

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 24th April, 2024

Afternoon Sitting

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

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

PRAYER

DETERMINATION OF QUORUM AT
COMMENCEMENT OF SITTING

The Speaker (Hon. Kingi): Clerk, do we have quorum?

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

Serjeant-at-Arms, kindly ring the Quorum Bell for 10 minutes.

(The Quorum Bell was rung)

(Several Senators walked into the Chamber)

Hon. Senators, I am informed that we have quorum. Kindly proceed to take your seats. Order, hon. Senators. Clerk, proceed to call the first order.

COMMUNICATION FROM THE CHAIR

OFFICIAL OPENING OF THE BUNGE TOWER BY H.E.
THE PRESIDENT OF THE REPUBLIC OF KENYA

Hon. Senators, as you may recall on Wednesday, 17th April, 2024, I informed the Senate that His Excellency William Samoei Ruto, CGH, PhD, President of the Republic of Kenya and Commander-in-Chief of the Kenya Defence Forces, had acceded to the request of the Parliamentary Service Commission to officially open the Bunge Tower. In

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

the Communication, I indicated that the official opening event was to be held on Friday, 19th April, 2024.

Hon. Senators will also recall that the event did not take place owing to a declaration by His Excellency the President, of a three-day national mourning following the most unfortunate and untimely demise of the Late General Francis Ogolla, Chief of Defence Forces, and other gallant soldiers in a helicopter crash while on official duty in Elgeyo Marakwet County.

Following consultation with the Office of the President, the Parliamentary Service Commission has made arrangements for the official opening event of the Bunge Tower by His Excellency the President to be undertaken tomorrow, Thursday, 25th April, 2024.

On behalf of the Parliamentary Service Commission and on my own behalf, I take this opportunity to invite all hon. Senators to the official opening of the Bunge Tower, at the forecourt of the Tower. The programme of events will commence at 8.00 a.m.

Hon. Senators are requested to be seated by 7.30 am. I will repeat the last sentence. The programme of events will commence at 8.00 am. Hon. Senators are requested to be seated by 7.30 am.

I thank you.

Next order.

PETITION

REPORT ON PETITION: PROTECTION OF CONSTITUTIONALLY PROTECTED RIGHTS AND FUNDAMENTAL FREEDOMS

The Chairperson Standing Committee on Energy, proceed. This Petition has been dropped.

(Report on Petition dropped)

Next order.

PAPERS LAID

NATIONAL GOVERNMENT BUDGET IMPLEMENTATION REVIEW REPORT

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Wednesday, 24th April, 2024-

First Half National Government Budget Implementation Review Report for Financial Year 2023/2024.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

COUNTY GOVERNMENTS BUDGET
IMPLEMENTATION REVIEW REPORT

First Half County Governments Budget Implementation Review Report for
Financial Year 2023/2024.

REPORTS OF THE AUDITOR-GENERAL ON FINANCIAL
STATEMENTS OF VARIOUS ENTITIES

Report of the Auditor General on Financial Statements of Karuri Water and
Sanitation Company Limited for the year ended 30th June, 2023.

Report of the Auditor General on Financial Statements of Kakamega County
Water and Sanitation Company Limited for the year ended 30th June, 2023.

Report of the Auditor General on Financial Statements of Kericho County
Executive Staff Car Loan Fund for the year ended 30th June, 2023.

Report of the Auditor General on Financial Statements of Nyamira County
Education Support Fund for the year ended 30th June, 2023.

Report of the Auditor General on Financial Statements of Municipality of
Nyamira for the year ended 30th June, 2023.

Report of the Auditor General on Financial Statements of Kajiado County
Executive Staff Car Loan and Mortgage Scheme Fund for the year ended 30th June, 2023.

(Sen. (Dr.) Khalwale laid the documents on the Table)

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

REPORT ON THE EXTRAORDINARY SESSION OF
THE SIXTH PARLIAMENT OF PAP

Sen. Mungatana, MGH: Thank you, Mr. Speaker, Sir. I beg to lay the following
Paper on the Table of the Senate today, Wednesday, 24th April, 2024-

Report of the Kenya Delegation to the Extraordinary Session of the Sixth
Parliament of the Pan-African Parliament (PAP) held at the Gallagher Convention
Centre, Midrand, South Africa, from 20th to 27th March, 2024.

(Sen. Mungatana laid the document on the Table)

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

REPORT ON PETITION: PROTECTION OF CONSTITUTIONALLY
PROTECTED RIGHTS AND FUNDAMENTAL FREEDOMS

Sen. Kisang: Thank you, Mr. Speaker, Sir. I beg to lay the following Petition report on the Table of the Senate today, Wednesday, 24th April, 2024-

Report of the Standing Committee on Energy on a Petition to the Senate by residents of Uyomo village in Kilifi County, concerning the protection of the right to life, health and a clean environment, and other constitutionally protected rights and fundamental freedoms.

(Sen. Kisang laid the document on the Table)

The Speaker (Hon. Kingi): Clerk, next order.

NOTICE OF MOTION

NOTING OF REPORT ON THE EXTRAORDINARY
SESSION OF THE SIXTH PARLIAMENT OF PAP

Sen. Mungatana, MGH: Thank you, Mr. Speaker, Sir. I beg to give Notice of the following Motion-

THAT, the Senate notes the Report of the Kenya Delegation to the Extraordinary Session of the Sixth Parliament of the Pan-African Parliament (PAP) held at the Gallagher Convention Centre, Midrand, South Africa, from 20th to 27th March, 2024, laid on the Table of the Senate on Wednesday, 24th April, 2024.

The Speaker (Hon. Kingi): Sen. Cherarkey, you will get an opportunity later. Get your paper in order. Next Order. We proceed to Statements pursuant to Standing order No.53(1). Sen. Mumma, proceed. Sen. Sifuna, are you holding brief? Very well.

QUESTIONS AND STATEMENTS

STATEMENTS

IMPLEMENTATION OF SIGNED CBAS
BY THE GOVERNMENT

Sen. Sifuna: Thank you, Mr. Speaker, Sir. I will be reading these Statements on behalf of Sen. Mumma.

I rise pursuant to Standing Order No. 53(1) to seek a Statement from the Standing Committee on Health regarding the implementation of the Signed Collective Bargaining Agreements (CBA) by the Government.

In the statement, the committee should-

(1) Explain the position of the national Government, particularly the Ministry of Health and the county governments regarding the CBA which were signed by the two

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

levels of Government and health workers in 2012; and which are the subject of the ongoing national-wide strike by health workers.

2) Clarify whether the national and county governments intend to uphold the principle of perpetuity of Government obligations in the implementation of the CBA, and if not, explain why.

(3) Outline measures put in place by the Government to safeguard the safety and well-being of health workers who continue to provide essential and emergency health services despite calls by the unions for all health workers to participate in the strike.

EMERGENT CONCERNS REGARDING MRNA COVID-19 VACCINES

Mr. Speaker, Sir, I also rise pursuant to Standing Order No. 53 (1) to seek a Statement on behalf of Sen. Mumma from the Standing Committee on Health regarding emergent concerns regarding the safety, profile, efficacy, and known adverse effects of the Messenger Ribonucleic Acid (mRNA) COVID-19 vaccines.

In the statement, the committee should-

(1) Report on the different types of COVID-19 vaccines that have been and are currently officially authorized for use in Kenya, highlighting such relevant procurement specifics for each series of vaccines, such as the authorized suppliers procured aggregate quantities of each series of vaccines and corresponding aggregate costs. Further, provide a summary outline of the distribution of the various series of vaccines across the counties in Kenya.

(2) Indicate whether the Ministry of Health has sanctioned a nationwide comprehensive research on the safety, profile, efficacy, and known adverse effects of the various vaccines sanctioned for use in Kenya, and state the principle findings of the research, giving the justification for continual financial investment in the acquisition of these vaccines.

(3) Provide the latest data and statistics on the number of people in Kenya who have received the mRNA COVID-19 vaccines as well as details on the current nationwide stockpile of mRNA COVID-19 vaccines. Further specifying what adverse effects and deaths have been reported nationally connected to the mRNA COVID-19 vaccines and specifically address imagined global concerns over serious harm and deaths potentially associated with experimental mRNA COVID-19 vaccines.

(4) Outline any steps and measures, the Ministry of Health and the Pharmacy and Poisons Board (PPB) have taken to guarantee the health and safety of Kenyans in relation to the vaccines, specifically the measures taken to investigate and publicize, reported and observed adverse effects and finally.

(5) State the Kenyan position on the continued administration of the vaccine amidst escalating global concerns and mounting evidence regarding their use.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Sen. Cherarkey are you ready now? Kindly proceed under Standing Order No.52 (1) and then you take the one under Standing Order No. 53 (1).

SHATTERING OF THE WOMEN'S MARATHON
WORLD TIME RECORD BY PERES JEPCHIRCHIR

Sen. Cherarkey: Thank you, Mr. Speaker, Sir, for that direction and guidance.

I rise pursuant to Standing Order No. 52 (1) to make a Statement on an issue of general concern topical and national importance namely, the shattering of the women's only marathon world time record by Peres Jepchirchir in a staggering and superb performance at the London Marathon on Sunday 21st April, 2024.

Peres Jepchirchir has once again brought glory to our country. This time through the London Marathon where she shattered the World Women's Marathon (WWM), title that was previously set by a compatriot Mary Keitany of two hours, seventeen minutes and zero one seconds, that she won in the same course at the 2017 London Marathon.

Mr. Speaker, Sir, Peres broke the WWM record by 45 seconds, by finishing at two hours, sixteen minutes and sixteen seconds. She is the reigning Olympic marathon and three times World Half Marathon champion. This being her third victory in the world marathon majors, that is the New York Marathon in 2022 and the Boston Marathon in 2022.

This year's London Marathon provided the perfect stage for athletes to shine with Joyciline Jepkosgei, finishing third in two hours, sixteen minutes and twenty-four seconds.

Brigid Kosgei, came fifth in two hours, nineteen minutes and two seconds while Sheila Chepkirui was sixth in two hours, nineteen minutes and thirty-one seconds. Ruth Chepng'etich was two hours, twenty-four minutes and thirty-six seconds, making five Kenyan women athletes on the top 10 list.

Mr. Speaker, Sir, in the men's marathon, Alexander Mutiso Munyao who was making his debut in the London as well as the Major World Marathon, pulled a surprise win in two hours, four minutes and four seconds as he warded off the legendary Ethiopian marathoner, Kenenisa Bekele to claim the title.

Munyao had previously competed in the 2022 Valencia Marathon, finishing third in a race that was won by the world record holder Kevin Kiptum who, unfortunately, died a month ago. Munyao, thus seals a third consecutive win for Kenyans at the London Marathon.

Congratulations to all of them.

Mr. Speaker, Sir, it was also shameful to learn that our walking race team failed to reach Turkey, the venue of the World Athletics Championship, due to poor planning by the State Department for Sports and Ministry.

The athletes were forced to sleep at Aragon International Airport for two days and were also detained by the police from Thursday 18th April, 2024 then flying back from Istanbul to Nairobi, on Saturday 20th April, 2024, without participating in the championship that took place on 21st April, 2024.

Mr. Speaker, Sir, these athletes were detained and arrested by the police because of non-preparation by the Ministry of Youth Affairs, Creative Economy and Sports. It is very unfortunate and shameful.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Mr. Speaker, Sir, I hereby call the State Department for Sports to clearly state what transpired and what actions have been taken against the responsible persons that denied Kenya an opportunity for qualification for the walking race at the Olympics in Paris later this year.

Mr. Speaker, Sir, even as Alexander Mutiso Munyao, Peres Jepchirchir and others landed yesterday at 5.00 a.m., there was no one to receive them at the Jomo Kenyatta International Airport (JKIA) or even to give them a Maasai *shuka*. It is very embarrassing to these world-beaters.

I also wish to call upon the Ministry of Youth Affairs, Creative Economy and Sports, Athletics Kenya and the National Olympics Committee of Kenya (NOCK), to embrace openness and transparency during team selection, for various teams representing Kenya in various competitions around the world, especially as our team is preparing for the August Paris Olympics to avoid such a shame.

Mr. Speaker, Sir, in conclusion, I also wish to call upon the Anti-Doping Agency (ADAK) to enhance its vigilance and eradicate rogue agencies and coaches masquerading and spoiling the athlete's careers and the good name of our athletes by making them to engage in doping, unknowingly to enrich themselves.

Mr. Speaker, Sir, I end that Statement and move to the statement under Standing Order No. 53 (1).

FINANCIAL ACCOUNTABILITY IN CONSTRUCTION
AND APPROVAL FOR OCCUPATION OF BUNGE TOWERS

Mr Speaker, Sir, I rise pursuant to Standing Order No.53 (1) to seek a Statement from the Standing Committee on Roads, Transportation and Housing, concerning financial accountability in the construction and approval for the occupation of Bunge Tower which has been christened the Tower of Babel;

In the statement the committee should–

(1) Explain the factors that led to the escalation of the project cost of Bunge Tower from the initial budget of Kshs5.8 billion to a revised figure of Kshs9.6 billion, listing all contractors and suppliers involved in the construction of Bunge Tower, including the payments made to each and any other pending payments.

(2) Disclose the total amount incurred in the interest and penalties due to the late payments in the implementation of the project, 14 years down the line.

(3) Provide the completion certificate and the certificate of occupation from the State Department for Public Works as well as the building occupation certificate from the State Department for Public Health and professional standards, and reports on the pending works for Bunge Tower to be declared complete and fit for use.

(4) Clarify the reasons for the current move to Bunge Tower, despite the ongoing construction activities in sections of the building, thus endangering lives and health of Members of Parliament.

(5) Assess whether the building is fit for occupation.

Mr. Speaker, Sir, I submit.

The Speaker (Hon. Kingi): Proceed, Sen. Chute. That Statement is dropped.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

STATUS OF PROJECTS UNDER THE
PARLIAMENTARY SERVICE COMMISSION

(Statement dropped)

Proceed, Sen. Lomenen.

STATUS OF CONSTRUCTION OF THE COUNTY EXECUTIVE OFFICE
BLOCK AND SPEAKER'S RESIDENCE IN TURKANA COUNTY

Sen. Lomenen: Thank you, Mr. Speaker, Sir, for this opportunity. I rise pursuant to the Standing Order No.53 (1) to seek a Statement from the Standing Committee on Roads, Transportation and Housing concerning the current construction status for the County Executive Office Block and the residence of the Speaker of the County Assembly in Turkana.

In the statement, the committee should-

(1) Provide an update on the construction progress of the County Executive Office Block and the residence of the Speaker of the County Assembly of Turkana.

(2) Disclose details of the tender opening and evaluation process for both projects, stating the number of bids received, the amount of the winning bid, and the identities of the companies awarded the contract.

(3) State the contractual commencement and completion dates for these projects, stating reasons for the diversion and delays from the initial timeline.

(4) Outline measures being implemented to ensure the timely completion of these projects.

Mr. Speaker, I have a second Statement. May I continue?

The Speaker (Hon. Kingi): Proceed.

SAFETY OF CHIEFS SERVING IN COUNTIES
PLAGUED BY INSECURITY

Sen. Lomenen: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.53 (1) to seek a Statement from the Standing Committee of National Security, Defense and Foreign Relations regarding the safety of chiefs serving in counties plagued by insecurity.

In the statement, the committee should-

(1) Clarify whether the State Department for Internal Security and National Administration has undertaken a risk assessment to identify the challenges faced by chiefs serving in counties plagued by insecurity, and if so, highlight the findings of such an assessment.

