

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 23rd July, 2024

*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): Hon. Senators, kindly take your seats.
Clerk, you may proceed to call the first Order.

PETITIONS

REPORT ON PETITION: DESTRUCTION OF SIANY
WETLAND IN NYAMIRA COUNTY

Sen. (Dr.) Lelegwe Ltumbesi: Mr. Speaker, Sir, pursuant to Standing Order No.238(2), I beg to lay the following Petition report on the Table of the Senate today, 23rd July, 2024-

Report of the Standing Committee on Land, Environment and Natural Resources on a Petition to the Senate by the residents of Siany area, Nyamira County, regarding destruction of 41 hectares of Siany Wetland, LR Number North Mugirango, Magwagwa 2/403.

Mr. Speaker, Sir, I beg to lay.

*(Sen. (Dr.) Lelegwe Ltumbesi laid the
document on the Table)*

The Speaker (Hon. Kingi): Next Order.

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PAPERS LAIDTHE KNCHR ANNUAL REPORT FOR
FINANCIAL YEAR 2022/2023

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Tuesday, 23rd July, 2024- Annual Report of the Kenya National Commission on Human Rights for Financial Year 2022/2023.

Mr. Speaker, Sir, I beg to lay.

(Sen. Cheruiyot laid the document on the Table)

The Speaker (Hon. Kingi): Next Order.

NOTICE OF MOTIONADOPTION OF REPORT ON DESTRUCTION
OF SIANY WETLAND IN NYAMIRA COUNTY

Sen. (Dr.) Lelegwe Ltumbesi: Mr. Speaker, Sir, I beg to give notice of the following Motion-

THAT, the Senate adopts the Report of the Standing Committee on Land, Environment and Natural Resources on a Petition to the Senate by residents of Siany Area, Nyamira County, regarding the destruction of 41 hectares of Siany Wetland – LR No. North Mugirango/Magwagwa II/403 laid on the Table of the Senate on Tuesday, 23rd July, 2024.

The Speaker (Hon. Kingi): Next Order.

QUESTIONS AND STATEMENTS**STATEMENTS**

The Speaker (Hon. Kingi): The hon. Senator for Kisumu County, Sen. (Prof.) Ojienda, had formally requested that his Statements be deferred to tomorrow. So, we will move to Order No.8.

EMPLOYMENT OF PERSONS ABOVE THE MANDATORY
RETIREMENT AGE BY KISUMU COUNTY GOVERNMENT

(Statement deferred)

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STATE OF STADIA FACILITIES IN KISUMU COUNTY

(Statement deferred)

UPGRADE OF JOOTRH TO LEVEL SIX FACILITY

(Statement deferred)

FLOOD MITIGATION AND COMPENSATION TO
VICTIMS IN KISUMU COUNTY

(Statement deferred)

MOTION

THE CURRENT STATE OF THE NATION

RECOGNISING the State of the nation at this moment; the ongoing protests following the passing of the Finance Bill (National Assembly Bills No. 30 of 2024) on 25th June, 2024 by the National Assembly; the loss of lives, maiming and loss of property that has been occasioned following these protests.

COGNIZANT THAT pursuant to Article 115(1)(b) of the Constitution His Excellency the President of the Republic of Kenya declined to assent to the Bill and referred it back to the National Assembly with recommendations to delete all clauses of the Bill.

ACKNOWLEDGING THAT the conversation on the Finance Bill has triggered the broader important public conversation on the question of the high cost of living juxtaposed against the wasteful expenditure in all public institutions including Parliament.

FURTHER ACKNOWLEDGING the issues raised by the youth and other members of the public to do with corruption, impunity, incompetence within state and public appointments, opulent lifestyles of public officers, unemployment and high cost of living amongst other issues bedeviling the economy;

NOW THEREFORE, the Senate—

1. calls upon-

(i) the National Assembly to expeditiously consider the Presidential Memorandum pursuant to Article 115(2)(a);

(ii) all Government ministries, departments and agencies, and constitutional commissions, including Parliament, to put in place austerity measures in undertaking their respective functions;

(iii) the Ethics and Anti-Corruption Commission (EACC) and other Government multi sector agencies in the governance, justice, law and order sector to upscale and make concerted efforts to fight corruption;

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(iv) the National Police Service to cease abductions, unlawful arrests, extra judicial killings and exercise restraint in dealing with peaceful and unarmed demonstrators;

(v) release of all persons arrested for planning and participating in peaceful demonstrations relating to the enactment of the Finance Bill;

(vi) the Government to waive hospital bills for persons who have been injured and defray funeral expenses for those who lost their lives, during the demonstrations;

(vii) the Judiciary to prioritize and expedite all court cases relating to the enactment of the Finance Bill and the resultant demonstrations

(2) Considers all the challenges facing the country and makes necessary recommendations to address them.

(Sen. Cheruiyot on 3.7.2024 – Morning Sitting)

(Resumption of debate interrupted on 18.7.2024P)

Sen. Kinyua: Mr. Speaker, Sir, I beg to move that the Motion be amended by deleting paragraphs (i) and (ii) and substituting thereof the following-

(i) In order for the Senate to create an amiable environment and tone for national conversation and dialogue in the country, resolves-

(a) THAT the National Police Service (NPS) acknowledges and apologises for all the deaths resulting from peaceful demonstrations;

(b) THAT all victims of police brutality related to peaceful protest between 2023 and 2024 be compensated by the Government of the Republic of Kenya;

(c) The NPS extends amnesty to all the peaceful protestors who are unlawfully detained during peaceful protests;

(d) Call upon the Director of Public Prosecutions (DPP) to withdraw all cases in courts involving peaceful protestors against the Finance Bill, 2024;

(e) The Independent Police Oversight Authority (IPOA) moves with speed to investigate and recommend appropriate action against police officers found culpable of using brutality against peaceful protestors;

(f) The NPS submits to Parliament the revised Standard Operating Procedures (SOPs) on the management of protests, demonstrations and the use of force to contain demonstrations;

(g) Parliament puts in place guidelines on the actualisation of Article 37 of the Constitution with respect to how citizens can enjoy the right to picket without resorting to the loss of lives or property;

2. Direct the following select Committee of the Senate to urgently engage relevant stakeholders, including members of the public and consider the following issues-

(a) Public Debt and Public Finance Management.

Mr. Speaker, Sir, the Standing Committee on Finance and Budget should-

(i) In consultation with the Parliamentary Budget Office (PBO) to independently audit the national debt and present the actual status to Parliament;

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(ii) Engage the National Treasury to submit a roadmap on its strategy to reduce the public debt to not more than 55 per cent of the Gross Domestic Product (GDP) in present value terms in compliance with Section 50 (2) (C) of Public Finance Management (PFM) Act; and,

(iii) Engage the National Treasury to identify and implement sustainable strategies to reduce the high cost of living.

(b) The Security Sector.

The Standing Committee on National Security, Defense and Foreign Relations engage the NPS on matters of security and standard OPS for handling demonstrations.

(c) Fighting Corruption.

The Standing Committee on Justice, Legal Affairs and Human Rights (JLAHRC) engage the Ethics and Anti-Corruption Commission (EACC) on matters of corruption and action to be taken to scale up efforts to deal with corruption, especially in county governments.

Mr. Speaker, Sir, this is our core mandate in the counties. So, the Committee must deal with these governors with precision.

(d) Equal Opportunities for all Kenyans.

The Standing Committee on National Cohesion, Equal Opportunities and Regional Integration engages the Public Service Commission (PSC) and National Cohesion and Integration Commission (NCIC) to audit the state of employment in Public Service, including county governments and propose strategies to adhere to meritocracy, equality and equity of opportunities across Public Service as espoused in Article 232 of the Constitution on values and principles of Public Service

(e) Effective Public Participation and Stakeholder Engagement.

The Standing Committee on JLAHRC to-

(i) Put in place a mechanism to ensure that broader concerns for citizens especially the youth are received and taken into consideration in making decisions on public affairs;

(ii) Put in place mechanisms that integrate new media as a medium for public participation in legislative process;

(f) Health Sector Reforms.

The Standing Committee on Health to-

(i) Expedite and facilitate public participation in the re-enactment of the Social Health Insurance Act, the Digital Health Act and the Primary Health Act in compliance with the judgment of the High Court Petition No.E 473 of 2023; and,

(ii) Engage with the Cabinet Secretary for Health and Council of Governors (CoGs) with the view to standardize Human Resources (HR) Policy for health workers across all counties.

(g) Education Sector Reforms.

The Standing Committee on Education to liaise with the Ministry of Education and other stakeholders to resolve the concerns of Junior Secondary Schools (JSS), the new funding model for university education and the acceptability of Competency Based Curriculum (CBC) and report their findings and recommendation to the Senate within 30 days.

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Mr. Speaker, Sir, I want to confirm to you that this Senate has listened to Gen Z, the Millennial and the Alpha Generation. I confirm to you that right now with all this raft of recommendations from the Senate of the Republic of Kenya, which is the Upper House, this country will be ready for a dialogue.

We are the listening House. We listen every day. That is our duty. In our counties, we listen to our Members of the County Assembly (MCAs) and everybody. With these recommendations, I do not doubt that we will provide a conducive environment for any dialogue so that we can move our country forward. This country belongs to all of us. Together we stand, divided we fall.

I call upon the Senator for Samburu to second these amendments.

The Speaker (Hon. Kingi): Proceed, Sen. (Dr.) Lelegwe.

Sen. (Dr.) Lelegwe Ltumbesi: Mr. Speaker, Sir, I beg to second the amendments to the Motion as moved by Sen. Kinyua. Having listened to the contributions of Members and what is happening in Kenya, we thought that it is rightly in place to amend the Motion as in the Order Paper to contain the contents as moved by Sen. Kinyua. Therefore, I do not have much to say. I second.

Thank you

(Sen. (Dr.) Murango consulted loudly with Sen. Kinyua)

The Speaker (Hon. Kingi): Sen. (Dr.) Murango, take your seat. Hon. Senators, I now proceed to propose the question.

(Question proposed)

Hon. Senators, we need not debate these amendments because your contributions were largely anchored on this subject. Therefore, with your concurrence, you may allow me to proceed to put---

(Sen. Kathuri spoke off record)

The Senator for Meru, you are out of order. The Chair is on his feet speaking and you cannot in any way raise points of intervention, points of order or interject.

Therefore, hon. Senators, with your concurrence, I may proceed to put the question so that we dispense with these amendments and proceed to debate the Motion as amended. Do I have your concurrence or do you want to debate the amendments?

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

The Speaker (Hon. Kingi): Yes, Majority Leader, what is your point of intervention? Certainly, it is not a point of order.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I do not think you need our concurrence to put the question because that is your prerogative. I think our engagement with you is immediately thereafter.

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Mr. Speaker, Sir, this is the request that I wanted to make to you. I would wish to remind Members, if I could get the attention of the House, this is something we agreed on before we began this Motion and we cannot appear to be backtracking. We agreed that because all of us could not sit down and craft the resolutions or the thoughts that were in the minds of people before the Motion was tabled, we will have members of the technical team who are our staffers, to sit down and wrap up all the thoughts of Members as they contributed to this Motion into actionable points. More so, that is what has been done. We agreed that towards the end of the Motion, we would provide the opportunity for one of us amongst the last people who have not spoken to the Motion to move the Motion in an amended form.

Procedurally, people will be allowed to speak to it because that is our procedure, but remember we had an agreement. I do not know why people would want again to speak to the same points that they had raised earlier, which is what has informed this. This is to the best of my knowledge and that is the position that we took and proposed to the House.

Additionally, even today at the Senate Business Committee (SBC), we proposed that once the amended Motion is placed, if any Senators have not spoken to this Motion in general, then they should be allowed. However, if there is none in the House as I can see-- - there is a list of about six or seven Senators only who have not spoken to the Motion since we began this particular exercise--- then we proceed to call on the Mover to reply and conclude on this business. Otherwise, it will look ridiculous to us that for two weeks, we have been speaking on the same thing and we want to begin to repeat ourselves.

I want to beg the indulgence of the House because we agreed on that before we began this Motion.

The Speaker (Hon. Kingi): Hon. Senators, before I give guidance, let us listen to Sen. Wambua.

Sen. Wambua: Thank you, Mr. Speaker, Sir. We must all agree that you have done very well. Sen. Cheruiyot, this is good and we have come a long way. We are almost there.

I want to plead with the Senate Majority Leader to revise his position.

(Sen. Chute consulted with Sen. Cheruiyot)

Mr. Speaker, Sir, I am trying to address the Senate Majority Leader to make a very important decision on a matter that affects our country.

I plead with him to revise his decision and just allow a few comments on the amendments because it is true that a lot of things that have been put forward in the amendments are what we agreed on. Probably, there is an issue or two, that has not been captured and we should capture everything.

The Senate Majority Leader, I do not have a problem with finalizing this matter, tomorrow or the day after tomorrow, so that we capture the thinking of all the leaders. My thinking, and I could be wrong, but I am sure I am not, the Senate is now the institution that is spearheading a national conversation on issues as opposed to an elite political settlement.

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Mr. Speaker, Sir, we have an opportunity here. If there is one or two issues that Members would want to ventilate on or add, they should be given an opportunity. If there is none, then I would be guided.

The Speaker (Hon. Kingi): The Senate Majority Leader and the Senate Minority Leader, kindly, approach the Chair.

*(The Speaker (Hon. Kingi) consulted with
Sen. Cheruiyot and Sen. Madzayo)*

Hon. Senators, to avoid being repetitive because this is a Motion that we have contributed on for more than two weeks, I am going to limit the number of speakers who are going to contribute to these amendments.

We are going to take three from the Minority side and three from the Majority side, starting with the Senator for Meru.

Sen. Kathuri: Thank you, Mr. Speaker, Sir, for this indulgence and also for giving further guidance on how we dispense off this important Motion that touches on our country. I have no problem with all the recommendations and I support them 100 percent. However, there is one issue that I feel should be given some consideration. I can see these further recommendations are trying to seek amnesty and bring the country together. This is because people have lost their lives and properties. As we consider giving amnesty to the demonstrators, there are other many Kenyans who have lost their properties. Their properties were looted. They have nowhere to go to and they are back to square zero.

If the Government is giving all these goodies to the demonstrators, let us also give another consideration for the Government to consider compensating Kenyans who lost their properties. Last week, a petrol station, which had shops, was destroyed. A lot of property in Nairobi has been destroyed. In Meru, one Member of Parliament's (MP) building was destroyed. Therefore, as we seek to bring peace in this country, let us also consider these other Kenyans who have lost their property and have nowhere to go to.

