

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 31st July, 2024

Morning Sitting

*The House met at the Senate Chamber,
Parliament Buildings, at 9.30 a.m.*

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

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

The Speaker (Hon. Kingi): Clerk, do we have quorum? Serjeant-at-Arms, kindly ring the Quorum Bell for 10 minutes.

(The Quorum Bell was rung)

We have quorum now and we will proceed with today's business.
Clerk, please, proceed to call the first Order.

MOTION

ADOPTION OF REPORTS OF THE AUDITOR-GENERAL ON FINANCIAL STATEMENTS OF VARIOUS COUNTY ASSEMBLIES

THAT, the Senate adopts the Report of the Select Committee on County Public Accounts on its consideration of the Report of the Auditor General on the financial statements of West Pokot County Assembly for the Financial Year 2018/2019 and Reports of the Auditor General on the financial statements of Isiolo, Kiambu, Kitui, Marsabit, Narok, Nyamira, Trans Nzoia, West Pokot and Murang'a County Assemblies for the Financial Year 2019/2020 laid on the Table of the Senate on Thursday, 7th March, 2024.

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(Sen. M. Kajwang' 30.4.2024)

(Resumption of debate interrupted on 30.4.2024)

The Speaker (Hon. Kingi): Hon. Sen. M. Kajwang', you have the Floor. We will defer that Motion and proceed to Order No.9

(Motion deferred)

MOTION

ADOPTION OF REPORT ON DESTRUCTION OF SIANY WETLAND IN NYAMIRA COUNTY

The Speaker (Hon. Kingi): The Chairperson, Standing Committee on Land Environment and Natural Resources, you have the Floor.

Sen. (Dr.) Lelegwe Ltumbesi: Mr. Speaker, Sir, I beg to move 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 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.

Mr. Speaker, Sir, the Senate Standing Committee on Land, Environment and Natural Resources at its sitting held on 14th June, 2024 adopted its report on the Petition by the Siany residents on the destruction of the 41 hectares Siany Wetland LR No. North Mungirango/Magwagwa II/403 and tabled it in the Senate on Tuesday, 23rd July, 2024.

At a sitting of the Senate held on Tuesday, 13th July, 2023, the Hon. Speaker of the Senate reported to the Senate that a Petition had been submitted to the Clerk by the Siany residents of Misambi Sub-Location in Nyamira County concerning the degradation of the Siany Wetland brought on by the activities of the Kenya Prisons Services (KPS), a section of the community members through cultivation and construction of structures and a primary school built on this land.

Pursuant to Standing Order No.238(1), and the Fourth Schedule of the Standing Orders of the Senate, the Petition was committed to the Standing Committee on Land, Environment and Natural Resources.

The Committee proceeded to seek for responses from the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry and the Cabinet Secretary, Ministry of Interior and National Administration to address the issues raised in the Petition.

As a background in brief for the hon. Senators to understand the intentions, the contents of the Petition were -

(i) Siany Wetland is a community land situated in Misambi sub-location in Nyamira County that had been set aside for grazing and registered as a common grazing

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area under Gusii County Council and is a major water catchment area in the region that serves as a source of fresh and clean water for the community. However, the water sources have now been polluted with waste material due to human activities, posing a great risk to the residents.

(ii) Degradation of the wetland has been occurring through activities of the KPS for the last 14 years, a section of the community members through cultivation and construction structures and a primary school built on this land.

(iii) The destruction of the Siany Wetland was brought to the attention of the National Environment Management Authority (NEMA), Water Resources Management Authority (WARMA) and the Ministry of Environment in 2010.

Subsequently, NEMA gave orders for the stoppage of construction on the land and issued an environmental restoration order in the same year.

Mr. Speaker, Sir, following extensive scrutiny, the committee made the following observations in line with the prayers of the petitioners as follows:

Prayer one; the committee stops the destruction of the wetland and ensures that the ecosystem is conserved and preserved for future generations.

The committee observed that there were efforts by the KPS geared towards restoration and conservation through the protection of water springs, tree nurseries, afforestation programmes, donation of tree seedlings, promotion of fruit farming and peacekeeping missions as detailed in the Ministry's submission.

The committee observed that Nyamira Prison occupies an area that is fragile and prone to environmental distractions. Consequently, the institution has a duty to prevent further degradation and maintain the ecological and other functions of the wetland as outlined in Regulation 14 of the Environmental Management and Coordination Wetlands, Rivers, Banks, Lakes, Shores, and Sea Shores Management, Regulation 2009.

To address this, the committee observed that there is a need for the development of a comprehensive Environmental Management Plan (EMP). This EMP should focus on preventing adverse environmental impacts, mitigating pollution and ensuring compliance with environmental regulations.

The plan should also aim to improve the current environmental conditions and support the long-term conservation and preservation of the wetland ecosystem, hence, collaboration with NEMA and other relevant stakeholders will be essential in achieving these goals.

Prayer two; the wetland be protected from being subdivided by the National Land Commission (NLC) and the County Government of Nyamira through clear and correct boundaries and beacons put in place.

Observation one on that prayer; based on the submissions and evidence from the petitioners and respondents, the committee observed that there is significant concern about the potential subdivision of the wetland. The County Government of Nyamira has not yet developed a physical development plan for the disputed land.

The land boundaries were established by the County Survey Department, not by the prison's wardens. There is an ongoing encroachment by the community members and institutions.

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Two; given the sensitivity of the Siany Wetland and its ecological importance, the committee observed that there is need for the question before any further subdivision is considered. The conservation of the wetland should be a top priority for the County Government, the KPS and the local community, establishing clear and correct boundaries with proper public participation is essential to prevent further encroachment and ensure protection and preservation of the wetland.

Prayer three; the Land, Environment and Natural Resources Committee directs NEMA to work with the community to restore the wetland and springs emanating from it to their original status through environmentally friendly activities.

Firstly, the committee concurs with the petitioners that it is the responsibility of the EMCCF to ensure that NEMA develops and implements robust programmes and plans that actively involve the community. This includes educating the community and KPS on the best land use practices, engaging them in environmentally friendly activities and promoting sustainable agricultural practices.

Secondly, the committee supports the petitioners' call for NEMA to work closely with the community to restore the wetland and its springs to their original state, thus ensuring long-term conservation and ecological balance.

Enhanced collaboration among all stakeholders, including the County Government of Nyamira is crucial to the success of these initiatives.

Mr. Speaker, Sir, the committee, having investigated the matter in accordance with its mandate under the Standing Order No. 228(4) of the Senate Standing Orders, recommends that;

(1) The KPS, in collaboration with NEMA and under the guidance of the Ministry of Environment, Climate Change and Forestry, develops and implements a comprehensive EMP to prevent environmental degradation, manage waste effectively and promote sustainable activities within the prison's operations, ensuring compliance with all relevant environmental regulations and improve the current conditions of the wetland by 31st December 2024.

(2) A moratorium on further subdivision of the wetland should be enforced by the County Government of Nyamira until a comprehensive physical development is in place.

The County Government of Nyamira, in collaboration with the Ministry of Lands, Public Works, Housing and Urban Development and the NLC, should conduct a public participation exercise to establish clear and correct boundaries marked by beacons to prevent encroachment and ensure the protection of the wetland. This should be done by 31st December, 2024.

Further, the Ministry of Lands, Public Works, Housing and Urban Development should begin the process of issuing ownership documents to the uncontested areas since most of the land has been surveyed;

(3) With support from Ministry of Environment, Climate Change, and Forestry and the County Government of Nyamira, NEMA is required to develop and implement programmes to engage and educate the local community and the KPS staff on the best land use practices. Focusing on the environmentally friendly activities, sustainable agriculture and the importance of wetland conservation through regular workshops,

training sessions and community meetings to foster collaboration and commitment to conservation efforts.

(4) NEMA shall lead efforts to restore the wetland and its springs to their original state, including replanting indigenous trees, removing hazardous tree species and implementing soil and conservation measures with the County Government of Nyamira and the KPS providing resources, the manpower and the local community actively involved in the restoration activities;

(5) NEMA, Ministry of Environment, Climate Change and Forestry and the County Government of Nyamira shall establish monitoring and a reporting framework to track the process of the conservation and restoration efforts, conducting regular site visits and assessments to ensure compliance with the Ministry, the EMP and other conservation measures, documenting and sharing results with all stakeholders, including the Senate Standing Committee on Environment, Land and Natural Resources, to ensure transparency and accountability.

(6) The Environment and Land Court expedites the resolution of the ongoing land disputes involving the Siany Wetland.

(7) The Ministry of Environment, Climate Change and Forestry works together with the Ministry of Interior and National Administration to train and educate staff and wardens in Nyamira Prisons on the best practices on matters of environment conservation.

I thank you.

The Speaker (Hon. Kingi): You are supposed to move and request any Senator of your choice to second.

Sen. (Dr.) Lelegwe Ltumbesi: Mr. Speaker, Sir, I beg to move and request Sen. Chute to second.

Sen. Chute: Mr. Speaker, Sir, I second.

(Question proposed)

The Speaker (Hon. Kingi): The Floor is now open for debate. Proceed, Sen. Maanzo.

Sen. Maanzo: Thank you, Mr. Speaker, Sir, for giving me an opportunity to contribute on this important Petition.

From the explanation by the committee, those are 41 acres of a wetland that has gone to waste. It even has an LR number, plot number and a title deed, but it is a riparian area, being part of a river system.

We thank the people of Nyamira for coming to this House to protect their environment. The issue of the environment has become a worldwide affair. It is shocking to find that people do developments on riparian or wetland areas.

The fact that it is a wetland, it means when the rains are at their highest, it is likely to be inhabitable by human beings or filled by water. Therefore, no human development like construction can take place there because it will be destroyed at that particular moment.

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This land is good for public use because it helps in preservation of water to keep the rivers downstream running. Secondly, ordinarily, wetlands are riparian areas under the control of counties. Though the public may have access, it is not to be alienated or subdivided for further human activity. Therefore, an effort to preserve the environment is important.

This should serve as an example to many other wetlands in Kenya and many parts of the world. You will find wetlands even in dry areas in many parts of the world. There are areas where water does not move.

You will find natural ponds or small lakes there. God had his own way of making sure that water is preserved in those areas, so that animals and human beings can find some water somewhere as they migrate. I am sure many Members here will bear me witness that this is very common even in dry lands.

It is even more important in a wetland like Kisii. When there is drought in the country, these are important water and forest conservation areas, with natural habitation and natural trees growing there. Certain animals like pythons survive there. They could be a source of tourist attraction, despite the dangers they may cause to other animals and human beings.

A wetland is important. That particular one is quite substantial. Therefore, preservation of the environment is important.

This is a sort of responsibility we expect from Kenyans, just like what the people of Nyamira did. Wherever there is land to be preserved, it is not upon human activity around the area to cover up the wetland by putting more soil into it, like it happens in many parts of the country.

Mr. Speaker, Sir, I had the privilege of making regulations in this area as a Member of the Committee on Delegated Legislation. Water Resources Management Authority (WARMA) brought regulations to this effect. It got the committee and the Senate to think how best they can be preserved with the best regulations and public participation to make sure that the public is aware.

Public participation has been abused. Many times, ideas come from the public, but they are never adopted or taken into consideration when it comes to making of laws.

I would like to reiterate that views from the public could be helpful to lawmaking because there are quite a number of specialists out there who may not be in this House, but their input in public participation is important. We insisted that public participation is important whenever you are dealing with the issue of riparian areas or wetlands.

Surprisingly, you will find the same members of the public settling in those wetland areas. When there are floods, they have to be removed at the public expense. Even deaths ensue quite unnecessarily. Therefore, county and national governments have to take precautions much earlier.

I like it that the matter has been taken to court. The committee has encouraged public participation and a bipartisan approach by the people, including Government institutions in those areas. In fact, this area should be protected by the Kenya Wildlife Service (KWS) to make sure that wildlife in that particular place is preserved for purposes of natural resources.

Now that the world is facing the issue of climate change and we are trying to clean air through carbon credits, this particular area should be developed. We need to ensure it is protected. The natural vegetation should be preserved and the grass allowed to grow. All the animals inhabiting that place should be allowed to thrive.

Mr. Speaker, Sir, we know there are challenges of land in Kisii. However, the land should be left for public use. Everyone should have access to, but not for development or other human activities such as agriculture.

It has been reiterated by the committee that during dry season, that is an area where people can communally graze. They should have a method of making sure that anyone with animals can access the area, but in a controlled manner, so that it does not end up being damaged, but preserved for future generations.

Environment is one of the key issues in the world today. We have environmental law, which is supposed to ensure preservation and management of the environment, but that is a personal responsibility which has been lacking in our nation. That is very important.

Kenyans need to begin to own everything, which is our heritage. They need to own the wetlands and riparian. We do not need to pollute them so that rivers can be clean for the communities, which live downstream. It goes on to personal and public responsibility so that every Kenyan is conscious and preserves the environment for the future.

Mr. Speaker, Sir, I thank the committee for the good work it has done in helping resolve the issues relating to the people of Nyamira and this particular wetland. It is our constitutional duty to make sure that we resolve issues coming from the people of Kenya, whom we represent.

