We know county governments will benefit a lot. As indicated by the previous presenters, the conditional grants need to have a separate structure. That way, county governments will not receive this money and just use it without a structure that can direct and bring them to account for this money.

I support this Bill and congratulate the Committee for bringing it.

**Sen. Wambua:** Thank you, Madam Temporary Speaker, for this opportunity to contribute to this important Bill.

From the onset, I declare that I am in support of the Bill. As I support it, I am doing so while at the same time, proposing amendments to it. My colleagues have spoken very well on it. So, I do not need to repeat what has been said. I will only emphasize three things.

First, in my considered opinion, the Senator for Mandera, who is the Chair of the important Committee, should consider deleting Clause 6 and the Third Schedule from this Bill, so that we are left with clarity on what we need to do.

My last experience with this kind of Bill is that in 2019 and 2020, when there were issues of COVID-19 and locusts, and donors and development partners came calling, there was a serious conflict between county governments and the national Government on the utilization of funds especially for mitigation on the COVID-19 and the locust. Some of the conflicts arise when innocently, the Houses of Parliament pass Bills that are clouded and, therefore, giving room for interpretation in different ways.

There is sufficient clarity in Article 204 of the Constitution in relation to the Equalization Fund. Clause 1 is very specific on the amount of money that the Equalization Fund kitty should have. Clause 2 is clear on the areas where that money should be invested such as water, roads, health and electricity.

The whole idea behind the Equalization Fund is to raise the living standards of residents in marginalized areas and bring them to a level that is almost at par with other areas that are comparatively more privileged. This is important for Senators and Members of the National Assembly to hear.

When it comes to the appropriation for the use of the funds in the Equalization kitty, according to the Constitution, appropriation is a shared function between the National Assembly and the Senate. It should not get to that point, if it will, that because this Fund will be utilized by the national Government. An argument then is brought here that the National Assembly has exclusive right to appropriate on it because it is the national Government to implement.

Article 204(3) of the Constitution states clearly that appropriation will be done by Parliament. According to the Constitution, when you talk about Parliament, it refers to the National Assembly and the Senate.

It has been said and I am in full support that we need to move in speed. I want to challenge the Chair of the Committee on Finance and Budget to move with speed and bring a legislation to actualize Equalization Funds separately from additional allocations to counties. When that happens, if it will happen, this Senate needs to agree on the distribution of the Fund.

Initially when I joined the Senate in 2013, there were only 14 counties that were supposed to benefit from the Equalization Fund.

Unfortunately, by that time, Kitui County was not poor or marginalised enough to make to the list. We had intense conversations with Commission on Revenue Allocation (CRA); we pushed and pulled. We now have a list of 34 counties.

Madam Temporary Speaker, what has happened is that, the CRA has decided that in these counties that have been listed as marginalised and deserving of the marginalization fund, they will choose villages within the counties that should benefit. When that time comes, if Sen. Roba will bring that Bill before this House, we will need to relook at those villages that have been picked by CRA to benefit from the Equalisation Fund.

Madam Temporary Speaker, in my county, I have villages and wards that are seriously marginalised that - even those villages that are naturally marginalized - call them marginalised. That is the extent of marginalization in those villages, but they have not been picked as villages that should benefit from this fund.

I have many of those villages, especially in Tharaka Ward of Mwingi North Constituency. That is a conversation we need to have. That is why I propose that we completely delete Clause 6 from this Bill and have a separate conversation about the Equalisation Fund.

The second issue is on the First Schedule which is talking about counties that are seen in Column B which are supposed to be allocated funds for the construction of county headquarters. We must be truthful to ourselves in this House and to the country.

My take is that the only thing that Column B of the First Schedule does for me is an automatic invitation of the Senate CPAIC to summon governors in those counties. Allow me to mention those counties. Isiolo County has been allocated Kshs102 million, Lamu County, Kshs24 million; Nyandarua County, Kshs121 million; Tana River County, Kshs104 million; and Tharaka Nithi County, Kshs103 million. In total, Kshs454 million has been allocated for the construction of county headquarters.