Mr. Speaker, Sir, the property belonging to hon. Member of Parliament for Kieni is now zero. There was a supermarket and a commercial building. It is important that as we are considering to bring peace---

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

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, sorry to interrupt the Deputy Speaker, but I would like to help him as he raises the points he is raising, which are fairly important. We are already debating an amended Motion.

Listening to his useful thoughts, would it not be in order, if he moved an amendment to the already amended Motion? Otherwise, we have no other way of capturing whatever he is adding to the Motion. I do not know at which point he intends to do that. This is because, after he is done with his contribution, he will not have another opportunity to move an amended version of the Motion considering he will have contributed to the Motion itself.

(The Speaker (Hon. Kingi) consulted with the Clerks-at-the-Table)

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The Speaker (Hon. Kingi): Senator for Meru, reading from your contribution, you want to make further amendments to the proposed amendments.

(Sen. Kathuri spoke off record)

No, you need to move your amendments, so that it is seconded and then proposed.

Sen. Kathuri: Mr. Speaker, Sir, give me a minute. Procedurally, I was commenting with your guidance of the three Members from each side, so that if my comment holds water, I can be allowed to do that amendment.

The Speaker (Hon. Kingi): You will not have another opportunity to do that. So, conclude by moving and proposing the amendments.

Sen. Kathuri: Mr. Speaker, Sir, I cannot draft amendments when I am on the Floor. It is only after my suggestion when I can be allowed through this office, in front of me, to draft an amendment so that we can have further amendments to the recommendation. Even before both the three finish speaking to this matter, I will do the amendments.

The reason I wanted to first move my thoughts on this matter is because this has been a bipartisan issue, discussed between the two Houses. After moving or giving my thoughts, it is when the two sides can agree whether my points hold water and then we do further amendments. However, while I am standing here, it is not possible to make an amendment before it is agreed that it is important to have the amendment.

Mr. Speaker, Sir, if you give me some more time, then I will stand down and ask now to give the amendment.

The Speaker (Hon. Kingi): Very well. Can you synthesize your proposed amendments?

Sen. Kathuri: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Sen. Okong'o Omogeni.

Sen. Omogeni: Thank you, Mr. Speaker, Sir. I wanted to seek guidance from you and from the Senate Majority Leader. We started this process together and we were doing this process to carry Kenyans with us. We are doing this as Kenyans and in the best interest of Kenyans.

There were views that were collated by members of our Secretariat and I appreciate the work that has been done so far. I plead through our Leadership because I have spoken to the Senate Minority Leader and I hope he can reach out to the Senate Majority Leader; that you allow us, some of us who have one or two issues and wish them to be incorporated. Allow us to get that opportunity. We know you met as the Senate Business Committee (SBC), but as Senators and Kenyans who want to calm what is happening in the country and carry our Generation Z with us, allow us to also propose one or two amendments to the Motion so that it carries all of us. I commend what the Senator for Laikipia County, Sen. Kinyua, has done. He has captured a good number of the proposals that came up. However, there are also a number that have not been addressed in this Motion.

If you go through the HANSARD, you will be able to pick a number of suggestions that were made by Senators who contributed to the Motion, including in some cases,

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documents that were tabled on how the Directorate of Public Prosecutions (DPP) had exercised its powers under the Constitution.

Issues were raised around the exercise of investigative powers by corruption, and the positions of permanent secretaries, which are 51. That was a very live issue. That has not been addressed. Issues were raised around the position of Cabinet Administrative Secretaries (CAS). That has not been captured in the Motion that has been moved by Sen. Kinyua.

Mr. Speaker, Sir, if you give us a chance, since this was a bipartisan Motion, we can also incorporate our views as amendments, so that you carry everybody and Kenyans. Let us do this process having everybody on board. If we make our observation and comments here, it will not find its way to the Motion. However, if you accord us that opportunity, we can talk, make our proposals and put it on the Motion, and then the House can vote.

Senate Majority Leader, I believe it is not life and death. It is not a must that we finish this today.

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

(Interruption of debate on Motion)

PROCEDURAL MOTION

ADJOURNMENT OF DEBATE UNDER
STANDING ORDER NO.110 (1)

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, listening to the House, I beg to move that the debate on this Motion be adjourned pursuant to Standing Order No.110(1) to enable the Motion of the Senate to be moved. The reason we are moving this is because there are Members requesting, and perhaps, there are one or two things they want to add.

Mr. Speaker, Sir, you need to guide the House on the timeliness. This is because this Motion has been handled in a bipartisan manner. We need to give the membership of the House sufficient time, maybe up to 5.00 p.m. or 6.00 p.m., after which, teams from both sides of the House can sit down to consider the amendments jointly because it is a Motion that is of a bipartisan nature. We can sit, consider those amendments, then we come and conclude on this debate tomorrow.

The only thing I beg our colleagues is, they need to understand that it may not be possible to agree on everything and carry everyone's thoughts. We are trying as much as possible to be general because the specifics like the ones the very last topic that Sen. Omogeni was speaking to, touches on the issue of governance and public finance management. That is why when we discussed the Motion as the SBC. We tasked the Budget and Finance Committee to go and look at where cost-saving measures can be achieved, so that you run a leaner Government.

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It is not possible to put every specific action in a Motion. That is why we are directing it to the various committees. However, listening to the views of the colleagues, I request that, in accordance to Standing Order No.110 (1), the debate be adjourned until perhaps tomorrow in the morning, when we will have had the opportunity to benefit from the various amendments of colleagues who want to add to what has already been proposed.

I thank you, Mr. Speaker, Sir. I ask the Senate Minority Leader to second.

The Senate Minority Leader (Sen. Madzayo): Thank you, Mr. Speaker, Sir. I concur and second this Motion.

The Speaker (Hon. Kingi): Sen. Chute, you may take your seat, please. Hon. Senators, I will proceed to propose the question.

(Question, that debate on the Motion be adjourned proposed)

Again, you may want to debate that or you may allow me to proceed to put the question so that we lay this matter to rest. Procedurally, that is permissible.

(Question, that debate on the Motion be adjourned put and agreed to)

Again, as a way of guidance, if there is any Senator wishing to propose any amendments, you have up to 5.00 p.m. today. This is to give the leadership time to sit and put together those amendments, so that this Motion can be carried in tomorrow's Order Paper. It is so guided.

Hon. Senators, we are going to defer the Orders that are up for division and Committee of the Whole.

BILLS

Second Reading

THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS) BILL
(NATIONAL ASSEMBLY BILLS NO.44 OF 2023)

(Bill deferred)

Second Reading

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL
(SENATE BILLS NO.40 OF 2023)

(Bill deferred)

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*Second Reading*THE STREET VENDORS (PROTECTION OF LIVELIHOOD) BILL
(SENATE BILLS NO.41 OF 2023)*(Bill deferred)**Second Reading*THE LAW OF SUCCESSION (AMENDMENT) BILL
(SENATE BILLS NO.20 OF 2023)*(Bill deferred)***MOTION**ADOPTION OF REPORT ON CONSIDERATION OF THE SOCIAL HEALTH
INSURANCE (GENERAL) REGULATION, 2024 AND THE SOCIAL HEALTH
INSURANCE (TRIBUNAL PROCEDURE) RULES, 2024

THAT, the Senate adopts the Report of the Select Committee on Delegated Legislation on its consideration of the Social Health Insurance (General) Regulations, 2024 and the Social Health Insurance (Tribunal Procedure) Rules, 2024, laid on the Table of the Senate on Tuesday, 2nd July, 2024; and that pursuant to Section 18 of the Statutory Instruments Act, the Senate resolves to annul:

- (i) the Social Health Insurance (General) Regulations, 2024 (Legal Notice No. 49 of 2024);and
- (ii) the Social Health Insurance (Tribunal Procedure) Rules, 2024, (Legal Notice No. 48 of 2024).

*(Motion deferred)*ADOPTION OF REPORT ON STATUS OF PROJECTS FUNDED BY THE CONDITIONAL
GRANT FOR CONSTRUCTION OF COUNTY HEADQUARTERS

THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the status of implementation of projects funded by the Conditional Grant for the construction of County Headquarters laid on the Table of the Senate on Thursday, 28th March, 2024.

(Motion deferred)

We will move to Order No.15. Clerk, proceed to call that Order.

BILL

Second Reading

THE PUBLIC TRANSPORT (MOTORCYCLE REGULATION)
BILL (SENATE BILLS NO.38 OF 2023)

(Sen. (Dr.) Khalwale on 14.5.2024)

(Resumption of debate interrupted on 16.5.2024)

The Speaker (Hon. Kingi): When this was interrupted, Sen. Oketch Gicheru was on his feet and he had a balance of 13 minutes.

Sen. Oketch Gicheru, proceed.

Sen. Oketch Gicheru: Mr. Speaker, Sir, I think somebody was confusing Sen. Oketch Gicheru on this.

The Speaker (Hon. Kingi): Clerk, may I have the sheet for contribution.

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

Sen. Oketch Gicheru, there is absolutely no confusion. Maybe it is passage of time. You may have forgotten because it was on 16th May, 2024, when you rose to speak, and the House adjourned when you had a balance of 13 minutes. It is okay. You need not take the 13 minutes. You may opt to allow other Senators to contribute to the Motion.

Sen. Oketch Gicheru: Mr. Speaker, Sir, can I yield my time to---

The Speaker (Hon. Kingi): No, you cannot. Just take your seat if you have nothing useful to add.

Sen. Crystal Asige, proceed.

Sen. Crystal Asige: Thank you, Mr. Speaker, Sir. I had called for the microphone to speak on the previous Motion.

The Speaker (Hon. Kingi): Sen. Kavindu Muthama, proceed.

Sen. Kavindu Muthama: Thank you, Mr. Speaker, Sir. This is a very important Bill. Many times, we see the motorbike people carrying up to four passengers, which is very dangerous for them.

Mr. Speaker, Sir, if this will be regulated, it will be very good. When we went to Rwanda, I saw the motorcycle riders there with their helmets carrying only one passenger - who also had a helmet. That is the law, and they keep to it completely.

If this is regulated, they can also keep to their side of the road. Many of the times when we are using the roads, most of them are knocked down because they pass in between cars. It is as if they do not care how they are riding. It will be for their own good and safety.

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In many hospitals, you will find many of them with fractured legs, arms and heads - which are terribly hurt. Majority of them have died. This Bill will help to regulate this sector.

I thank you.

The Speaker (Hon. Kingi): Proceed, Sen. Wamatinga.

Sen. Wamatinga: Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute to this very important Bill. I spent one long week in Rwanda as an election observer, and I had an opportunity to interact with the *boda boda* riders. It is quite fascinating to see how regulated they are; how they watch out for everybody by only carrying one passenger and they must wear a helmet.

Mr. Speaker, Sir, the *boda boda* sector in this country cannot be underrated. There are some places where we do not have road network and they can only be accessed through motorcycles. Therefore, it is imperative that we look at laws and mechanisms to make this industry thrive; but most importantly, ensure that the security of both the passengers and the riders is taken care of.

Mr. Speaker, Sir, gone are days when we used to have our youth go to school and get good jobs. The Transport sector has created very many employment opportunities for our young generation. As a result, it is upon us as legislators, to make sure that we put laws and mechanisms in place that ensure once they get into the industry, they have an opportunity to grow and if they get an accident, they not only access good medical facilities but are not maimed for life.

Mr. Speaker, Sir, this cannot be done without us putting in place good laws, but most importantly good civic education, so that our riders and their passengers are safe. In other countries and more so the Western countries, we know the government and the local governments manage public transport. In this country, the transportation sector has been left in the hands of the private sector. We have been a bit slow in dragging our legs on formulating laws that will regulate this.

Therefore, it is important today that we start looking at these issues by addressing the possible loopholes and gaps that are there. One of them is to come up with a good law that will ensure that our insurance firms will take care of the victims who get accidents. If you go to any public hospital, you will find a ward dedicated to people who have sustained fractures or injuries due to *boda boda* accidents. Unlike a motor vehicle where somebody has a safety belt, you cannot put on one on a motorcycle. Therefore, the exposure is high.

We must therefore look at our insurance policies, so that anybody who is involved in a *boda boda* accident does not only get treatment, but accessible and affordable means of being treated. I urge my colleagues that we must take responsibility by conducting civic education, so that the *boda boda* riders in Kenya can emulate the ones in Rwanda who only carry one passenger equipped with a helmet and a reflective jacket.

If we do that, we will go a long way in ensuring that we minimise the number of accidents. Moreover, we know that when most of these riders come from school, they are usually trained for two days then they take on carrying passengers. It is high time that we come up with a mechanism to ensure we have safe standardised training procedures, so that they know the secure and better use of roads in order to avoid some of these accidents.

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I support.

The Speaker (Hon. Kingi): Proceed, Sen. Maanzo.

Sen. Maanzo: Thank you, Mr. Speaker, Sir, for giving me an opportunity to speak on this very important law. The Traffic Act has not been sufficient bearing in mind that it is a very old Act from the colonial days. In the Kibaki Administration, motorcycle transport became very huge. A long time ago, a few individuals owned motorcycles, but now it has become part of public transport system. Therefore, this was a big development.

Although there could be some regulations under that Act, Sen. (Dr.) Khalwale, in his wisdom, decided to come up with this law, which deals with the regulation of the motorcycle transport industry, and even goes on to devolve it. Now that the Senate deals with devolution, that can also be managed at the county level.

Mr. Speaker, Sir, many motorcyclists do not have insurance, driving licenses or the gear necessary in case of an accident. Again, when this culture came, it went unregulated. Some even drive on the opposite side of the road. Recently, on my way to Makueni County last week, I saw a very bad motorcycle accident. In fact, a matatu overtook and hit a motorcyclist very badly.

I stopped and quickly organised - because this was Machakos County - through the deputy governor, and we were able to get first aid facilities quickly and an ambulance to save his life. You could see the interaction between the normal motorists and motorcyclists has not been well done. We can even come up with pathways to be used by motorcyclists together with the cyclists, which apply in many other countries.

The whole idea is to make sure that the people being transported, and motorists are safe. If you go to most accident wards, the people with the most broken limbs and skulls are from motorcycle accidents. The motorcyclist himself does not have insurance cover and, therefore, compensation for such people becomes extremely difficult. This particular regulation also goes on to come up with a board, which will manage and time to time, follow up the activities of motorcyclists.