I support.

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

Sen. Mungatana, MGH: Mr. Speaker, Sir, I thank you for allowing me to also contribute to this Motion.

First of all, I thank the Senate Committee on Land, Environment and Natural Resources for the good work they have done through this report and I support their recommendations. Indeed, it is good to protect the environment and to protect the place where the people of Nyamira are living.

I will raise two issues, first, the KPS is mentioned here in this Petition by the residents of Nyamira as being one of the agencies that is polluting their natural environment. The fact of the matter is, for all of us who come from rural constituencies or counties know how critical and important wetlands are, especially during the dry season. When there is no rain anywhere else, everybody converges there because livestock must survive the difficult time until the rains come again.

It is sad to hear that the KPS is also part of the agencies where the complaints have been laid by the residents of Nyamira. The KPS across the country, including in Tana River County, have taken a lot of land from residents and counties. It is gazetted without any public participation. Sadly, it has gone even into wetlands such as the one this Petition has stated.

In Tana River County, for example, it has taken prime land right along the road. In Hola or Minjila, they have taken sizeable parcels of land. The problem is that we do not need so many jails. What we need are correctional facilities or places where we can train people to be good, but not places where we jail them.

This land that is taken sometimes conflicts with the development aspects of the people. I urge the KPS to have self-questioning and return the parcels of land that are in some of the places that they do not need. For example, in this wetland, one of the best solutions and gifts that the prisons can give to the people of Nyamira is to surrender this land. Move from this place and go to another area where you will not be accused of polluting the environment.

Mr. Speaker, Sir, when the residents are complaining and we know that you took the land without any public participation---

(Sen. Cheruiyot received a phone call in the Chamber)

The Speaker (Hon. Kingi): Senate Majority Leader, you may want to take your calls out of the Chamber. May the Senator be heard in silence, please?

Sen. Mungatana, MGH: Mr. Speaker, Sir, when we know that, the people did not participate in alienating that land to the KPS and they took it, the people are now saying your activities and other human activities are encroaching on this land and they are disturbing the environment of this area. It is time they think about moving to other areas.

I also support the stand by the committee and the recommendation that the County Government of Nyamira should issue a moratorium in terms of alienating any more land until a proper environmental plan is set out and implemented.

I am surprised that the County Government of Nyamira does not have an environmental plan for a wetland. This is a terrible thing that needs to be corrected. If the Senate Committee has found that a county does not have an environmental plan for a wetland, this is a huge indictment on the County of Nyamira and they ought to do something about it.

This moratorium should not stay forever. The county must come up with a plan, even if it is a bad plan. That bad plan will give way to a good one when maybe a new governor comes and that good one may give way to a better plan and that better one may give to a best plan when new administrations come into place. Nonetheless, it is terrible that a whole county does not have a plan for a wetland.

I thank the Senate Committee for pointing out this. I hope the governor and his teams in Nyamira are listening to the Senate today as we are talking about this report. We, as a nation, are not happy to hear that a county does not have an environmental management plan for a wetland that is critical to people who are living within that area.

I am pleading with them to take it upon themselves and the County Executive Committee Member (CECM) for Land, Environment and Natural Resources to work on this, but not just to sit on a moratorium to stop people from alienating the land.

One of the things I want to mention is that we all know that human development and the protection of the environment are always in competition. Human habitation and

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how they use the land is always in competition with environmental protection. When you want to keep the land undisturbed and it is pristine, it has problems when also development wants to be carried out. For instance, it is possible to discover gold in a place, which is environmentally supposed to be preserved.

Additionally, we need to have a balance and in particular, I am bringing to your attention that the agency called the Kenya Forest Service (KFS) sometimes does things that do not make sense. For example, in Tana River County, we have had human habitation along the Bangale area. Bangale is an old settlement. It has been there for many years, all the way to Bulto Banta as you go towards Garissa. This is an area that has been in settlement like forever and people have lived there.

Bangale is a big town and a lot of settlements are there. Therefore, if you go down all the way to Madogo on your way to Garissa County, all of a sudden, KFS has said this is our forestland. They went ahead to gazette the forestland without public participation. Right now, some very important donors have come to Madogo and they cannot do any form of development. They want to alienate the land so that they can do something for the residents. The County Government was not aware when the KFS went to gazette a forest area.

Mr. Speaker, Sir, we were with you in Bangale when the residents, through their Member of Parliament (MP), were complaining that they cannot expand the land. In fact, the town itself has been put under forest. The KFS needs to be more reasonable. You cannot come and declare a forest where people are living and stop people from developing. Then, people cannot expand or do planning of the town.

The World Bank has given us some money so that we can properly urbanize our towns like Madogo and Bangale. However, you will find that agencies such as this, which I call land grabbers, have wronged the people of Tana River County. These people are not talking about wetlands like we the one in Nyamira County. These are not wetlands; they are areas which are already occupied by human beings. These are not forests, they are in town. Someone declares it a forest and have put that notice after the people are already there and there is no public participation.

Mr. Speaker, Sir, I am also taking this opportunity to say even though we have to preserve the environment, there are agencies that must not misuse this whole blanket on preservation of land, to do things that are wrong to the people. The people were there before.

I have mentioned the KPS which was mentioned in this Petition that they have interfered with an environment that is supposed to be a pristine environment and reserved as a wetland. I am also mentioning the KFS, which is being totally unfair to Tana River County. You cannot go to villages where people are living and towns are in existence and then you gazette that area in the name of protecting the environment while the County Government is not aware. The area is not even a wetland.

I am taking this opportunity to also ask Government agencies not to misuse these powers. We know that they come in the name of preservation of the forest. The next thing you will hear, the same forests have been alienated, and people have been given those forests. We know what has happened in Nairobi in all these forested areas. You are told

this is Ngong Forest and so it is not available for alienation. However, later on, some important people come and take the land and develop it.

We know KFS tricks and what they want to do in Tana River County. We pray that you will desist and resist the temptation to rob the people of their land. Next time, when you want to gazette any land for whatever reason, you have to do public participation and involve the county governments. Let this mentality of old times, when people could do anything in this country like the other people are not shareholders, must change.

The people in those departments must change with the times. We changed into the current Constitution. There are a many people who are in senior positions that have not changed with the current Constitution. People are still behaving like we are in the previous Constitution where they could do anything. Nowadays, public participation is, indeed, a critical principle of governance. We urge the KFS to do the same.

I want to take this opportunity to also congratulate the nominee for Environment and Natural Resources. I hope the National Assembly will pass him. If he passes, the test of the committee on approval of appointments, I hope he will sit down and look afresh because he is our neighbour. He passes through that area and knows that Bangale and Madoga are not forest, they are towns.

We pray that when hon. Duale is approved and gets into the Ministry, he will look into these problems afresh. Yes, let us conserve the environment, but let us also not give carte blanche to Government departments to misuse those powers by allocating lands that they do not need. They deprive people of their natural lands.

Mr. Speaker, Sir, with those many remarks, I support this report. However, I also pray that Government departments will be sensitive to people's needs so that they do not misuse the name, "protection of the environment" to deprive people of their natural heritage and richness, which is the land where they occupy. We thank the committee that worked on this report for all these recommendations. We support them. We also want the various departments in Government to be sensitive before they go declaring places as forests, as has happened in Tana River County. I hope the new Cabinet Secretary will find it in himself to listen to the people of Tana River County and change some of those mistakes that were done under previous holders of that office.

With those many remarks, I support this report.

I thank you.

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

Sen. Ogola: Mr. Speaker, Sir, I supported this Petition right from the word go. It is important that, as Kenyans, we note that all this public land that we have in this country was acquired from the people of Kenya. At the acquisition and adjudication level, these lands were being set aside for a particular usage by the people of Kenya. The Siany area was set aside as indicated in the Petition, for grazing and community purposes.

Mr. Speaker, Sir, when the people of Kenya are struggling with issues of land, especially land that was set aside for public use, I ask myself where the National Land Commission (NLC) in this is. In 2010, the people of Kenya spoke with one voice and indicated that they wanted public land to be managed differently.

The NLC has a mandate of managing land that is public on behalf of the national and county governments. This is where the management of Siany, which is a wetland and public land, should have been. It is also ironical, as has been stated by my colleagues, that we have the Government struggling with a lot of activities and dealing with aspects of climate change. However, in Siany Wetland, we have another Government entity that is contributing to the destruction of a wetland.

The issue of physical planning also comes in this Petition. The Department of Land at the county government should have foreseen that as the population rises, there is a need to review some of the physical plans; that we have this wetland, but we equally have the populations growing. So, what should happen? Development and physical plans are reviewed over a period of time, specifically in a 10-year plan.

That is why I say the County Government of Nyamira should have foreseen that as population increased, they needed a primary school and the prison as indicated probably needed some space. However, this must be brought in a harmonized plan so that people live in Siany peacefully.

Mr. Speaker, Sir, in the Petition, we see that there is interference with the source of fresh and clean water for these people. We all know that water is a basic need and it is a source of livelihood. We have often seen that when our communities lack water, there is insecurity because people are struggling to get water for themselves and livestock. That is why we must preserve these sources of water for both domestic use and grazing.

As I support this Petition, that the remaining parcel of land must be set aside, ring-fenced and must be kept for the community to graze their livestock as was intended initially. I also request the County Government of Nyamira to enhance their restoration programmes for the Siany. This wetland must be preserved.

We can now see that the KPS has come in and have put up buildings. Some of them are shanties and now we are seeing a lot of pollution in the streams around the Siany area. With pollution, we know there will be health issues. It is important that the county government enhances their programmes.

Mr. Speaker, Sir, as I support this, it is also pathetic that the KPS is leading in the degradation of this wetland. A primary school has been built for the people of Siany, the Physical Planning Department of Nyamira County must move ahead to protect all the other areas. As I indicated earlier, the NLC must up their game.

As a committee on Lands, Environment and Natural Resources, we deal with many petitions from all areas involving the NLC. I, therefore, call upon the new nominee for the Ministry of Lands, Housing and Urban Development that when the vetting is done and he resumes office, the issue of NLC must be looked into. From the observations I have had in the Committee on Land, Environment and Natural Resources, this NLC seems to be struggling. They are either not facilitated well.

Mr. Speaker, Sir, the sector needs to review some of their functions. If they are not able to serve Kenyans, then their mandate must be looked into. Last week, we were dealing with a statement from our sister, the Senator for Isiolo. This is a problem and a challenge she has had with the NLC for over one year, which is unresolved. Every time, it looks like NLC is unable to solve it.

When the new Cabinet Secretary comes in after vetting and appointment, he must ensure that the NLC functions as expected by Kenyans. This is a commission that Kenyans had a lot of expectations on. As the managers of public land, they must be able to solve a number of problems that Kenyans have with land issues, especially public land as stated in their mandate.

Mr. Speaker, Sir, I support this Petition and the fact that the land is still left open, unused by the KPS and not occupied by the primary school be set aside and restored; and afforestation programmes be initiated. Also, this land must be set aside for the original use of grazing by the people.

In addition, physical planning must be done by the County Government of Nyamira. They must zone these areas and preserve land as was initially expected by the people of Nyamira. Where there are changes to the use of land, it is important that our people are involved and their aspirations are carried into such change of use.

Mr. Speaker, Sir, I thank you.

The Speaker (Hon. Kingi): Sen. (Dr.) Bonny Khalwale.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. Every time we deal with petitions in this House, it gives me hope that the Constitution of Kenya 2010 is the solution to the future challenges in this country.

Mr. Speaker, Sir, if this House goes on and adopts this report, it will go down on record that we can use petitions to secure public interest. More importantly, it check the thirst and greed of some Kenyans who want to own public property when in effect, they do not need it.

If you were to dissect the people who are now encroaching on this land, you will find that some of them are former civil servants who worked in that area. In the bad old days, they allocated part of that land to themselves. However, now in retirement, they are struggling in courts to justify that property which they unjustifiably converted to personal use is theirs.

Mr. Speaker, Sir, I thank all Members of this committee led by their chairperson for the good they have done. I specifically want to single out a few bullets that have caught my eye.

If you go to bullet No. 64 in this report, we are told that the KPS has put temporary offices and staff quarters made of iron sheets and that they have gone further and put up a permanent structure measuring approximately, 6 x 4 metres for housing 33 inmates.

Mr. Speaker, Sir, how the Government went sleeping and allowed itself or a section of itself called the KPS to interfere with the ecosystem of this area in the County of Nyamira begs many questions. The wetland has also been allowed to host Siany Primary School. How people woke up and started constructing a primary school on this wetland, when we have offices in the Government, including county commissioners, district land officers and NEMA beats logic.

I ask myself all these people involved report to the office from Monday to Friday and from 8.00 a.m. to 5.00 p.m.; how come they never saw that the wetland was being destroyed by putting up a primary school?

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In Bullet No. 66, we are told that: “We have farming activities that predominantly attract human activity on the wetland and its surrounding environments. The prison has set aside 20 acres for farming.” The question is what is the core role of a prison? Is it farming? We must stop all prisons in Kenya from doing any farming activity. Their core responsibility is to take care of prisoners.