Madam Temporary Speaker, this far that we have come, more than 10 years into devolution, it is a shame - let me just call it what it is - that there are some county governments that have not yet constructed their headquarters and that money continues to be allocated to them, for the construction of county headquarters.

It is my considered view that the conversation that we should be having in this Senate at this time is allocation of special funds for the construction of Senators offices in the counties. That is a fresher conversation that we could engage in and not talk about

allocation of funds for the county headquarters. The Senate CPAIC has a job to do. Sen. M. Kajwang' has a job to do.

The last thing is a general comment. Senators, are sitting late.

The Committee on Budget and Finance has taken a lot of time to work on this Bill, to allocate funds and bring allocations to the Senate for processing, debating and eventually passing it for the money to go to the counties.

Madam Temporary Speaker, from my experience when we sit late in the night to pass these Bills and allocate money to them, the governors and their governments are happy. They should be equally happy when we go there to oversight the expenditure of these funds. It should be okay when we facilitate release of money to counties and also okay when we ask how these monies are spent.

In our oversight responsibility as Senators, we cannot just look at processes. We shall also be interested in the scope of work for the monies allocated, the quality of the work done and most importantly, in the value for money.

I conclude by saying that this speaks to the dire need for this Senate to push again and ensure that Senators are properly facilitated to undertake their oversight function. The work of the Senate and any Senator is incomplete if we are unable to carry proper oversight.

We can only carry our proper oversight if we have an oversight fund. That, among other thing, enables us to procure the services of qualified personnel in monitoring and evaluation in all spheres of project development. It also makes we hold governors and their governments to account in the spending of Equitable Share and Additional Funds.

With those remarks, I support.

**The Temporary Speaker** (Sen. Mumma): Thank you, Senator. I call upon the Mover to reply.

**Sen. Ali Roba:** Thank you, Madam Temporary Speaker. I take this opportunity to reply to various contributions that have been made by the hon. Senators to this County Governments Additional Allocations Bill, No.4 of 2022, Second Reading.

I first appreciate hon. Members for contributing passionately to this Bill and emphasizing the importance of this Bill to county governments which we all represent. There are a few issues that came to light during the discussions by various hon. Members.

There are issues concerning whether it is appropriate to have the Equalization Fund as part of this Additional Allocation Bill. I agree with all those that have contributed as we have had the same discussion.

They have also interrogated not only from the perspective of giving us an opportunity to justifiably contribute to Equalization Fund as required, but also from a point of legality and avoiding hitches that may come after this Bill processed together with the Additional Allocation Bill, on three grounds-

Most importantly, as you are aware, additional allocation are conditional and unconditional revenue of national Government that is given to counties with certain conditions. However, if you look at the strict definition of Equalization Fund, it is not revenue of the national Government *per se*. The CRA sets apart Equalization Fund before revenue is shared vertically between national and county governments.

Secondly, modalities of utilization of conditional and unconditional grants or this additional allocation, which comes with sets of conditions from the development partners as well as the Government of Kenya, does not conform to the modalities of utilization of Equalization Fund, or its flow as required.

Number three, is extremely critical. We noticed during interrogation and engagement with various stakeholders that the administrative cost of three per cent that would have given effect to the utilization of the Equalization Fund has not been factored in the provisions of this Bill.

As such, we have engaged our legal experts, the Council of Governors (CoG), the CRA and the National Treasury who have all concurred that it is not appropriately placed if bundled with conditional grant. Therefore, we will adapt proposals by hon. Senators as they contributed during debate on this Bill as well as from various stakeholders as required.

The issue of medical equipment has come up. We, as a Committee, have extensively engaged the CoG who are the end users of medical equipment in the hospitals. I am a former governor and I know there are some technical hitches. However, there is greater good in utilization of this medical equipment by our county governments in terms of service provision.

Notably, during my time in office as Governor, Computed Tomography (CT) scans and dialysis machines really touched me. People from my county used to travel over 1,200 kilometres to Nairobi for dialysis. Now they are able to enjoy the same services at county level.