This has also become a very big industry in Kenya. People are assembling and manufacturing parts. In that scenario, I have engaged many young people into employment, even the cyclists themselves. In fact, most of them are university graduates who do this motorcycle transport as they look for better jobs or as they wait for placement in regular businesses or companies. It has also provided big time solutions.

Motorcyclists have also been abused during election time. Today, I saw that a politician had sponsored motorcyclists in Nairobi to engage in politics. You could see three to five people loaded on one recklessly driven motorbike and a lot of them following each other. There is every likelihood of an accident. Unless the Sen. (Dr.) Khalwale law regulates this, we are likely to have more trouble; more people injured or maimed, and end up being having a bigger expense.

As we support this law, I hope it is going to be received well in the counties. Counties and politicians support motorcyclists a lot especially during campaign time because they are useful. In fact, where someone does not know how to use *Google Maps*, the best person to ask the direction to a place is a motorcyclist because they are

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familiar with many areas. Sometimes they even lead people to their destinations at a little fee, thus young people are able to earn a living.

I support because this is an important law. We need to have it enforced so that motorcyclists have certain exceptions and go through training. Their driving licenses should not necessarily be like the normal driving licenses. It should be its own class.

Mr. Speaker, Sir, on the issue of the gear and proper dressing due to the wind, many of them end up coughing or with chest problems. Therefore, we need to make sure they are fully secured so that we build our nation.

I thank you.

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

Sen. Cherarkey: Mr. Speaker, Sir, from the outset, I would like to support the Public Transport (Motorcycle Regulation) Bill, 2023, because it is timely. Before I make a few comments, allow me to thank my colleagues for standing with me and offering support when I lost my elder brother, Mwalimu Alex Meli. My family and I are grateful for the support I got from my colleagues and the Secretariat. I do not take it for granted. I will always be grateful.

Mr. Speaker, Sir, allow me to state a few issues on this Bill. On the issue of *boda boda*, I can call it a necessary evil because it is becoming part of us. I realised the importance of *boda boda* when this House was invaded. Most of us decided to leave our Sports Utility Vehicles (SUVs). The significant way of escaping from this place was using *boda boda*. Except for a few who were lucky to use other forms to escape the invasion of this Parliament, people had to change and escape using *boda bodas*.

My brother has put it well. We use *boda boda* to mobilize young people to show how powerful and popular we are in politics. So, it is part of us socially and economically. *Boda boda* operators have also made transport easy and more convenient from villages to cities and towns. When you get stuck in traffic, you simply hike on a *boda boda* to enable you access your destination in good time.

Whilst the *boda boda* economy has become strategic and important to the socio-economic and socio-political landscape of this country, it also continues to be a source of trauma. When you go to Moi Teaching and Referral Hospital (MTRH), Kenyatta National Hospital (KNH) and other hospitals in the counties, at trauma and emergency centres, you cannot stay for 10 minutes without seeing a *boda boda* accident victim being admitted.

While the *boda boda* sector is critical for the growth of the economy of this country since the regime of President Mwai Kibaki, we must also bring in certain decency through regulations. Therefore, I agree with Sen. (Dr.) Boni that it is time to have the *boda boda* sector under order.

According to the United Nations (UN) records, there were about three million *boda boda* operators across the country as at 6th January 2024. That shows that it is a critical sector that cannot be ignored. While we agree that there could be challenges here and there, we must also support them.

Almost 100 per cent of people who work in the *boda boda* sector, both in villages and urban centres, are young people who largely depend on it for business growth and as a way of earning their daily wages. That is why when this Bill was moved, as a leader and

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Senator for Nandi County, and through God's grace, I thought I should contribute to it because there are challenges that we need to find a way out.

While we agree that the *boda boda* sector is important, we also have challenges where rogue criminals are using them to create insecurity. Sometimes *boda boda* operators are used by criminals who attack people. I am not talking about all of them.

On some roads in this city, if you want to enjoy the breeze and the sun while operating your phone with your window open, the easiest way for some of the criminals is to snatch your phone and drive off using *boda bodas*. This is a critical sector but we must ensure there is order. Politicians are the greatest consumers of *boda boda* services, especially around the campaign season and when you want to make a statement. It also has an aesthetic value in the politics of this country.

Clause 12 talks about a two-wheeled motorcycle. I do know the place of *tuktuk*. The Sponsor of this Bill should see where to categorise *tuk tuks* because they are three-wheeled and most common in Mombasa. I just saw Sen. Faki here. We also have carts commonly known as *mikokoteni* with two wheels.

Sen. (Dr.) Boni, you need to be precise because I may be pushing a *mkokoteni*, but the police stop me and ask for my license. We must also consider *tuk tuks* since they are also a critical sector in transport. They are used for short distances especially in places like Mombasa. My sister, Sen. Miraj, will tell you that they are critical in terms of moving the economy of that city.

Another issue is that just like the matatu sector, we should have Savings and Credit Cooperative Societies (SACCOs) for strict enforcement within the Traffic Police Department. If you operate a *boda boda* in the Central Business District (CBD) and you are involved in criminal activities, we can track you through your SACCO if we identify your number plate.

If we do that, two things will happen. First, it will allow us to ensure decency and order within the sector. Secondly, it will give us a chance to allow these SACCOs to build themselves to become economic powerhouses. It will enable them to build the capacity of *boda boda* riders and many others in terms of giving them loans. They will also enable enforcement of traffic rules or follow-up issues.

Since Kakamega County is my neighbour, we had *boda boda* operators using bicycles before motorcycles were introduced. So, we should also consider those who operate using bicycles because in some areas, they are still being used and one requires to use energy to peddle. Before motorcycles were introduced in Kenya, many people were using normal bicycles.

Another issue is training of *boda boda* riders. We need to train them to ensure that they are compliant with traffic rules. The sad reality especially, in the village where some of us come from is that you will find somebody training at 11.00 a.m. to drive and carry passengers by 1.00 p.m. That is when we have most of the accidents.

The National Transport and Safety Authority (NTSA) and other agencies within the transport sector should look at the issue of licensing. I do not know whether we will use the normal driving license that we have or introduce another class within the driving license to allow ease of access of driving licenses for many young people.

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The National Government-Constituencies Development Fund (NG-CDF) can play a critical role. I see Members of the National Assembly mobilizing *boda boda* training. They should also train them to acquire a driving license, to ensure we are safer when using *boda boda* going into the future.

The fourth point is on employment contracts. It should be compliant with the labor relations or labor laws. I know people who use start-up business and we had start-up Bill. Many people in the village start small businesses, for example, buy a motorbike and hire a young man or lady within that region.

Mr. Speaker, Sir, on Clause 14 where Sen. (Dr.) Khalwale has indicated, we can just agree to say *mutatis mutandis* in terms of the Labor Relations Act and other employment Act should be used. Sometimes you meet *boda boda* riders who are below 18 years in our centers.

We should also agree with Clause 18 on the County Transport and Safety Board. One of the most harassed are *boda boda* especially in Kapsabet, Nandi Hills, Mosoriot and Kabiyeet, according to complaints that I normally get from the traffic police officers. I do not know why. I have never understood why there is no place in this region where the police are in good terms with the *boda boda* sector. With the County Transport and Safety Board, we should involve and ensure they are trained; civic education is being carried so that they are not being also exploited. However, as the *boda boda* sector demands for respect and not to be harassed by the police, they must also be compliant in terms of driving license, as a Senator has indicated here.

Most of us are drivers. Sometimes you drive in the middle of the night and immediately brake having just noticed there is a motorcycle ahead of you. The *boda boda* rider does not have a reflector jacket, helmet, reflector lights, parking lights or headlights. That is what has caused accidents on our roads.

It is out of ignorance sometimes. Maybe Nairobi does not have such, but we encounter it where we come from. This county transport and safety on the compliance of *boda boda* is that they must be approved to use the road. For example, they should have proper working headlights, indicators, functioning engine, well-maintained tires and have reflector jackets.

I am happy that the law has specified that you must have two helmets and two reflector jackets. If you go to Rwanda, you will notice that those things have been complied. I have never known whether in this country, we go for quality or quantity. I do not know if it is better when the *boda boda* rider carries more passengers than complying with the two or is it that you earn more? Especially those taking children to school, you will find that they are carrying almost six children using one *boda boda*. The law is very clear on the apart from the rider; you have two helmets and reflector, each one for the rider and for the passenger you are carrying.

I bet if we were to go across the country, you would get very few *boda boda* riders wearing reflective jackets. Mostly when you see them wearing, you are likely encountering them in Luanda with reflector jackets that bear the image of Sen. Osotsi. We must agree on how to ensure that we implement this issue of reflectors and the county transport.

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On the issue of delivery motorcycles, I agree with Clause 19. It is very critical because with the Uber Eats, there are now Uber riders and also people delivering parcels within the city. I just wanted to emphasize and I know all my colleagues agree with me that the delivery riders are very critical. If you want to send something to Mombasa Road or Thika Road, the easiest and fastest way within a short distance is through *boda boda*.

In addition, I have noted when they are issuing special licenses This should be especially to Uber Eats because they deliver food. There must be public health. I have agreed on the special licenses that are being given for food delivery. I remember a few weeks ago when we were in session, after some dysfunctionality of the House, some of us would order food through Uber Eats. You can imagine if they are not compliant in terms of public health.

In these special licenses, we need to be precise. If a rider delivers food to you that ends up making you unwell, who would be liable? Is it a vicarious liability? What do you do? So, we must look at those special licenses. It is very critical when they are doing that because they can deliver anywhere as I have indicated, going into the future.

Mr. Speaker, Sir, in closing because I have seen my time is up, I agree, generally, with the penalties that are there, but we must also be realistic. Most of these young people who are riders do not own those *boda bodas* or motorcycles. They are hired. So, we must be reasonable in terms of the penalties because most of them are young. If we convict them, we might hinder their chances of getting jobs in future, advancing in their careers and many others. Up and short, this is a very good law.

I encourage the *boda boda* sector to give their opinion in terms of improving this. This is a good start for this public transport sector. We need to have a conversation around it as a country.

As I said, we had about three million *boda bodas* at the beginning of this year. So, imagine if every *boda boda* in Kenya generates an average of Ksh1,000 or Ksh500 per day. That is billions of Kenya shillings. Therefore, we ask the *boda boda*, as we push for their decency in terms of environment, to also behave decently. They should avoid criminal aspects within the sector, so that we can ensure all of us have a public transport sector that goes into the future. I hope the Cabinet Secretary for Roads and Transportation will come in to ensure that the sector is well regulated. We do not want to see the attention to aviation sector and others only.

Mr. Speaker, Sir, this sector is also very important. I want to believe the new Cabinet Secretary will be more listening and sober. We want to see a more appropriate engagement with all sector players, regardless of who they are.

With those very many remarks, allow me to support this Bill. We will discuss the three-wheeled- the *Tuk-tuk*, *mkokoteni* and the rest. I support.

The Speaker (Hon. Kingi): Proceed, Sen. Omtatah.

Sen. Okiya Omtatah: Mr. Speaker, Sir, thank you for the opportunity to comment on this Bill. I also express my condolences again to my brother Senator.

I would like to begin by recognizing that *boda boda* originated in Busia. So, this is a very important Bill for the people of Busia. I request that Sen. (Dr.) Khalwale finds a way

to have the State erect a monument of the unknown first *boda* rider in Busia, where *boda boda* originated.

Secondly, many people, including youngsters, have ventured in this industry. However, for me, the main challenge is the training. Many *boda boda* riders do not have licenses. I do not know if they are called riding or driving licenses, but they do not have them.

There is an impact of the absence of licenses on public health through injury and death. As a public health measure, I would request that the State step forward to underwrite or subsidize the training of motorcycle riders across the country. Poverty should not be an excuse for not having a driving or riding license.

It will not be a waste of public funds. This is because the recovery in terms of prevention of what otherwise becomes medical care or burial expenses for the victims of the accidents would be much less than the money required to equip and train these people to be efficient riders on the road.

This country also needs to seriously realize that it is not only people who drive motor vehicles who pay taxes. Therefore, there is no justification for building roads only for people who drive motor vehicles. We must build roads for pedestrians and cyclists.

The fact that *boda boda* riders have to struggle and fight for space on roads used by four-wheeled vehicles is in itself not a good thing. One of the reasons why many fatalities of motor vehicle and motorcycle collisions occur is because of lack of space for the riders.

We need to come up with road designs and build roads for all taxpayers, including those who cannot afford motor vehicles, but walk on foot. For example, in Nairobi along Mbagathi Way, every morning and evening, some people walk from Kibra and Kawangware estates to Industrial Area. However, they do not have a place to walk. They keep on struggling on the edge of the road. Occasionally, some are knocked down by motor vehicles. This is something that needs to be addressed. As I said, road design must be inclusive. One of the national values of this country as provided for in Article 10 of our Constitution is inclusivity.

Furthermore, as much as *boda bodas* are important, we must accept the fact that Nairobi cannot continue being run by them. It requires a proper public transport system. I have never gone to any serious country where a capital city runs on *boda boda* like in Nairobi.

We need to get a proper public transport system in Nairobi. It is a strategic requirement. It cannot wait because public transport is a key component of human resource. Our human resources need to move freely and easily. We must not wait to modernize motorcycles. Let it be a stopgap measure. However, going forward, cities must be weaned off the need to rely on motorcycles and the likes.

Mr. Speaker, Sir, I have a small problem with Clause 13(1)(d). It says-
“Every passenger on a two-wheeled motorcycle shall sit astride in the seat fixed behind the rider's seat.”

That statement has cultural implications. In some areas, our sisters may not be comfortable sitting astride on a motorcycle, unless we are going to insist that they wear

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trousers. We have to be sensitive to the dressing of women. We must be sensitive to that because it is a cultural issue. Therefore, we cannot make a law that offends some cultures.

Let us be sensitive. Maybe, we may have to find a better word for that. Even in almost all situations, I do not see a situation where you can force a lady to sit astride on a motorcycle. Unless a lady is on a pair of trousers, we might be demanding her to expose more flesh than she is comfortable doing. So, let us look at that clause like what you have done in Clause 13(2) (b), which says-

“Persons with disabilities will be exempted from the requirement to sit astride while being carried on a motorcycle.”

Such kind of nuanced interventions might be required for our sisters when they are using motorcycles.

I have also looked at Clause 17(3). Being a person who uses the *boda boda* a lot, there are loads, which are carried in front of the rider. Those loads are not addressed. The assumption is that all loads on a motorcycle are behind the rider. Some riders take the load, put it on the petrol tank and the control bars, and then leave the rear to carry other things. So, I would ask my brother to look at and address that kind of loading of motorcycles.