If they are denied this opportunity, the farmers in Nyamira will have a chance to do business with Nyamira prisons. They will sell their farm produce to this prison and make money instead of setting aside 20 acres under the pretext that the food that comes from these 20 acres is used to feed prisoners. It should never be the case.

This is what the prison officers in Nyamira do: They farm maize, sorghum, beans and millet on these 20 acres and sell to the Prisons Department despite of being paid as officers. So, this is a clear avenue of corruption. It allows prison officers in Nyamira to enrich themselves pretending that they have crops and farm produce that they can sell to the prison's land.

This reminds me of a similar experience we have back home in Kakamega in a place called Shikusa Prison. The officers are doing exactly what is happening in Nyamira.

As such, this report and its recommendations should not only apply to Nyamira, but also Kakamega. Officers come to Kakamega and by the time they leave the station five to 10 years later, they have become multi-millionaires by farming Shikusa Prison land and selling the produce to Shikusa Prison.

Mr. Speaker, Sir, you were in that Chair when I clashed on the Floor of this House during question time with the former Cabinet Secretary for Roads and Transportation. I clashed with him over the issue of Shikusa Prison land because he had proposed from the podium there that they had talked to some Members of Parliament of Kakamega and they wanted to convert it into an airport. I told them it was not right.

You cannot desegregate the environment for the sake of an airport. Therefore, we, the people of Kakamega in general and the people of Shinyalu in particular, are saying never shall we allow Shikusa Prison land to be converted into an airport. We want the current airstrip in Kakamega to be expanded according to the wishes of the 197 families that have signed and agreed to move for expansion instead of going and interfering with their ecosystem.

Bullet No.67 tells us that the land has been encroached upon by members of the community and has been converted to farmland without provision for environmental conservation. This is my appeal to the good people of Nyamira, even as this House sits to deliberate, we shall not allow a section of the people in Nyamira to go into this land.

As such, the Senator for Nyamira should bear with us. I know some members of the community will feel that we are throwing them out. Yes, we are. If you want to get free land, these people who are affected, statistically, there is no fairness because there are just a few of you who want to benefit and it is not justified. The population of Nyamira is 605,576 people.

Sen. Omogeni: On a point of information, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): What is your point of information?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, yes, I would wish to be informed by the Senior Counsel.

The Speaker (Hon. Kingi): Kindly proceed to inform the Hon. Senator.

Sen. Omogeni: Mr. Speaker, Sir, I want to inform my good friend from Kakamega, Sen. Khalwale, that the people of Nyamira have not approached the Senate to get permission to go and settle in that wetland. They have petitioned the Senate so that it can intervene and protect the wetland. Therefore, the submissions that the Senator of Kakamega is making are misleading.

I repeat that the people of Nyamira have not approached the Senate to give them free land. They want the Senate to assist them in ensuring that this wetland is protected and preserved so that they can benefit from a good ecosystem. That is what I wanted to inform, Sen. Khalwale.

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

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I thank the Senator of Nyamira for that piece of information. However, I would also like to urge him to read the report in Bulletin No.67. Senator of Nyamira, I want the people of Nyamira to understand me very well. They are my in-laws. It says-

“The land encroached on by members of the community has been converted to farmland without provision for environmental conservation.”

It is this small section of people from the community who have invaded that I am apologizing to; to understand that we are asking them to leave. It is not because we are denying them an opportunity to till this land, but because of the bigger picture of enhancing environmental conservation.

The Senator of Nyamira, you know you and I have said the same thing. I would like to refer you to the story of the blind man who touched the elephant. Maybe you are the blind one who touched the tail and I am the blind one who touched the ears. We are still talking about the same elephant.

As I conclude, I want to go directly to the recommendations. I agree with all of the recommendations, that is, 143, 144, 145, through to 149. They are solving our problems. However, Members of the committee, let us look at what you are saying in 144. Senator of Nyamira, if you have the copy, I would like us to go to 144. There is a bitter taste in my mouth when I read recommendation No. 144.

It says a moratorium on further subdivision of the wetland should be enforced by the County Government of Nyamira until a comprehensive physical development plan is in place. This recommendation is anticipating the possibility that once you get a physical development plan in place, we can never entertain the possibility of subdivision of this land.

I feel this particular sentence is offensive. It should just be in black and white that the wetland in Nyamira shall never be open to subdivision.

With those many remarks, I congratulate my colleagues who sat on this committee. I support

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

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Sen. Dullo: Thank you, Mr. Speaker, Sir. I join my colleagues in congratulating this committee that looked into the Petition from Nyamira County. I hope the petitioners will get solutions to the current problems they are facing. There is a major problem as far as land acquisition by relevant government institutions in this country is concerned. It is a matter that we need to review.

Mr. Speaker, Sir, looking at the Petition, you can imagine 104 acres of land being owned by certain institution in a place like Nyamira County, where the population is increasing. That is a big chunk of land which – procedurally - should not happen. The land is not also being used in the right manner.

I used to work with the Kenya National Commission on Human Rights (KNCHR) as a convener of a programme that touches on prison services. I remember one time I was actually heading a committee that looked at the issues of prisons in this House. I think it was in 2019 we visited several prison institutions to look at the land use.

Those Government institutions are keeping huge chunks of land, which are not being put to proper use. There is also so much grabbing of the land by different individuals taking place.

Mr. Speaker, Sir, the prisons' core mandate is the rehabilitation of the inmates or rather even the prisoners. However, as it is right now, some of them have over 900 to 1,000 acres of land in several parts of the country that are not properly used.

They might also have a labour force that is already there, but accountability of the land produce is in question because it is not properly accounted for and the land is not utilized properly. There is a big challenge.

The situation in Nyamira County where a Government institution is blocking the usage of water or even polluting the water that is being used by the community is a very serious offense. I feel that we need to review the use and acquisition of land by different Government institutions because it is not being put to proper use. If prisons land is properly utilized it can feed the whole country, but unfortunately is not put to proper use. Something has to be done.

The prisons budget has billions of Kenya shillings of pending bills while they are keeping those huge chunks of land in this country. Those bills should have been paid from the land proceeds they get from the prisons.

Counties are not properly involved in compulsory acquisition and land use. If the land use has changed then the counties should be involved. They should be told this is the direction the planning is supposed to take.

Mr. Speaker, Sir, you will find that the counties sometimes relegate their responsibility to the national Government and do not protect the right of the citizens as required by law. I have seen that there is also the destruction of flora and fauna by Government institutions, which is very dangerous. That has to be investigated properly and the right action be taken against those Government institutions.

I have a similar situation in Isiolo County where a prison has over 10,000 acres within the Central Business District (CBD) and they are not properly using it. It has now become a den of criminals within Isiolo town.

As a county, we have tried to give them an alternative piece of land so that they can move and utilize land outside the CBD. Unfortunately, they are reluctant.

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Most of the issues on land acquisition happened many years before the population had increased. It is high time we reviewed the land acquired by the national Government institutions so that we can have proper planning.

As Isiolo County, we do not even have development land within CBD. Moreover, there is idle land lying somewhere and a prison department is trying to see how they can corrupt the system and give the same land to private individuals. There is a case even in court where somebody has acquired an illegal title.

I believe this committee has done the right thing as far as this Petition is concerned and the petitioners have solutions to this problem. There should be serious thinking as far as land is concerned because most of the counties are affected by compulsory acquisition of land through national Government.

Mr. Speaker, Sir, I have a similar issue on acquisition of land for the purpose of road use in Isiolo County for the Isiolo-Modogashe Road. The NLC is sitting in Nairobi City County and they do not know the challenges people are going through.

The other day, I had a statement before the Standing Committee on Land, Environment and Natural Resources. The NLC decided to go on the ground without even consulting me - the owner of the statement.

They are actually coming up with compensation figures. In Nuno-Modogashe area, compensation was higher than Isiolo town. For example, the law allows that if Isiolo town is coming after Nuno-Modogashe, the compensation should be higher. There is so much corruption that is happening even at the NLC itself in compensating individuals whose lands were acquired by Government institutions.

Mr. Speaker, Sir, I wish these petitioners good luck as far as the recommendations are concerned. Sometimes you will find that we make recommendations here, but we do not have opportunities to follow through and make sure that those issues are recommended.

I hope the committee will look through and ensure that the petitioners have got their rights as far as this Petition is concerned. I believe Senator of Nyamira County is here and he will follow through and see that petitioners have got their rights.

I support.

The Speaker (Hon. Kingi): Proceed Sen. Thang'wa.

Sen. Thang'wa: Thank you, Mr. Speaker, Sir, for the opportunity to also weigh in and support this report by the committee and thank them for listening to every party in coming up with these recommendations.

As a country and as people we are mandated to lead and fight for solutions. It is high time we get out from the areas of promises, planning and statements of I will do or I want to do. We need to go to the areas of I have done nothing so that the people know whether one is capable of holding a certain office in these departments we are talking about.

Mr. Speaker, Sir, I am saying so because if you read this report all the way from paragraph 130, the Ministry of Environment, Climate Change and Forestry said that they are planning and will be doing something. The neighbouring communities who have encroached the wetland will be engaged. The relevant Government institutions, that is, KFS and Kenya Forest Research Institute (KEFRI), will be approached.

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It is time for the department of environment to say that they have done nothing and do not know anything about Siany Wetland.

The Ministry of Interior and National Administration also responded by saying that they will endeavour to restore the wetlands. The wetland, as will be outlined in the Environment Management Plan that will be developed, will be looked into.

If you look at all these issues, there is a problem. The people of Siany said they have 101 acres and the report is talking about 104 acres. However, when you convert 41 hectares, it is 101 acres. The people of Siany Wetland want a solution to preserve this Wetland.

Wetlands should be protected areas. We should come up with a law that they should be protected areas because they are the source of water. These wetlands were initially lakes, but because of many years of degradation and earth movement, they became wetlands because of the flora and fauna.

Even in Kiambu County, we have Ondiri Wetland that was initially 74 acres, but it is now 37 acres. It was actually an old lake. The name Ondiri means an old lake. The people in Kikuyu Constituency have joined hands to preserve Ondiri Wetland.

The Government or the counties should come up with proper policies on protecting these wetlands because they are the source of water. I do not know whether you know that Nairobi water comes from Ondiri Wetland. It is the mother of 40 water springs in the area of Kikuyu and the surrounding plus Nairobi.

I thank the committee because they came up with very nice recommendations, but they should have timelines. This is because if we leave it like that, they will take their sweet time.

You have heard of the Government agency or department that is the KPS. The other entities, that is the Nyamira County Government has nothing about it; they are also planning. NEMA has done nothing; they are also planning. The KFS has done nothing; they are also planning. The NLC has done nothing; they are also planning. The only person who has done something is KPS and it is to take the land.

This report should have given timelines to make sure that the people of Nyamira County are engaged. They should also go to Kiambu County in the Ondiri Swamp. Whatever they do to Nyamira, they do to Kiambu so that we protect these water sources. Otherwise, in future, we will have no water, even in Nairobi and in our homes.

There is a saying that says, "Never drain a river until it dries." What that means is be the person to make sure that river has water by sustaining it, planting the proper trees and coming up with the initiative to protect those areas.

From the report, the petitioners came because they fear that they are going to lose the swamp. Why are they losing the swamp? Some of them are to blame because there is cultivation. They are cutting the indigenous trees so that they can plant. That is why as the Senator of Nyamira County and the Senator of Kakamega County were saying, we should involve them to make sure that they exit peacefully or they do their agricultural activities while preserving the wetland.

There is construction in that swamp. They even have constructed a primary school. If they build a school, they are inviting population. People go where there are schools, water and good institutions. When you build a school, you are already inviting

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people to come close to that. So, the people of Nyamira County should be consulted; public participation must be done so that we preserve this water source.

There is also an issue of pollution, which is all about sanitation, garbage that comes from these homes. If it is not done, even the water that comes from there will be contaminated. It will go downstream to the other areas and you know, we still have waterborne diseases.

As much as we are accepting this report and supporting it, we should invite NEMA and the Country Government of Nyamira after a few months. We also invite the Cabinet Secretary for Environment, Climate Change and Forestry, once he is vetted and approved to take this issue and we tie along the Ondiri Swamp of Kiambu County.

We need to talk to the KFS, the Ministry Land and Physical Planning and the Ministry of Interior and National Administration. This is a multi-agency and department problem that should be solved. Sometimes, I do not understand. This thing has been there for many years and nothing has been done. Somebody somewhere is seated in an office that is mandated to solve these issues and they are doing nothing.

I can give you a good example of my people of Gatundu North, in a place called Gatei, in Muserere Shopping Centre. They have lived for over two months without electricity because the Kenya Power (KP) took a transformer for repair.

For two months, they have not returned that transformer to the people and the people are suffering. The schools there; Gatei Secondary, Gatei Junior Academy and Gatei Primary, did not do their exams because they are printed in schools and they have no electricity.

Animals are suffering because farmers use chaff cutters and they use electricity. They do not have water in their home because they use electricity to pump water.