(2) Provide details on training programmes undertaken by chiefs aimed at bolstering their ability to safeguard themselves when confronted with threats.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

(3) Outline any other measures the State Department has put in place to safeguard the lives of chiefs who actively assist in curbing crime within their respective locations and face threats as a result of their work.

(4) State whether the Minister of Interior and National Administration has considered deploying police officers for the protection of chiefs or issuing firearms to the chiefs in light of the threats faced by them as a result of the nature of their work.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Proceed, Sen. (Prof.) Tom Odhiambo Ojienda, SC.

MEASURES TO ADDRESS WASTAGE OF PUBLIC RESOURCES IN KISUMU COUNTY

Sen. (Prof.) Tom Odhiambo Ojienda, SC: Thank you, Mr. Speaker, Sir. I have three Statements.

I rise pursuant to Standing Order No.53 (1) to seek a Statement from the Standing Committee on Finance and Budget regarding measures put in place to address and curb wastage of public resources in Kisumu County.

In the statement, the committee should-

(1) Provide details on measures in place to prevent and mitigate instances of wastage of public funds by various departments as prescribed by the Public Finance Management Act, 2012.

(2) Specify the steps being taken by the County Government of Kisumu to ensure transparency and accountability in budgetary allocations and expenditure in accordance with the principles of public finance outlined in the Constitution of Kenya 2010.

(3) Provide an overview of all the internal audits or investigations conducted to identify instances of financial mismanagement or misuse of public resources within the departments and the remedial measures taken in cases where officers are found to have misused public funds and resources.

(4) Explain the various strategies the County Government of Kisumu has put in place to enhance oversight mechanisms and strengthen institutional capacity to safeguard public funds and resources.

LEGITIMACY OF KISUMU COUNTY DRAFT VALUATION ROLL

Mr. Speaker, Sir, I also rise pursuant to Standing Order No.53 (1) to seek a Statement from the Standing Committee on Land, Environment and Natural Resources regarding the legitimacy of the Kisumu County Draft Valuation Roll 2017.

In the statement, the committee should-

(1) Explain the criteria used by the County Government of Kisumu in preparing the Draft Valuation Roll 2017, explaining the rationale for the tenfold increase in proposed land rates in Kisumu County.

(2) Assess whether the proposed land rates are fair.

(3) Clarify the meaningful public participation, whether meaningful participation was undertaken during the preparation of the State Draft Valuation Roll as required by the Constitution, and in particular, whether property owners and community representatives were consulted.

STATE OF SUGARCANE FARMING IN KISUMU COUNTY

Mr. Speaker, Sir, again, I rise pursuant to Order No.53 (1) to seek a Statement from the standing committee on Agriculture, Livestock and Fisheries regarding the state of the sugar cane farm in Kisumu County.

In the statement, the committee should-

(1) Explain the initiatives taken by the County Government of Kisumu to address the systemic challenges that plague the sugar cane sector in Kisumu County, particularly with respect to inefficient production systems, high cost of inputs, and barriers to market access.

(2) Provide details on the agricultural extension services or training programs offered by the county Government to sugar cane farmers aimed at entrenching their knowledge and skill in the sector.

(3) State any measures put in place to guarantee the fair pricing of sugar cane and prompt payment to farmers, disclosing any plans by the County Government of Kisumu to enhance or deal with the question of pricing.

(4) Outline efforts by the County Government of Kisumu to increase sugar cane production within Kisumu County and to facilitate access by farmers to high-quality inputs, including certified seeds and fertilizers.

(5) State measures put in place to address environmental sustainability concerns related to sugar cane farming, particularly with respect to water conservation.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Sen. Chute, having explained your absence to the satisfaction of the Chair, you may now proceed to read your Statement.

STATUS OF PROJECTS UNDER THE PARLIAMENTARY SERVICE COMMISSION

Sen. Chute: Thank you very much, Mr. Speaker, Sir. I rise pursuant to Standing Order No. 53 (1) to seek a Statement from the Standing Committee on Roads, Transportation and Housing regarding the status of projects under the Parliamentary Service Commission (PSC).

In the statement, the committee should-

(1) Provide an update on the status of the following projects within the PSC-

(a) Installation of the PSC integrated security system.

(b) Construction of the Centre for Parliamentary Studies and Training (CPST).

(c) Renovation of the residence of the Speaker of the Senate.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

(2) Disclose details regarding the tender opening and evaluation processes for each of the projects, indicating the number of bids received, the winning bids as well as the company's that won the awards.

(3) State the contractual commencement and completion dates for the said projects, explaining any instances of delays or deviations from the original timelines and outline any measures in place to ensure that the projects are completed without further delay indicating the projected timelines for the same.

(4) Indicate when the Senate Speaker's residence was last occupied, clarifying whether consideration has been made to purpose the residence into an office block to maximize its utilization and functionality.

I thank you.

The Speaker (Hon. Kingi): Hon. Senators, the last two Statements by Sen. Abdul Haji are deferred.

(Statements deferred)

Let us now move to Statements pursuant to Standing Order No.56(1)(b). The first one is by the Chairperson for the Standing Committee on Trade, Industrialization and Tourism.

ACTIVITIES OF THE COMMITTEE ON TRADE,
INDUSTRIALIZATION AND TOURISM

Sen. Seki: Mr. Speaker, Sir, I rise pursuant to Standing Order No.56(1)(b) of the Senate Standing Orders to make a Statement on the activities of the Standing Committee on Trade, Industrialization and Tourism for the period commencing January to April, 2024.

(Loud consultations)

The Speaker (Hon. Kingi): Order, hon. Senators! May the Chairperson be heard in silence?

Sen. Seki: Mr. Speaker, Sir, during the period under review, the committee held a total of 17 meetings. The committee considered the following Bills-

(1) The Street Vendors (Protection of Livelihood) Bill (Senate Bills No.41 of 2023).

(Loud consultations)

The Speaker (Hon. Kingi): Commissioners Kinyua and Korir, what is the excitement all about?

Kindly take your seats.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Sen. Seki: The Street Vendors (Protection of Livelihood) Bill (Senate Bills No.41 of 2023) was read a First Time on Tuesday, 17th October, 2023. It is sponsored by Sen. Okenyuri, MP.

The Speaker (Hon. Kingi): Order, hon. Senators. Sen. Chimera and Sen. Miraj, kindly take your seats.

(Sen. Chimera and Sen. Miraj sat at their places)

Proceed, Chairperson.

Sen. Seki: The Street Vendors (Protection of Livelihood) Bill, 2023, is a Bill for an Act of Parliament to provide a legal framework for the recognition, protection and regulation of street vending in Kenya, the identification of minimum standards for street vending, and for connected purposes.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order No.145 (5) of the Senate Standing Orders, the committee invited interested members of the public to submit their representations on the Bill. They included, the National Gender and Equality Commission (NGEC), the Council of Governors (CoG), Central Organization of Hawkers Association (COHA), Association for the Physically Disabled of Kenya (APDK), street vendors and Sen. Crystal Asige.

The report was tabled in the Senate on Tuesday, 23rd April, 2024.

(2) The Co-operative Societies (Amendment) Bill (Senate Bills No.53 of 2023). The Co-operative Societies (Amendment) Bill (Senate Bills No.53 of 2023) was read a First Time in the Senate on Thursday, 29th February, 2024, and subsequently referred to the Standing Committee on Trade, Industrialization and Tourism for consideration.

The purpose of this Bill is to amend various sections of the Co-operative Societies Act, in order to align the Act with the provisions of Part II of the Fourth Schedule of the Constitution that provides that co-operative development is a devolved function.

Pursuant to the provisions of Article 118(1)b of the Constitution and Standing Order No.145(5) of the Senate Standing Orders, the committee invited interested members of the public to submit any representations that they may have on the Bill by way of written memoranda in the major dailies of 2nd March, 2024.

At the expiry of the public participation period, the committee received memoranda from the Ministry of Co-operatives and Micro, Small and Medium-sized Enterprises (MSMEs) and the CoG, respectively, who requested that the Senate Bill be stepped down in favour of the National Assembly Bill, 2024.

Consequently, the committee invited the Sponsor of the Bill, Sen. Mariam Omar, MP, for deliberations on the way forward on Tuesday, 23rd April, 2024. The deliberations are ongoing.

Moving to petitions, there is a petition on fraudulent shareholding activities and illegal acquisition of East African Breweries Limited (EABL) and UDV(K). During the period under review, one petition was reported on 30th May, 2023, by Sen. Wakili Sigei, MP, on fraudulent shareholding activities and illegal acquisition of East Africa Breweries Ltd (EABL) and UDV(K).

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

The committee has undertaken extensive engagements with all the relevant stakeholders, including the petitioner, Mr. Nicholas Rono and the Chief Executive Officer (CEO) of Capital Markets Authority (CMA), Competition Authority of Kenya (CAK) and the Kenya Revenue Authority (KRA).

The committee is finalising its draft report for consideration and adoption.

Next is county visits. During the period, the committee undertook a report writing retreat on 23rd March, 2024, in Machakos County to consider the following legislative business. Meeting with stakeholders on the Street Vendors (Protection of Livelihood) Bill, 2023, and the Co-operatives Societies (Amendment) Bill (Senate Bills No.53 of 2023). It also undertook a pre-publication scrutiny on the Creative Industries Bill, 2023.

Further, on 16th to 18th February, 2024, the committee participated in a consultative stakeholder workshop on the Co-operatives Societies Bill, 2023, in Mombasa County.

Regarding Statements, during the period under review, seven Statements were referred to the committee for consideration as follows-

Statement requested by Sen. David Wafula, MP, on 21st February, 2024, regarding co-operative societies in Bungoma County. The committee has received written responses from the Ministry of Co-operatives and MSMEs dated 22nd April, 2024, which has been shared with Sen. Wafula, MP.

Statement requested by Sen. Samson Cherarkey, MP on 22nd February, 2024 regarding Police raid on businesses in Eastleigh over counterfeit products is concluded and referred to the relevant Committee.

Statement requested by Sen. Ledama Olekina, MP on 28th February, 2024 regarding the status of tourism and consequent lease agreements entered into by proprietors in the greater Mara and Triangle and the County Government of Narok. The status is that the Committee has scheduled a meeting with the Governor, Narok County Government on Thursday, 9th May, 2024 to consider the issues raised in the statement.

Statement requested by Sen. David Wakoli, MP on 5th March, 2024 regarding the collapse of Malakisi Cotton Ginnery in Sirisia Constituency, Bungoma County. The Committee has received responses from the Ministry of Investment, Trade and Industry and the Statement is concluded.

Mr. Speaker, Sir, on the overall, as per the Senate Statement Tracker, the Committee has received and processed 38 statements and concluded 24 statements, which is a good indicator.

On international engagements undertaken by the committee; during the period under review, the Committee held a joint Sitting with the National Assembly Departmental Committee on Trade, Industry and Cooperatives on Thursday, 21st March, 2024 and facilitated the address by His Excellency, Wamkele K. Mene, Secretary General, Africa Continental Free Trade Area-(AfCFTA) on the status of Intra-Africa Trade opportunities and economic cooperation.

Mr. Speaker, Sir, on challenges encountered; the committee noted with concern that there are two published Bills on the Co-operatives Societies in both Houses. These are: the Co-operatives Societies (Amendment) Bill (Senate Bills No. 53 of 2023) and the Co-operatives Societies Bill, 2024 (National Assembly Bills No. 7 of 2024). The two

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

bills have similar stakeholders with divergent views, which has affected public participation and stakeholder engagements.

The committee will prioritise the following business in the next quarter-

- (1) undertake a report writing retreat on the following-
 - (i) Petition on the fraudulent shareholding activities and illegal acquisition of East Africa Breweries Ltd (EABL) ; and
 - (ii) The Co-operatives Societies (Amendment) Bill (Senate Bills No. 53 of 2023);
- (2) undertake an inspection visit to Embu and Meru Counties to engage with Muguka and Miraa farmers and the related farmer cooperatives Societies.
- (3) Meet with the Metropolitan National Saving and Credit Cooperative (SACCO) to conclude on the statement requested by Sen. David Wakoli, MP, on the status of SACCO regarding the refund of the shares and deposits and the withdrawal of the teachers from the said SACCO in Bungoma County.
- (4) Undertake county visits to assess the implementation status of the County Integrated Industrial Parks.

I thank you.

The Speaker (Hon. Kingi): Hon. Senators, we will defer the last two statements under Standing Order No.56(1)(b) as listed in the Order Paper.

ACTIVITIES OF THE COMMITTEE ON ROADS,
TRANSPORTATION AND HOUSING

(Statement deferred)

ACTIVITIES OF THE COUNTY PUBLIC
ACCOUNTS COMMITTEE

(Statement deferred)

(The Clerk-at-the-Table consulted the Chair)

Hon. Senators, we will proceed to take Order No. 8 and 9 at the Committee of the Whole.

COMMITTEE OF THE WHOLE

(Order for the Committee read)

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

IN THE COMMITTEE

[The Chairperson (Sen. Kathuri) in the Chair]

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

THE COUNTY BOUNDARIES BILL
(SENATE BILLS NO. 6 OF 2023)

The Chairperson (Sen. Kathuri): Order, Senators. We want to do serious business.

Clause 3

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

The Division will be at the end.

Clause 4

The Chairperson Standing Committee on Devolution and Intergovernmental Relations.

Sen. Abass: Mr. Chairman, Sir, I beg to move:

THAT clause 4 of the Bill be amended—

(a) in sub-clause (1) by deleting the word “electronic” appearing immediately after the words “an up-to-date” and substituting therefor the words “digital and manual”;

(b) in sub-clause (2) by deleting the words “utilise the appropriate technology to ensure” appearing immediately after the words “Cabinet Secretary shall” and substituting therefor the words “ensure appropriate technology is utilized for”.

The Chairperson (Sen. Kathuri): Any further explanation?

Sen. Abass: Yes, I have the rationale. This is to ensure that the Cabinet Secretary does not only keep electronic records of the boundaries of each county, but instead keeps both the digital and manual records.

This will enable the citizens in the country to verify the digital and manual records of the boundaries of different counties.

I urge Members to support these amendments.

(Question of the amendment proposed)

The Chairperson (Sen. Kathuri): Sen. Orwoba, are you interested in making a comment on this proposed amendment? You are not aware.

Division will be at the end.

Clause 5

Sen. Abass: Mr. Chairman, Sir, I beg to move-

THAT Clause 5 of the Bill be amended in sub-clause (2)(a) by inserting the word “committee” immediately after the words “County Executive.”

The purpose of this amendment is to clean up the text.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

(Question of the amendment proposed)

The Chairperson (Sen. Kathuri): Division will be at the end.

Clause 6

(Question, that Clause 6 be part of the Bill, proposed)

Division will be at the end.

Clause 7

Sen. Abass: Mr. Chairman, Sir, there is a double error. I beg to move:

THAT Clause 7 of the Bill be amended in sub-clause (1) by —

(a) deleting the words “experience in alternative dispute resolution” appearing at the end of paragraph (a) and substituting therefor the words “post-admission experience and an accredited mediator”;

Mr. Chairman, Sir, the purpose of this amendment is to provide for the qualification of the Chairperson of the managing committee. The Bill refers to experience in alternative dispute resolution. However, there are different forms of alternative dispute resolutions, being negotiation, arbitration and mediation.

The intention of the Bill is to establish a specific mediation committee and as such, the Committee recommends that the experience be specific and proposes an accredited mediator. I urge Members to support this amendment.