On motorcycle ambulances, there is a requirement that they will be operated by trained medical personnel. I do not know what trained medical personnel is. Maybe, there will be a need to look at that. I also do not know whether we shall be requiring medical doctors to be operating these motorcycles. Therefore, there is a need to do some clarification on that particular provision.

We need to know the role of the trained medical personnel on these motorcycle ambulances. Are we talking about paramedics operating these motorcycles or what is it? Let us get some clarification.

The other thing is the issue of *boda boda* operators as riders of passengers and delivery agents. What I know is that sometimes because of the limitation in business opportunities, many *boda boda* riders act both as delivery agents and as passenger riders. So, maybe, Sen. (Dr.) Khalwale, should look at that and see how he could capture that unique aspect.

One of the interesting qualities of *boda boda* is that they end up doing everything. Some people even use them for ploughing. So, I think it will need a bit of creativity to govern this industry.

Otherwise, to me, this is an excellent Bill which is long overdue. It ought to have come when Mr. Okemo was the Minister for Finance. He lifted the tax on motorcycles. This led to the affordability and expansion of the *boda boda* sector to ordinary people. Consequently, it weeded out bicycles. Perhaps at that time they should have looked into this and made such a Bill to regulate this area. It is a very important law whose time is long overdue. I support it with amendments.

Thank you, Mr. Speaker, sir.

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

Sen. Abass: Thank you, Mr. Speaker, Sir. I rise to support the Bill. The *boda boda* sector is very important in this country and in many parts of Africa, especially in East Africa in terms of job creation, access and easy transportation. However, today as you look

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around Nairobi, there are so many young men who are engaged in the *boda boda* business. For sure the ladies are also involved. I know some do not ride, but they employ young men to at least help them so that they can get some income out of it.

Many students in the universities make joint ventures so that they can get something out of the *boda boda* business. Therefore, that sector is very important in terms of the economy. However, it has been said that it employs many people and it is actually a source of income, but it also has its challenges in terms of discipline.

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

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

Mr. Deputy Speaker, Sir, many of our riders as has been said earlier, are not trained. Some of them have become a menace on the road. You will see them crossing the highways. As a result, they are knocked down or they cause accidents. They also become a nuisance to other people, especially to the vehicle drivers on the roads.

They knock you down from the rear side and maybe when they are knocked or they hit you, they come to intimidate the other drivers. They come together like bees and intimidate other Kenyans even when they are wrong. I think there is a need to have some discipline within this sector.

Some of the *boda bodas* are involved in criminal acts and they aid the criminals and many of the criminals take advantage of the *boda bodas*. Therefore, it is a very important sector, but we need to have it regulated. They also need to have some visible number plates because some of them do not use genuine number plates. They change their number plates or get number plates from the old grounded *boda bodas*. I think there needs to be a proper registration so that at least we can know their number plates, which should be bigger and visible. This will make it easier to identify whoever does the wrong things.

As earlier said, they also need to be registered in cooperatives to easily track anybody who is engaged in any act of crime. One other thing is, in other parts of the world, we have parking lots for *bodas bodas* and bicycles and you cannot just go and park your bicycle or motorbike anyhow. We equally need zoning areas in places like Nairobi where the *boda bodas* can park their motorbikes and anybody who wants to get a ride can easily go there and get a *boda boda*.

What is happening currently is that the *boda bodas* are all over the city and it has now become a problem. Additionally, at the time of demonstrations and all these things, you do not know who is a genuine rider and who is a criminal. We also need to give them special lessons. They have it, but it is not easy to inspect or to stop them at the time they are riding around. Therefore, we need to come up with a system that will at least bring some discipline within the sector.

Right now, we are being told that the *boda bodas* are almost three million in number. It is a fact that the *boda boda* sector has employed many young men who otherwise could be jobless. The only thing that we need to do is to improve the sector, so that they have value for whatever business they are doing instead of associating them as criminals.

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Most times, they are associated with criminals. Sometimes somebody borrows a motorcycle the next day you hear that person is either killed or robbed.

Despite the many advantages, there are many more disadvantages because of the behaviours of the riders. One other thing is that we need some kind of testing. There have been riding tests. The rider should undergo some testing and their business should be regulated. Also, this testing could be done on an annual basis to know who is a genuine rider and who is not.

On the ownership of motorbikes, there needs to be proper logbooks because some of these motorbikes are very cheap and most of the genuine owners are not known. The whole sector must be reformed and discipline must be encouraged among the young men who are riding these *boda bodas*.

The Government can also support young men who want to engage themselves as riders, so that they can do some business by giving them cooperative loans. This sector has become a source of income for them. They can easily access the money to buy motorbikes, so that the young unemployed men can get employed. The Gen Zs who are now complaining of lack of employment can also engage in such kinds of businesses.

With those few remarks, I beg to support.

The Deputy Speaker (Sen. Kathuri): Proceed, Sen. Osotsi.

Sen. Osotsi: Thank you, Mr. Deputy Speaker, Sir, for this opportunity to also support this Bill, the Public Transport Motorcycle Regulations Bill, 2023 by Sen. (Dr.) Khalwale. From the onset, this Bill is very timely.

The *boda boda* sector is now the leading employer of our youth. Almost everywhere in this country, you will find so many youths who are jobless engaging in this kind of trade because it is the only thing they can do now that there is unemployment crisis in this country.

Although we appreciate that the *boda boda* industry has employed our youth, there are several challenges. There are challenges in how these young people are paid because more than 80 per cent of *boda boda* riders do not own those motorcycles. Other people, probably the teachers in the village or Members of Parliament (MPs) like me, own them. The riders only do the job of riding the motorcycles.

Mr. Deputy Speaker, Sir, we also appreciate that some unscrupulous individuals have come up with companies to try milk the youth. In my debate on this, I encourage the owner of this Bill, Sen. (Dr.) Khalwale, to also bring up that issue.

We have a number of companies, which pretend to be giving loans to the *boda boda* riders, but a few months before completion of those loans, you will find the motorcycle being taken away when a rider has completed nearly 80 per cent of the payment. That has been a major problem. I have sat in this House when Sen. Cherarkey brought this matter. It is a big problem.

Mr. Deputy Speaker, Sir, we also have to appreciate that a number of our youth have been killed through accidents of these motorcycles. Some have been injured, including their passengers. In our various counties, we have attended many funerals from *boda boda* related accidents. Something needed to be done on this.

I congratulate my colleague, Sen. (Dr.) Khalwale for coming up with this Bill because it will address the problem that we have in this sector. We need to make the *boda boda* industry a meaningful employment industry, not an industry that will take advantage of our youth or cause deaths, injuries and enable crime. Therefore, this Bill addresses all those challenges.

Just like the Senator for Busia said, there are a few areas that we should consider amending. One of the areas is on Clause 5, which talks about the board. You do not see the representation of *boda boda* owners and riders in the composition of the board. It is largely composed of county officials. I would propose that we have representation of the riders and the owners.

Mr. Deputy Speaker, Sir, whereas I support the idea of the board, this also exposes the question we have all been asking. What is the use of the National Transport and Safety Authority (NTSA) on matters of managing accidents in this country and the transport sector?

The NTSA has completely failed. They should have been at the forefront of helping this country deal with the problems in the *boda boda* industry, especially on licensing, safety and everything else. However, they have failed *boda bodas* on public transport and it is not serving the purpose that it was established for.

I, therefore, support the creation of this board. At the same time, the Bill needs to tell how these board will be financed. It is silent on that. Where is the money meant to run this board will come from? This is so that we do not have a scenario where the board now becomes an institution that will fine our *boda bodas* or introduce extraneous levies and make the industry more expensive to run and even send more of our youth out of employment.

Mr. Deputy Speaker, Sir, that aspect of how it will be financed must be very clear in the Bill, so that they do not run rogue and start introducing unreasonable levies and charges to our *boda bodas*.

This Bill has given reflection on the relationship between the owner and the rider under Clause 14(1). It says-

“Every owner of a motorcycle who engages the services of a rider shall enter into a written employment contract with the rider.”

It goes on to specify on what will be contained in the employment agreement. This is one area that has to be looked at very keenly so that it is easy for owners of motorcycles to continue operating in this industry.

This is so that salaries or any other benefits that accrue to the rider are manageable because if we leave it hanging like that, the danger will be in the terms in the Employment Act, which may be difficult for most owners to comply.

Mr. Deputy Speaker, Sir, there are issues of medical insurance, minimum wage and all that. For us to encourage investment in this sector we need to look at those issues.

The Bill also talks about motorcycle ambulances that will be equipped with medical equipment and supplies. This will be very useful, especially in the rural areas, where we have problems with the road network and accessibility and yet, our people need to access medical care. So, I fully support that.

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This is an innovation and it is a proposal that we will be looking forward to in order to see on how it is will work. This is so that our people who may be sick or the elderly in the villages will have access to the medical ambulances through these motorcycles.

Mr. Deputy Speaker, Sir, I have seen that the Bill also talks about the three-legged motorcycles, the *tuk tuks*. I remind Sen. Cherarkey that, indeed, the Bill has captured *tuk tuks*. The Bill has also talked about delivery *boda bodas*. Those that deliver food, goods, every other thing and how they will be managed. They should not be used for any other purposes, but for which they were designated for. They will strictly be used for deliveries.

All in all, this is a wonderful Bill. All we need to do is look for a few areas that need to be enhanced, particularly on the issue of financing and ensure that this Bill will not lead to an additional financial burden to the owners and the riders so that this business is encouraged and not discouraged due to costs.

Mr. Deputy Speaker, Sir, the other thing is inspection of *boda boda* motorcycles. This is one area that the police in our counties have on numerous occasions harassed our youth who the only crime is to own and operate a *boda boda*. Harassment of *boda boda* riders is on the increase. Something has to be done. This Bill has to be very clear that inspection of motor cycles should not lead to harassment.

Again, if you open up the aspect of inspection, there are some police officers who will take advantage of it and use it to extort money from the poor *boda bodas* and intimidate and harass them. Therefore, the issue of harassment of our *boda bodas* has to be addressed in this Bill as well. This will enable the *boda boda* riders to comply with the law on matters of safety, and having a helmet and all the other accessories they need to have. However, unnecessary harassment by police must be stopped. This Bill has to talk about that. The *boda boda* owners and riders must have a recourse where there is unjustifiable harassment by the police.

Mr. Deputy Speaker, Sir, all in all, this Bill covers almost all the challenges that we face in this *boda boda* industry. Issues of drug movement here and there, have been addressed in Clause 20.

The issues of offences have also been addressed. With further amendments, particularly on the issue of Clause 26 that talks about a fee of Kshs100,000 for an offence committed by *boda boda* riders. The Kshs100,000 is too high for our youth in the village who are in this industry. That figure should be scaled down, so that the offenders have a responsibility to pay for their offences. At the same time, the amount should be manageable so that we do not discourage our unemployed youth from earning their living in this industry.

Mr. Speaker, Sir, with those few remarks, I support this Bill with amendments. I encourage hon. Members to also support this Bill with amendments.

The Deputy Speaker (Sen. Kathuri): Sen. Osotsi, since you have not tabled any amendments, your statement might not be accurate unless you propose the amendments if you intend to admit them.

Sen. Mariam Omar, proceed.

Sen. Mariam Omar: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. First, I appreciate and thank Sen. (Dr.) Khalwale for bringing up this Bill, which in one way or another, will solve most of the challenges of the *boda boda* riders.

In the Bill, there is a board. In the composition of that board, as another Senator has also highlighted, there must be a *boda boda* association. Currently, we have a *boda boda* association. Sen. (Dr.) Khalwale, take note on that so that we include a *boda boda* association in that board.

Mr. Deputy Speaker, Sir, when it comes to the board registration, it will tell us the number of *boda bodas* motorcycles in counties. I can see there is a cross-county recognition, which is a very good proposal because it will help us to know how many *bodas* are in each county.

On the registration of motorcycles by the board of directors, there must be penalties when it comes to registrations. Sometimes, they do not follow what the requirements. Maybe the board member can register anyone. On that scenario, the registration of motorcycle has not been done correctly. Therefore, take note on the penalties to the members of the board of directors who makes a registration without checking the requirements. There is a requirement that all the registered riders to also register with the cooperative society. In fact, I am a sponsor of cooperative society. Give me a clue so that I can put an amendments to take care of the *boda bodas*.

Concerning the training, we must have a unique licence for the *boda boda* motorcycle, which must be different from other means of transports. Concerning sitting position, as the Senator for Busia County has said, there is a clause which said exempt Persons with Disability (PwDs). You have to include PwDs and women so that it can cater for some cultures because I cannot sit the way other people are sitting. You have to take care of that position.

Mr. Deputy Speaker, Sir, some *boda bodas* are private and others are commercial. When you need transport means and stand at the roadside, we should be able to differentiate the *boda bodas* that are private from the commercial ones. We must have a unique differentiation between the private and commercial motorcycle.

When it comes to offences of Kshs100,000, you also have to differentiate the offence charge of the private and the commercial one so that the private one can pay that Kshs100,000, but the others riders cannot. You also have to differentiate that.

Concerning the requirements of the road, *boda boda* motorcycles have simplified the work of many of the Kenyans. We should have a private path on one side of the road so that we have a different section from the four-wheel drivers. We have to restrict that when giving contracts to the contractors. The engineer doing inspections must ensure that the scope in the Bills of Quantities (BQ) includes a road done for motorcycle riders.

Concerning *boda bodas* being used as ambulance, in fact, that is what we are using on our area. We need to have each county's health sectors to have two or three motorcycles as emergency ambulance so that people can access the health services at the right time, when they are needed.

The other thing is the registration of these motorcycle. The Senator can take note that the valuation should be done when doing registration. Sometimes, somebody can come

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to register a motorcycle that is worn out and unrepairable. Inspections and valuation must be done.

Mr. Deputy Speaker, Sir, with those few remarks, I support the Bill with amendments. I thank you.

The Deputy Speaker (Sen. Kathuri): Thank you. Next is Sen. (Prof.) Kamar.

Sen. (Prof.) Kamar: Thank you, Mr. Deputy Speaker, Sir, for the opportunity to contribute to this Bill.

First, may I start by congratulating our colleague, Sen. (Dr.) Khalwale, for coming up with a very beautiful piece of legislation.