Insecurity is also another issue. These are some of the things that we are saying somebody is seated somewhere, he or she is mandated to do something but he is not doing it.

I would even suggest that electricity in the homes of the Cabinet Secretary and Principal Secretary in charge of Ministry of Energy and Petroleum be disconnected, so that they can understand what my people are going through. Two months or even one day without electricity is too much.

To preserve these wetlands, I am talking about the Ondiri Swamp and the Siany Swamp, we should have buffer zones so that before you get there, you are cleared. We have to check what you have so that we can avoid pollution and grabbers who take land in the name of preserving it.

We should also have sustainable agriculture. As it is in this report, some people have used it to cultivate. I was actually looking online and I have seen they are even taking the soil to make bricks for their houses. So, you can see they are not only draining the swamp, they are also taking away the soil.

Probably, within a few years, we will have no water if this report is not implemented fully.

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

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

Mr. Deputy Speaker, Sir, as I conclude, we have to support advocacy by those groups that form in the village; the Community-Based Organisations (CBOs) that come up with initiatives to preserve and talk about these swamps. Maybe even the county government should have a budget for such groups because sometimes, they are not aware of their existence. This is so that they can help in the budgets of preserving these wetlands.

I will conclude with a proverb from East Africa that says; “never drain a river until it dries.”

Thank you very much.

The Deputy Speaker (Sen. Kathuri): Thank you, Sen. Thangw’a.

Sen. Omogeni Eric, proceed.

Sen. Omogeni: Thank you, Mr. Deputy Speaker, for also giving me an opportunity to contribute to this report by the Senate Standing Committee on Land, Environment and Natural Resources.

This Petition involves people from my county, some of them who migrated from our neighbouring county represented by the Senator for Homa Bay, Sen. M. Kajwang’.

In fact, the people who vote in Misambi, Mogonga and Nyaobe are communities of Luo-Kisii. I am sure three-quarters of people in Misambi Polling Station migrated from Kadongo. When I am in Nyamira and I want a nice fish, I go to Nyambambo Market because that is where we get very good fish from Homa Bay. So, it is a place that has demonstrated that two neighbouring communities can live peacefully as Kenyans.

Sen. (Dr.) Khalwale, I do not know whether you have such a thing in Kakamega. For us, we have coexisted very peacefully with these brothers of ours from Luo/Nyanza. They control four polling stations where they vote for me and I always lead in those polling stations. We have lived very well.

Sen. Beatrice Ogola can confirm that if she made some traces, she would find a few of her relatives residing either in Misambi, Nyaobe or somewhere around there. So, these are people you can call marginalised.

We have been trying to push for a nomination by proposing names. However, when things reach the Orange Democratic Movement (ODM) Headquarters in Nairobi, they miss out. So, I hear them and I really want the Senate to listen to them.

Mr. Deputy Speaker, Sir, I was trying to inform Sen. (Dr.) Khalwale that, if you read the prayers of the petitioners, they are not seeking consent to settle on this wetland. If you go to page 11 of the report, you will see what they are seeking.

Number one, they want the Senate to assist and direct a stoppage on the destruction of the wetland and that the ecosystem be preserved for future generations. Very progressive Kenyans.

Secondly, they want to stop the NLC and the County Government of Nyamira from subdividing the wetlands. Very progressive Kenyans.

Thirdly, they want the Senate to direct the County Government of Nyamira and the Ministry of Lands---

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The Deputy Speaker (Sen. Kathuri): Sen. (Dr.) Khalwale, what is your point of order? Sorry, Sen. Omogeni, just a minute.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I am sorry that I am interrupting the Senator for Nyamira County. However, under Standing Order No.105, could the Senator table evidence and substantiate that the names of the residents of this region were forwarded to ODM headquarters and they were denied their political rights?

That the ODM party is marginalising these people. Failure to, he should withdraw and apologize because I come from Kakamega County which is predominantly ODM and it has demonstrated that they do not marginalize anybody in Kakamega.

The Deputy Speaker (Sen. Kathuri): Sen. Omogeni, proceed.

Sen. Omogeni: Mr. Deputy Speaker, Sir, Sen. (Dr.) Khalwale used to be a Member of ODM and he ran away. I do not know why he is mourning more than the bereaved. He has no business commenting on the businesses of ODM. Now that he has heard of something called Broad-Based Government, he is trying to again warm up to ODM. We will deal with our issues; we do not need any advice or messages of comfort from Sen. (Dr.) Khalwale. That is meant to distract me.

The point I was making is ---

The Deputy Speaker (Sen. Kathuri): Sorry, Sen. Omogeni. Sen. Beatrice Ogola wants to give you some information. I do not know whether you are able to---

Sen. Omogeni: Mr. Deputy Speaker, Sir, I will be happy to be informed by Sen. Beatrice Ogola.

Sen. Ogola: Mr. Deputy Speaker, Sir, I just needed to inform the Senior Counsel that you do not need to worry about the mention of ODM and any related stake of ODM because that is the order of the day. That party and the party leader are names that must be part of the conversation of Kenya.

The Deputy Speaker (Sen. Kathuri): Sen. Omogeni, proceed.

Sen. Omogeni: Mr. Deputy Speaker, Sir, yes, so just breathe in and out because you will be hearing a lot about ODM and the party leader going to the African Union (AU). Just get used to these things; they will occupy our spaces for a while now.

During Sen. (Dr.) Khalwale's contribution, I heard him try to create the impression that these petitioners have approached the Senate so that they can get a piece of the cake from this wetland. Those are not the prayers in the Petition. That is what I want Sen. (Dr.) Khalwale to get.

Number two; anybody invoking Article 119 of the Constitution and approaches the Senate needs to see that the Senate cares about the concerns of Kenyans.

I have nothing against the Chairperson of this Committee, my friend, Sen. Methu. However, when Kenyans bring a Petition of this nature, complaining that a public entity is trying to divert a river so that they can do construction, the least the people of Nyamira expected is for the Senate committee to physically go to the ground and assess the situation for themselves.

It is sad that reading through the report, the committee merely relied on what they were told by NEMA, the petitioners and the county government. With tremendous respect, I urge my good friend, Sen. Methu that, next time when a community as progressive as this one seeks the preservation of a wetland for the benefit of future

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generations, we make an effort and go to the ground so that we see the picture for ourselves.

When we are preparing a report, we should be telling the Senate of the Republic of Kenya that we had the benefit of going all the way to Nyamira County, saw the activities being undertaken and the current status of that wetland. You can even take photos. The people of Nyamira County are very welcoming, we would prepare bananas for the Senators.

Mr. Deputy Speaker, Sir, I have a big concern that they did not make any effort to visit the County of Nyamira. That is a big---

The Deputy Speaker (Sen. Kathuri): Sen. Omogeni, Sen. Chute is a member of this committee. Are you a member?

Sen. Chute: No, I am not.

The Deputy Speaker (Sen. Kathuri): I saw you doubting that you visited. Sen. Mariam, can you confirm?

Sen. Omogeni: Is there any Member, I do not think there is a Member of the committee.

The Deputy Speaker (Sen. Kathuri): Is she a Member of the committee?

Sen. Omogeni: Are you a Member of the committee? You can confirm if you visited Nyamira. Maybe I did not get it right.

The Deputy Speaker (Sen. Kathuri): Is it true that you did not visit?

Sen. Mariam Omar: No, Mr. Deputy Speaker, Sir. We have not visited Nyamira.

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

Sen. Omogeni: Mr. Deputy Speaker, Sir, that was a big oversight on the part of the committee. I hope you can revisit and make a physical visit to Nyamira.

Sen. Dullo has left. She and Sen. Chute come from counties where they have community land. Community land should be used for the benefit of the people who reside in those counties.

If you read the report, the committee confirms that this is a community land gazetted with a title under the County Government of Nyamira. However, KPS has taken over the land. If you read through the report, they have diverted a river to create way for construction of a prison.

How can we, as a country, allow a Government department to destroy our ecosystem? Are we a normal country? These are people in uniform who carry guns invading our wetland and diverting a river.

Mr. Ijagi who taught me geography in high school told me that it takes many years for a river to change its course and that occurs through a natural happening and not through physical activities. I expected the committee to make a strong recommendation, that the activities being undertaken by KPS should cease forthwith. We cannot allow KPS to come to Nyamira and destroy our springs because it is not right.

Sen. M. Kajwang' will tell you that we borrowed the name from Homa Bay. We call it Kamoti Water Spring. My good friend, retired Chief Ontita, was our chief in Misambi in Nyamira, but he came from Homa Bay. How can we allow KPS to come and divert Kamoti Water Spring and start constructing a prison?

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They do not even have a title deed. If you read through, the committee has made a clear finding that not even the County Government of Nyamira has given any allotment letter to KPS. They are using their guns to take over our wetland. This is something we must strongly condemn.

I was told when I was in school that the Constitution is our supreme law and we all must abide by its provisions. The Constitution clearly states in Article 63 that the only way public land can be used is if it has been transferred from a specific community by way of a legal process to be used for a purpose that benefits the local community.

We know that a prison is a service that is beneficial to the community, but it cannot be at the expense of destroying our environment. I appeal to the national Government to read our Constitution clearly. They should understand that they have an obligation to protect our environment.

I have seen the recommendations in this report. Everything is directed to the county government. Nothing is mentioned about the national Government.

If you look at Chapter Five of the Constitution on Land and Environment, Article 69 has a sub-heading titled; obligations in respect of the environment. It talks about the State and not the county government. The word used there is “shall”, which means mandatory. Article 69(1)(a) states that the State shall-

“Ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits.”

I would like to understand the Cabinet Secretary who has allowed KPS to destroy our catchment in Nyamira, contrary to provisions of the Constitution. The word used implies mandatory. Article 69(1)(f) states that the State shall-

“Eliminate processes and activities that are likely to endanger the environment.”

The activities of KPS on Isiany Wetland in Nyamira are endangering the environment. I expected the committee led by Sen. John Methu to call out the Government for failing to protect the environment. Most parts of this country have what we call water stress because the water tables are deep.

The report confirms that the water table in this area is very favourable. If we allow KPS and others to destroy this catchment area, we will not be fair and kind to the people of Nyamira. The committee has observed that there has been a lot of dumping.

There is a committee that is chaired by Sen. M. Kajwang’. We are among the few counties that have been privileged to receive climate change money as the County Government of Nyamira. I plead with my Governor, Hon. Amos Nyaribo. He comes from Magwagwa Ward where he votes.

He should also be ashamed this morning that he has left KPS to go to his ward and destroy the wetland. What is more worrying is the climate change money that went to the Nyamira County. Maybe Sen. M. Kajwang’ should confirm the figures, but I think we

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have received Kshs150 million. I hope that money has not ended up in the pockets of people in the County Government of Nyamira.

Mr. Deputy Speaker, Sir, in this country, people exchange bribes every minute, both in the national and county governments. You receive money from a donor to assist in climate change, but you pocket it as a governor with your officers. Why can he not take steps to direct the climate change money to rehabilitate this wetland? We want money that is given to us by our donors to impact the lives of the people who reside in our respective county governments.

The idea of people dumping is a shame. I come from Nyamira, but we do not have a sewer system. We dig septic tanks. As a way of addressing the concerns raised by the people of Misambi who are under the jurisdiction of Governor Nyaribo, he should also move with speed to do something to ensure that this wetland is protected. He should utilize money that has been given by our donors to help.

Finally, there is a recommendation that the Environment and Land Court in Nyamira should expedite a resolution of the ongoing land dispute cases touching on Siany Wetland.

I hope the resident judge in Nyamira, without trying in any way to influence how they should rule, should at least determine the cases that are pending before the Nyamira Land and Environment Court, so that the good citizens who are very keen in protecting the environment for future generations can have trust and faith in our institutions.

Mr. Speaker, Sir, I do not want to see what I saw in Meru. We do not want this dispute to be referred to the *wazees* in Nyamira, the way the dispute in Meru was referred to *Njuri Ncheke*. We have our courts so that those who approach them can get solutions.

If we want to go to *wazee*, we can go to *wazee*, but for us to go to court, it means that even the efforts and interventions by them have failed. We do not want the judge without directing him, to invoke what I saw in Meru and refer this dispute to you *Njuri Ncheke*.

Let him decide and whoever receives an order from the court directing them to do anything should comply. I support this Motion, but I hope I can get a second bite on it to have some amendments so that issues that I have raised can be addressed. I also urge the committee to consider making a physical visit, to Nyamira.

The Deputy Speaker (Sen. Kathuri): I give him one minute to conclude. He represents Nyamira.

Sen. Omogeni: Mr. Deputy Speaker, Sir, I, therefore, pray that this committee should decide. This Petition is so important that it necessitates them visiting Nyamira physically to ascertain the physical status of this wetland and also report one-on-one on the activities being undertaken that pose a threat to this wetland.

I support.

The Deputy Speaker (Sen. Kathuri): Sen. M. Kajwang', do you have anything to say on this Motion?

(Sen. M. Kajwang' consulted the Deputy Speaker)

Sen. Mariam Omar, can you kindly reply? No other Senator is willing to contribute. However, I understand you are the one who seconded the Motion. Hence you earned that chance also to talk to that Motion when you were seconding. You lost the opportunity.