(Question of the amendment proposed)

The Chairperson (Sen. Kathuri): Division will be at the end.

Sen. Abass: There is also part (b) which is a new paragraph.

I beg to move, that the Bill be amended in Clause 7 by-

(b) inserting the following new paragraph immediately after paragraph (d)— (da) a commissioner of the National Cohesion and Integration Commission nominated from amongst its membership;

(Question of the amendment proposed)

The Chairperson (Sen. Kathuri): Division at the end.

Clauses 8 and 9

(Question, that Clauses 8 and 9 be part of the Bill, proposed)

Division at the end.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Clause 10

Sen. Abass: Mr. Chairman, Sir, I beg to move-
THAT Clause 10 of the Bill be amended in the proviso to sub-clause (1) by deleting the words “Physical planning or” appearing immediately after the words “experience in” and substituting therefor the words “mapping or”.

Mr. Chairman, Sir, the rationale is that this is an amendment to make the technical person be fit for the purpose of technology, that is, survey and mapping is desirable and relevant for this purpose. I urge Members to support the amendment.

(Question of the amendment proposed)

The Chairperson (Sen. Kathuri): Division will be at the end.

Clauses 11 - 22

(Question, that Clauses 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 be part of the Bill, proposed)

Division will be at the end.

Clause 23

Sen. Abass: Mr. Chairman, Sir, I beg to move that:
THAT Clause 23 of the Bill be amended by deleting the word “nominate” appearing immediately after the words “receipt of the petition,” and substituting therefor the word “appoint”.

This amendment is to use the appropriate words in the context. It is to provide for the role of the President in the appointment of the commission. The role of the President is to appoint and not to nominate. The President appoints the commissioners and does not nominate them. I urge the Members to support this amendment.

(Question of the amendment proposed)

The Chairperson (Sen. Kathuri): Division will be at the end.

Clause 24

Sen. Abass: Mr. Chairman, Sir, I beg to move:
THAT Clause 24 of the Bill be amended in sub-clause (1) by—
(a) deleting the words “and physical planning” appearing immediately after the words “related to land” and substituting therefor the words “survey and mapping” in paragraph (d);

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

(b) deleting the words “nominated by the Council of Governors” appearing immediately after the words “the affected counties,” and substituting therefor the words “each of whom shall be nominated by the Council of Governors and the entity responsible for coordinating the County Assemblies” in paragraph (e).

(Question of the amendment proposed)

The Chairperson (Sen. Kathuri): Division will be at the end.

Clause 25

Sen. Abass: Mr. Chairman, Sir, I beg to move:

THAT Clause 25 of the Bill be amended in sub-clause (2)(c) by inserting the following new sub-paragraph immediately after sub-paragraph (ii)— (iii) land survey and physical planning;

The rationale is that this is on the qualification to be appointed as a member of the commission to include land survey and physical planning which is a critical component of the role of the commission. It is on that note that the provision in land survey and physical planning be considered as they have critical skills on boundary disputes.

I urge Members to support this amendment.

The Chairperson (Sen. Kathuri): Silence means that they have supported.

(Question of the amendment proposed)

Division will be at the end.

Clauses 26-40

(Question, that Clauses 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40 be part of the Bill, proposed)

Division will be at the end.

Clause 41

Sen. Abass: Mr. Chairman, Sir, I beg to move-

THAT Clause 41 of the Bill be amended in sub-clause (4)(b)(ii) by deleting the word “commission’s” and substituting therefor the word “ministry’s”.

The rationale of the report of the commission should be circulated nationwide, keeping in mind that the commission is *ad hoc* in nature and will be for a specific period. In the interest of the information, it will be better to publish the report on the website of the Ministry as opposed to that of the commission.

The Ministry has a role in keeping the records of the country's boundary, the county boundaries, and as such, it will be important for the Ministry to be a custodian of

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

the report as it is the primary office keeping records for county boundaries. I urge members to support with amendments.

(Question of the amendment proposed)

The Chairperson (Sen. Kathuri): There is also an amendment to the same Clause 41 by the Mover of the Bill, Sen. Moses Kajwang’.

Sen. M. Kajwang’: Mr. Chairman, Sir, I also wish to further propose:

THAT Clause 41 of the Bill be amended in Sub-clause 1 by inserting the words, “including matters touching on displacement of persons and compensation for loss suffered” immediately after the words “considers necessary” in paragraph F.

Mr. Chairman, Sir, it is an amendment that I have been persuaded by Sen. Danson Mungatana, the Senator for Tana River, that would make the Bill neater and ensure that those functions and provisions under Clause 41 are expanded.

There will be a further amendment to Clause 42, but then I wish to beg and move that the clause be amended in sub-clause 1, paragraph F, as stated.

(Question of the further amendment proposed)

The Chairperson (Sen. Kathuri): Division will be at the end.

The next Clause 42 has two amendments by the chairperson and also by the Mover of the Bill. We will start with the Chairperson.

Clause 42

Sen. Abass: Mr. Chairman, Sir, I beg to move:

THAT Clause 42 of the Bill be amended—

- (a) by re -numbering the existing sub-clause (6) as sub-clause (2);
- (b) in the re-numbered sub-clause (2) by deleting the words “the specific geographical” appearing immediately after the words “under subsection (1),” and substituting therefore the words “a comprehensive description of boundaries with adequately enlarged scaled map”.

The rationale is that this is an amendment to ensure that we have all comprehensive descriptions of the boundary as possible. I urge members to support the amendment.

(Question of the amendment proposed)

The Chairperson (Sen. Kathuri): Let us get the further amendment by Sen. Moses Kajwang’.

Sen. M. Kajwang’: Mr. Chairman, Sir, I also beg to move:

THAT, Clause 42 of the Bill be amended in Sub-clause 1 by inserting the words, “including referring a matter to a relevant body for redress” immediately after the words “may consider appropriate” in paragraph B(2).

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Again, I have consulted with the veteran Member of Parliament (MP), Senator Danson Mungatana of Tana River and we have agreed that this amendment would ensure that this Bill achieves the intended objective of ensuring that matters that are put before the mediation committee are appropriately handled.

Thank you.

(Question of the further amendment proposed)

The Chairperson (Sen. Kathuri): Division will be at the end.

Clauses 43 and 44

(Question, that Clauses 43 and 44 be part of the Bill, proposed)

Division will be at the end.

Clause 45

Sen. Abass: Mr. Chairman, Sir, I beg to move—
THAT Clause 45 of the Bill be amended—

(a) in sub-clause (1) by deleting the word “may” appearing immediately after the word “Cabinet Secretary” and substituting therefor the words “shall within two years of coming into force of this Act”;

The rationale is that this is an amendment to the mandatory requirement by the Cabinet Secretary to gazette the regulations as opposed to giving the Cabinet Secretary the option to gazette the regulations. Therefore, I request members to support.

(b) by re-numbering the existing sub-clause (14) as sub-clause (2);

This is to correct the drafting error.

(c) by inserting the words “and the Council of County Governors.” immediately after the words “Boundaries Commission” in the re-numbered sub-clause (2).

Rationale is that this is an important amendment to include Council of Governors (CoG) as body to be consulted by Cabinet Secretary in coming up with the regulations. County boundaries are within counties which are managed by the CoG.

As such, it will be important to have the council consulted in coming up with regulations as they are integral stakeholders. I ask members to support the amendment.

(Question of the amendment proposed)

The Chairperson (Sen. Kathuri): Division will be at the end.

Clauses 46-52

*(Question, that Clauses 46, 47, 48, 49, 50,
51 and 52 be part of the Bill, proposed)*

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Division will be at the end.

First Schedule, Second Schedule, Third Schedule, Fourth Schedule and Fifth Schedule

(Question, that the First Schedule, Second Schedule, Third Schedule, Fourth Schedule and Fifth Schedule be part of the Bill, proposed)

Division will be at the end.

New Clause 13A

Sen. M. Kajwang’: Mr. Chairman, Sir, I beg to move-
THAT the Bill be amended by inserting the following new clause immediately after Clause 13.

13A. Where in the course of mediating a boundary dispute, a matter touching on:

- (a) displacement of persons;
- (b) compensation for loss suffered; or,
- (c) any such related matter arises, a mediation committee may make appropriate recommendations and refer the matter to a relevant body for redress.

Mr. Chairman, Sir, again, I have been convinced by Sen. Mungatana on the need for this amendment because Clause 13 addresses the report of the mediation committee. It provides that the report shall be sent to the Senate, or where it proposes alteration of a boundary, to the Senate, the National Assembly and the President.

What this Clause 13A opens up is that the report should not be limited to the Legislature and the Executive. The mediating committee will be allowed to refer their recommendations to other bodies like the National Land Commission (NLC), if there is compensation on issues of land and the Kenya Wildlife Service (KWS) if there is loss of life as a result of wildlife and human conflict across borders.

I feel that this is a reasonable amendment that will not mutilate the intention of the Bill. I request Sen. Mungatana to second.

The Chairperson (Sen. Kathuri): Sorry, Sen. M. Kajwang’. Just put it straight that new Clause 13A be read a Second Time. That would suffice. There is no need for seconding.

Sen. M. Kajwang’: Mr. Chairman, Sir, I beg to move that the New Clause 13A be read a Second Time.

(Question of New Clause 13A proposed)

(New Clause 13A read the First Time)

(Question, that New Clause 13A be read a Second Time, proposed)

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

*(Question, that New Clause 13A
be part of the Bill, proposed)*

The Chairperson (Sen. Kathuri): Division will be at the end.

Clause 2

Sen Abass: Mr. Chairman, Sir, I beg to move-
THAT Clause 2 of the Bill be amended-

(a) by deleting the words “and physical planning” appearing immediately after the words “related to land” and substituting therefor the words “surveying and mapping” in the definition of the word “Cabinet Secretary”;

(b) by deleting the words “and physical planning” appearing immediately after the words “related to land” and substituting therefor the words “surveying and mapping” in the definition of the term “County executive committee member”.

The rationale is that the technical expertise required for the determination of county boundaries relates to surveying and mapping more than fiscal planning. Therefore, the Cabinet Secretary ought to be one that is in charge of surveying and mapping functions in the country.

I urge members to support this amendment.

(Question of the amendment proposed)

The Chairperson (Sen. Kathuri): Division will be at the end.

Sen. Abass: There is New Clause 7B.

The Chairperson (Sen. Kathuri): We dealt with that.

The Title and Clause 1

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

Division will be at the end.

Hon. Senators, note that Sen. M. Kajwang’s amendments were circulated. They were not on the Order Paper, but they were circulated for record purposes.

We are done with the County Boundaries Bill, (Senate Bills No.6 of 2023). Next is the Sugar Bill (National Assembly Bills No.34 of 2022).

THE SUGAR BILL (NATIONAL ASSEMBLY
BILLS NO.34 OF 2022)

Clauses 3, 4 and 5

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

*(Question, that Clauses 3, 4 and 5
be part of the Bill, proposed)*

Division will be at the end.

Clause 6

The Chairperson (Sen. Kathuri): Let us have the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries or any Member of the committee to move the amendments. Sen. (Dr.) Murango, please proceed.

Sen. Wafula: Thank you, Mr. Chairman, Sir. I beg to Move:

THAT Clause 6 of the Bill be amended in—

- (a) subclause (1) by inserting the following new paragraph immediately after paragraph (e) –
(ea) one person of the gender that is least represented in the composition of the Board who has knowledge and experience in matters relating to the sugar industry appointed by the Cabinet Secretary: and,
(eb) one person representing persons living with the disabilities or youth appointed by the council of county governors;
- (b) subclause (2) by deleting the expression “and (e)” and substituting, therefore, the expression “(e), (ea) and (eb)”.

The Chairperson (Sen. Kathuri): Sen. Wafula is a Member of the Committee on Agriculture, Livestock and Fisheries. He is moving the amendment on behalf of the Chairperson.

(Question of the amendment proposed)

Division will be at the end.

Sen. Osotsi, proceed.

Clauses 7 – 16

Sen. Osotsi: Mr. Chairman, Sir, the Sugar Bill (National Assembly Bills No.34 of 2022) is an important piece of legislation, especially for Members coming from the western part of Kenya. For every amendment, the Mover should explain its justification so that we understand what we are amending.

The Chairperson (Sen. Kathuri): Sen. Osotsi, your concern has been noted. The justifications will be provided as we proceed. You will be satisfied with the explanation.

*(Question, that Clauses 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16
be part of the Bill, proposed)*

Division will be at the end.

Clause 17

The Chairperson (Sen. Kathuri): Sen. Wamatinga, proceed.

Sen. Wamatinga: Mr. Chairman, Sir, I propose that the Bill be amended by inserting the following new heading immediately after Clause 17.

(Sen. Wamatinga walked to the Dispatch Box and consulted the Clerk-at-the-Table)

The Chairperson (Sen. Kathuri): Sen. Wamatinga, proceed.

Sen. Wamatinga: Mr. Chairman, Sir, I beg your pardon for that. I beg to move: THAT, the Bill be amended by inserting the following new heading immediately after clause 17.

PART III –LICENSING AND REGISTRATION

(Question of the amendment proposed)

The Chairperson (Sen. Kathuri): Division will be at the end.

Clause 18

(Question, that Clause 18 be part of the Bill, proposed)

Division will be at the end.

Sen. Wamatinga, proceed to move the amendment on behalf of the Chairperson of the Committee.

Clause 19

Sen. Wamatinga: Mr. Chairman, Sir, I beg to Move-

THAT Clause 19 of the Bill be amended by-

- (a) deleting subclause (1) and substituting therefore the following new subclause -
 - (1) A miller shall not purchase sugar crop from, or accept, sugar crop delivered by a grower and a grower shall not sell or deliver sugar crop to a miller, unless the-
- (a) grower is registered with, and has in force a valid supply agreement with the miller;
- (b) factory of the miller is situated within the grower's sugarcane zone; or
- (c) grower is exempted from the requirement by the Board under section 19A;
- (b) deleting the heading appearing immediately after the subclause (3).

(Question of the amendment proposed)

The Chairperson (Sen. Kathuri): Sen. Cherarkey, you have the Floor.

Sen. Cherarkey: Mr. Chairman, Sir, I agree with the intent of the amendment to Clause 19. Some millers develop cane and have an agreement with the farmer. Therefore,

this amendment will ensure there is no cane poaching or hawking. It will ensure that the development is duly done.

There should be supplier-valid agreement to protect the growth of the miller. Most of the farmers have taken loans from millers and there will be protection by the valid supplier agreement.

On the issue of delivering within the sugar zone area, this amendment will ensure there is discipline. Every game has its rules. I come from Nandi and we have no millers in entire county. When you go to Nandi South, the nearest miller is Kibos, Muhoroni and the rest are 18 kilometres away.

This amendment will ensure that it is easier for farmers within Nandi South to deliver to factories in Kisumu. Nandi North does not have a miller and it is nearer upper western, that is Kakamega County where Naitiri Sugar Company and Butali Sugar Company are. Farmers will not need to travel more than 200 kilometres to deliver their cane.

If we are growing sugarcane in clusters as Hon. Oparanya's report indicated, we will have the central zone of Nandi South, Kisumu, and Kericho. On this other part, we have Nandi North, Kakamega, Bungoma, and Trans Nzoia because of the proximity of those factories.

This amendment is in good faith and will ensure cane development, while protecting the interest of the farmer and the miller.

The Chairperson (Sen. Kathuri): Hon. Senators, make a brief comment on this amendment. This Bill was well conversed during the Second Reading.

Sen. (Dr.) Oburu, proceed.