For those of us who have travelled to Rwanda, we see this as a very important step in the right direction. In Rwanda, you do not see more than one passenger on a *boda boda*. In fact, they are so organised that when we were there for sports, we kept asking ourselves, what happened to us? How do we introduce motorbikes and confuse the roads with the same? I congratulate our colleague for coming up with this Bill and I support it. However, I would like to request the Senator to look at a few areas.

In Clause 5(f) and (g), he is talking of membership to the board. He states that the County Executive Committee Member (CECM) responsible for transport appoints four persons. Clause 5(g) states two members be appointed by the CECM responsible for transport to represent groups with special interests.

My assumption is that Clause 9 is referring to members of Savings and Credit Cooperative (SACCOs) and maybe the new association that has been introduced by some hon. Members.

The improvement I request him to look into is that the CECM should not be appointing on behalf of the representative groups. We are in a stage in this country where public participation is very crucial and the groups themselves do representation. It may be necessary for him to tweak that a little bit, so that we actually have the representative groups appointing members to this board because this board will be the driving force.

In fact, I was personally impressed by this law because it is taking the *boda boda* business to the county. It is very important that the counties take responsibility for this because of the proximity of the activities. My first suggestion is that the representation of groups be a result of an election or selection by the groups themselves; be it the owners or the riders.

Secondly, he switches Clause 5(f) and (g) so that we have only two appointees to come from the CECM and four from the representative groups. It is very important that when we are talking of regulating a system, we have more representatives of the actors.

Mr. Deputy Speaker, Sir, I am bringing this point of suggestion, but I note what you have said to our colleague earlier; that if we want to introduce as amendments we will introduce them. I want the Senator to think this through so that when we come back with amendments, it works well.

I am so impressed with the registration of *boda boda* riders and membership being within a body that can be felt and seen. I do not think that there is any of us who has not attended a funeral of somebody who died because of *boda boda* accidents. Therefore, it

very important that we consider this because it is the mode of transport that is most commonly used. It reaches every corner of our country.

Mr. Deputy Speaker, Sir, I also join colleagues who have raised an issue with Clause 13(2)(b) which introduces PwDs to be exempted from the requirements of sitting astride. I persuade our Senator that it should include PwDs and women. When this law takes effect and we have only one passenger on a *boda boda*, it will be possible to sit facing one direction. I persuade that it should come from him so that we reduce on our amendments and have his coming in. That amendment would make a lot of sense.

Another question I have which again Sen. (Dr.) Khalwale should think about is Clause 18 on motorcycle ambulances. I have tried to imagine how a motorcycle can be an ambulance. I know we are using it now because there is nothing else. However, we must force our governors to have ambulances equitably distributed in a county. If we allow these *boda boda* ambulances, we will make it so easy for governors to ignore very rural areas in two ways, provision of the ambulances and provision of roads.

The reason our people are using *boda bodas* as ambulances is because there are no roads. They are using very narrow paths to take people to hospital. We know that in some areas you even have to carry people literally using a sack and four men to get them to the main road.

We should ask governors to take responsibility of our health. Health is a right in our Constitution that should cover everybody. We should not give them an excuse to have any other form of ambulance. They should provide ambulances because that is what everybody pays taxes for. Equity and equality when it comes to health should not degenerate to anything else.

Finally, Clause 22 is on insurance. I have read and asked myself if this insurance covers death or injury compensation. The line is very attractive that:

“Every owner of the motorcycle shall have at the minimum a motor commercial public service insurance cover.”

It is my hope that this arrival of an insurance will discourage careless driving of motorcycles. The only way we can do that is to make sure that there is compensation.

In most cases, people who have died or are injured through motorcycle accidents have been left on their own. In fact, they part ways with the motorbike owner on the road. The motorbike owner is normally always different from the rider. The rider goes to take care of these injuries and any accident victim does not get any assistance anywhere.

I persuade our colleague to think through how this motorcycle insurance can take care of injuries and death compensation in a way to deter careless driving. This should also stop owners from hiring careless riders.

With those remarks, once more, I congratulate our colleague, Sen. (Dr.) Khalwale and freely mention that this Bill is long overdue. It will bring order to our country.

I thank you.

The Deputy Speaker (Sen. Kathuri): Thank you, Professor. Next is the Senator for Murang’a, Sen. Joe Nyutu.

Sen. Joe Nyutu: Mr. Deputy Speaker, Sir, I rise to support this well thought-out Bill by our colleague and senior, Sen. (Dr.) Boni Khalwale, because *boda boda* has become

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an important sector in our economy. We have very many young men and sometimes women who are employed in this particular sector, whether owning or being engaged by people who invest in the bikes. So, this is an important sector that needs regulations.

Apart from the *boda boda* sector employing many young men and women, it is also something that has made accessibility to some interior places easy. There are places that used to be hard to access before *boda bodas* came. It is important that we regulate this particular sector. This Bill will help a lot on this particular matter.

We have been having many deaths because of *boda boda* accidents. Some of us have lost relatives due to *boda boda* accidents. One thing that has been a denominator in most of these deaths is failure by *boda boda* users, both the riders and their passengers, to wear helmets because sometimes they are not provided.

Mr. Deputy Speaker, Sir, I am excited about Clause 10 of this particular Bill where Sen. (Dr.) Khalwale has talked about a board that will ensure that our *boda boda* riders undergo safe and defensive riding techniques in order for them to prevent deaths. Some of them do not even understand the risks involved in riding without their helmets on.

Just like Sen. (Prof.) Kamar said, when you go Kigali in Rwanda, you get challenged as a Kenyan, especially when you see *boda boda* riders and passengers properly fitting their helmets and none of the motorcyclists ferry more than one passenger. That is something we should borrow. That is what this Bill seeks to address through these regulations.

Another issue coming out well in this Bill and that is why I support it, is the idea of regulating this particular sector. As I speak, we have no regulations in this particular sector. Sometimes you see *boda bodas* riding on the opposite side of the road in the full glare of traffic police officers because there are no regulations. Regulations are important because we do not want a country that is lawless with a big sector that is not regulated.

Mr. Deputy Speaker, Sir, I am also excited about Clause 6(2)(b) where the board will ensure that all *boda boda* riders are registered and licensed. That will enable us to know the *boda boda* operators. Without this particular regulation, crime can be committed without us knowing exactly who did what.

Another important issue in the same Clause 6 is developing and implementing programmes to promote road safety, including training and education of riders and passengers. These young men and women sometimes just finish secondary school, but since they can balance on a motorcycle, they only need some instructions for 30 minutes. The following day, you will see them scouting for passengers because they know how to ride.

They need to be trained as the Bill proposes. They should also be trained on their own safety and that of their passengers because sometimes they are ignorant. This is something that is progressive.

I am also excited about the fact that they will be required by the board to register in a SACCO as proposed in Clause 9. We do not want our young people to go out there, make some money and spend all of it in the evening. At the end of the day, they have no savings. We do not want to have a situation where somebody rides a *boda boda* up to 70 years.

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Where I come from, they say that the old feed from the youth. Since most of *boda boda* operators are young, they also need to develop a culture. I believe this particular provision will encourage them to develop a culture of saving so that they can access credit facilities.

If I am hired, for example, to ride someone's motorcycle and I am able to make some savings, I should access credit facilities. After that, I should acquire my own *boda boda* so that I am self-employed and can also create employment for somebody else. That is something that is progressive.

There is a requirement that before you are allowed to operate a motorcycle, you have to complete a training course approved by the board. That is important because they are engine-driven motorcycles.

Some of them move at speeds of over 100 kilometres per hour and that is risky for somebody who has not been trained. It is not just risky for the rider, but also the passenger. Those are some of the issues that this Bill seeks to remedy and we must support it.

We have also been having many problems with passengers. I like this Bill because it also seeks to make a passenger responsible for their own safety and that of others.

In Clause 13, the Bill proposes that a passenger must wear a helmet and a reflective jacket. When you drive or are driven at night, sometimes you realise there was a motorcycle just when you were about to hit it because some of them do not wear reflective jackets and the rear lights are off or not operational at all. Therefore, you can hardly see them.

Without mixing up matters, I also like the clause that requires riders to have their headlights on all the time when using roads. The fact that we are seeking to ensure that passengers are responsible by requiring them to wear protective gear and not to board a motorcycle that has already been boarded by another passenger, I think Sen. (Dr.) Khalwale had observed what happens in his and other counties because this is a problem that cuts across Kenya. We must make both the rider and the passenger responsible.

Mr. Deputy Speaker, Sir, on the safety of road users, something caught my eye under 17(a) that the riders will not be allowed to carry a load whose width projects more than 15 centimetres beyond the outside end of the handlebars.

Some of these riders have been ferrying loads that are very wide, occupying a whole lane sometimes. You do not know how to overtake them. If you get to hit that particular load, the vehicle and the rider will get a problem. This is something that I thought should be supported.

I also noted that under 17(2), we are trying to protect our roads under this Bill. Most of the *boda boda* riders, especially those ferrying loads like building bars, they drag them along the tarmac. This destroys our roads and we know that road construction is a very expensive thing. So, that is something very important so that we protect our roads and the riders.

The riders are not safe when they drag this particular load. The stability of a two-wheeled motorcycle becomes greatly compromised by dragging loads along the road. I hope I got it right because you know where I come from when you have a load and a road, you could get problems with R and L.

Insurance cover under Clause 22 is very important. Most of the people that have had motorcycle accidents, sometimes suffer grievous harm to their bodies yet they have no recourse.

They have to pay their medical bills. If you lose your leg, nobody will compensate you because most of these riders do not have an insurance cover on their bikes.

As we require our *boda boda* to have an insurance cover for every other motorcycle that is on the road, we must also consider the rates of paying for a cover because the business is not that profitable.

Mr. Deputy Speaker, Sir, what then should be done? Although we will be bringing amendments to this Bill, I am of the view that since every Government gives incentives to business people; it should chip in.

We can even have an insurance agency partly or wholly owned by the Government so that we can charge these *boda boda* riders a figure that they can afford. Whatever is over and above the value of the cover, it should be met by the Government as an incentive to this particular sector that has employed so many of our youths.

There are very many benefits in this Bill, but we need also to rethink about the offences and penalties. We may not want to allow them to break the law, but we may need to revise some figures. If you go to 26(2), there is a provision that if you are found liable for a particular offence, you are penalised Kshs100,000 which may not be affordable.

Mr. Deputy Speaker, Sir, we may need to revise some of these figures downwards even as we encourage our young men and women who are riding *boda boda* to be law abiding. We must charge them penalties that can be afforded.

That is why if you walk into almost every police station in this country, you will find a lot of *boda boda* parked there because our young men and women cannot meet the requirements in law that they need to meet in order to have their motorcycles that have been impounded in police stations, released. So, we should revise that.

Mr. Deputy Speaker, Sir, before I conclude, I am excited regarding the behaviour of ganging up. This Bill has a provision under 20(26) that they will not be allowed to gang up, especially when there is an accident.

It has become a very serious problem - and I am concluding - that when there is an accident between a motorcycle and a vehicle, whether or not the rider was the one on the wrong, they gang up and harass motorists. Such are the things that should not be encouraged.

I support this Bill in totality with some amendments that Members may bring.

Thank you.

Sen. Omogeni: Thank you. I want to begin by thanking the Senator for Kakamega for the interest he has shown in bringing a Bill that addresses the concerns of *boda boda* riders who make a huge contribution to our economy. We thank our former President, the late Mzee Mwai Kibaki who in 2008, zero-rated motorcycles and that opened the market.

I believe we now have more than 2 million motorcycles in this country. There is no doubt that they are making a very huge contribution to our economy. Every time they fuel, that is tax to the government and there are many counties that also tax *boda boda*. They are making a huge contribution.

Mr. Deputy Speaker, Sir, I do not know about your county, but I know where I come from, the County of Nyamira, I have so many people who have gone to school to a degree level and they are *boda boda* riders. I have so many *boda boda* riders who have qualified as teachers. I even have picked one or two and encouraged them to apply for teaching jobs and they have been successful.

Our sons who are in *boda boda* business are in it because we have no jobs. So, we need to be very fair and kind to them. As we pass this regulation, my first concern is that we should not pass a law that will again put a heavy burden on the *boda bodas*.

I have looked at the roads. You sympathise with our young children. They ride their motorcycles in the dusty roads from morning to evening. When it rains, they still want to continue doing their business because they have to fend for their families.

At times, they are called in the wee hours of the night to pick passengers. They say 'yes' because they are trying to fend for their families. They work under very difficult conditions. I wish the Government could put in place mechanisms of upgrading our roads to bitumen standards so that these very enterprising cadre of Kenyans can work in an environment that puts a human face to their business.

Having said that, I support this Bill, but with a number of amendments. I want to persuade Sen. (Dr.) Khalwale to listen to my concerns on this Bill. The first concern is that if we create this board in Clause 5, it has a heavy presence of county government. It is also huge with eleven members. You are saying the chairperson should be appointed by the county governor.

Personally, I propose that we have a competitive process of picking a chairperson through the County Public Service Board (CPSB). There is nothing so special that a governor should appoint a chairman. Let it be competitive.

Let those who have an interest in that sector be allowed to apply in a competitive process to the CPSB.

On representatives from the County Executive Committee membership, you have proposed we put a representative from County Executive Committee Member (CECM) for Transport, Finance and Attorney General. Then, you go to Clause 4(f) and again propose four persons appointed by the CECM responsible for matters relating to transport.

I will persuade that we consider proposing to amend this Clause 4(f) to have representatives from the sub-counties. If in Kakamega you have 12, let each sub-county elect one person.

We have tried issues of elections. In the Judicial Service Commission (JSC), every representative is elected. The only ones who sit in JSC without being subjected to an election are those who are there by virtue of their offices, including the Chief Justice (CJ), the Attorney-General (AG) and the like. The rest, including the Supreme Court, the Court of Appeal and the magistrate courts.

We should remove this thing of throwing everything to the county. This Bill is self-regulating. The Law Society of Kenya (LSK) does self-regulation, and it does it very well. If you misbehave, lawyers can strike you off the roll. I think if you give power to the *boda boda* sector, they can ably regulate themselves.

Having said that about the board, the second issue is mitigating costs on licenses. Some of these *boda boda* riders come from very poor families. I have helped a few to register and get a riding license because they come from very disadvantaged families. These are people from our counties. We know them and their families.

Mr. Deputy Speaker, Sir, I suggest that we push this burden to the Government. I am privileged to have you on the Chair because you have been a former Member of Parliament (MP). There was a time when the National Government Constituency Development Fund (NG-CDF) used to have a budget for assisting *boda bodas* to get their licenses. Let the Government take that burden

Sen. (Dr.) Khalwale, every day a *boda boda* rides into a petrol station and fuels one litre, the Government takes Kshs82 as tax. So why should the Government not also set aside a fund to train and pay for their licenses? That can be done through the National Transport and Safety Authority (NTSA).