Sen. Mariam Omar: Thank you, Mr. Deputy Speaker, Sir. I appreciate those Senators who have contributed to this Petition's report.

I rise to reply to this Petition. There are three prayers and questions. On all of them, we have engaged the Petitioner, the Ministry of Environment, Climate Change and Forestry, the National Environmental Authority (NEMA) and everyone and we came up with this report.

When it comes to Petition, as a committee we have so many petitions but I can confirm the number. In each of the Petitions, there are requests that we have to go to the ground to visit and check for ourselves.

Nevertheless, when it comes to the package of finance, it will be very difficult for us to heed each of the petition's requests for us to visit the counties. Besides, we have taken the request of the Senator of Nyamira, so that at least we can solve that issue.

We have engaged some institutions and recommended that the County Government of Nyamira in collaboration with the Ministry of Land, Public Works Housing and Urban Development and the National Land Commission (NLC), should conduct a public participation exercise to establish clearly and correct boundaries marked by a beacon, to prevent the encroachment of the wetland.

Additionally, the KPS, in collaboration with NEMA under the guidance of the Ministry of Environment, Climate Change and Forestry, need to develop and implement a comprehensive environmental management plan to prevent environmental degradation, manage waste effectively and promote sustainable practices within the prison operations. They should also ensure compliance with all relevant environmental regulations to improve the current condition of the wetland.

Mr. Deputy Speaker, Sir, I think all the information has been raised, but NEMA, the Ministry and the County Government of Nyamira, should also establish, monitor and report in the framework to track the progress of the conservation and restoration of the wetland.

They should conduct regular site visits and assess to ensure compliance with the Environmental Management Plan (EMP) and other conservation measures by documenting and sharing results with all stakeholders, including the Senate Standing Committee of Land, Environment and Natural Resources.

Mr. Deputy Speaker, Sir, with all those comments from the Senators, pursuant to the Standing Order No.66(3,) I request that you defer the putting of question on this Motion to a later date.

I thank you.

The Deputy Speaker (Sen. Kathuri): Since we have no quorum to put the question, we defer the putting of the question to a later date.

(Putting of the Question on the Motion deferred)

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I would advise my senior colleague here, Sen. Omogeni, to work closely with the secretariat so that the issues that he has raised can be captured in the resolutions of this Motion.

For sure, the committee needed to visit this swamp and the community. Therefore, Sen. Omogeni, liaising with the secretariat, you can be able to align your interests on the issues that you have raised.

(Sen. Cherarkey spoke off record)

What do you want to clarify? There is nothing to clarify.

Sen. Cherarkey: Mr. Deputy Speaker, Sir, while I appreciate the concerns and interests of the Parliamentary Service Commissioner, if you can recall when the issue of budget to committees---

Mr. Deputy Speaker, I wish I could capture your attention. While I appreciate ---

The Deputy Speaker (Sen. Kathuri): I can multitask, Sen. Cherarkey.

Sen. Cherarkey: Mr. Deputy Speaker, Sir, according to research, men cannot multitask, but anyway, that is beside the point.

I know the Commissioner is our employer and when he speaks, we must listen. Mr. Deputy Speaker, however, you are the Chair of the Liaison Committee, but I do not have the privilege of sitting at the Liaison Committee.

The information we have had is that committees have had to cut down their budgets. Does it mean maybe the committee did not have enough resources to be able to do county visits to the specific area of Siany? Therefore, even as you direct, you should direct that the secretariat or your office ensure that the committee is facilitated to do a fact-finding mission to the site.

I am sad because the person in charge of our budget, Sen. Omogeni, who is a Commissioner of the Parliamentary Service Commission (PSC) is asking us the hard question why the committee did not visit, yet he knows he has not given us enough resources. You remember many things were being cut.

The Deputy Speaker (Sen. Kathuri): Sen. Cherarkey, I want to rest this matter. Sen. Omogeni, proceed

Sen. Omogeni: Mr. Deputy Speaker, Sir, I want to inform Sen. Cherarkey who is a very good student of mine. I worked very hard to ensure that he is admitted to the role of advocates. He is doing very well. However, it is good for us to have our facts.

The people who appropriate money for us is the Budget and Appropriations Committee of the National Assembly, okay. So, the problem is not the commission. When we know the facts, we are able to argue our case properly.

From our end, the commission makes an adequate request or wish list for the Senate. If I shared with the Senators our wish list to the Budget and Appropriations Committee, if it was granted, we would have had enough money for Senate to run its activities.

The Deputy Speaker (Sen. Kathuri): Sen. Omogeni, let me help you. You do not need to explain so much. He has mentioned that I chair the Liaison Committee and it is on record. I confirm that there is no time that the Standing Committee on the Land,

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Environment and Natural Resources came to the Liaison Committee requesting for more resources to visit Nyamira, and the Liaison Committee was unable to facilitate.

The Committee still has a chance to do that visit. Sen. Omogeni, you can request that visit for the committee to visit officially so that you can also be involved to sort out that swamp. Personally, I have a lot of interest on environmental matters because that is my background. Sen. Omogeni, that swamp should be protected.

Let us go to the next Order. We will go back to Order No.8.

MOTION

ADOPTION OF REPORTS OF THE AUDITOR-GENERAL ON FINANCIAL STATEMENTS OF VARIOUS COUNTY ASSEMBLIES

THAT, the Senate adopts the Report of the Select Committee on County Public Accounts on its consideration of the Report of the Auditor General on the financial statements of West Pokot County Assembly for the financial year 2018/2019 and Reports of the Auditor General on the financial statements of Isiolo, Kiambu, Kitui, Marsabit, Narok, Nyamira, Trans Nzoia, West Pokot and Murang'a County Assemblies for the financial year 2019/2020 laid on the table of the Senate on Thursday, 7th March, 2024.

(Sen. M. Kajwang' on 30.4.2024)

(Resumption of debate interrupted on 30.4.2024)

The Deputy Speaker (Sen. Kathuri): Sen. M. Kajwang, you were moving this Motion. You have a balance of 50 minutes. Proceed.

Sen. M. Kajwang': Thank you, Mr. Deputy Speaker, Sir.

On 30th April, 2024, I had moved the House to adopt the Motion on the Report of the Select Committee on County Public Accounts on its consideration of the report of the Auditor-General on the financial statements of 10 County Assemblies, which is Isiolo, Kiambu, Kitui, Marsabit, Narok, Nyamira, Trans Nzoia, and West Pokot County Assemblies.

I have a balance of 50 minutes, and I intend to utilize about 5 to 10 minutes in moving this Motion.

I also thank you for indulging the committee and indulging me because this matter was on the Order Paper last week. However, with your leave, I had gone somewhere else last week to represent the Speaker on a climate change-related issue. While I was away, the shareholding of the nation was also rejigged. Now we have a nation where all stakeholders and all shareholders are sitting on the table.

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As I said when I was moving this Motion, for a long time, the Senate had not considered the reports of county assemblies because we had concentrated and focused on the county executives.

The first Chairperson of the County Public Accounts Committee (CPAC), the distinguished Senator for Kakamega County, Sen. (Dr.) Khalwale, laid a firm ground and rules that we have followed to date in consideration of reports of the Office of the Auditor-General (OAG).

(Applause)

I agree with the rules and algorithm that they established because county executives take 80 per cent, if not 90 per cent, of county budgets. Sometimes we go for Pareto's principle, "go for the area where you are going to have the biggest impact." However, along the way, we realized that a lot of the corruption and bad governance is condoned by weak county assemblies. If there is corruption in the county assembly, there is no way they will manage corruption at the county executive level. Therefore, the committee took an interest in the financial statements of county assemblies.

Mr. Deputy Speaker, Sir, I am happy to report that today, which is again interestingly, Kakamega County Assembly is the only county assembly that is up to date in consideration of the reports of the OAG. I congratulate the Chairperson of the Public Accounts Committee (PAC), hon. Mahelo and the entire membership. They have been with us every time we are holding these meetings. They have built the capacity to be able to look into these reports.

We just want them to look at them objectively and not with the Governor, Speaker or Clerk, in mind. That is one success story that I have seen. However, even though they are considering the reports, it does not mean that there is no corruption and financial mismanagement in those entities. I encourage most of the other county assemblies to be up to date. If Kakamega County Assembly can do it, then the rest of the county assemblies can do it.

The reports before us cover West Pokot County Assembly, which is a complete mess. Sometimes, the Senate seconds staff to go and manage county assemblies as clerks. For the period under consideration, the Clerk of West Pokot County Assembly was a staff of the Senate who had been seconded there.

He was not the best ambassador of the Senate, because if you look at the report of the Auditor-General, for the formative years of West Pokot County Assembly, they were not the best. We are working hard to encourage and empower them to clean up the messes so that they are able to oversight the many stalled projects in West Pokot County Executive.

The other Assembly, whose reports I have laid today, is Isiolo County Assembly. Three months ago, the Senate went to Isiolo County to carry out oversight of projects. We were to be hosted by the Isiolo County Assembly. However, the Speaker, Clerk and all the Members of County Assembly (MCAs) of Isiolo County Assembly disappeared.

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We were only left with the Serjeant-at-Arms officers. I thank those gallant Serjeant-at-Arm officers because when everyone else ran away, they were there to receive us and make sure that we at least had a bottle of water.

Isiolo County Assembly has a leadership crisis. We cannot condemn all the MCAs. However, the leadership of this Assembly, particularly the Speakership, the last time they appeared before the CPAC, we had to ask the Speaker for Isiolo County Assembly to apologize for utterances that he made in public, failure to which, he would be ejected from the meeting.

He chose not to apologize and we subsequently ejected him. In his mind, he thought that that would stop us from proceeding with the scrutiny. However, we went ahead with the scrutiny because the Clerk was there. We uncovered gross violations of the Public Finance Management Act.

A county assembly reporting close to Kshs96 million as other payments, without justification or a breakdown. Therefore, the report that we have laid for Isiolo County Assembly is of a past period when this Speaker was not the Speaker. However, things are getting worse in Isiolo County Assembly rather than improving.

Kiambu County Assembly ought to be close to Nairobi and should perhaps through osmosis, or other processes, be able to pick the best practices from Nairobi County Assembly. When Governor Kimani Wamatangi appeared before us, it was clear that the Kiambu County Assembly had never considered a single Auditor-General's report. We felt that Kiambu County Assembly was punching below its weight. That is why the Assembly itself has quite a number of financial mismanagement issues.

We have seen some marked improvement in Kitui County Assembly in the leadership and financial administration. We hope that the recommendations that we have put in here and the suggestions that we made to them when they appeared before us, will position the Kitui County Assembly so that they can be at the same level as their Senator.

The Senator for Kitui County is very vigilant and keen on oversight and proper financial management. We want our assemblies to reflect their capability and ambitions of their respective Senators.

Mr. Deputy Speaker, Sir, that is why when I come to Nyamira County Assembly, I am disappointed. One of the finest Senators in this House and one of the finest legislators in the history of our Parliament comes from Nyamira, Sen. Okong'o Omogeni. However, if you look at the way the County Assembly is managed and run, I do not know which pool they picked the leadership of the Assembly from. I do not know whether it is a different pool from which they picked the Senator for Nyamira.

This is because Nyamira County Assembly appeared before the Senate and the Senator for Nandi was chairing. Every matter was unresolved and referred to the EACC. When the Vice-Chairperson sitting on behalf of the Speaker gave directives for Nyamira County Assembly to go correct and give authority to incur and accounting officer roles to the Clerk, they went home and fired the Clerk; effectively showing us the middle finger.

(An hon. Senator spoke off record)

Mr. Deputy Speaker, Sir, we must ensure that our assemblies are a reflection of the Senators here. It is only Sen. (Dr.) Khalwale here who could be proud that---

The Deputy Speaker (Sen. Kathuri): Distinguished Chair of the CPAC. You are doing so well and I do not want the HANSARD to have that something you have mentioned.

Sen. M. Kajwang': Mr. Deputy Speaker, Sir, I withdraw and apologize. As I explained in the earlier case---

The Deputy Speaker (Sen. Kathuri): What are you withdrawing?

Sen. M. Kajwang': The offensive words because if I mention them, I will give further effect to the offence.

The Deputy Speaker (Sen. Kathuri): Proceed, Sen. M. Kajwang'.

Sen. M. Kajwang': Mr. Deputy Speaker, Sir, I apologize and withdraw for being offensive.

As I had mentioned when we were considering the impeachment for the Governor for Meru County, and I am informed that Njuri Ncheke Council has refused to be drawn into those shenanigans, I think in Suba, translate to Luo and then I translate to English. So, sometimes, when I speak in English, my words can be taken out of context.

I had committed to withdraw and apologize unreservedly on the comments I had made that seemed to indicate that there was no lucid person in Meru County. As we had agreed, I will bring a proper formal statement, so that the record is set clear and I am always willing to abide by your directives.

We must ensure that we continue whipping the Nyamira County Assembly and also continue guiding them. I do not think the problem is with the MCAs. The problem mostly resides in the County Assembly Service Board (CASB), where you find a few people with impunity and who think that the money that the Assembly gets, they should first take their share before MCAs get the services that they deserve.