Maybe without the helping hand from national Government in terms of catalyzing the process of improving quality of health services in county government and in view of the natural growth of county governments, we would have taken longer. I believe that the agreement and contract between the providers of these leased equipment and the Government is a bit opaque. To the extent, by the time I left office, we did not know explicitly the content of the agreement between the Government of Kenya and the equipment service providers that we engaged with.

We had taken up that issue with the National Treasury and CoG. They requested that we process the provision as provided. So far, 26 counties have expressed willingness to extend the contract, but on new terms that is clear. As such, we have also consulted the National Treasury and the same has been shared. When we are ready to submit the report, the various justification in relation to those issues will be shared.

My colleagues have shared the issue of constructing county headquarters. It is extremely sad. As a Governor who has served 10 full years, I stand here with the benefit of institutionalising and operationalising devolution and having been part of this.

Madam Temporary Speaker, these counties have suffered disadvantage rather than advantage. The counties that opted to build their county headquarters using their own resources without subjecting themselves to the mercy of the national Government offer, have done so and are operating out of their county headquarters. Those that complained and were listened to, it was a noble gesture then. However, the money was not released on time. As such, to date, those county governments do not have headquarters to operate from.

We, as the Committee on Finance and Budget, it is imperative that we get to understand this issue a little better. We have discussed and it will be submitted in the report. The Committee may need to visit and understand to what extent money has been allocated; how much longer the allocation will continue becoming part of this additional allocation; and, the contract terms for those headquarters of the five counties which were supported by the national Government.

Unfortunately, six or seven years down the line, those counties do not have headquarters. They are still waiting for money to be appropriated in the budget at the mercies of the National Treasury. The National Treasury may or may not release the funds in time. A total of 42 out of the 47 counties have headquarters. The five that remain were offered to be supported, but that offer has not practically worked out. It is extremely critical that these counties consider other options to ensure they build their headquarters.

Concerning the Equalization Fund criteria, it is a long story in terms of the changes that took place with the original intended 14 counties benefitting from the Fund being increased to 34.

I was previously the Chairperson of the Arid and Semi-Arid Lands (ASAL) Committee of the CoG. I was also the Chairperson of Frontier Counties Development Council (FCDC), bringing together 10 counties. We have extensively engaged the CRA on this issue.

It is extremely sad that the previous system of Government attempted to dilute how CRA defined the Equalization Fund. It is sad because marginalisation is not equal to poverty and vice-versa. Marginalisation is a state of poverty created by deliberate resource denial by successive governments because of policy documents that did not favour resource allocations to certain areas in this country. This policy is as per the Sessional Paper No. 10 of 1965.

Madam Temporary Speaker, the drafters of the Constitution envisaged that the Equalization Fund would try as much as possible to bring the development in these deliberately disadvantaged regions to a level closer to what the other counties enjoy.

Unfortunately, in later years, after a lot of bureaucracy on lack of implementation of utilisation of funds, the resultant impact is that they had to redefine what marginalisation meant. Marginalisation was then equated to poverty and vice-versa. It then gave rise to the discussion about revenues in the Equalisation Fund to be given to marginalised areas.

In context, the whole concept of marginalization was different by the drafters of the Constitution. That disadvantage led to more marginalized areas where the second policy came into play. We had more than 2,000 marginalized areas.

When we engaged CRA on that policy, they argued that they were looking at pockets of marginalization within the counties, especially those affected by food insecurity and other issues. They insisted that they were looking for pockets of poverty within the counties.

This Bill seeks to address that. It was unfortunate that we tried to drag it. Unfortunately, we have lost 10 years of the first 20 years of the Sunset Clause. We agreed that for the sake of moving on, and not beating the system, that issue has not taken root. It still remains clouded.

As a leader, while I acknowledge that we have a serious problem of the urban poor in this country that needs to be taken into consideration, all the areas identified by the CRA can be qualified as having the urban poor that need affirmative action from the Government of the day.

Maybe we can have another 1.5 per cent of the revenues collected nationally to address the issues affecting the urban poor while safeguarding the original intent of the drafters of the Constitution, which is that Equalization Funds be used for the previously marginalized counties as a result deliberate Government policies.