We should also appreciate the contribution that these *boda boda* riders make to the economy other than locking so many of them from the industry because they are not able to get these licenses. Remember, if you put so many offences, you are creating an avenue of corruption through the police.

If you engage these guys, some of them call us. When they are riding without helmet, they get arrested and the fine is Kshs5,000. A policeman will tell you *toa mia tano*. Why can we not make it easy if we want to eliminate corruption? Make the fine affordable. Charge this guy Kshs500 so that, that money goes to the Government as a fine.

When you make it so high, the policeman will take the easier option. Give me Kshs500 because the fine is Kshs5,000. On the failure to display an insurance sticker, the penalty is Kshs10,000. Tell me, Sen. (Dr.) Khalwale, which *boda boda* will walk into a court of law and pay a fine of Kshs10,000. So, they will opt to give a bribe to the policeman. Let us make the penalties reasonable.

If you are found drunk and riding a motorcycle, they will fine you Kshs60,000. They cannot afford it. So, I will propose that we ride on this Bill and create affordable fines. Let us also appreciate that the highest you can make as an owner of a motorcycle is between Kshs500 to Kshs1,000 a day. So, let us also have fairly reasonable fines.

Thirdly, I have seen a lot of reforms in how we conduct elections. This idea of saying you come up with elections and you throw it to any Tom, Dick and Harry to conduct elections for *boda bodas* is not working. I will be persuading the Mover that I bring in an amendment to have the elections of the *boda boda* industry conducted by the Independent Electoral and Boundaries Commission (IEBC)

Two weeks ago, you know that the tea elections of directors were conducted by IEBC. I am moving a Motion here to also ask that elections for trade unions be supervised by IEBC. We should have people who have direct mandates from people in that sector. You allow other people out there who are not accountable to conduct elections, you get manipulation, people will also come in to interfere and you get leaders who maybe do not have the confidence of the membership.

Let us use this opportunity to put in place a credible process for carrying out elections so that there can now be proper self-regulation. In the LSK, Sen. Mungatana will

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tell you, that our elections are conducted by IEBC. That is why you do not see lawyers going to court to file petitions because it is credible and it enjoys the confidence of the membership.

I am looking forward to a day when my good friend, Secretary General of Central Organisation of Trade Unions (COTU), Mr. Francis Atwoli, will also be elected in a process overseen by IEBC. It is there in Chapter 6 of the Constitution of Kenya, 2010. If you are subject to an election, the Constitution says you should be elected in a transparent electoral process, but by sacred ballot. We do not want those things of 1988 of lining up.

SACCOs are good. However, we need a mechanism where maybe counties will have an obligation to give seed money to our SACCOs. We give counties a lot of money that is embezzled. Governors get a lot of money and a lot of it goes to *mandazi* and *kunywa chai*.

We should put some austerity measures and say each county put aside some seed money to jump-start SACCOs. Why did we create counties if they cannot benefit our people?

On traffic policemen, at a roadblock near my home in Metamayo, a police officer threw spikes on a motorcyclist. This guy hit the spikes at high speed, rolled and died.

We now have motorcycles with registered number plates. A traffic offence is not a life and death issue. If this guy is committing a traffic offence by failing to stop, you do not throw a spike and cost a life. Prof. Patrick Lumumba Odhiambo (PLO) says that you do not respond to a mosquito bite with a hammer. I mean, the best you should do is take the registration number.

I mean, these motorcycles are registered and there is now a proposal here to ensure that all of them are registered in a SACCO. Just take the registration number. Go after the guy, but costing a life by throwing a spike, I do not think is right. We are being extremely inhuman as a country.

As I gear towards conclusion, I have looked at the number of offences that have been created in this Bill. I am of the view that there are too many. Then, you cannot fine a *boda boda* Kshs100,000. That is a fine that should be meted out to an hon. MP. It is 10 per cent of their salary. Putting it at Kshs100,000 is too much. Let us have a reasonable fine. When you go to London, you will find that committing an offence is 1,000 pounds, but when you look at the income of the victim or the culprit, it is over 10,000 Great British Pounds. When you convert, that is over a million Kenya Shillings. It is reasonable to say they pay Kshs100,000.

Nonetheless, for this economy, a *boda boda* person is making Kshs800 or Kshs500 a day. When you tell him that if he commits an offence here, he will pay a fine of Kshs100,000, that is unaffordable and that is how we create avenues for policemen to collect money. I do not know whether we have a Finance Bill in our respective counties, but in the county where I come from, when I joined the Senate, the *boda bodas* used to pay Kshs50 as a monthly sticker, then it went to Kshs100. In the last financial year, the Finance Bill pushed it to Kshs300 a month.

Right now, they are paying Kshs300 for a sticker. They are going to pay money for their license and they have to get money for insurance. You are now telling them to

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also have employment contracts. Will that be sustainable in an industry that does not entail the Employment Act to determine the minimum salary and the benefits that accompany a contract? That is too much.

I propose that we standardize the fee that *boda bodas* pay for monthly stickers. In my estimation, Kshs300 is on the higher side. If you put it at Kshs100, it means in a year you are paying Kshs1,200, and that is what we used to pay for our motor vehicle licenses; it is reasonable.

I propose that we put a ceiling here that a county will not pass a Finance Bill that will put an unnecessary burden on our *boda boda* riders because you have seen what heavy taxation can do to these young guys who are trying to make a living out there.

You saw what the passage of the Finance Bill 2024/2025 did to us as a country. Let us also be seen as a Senate that cares for these *boda boda* riders. Put a ceiling that you do not charge anybody more than Kshs100. If computed annually, it is Kshs1, 200. That is enough for counties to collect as revenue from our *boda boda* riders.

On employment contracts, let us leave that to be regulated by the market. People can agree between the owner of the *boda boda* and the rider. If you make it too prescriptive, you may achieve a different result where employers will shy off from engaging these young people. Let us try to have a balance between the two.

In conclusion, Mr. Deputy Speaker, Sir, it is a good initiative by Sen. (Dr.) Khalwale. If we improve it, make some amendments, lessen the burden for the *boda boda* riders, and put some obligation on the national Government and county governments, we will be seen to be caring for our *boda boda* riders who are supporters of most of us and are our children and friends back home.

With those remarks, I support.

The Deputy Speaker (Sen. Kathuri): Thank you. Sen. (Dr.) Khalwale, there are many recommendations on this Bill. Possibly, you will encourage our colleagues to come up with amendments and discuss them, so that you do not write a new Bill.

Next is Sen. Wambua, the Senate Deputy Minority Leader.

Sen. Wambua: I thank you, Mr. Deputy Speaker, Sir. I want to begin by thanking Sen. (Dr.) Khalwale for coming up with the Public Transport (Motorcycle Regulation) Bill, 2023.

(Sen. Chimera consulted with Sen. (Dr.) Khalwale)

Mr. Deputy Speaker, Sir, if Senator Chimera would just take his seat, Sen. (Dr.) Khalwale would benefit from wisdom from Kitui.

I will begin by saying that I support the Bill. I agree that a time has come when this industry will need to be regulated. Before I go into the specifics of the Bill, I want to draw the attention of Sen. (Dr.) Khalwale and of course, the attention of the entire House, that perhaps the *boda boda* industry is arguably the only growth sector in this country. It is the only sector that is guaranteeing jobs, be they casual or otherwise, to the greatest number of our young people.

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It is absorbing many young people and for that reason, every legislation that we pass, either in this House or in any legislative assembly, even in the counties, there must be a law that is a lot more facilitative than restrictive. It should be a law that facilitates the growth of the sector and creates avenues for expansion and growth of the sector.

Having said that, I will not miss this opportunity to thank the former President, the late Mwai Kibaki, for thinking through this very important sector and opening up our borders for the importation of motorcycles. Were it not for the initiative of the former President, then I would not know what we would be doing with the millions of young people who are now engaged in that sector. Therefore, we should carry that vision of the former President forward in whatever legislation we are going to come up with.

Let me just mention a few things on this Bill by our brother, Sen. (Dr.) Khalwale. First, when it comes to the issue of the regulation of motorcycles, I have heard my colleagues speak about this, so I will not spend a lot of time on it.

At some point, when we go into Third Reading, we may want to engage a lot more on this matter of the board, the County Motorcycle Transport and Safety Board. Engage, discuss and agree on two issues; one, the composition of the board and two, the functions of the board.

I say this because when you look at the composition of the board as proposed in this Bill, it appears like a department of the county government. It is an extension of the executive of the county governments and yet, this is private business. When the operators in this private business encounter challenges, they should approach the executive in their counties for a resolution of the challenges that they face.

Now, if the board is in itself an extension of the executive in the counties, then when there are challenges, it would be very difficult for the county executives to approach themselves to resolve those challenges.

Mr. Deputy Speaker, Sir, looking at this, I would have wanted to see the involvement of the riders. They have a voice in their business and their jobs. There must be a representation of the riders in this board. There would be need for a representation of the owners because it is not all the time that the riders are the owners, but there are people who have invested in this business. They have an opinion in how the board, the business and the sector should be regulated,

There will be need to deal with manufacturers of these motorcycles. They need to be on the board for purposes of dealing with quality and safety issues of the motorcycles. There is also the dealers, the people that offer these motorcycles to the owners and the riders, so that it is a holistic board that is not an extension of the executive of the county governments.

Mr. Deputy Speaker, Sir, when it comes to the functions of the board, Sen. (Dr.) Khalwale, we should run away from the temptation to be generic in the creation of the functions of the board. As I said, let us first admit and agree that this is a unique and growth sector for us. Therefore, the functions that we assign the board must be specific to the operations of the motorcycles.

I have in mind, and I see that Sen. (Dr.) Khalwale has captured a bit of that, an obligation being placed on the boards to ensure that there are sufficient parking lots

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everywhere the *boda bodas* operate from. I see there is a mention of that. I would want to see a situation where we have lanes and this becomes an obligation of the board to ensure that we have dedicated lanes in towns for the *boda bodas*.

You do not want *boda bodas* to be fighting for space with Public Service Vehicles (PSVs), private cars and human traffic. Why not designate special lanes for these riders in view of the fact that this sector can only grow or expand? An investment in making the operations better and safer, no matter its cost, is not an investment in vain.

Mr. Deputy Speaker, Sir, those are things we can create an obligation on the boards. About the boards again, the Bill is silent on the funding of the board. Where will the board get its money from? That is where the problem begins. This is because, if we leave it open-ended, these boards will start imposing fines on the riders and owners to generate their operating capital.

We need a think-through because all of us in this Senate have *boda boda* riders and owners in our counties in their hundreds of thousands to agree on what will be the source of funding for the board, so that the boards also enjoy a level of autonomy in their operations.

Going down to Clause 7 of the Bill, it says-

“1) No person shall use a motorcycle for commercial purposes in a county unless it is registered in accordance with this Act.”

There is a small challenge there. When we have that conversation. Sen. (Dr.) Khalwale, we then have to define, either in this Bill or through a common understanding, what a commercial purpose is; where it begins and where it ends. In this Bill when you read through, I see two levels of commercial engagements. There is the passenger and the load.

Mr. Deputy Speaker, Sir, the question I ask myself is, if I buy a motorcycle to do my private transportation like going to church or any other activity; and then occasionally, I have sufficient eggs at home and I use it to carry them to the market, is that a commercial function? Where I come from, there is Kabati Market, which has two market days; on Mondays and Thursdays. When I ride my bike to Kabati and I have bought a few things and maybe, I also run a small *kiosk* at home, and on Friday, I carry a box or two of biscuits and sweets to sell in my *kiosk*, is that a commercial function?

We have to define commercial properly, so that there is clear understanding that you can own a motorcycle, but not for commercial purposes. That will now bring clarity, especially on the part of the enforcement officers; that on the day they meet Sen. Wambua riding his motorbike from Kabati to Kalimba and he is carrying a crate of soda or something, they will not ask me for the commercial license of the motorcycle. Therefore, that needs to be clearly defined.

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

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

Mr. Temporary Speaker, Sir, again, that Clause 7(3) talks about a prescribed fee.

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“(3) An application for registration shall be made to the Board in the prescribed form and shall be accompanied by the prescribed fee.”

The Senator for Meru - not the Speaker now but the Senator for Meru--- We have another Speaker.

Sen. (Dr.) Khalwale talked of a prescribed form and a prescribed fee, but he is leaving that to the board to determine. There is a danger there. Later on, in the Bill - and this Bill should begin to speak to itself – he is suggesting that if a *boda boda* is registered in Kitui, then it can operate in Kakamega. That is what he is saying and it is a good thing. However, the prescribed form for the registration of the *boda boda* in Kitui is essentially and materially different from the form that is prescribed in Kakamega. Even the fee the board in Kitui has set and prescribed is essentially and materially different from the prescribed fee in Kakamega. How do we navigate that?

How do we navigate that to create uniformity in the prescribed form and fee? My proposal would be, when we get to the amendments, why can we not have a schedule here and prescribe the registration form and fee, so that we do not have different counties prescribing different fees for the operators.

In that case, the principle that what I paid in Kitui County is the same amount of money that I will pay in Kakamega County will hold, both for registration and certification. That way, we will create better harmony. That is carried through a number of clauses, from Clause 8 to 9.

There is also need for clarity on Clause 9 (ii). It begins from Clause 9 (i), which lays the basis for Clause 9 (ii). It says that a person who owns or operates a motorcycle for commercial purposes shall register with the savings and cooperative societies.

Sen. (Dr.) Khalwale, I know we have Savings and Credit Co-operative (SACCOs) for matatus. I am not sure whether the same spirit that is in the SACCOs for matatus or Passenger Service Vehicle (PSVs) is the same spirit of savings as we know cooperatives to do. The nature of cooperative societies that we have is pulling together resources to grow the society, so that members can go back to that society and get some loans and grow their businesses, or do their savings and at some point, liquidate their savings. I do not know whether that is the nature of SACCOs that you have in mind in this Bill.

My understanding of the PSV SACCOs is not necessarily for members to get loans or liquidate their savings at some point, but in most cases, to ensure that there is ease of regulation. If a member of the SACCO is on the wrong, then the others take collective responsibility and push for compliance for every member. That will also need to be clarified.