For the period that we are tabling the report, the operations of Nyamira County Assembly were not that bad. The report that we have is not terrible, but in the last two or three months because my committee is very current, we are now dealing with financial statements up to the financial year, 2022. In September, we will be getting to the reports for the financial year, 2023.

My committee will continue to engage with Nyamira, so that whatever recommendations that we made to Nyamira County Assembly are followed and are not sabotaged and that the mandate and authority of the Senate is not undermined as well.

Mr. Deputy Speaker, Sir, another County Assembly whose report we have here is the Narok County Assembly. Our experience is Narok has been progressive. It is an assembly that listens whenever we make suggestions to them. It is an assembly I have seen that works closely with their Senate.

At the end of the day, the role of the Assembly and that of the Senate has a lot of intersections and mandate concurrent jurisdictions. As I was pointing out in the case of Nyamira, we want Nyamira County Assembly to pull up. The Senator has set such a high bar and I want the Assembly to aspire to that bar.

Mr. Deputy Speaker, Sir, another assembly we have here is Marsabit County Assembly. We also noticed certain weaknesses in this Assembly in their financial

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management systems. However, the bigger weakness was their lack of ability or capacity to oversight the County Executive.

Since I had spoken a lot on this matter on 30th April, let me summarize two or three issues. There is the issue of the Society of Clerks at the Table (SOCATT). The clerks who are sitting at the Table here belong to it and in the county assemblies, the clerks also belong to this society. However, it is a body that is registered and is not illegal, but it receives money from county assemblies. However, their accounts are not audited. Any public funds must be audited.

We have declared that contributions to SOCATT by county assemblies are illegal and are a contravention of the Public Finance Management (PFM) Act. However, we have given SOCATT an opportunity to come and engage the Senate. We have been generous and cleared our calendar to allow SOCATT to come before us two times, they have turned down our invitation.

Mr. Deputy Speaker, Sir, the County Assemblies Forum (CAF) is also another body we have been liaising with on matters to do with the welfare of the MCAs. This body is not illegal and is registered as a society, so there is nothing wrong with it. The only problem is when county assemblies contribute Kshs3 million to CAF. A sum of Kshs3 million times 47 counties is clearly a lot of money. That money is also not audited. We do not get those financial statements. We have a problem with that.

We have said that county assemblies must stop contributions to the CAF until we sort out the legal and regulatory issues and until CAF accounts are audited by the OAG. Again, the leadership of CAF is the Speaker for Elgeyo-Marakwet, hon. Sabulei. I have repeatedly asked him to come before the Senate and told him that our committees are ready and willing to engage with them because MCAs are our brothers and sisters. In fact, 90 per cent of the MCAs are persons of integrity who are properly spirited and persons who want good service delivery.

What sometimes fails them is the leadership of the assemblies, that entity that we put called the CASB. Sometimes, they make decisions on contributions to CAF and yet, we have told hon. Sabulei, the Speaker for Machakos, who is the vice-chair and several other speakers who are members of CAF to come and talk to the Senate. The Senate is ready, open and willing to engage you. If you do not want to talk to the CPAC, go and talk to the Committee on Devolution and Intergovernmental Relations, chaired by Sen. Abass.

Mr. Deputy Speaker, Sir, I know Sen. Abass has been working on some legislation that would give effect and power to CAF and SOCATT. Unfortunately, they have not appeared before me and I do not know whether they have made presentations in Sen. Abass' Committee, but until that matter is resolved, those contributions to SOCATT and CAF shall continue to be declared as illegal and irregular.

This Senate has allowed assemblies to undertake capital projects. In Isiolo, we went to see a County Assembly Chamber that is being put up. Unfortunately, as I said, the Speaker, the Clerk and everybody else disappeared. We only remained with the Serjeant-at-Arms and we could only stare and spectate.

Mr. Deputy Speaker, Sir, you can recall that when we went to Turkana, they were putting up a grand county assembly chamber. We have allowed a number of counties

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through the Committee on Finance and Budget by revision of the ceilings to put up those projects. Project management by county assemblies is very poor because there is a lot of duplication. They want to bring in competencies that already exist in the county executive. Whenever we make those approvals for county assemblies to do capital projects, we need to guide them appropriately. We do not to see waste too much time in duplication and redundant things that could have been best done by county executives or through the shared services of the county executive.

The reports before the Senate contain specific recommendations that will be communicated to the entities once adopted by the House. However, I assure the Senators that the Committee we are in and where I am deputized ably by Sen. Cherarkey, we are closing the backlog. We are finalizing the reports for the election year, 2021/2022. I also assure this House that in September, we will be considering financial year 2022/2023 for the time that the current governors are in office.

Mr. Deputy Speaker, Sir, you are a witness because you attended one of our meetings. For example, in the case of Meru, we are now able to close the years of Kiraitu Murungi, so that we can focus on the years of Governor, Kawira Mwangaza.

I also thank the Senators who have attended our meetings for indulging us and understanding the backlog we have been in.

That backlog has not been because of laziness. When Sen. (Dr.) Khalwale chaired this Committee, for the first two years, he could not do anything because governors were going to court left, right and centre.

If Dr. Kidero was not going to court, it was hon. Oparanya. If not hon. Oparanya, it was hon. Mwangi wa Iria. As such, for two years, it was a fight. No one wanted to subject themselves to the Senate. So, we have gotten to a point where the Supreme Court has made its decision on the matter and they have no choice, but to subject themselves to the Senate.

What we want to do is tighten the sanctions. If the Orange Democratic Movement (ODM) Chairman, Hon. Mbadi becomes the Cabinet Secretary for the National Treasury, one of the first things we will be asking him to do, is to invoke Article 225 of the Constitution to stop the transfer of funds to counties with serious financial problems. This is because there is no need for us to pour money down a bottomless pit.

We will be supporting the Motion by Sen. Dullo. However, the Constitution puts that power in the hands of the Cabinet Secretary for the National Treasury. Cabinet Secretary, Hon. Ukur Yatani, tried to invoke it, but we frustrated it. Cabinet Secretary, Prof. Njuguna Ndung'u, had no clue of what was going on. In fact, he never even appeared before any of our committees.

So, we hope that hon. John Mbadi, hopefully, inshallah, will be a Cabinet Secretary who listens to the Senate, responsive to the needs of his colleagues, the politicians that he served with over the years.

I beg to move and request the distinguished Senator for Nandi, none other than Sen. Cherarkey, to second. I, however, advise him that while he seconds, he should refrain from talking about the other members of the Cabinet.

Mr. Speaker, Deputy Speaker, Sir, I beg to move.

The Deputy Speaker (Sen. Kathuri): Thank you, Chairperson for that commitment to bring your accounts to the current governors. That is very good for the Senate. We do not want to flog that which has built us. So, thank you very much for that commitment. As the Chairperson of the Liaison Committee, we will be very happy to have the accounts for the current governors being prosecuted.

Sen. Cherarkey.

Sen. Cherarkey: Thank you, Mr. Deputy Speaker Sir, as I rise to second, I want to indicate to my Chairperson that there is no Cabinet in place, except for a few people who are there, at the moment.

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

[The Temporary Speaker (Sen. Abdul Haji) in the Chair]

I thought they were still undergoing vetting. However, I am happy with the enthusiasm of my brother, who is an ODM member, because they are excited about being part of the Cabinet in history. That shows the intention of everybody wanting to join the Government.

As I rise to second, let me make the following observations. County Assemblies essentially are the primary oversight. Unfortunately, some county assemblies and MCAs continue to be gatekeepers of ineffective, moribund and inefficient county executives across our nation.

I am saying this with the backdrop that I want to send my special accolades to the Wajir County Assembly for refusing to become the Wajir County Executive rubberstamp of passing a budget that does not reflect the wishes of the people of Wajir County. While I do not condone that they went to the extent of running away with the Mace, I agree with the principle of not allowing to pass a budget where allocation---

The office of the First Lady, Second Lady and Prime Cabinet Secretary's wife have been scrapped. So, I want to agree with the MCAs of Wajir County Assembly. We want to see them becoming more enthusiastic about doing their job without fear of contradiction. Let all the MCAs and county assemblies be proactive in budget-making processes going into the future.

It is their work under the Constitution and the County Government's Act respectively. Therefore, we hope to see MCAs taking their rightful place in ensuring oversight. Many things, including yours of Garissa, would not have escalated to the Senate if the MCAs had done their job. So, as much as we support them, we must also call upon them to do their job as per the Constitution and devolution laws that have been set in place, so that we get more value.

You know, the advent of Gen Z protests has brought some level of self-reflection both in county governments and the national Government. So, I hope after all these issues that have been raised nationally are resolved, we will see county governments doing their job; giving value for the money that we appropriate under the Constitution. As we even push, the new Cabinet Secretary nominee should be aware of Article 219 to ensure

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money is disbursed on time to county governments, so that it becomes easy to hold them accountable.

As I go to the second substrata, I know that MCAs might argue that their welfare is not taken care of. However, we have done our best through the Salaries and Remuneration Commission (SRC). We have tried to push SRC to improve the welfare of the MCAs to get enough resources to ensure they do oversight.

I am also happy that, for the first time, there is the goodwill of financial autonomy for the MCAs. There are some recommendations and legislative interventions from our CPAC to ensure we have financial autonomy for counties. The Clerks of the County Assemblies should have their own County Revenue Fund (CRF) account at the National Treasury. They should be able to sign their money for the expenses within the county assembly, like it is done in the Parliament of Kenya. Our accounting officers are known. Although here, it reached some point where some funny offices were introduced and given some funds.

Sen. Abass: On a point of Information, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Abdul Haji): What is your point of information, Sen. Abass?

Sen. Abass: I want to inform Sen. Cherarkey of what is going on in Wajir. Not all of the Assembly is in agreement with the whole process. We appreciate that they are doing an oversight. However, there is some hooliganism in their actions, including breaking the chairs and desks, that they work from. They are asking for accountability and a proper itemised budget. I will commend them for that, but not for their unacceptable behaviour. As you know, they are elected MCAs.

The Temporary Speaker (Sen. Abdul Haji): Thank you, Abbas.

Sen. Cherarkey.

Sen. Cherarkey: I said very categorically, and you can check the HANSARD; that I support accountability. However, I do not support them running away with the mace. I think it is important that we put that into perspective. They should do it with vigour and enthusiasm.

I hope in the course of today or tomorrow's sitting, Sen. Abbas of Wajir will give us a Statement either under Standing Order No.52 or No.53 on what transpired, so that he can put things in perspective. While we agree that there is no need of breaking chairs and other things within the Assembly, he should be able to give us that perspective going into the future.

The last thing that I wanted to say was financial autonomy. Let county assemblies be given financial autonomy. Let them have CRF with the clerk as the accounting officer. We are aware of instances in which governors decline to release money to county assemblies through the CECM, Finance, simply because they thought that MCAs had undermined them or they had not done public relations exercises. It is so sad.

Whenever I work on my functions in counties, the public relations officer of the county government is normally the MCA, and yet, the MCAs are supposed to do the oversight. They are not supposed to be telling us what the governor is doing. However, we have reduced county officers to cheerleaders. You get MCAs telling us more about what the governor is doing more than the governor himself. In my county, that is the

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situation. Maybe in Machakos or Nyamira, the story is different. However, in silent tones, the MCAs have been telling us the reason they do this is so that they do not get denied funds for their locations by County Executive Committee Members (CECM) for Finance of the respective counties.

When we give financial autonomy to MCAs, they will be able to oversight. The history of this Parliament stated that our accounts were with the Office of the President. Therefore, it meant if you criticized the Government, you did not get your pay.

We want to mirror what we are doing in Parliament to the county assemblies. Although constitutionally, and maybe the Commissioner will mention this in his presentation later if he will contribute, in Parliament, we have had situations where the Secretary to Parliamentary Service Commission (PSC) has been watered down.

There is an office called Chief Accounting Officer (CAO) or Accounting Officer, somewhere in between provided under the Secretary, who is the Clerk of the Senate, Mr. Jeremiah Nyegenye. That person undermines and has more money.

I will be bringing a substantive statement. Why was that office created, yet the Secretary to the PSC is the Clerk of the Senate? Some cartels or individuals who are hell-bent to undermine the work of the Senate made sure they introduced another extra office in between the Accounting Officer, who should be the Secretary to the Commission, Mr. Jeremiah Nyegenye. As a Parliament, we must take a position on it.

I want to challenge our Commission representatives. I asked them sometimes back and they told us that they we are few in the PSC. You should bring it back to the people. Go back to the people; they should bring it back to Parliament.

When we raised issues about the functionality and capacity of Parliament, some of us were told to write some silent letters and whisper to powers that be, that we have a problem with the lifts or we have a problem with the aeration in our rooms.

Mr. Temporary Speaker, Sir, our Chairman normally struggles to breath in Committee Room No.8 in the New Wing because there is totally no aeration in the room. We were together with you in the Standing Committee on Health and you saw our witnesses cramped up in a corner. God forbid, if COVID-19 pandemic was to come back with the small spaces that we are talking about, it would be very unfortunate.