Sen. (Dr.) Oburu: Mr. Chairman, Sir, I totally oppose this amendment because of the factories which are around that take sugarcane from farmers. Sugar is not a warehousable item.

Mr. Chairman, Sir, when they take sugarcane from farmers, they mill and sell it immediately and they do not pay the farmers. Therefore, farmers should be free to sell their cane to those factories which have cash and can pay.

There is always an arrangement between the sugar factories. If a farmer has a loan from any particular sugar factory and he delivers in a different factory in a different zone, normally that factory in a different zone that has purchased sugar from this farmer, will deduct the loan and pay that particular factory which is owed money. There is no risk of farmers avoiding to deliver sugarcane where they have taken loan. The loan will be repaid anyway. So, farmers should not be oppressed.

I am a sugarcane farmer and there is a factory in Moroni, that has not paid me for more than one year. When other factories come to take my cane, which I have spent money and took a loan to develop, they do not want me to deliver the cane to those factories because they say it is poaching.

Mr. Chairman, Sir, I continue to suffer and I have loans which I have to pay as a farmer. When you ask them why they are not paying you and they already took your cane, milled it, and sold it---

Where do they take the money? Do they use farmers' money as their working capital?

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

I totally oppose this over-regulation of farmers.

The Chairperson (Sen. Kathuri): Thank you.

Sen. Kisang' you want to speak to this?

Sen. Kisang': Yes. I have put an intervention, Mr. Chairman, Sir.

I do not know if the farmers agreed with this Bill during the public participation because this is retrogressive. The farmer should be free to sell their cane where they wish. Otherwise, a miller might take your cane and then they do not pay you. What happens? Therefore, I think we need to oppose this amendment.

The Chairperson (Sen. Kathuri): Proceed, Sen. Olekina.

Sen. Olekina: Mr. Chairman, Sir, I do not know whether to support the idea of the 'youth leader' or to oppose it.

I would like to beseech him to consider the investors who come in and help farmers with inputs. When it comes to the issue of output, all of a sudden that farmer now decides to sell that sugarcane to another miller. How will the miller recover their inputs?

What we need to do to safeguard both the farmer and the input, is to further amend that amendment which is being brought. I wish the sponsor would have been listening to it because it would help him.

We need to put a caveat where the farmer does not have a contractual agreement with the miller, they are free to sell and there is no zoning. However, where there is a contractual agreement, we have to protect contracts. Therefore, we need to amend that section. That will take care of the reservation of the 'youth leader' on that. It will also take care of the interest of the investors.

I have seen it in Narok County where, the Trans Mara Sugar Company has invested in the input. When it comes to harvesting cane, sometimes there is a challenge and the is not able to take all the cane at ago, then you find farmers selling their cane.

Mr. Chairman, Sir, there are different mitigating factors that we can put in the Bill, such that if the cane is ready to be harvested, and there is a contractual agreement, then with the consent of the milling company, the farmer can sell that cane to another company. That will be a much sober way to resolve this issue.

I thank you.

The Chairperson (Sen. Kathuri): This clause has received a lot of interest.

Proceed, Sen. Wafula.

Sen. Wafula: Asante, Mwenyekiti. Katika Kifungu cha 19 (a), kuna maelezo bayana kwamba halmashauri hii itaweza kuwapa kibali wakulima wa miwa, iwapo wataelekeza ama wataeleza kwa mapana na marefu kwamba hawana mkataba wowote na kiwanda chochote katika eneo lao. Basi watapewa ruhusa kuendeleza na mkataba ambao uko katika eneo lingine.

Vile vile, jinsi Seneta wa Narok amesema, iwapo hauna deni na kiwanda ama kongamano la wakulima, utaweza kupewa nafasi na hakuna stakabadhi yoyote inayoonyesha kwamba una mkataba wowote.

Zaidi ya hapo, Kifungu cha 19(b), inaeleza bayana kwamba mkulima atapewa nafasi ya kupewa ruhusa na halmashauri hii iwapo kandarasi yake imekiukwa na msagaji wa sukari. Hivi kwamba, halmashauri itapea mkulima ruhusa kuuza miwa yake kwingine.

Mkulima ama halmashauri itathibitisha kwamba kiwango ama miwa inayopatikana katika eneo hilo imezidi kiwango cha msagaji wa miwa kudhibiti. Hivyo, wakulima watapewa nafasi ya kuuza miwa yao katika kiwanda kingine katika eneo lingine.

Mwisho, kiwanda ambacho anataraji kupeana miwa kiko katika eneo lingine na ana mkataba. Sasa hayo yote yataweza kuafiki yale ambayo Sen. (Dr.) Oburu alikuwa anaangazia, ili kwamba mkulima asifinywe na vile vile mikataba kati ya mkulima na kiwanda ama kiwanda na kingine, kila mwekezaji afanye jinsi sheria inavyostahili.

Asante.

The Chairperson (Sen. Kathuri): Proceed, Sen. Osotsi.

Sen. Osotsi: Mr. Chairman, Sir, earlier on I rose on a point of order to demand that whenever the Mover moves these amendments, justification of the same is very important so that Members can follow up and so that any ambiguities can be handled.

If I look at this proposed amendment, there is ambiguity in it because a similar amendment is on New Clause 19. We must decide on which one to adopt. Is it the new clause or this amendment?

At the same time, Clause 19 (d), talks about deleting the heading appearing immediately after the subclause (3). That heading talks about Part Three of the Bill, which is licensing and regulation. It is jumbled up because this particular Clause 19 is talking about a miller and grower and whether they have an agreement or not.

I am wondering why the deletion of a heading comes in here. The next thing is what happens to all those provisions under that heading? So, we need to look at Clause 19 at the same time we compare what has been proposed under New Clause 19, so that we do not end up having two clauses that are talking about the same thing.

Mr. Chairman, Sir, that is not proper law-making.

The Chairperson (Sen. Kathuri): Sen. Osotsi, the heading is on Clause 17 which was prosecuted by Sen. Wamatinga. It is Clause 17, not Clause 19.

Sen. Osotsi: There is a mistake because Clause 19 is talking about deleting a heading immediately after subclause 3, which is talking about licensing and registration.

The Chairperson (Sen. Kathuri): Sen. Osotsi, the heading, “Part III –Licensing and Registration” has been moved from Clause 19 to 17, which the Chairperson, Sen. Wamatinga, has already amended.

Sen. Osotsi: Okay. What about the conflict between Clause 19 and the New Clause 19A? It is talking about the same thing.

The Chairperson (Sen. Kathuri): Yes, we will get there, do not mind. Let me put the question.

Division will be at the end.

Clauses 20-28

*(Question, that Clauses 20, 21, 22, 23, 24, 25, 26, 27,
and 28 be part of the Bill, proposed)*

Division will be at the end.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Chairperson, proceed.

Clause 29

Sen. Wamatinga: Mr. Chairman, Sir, I beg to move-
THAT, Clause 29 of the Bill be amended -

(a) in subclause (1) by-

(i) deleting paragraph (d) and substituting therefore the following new paragraph-
(d) one person with knowledge of and experience in the operation of sugar industry nominated by the Council of County Governors;

(ii) deleting the words “nominated by universities” appearing immediately after the words “one person” in paragraph (e) and substituting therefore the words “representing the universities nominated by the Commission on University Education”;

(b) by inserting the following new subclause immediately after subclause (1) —

(1A) The Cabinet Secretary shall appoint the members under subsection (1), (a), (b)(c) (d) and (e) by notice in the Gazette.

The Chairperson (Sen. Kathuri): Chairperson, anytime you do any amendment, you give the rationale so that Members can understand you better.

Sen. Wamatinga: Mr. Chairman, Sir, the rationale behind this amendment is the inclusion of the county government because agriculture being a devolved function, it was important to ensure that the CoG take part in the nomination of the board and the people who will run the board.

Secondly, by changing and substituting, “nominated by universities” to “representing the universities nominated by the Commission on University Education”, ensures that it is also inclusive. Therefore, it does not claw back on the duties and the roles of the county government because this involves agriculture and it is a devolved function.

(Question of the amendment proposed)

The Chairperson (Sen. Kathuri): Proceed, Sen. Cherarkey.

Sen. Cherarkey: Mr. Chairman, Sir, I agree with this amendment. In this Bill, we are trying to establish Kenya Sugar Research Institute. Universities are a hub of our research although they have been a challenge since they do not have proper funding. However, with Kenya Sugar Levy Fund that will be levied, it will allow extensive research in the type of breed that we will plant across western and rift valley part of this country.

Secondly, as the Chairperson for Agriculture, Livestock and Fisheries has said, agriculture is devolved.

Finally, on the person nominated to be on the board, the CoG should nominate somebody with a background and understanding of the sugar sector. That is how sugar industry operates from the way it is planted, harvested, milled, and also the marketing of sugar.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Now that the Kenya Sugar Directorate is with Agricultural Food Authority (AFA), it will give opportunity for farmers, especially in provision of extension services and research and the growth and development of sugar industry in the country.

Thank you. I support.

The Chairperson (Sen. Kathuri): Sen. Wafula, proceed.

Sen. Wafula: Thank you, Mr. Chairman, Sir. I want to reiterate what Sen. Wamatinga has raised. The representative of the CoG with a background in the industry of sugar, ensures that the aspects that are devolved in this industry are well catered for.

Remember, in the Bill, we have inspectors, seedling preparation and dissemination, the pricing committee in this exercise and the cess that counties will receive. Therefore, the person representing the counties must understand the various regions that grow sugarcane and the dire challenges they go through. They have no reason not to give us a qualified person to sit in the board and ensure that the CoG and agriculture being devolved, gets a fair representation in the board.

The Chairperson (Sen. Kathuri): Division will be at the end.

Clauses 30-37

(Question, that Clauses 30, 31, 32, 33, 34, 35, 36, and 37 be part of the Bill, proposed)

Division will be at the end.

We have three amendments to Clause 38. Chairperson, proceed.

Clause 38

Sen. Wamatinga: Mr. Chairman, Sir, I beg to move-

THAT, clause 38(6) be amended in-

- (a) paragraph (b) by inserting the words “allocated to the Kenya Sugar Research and Training Institute” immediately after the words “research and training”; and
- (b) paragraph (d) by deleting the words “and shall be managed by Kenya Rural Road Authority of the catchment area” appearing immediately after the words “development and maintenance” and substituting therefore the words “of county roads and shall be allocated to county governments as a conditional grant on a pro rata basis”.

Mr. Chairman, Sir, the rationale behind this was that the sugar growing zone cuts across counties. There are roads that run inter-county. Therefore, if it will be put on pro rata basis and managed by the Rural Roads Authority, may be a disadvantage to some counties.

Again, during the public participation, the issue of levies being raised, and roads not being maintained was raised by various observant. Therefore, it is important that that is operationalised by ensuring that it is managed differently in a way that those who pay the levies also get their roads maintained properly.

Thankyou

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

The Chairperson (Sen. Kathuri): Sen. Olekina, I understand you have the amendments by Sen. Sifuna.

Sen. Olekina: Yes, I do.

Mr. Chairman, Sir, I would like to move an amendment on behalf of Sen. Sifuna: THAT Clause 38 of the Bill be amended by inserting the following new subclause immediately after subclause (1) –

(1A) The provisions of sub-section (1) shall not apply to imported industrial sugar.

The importance of this amendment is because of the levy, which was being imposed. This country does not produce enough sugar. If you apply the 4 per cent levy, it makes it very difficult, such that all the sugar being produced here will become industrial sugar. That is why in the wisdom of Sen. Sifuna, the 4 per cent should not apply to imported sugar for industrial purposes.

I thank you.

The Chairperson (Sen. Kathuri): I understand Sen. Osotsi's amendment is similar to what Sen. Sifuna has proposed. Therefore, we shall drop that amendment.

(The amendment by Sen. Osotsi was dropped)

Let us proceed. Do you want to say something on this amendment?

Sen. Cherarkey: Mr. Chairman, Sir, I support the amendment on Clause 38 by the committee. The Kenya Sugar Research and Training Institute is critical in cane development and sugar industry. That includes from the time it is grown, the type and many other factors. I agree that this should be a conditional grant.

Mr. Chairman, Sir, where some of us come from, we normally have tea and sugar cess. You are aware that when they transport sugarcane, feeder roads, especially where sugarcane is planted get destroyed.

Factories or millers normally pay cess. I agree that county roads should be left to county governments and given conditional grants, which will ensure the cess that is paid for sugarcane delivery is used to maintain the roads within that area where sugarcane is harvested.

In Chemelil-Chemase, Chepterwai Ward, Songhor-Soba Ward in Tinderet, Aldai, Mosop and Kibiyet, most of the roads used to transport sugarcane are in poor and pathetic conditions. Farmers normally complain that they are paid cess.

I agree that we should ring-fence this. We should not be managed by the Kenya Rural Roads Authority (KeRRA). I know Members of the National Assembly wanted to be mischievous.

Mr. Chairman, Sir, with all due respect, I know you are a former Member of the "Lower" House. They want to use the KeRRA to take the normal percentage. We have to appreciate that the KeRRA has continued to be inept in their duty even with the current floods. Most roads are under the KeRRA. Kenyans cannot access their homes due to poor drainage.

We cannot continue giving them more jobs when they have failed in what they are supposed to be doing. Let us give the cess money in order to ring-fence county governments for maintenance.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

In conclusion, to be honest, most of these roads are feeder roads. These are roads which pick crops from the farms to the factory. Let us ring-fence and make it conditional grant. The KeRRA does not have the capacity. It continues to be ineffective even in maintenance of their own roads.

I submit.

The Chairperson (Sen. Kathuri): Sen. Olekina, you moved the amendment---

(Sen. Olekina spoke off record)

No, it was the same Clause 38. Sen. (Dr.) Oburu, do you want to make a comment on the amendment on Clause 38?

Sen. (Dr.) Oburu: Mr. Chairman, Sir, I support the amendment because we used to have private factories which used to maintain roads in the sugarcane growing areas. The roads were perfectly maintained. When the function was taken over by the state, things went haywire. The roads were completely destroyed.

It appears that our brothers in the “Lower House” wanted to control this through the KeRRA, so that this remains as it is. The roads now are in a poor state. Maybe cess going to the counties as a conditional grant will help improve the road network there.

Personally, I would prefer privatization of these factories because they used to maintain the roads. The roads used to be good. In Miwani, we used to have a railroad within the areas of transporting sugarcane therefore not destroying the roads.

Sen. Cherarkey: On a point of information.

Sen. (Dr.) Oburu: Yes, you can inform me.

Sen. Cherarkey: Mr. Chairman, Sir, I want to inform my brother, the senior youth leader in the House, that the issue of privatization of sugarcane sector is ongoing. However, the matter is still in court. I agree with him that if we succeed with privatization, that is the direction we should take with the roads.

I would like to see that proposal through the senior youth leader and chairman of the Odinga family. We should also bring that to the tea sector such that the roads maintained by the sector also get access to the cess. That is the information I wanted to add.

(Question of the amendment proposed)

The Chairperson (Sen. Kathuri): Division will be at the end.

Clauses 39 - 42

*(Question, that Clauses 39, 40, 41
and 42 be part of the Bill, proposed)*

Division will be at the end.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Clause 43

Sen. Wamatinga: Mr. Chairman, Sir, I beg to move- THAT Clause 43 be amended in subclause (2) by inserting the words “and the Senate” immediately after the words “the National Assembly”.

The rationale behind this is that when you talk about Parliament, it comprises the Senate and the National Assembly. Agriculture being a devolved function, the role of the Senate cannot be overlooked.