That was deliberate denial of resources by successive governments before the advent of devolution. As such, it is an issue whereby if we separate the Bill and we have the Equalization Fund maybe we shall interrogate to see to what extent to define.

Like my colleagues who have contributed before me, I also feel that we need to look at the concept of the Sunset Clause. This is because Article 204 of the Constitution creates a provision that can be exploited by Parliament to make sure that we have justice by extending the Sunset Clause because 12 years have already been lost.

Madam Temporary Speaker, I agree with my colleagues on the issue of oversight funds because Kshs32 billion is a lot of money. While I acknowledge that it follows the model that requires that once the County Governments Additional Allocations Bill is passed, then county governments that may not have included in their appropriation will have to do that through their budgets in order to make sure that the oversight responsibility as required by the law, follows the same trajectory.

This is also part of the many additional responsibilities that Senators will have to undertake to ensure absolute compliance. That way, development partners will find it more prudent to help county governments get more money. By counties prudently utilizing the money and with proper oversight of the monies allocated under this Act, the Senate will play its rightful role.

Madam Temporary Speaker, I beg to reply and request that you defer putting of the question to a later date pursuant to Standing Order No.66 (3).

I thank you.

**The Temporary Speaker** (Sen. Mumma): Thank you, Sen. Ali Roba. Hon. Senators, I wish to defer the putting of the question to Tuesday, next week.

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

Hon. Senators, we have concluded the debate on the County Governments Additional Allocations (No.2) Bill (Senate Bills No.4 of 2022). The Senate extended its sitting time to conclude the debate on the Bill and also to receive the results of election of Members to the EALA.

The results have not been received, but I am informed that they are being finalized.

Consequently, I wish to suspend the sitting to await the results which will be communicated to the House. This is to request you to wait for the resumption in close proximity to the Chamber. The Division Bell will be rung five minutes before the Senate resumes to alert you.

I seek your patience and assure you that this will not take long. The Sitting is suspended.

*(The Senate was suspended at 6.56 p.m.)*

*(The Senate resumed at 7.40 p.m.)*

**The Temporary Speaker** (Sen. Mumma): Hon. Senators, we have strangers in the House. I am informed we have a message that is supposed to be delivered to our Serjeant-at-Arms. Please deliver the message.

*(The National Assembly Serjeant-at-Arm stood at the Bar)*

*(The Senate Serjeant-at-Arm matched to the Bar  
and received the Message)*

*(The Serjeant-at-Arm matched to the Clerk-at-the Table  
and delivered the Message)*

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

#### **MESSAGE FROM THE NATIONAL ASSEMBLY**

##### **ANNOUNCEMENT OF RESULTS OF ELECTION OF EALA MEMBERS BY THE NATIONAL ASSEMBLY**

**The Temporary Speaker** (Sen. Mumma): Hon. Senators, I have a Message from the National Assembly. The subject is the results of the Election of Members to the East Africa Legislative Assembly (EALA).

Pursuant to the provisions of Standing Order 41(1) of the Standing Orders of the National Assembly and Rule 19 of the EALA Election of Members Assembly Rule 201, I convey the following Message to the Senate.

WHEREAS on Thursday, 17<sup>th</sup> November 2022, the National Assembly conducted election of Members to the EALA pursuant with the provisions of Rule 19 of the EALA Elections of Members of the Assembly Rules, 2017. The record of votes for each candidate is as here under-

The Kenya Kwanza coalition results: Aden Abdikadir Omar, 65 votes; Busaidi Salim Mohamed, 16 votes, Charles Fredrick Muteti, 150 votes; Hassan Omar, 207 votes; Iman Falhada Dekow, 131 votes; Iringo Cyprian Kubai, 176 votes; Kering Zipporah Jesang' Kurgat, 186 votes; Kuko Jonas Misto Vincent 4 votes; Lowoiya Rebecca, 17 votes; Mwangi Godfrey Maina, 184 votes; Nyambane Joel Okeng'o, 19 votes; Sankok David Ole, 188 votes; Sheikh Yasir Ali, 15 votes; Tomitom Lillian Cheptoo, 21 votes; and, Too Anne Cheron, 16 votes.