The other day we saw the invasion of Parliament. I am told they have used close to Kshs100 million to do the repairs. However, when you see the quality works of the seats, I highly doubt it. I sat on one seat in the restaurant and I almost collapsed. We should be putting up a perimeter wall.

The Temporary Speaker (Sen. Abdul Haji): Sen. Cherarkey, would you like to be informed by Sen. Omogeni?

Sen. Cherarkey: No, Mr. Temporary Speaker, Sir. I am sufficiently informed.

The Temporary Speaker (Sen. Abdul Haji): He is a Senior Counsel.

Sen. Cherarkey: If you ask me about the Committee Room No.8 used by the CPAC, I know about it because I have used it.

The Temporary Speaker (Sen. Abdul Haji): What is your point of order, Sen. Omogeni?

Sen. Cherarkey: Under which Standing Order, Mr. Temporary Speaker, Sir?

Sen. Omogeni: On a point of order, Mr. Temporary Speaker, Sir. Any Senator speaking before the House should be able to support the facts that he lays before this House. Sen. Cherarkey has stated that the PSC has spent Kshs200 million to repair the damage that was caused by the Gen Z invasion of 25th June, 2024.

Whereas, Parliament is fully insured, it is Old Mutual Insurance that we will undertake the repairs. Can he substantiate which PSC has spent the Kshs200 million to undertake repairs?

The Temporary Speaker (Sen. Abdul Haji): Sen. Omogeni, just to correct you, the figure he mentioned was Kshs100 million.

Sen. Omogeni: He did not say Kshs200 million?

The Temporary Speaker (Sen. Abdul Haji): No.

Sen. Omogeni: Mr. Temporary Speaker, Sir, can he substantiate where he got the information that PSC is undertaking the repairs, yet we have a comprehensive insurance cover that passes that obligation to Old Mutual Insurance? Can he substantiate the allegation that PSC has spent Kshs100 million to undertake the repairs?

The Temporary Speaker (Sen. Abdul Haji): Sen. Cherarkey, can you substantiate or withdraw and go by the information provided by the Commissioner, Senior Counsel, Sen. Omogeni?

Sen. Cherarkey: Mr. Temporary Speaker, Sir, while I appreciate the enthusiasm of the Commissioner in response, I need up to Tuesday so that I can provide information, not necessarily on PSC, but it is the supervising body.

Mr. Temporary Speaker, the PSC procured the Old Mutual to provide insurance cover. So---

The Temporary Speaker (Sen. Abdul Haji): Sen. Cherarkey---

Sen. Cherarkey: Mr. Temporary Speaker, Sir, kindly, let me finish. I am willing to substantiate by Tuesday, next week, and provide necessary facts. This is because Old Mutual Insurance did not provide all the insurance cover. In the insurance policy of Old Mutual, it does not include attacks by Gen Zs and protests.

So, can I substantiate on Tuesday?

The Temporary Speaker (Sen. Abdul Haji): Yes, you can substantiate. That is what I wanted to clarify. You would substantiate the amount of Kshs100 million spent by PSC on refurbishment of Parliament following the destruction by the demonstrators.

Sen. Cherarkey: No, Mr. Temporary Speaker, Sir. I have not said the PSC spent. I will provide information on the issue of repairs and you will notice in my information that some of the repairs were incurred by the PSC themselves.

The Temporary Speaker (Sen. Abdul Haji): So, what you will substantiate is the sum of the repairs done by PSC amounting to Kshs100 million.

Sen. Cherarkey: Mr. Speaker, Sir, including the insurance by the Old Mutual and their policy document that do not cover destruction by protests.

The Temporary Speaker (Sen. Abdul Haji): Very well, Senator. Please, provide that information by Tuesday.

Sen. Cherarkey: Thank you, Mr. Temporary Speaker, Sir. I was just explaining that we need to mirror what Parliament does because county assemblies are our small

brothers and sisters. So, we support the issues of MCAs, their salary review and personal remunerations. We want to assure that we shall push and ensure that the SRC---

You remember the President held a meeting with all the MCAs. I see Sen. (Dr.) Khalwale who is a Member of the Standing Committee on Finance and Budget. I do not know what they will do with the SRC to table the recommendations that they have done on the issue of salaries, review and remuneration.

We are not pushing for increment, but they should be given capacity, even ward offices. For us we are given liaison offices at counties. We need them for oversight.

I was sad when I saw one part of the Nyamira County Assembly Chamber collapse. Sen. Okong'o Omogeni should be nice to me. I have directed, through the Committee, for Ethics and Anti-Corruption Commission (EACC) to swing into action to ensure accountability.

Counties are facing budget performance, which is largely attributed to delayed disbursement by the National Treasury. So, we request the new Cabinet Secretary for National Treasury to release money.

On the issue of imprest, we need to ensure there is proper surrender, after time, without interest, as per the Public Financial Management (PFM) Act.

The issue of ethnic composition, you find that most of the county assemblies are ethnic conclaves that must be looked at. Therefore, we demand that the National Cohesion and Integration Commission (NCIC) and the county assemblies, respectively, should look at the composition of ethnic staff establishment and the one-third basic salary rule. MCAs should be told not to take all their salary; they must obey a third principle in basic salary.

The issue of county assembly and Speakers' residences, the limit has been indicated and let us obey it. On the issue of pending bills, the Chairperson has directed that county assemblies should abide by the resolutions on pending bills. So, we have transmitted as a Senate that pending bills must be sort out as soon as possible.

I want to advise the SOCATT, CAF and Council of Governors (CoGs) to come up with a proposal to anchor them into law. Spending resources allocated to them on something that has not been provided for through legal authority is illegal, unconstitutional and immoral. Going into the future as a Committee, we shall be referring this expenditure to the EACC, so that various officers can be surcharged and charged in the court of law.

On the late submission of documentation, we have noticed county assemblies have this documentation, but they continue to violate Section 65 of the Public Audit Act that recommends any entity, on the period of audit, should give the OAG documents in time.

As we review the budget, I ask the people who allocate budgets, especially us and the National Assembly, to give more resources to the Office of the Auditor General (OAG).

Mr. Temporary Speaker, Sir, allow me a minute to say this; we need to resource OAG to visit projects. What we are getting as a committee are narratives about Garissa, Nandi and Kakamega counties. We need to empower the OAG to go to Nyamira County with the public works officers to look at the County Assembly of Nyamira.

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What I am proposing to the Chairperson of the Liaison Committee, your colleague, is that we need the CPAC) and County Public Investments and Special Funds Committee (CPISF) to be given more resources to do county visits. We only went to Isiolo, we have yet to visit Kakamega and other counties. We will make more impact because we can see things on the ground.

When the Governor of Marsabit appeared before us, he told us that there was an issue with a building that had been submerged in water. How can we verify that? As the committee, we need to go visit and look at it.

When you come to Nandi, when the Governor appears in CPAC, he says that the new mother and baby unit of Kapsabet Hospital is complete and yet, I pass there every day. If today, the CPAC was to visit Nyamira, Nandi, Kakamega and Garissa counties to look at the projects one by one, we would not be entertaining such narratives,

I encourage the House to take decisive action going into the future.

Mr. Temporary Speaker, Sir, add me one minute, please.

The Temporary Speaker (Sen. Abdul Haji): Very well, one minute to conclude.

Sen. Cherarkey: That is why I am pushing for more funds for the CPAC. Let us go to Turkana County. Turkana County is a hardship area and yet, Kshs110 billion cannot be accounted for ten years when there is hunger, insufficient water and irrigation projects have collapsed.

Somebody sank Kshs200 million to build a governor's residence that does not exist, Kshs1.5 billion was used to build a county headquarters, Kshs82 million was used to purchase an Air Conditioning (AC) equipment that is not functional and Kshs6.5 million to procure a generator that does not exist, yet, the EACC is doing nothing about it and the culprit is walking around in the protected area.

Mr. Temporary Speaker, Sir, as a House, we must take a position. I would go on and on and become emotional because I feel bad, just like the other Senators because we fight here to allocate money to counties, yet we do not see value for that money.

Mr. Speaker Temporary, Sir, with those very many remarks, I beg to second to allow my colleagues to also contribute.

I thank you.

(Question proposed)

The Temporary Speaker (Sen. Abdul Haji): Hon. Senators, you will now be making your contribution, starting with Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Thank you, Mr. Temporary Speaker, Sir. The importance of this particular report is such that I was expecting the entire House to be here. We are talking about the mother of oversight. There can be no oversight without the CPAC and the CPICSF.

Using very strong words, I congratulate this committee for this commendable report.

(Applause)

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The work that this committee is doing is so sensitive and attractive to the public that little do you miss an item in the media about the work of this committee.

Sen. M. Kajwang', as I congratulate the entire team, I also have personal congratulations for you. You are not only doing a good job in this House, but also in the committee. It appears that doing a good job is the other name of the leadership in Homa Bay.

(Applause)

I know all governors have challenges, but we must accept when a governor makes an effort. Gov. Gladys Wanga, just like her Senator, has also put her best foot forward.

Mr. Temporary Speaker, Sir, a comment by the Chair of this committee caught my attention a few days ago in respect of a House in Mandera. He told me that he came across a residential house that had been built for Kshs285 million. I am trying to imagine. Does it have 12, 20 or 58 bedrooms?

I will find time to go and read the entire report on that house. We must not allow that kind of wastage of public resources, where a governor spends Kshs285 million on building a house. That amount can build a 60 to 80-bed capacity hospital. It is sad but that is for another day.

Having said that, Mr. Temporary Speaker, Sir, allow me to comment on adoption of this report. It has caught my eye that adoption of the report did not attract signatures of Sen. Edwin Sifuna, Sen. Omar Mariam, Sen. Richard Onyonka and Sen. Samson Cherarkey. Were they dissenting? If they were dissenting, where is the reason they dissented? We want to encourage Members to attend committee meetings and be part of deliberations. I am not casting any aspersions. If they have no time, let them give room for other Members who will have time for such an important---

The Temporary Speaker (Sen. Abdul Haji): Sen. (Dr.) Boni Khalwale, would you like to be informed by Sen. Cherarkey?

Sen. (Dr.) Khalwale: I was going to refuse, but when I looked at his age, being a young man, he is very close to Gen Z. I better be informed here rather than on the streets.

(Laughter)

Sen. Cherarkey: Mr. Temporary Speaker, Sir, Sen. (Dr.) Khalwale is a senior person. I cautiously informed him because he is a man full of wisdom.

Through the guidance of the Chair, we normally have sub-committees, especially when we meet county assemblies. Most likely, colleagues who have not signed this report were in other sub-committees because we are usually three in each. He appoints another Member to chair some and I also chair other county assemblies.

Mr. Temporary Speaker, Sir, I request for your indulgence. With this and the Standing Orders, perhaps you should advise us on what should happen when a report is being adopted, but you were not in that subcommittee.

I thank you.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, that is a housekeeping issue that I will leave to the Chairman to manage. As far as the House is concerned, this is their Report. It is not a report of a subcommittee. Therefore, I would have wanted to know the reason other Members did not sign.

Allow me bragging rights, Chairman of the Committee. You have had very good words for the County Assembly of Kakamega. Like you, I congratulate the Chair, Hon. Kelvin Mahelo, MCA for Chegulo-Butali, for being a good Chair of that committee in Kakamega. He had started getting lost.

You remember my conversation with you, Mr. Chairman? I quickly called and told him that was not the way to go. When he asked what I was talking about, I asked whether he does not have the capacity or had not reflected on the meaning of oversight of the Senate. I asked him to at least look and respect the ruling of the Supreme Court, which pronounced itself; that this work must be done by this Senate.

Mr. Temporary Speaker, Sir, there is something that we can learn from each other. It is not by chance that the County Assembly of Kakamega is doing this work. I deliberately addressed the County Assembly of Kakamega and emphasized on the role of oversight. I also created 12 breakout committee meetings in my home in Malinya, where I was reserving up to four to six hours with the MCAs from every constituency.

I have 12 constituencies and during this time, I was emphasizing to them the importance of oversight vis-à-vis the risk of sycophancy. I am glad that they have taken it up, and it is the way to go.

Going to the substantive issues raised, I am very impressed that the committee has been thorough, in particular, when I look at the actual issues, I noticed that the committee was able to flag out the important issue of spending money on items that do not exist in the budget.

Mr. Temporary Speaker, Sir, you also raised to committee Members the issue of unbudgeted payments, where you found that Kshs1 million had been given to the CAF and Kshs500,000 had been given to the SOCATT. Having recommended that these people be surcharged, demonstrates the seriousness of this exercise. The public will not lose this Kshs1.5 million as it will be recovered through a surcharge.

I also noticed on specific issues that the committee went and focused on cash flows from operating activities. You put these county assemblies to task and I am happy that the matter was resolved. Thereafter comes the issue of pending bills.

Whereas this matter of pending bills was resolved, we need during this debate to remind county assemblies that pending bills should never exist because of the structure of the Public Finance Management (PFM) Act.