(Question of the amendment proposed)

The Chairperson (Sen. Kathuri): Division will be at the end.

Clauses 44 - 58

(Question, that Clauses 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57 and 58 be part of the Bill, proposed)

Division will be at the end.

Clause 59

Sen. Wamatinga: Mr. Chairman, Sir, I beg to move- THAT the Bill be amended by deleting Clause 59.

Mr. Chairman, Sir, the rationale behind this is that the farmers will be responsible for planning their own affairs. Therefore, there is no point of having the growers' association.

The Chairperson (Sen. Kathuri): There are requests here, but I do not know for which amendment.

Sen. M Kajwang': Mr. Chairman, Sir, Clause 59 that has been proposed to be deleted talks about representation of growers in a private milling company. I am extremely hesitant to support an amendment that curtails the representation of the key players in the sector - the growers.

I would have loved for the Senator who moved the amendment to have given a deeper rationale for this. I am sure, Clause 59 with three sub clauses must have been subjected to rigorous public participation.

We then might be accused as a House that allowed private milling companies to operate without considering the voices of the growers who are very integral to this industry.

In as much as when it comes to the vote, I will probably ask the Senator to give me a greater rationale. It would have been very good for it to go on record on the thinking, the public push and agitation that has informed his decision to convince the Senate to drop representative of growers in private milling companies.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

I am looking at an example of sukari industries, a private miller in Homa Bay County. If there was that hope that the growers will have a representation on their board of directors, I will find it very difficult to go back to the residents of Ndhiwa and tell them that the Senate decided that the private miller and that the Mr. Rais of this world will run their operations unfettered without any representation from the local community. I see this as the entry point of the voice of the local community and players in that private milling company.

Mr. Chairman, Sir, I know the Mover may not be allowed to speak twice to the question, but let it to go on record as to why he thinks that we should support that deletion.

The Chairperson (Sen. Kathuri): Sen. Osotsi, you may have the Floor.

Sen. Osotsi: Mr. Chairman, Sir, when we were doing the Second Reading, I am among the people who opposed this provision of Clause 59. I differ with my good friend Sen. Kajwang' in the sense that, when we allow farmers to sit on the board of a private company, it goes against the dictates of the Companies Act. That is likely to discourage private investors from investing into our country.

The second part of that clause talks about a representative of the farmers' organization. This basically means, the farmers will sit, do an election and chose someone who will sit on the board of that private company. That in itself creates a risky situation for our private investor, because of the political process of choosing that representative among the growers.

I think this Clause 59 is retrogressive and we should delete it. In any case, the Bill has a regulatory mechanism of managing challenges or interests of the farmers through the board. So, I support the deletion and differ with my good friend, Sen. Moses Kajwang' on this.

The Chairperson (Sen. Kathuri): Yes, the Senate Majority Leader.

The Senate Majority Leader (Sen. Cheruiyot): I do not see why there should be a fight about this. I agree with the position by Sen. Osotsi for this simple reason - sometimes, we make laws, which unfortunately, are in contradiction to already established laws. There is already a set out law in the Companies Act on how you become a board member in a company, especially the private owned company.

There is no way you can do a subsidiary legislation purely for one group of companies. Sen. Kajwang', for this, you do not even need a good lawyer, even an intern will strike out this legislation on grounds of discrimination alone because somebody will ask, "why not then Mbita millers for maize farmers?" Farmers will say they have to be in the company because they take their maize there.

Since there is also an agro-processing plant in that place that we went to, called the Victory Fish Farmers, they will also say that they have to be in this company because they deliver their fish to this company.

In my assessment, it is in violation of already existing laws on how you become a board of director in an institution. To single out one entity alone and say that only in sugar farming will we have this, you will then be asked about maize, tea, dairy, fish and all these other private companies that deal with the public.

I agree with the wisdom of the Committee.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

The Chairperson (Sen. Kathuri): Sen. Wafula, go ahead.

Sen. Wafula: Thank you. I rubber stamp what the Senate Majority Leader has said. The resolution of the Committee to delete that clause was out of a rigorous public participation exercise that we did across the country.

We met stakeholders in the industry and owners of companies. They expressed their reservations of their hard-earned investments being threatened by externally imposed representatives by this law.

As a country, we believe we need to create a good working environment for investors in the industry. Therefore, we had no other option, but to do what is legally correct by deleting that clause.

As a Member of the Committee, we stand with the deletion.

Thank you.

((Question of the amendment proposed))

The Chairperson (Sen. Kathuri): Division will be at the end.

Clause 60

The Chairperson (Sen. Kathuri): Chairperson, you may have the Floor.

Sen. Wamatinga: Mr. Chairman, Sir, I beg to move-

THAT clause 60 of the Bill be amended in subclause (2) by inserting the following new paragraph immediately after paragraph (k) -

(ka) the procedure for election of farmers and millers' representatives to the Board and the pricing committee.

Mr. Chairman, Sir, the rationale behind this is that the regulations governing the appointment of the board members are regulated in the Bill. Therefore, it needs to be put in such a way that the operationalization will be without any hiccups.

Thank you.

(Question of the amendment proposed)

The Chairperson (Sen. Kathuri): Clause 60? Proceed.

Sen. Cherarkey: Mr. Chairman, Sir, while I support the procedure of election of the millers' representative to the board and the pricing committee, there are two things; under this Bill, we are going to have the directors Kenya Sugar Board that will oversee the running of the sugar industry.

When you look at the Companies Act, that provision has been provided for. Therefore, it even becomes easy to run as a miller's representative to the board in the regions that will elect their representatives as provided for in the First Schedule.

Farmers and millers are conjoined twins; they need each other. They must have what we call symbiotic relationship.

Mr. Chairman, Sir, this is because, you cannot have a miller without a farmer or a farmer without a miller. There is that Siamese or symbiotic relationship that is within the

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

industry. I, therefore, agree that they must be there so that their interests are protected, especially now, when we are removing the management of the sugar from the AFA.

On the pricing committee, we are having a crisis with the sugarcane farmers. A few months ago, the tonnage was around Kshs6,050 and now it has fallen by a half. There was hue and cry by the sugar cane farmers with the arbitrary lowering per tonne of selling the sugar cane.

The sugar pricing committee is critical. When you look at the Bill as is proposed, we will ensure that the interests of farmers are well catered for and not only on pricing. For example, thanks to his Excellency, the President for providing subsidized fertilizer, it has become easy for farmers to produce more tonnage. This goes a long way to ensure that the representative of the pricing committee and the board becomes easier.

I thank you.

The Chairperson (Sen. Kathuri): Sen. Cherarkey, you are taking advantage to go to the contents of the Bill like we are in the Second Reading. Just make a comment on the amendment.

(Sen. Cherarkey spoke off record)

I thought you were one of the seasoned legislators in the Senate. The new-comers like Sen. Mundigi are doing well. He is not just talking for the sake of it, but he is now a veteran. Sorry, Dr. Mundigi.

(Laughter)

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

Sen. (Dr.) Oburu, you are not requesting. You are using the old system.

Sen. (Dr.) Oburu: Mr. Chairman, Sir, I want to add my voice to this inclusion of farmers and millers together in the board. When farmers are involved in pricing, their interests will at least be protected and taken care of. Sometimes, when you only have millers and Government representatives sitting in the board, they exploit farmers. For instance, in zoning, there is zoning of transportation. There is zone A, zone B and so on. You will find that farmers lose tremendously on the pricing of transportation. Transport charges are high for farmers if they do not take part in pricing policies.

Working together as farmers, millers and representatives of the Government in the board is very important. I want to add my voice on the importance of having farmers and millers together.

I thank you.

(Question of the amendment proposed)

The Chairperson (Sen. Kathuri): Division at the end.

Clauses 61- 65

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

*(Question, that Clauses 61, 62, 63, 64 and 65
be part of the Bill, proposed)*

The Chairperson (Sen. Kathuri): Division at the end.

New Clause 19A

The Chairperson (Sen. Kathuri): Mr. Chairman, approach the Chair for guidance.

(Sen. Wamatinga approached the Chair)

Sen. Wamatinga: Mr. Chairman, Sir, I beg to move that the Bill be amended by inserting the following New Clause 19A immediately after Clause 19-

19A. (1) The Board may exempt a commercial cane grower from the restriction on supply of cane within a sugarcane zone, provided that-

(a) the grower demonstrates that there is pre-existing agreement with the miller outside the sugarcane zone;

(b) the grower is not indebted to any miller or outgrower institution within the sugarcane zone; and (c) no supply agreement exists between the grower and any miller within the sugarcane zone.

(2) A commercial cane grower who intends to supply cane outside their sugarcane zone shall submit to the Board, an application for exemption in the prescribed form.

(3) The Cabinet Secretary shall prescribe regulations for the consideration of an application for exemption under this section.

The rationale is that we do notice that there are regions and zones in the sugar growing sector that have the disadvantage of not having enough factories or millers. They may be disadvantaged if we do not introduce this new Clause in order to not suffer from restrictions unlike the zones that have several millers in their area.

(Question of New Clause 19A proposed)

(New Clause 19A read the First Time)

*(Question, that New Clause 19A be
read a Second Time, proposed)*

*(Question, that New Clause 19A
be part of the Bill, proposed)*

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

The Chairperson (Sen. Kathuri): Sen. (Dr.) Oburu, you must request to speak. This is the third time. You must use your card.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Sen. (Dr.) Oburu: I spoke on this issue of over-restricting farmers. Introducing regulations which introduce the board to allow the farmer to sell to another zone is introducing corruption. This is another hurdle. Already the millers have agreed that if a farmer delivers cane in a zone that is not his and he has a loan with a factory in another zone, that loan is deducted and paid to that particular factory. What is this board being introduced here?

Mr. Chairman, Sir, this is bureaucracy, the farmer has to apply to the board to give them permission to deliver cane in another zone because of many reasons. This is oppression of the farmers. They are already suffering from some of these regulations.

I totally oppose this kind of amendment.

The Chairperson (Sen. Kathuri): Sen. Mundigi.

Sen. Mundigi: Bw. Mwenyekiti, ningetaka kumwambia Seneta mwenzangu kuwa wakati tulikuwa tunaibuni Hoja hii wakati huu wa demokrasia halisi, tuliona ni vizuri mtu awe akiuza vitu vyake pahali anaona ni pazuri naye. Unaweza mwambia apeleke miwaa zake upande huu, lakini yeye anapendelea upande ule mwingine kwa sababu ya bei ya nafuu. Kwa hivyo, hatukuona ikiwa vibaya na tuliona na vizuri kuwe namna hiyo.

The Chairperson (Sen. Kathuri): The Senate Majority Leader.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Chairman, Sir, I plead with my neighbour, Sen. (Dr.) Oburu, to understand. In my opinion, this amendment helps the farmer achieve what he is saying.

It is the previous amendment of Clause 19 that closes all farmers in one region without room for exit whatsoever. Farmers in the central region; Kericho, Kisumu and South Nandi, have only two private factories. If you close those farmers into that region alone, without providing any exception for them and yet, there is clear evidence that even with the presence of those two millers, there is still, an oversupply of cane.

Mr. Chairman, Sir, to marry the situation, where you have regions in the country, where there is an overabundance of factories and farmers have sufficient choice of where to take their cane, and us, who come from areas where we still have unique challenges of not having sufficient factories, it was important that we provide this provision.

There was a big debate when this Committee went to Chemelil to listen to farmers from Kisumu, Kericho and Nandi. There were those who wanted zoning for reasons best known to them and there were those of us who were opposed to zoning. In their wisdom, the committee listened to those that were opposed to this issue of being zoned in an area where there is no sufficient factory to take their cane and requested that this provision be provided.

If you would request that you have received support from a particular factory outside your zone because those that are there are not sufficient to take our cane, then it was important to provide this exception.

It is a fair proposal given the unique situation that those in the central region find themselves in. Another region that will find themselves in this situation are those that come from Transmara or Narok, the southern region. I wish Sen. Ledama was here.

Migori, Homa Bay, Kisii are also among those counties. For example. In Narok, the only private factory is Transmara. If you restrict them to that particular region alone

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

without providing any exception, what happens if there is a breakdown and it takes a longer period to repair? Therefore, it was important to make this provision and I plead with you to agree with the wisdom of the committee.

The Chairperson (Sen. Kathuri): Proceed, Sen. Oburu.

Sen. (Dr.) Oburu: Mr. Chairman, Sir, I do not support restriction. That is why I do not support this idea of bringing in the board to give permission. The farmers should be free to sell their cane where there is good pricing, payment or treatment in terms of business. Some even give loans to farmers to pay school fees when others do not even care. You could be having a child sitting there yet your cane is lying with the sugar cane factories. However, some factories even pay you when your cane is still in the farm.

They come and assess your ability to repay and give you the loan to even pay school fees for your children. If you have such kind of treatment and the other factory that had given you a loan are not paying you money, you should be free to sell your cane to them and there be an arrangement where they can recover their loan. If they give me money to develop cane and are not good by not paying me, they will tie me to some draconian agreement, which would make me suffer.

The Chairperson (Sen. Kathuri): Proceed, Sen. Mandago.

Sen. Mandago: Thank you very much, Mr. Chairman, Sir. I am also uncomfortable with that Clause 9A. You know the board chair will be sitting in Nairobi. Farmers will have difficulty in accessing the boards to give their approval. I do not know the wording that can be amended whereas it is important to make sure that there is a bit of control. However, for them to apply to the board, it will take ages and they will extremely suffer.

I do not have a problem with the explanations that have been given on the zoning, but on this restriction. Why would a cane farmer who may not have loans have to seek permission? Why can I not take my cane anywhere I want?

I submit.

The Chairperson (Sen. Kathuri): Proceed, Sen. Wakoli David.

Sen. Wafula: Let Members ventilate. I will bounce back.

The Chairperson (Sen. Kathuri): Anybody calling on the Chair, *huwezipata*. I am using the screen, stop calling the Chair. Keep quiet.

What did you say, Sen. Wakoli?

Sen. Wafula: It is not like I am not interested. I am considerate of Members, especially proponents of the Bill to expose what is in detail.

Thank you.

The Chairperson (Sen. Kathuri): Proceed, Sen. Cherarkey.

Sen. Cherarkey: Mr. Speaker, Sir, I invite Members, especially senior youth leader, Sen. Oburu, to look at the intent and principle and the spirit of this introduction. Why? One, you remember AFA issued a letter on closing some factories in central region, that is Kisumu, Kericho and Nandi South. Imagine your cane was ready.

Mr. Chairman, Sir, every game has rules and has a referee. The reason Kenya Sugar Board (KSB) is being removed as sugar directorate from AFA is to give KSB an opportunity to become a regulatory.

The KSB is a regulatory body. Just the same way I must get a license from Kenya Dairy Board to take my milk from Nandi to Kakamega or Kisumu. For example, in Chemilil-Chemase ward, we produce 1,800 metric tons of cane in a day.

Let us assume out of the seven factories, only two are functional. They do not have sufficient capacity, so the exemption can be provided for me to take that sugarcane to Vihiga or Kakamega, which is in another zone. This exemption is within the power of KSB.

I correct the misnomer that it does not mean KSB will only sit in Nairobi. They will have offices just like the way Kenya Dairy Board has offices in other areas.

Finally, I have heard something very dangerous from Sen. Oburu saying that you should not be tied with draconian agreement. It is you the farmer and the miller who went to an agreement. If we allow that agreement be broken, it means we will be allowing cane poaching and hawking.

If I am doing cane development as a factory then somebody somewhere like Oburu factory wants to come and buy without following an agreement, it will bring chaos in the industry.