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The Azimio la Umoja one Kenya Alliance: Ali Fatuma Gedi, 138 votes; Bosire Timothy Mosei, 62 votes; Diriye Abdulahi Mohamed, 52 Votes; Kalonzo Kennedy Musyoka, 217 votes; Kega James Mathenge Kanini, 168 votes, Kioni Jeremiah Ng'ayu, 19 votes; Mugali Justus Kizito, 80 votes; Mutua Winfred Syonindi, 1 vote; Ms. Nakusa Beatrice Askul, 11 votes; Ndeti Hellen Mueni, 2 votes; Odinga Ingad Winnie, 212 votes; and, Shahbal Suleiman Said, 143 votes.

Further, whereas the summary of the result of the election are as follows: Total Ballots cast 320 votes, spoiled ballots 14 votes, valid ballots 306 votes.

Now, therefore, in accordance with the said provisions of the Rules and the National Assembly Standing Orders, I hereby convey the results of the election conducted in the National Assembly to the Senate.

I now, therefore, wish to convey the results to the Serjeant-at-Arms to consolidate and tally with our results.

Sen. Wambua, you have the Floor.

**Sen. Wambua:** Thank you, Madam Temporary Speaker. Sorry for interrupting the process, but I had to do it because this is an important matter.

For the record, I heard you say that you are giving the results to the Chief Serjeant-at-Arms to consolidate. I thought the Returning Officer for our purpose was the Clerk of the Senate.

**The Temporary Speaker** (Sen. Mumma): Hon. Senators, I stand guided; the results were consolidated by the Clerk of the Senate.

I now give the opportunity to the Clerk of the Senate to read out the consolidated results.

#### DECLARATION OF THE OUTCOME OF THE EALA ELECTION

(CONSOLIDATED RESULTS)

**The Director, Legislative and Procedural Services** (Mr. Njenga Ruge): Thank you very much, Madam Temporary Speaker. I am reading out the consolidated results as the Presiding Officer of this election.

I will read out for all the candidates starting with Kenya Kwanza: Aden Abdikadir Omar, 78 votes; Busaidi Salim Mohammed, 16 votes; Charles Fredrick Muteti, 189 votes; Hassan Omar Hassan, 253 votes; Iman Falhada Dekow, 174 votes; Iringo Cyprian Kubai, 188 votes; Kering Zipporah Jesang' Kurgat, 223 votes; Kuko Jonas Misto Vincent, 4 votes; Lowoiya Rebecca, 20 votes; Mwangi Godfrey Maina, 213 votes; and, Nyambane Joel Okeng'o, 21 votes; Sankok David Ole, 223 votes; Sheikh Yasir Ali, 17 votes; Tomitom Lillian Cheptoo, 23 votes; and, Too Anne Cheronno, 17 votes.

Under the Azimio la Umoja one Kenya Alliance: Ali Fatuma Gedi, 169 votes; Bosire Timothy Mosei, 79 votes; Diriye Abdulahi Mohamed, 56 Votes; Kalonzo Kennedy Musyoka, 262 votes; Kega James Mathenge Kanini, 197 votes, Kioni Jeremiah Ngayu, 20 votes; Mugali Justus Kizito, 89 votes; Mutua Winfred Syonindi, 1 vote;

Nakusa Beatrice Askul, 12 votes; Ndeti Hellen Mueni, 2 votes; Odinga Imgad Winnie, 247 votes; and, Shahbal Suleiman Said, 181 votes.

**The Temporary Speaker** (Sen. Mumma): Hon. Senators, in accordance with Section 19(d) of the applicable rules, the returning officer in the National Assembly is the one to declare to be duly elected, Members of the East African Legislative Assembly (EALA). She has already made that declaration.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Mumma): Hon. Senators, there being no other Business on the Order Paper, the Senate stands adjourned until Tuesday, 22<sup>nd</sup> November, 2022 at 2.30 p.m.

The Senate rose at 7.52 p.m.