Sen. (Dr.) Khalwale, you may have to guide us at some point on Clause 9 (iii) when you say the *boda boda* shall not be for purpose of forming a gang or cartel by the riders. That may not be necessary. I do not think there is anybody who forms a cooperative for purposes of being a gang or a member of a cartel.

(Sen. Wambua’s microphone went off)

The Temporary Speaker (Sen. Wakili Sigei): Kindly allow Sen. Wambua one minute to conclude his presentation.

Sen. Wambua: My goodness. Okay, I will try in that one minute. Sen. (Dr.) Khalwale, on Clause 11, be sure that is what you want us to do. You are telling us that you want a valid employment contract between the owner of the motorbike and the rider. In most cases, the owner and the rider are one and the same thing. How will you deal with a situation where the owner of the motorbike is also the rider of the motorbike? There are a lot of fines that are prescribed in this Bill. I am just avoiding a situation where a police officer stops a rider and asks them whether they own the bike or not, and ask for the employment contract. That becomes a problem.

Again, do not forget that these people have their own way of doing their things. There are things called ‘squads.’ You get a bike to ride for four hours, and then you return it to the owner and take a rest for around three hours. You then take another bike from another person. Let us not disrupt that order that they have created. Let us just facilitate and regularize, so that they are able to carry out their trade without too much restrictions.

You have repeated so many times that the two-wheeled motorcycle rider shall carry only one passenger. It is repeated more than five times. Just clear it up. There is a height that you have prescribed there of two meters. Two meters from the ground is too high.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Wambua, your time is up. Thank you for your contribution.

Sen. Lemaletian, proceed.

Sen. Lemaletian: Thank you, Mr. Temporary Speaker, Sir. I can see that the bullfighter is supporting me this time around. I take this opportunity---

The Temporary Speaker (Sen. Wakili Sigei): Sen. Lemaletian, who is the bullfighter?

Sen. Lemaletian: Mr. Temporary Speaker, Sir, the bullfighter is the man sitting across the Floor, the Senator for Kakamega County.

The Temporary Speaker (Sen. Wakili Sigei): Senator, use Parliamentary language to make reference to your colleagues in the House. Withdraw the name, “bullfighter” and “the man sitting across”, and refer him by his official parliamentary title and name.

Sen. Lemaletian: Mr. Temporary Speaker, he is Sen. (Dr.) Khalwale, alias the bullfighter. He owns the name. Thank you.

I rise to support the Public Transport (Motorcycle Regulation) Bill (Senate Bills No.38 of 2023). I am very glad that we finally have a Bill that can streamline the operations of the *boda boda* sector in this country because this is very vital. There was a time I visited Kenyatta National Hospital, and I realized that there was about a whole block of *boda boda* accidents in this country. That shows that this is a very looming problem in this country. It is quite commonly known as such.

Streamlining the operations of the *boda boda* riders and sector will ensure that we have reduced road accidents. It will also ensure that we have responsible young motorists across our country. I take note that many of them are the youth of our nation, and the *boda boda* sector makes up one of the largest sectors in our economy.

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I remember the other day when we went to Kigali in Rwanda for the East African Legislative Assembly (EALA) games, we all witnessed how disciplined the *boda boda* riders in Kigali are. That is one thing that we admired as Kenyans, and I am sure the Ugandans too.

I know that our *boda boda* youth have borne the brunt of our tough economic conditions spanning over several Government regimes and several years and decades. Some of these problems are increased by taxation. It is safe to say that these people are depressed while riding this *boda bodas*, not only because of the high taxation, but the economic condition.

Mr. Temporary Speaker, Sir, while we were campaigning in the last election, I remember I had a meeting with the Chairperson of the Boda Boda Safety Association of Kenya (BAK) and one of the saddest problems that we also need to look at as leaders was the fact that there is a higher purchase company that has monopolized the acquisition of *boda boda* in this country.

The carelessness you see on the roads is because these young people -the youth - make so little from this *boda boda* business, and at the end of the day, they still have to pay the higher purchase rate contributions. I think they pay it daily until the date it is cleared. We all know that in higher purchase, you always end up paying more than you would if you were paying in cash.

Mr. Temporary Speaker, Sir, we also need to jump into that as leaders. Unfortunately, I know this Bill might not address that, but this is something that we need to look at. The Bill recommends licensing for each *boda boda* operator, ensuring that each operator and the passenger they are carrying have protective gear, and can only carry one person at a time. Training is also compulsory, but my recommendation would be to include civic education in the training.

The Bill recommends a hefty punishment for those *boda boda* operators who get into mob justice once they have been attacked or wronged by other road users, and usually there is torching of vehicles. It is important that they are educated on their rights as citizens, so that they can pursue justice through the legal means. As leaders, we should ensure that they are not harassed or oppressed.

Mr. Temporary Speaker, Sir, I have seen that there is a recommendation to have a board that should be headed by a chair who is appointed by the governor. We need these young people to participate on the table that makes decisions concerning their businesses and their lives.

I would recommend that the Senator adjust that to make sure that the chair of the board is elected by the people, instead of being appointed by the governor. That will cushion it from political interference, such as the governor electing someone who would favour them, and maybe in the next regime, they will have to again be disarranged or something of the sort. Kindly take note of that.

Lastly, my other recommendation would be to ensure that we make it mandatory in the Bill for every county to have a stage for the *boda boda* operators where they can park. This has been necessitated through a visit I had with the Standing Committee on Devolution and Inter-Governmental Relations to Vihiga and Bungoma Counties three

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weeks ago. I could see the commotion in the market, especially in Vihiga, because the traders were haphazardly in a confused mode between them and the *boda boda* operators.

The young *boda boda* gentlemen approached us and told us that they would wish for us to direct the Vihiga County Government to give them a space somewhere they can park because they were parking in between the vegetables, and literally had nowhere to pick their passengers. It is very important that this is noted.

I thank you.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Senator. Proceed, Sen. Chimera.

Sen. Chimera: Asante Bw. Spika wa Muda kwa fursa hii. Nimesikiza kwa makini sana Maseneta wenzangu wakichangia Mswada huu muhimu. Nampongeza Seneta wa Kaunti ya Kakamega, Sen. (Dr.) Khalwale, ambaye ni shupavu. Amewahi kufanya kazi katika kaunti yetu ya Kwale na tunamshukuru kwa huduma zake wakati ule. Ndiposa anajiita lile jina 'Bullfighter.' Nimetohoa na naomba kwa fursa na heshima kuu niruhusiwe.

Mswada huu ni muhimu sana hususan ukizingatia kuwa vijana wengi katika nchi hii wako katika sekta hii ya boda boda. Kwa muda mrefu sekta hii imewachwa wazi. Hakujakuwa na hatua yeyote ya kujaribu kuhakikisha sekta hii pamoja na vijana wameletewa sheria, muundo au mfumo ambao utadhibiti utendakazi ule katika sekta ile.

Vijana wengi wamepoteza maisha yao kwa sababu ya kutojali hali yao ya usalama, kutokuwa na mafunzo au nidhamu katika sekta na biashara hii. Seneta wa Kaunti ya Murang'a, Mhe. Joe Nyutu, amenena kuwa utapata kijana anayefahamu kuendesha baiskeli na amemaliza chuo kikuu au shule ya upili na kwa bahati mbaya ameshindwa kutafuta karo ya kusonga mbele, ameamua kujileta katika biashara hii ya boda boda. Kwa dakika chache, kwa sababu anafahamu kuendesha baiskeli, anapata fursa ya kujifunza na kuwa mwana *boda boda*. Mwisho wa siku anakosa nidhamu na mafunzo, na tunampoteza aidha kwa ajali mbaya au matukio yasiyopendeza katika sekta hii.

Namshukuru Sen. (Dr.) Khalwale kwa hatua yake ya kudhibiti sekta hii. Vile vile, nawahimiza vijana wenzangu kuwa wakati umefika sasa kujipanga katika biashara hii. Nimeona kuwa kuna pendekezo la vijana wa boda boda kuungana katika Savings and Credit Cooperative (SACCO).

Sisi viongozi mara nyingi hususan tukiwa mashinani ninapotoka, Kaunti ya Kwale, huwa ninapokea maombi kutoka kwa vijana wakitamani angalau niwanunulie boda boda ili wapate ajira na kujikimu katika maisha. Nawaeleza kuwa suluhu ya boda boda ipo katika sheria hii ya Sen. (Dr.) Khalwale. Sheria hii inampa fursa kijana kutoka Kaunti ya Kwale, Tana River, Kakamega au Samburu kuwekeza katika boda boda.

Juzi niliona vijana wa boda boda katika mji wa Thika, ambao walikuwa wamekuja pamoja, wakaungana na kuwekeza *savings* zao, wakafikia kununua shamba na kujenga nyumba ambazo wanakodi. Sasa wanapata pato la kuridhisha. Nina imani tukipanga vijana hawa katika SACCO zetu, watapata mapato bora ambayo yatawapatia afueni katika maisha yao.

Kwa kifupi, nataka kuzungumzia pendekezo la kuwa na mkataba baina ya mwenye *boda boda* na mwendeshaji. Ni kweli kuwa pale kuna ati ati. Namuomba Sen. (Dr.)

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Khalwale afikirie jinsi gani tutabadilisha sheria hii, kwa sababu ni ngumu kupata mwenye boda boda ambaye ataenda kwa ofisi ya wakili au atamwandikia yale makubaliano ili amujari mtu fulani kazi. Kama hana fedha za kumlipa wakili yule, basi sidhani itawezekana kuwa na makubaliano hayo.

Vile vile, nimeona kuwa kuna pendekezo fulani la boda boda kuwekwa *tracking device*. Pengine mtanipa jina la Kiswahili. Tayari bei ya kununua pikipiki iko juu. Tukiweka pendekezo kuwa pikipiki iwe na chombo ambacho kinaweza kufuatwa ikiwa imepotea, bado ni gharama kwa mwenye boda boda. Jambo hili litaongeza gharama zaidi ya kupata kifaa kile ili mwenye boda boda aweze kufanya biashara. Ombi langu ni kuwa ikiwa tutaweza tulitupilie mbali pendekezo lile ili pikipiki zetu zipatikane kwa njia ya afueni na kwa bei ya rahisi, ili vijana wetu wafanye biashara yao bila gharama yeyote.

Nachukua fursa hii kumpongeza Sen. (Dr.) Khalwale. Naunga mkono sheria hii na mapendekezo ya marekebisho kidogo ndio vijana wetu wa boda boda wapate sheria mwafaka ya kuwapa fursa ya kufanya biashara yao bila bugdha.

Asante.

The Temporary Speaker (Sen. Wakili Sigei): That brings us to a close on Members who had an interest in contributing to this Bill.

I now call upon Sen. (Dr.) Boni Khalwale to reply.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, for a good reason, this Bill has generated a lot of interest and I thank Members for demonstrating that. I assure them that whereas this is my brainchild, the Bill is ours because none of us is not affected by its provisions.

I beg that we either send proposals in writing or do personal proposal for amendments, which should be incorporated in the Bill. I assure everybody that I have taken notes. I will be looking for everybody who has proposed something to see how we can work on that particular amendment to make this Bill much better.

Mr. Temporary Speaker, Sir, I cannot allow this debate to end without putting on record the name of an old man from Busia called Mzee Ali Mayende. Ali Mayende was working in Uganda. When his father died, he sold the family cow and bought a bicycle, which he would use during the difficult days of struggles in Uganda in the 1980s. He would carry soap and cooking oil to Uganda. In exchange, he would come back with beans, maize or sorghum. He used not to go through immigration offices, but instead made use of what we call back at home as *panya* routes to avoid immigration officers and it became a business.

After some time, more and more people realised that it was a way of earning an income. They used to move from one side to the other side of the border and that is how the name *boda boda* came about. It is the one that gave birth to this industry.

Mr. Temporary Speaker, Sir, when I was a young man like you in the National Assembly in 2002--- I do not know where you were at that time, you must have been in the kindergarten---

The Temporary Speaker (Sen. Wakili Sigei): Sen. (Dr.) Boni, I can assure you that the Chair was not in the kindergarten then---

Sen. (Dr.) Khalwale: You were somewhere.

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The Temporary Speaker (Sen. Wakili Sigei): I was much younger.

Sen. (Dr.) Khalwale: Thank you, I appreciate that.

I remember some of our colleagues used to make us, Members from Busia, Kakamega, Vihiga and Bungoma, a laughing stock because we used bicycles to carry people. In 2004, President Mwai Kibaki, in his legendary simplicity, zero-rated importation of motorbikes. So, people migrated from bicycles to motorbikes. Thanks to that, as I speak, we have created employment for three million *boda boda* riders.

The three million *boda boda* riders support five million people in this industry, which generates over Kshs4.5 billion to our Gross Domestic Product (GDP). Sen. Mungatana, we need to polish this law because this industry is no longer a joke; it is a huge enterprise.

Mr. Temporary Speaker, Sir, I, therefore, want to take the imagination of this House further. Arising from what I read in the Finance Bill, where the President had introduced the issue of manufacturing *boda bodas* and spare parts in this country, that is the route we should go. If we do our own spare parts, with this kind of market, it is going to expand the economy of the *boda boda* industry even further. It is important that we embrace this Bill because we have now put it in black and white.

On the issue of the safety of our riders, passengers and other road users, this Bill is going to streamline and bring order in this industry when applied strictly. The riders must be taught how to observe the Highway Code.

It is amazing. Even in Nairobi, it is very scary. While driving and keeping left, it is common to see a *boda boda* rider coming in front of you. When you look at him, it is like he does not realise he is making a mistake by riding on the right. When you honk at him, he shows you the middle finger. They are very difficult young people. We must bring order.

A *boda boda* rider should only carry one passenger at a time to reduce excessive weight that could make them more prone to accidents. We should also limit the number of passengers in a *tuktuk*, a three-wheeled motorcycle, and prescribe the size of the luggage.

This Bill is going to make this industry crime-free. I appeal to my young colleague, Sen. Chimera, that the tracking device is a safety tool because we also have other unscrupulous *boda boda* riders who disappear with school girls or luggage. If there is a tracker, you are able to know where that motorcycle is.

This is not a strange thing because some credit providers track their motorbikes. So, *boda boda* riders are already used to the issue of tracking. Tracking is not extremely expensive because for those who own motor vehicles, we are able to track them with a one-off fee of Kshs10,000. Probably, it will be much cheaper for *boda bodas* depending on the innovativeness of that particular provision.