I submit.

The Chairperson (Sen. Kathuri): Sen. Olekina, kindly comment on the amendment, do not debate.

Sen. Olekina: Mr. Chairman, Sir, this is a very important debate. However, as I listen to both Sen. Cheruiyot and Sen. Oburu, one point that he has is that what does a farmer do when the company that you have a contract with refuses to pay you money and you have a loan that you are supposed to pay?

Senate Majority Leader, we need to discuss this to find a way to ensure that the farmer is not tied to that miller if the miller does not pay them. I think we need to further amend this clause.

That is why you should not be in a rush to pass this. We take care of the interests of the farmers that Sen. Oburu is representing. When we were consulting, Sen. Oburu told me that he has a relative who has not been paid Kshs2 million and he has taken a loan on. When that relative attempts to sell sugar to another milling company, Muhoroni Sugar comes and says it is poaching, we will not allow it. Yet, they have not paid him for two years over Kshs2 million.

We need to have a balance. I have a problem with boards. I agree with Sen. Oburu 100 per cent that we are creating a lot of bureaucracies. All we need to do is to protect these farmers and say that if there is this contract, it must be respected by both parties. There is no point as to why the miller do not respect the contract by not paying the farmer for two years.

If it says when you collect my cane, pay me---

(Loud consultations)

Let me finish my argument. That is the issue Sen. Oburu has with this board.

The Chairperson (Sen. Kathuri): Sen. Olekina, would you want to be informed by the Senate Majority Leader?

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Sen. Olekina: Mr. Chairman, Sir, I am happy to be informed.

The Senate Majority Leader (Sen. Cheruiyot): Sen. Olekina, I think you are conflating issues. What you are describing is a situation prevailing, where a farmer has delivered cane to a certain miller and they have not been paid. You are arguing that we need to provide mechanisms to ensure that they recover whatever they have delivered.

That is a completely separate issue from the debate that we are having with Sen. (Dr.) Oburu. Sen. (Dr.) Oburu holds the position that there should be no exemption or restriction in the game and that it should be free and open.

Unfortunately, this played out here on Tuesday. I do not know if Sen. Wambua was here. We had farmers from central region; Nandi, Uasin Gishu and Kericho, who appeared before the committee.

The way it had previously been drafted in the law, when there was no this clause on exemption, farmers were up in arms. They said that we want to lump them in one region without providing room for them to do what we proposed to be provided for them to deliver wherever they want to.

That is why we have provided this exemption with conditions that, first, you demonstrate that you had a pre-existing agreement with a miller. If, for example, you are in the central zone, already you have an agreement with another miller. You can ask to be exempted.

Secondly, the grower is not indebted to any miller or out-grower institution within the sugar zone. That means that you do not owe anybody any money and you are not running away from anybody. Finally, you do not have a supply agreement between you and any miller within that particular region.

Sen. (Dr.) Oburu, this is a perfect middle ground, given the fact that in the absence of this Clause 19A, you are left with Clause 19 as it is, which has put farmers into zones with no exit clause for them. You have described, there will be farmers who may feel that a certain miller who is not within their zone treats them better and they want to do business with them. I thought that is a better middle ground.

The only point that has been raised here, which we need to reflect, is how to access the board. That is something the committee needs to guide us on how it will be done. Think of an average farmer at Kipsitet or any other part. You do not want to leave a peasant farmer who has an acre or two or even five acres of sugarcane at the expense of a body that sits here in Nairobi. That particular part should be drafted properly.

It was until Sen. Mandago said it that I thought about. Either the chairperson needs to guide, or we need to reflect because the people in the House here are all representatives of sugarcane farmers. As we go along with this discussion, after Members have spoken, we need to sit down and agree on a better draft to this exemption, other than leaving an interaction between farmers and the board.

Sen. M. Kajwang’: I have a proposal.

The Senate Majority Leader (Sen. Cheruiyot): Sen. M. Kajwang’ says he has a proposal.

The Chairperson (Sen. Kathuri): At this juncture---

(Loud consultations)

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Please, listen. The Chairperson should handle the discussions from both sides. I want to give you an opportunity because maybe---

Sen. Olekina: Mr. Chairman, Sir, I was being informed.

The Chairperson (Sen. Kathuri): Please, conclude.

Sen. Olekina: I was being informed.

(Loud consultations)

The Chairperson (Sen. Kathuri): Order, hon. Senators!

Sen. Olekina: Mr. Chairman, Sir, what Sen. Cheruiyot said is exactly what I was saying. The problem that Sen. (Dr.) Oburu has with this restriction is the board. Secondly, Sen. (Dr.) Oburu has a problem with people who do not pay. If you are restricted to a zone that does not pay you, it is still the same problem.

I am actually in agreement with you. I have been in agreement with you from the onset. I was trying to persuade Sen. (Dr.) Oburu, but now I agree with him. He has a problem with one, which I also do. Sen. Mandago has the same problem with this bureaucracy of creating a vote to give those exemptions.

I agree with Sen. (Dr.) Oburu on this one. How do you expect a small farmer who has two acres to go to that board to seek approval to go and sell their cane somewhere else?

(Loud consultations)

Can I finish?

The Chairperson (Sen. Kithuri): Sen. Olekina, please conclude.

Sen. Olekina: Mr. Chairman, Sir, the best way forward is this. It is good for us to agree because we are all fighting for our farmers. I have a problem with my farmers in Narok being forced to sell their cane to another zone if they have a problem with where they sell because they are not being paid.

I have a problem with creating bureaucracies where you have a board that sits in Nairobi, that every farmer has to come and seek exemption. They have to inform the board that they do not owe any miller if they want to sell their cane. That creates an avenue for corruption and that is the problem I have.

My proposition is as follows. The best thing is for the committee to relook at this issue and see how to redraft the powers of the board.

(An hon. Senator spoke off record)

If we amend it here, it will help us. I have a problem with bureaucracies of these boards. Leave the farmer alone. I do not even know why we are controlling this crop so much. Allow farmers to grow cane and sell it wherever they want to.

The problem is when---

The Chairperson (Sen. Kathuri): Sen. M. Kajwang?, what is your proposal?

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Sen. M. Kajwang’: Mr. Chairman, Sir, we are probably losing the essence of this Bill. For those who have done systems programming, there is something called entity relationship diagram. We are establishing zones; each zone with growers and millers and restricting activities within those zones.

However, for the reasons that have been provided in the proposed Clause 19A, particularly the second reason, the grower is not indebted to any miller or out-grower institution within the sugarcane zone. That grower cannot be compelled to supply cane within that zone.

Mr. Chairman, Sir, I hear what Sen. Cheruiyot is saying. It is drafting that could be problematic. Perhaps, we need an opportunity to redraft this and exclude the mention of the board. We can simply say that a grower shall be exempted from the restrictions on supply of cane, if the grower is not indebted to any miller or out-grower institution. We should drop Clause 19A (2), which then compels a grower to go to the board.

I think that is where the problem is; the board is an unnecessary bureaucracy. In any case, we are saying that the Cabinet Secretary shall prescribe regulations for consideration. We know that sometimes Cabinet Secretaries take forever to bring regulations to this House.

Under delegated authority, we have given the Cabinet Secretary six months to come up with regulations. Remember, this is an amendment that has not been carried over to the responsibilities of the Cabinet Secretary under delegated authority.

I agree that we remove this board. If I have grown my cane using my money, my resources, my fertilizer and my seed, allow me to sell wherever I want to sell it.

The Chairperson (Sen. Kathuri): Chairperson of the Committee, you have heard the sentiments from Members. If you are agreeable, you can see how to navigate the wanting of this clause.

I want to hear first from the Chairperson of the Committee.

Sen. Wamatinga: Mr. Chairman, Sir, we are well guided. However, I also want to put it this way. We know that most of the times, we operationalize laws by creating regulations.

We created a board in this particular Bill because we need to bring some sanity. We know that if we leave it to people to decide what they want to do, there will be abuse.

The question that has been asked makes a lot of sense; how will peasant farmers access the board? I want to put it this way. It is the regulations that will operationalize how they will access the board without even necessarily having to capture it in the document.

I believe that most laws are operationalised through regulations. I understand the concern of Members that the Ministry takes a long to bring these regulations. It is our interest as a committee to ensure farmers in this county get their services and income optimised by ensuring the laws and regulations address the pertinent issues, as have been raised in this House.

I submit.

The Chairperson (Sen. Kathuri): Sen. Wambua, proceed.

Sen. Wambua: Finally, Mr. Chairman, Sir, I get the Floor. Members, we need to appreciate where we are coming from. I have sat in this committee and been engaged on

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

this issue of sugar from the last session and even now. Someone will say that I do not produce sugar where I come from, but I am a net consumer of sugar.

We are coming from a situation where we have a monster called the AFA. This AFA pretends it can regulate every crop and everything under the sun. They create directorates. Sugar is an important sector in the economy, but is managed by a directorate under AFA. I hear my brother, the Senior Counsel, asking why we want to expose farmers to a board. My response to this is that the board is better evil than AFA because the farmers are on the board. In AFA they do not exist and sugar is under a Nairobi-based directorate. The decisions are made in Nairobi and implemented on the farms.

Secondly, let us be reminded that three or four years ago, there was a taskforce that was set up to look into this matter of the sugar sector. This taskforce came up with recommendations that have found their way into this Bill.

(Sen. Cherarkey spoke off record)

The Chair has not asked whether I want to be informed.

The Chairperson (Sen. Kathuri): Sen. Wambua, we are in the Committee of the Whole. Give some comments.

Sen. Wambua: When Sen. Wambua informs it is a problem, and when other people inform, it is okay. What is the problem?

The Chairperson (Sen. Kathuri): We just need a comment.

Sen. Wambua: Mr. Chairman, Sir, I am commenting and have not taken half the time people have taken to say many things.

The Chairperson (Sen. Kathuri): Conclude.

Sen. Wambua: Mr. Chairman, Sir, I am concluding. I am happy that the Chairperson of the Committee on Agriculture, Livestock and Fisheries is listening to me, even if the Chairperson of the Committee of the Whole is not listening to me.

The thing about growers and zoning is that zoning is meant for voting, that is, electing board members. The decision as to where a grower will deliver their cane is a deal between the grower and the sugar factory. There is no one being forced or told that since they are growing their sugar in Kericho, they must sell it in Kericho.

If farmers in Kericho thinks that they will make more money selling their cane in Kwale County, they could sign a deal with a factory in Kwale and sell their cane there. Nobody is being forced to sell their cane within the zone. The zoning thing was purely for purposes of voting and election of board members.

I thank you.

The Chairperson (Sen. Kathuri): If you understood what the Chairperson of the Committee said, we have an alternative in part three. However, we are not closing this matter. To make progress, we are not deciding now or voting on this issue. We will open this matter again. Let us proceed to the next clause.

No decision has been made now. The other alternative is to go to division. We cannot resolve a drafting issue right now.

(Sen. Cheruiyot, Sen. M. Kajwang', Sen. Omogeni, Sen. Wambua, and Sen. Cherarkey approached the Dispatch Box and consulted the Chairperson)

The Majority Leader and your team, consult behind the Dispatch Box, so that we can make progress.

*(Question, that New Clause 19A be read a
Second Time proposed)*

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

Division will be at the end.

New Clause 19B

(Loud consultations)

The Chairperson (Sen. Kathuri): Sen. Cherarkey, settle down first.

Sen. Wamatinga: Mr. Chairman, Sir, could I be heard in silence?

The Chairperson (Sen. Kathuri): Sure.

Sen. Wamatinga: Mr. Chairman, Sir, I beg to move:

THAT the Bill be amended by inserting the following new clause –

A miller may enter into a contract of cane supply with another miller if —

- (a) the miller's factory is temporally broken down; or
- (b) there is an oversupply of cane to the miller; and
- (c) the mill is located within the same sugarcane Zone.

The rationale behind this is that a mill may break down and not pick cane from the farmer. In such a case where the factory has broken down, he can sell his cane to another miller since the repairs can take time. We are creating a situation where the millers can agree to take up the cane from farmers.

Thank you, Mr. Chairman, Sir.

The Chairperson (Sen. Kathuri): Sen. M. Kajwang, proceed.

Sen. M. Kajwang': Mr. Chairman, Sir, the Deoxyribonucleic Acid (DNA) of this Bill, which I will keep referring to, is that we establish zones and define millers and growers within those zones. I think to argue against that essence is to argue against the Bill in its entirety.

New Clauses 19A and B are providing a window for exemption circumstances. Clause 19B talks of inter-miller agreements, but it assumes that those agreements can only exist within a zone.

Mr. Chairman, Sir, I believe that there will be a situation where you will have interzone, inter-miller agreements; millers in different zones. Therefore, I want to urge the Mover of this amendment, that in the same manner under Clause 19A, you provided for a procedure where a grower can send his cane outside the zone, let us also have a Clause 19B (2) that will address interzone miller agreements.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

If a miller in zone A, for whatever reason, finds it necessary to move cane or to have relationships with a miller in zone B, then there is a prescribed form for that kind of arrangement.

The Chairperson (Sen. Kathuri): Sen. M. Kajwang', I want to rule that maybe at the rise of the House, you, the Chair of the Committee, the Mover, Sen. Wafula, the Senate Majority Leader and any other Senator interested in relooking at Clause 19A and B will have the opportunity to do that today.

Sen. M. Kajwang': Thank you, Mr. Chairman, Sir, because we cannot make it difficult for growers and make it easy for millers.

The Chairperson (Sen. Kathuri): I have heard the concern of the Senators. I think we have made some progress, the Senate Majority Leader. We have opened it up so that we will negotiate to discuss this Clause 19A and B.

The Senate Majority Leader (Sen. Cheruiyot): Okay.

The Chairperson (Sen. Kathuri): Hon. Senators, after my ruling, I want to put the question.

(Question of the New Clause 19B proposed)

(New Clause 19B read the First Time)

(Question, that New Clause 19B be read a Second Time, proposed)

(Question, that New Clause 19B be part of the Bill, proposed)

Division will be at the end.

Proceed, Sen. Cherarkey.

First Schedule

Sen. Cherarkey: Mr. Chairman, Sir, I have seen there is an amendment to the New Schedule that has been introduced.

[The Chairperson (Sen. Kathuri) left the Chair]

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

Madam Temporary Chairperson, I request that the First Schedule remain as is, for the purpose of election of the representative of the farmers as per Clause 6 (b), where the First Schedule has only been used to elect directors to Kenya Sugar Board.

My aspirations have been captured by the introduction of the New Schedule that will create sugar zones of the central region, that is, Kisumu, Southern Nandi and Kericho counties. On Upper Western, we have Bungoma, Kakamega, excluding Mumias areas, Trans Nzoia, Uasin Gishu and Northern Nandi counties.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Madam Temporary Chairperson, the introduction of this New Schedule has captured my aspirations. In that spirit, I request that the First Schedule remains as is. I, therefore, withdraw that amendment because it has been captured in the New Schedule.

I thank you.

The Temporary Chairperson (Sen. Veronica Maina): The proposed amendment is, therefore, withdrawn. That is in the First Schedule.

Sen. Cherarkey: Yes, I withdraw the amendment to the First Schedule. It remains as is for the election of directors only.

There is a New Schedule that has been introduced by Sen. Wafula.

*(Proposed amendment to the First Schedule
by Sen. Cherarkey withdrawn)*

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

The Temporary Chairperson (Sen. Veronica Maina): Division will be at the end.

Sen. M. Kajwang', do you have a proposal on the Second Schedule?

Sen. M. Kajwang': Yes, I have a concern.

The Temporary Chairperson (Sen. Veronica Maina): Proceed.

Sen. M. Kajwang': Madam Temporary Chairperson, first of all, when this Bill came from the National Assembly, there was only one Schedule that was to form the basis for election and delivery of cane.

The initial printout of the Order Paper that proposed the Second Schedule, Homa Bay County, which is a sugar-growing zone was excluded. I have just looked at the Supplementary Order Paper and I can see now that Homa Bay has been put in the southern catchment area.

Madam Temporary Chairperson, it would also be important for the Mover of this amendment, on the inclusion of the Second Schedule, to explain to the House. If we are together for elections, it means that we have certain common and similar interests. Why then do you separate us---

The Temporary Chairperson (Sen. Veronica Maina): Sen. M. Kajwang', if I may render some assistance to the concern you are raising, it may be premature because it will be addressed by the Chairperson of the Committee when he is moving the New Schedule. If Homa Bay County had been left out previously, it will be addressed by the Chair in the New Schedule.

Sen. M. Kajwang': I thought you had read out the Second Schedule because that is the Second Schedule.

The Temporary Chairperson (Sen. Veronica Maina): It is in the New Schedule.

Sen. M. Kajwang': Okay.

The Temporary Chairperson (Sen. Veronica Maina): We will get there. Perhaps, you can comment if it does not meet the standard that you want.

Therefore, I repeat the proposal of the question that the First Schedule, be part of the Bill.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

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

Division will be at the end.

New Schedule

The Temporary Chairperson (Sen. Veronica Maina): I call the Chairperson, Sen. Wamatinga to proceed.

Sen. Wamatinga: I beg to move-

THAT the Bill be amended by deleting the First Schedule and substituting therefor the following new Schedule —

FIRST SCHEDULE

(S. 2, 6 (1) (b) and 29(b) DELINEATION OF SUGAR CATCHMENT AREAS

| SUGAR CATCHMENT AREA | COUNTIES |
|-----------------------------|---|
| Central Region Area | Kericho, Nandi South, Kisumu |
| Upper Western Area | Kakamega, Nandi North, Uasin Gishu, Bungoma and Trans - Nzoia |
| Lower Western Area | Busia, Siaya and Vihiga |
| Southern Area | Homa Bay, Migori, Narok and Kisii |
| Coastal Area | Kwale, Lamu and Tana River |

The Temporary Chairperson (Sen. Veronica Maina): For clarity, are you moving the New Schedule in an amended form?

Sen. Wamatinga: Yes, Madam Temporary Chairperson, because it is differently composed than what we had proposed initially.

The Temporary Chairperson (Sen. Veronica Maina): Can the secretariat then circulate the New Schedule, so that Sen. M. Kajwang' can see whether his concerns have been addressed in the New Schedule?

You will get a copy just now and you can confirm that you are comfortable with the proposed New Schedule as amended.

Sen. M. Kajwang', you have the New Schedule and you can proceed if you have any concerns.

Sen. M. Kajwang': Madam Temporary Chairperson, this is usually a very important stage in law-making. I am a bit uncomfortable because before this amendment was done, Homa Bay County was missing.

If I had not been in this House or if someone was not going to point it out, perhaps Homa Bay would have missed out on the sugarcane zones and that would have been a great tragedy.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Madam Temporary Chairperson, my concern is when this Bill came from the National Assembly, we had one Schedule, which was supposed to suffice for election and delivery of cane. I have not heard the strong justification from the Mover of the amendment, who proposes a New Second Schedule for sugarcane zones, because the problem is that it has disaggregated.

For example, in the First Schedule, you will find that Kisumu, Migori, Homa Bay, Kisii and Narok counties are in the southern zone. In the Second Schedule, you will find that Kisumu has now moved to central region. Kisumu is now with Southern Nandi and Kericho counties.

This could be mischief, but I do not want to impute improper motives. I would like the Mover of the Second Schedule, not just to leave it to be included in the amended form, but to justify and tell the House why the Second Schedule is significantly different from the First Schedule.

This is because if you are going to use a unit for elections, then it follows that that electoral unit has similar interests and concerns. That is the unit you also use for development of cane. This can bring about certain confusion.

I do not see the Member for Kisumu County, but I would have been interested to find out whether he is comfortable with that. That for election purposes, Kisumu is lumped up with Migori, Homa Bay and Kisii counties, but for cane development purposes is lumped up with Southern Nandi and Kericho counties.

The Temporary Chairperson (Sen. Veronica Maina): Chairperson, Standing Committee on Agriculture, Livestock and Fisheries, that concern is valid.

(Sen. Cherarkey spoke off the microphone)

Do you have a concern which is aligning to the concern raised by the Senator? Okay, I will let you ask the question, then, the Chairperson can prepare to respond to that. The concern to justify why the Second Schedule has been adjusted is valid.

Sen. Cherarkey: Thank you, Madam Temporary Chairperson, for the indulgence. When you look at the Bill, Clause 6B, the First Schedule is specifically used for elections of farmers' representatives from the five regions for purposes of elections to KSB.

He asked a very important question. I come from Nandi County. We do not have a miller or a sugar factory. I am only 18 kilometres from the many factories that are in Kisumu. The reason I want to work with Kakamega for cane development is because most of the factories are in Kakamega, for example, Naitiri, Kabras, and Butali. When you come to Nandi South, we have Kibos, Muhoroni, Miwani, Sony, among others.

That is why this Second Schedule is very critical because it is convenient for farmers of cane development. For example, Nandi does not have even one sugar milling factory, but Kisumu has more than seven. If you go to Nandi, Kericho and Uasin Gishu counties, it is only Kericho that has one sugar factory that might not be able to accommodate the capacity because it might only be crushing 1,200 metric tonnes. Chemelil-Chemase, which is only 18 kilometres from Kisumu, produces 1,800 metric tonnes. You have not added Sigowet-Soin, Kipkaren, Aldai, Mosop and Tinderet. So, the one factory will be overwhelmed.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

The intention of this was for purposes of cane development and delivery only. However, when it comes to elections, we remain with the First Schedule to allow farmers to elect and also for regional balance.

Sen. M. Kajwang’: On a point of information, Madam Temporary Chairperson.

Sen. Cherarkey: Yes, you can inform me through the Temporary Chairperson.

The Temporary Chairperson (Sen. Veronica Maina): Sen. Cherarkey, business is not conducted like that. I am in charge. I am the one to request you whether you want to be informed.

Sen. Cherarkey: Can I be informed by my super Chairman, Madam Temporary Chairperson?

The Temporary Chairperson (Sen. Veronica Maina): You can proceed. He has accepted

Sen. M. Kajwang’: Thank you, Madam Temporary Chairperson. We work very well with Sen. Cherarkey, including and up to yesterday, when we were looking at the books of Nandi County.

I just want to inform him about the saying, “what is good for the goose, is good for the gander.” So, if a unit is good for electoral purposes, why is it not good for cane development purposes? That, you want to redefine a different unit for election and a different unit for cane development.

Do you fear that if you are lumped up with Kisumu for electoral purposes, then you will be whitewashed? However, you are only happy to be with Kisumu for cane development purposes. That needs to come out.

The Temporary Chairperson (Sen. Veronica Maina): Chairperson, you are the one to justify that, though maybe they are tapping into the big brains, which are in Kisumu for the cane development.

Sen. Wamatinga: Thank you very much, Madam Temporary Chairperson.

(Sen. (Dr. Khalwale) spoke off the microphone)

Sen. (Dr.) Khalwale, is it in line with the arguments that are being proffered?

Sen. (Dr.) Khalwale: Yes, it is.

The Temporary Chairperson (Sen. Veronica Maina): Sen. Wamatinga, just hold a bit, so that we hear what Sen. (Dr.) Khalwale has.

Sen. (Dr.) Khalwale: Madam Temporary Chairperson, the issues being raised by the Senator for Homa Bay County are real and practical. Allow me to remind the House that the upper and lower western zones produces over 80 per cent of the sugar consumed in this country.

If we take the route suggested by the Senator for Nandi County, it is dangerous. Directors are elected to represent and protect the interests of their zone. So, once we admit the New Schedule, the issue of electing people from a different zone, and then they go to represent another zone, makes it operationally non-productive and helpful.

If you look at this practically, the purpose of this zoning is not to give communities zones. It is to give zones to areas that make geographical sense. For us who know where this place is, Kisumu, South Nandi and Kericho counties are in the same

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

geographical area. The attempt by the Senator for Nandi County on the issue of election, is to represent community interests. We are not on community interests.

For your information, Senate Majority Leader, one of the reasons we have failed in some areas is because of the factor of transporting cane. If you are taking cane too far, it becomes unproductive.

I request that directors must be voted for in the zone that will have been adopted. Electing directors from outside, to go to a different zone, will have no useful purpose. It will create operational nightmare that is unhelpful.

Since this is the only time I might speak on this, I congratulate the committee on the exemptions that they proposed. They are very important, because it admits the principle of free market economy. You cannot tie a farmer to somebody who is not helpful. That is very good.

The only rider we should put there is that a miller from a different zone should not be allowed to erect a way-bridge in another zone. The moment they have a way-bridge in another zone, that is when poaching comes in.

Thank you, Madam Temporary Chairperson.

The Temporary Chairperson (Sen. Veronica Maina): Proceed, Senate Majority Leader.

The Senate Majority Leader (Sen. Cheruiyot): There is something that my good Whip is missing. The problem we have in Kericho, Nandi and Uasin Gishu counties is that we have abundance of cane, but no mills. If you were to lump them for purposes of zoning, they only have access to one small private mill. That will not be sufficient to provide milling services to those farmers.

That is why this request is coming in saying that in the delimitation of these regions, those that are in Upper Nandi or what is being referred to here as North Nandi and Uasin Gishu counties, have access to mills in Kakamega County because there are sufficient mills that side.

Those who are in the south of Nandi and Kericho have access to mills in Kisumu. If you do that, you will give the central region, for example, Kericho, access to seven mills; two private and five that are Government-owned.

Separate that for those that are in the north part of Uasin Gishu, it gives them access to about five private factories. Therefore, they will be satisfied. That is the whole logic behind it and why we are pleading with it.

Madam Temporary Chairperson, we are making good progress on this. Even on the other matter where we had a stalemate, Sen. Omogeni and Sen. (Dr.) Oburu were able to convince us. We were told earlier to consult and report progress, to shift the burden of approval from the farmer to the board, such that the farmer only has to give notification. That is reasonable.

The board should be notified by farmers that they will be supplying their cane outside their zone. This is because they do not owe any miller and that did not take any subsidy support from any of the millers. That is why they feel the need to supply elsewhere. It will be the work of the board to check whether what you are saying is true as opposed to a farmer going there. We felt that was a fair compromise, which we shall re-draft.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

I like the spirit that is prevailing. We request that it be the guiding spirit in consideration of this Bill. I support the schedules as proposed by the committee.

The Temporary Chairperson (Sen. Veronica Maina): In view of all those submissions, it appears as though the Chair's work has been eased by Members in their arguments, by justifying operational zones vis-à-vis governance zones. That would mean that since you are comfortable with operational zones remaining as such and governance zones remaining for purposes of elections, we should proceed as we had agreed.

(Question of the New Schedule proposed)

(The New Schedule read the First Time)

(Question, that the New Schedule be read a Second Time, proposed)

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

Division will be at the end.

Clause 2

Sen. Wamatinga: Madam Temporary Chairperson, I beg to move:

THAT Clause 2 of the Bill be amended by inserting the following new definition immediately after the definition of "sugarcane manufactures apex body". "Sugarcane zone" means a geographical area as set out in the Second Schedule where growers and millers are restricted to deliver and receive cane respectively.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Veronica Maina): Division will be at the end.

The Title and Clause 1

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

Division will be at the end.

The Senate Majority Leader (Sen. Cheruiyot): Madam Temporary Chairperson, we were formally in session when the Chair directed that there be a reconsideration of Clause 19. Given that we have reconsidered and consulted, and that the idea of notification as opposed to an approval seems to find favour amongst everyone in the

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

room, could the Chair commit to have a redraft of that, so that tomorrow as we conclude on the same, that is the question that is put?

The Temporary Chairperson (Sen. Veronica Maina): Chairperson of the Committee, you have heard the request. Could you make an undertaking on whether you have been updated on the consensus position?

Sen. Wamatinga: Madam Temporary Chairperson, I have been well guided on that. As a Committee, we accept that it is a good compromise. Yes, we can have it tomorrow as part of the proposed amendments.

I thank you.

The Temporary Chairperson (Sen. Veronica Maina): Chairperson, you will get the redrafted Clause 19A and B.

We are not ready to proceed from that point.

Proceed, Sen. Wafula.

Sen. Wafula: Madam Temporary Chairperson, pursuant to Standing Order No.153, I beg to move that the Committee of the Whole do report progress on its consideration of The Sugar Bill (National Assembly Bills No.34 of 2022) and seeks leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

The Temporary Chairperson (Sen. Veronica Maina): Sen. M. Kajwang', initially, we had deferred the reporting of progress by the Committee of the Whole on The County Boundaries Bill (Senate Bills No.6 of 2023).

I now invite you to move.

Sen. M. Kajwang': Madam Temporary Chairperson, pursuant to Standing Order No.153, I beg to move that the Committee of the Whole do report progress on its consideration of The County Boundaries Bill (Senate Bills No.6 of 2023) and seeks leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

The Deputy Speaker (Sen. Kathuri): Sen. M. Kajwang' and the Senate Majority Leader, we now want progress reported on the County Boundaries Bill (Senate Bills No.6 of 2023).

Chairperson, proceed.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

PROGRESS REPORTEDTHE COUNTY BOUNDARIES BILL
(SENATE BILLS NO.6 OF 2023)

Sen. Veronica Maina: Mr. Deputy Speaker, Sir, I beg to report that the Committee of the Whole has considered The County Boundaries Bill (Senate Bills No.6 of 2023) and seeks leave to sit again tomorrow.

The Deputy Speaker (Sen. Kathuri): The Mover, please, proceed.

Sen. M. Kajwang’: Mr. Deputy Speaker, Sir, I beg to move that the House do agree with the Committee on the said Report.

The Deputy Speaker (Sen. Kathuri): Who is seconding?

The Senate Majority Leader (Sen. Cheruiyot): I second.

(Question proposed)

(Question put and agreed to)

The Deputy Speaker (Sen. Kathuri): Now, on the Sugar Bill, (National Assembly Bills No.34 of 2022).

Chairperson, proceed.

THE SUGAR BILL (NATIONAL ASSEMBLY
BILLS NO.34 OF 2022)

Sen. Veronica Maina: Mr. Deputy Speaker, Sir, I beg to report that the Committee of the Whole has considered The Sugar Bill (National Assembly Bills No.34 of 2022) and seeks leave to sit again tomorrow.

The Deputy Speaker (Sen. Kathuri): Mover.

Sen. Wafula: Mr. Deputy Speaker, Sir, I beg to move that the House do agree with the Committee in the said report.

The Deputy Speaker (Sen. Kathuri): Who is seconding?

Sen. (Dr.) Oburu: I second.

(Question proposed)

(Question put and agreed to)

(The Clerk-at-the-Table consulted the Chair)

The Deputy Speaker (Sen. Kathuri): Next Order.