This Bill is going to speak to the issue of thuggery and control corruption and harassment by police officers because we will legislate. I do not know the impression that this Bill has left to many contributors. They had thought that small crimes in this industry will attract a fine of Kshs100,000. That is far from it. The fine of Kshs100,000 is specific for one crime; ganging up.

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When these people gang up, it becomes a real threat, especially to motorists. When you hit one *boda boda* rider, however slight the scratch is, when they gang up, they can do anything to you.

You have seen several cases in this country. One was reported in Juja, where a four-wheel-drive vehicle of a young lady was set on fire by these people. We want to discourage them from ganging. I wanted to avoid prescribing a fine for every little crime. I will go further. Where it is not provided for in the mother Traffic Act, I will see what prescription we can pick.

This Bill streamlines the relationship between a rider and the owner of a motorbike.

Why is it important, colleagues? It is important because as long as there is no accident or injury, the relationship between the owner of the motorbike and the rider is usually very cozy. However, the moment an accident occurs, the owner normally abandons the young rider. You will find them there in hospital stuck up with bills of Kshs40,000 or Kshs50,000. We should find ways of having a formal contractual agreement, so that we cushion the riders from being abandoned by their employers.

Mr. Temporary Speaker, Sir, as I conclude, this law is important because it is now speaking to the matter of the cost of road traffic accidents. You might not know it - this is my profession - but the three commonest injuries that these riders get is head injury, fractured limbs and multiple injuries.

When you are treating a patient with a head injury - and I am speaking with maximum authority - the cost of that treatment is usually around Kshs3 million. If you are treating a fractured limb or a lost limb, the cost is Kshs1.6 million. If there are multiple injuries, cuts here and there, bruises here and there, it can go for as high as Kshs900,000 to Kshs1 million.

This Bill will cut this cost and this is why I want to agree with Sen. Wambua that the governor and the national Government should play a bigger role in the issue of cost because these people make a huge contribution to the national economy and, therefore, we can afford to underwrite some of the things, including the injuries.

Finally, I want to take this opportunity to thank colleagues and look forward to the fact that this Bill will become law in the coming weeks. I thank you and I respond.

Mr. Temporary Speaker, Sir, before I sit down, allow me to beg to reply and request that the putting of the question be deferred to a later date convenient to the Calendar of the House, pursuant to the Standing Order No.66(3).

I thank you.

The Temporary Speaker (Sen. Wakili Sigei): Yes, the putting of the question is deferred to the next sitting of the House, pursuant to Standing Order No.66 (3) of this House.

(Putting of the Question on the Bill deferred)

Next Order.

BILL

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*Second Reading*THE CONSTITUTION OF KENYA (AMENDMENT) (No.2)
BILL (SENATE BILLS NO.52 OF 2023)*(Sen. Chimera on 30.5.2024)**(Resumption of debate interrupted on 30.5.2024)*

The Temporary Speaker (Sen. Wakili Sigei): Sen. Chimera, proceed to reply.

Sen. Chimera: Thank you, Mr. Temporary Speaker, Sir. Let me first begin by thanking my colleague Senators who took time and effort to contribute to this very weighty Bill.

Senators like Sen. (Dr.) Khalwale, who spoke in support of the Bill, I could not thank you more. Those Senators who spoke against the Bill, like Sen. Cherarkey and Sen. Thang'wa, I appreciate the critique that you put forth against this Bill.

Mr. Temporary Speaker, Sir, when I set out to move this Bill, my only fundamental and true intention and purpose of moving this Bill was the need to strengthen the very fundamental constitutional mandate that has been placed on this House by Article 96 in so far as matters oversight are concerned.

There was a need to cure the issue of conflict of interest on Senators as we seek to discharge our core role as enshrined in the laws of this great land.

Sen. Cherarkey spoke very well. I applaud and thank him for his contribution. He told this House that he was dispensing Solomonic wisdom *pro bono*. I know he is not sitting in this House today and he may not have a chance to respond to what I am saying. However, he went on to cite issues that are bedeviling our counties. They include mismanagement of public funds, broken systems and failure of this leadership to fix governance and leadership in our many counties. However, that is not the point of this Bill. Sen. Cherarkey is wrong in his contribution. It is not my intention to speak about the failures of our institutions to protect public funds or the slow rates of prosecutions against those leaders. I do not want to say governors in as much as this Bill seeks to speak more about governors. I am however speaking about those leaders who are in charge of public funds and have misapplied them, and we have not seen highly successful convictions.

That was not the text of this Bill. I urge and plead with my colleagues, especially Sen. Cherarkey. If he feels, in his wisdom, that there is laxity and a weak link in the fight against corruption, in upholding and promoting Chapter 6 of the Constitution, insofar as our leadership is concerned, then he has all the room and space to move this House to amend those relevant laws. We can propose that the Ethics and Anti-Corruption Commission (EACC) be granted prosecutorial powers. This is so that for the first time in this nation, it can have a chance to summon, interview, investigate, arrest and prosecute graft suspects. However, that was never my intention in moving this Bill. My intention was

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only one to safeguard the question of conflict of interest as we perform our oversight role in this Senate.

You may agree with me and most of us who are in different Committees of the Senate, especially the oversight committees, that whenever we summon a governor and they appear before us, they have one uniform answer to the question of the use of public funds allocated to them. They always say they were neither the governor nor in charge of that county at that time.

They always run away with this beautifully choreographed response that ‘I was not in charge at that time.’ That simply tells you that a governor who has served his or her full term as governor for 10 years and seeks election as a Senator, will attempt to either conceal or meddle with the affairs of his county when he served as a governor. That is the mischief I am trying to cure by way of this Bill.

Mr. Temporary Speaker, Sir, I had said when I was moving this Bill that Article 38 fundamentally guarantees their freedom to political association and political freedom. Most of those who spoke waved that Article before you as a way of trying to say I am moving a Bill that will be unfair to Kenyans who have served as governors and who still want to continue being in leadership as Senators.

What the Bill is simply saying is, yes, you have served your 10 years as governor. Yes, we are not presuming you as being guilty in your course of service for those 10 years, but what we are saying is, can you at least cool off for five years and allow the relevant Government agencies to do their jobs? If we feel you are okay enough, then you can seek election either as a Senator or Member of the County Assembly (MCA), or any other office for that matter.

We already have a living example. Members of the Independent Electoral and Boundaries Commission (IEBC) who have served their full terms are not allowed in law to seek election in any elective position for a period of five years immediately after serving their full term. This is not Sen. Chimera saying; it is the law.

Mr. Temporary Speaker, Sir, what is good for the goose must equally be good for the gander. It cannot be that we are limiting certain citizens in this nation from seeking elective positions and still allowing other special citizens in the name of former full-term governors to immediately seek election.

The nation recently has witnessed a lot of political upheavals. The young men and women of this country have spoken their minds and for the first time, I want to applaud them that they have taken the bold step to be willing to participate and engage in a discussion that secures their political future. This allows them to freely air their voices and that the leadership of the day has room to listen to them, engage them and institute reforms that are applicable across the board.

The young men of this country have spoken against the much opulence that we witnessed in the past and the blatant arrogance that some of our leaders in this House, in the other House and various other elective positions have shown in the past few days and very many years. They have spoken on the need to sanitize our politics, fix our governance and question our leadership.

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I thank them for that bold step and for the first time as a country, I hope and I am persuaded that we are headed in the right direction; that people in this nation can freely exercise their democratic minds, that we can hear those who are disgruntled and that people in positions of power or leadership can be willing to engage in a much more structured dialogue and conversation that safeguards and secures the interests of every single Kenyan. The Kenyan from Kwale, Turkana and Baringo has a say in the governance and leadership of this nation.

Mr. Temporary Speaker, Sir, as I beg to reply, I also want to say that even a very good leader knows when it is time to leave. As I conclude, I wish to humbly appeal to my colleague Senators to support this Bill and make sure that it becomes law, so that for the first time in the history of this great nation, history will not judge us harshly. That, we had a chance to fix and sanitize our leadership question and we failed to do that. I humbly urge my colleague Senators to be persuaded by this Bill.

With those remarks, I beg to reply and request that the putting of this Question be deferred to a later date, pursuant to Standing Order No. 66 (3) of the Standing Orders of this House.

I thank you.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. Chimera. The putting of the question is deferred to the next Sitting of the House, pursuant to Standing Order No. 66 (3) of the Standing Orders of this House.

(Putting of Question on Bill deferred)

Clerk, call the next Order.

PAPER LAID

REPORT OF THE COMMITTEE ON FINANCE AND BUDGET ON COUNTY GOVERNMENTS' NOMINEE TO THE SRC

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I rise to lay on this Table, today, 23rd July, 2024, the Paper from the Committee on Finance and Budget, being a report of this Standing Committee on the nominee by the Senate, on behalf of county governments, to the Salaries and Remuneration Commission (SRC).

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

*(The Temporary Speaker (Sen. Wakili Sigei) consulted with
Sen. Mariam Omar)*

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MOTION**ADOPTION OF REPORT ON ALLEGED IRREGULARITIES IN
PROCUREMENT OF LONG-LASTING INSECTICIDE TREATED NETS**

Sen. Mariam Omar: Thank you, Mr. Temporary Speaker, Sir. I rise to move the following Motion-

THAT, the Senate adopts the report of the Standing on Health on the inquiry into alleged irregularities in the procurement of long-lasting insecticide treated nets at the Kenya Medical Supplies Authority (KEMSA), laid on the Table of the Senate on Wednesday, 8th May, 2024.

The Senate Standing Committee on Health is established under Standing Order No.218 (3) of the Standing Orders. It is mandated to consider all matters relating to medical service, public health and sanitation.

On 15th May, 2023, Hon. Felix Koskei, the Chief of Staff and Head of Public Service, released a press statement regarding allegation of Kenya Medical Supplies Authority (KEMSA) in management and administration of various medical programmes being undertaken by Kenya in conjunction with development partner.

In the statement, the Head of Public Service noted that the regular verification exercise of Global Fund has revealed alleged maladministration on the part of KEMSA with regards to procurement of treated mosquito nets for vulnerable household.

In line with the Government commitment to promote accountability and openness in the management of public affairs, the statement went further to announce the termination of the then Principal Secretary, the State Department of Public Health and Professional Standard, Ministry of Health, and the provocation and consequent constitution of KEMSA board, the suspension of the then Chief Executive Officer (CEO) of KEMSA, the appointment of an acting CEO and suspension of various staffs at the agency.

In regards to that, the Committee noted key issues of determination and centered the following issues-

(1) Specify the allegations and irregularity of the procurement of Long Lasting Insecticidal (LLI) nets.

(2) Clarity on circumstance that led to cancellation of tender procured.

(3) Clarity on what reservation Global Fund has with regard to the tender.

(4) Clarify on a specific timeline for the procurement of LLI nets as agreed between the Global Fund and KEMSA.

(5) Clarity on allegations of undue interference on operation of KEMSA by the line Ministry.

(6) Clarity on circumstance that led to termination and suspension of Ministry of Health (MOH) and KEMSA officials.

Mr. Temporary Speaker, Sir, as a Committee, we interrogated the key institution related to the inquiry on that issue, that is MOH, Ministry of Economic Planning and

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National Treasury, KEMSA, Public Procurement Regulatory Authority and PriceWaterhouseCoopers (PWC) as the Global Fund agent.

On that inquiry, we got these recommendations-

- (1) The Senate to amend the Public Procurement and Asset Disposal Act.
- (2) Automatic disqualification of any companies that failed the national tender evaluation process in a donor funded program from further considerations and consideration by the donors to minimize potential abuse.
- (3) Implementation of measures to prioritize the local manufactured goods in both public and donor driven procurement, where applicable.
- (4) Review the structure relationship between the Government of Kenya and the Global Fund to prioritize user department in case the Ministry of Health is a principle rather than subsidiary in the programme related to the mandates.
- (5) Dispense the Global Fund management units at the National Treasury and full transfer of its responsibility and function to the Ministry of Health.
- (6) Application by the Ministry of Health to the National Treasury for KEMSA to receive its own direct votes head for the operationalization.

Mr. Temporary Speaker, Sir, for this comprehensive summary of the Committee findings, observations and recommendations in relation to the enquiry have been included into the body of the reports we have tabled.

On behalf of the Committee, I wish to thank various stakeholders who came before the Committee and submitted their views, including the Cabinet Secretary for Health, the Principal Secretary (PS) National Treasury, the officers attached to the Global Fund Management Units at the National Treasury, the current and former boards of the management of the Kenya Medical Supplies Authority (KEMSA) and the Director General Public Procurement Regulatory Authority (PPRA) PricewaterhouseCoopers (PWC) the Global Fund Agency. I also thank the Office of the Speaker and Clerk of the Senate for the support during the entire process of considering this matter.

It is now my pleasure, duty and privilege to present this Report of the Standing Committee on Health for the consideration and approval by the House, pursuant to Standing Order No.213 (6) of the Senate Standing Orders.

I move the Motion and ask Sen. Chimera to Second.

The Temporary Speaker (Sen. Wakili Sigei): Proceed, Sen. Chimera.

Sen. Chimera: Mr. Temporary Speaker, Sir, I beg to Second.

(Question proposed)

The Temporary Speaker (Sen. Wakili Sigei): Hon. Members, I see that we have a request to speak to this particular Motion. I will ask Sen. Mungatana, MGH to proceed.

Sen. Mungatana, MGH: Thank you, Mr. Temporary Speaker, Sir. I hope to just say one word, so that the Mover can reply. If Kenyans can recall, these were the beginnings of the new administration when President William Ruto had taken over. They were hit with a scandal of the Malaria nets. Very prompt action was taken against KEMSA and its administration. In fact, the Principal Secretary was removed from the position and many

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Kenyans lauded this step that was taken against obvious mismanagement of funds that belonged to the Kenyan people. Somewhere along the line, that spirit totally disappeared. There is a plea by the young men of Kenya today for the spirit of taking action against public officers who fail to live to the ethical standard that is required of them be applied.

The call by the young people is that we must manage our resources properly. It is a reminder that we must go back to the spirit of 2022, when we took over Government. We must take action promptly when things can happen, so that the Government of William Ruto, which has performed so much, can be remembered for the good things it is doing. My prayer is that we shall go back to that spirit. If people mess up, they go.

I thank you.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Mungatana, MGH, you will have 18 minutes remaining, when the House resumes, to conclude on your contribution to the Motion.

ADJOURNMENT

The Temporary Speaker (Sen. Wakili Sigei): Hon. Senators, it is now 6.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Wednesday, 24th July, 2024, at 9.30 a.m.

The Senate rose at 6.30 p.m.