MOTION

STATUS OF PENDING BILLS IN COUNTIES

AWARE THAT, as at 31st December, 2023, according to the County Governments Budget Implementation Review report for the first half of the Financial Year 2023/2024, County Governments had accumulated a total of Kshs.156.34 billion in pending bills with Nairobi City County accumulating the largest share of Kshs107,037,053,000 followed by Kiambu and Mombasa counties at Kshs5,711,614,412 and Kshs3,922,131,877, respectively;

CONCERNED THAT, the accumulated pending bills in counties have significantly affected service providers in the counties leading to closure of businesses, stalling of county projects, adversely affecting economic growth in counties, service delivery and ultimately slowing down the country's economic growth;

FURTHER CONCERNED that most of the service providers in the counties are battling court cases lodged against them by their financiers and suppliers while others are languishing in poverty exacerbated by the increased cost of living, with increased mental health disease incidences and others dying as a result of the effects of colossal amounts of debt owed to them by county governments;

NOW THEREFORE, the Senate

1. recommends that all County Governments pay verified pending bills amounting to less than Kshs1 billion by the end of this financial year and those above Kshs1 billion by the end of the financial year 2024/2025; and

2. Resolves that

i. pursuant to the provisions of Regulation 41(2) & (3) of the Public Finance Management (County Governments) Regulations, 2015, County Governments prioritize payment of pending bills as a first charge on the County Revenue Fund failure to which the subsequent quotas budget releases will not be done;

ii. County Governments shall only pay pending Bills contained in their respective procurement plans pursuant to Regulation 50 (2) & (3) of the Public Finance Management (County Governments) Regulations;

iii. Supplementary budgets for county governments are prepared in the 3rd Quarter to curb instances of arbitrary re-allocations out of the approved budget estimates; and

iv. County governments shall conduct public participation while formulating supplementary budgets, failure to which the Controller of Budget (CoB) shall not approve the supplementary budgets.

(Sen. Olekina on 28.3.2024)

*(Resumption of debate interrupted
on 24.4.2024 – Morning Sitting)*

The Deputy Speaker (Sen. Kathuri): Sen. Thangw'a, you had a balance of nine minutes on this Motion. Retrace your balance of the minutes.

Sen. Thangw'a: Thank you, Mr. Deputy Speaker, Sir.

I rise to support the Motion that we, as a Senate, need to do something about the pending bills. It is high time we stamp our feet. Pursuant to Article 96 of the Constitution, we are supposed to protect the interest of the counties and their governments, which means we have to protect our people.

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

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

Our people, the citizens that we represent, contractors who woke up very early to vote for us have been working for the counties, but their counties are not paying their money. The only remedy is for them to go to court. When they go to court, they give the governors another opportunity to embezzle funds through the lawyers.

Madam Temporary Speaker, as a House, we need to ask ourselves, do we stop everything and just discuss these pending bills? However, before we stop everything, we again need to ask ourselves how these county governments accumulate these amounts of pending bills.

One, it is through over projecting their own source revenue thinking that they will collect more, but they collect less, yet they had committed that amount into contracts.

Kiambu has been mentioned in this Motion as one of the counties with huge amounts of pending bills amounting to Kshs5.7 billion. The Kshs5.7 billion is an accumulation of pending bills from the three governors who have been there, including the current.

As I speak now, I am not a prophet of doom, but I know that by the end of this financial year, June, 2024, Kiambu County will have more than Kshs10 billion as pending bills. Why? It is because the county over-projected that they were going to collect about Kshs8 billion, and yet, they have collected less than Kshs2 billion, so far.

Another reason we have pending bills is county governments not following their budget lines, votes or what the Members of County Assemblies (MCAs) have already passed in the budget making process. They do requisitions to the CoB and she releases the monies. However, once the money hits the county account, it is diverted.

You then ask yourself, why would a county have a huge pending bill, yet they have not even paid their employees? An example is my county. The casuals and subordinate employees who work at the hospitals have not been paid for the last six months. Sometimes you ask yourself, do we include this kind of salary delays as part of pending bills?

Remember, when the issue of accumulation of pending bills was done, I do not know whether it was by choice or omission, that they omitted the monies that counties owe to the pension schemes. These county governments deduct monies from the employees, but never remit these amounts to the pension schemes.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Madam Temporary Speaker, contractors and service providers are suffering all over. As I had earlier on said, the courts gave them authority to auction county government properties. We do not want to get there.

Madam Temporary Speaker, I would not want to see a governor driving to work, only to be stopped by auctioneers and his car is taken, so that it goes to pay the pending bills. I do not want to see a Chief Executive Committee Member (CECM) or a chief officer of a county, driving a county government vehicle, stopped on the road by auctioneers and that vehicle driven away.

Who is going to hurt more? It is the people that we represent. Imagine an ambulance that is government property, taking a patient somewhere and then auctioneers – you know they do not know boundaries – stop the ambulance and take it to pay for a pending bill, for someone who had gone to them to auction government property. We do not want to get there.

Madam Temporary Speaker, that is why the Senate is discussing this issue. As we discuss, we should form an *ad hoc* committee, or we can task the Committee on Finance and Budget to investigate further and make the Government commit itself on individual capacity or governors in their respective counties, so that we deal with this issue, once and for all.

Hon. Senators have always been in the dark when it comes to usage of monies in the counties. I propose that we, as Senators, should have access to even the Integrated Financial Management Information System (IFMIS) of our respective counties, not to pay or withdraw, but ‘read-only’ access. I will then be able to know what is happening in my county on a daily basis, by just logging in and looking at what the county is doing. Senators should also have ‘read-only’ access to the Internet Banking (IB) of our counties, so that we see what the governors are doing.

Sometimes we are rendered as morticians when we scrutinize the work done by previous governors in previous years and we are unable to scrutinize the current governors. We can only do so, on individual capacity.

We wait for the Auditor General to do audit reports. We look at them and scrutinize them. If she says that this was not addressed or resolved, that is when we look at it. However, if she says that this was resolved, we do not go on asking questions. That tells us that we only rely on the Office of the Auditor General (OAG).

Madam Temporary Speaker, I am happy to know that nothing stops this House. If we want the OAG to look at a specific issue, we can always write to them, through this House. They will ensure that they look at a particular issue within the period that the governors are sitting.

On the issue of pending bills and audit reports, the Senate should ask itself whether it should change the law or come up with a framework that will ensure that before governors leave office. By the time they are leaving office, they defend their audit reports. No governor should defend the audit report of a previous governor.

Madam Temporary Speaker, if we do that, we will do justice to the governors. I remember there was a law that was proposed here that those who are governors should not run for Senate or Member of Parliament (MP). I do not agree with that. We do not oversight as individuals, but as a collective House or the Senate.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Instead of coming up with that law to bar governors from running for the seat of the Senator, MCA or MP, we should come up with a law that stipulates that before any governor leaves office, they should appear before the Senate and defend the previous audit reports.

They should also have a handing-over report, and it should always be given to the Senate. This is so that the governor taking over will have a well-articulated, looked at, investigated and informed report. It is the high time this Senate---

The Temporary Chairperson (Sen. Veronica Maina): Sen. Eric Okongó Omogeni.

Sen. Omogeni: Thank you, Madam Temporary Speaker, for giving me the opportunity to contribute to this very important Bill. I do not think there is any county in the Republic of Kenya, the 47 of them, that is not grappling with this problem of pending bills.

When you look at the figures, they run into hundreds of millions of shillings. They are not pending bills of Kshs5 million; they run into hundreds of millions. The problem is - and here is where the Senators need to be very candid - we know the root cause of why we have the pending bills.

The first major problem is if a governor leaves office and a new governor takes over, they want to abandon all the projects that were done by the previous governor; and initiate new ones, ostensibly to solicit for bribes for the new projects. I am sorry to say this, but that is what is out there.

In the process, you will go to counties and find very important projects that are supposed to provide services to the people of that particular county, stalling for a long period of time. I can give you an example from my County of Nyamira.

Our first Governor, the late Nyagarama, had a fantastic idea. He put in place a project to put an 80-bed extension to the Amenity Ward in our County Referral Hospital in Nyamira. Unfortunately, he passed on in 2020 during the COVID-19 period. That project has remained incomplete up to-date.

Our county headquarters remain incomplete to-date. I have been in sessions where we have summoned the governor to Nairobi. I have sat with the Committee that is chaired by Sen. M. Kajwang,' and he can bear me witness. That governor has given an undertaking. I know that maybe he does not go to church or believe what he says. He gave an undertaking that those projects will be completed. However, up to-date, they remain incomplete.

Madam Temporary Speaker, the Auditor General's report says that the people of Nyamira do not get value for money. I was in the Committee of Sen. M. Kajwang' when the governor promised that in six months, Manga Stadium would be ready and that Olympic trials could take place there. He was on oath. He is my senior and an elder in our community. He was born in 1960. I am much younger.

He says something before a Committee of the Senate on oath and nothing happens. If I take Sen. M. Kajwang' to Manga, the people of Kitutu Constituency are still crying. This is because they look at the millions of shillings that have been pumped into that project - he saw the Auditor General's report - and there is nothing.

Madam Temporary Speaker, in the process, you find that you have sent money to counties. We fight here when we are sharing revenue, but the moment that money reaches our counties, it is never used for its intended purposes.

The other day, we were talking about Kshs110 million that was given by the national Government during the COVID-19 period. Again, we started a project. If you read through the file, you will find correspondence from our county government informing us that they had started a project where they were going to build a 300-bed capacity as an emergency response to COVID-19 pandemic.

If you go behind our county referral hospital, the last time we visited, as a Committee chaired by Sen. Mandago, we found a project that was abandoned. It was abandoned as soon as the new governor took office after the death of the late Nyagarama. We had pumped in millions of shillings and then the project was abandoned.

We are the people's representatives; we must get a solution to this problem. Sen. Methu, you are a bright young man. We cannot allow it. Some of the money thrown into uncompleted projects is money gotten from donors. World Bank is giving us money that we send to counties to do nothing or you find that people are asking for bribes.

Like now, we have support to do roads in Keroka, our second largest town. The money available to us is Kshs204 million. People who want to do that projects are now falling over themselves, talking to various entrepreneurs. It has even moved up from 10 per cent. People are now told "give 20 per cent before we give you a tender," yet this is money that your taxes and mine will be used to repay.

It is not free money. When we get that money, it must transform the quality of life that the people of Nyamira are living today for the better. The Ethics and Anti-Corruption Commission (EACC), where I served for five years, must wake up. If you talk to all the Senators, no governor fears the EACC anymore. They are receiving bribes left, centre and right.

The Temporary Speaker (Sen. Veronica Maina): Would you like to be informed?

Sen. Omogeni: Yes, Madam Temporary Speaker.

The Temporary Speaker (Sen. Veronica Maina): Sen. M. Kajwang', you can inform him.

Sen. M. Kajwang': Thank you, Madam Temporary Speaker. I inform Sen. Omogeni, the pioneer and the architect of the anti-corruption laws and instruments and institutions, that the EACC has withdrawn their officers from Senate committee sittings.

For the last three weeks, the EACC officer who used to sit in the County Public Accounts Committee (CPAC) has been withdrawn without an explanation, the same thing for the County Public Investments Committee and Special Funds (CPICSF). I inform Sen. Omogeni that something is wrong with that institution you so proudly established and was proudly part of the team that set it up.

We have set a meeting with the leadership of the EACC to explain why their officers have been withdrawn from the proceedings of the Senate.

The Temporary Speaker (Sen. Veronica Maina): Proceed, Senator.

Sen. Omogeni: Thank you. Sen. Kajwang', the only thing I want to amend from what you have just informed me is do not invite them, you should summon them.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

We should summon EACC to appear before us. We tell the country whether we are serious in the fight against corruption, or whether we have allowed the prophecy that was given by Prof. P.L.O. Lumumba to come to reality. If most of you can remember, the moment we created devolved units, he said, if we are not careful as a country, we will devolve corruption. Why for God's sake would EACC withdraw an officer from a watchdog body?

I was the chair when I served as a member of the advisory board. One of the sources of getting information on corruption activities was reports of the PAC of Parliament. I am sure if Bishop Oginde and the CEO took time to come to Parliament to sit before the committee that is chaired by Sen. Kajwang', they will be shocked.

If they just sit through and listen to the queries raised by the Auditor General and the management responses from our county government, then look at the amount of money that this country is losing, they will have sleepless nights.

There are a lot of almost criminal and murderous activities that are taking place in our counties. I fully support this Motion and hope that when we resume tomorrow, we must agree that issues dealing with the pending bills is a cancer that we must diagnose and deal with once and for all, as Senators.

I support.

(Sen. Methu stood in his place)

The Temporary Speaker (Sen. Veronica Maina): Sen. Methu, do you want to give yourself the Floor when the Chair is holding the House?

Sen. Methu: Madam Temporary Speaker, I heard you call me and I want to make the best out of the five minutes that I have before we adjourn.

As a Member who sits in CPAC, when we speak about pending bills, as I rise to support this particular Motion. We must first define what pending bills are. Pending bills is when somebody has taken his or her own money or a loan, gone to a county like Nairobi or the counties cited here, done a road, a hospital, delivered pipes and done a classroom with his own money and not paid their own money.

Madam Temporary Speaker, as we speak about these pending bills, my Chairman, Sen. Kajwang,' will tell you that when we look at these pending bills, every report of the Auditor General has a line that makes most counties not to get an unqualified audit opinion. Every county has a line that is called 'Account Payables,' a line that has pending bills.

This is a matter that has been spoken about in this House many times. In 2014/2015, the then Auditor General, Dr. Edward Ouko, carried out an audit to show the pending bills that are there in the counties. To this moment, in all the 47 counties that we have, none would say that they have a clean bill of records.

I ask myself every time I sit in the CPAC, and my Chairman is there, he can confirm. When you have a pending bill that is sitting in your bills since 2013 or 2014, then you say that there is no documentation, you must either declare that a bad debt or say how you want to treat that pending bill. Tell us whether a road was done or not. I want you to conceptualise it this way: How long is a murram road expected to last? If you did a road in 2013 and you are being told that they are going to verify 14, 10 or 11 years later, where will they get that road?

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Madam Temporary Speaker, every election cycle like in 2017, all the governors who got in had a pending bill verification committee. Every time we invite them, they tell us that they have a pending bill verification committee.

This election of 2022, in every county, including Nyandarua, my own county, there was a pending bill verification committee. In every session, we say that there is a pending bill verification committee. One side of the pending bills says that these are eligible bills. The other side says that these are the ineligible bills. If then you have accepted and said that these are eligible bills, why are you not paying them?

Madam Temporary Speaker, there is the second issue that we need to diagnose here. How and where are these pending bills borne from? One of the easiest routes of the birth of these pending bills is the fact that most of the counties overestimate their own source revenue.

A county that collected Kshs450 million in their budget this year is saying that they expect to collect Kshs990 million, which is more than double of what they collected in the year under review. Even if you use mathematics, science or witchcraft, there are no new systems that you have done. There is nothing new you have or new taxes that you have introduced.

How do you expect to double your own source? Ultimately, this one brings a hole in your budget. How do they meet this hole? Their procurement plan is informed by their budget. So, in the procurement plan of a county that has overstated their own source revenue, they procure with the strength that they intend to collect more in that year under review.

What happens when it is the end of the year? They collected less than what they had intended to collect. So, they have procured services, but nothing---

The Temporary Speaker (Sen. Veronica Maina): Sen. Methu, you will have a balance of 10 minutes when the next sitting resumes.

ADJOURNMENT

The Temporary Speaker (Sen. Veronica Maina): Hon. Senators, it is now 6.30 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until tomorrow, Thursday, 25th April, 2024, at 2.30 p.m.

The Senate rose at 6.30 p.m.