The PFM Act is crafted in such a manner that you can only give out a tender for a project for which you already have a budget. If you have given out a tender to a project you have a budget, it means at the end of the project, the budget will simply be expended on paying the contractors. There should never be a pending bill.

The fact that there are pending bills in these county assemblies, means that money which was budgeted for particular projects and programmes is then diverted and taken to things that were never put in the budget. We must sound this to accounting officers in the county assemblies.

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Secondly, it is not a question of my region. It is not a question of my community or my county. We must encourage accounting officers to identify contractors from those counties. It is not because we are denying the contractors from outside the county an opportunity to participate.

Nonetheless, this is for the important reason that if we are talking about Homa Bay, Turkana and projects in Kakamega County, when you allow local contractors to partake in these particular tenders, then at the end of the contract, the project is complete and it remains in Homa Bay County.

If the contractor was from Homa Bay County, when you pay him, the money remains in Homa Bay County. The risk of allowing these millions of shillings to be given to contractors from outside Homa Bay County or Kakamega or Turkana counties, is that the money leaves the CRF account to the contractor, and that day or the following day. However, it leaves Homa Bay or Turkana or Kakamega counties and migrates to go to where the contractor was coming from. So, it does not circulate in the economy of the local county. Therefore, there is capital flight.

If you pay this man who has built a market in Khayega, and the man comes from Kakamega County, this person makes a profit of Kshs30 million. If this person ends up building a house for himself in his home, the local contractors of that home will be from that county and the money will circulate in that place. Those contractors will pay school fees for their children. That money will be in that county. We must discourage that because there are contracts going on in all the 47 counties.

Mr. Deputy Speaker, Sir, the committee has spoken to the issue of incomplete fixed assets register. I applaud them. I am glad that they have remained hawk-eyed. They flagged it out, although it was resolved---

Sen. M. Kajwang’: On a point of information, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Abdul Haji): Would you want to be informed by Sen. M. Kajwang’?

Sen. (Dr.) Khalwale: Yes, I would like him to inform me, especially in view of the accolades that I gave him at the beginning of my presentation.

Sen. M. Kajwang’: Thank you, Mr. Temporary Speaker, Sir. I want to inform the Senator and the House on that point.; that Narok County Assembly has managed to secure a title deed for the land on which the assembly sits. The rest of the county assemblies are still struggling with it. That is part of the asset management. That is why it will be a query in all the county assemblies.

I encourage each Senator to help the county assembly to acquire a title deed to the land on which the assembly sits because they are not supposed to be squatters on county executive land.

In some counties, you will find that they are squatters on national Government land. I encourage assemblies to look at what Narok County Assembly did. They are landlord and have the title deed in the name of the County Assembly of Narok.

I know Sen. Abass is still dealing with the issue of transfer of assets and liabilities. I want to inform the Governor from the context of assets; that even Kakamega County Assembly needs to have its title deed.

The Temporary Speaker (Sen. Abdul Haji): Sen. M. Kajwang', are you informing the Governor or the Senator for Kakamega County?

Sen. M. Kajwang': I am sorry, Mr. Temporary Speaker, Sir. Governor shall be 2027, for now, he is the Senator.

Sen. (Dr.) Khalwale: Thank you. Mr. Temporary Speaker, Sir, be so. He has informed you after informing me.

Mr. Temporary Speaker, Sir, having congratulated the Committee for flagging out and resolving the issue of fixed assets, there is something I want to say about fixed assets.

Mr. Chairman, try and put further pressure to the leadership of our county assemblies. We want to see the fixed asset called, "the debate chamber" in all our 47 counties. If you go to Kilifi or Mandera and quite a number of other county assemblies, for example, they have put up modern debate chambers, which is a good fixed asset.

Mr. Temporary Speaker, Sir, there is no justification why despite having these billions of shillings, county assemblies in certain counties have not constructed chambers? It is very annoying that there is no fixed asset called, "the debate chamber" in the County Assembly of Kakamega. If you were to visit, you would be shocked that the building they are debating from is the same building that was constructed in the 1930s by the colonialists, when they were practicing governance in Kakamega.

It is a ramshackle and is a useless thing. We must put pressure under the County Government of Kakamega to construct a modern chamber. There are other matters that were flagged out by the committee, including budget control and performance and I am glad that these issues have been resolved.

Having spoken to these issues, I will conclude by speaking to two other issues. The first is the OAG. We should never fail to congratulate them because without them, we cannot be where we are. They are our main resource team that gives us quality reports that we use to put these governors, speakers and clerks to account.

There should be no excuses because, today, the OAG is properly resourced, they have even put up regional hubs and we expect them to work. If because of devolution, they have a challenge of staff, they must come to us, as Parliament, so that we give them more money. This is because without these audit reports, governance can never succeed.

Mr. Temporary Speaker, Sir, last but not least is the EACC. Time has now come for the EACC. The CPAC has been sending them reports, asking them to take action and we have seen nothing. The EACC cannot start pretending that it wants to supervise how we do legislation here. They are even telling and misleading the country that we were involved in a piece of legislation here that watered down their oversight role or their work. This is a lie; total lies.

We expect them to work. If they do not work and choose to engage in politics, the way I saw them running after the distinguished Senator for Marsabit, because if they have problems with the Senator for Marsabit, they should not call the media. There is a channel to use as the EACC. It does not conduct its business through the media.

It should have been the media reporting that EACC was found either at the office of the Senator for Marsabit or at his home, that they had found he had stolen money and they were dealing with him. However, for them to call a press conference and start cat-

walking is a “no”. The EACC, that was not the intention of Chapter 15 in the Constitution of the Republic of Kenya.

Mr. Temporary Speaker, Sir, it is this careless approach by heads of certain institutions to conduct themselves---

I thank you, Mr. Temporary Speaker, Sir. Please, give me one minute.

The Temporary Speaker (Sen. Abdul Haji): One minute to conclude, Senator.

Sen. (Dr.) Khalwale: Thank you, Mr. Temporary Speaker, Sir. With a lot of meaning. It is also this poor conduct by heads of institutions that cause confusion among the youth until the youth think they should come and storm this Parliament.

If anybody had properly guided our youth, and if the youth had chosen to storm this Parliament, they would not have come to the Senate. They would have gone to the National Assembly. The Finance Bill does not go through the Senate. The Finance Bill that almost caused us to lose this House goes to the National Assembly. They should have gone there.

In fact, I want them to put pressure under the National Assembly. If the Gen Z should come back again, they should please go to the National Assembly. Do not come to this Senate. Thanks to this Senate, we have been able to get a compromised position that--

The Temporary Speaker (Sen. Abdul Haji): Thank you, Senator. Sen. Omogeni.

Sen. Omogeni: Mr. Temporary, Speaker, Sir, I want to begin by thanking the Mover of this Motion, the son of Rose Auma Ajwang’ and Mzee David Ajwang’ Nyakwamba of Homa Bay. I hope I got their names right.

If you are one of the Senators who normally appear when your governor appears before the committee led by the Senator of Homa Bay, Sen. Kajwang’, you will always feel the joy that Sen. Kajwang’ is the Chair of CPAC because of his understanding of the issues. I want to thank him for the good work he has done us, as the Chairperson of the CPAC.

If you did not know, most governors normally send inquiries to know who will be chairing. Is it Sen. Kajwang’ or there will be somebody else? If they confirm it is Sen. Kajwang’, they try to prepare because they know he has a good grasp and understanding of the issues.

Sen. M. Kajwang’, we are proud of you. We are also proud of the good work you are doing and the effort you have put in place to ensure that there is accountability from our governors.

It is also under his watch that we were able to incorporate an officer from the EACC to sit in Sen. M. Kajwang's Committee, so that EACC can get first-hand information of the wanton thefts that take place in counties. That was innovative and we thank him.

He is also a very good-hearted person. I was bereaved sometime last year in my ward of Gosamaro. I was surprised during the funeral to see the Senator of Homa Bay walking to come and bereave with the Omogeni family. I had lost my uncle, Mzee Auka Omogeni, father of Dr. Evans Omwenga Arita. Sen. Kajwang’ attended the funeral to bereave with us. So at a personal level, he is also a very kind-hearted person.

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So, we are glad to have you as the Chairperson and we pray that the people of Homa Bay will continue sending you back to the Senate, so that you can continue serving us.

Now, on the report from the County of Nyamira, I want to bring to the attention of the House, that all the issues that were raised by the OAG sadly remain unresolved. The county headquarters that remained incomplete when these reports were issued by the OAG on the 30th of June 2020 remain incomplete up to now.

I speak with a heavy heart because the last time the County Assembly of Nyamira appeared before the committee led by Sen. M. Kajwang', it was a debacle. It was like a comedy. The information that was tendered through a report that was signed by the County Public Service Board (CPSB) that indicated that they had made payments to the tune of Kshs150 million, did not get the concurrence of the accounting officer, who is the Clerk of the County Assembly of Nyamira.

It raised doubts as to whether somebody in the County Assembly could have embezzled over Kshs40 million because the accounting officer, who is the Clerk of the County Assembly of Nyamira, was categorical that he could not confirm that, that payment was made to the contract. It is regrettable.

Mr. Temporary Speaker, Sir, it is regrettable that after the committee directed that the CPSB ensures it gets back his role as an accounting officer, he was instead suspended by the board. You can see the level of impunity that is cropping up in this country.

This is happening after the issues have come to the Floor and recommendations have been made by the committee chaired by Sen. M. Kajwang', that the EACC should move in, conduct investigations and arrest the culprit.

Mr. Temporary Speaker, Sir, I am sorry to say, but instead of EACC parading Sen. Chute in their offices, I wish they could go for a case like this one where clearly public money to the tune of Kshs40 million has been lost. The accounting officer has appeared before the Senate of the Republic of Kenya and confirmed that they cannot account how that money has been spent.

I have worked at the EACC body and I know the Chief Executive Officer (CEO). I plead with him to take issues raised by the Senate of the Republic of Kenya, the Auditor General and the Controller of Budget (CoB) seriously.

I have no doubt that the members of the Committee led by Sen. M. Kajwang' do not manufacture the audit reports that come from the OAG. That is a public office that has no interest in any of the counties listed here such as Isiolo, Kiambu, Kitui, Marsabit, Narok, Nyamira, Trans Nzoia, West Pokot and Murang'a. The Auditor General does not have any personal interest in any of these counties other than discharging her constitutional role of looking at the expenditure of funds that are sent to these counties.

The CoB or even Sen. M. Kajwang' have no intention of vying for a governor's position in any of these counties. He does not want to move to Nyamira County and run for governorship. He just wants the money that goes to Nyamira county Government be spent for the benefit of the people who reside in that county.

Secondly, without accountability we will convert counties to avenues where people enrich themselves. It is not right that year in and out, the Auditor General

generates reports that raise issues of financial improprieties in our counties, but we do not see any action.

An issue was raised on the Conflict of Interest Bill that came to this Senate. We did not mutilate the Bill. All we did was to remind the EACC that those offenses they were trying to create in the legislation are already captured in other pieces of legislation.

I can even table evidence before the Senate to demonstrate that there are a number of governors who are already in court charged with the offence of conflict of interest in line with Section 42 of the Anti-Corruption and Economic Crimes Act, 2003.

Mr. Temporary Speaker, Sir, the former Governor of Samburu County is already facing a court case on conflict of interest. The former Governor of the Nairobi City County Government is already in court, charged under Section 42 of the Anti-Corruption and Economic Crimes Act on conflict of interest.

Mr. Temporary Speaker, Sir, the former Governor of Kiambu County, who was impeached by this House is already facing charges in courts of law, on breach of Section 42. So, it is not right for EACC to create the impression that we are trying to weaken legislations dealing with corruption.

In fact, I would like to work with EACC on how we can, as the Senate, or the collective Parliament of the Republic of Kenya, fast-track conclusion of investigations on cases touching on corruption. On that one, I would like to partner with the EACC to ensure that there is speedy conclusion of cases touching on corruption offences and that they are heard and concluded within the statutory period of six months. That way, we will be genuinely responding to a matter that is of concern to most of us.

How can it be right that despite the good work that the committee has done, the investigations that have been undertaken by the EACC, the decision that has been made by the Directorate of Public Prosecution (DPP) to prosecute governors who have been involved in corruption, there is not even one conviction. Cases that were taken to court in 2019 are still pending in the year 2024.

You witnessed the trial of the former President of the United States of America (USA). It was on CNN, we all watched. In a record period of 10 days, the case was presented before the court, evidence taken and a verdict delivered.

Maybe as country, we need to re-examine whether we need to take the jury system if that is what will help us to have faster hearing and conclusion of corruption cases. Without deterrence, we will convert this House into re-writing the Book of Lamentations. We cannot be coming here every now and then we get good reports from the Committee led by Sen. M. Kajwang,' but all we do is lamentation.

Yesterday, I was watching my governor, my good friend, Governor Nyaribo speak. He appeared before the Select Committee led by Sen. M. Kajwang'. One of the issues that came to the attention of the committee was a fraudulent payment of Kshs6.5 million that the Governor made to himself.

When questioned, he said that he fraudulently paid himself and the pay slip was there. He also said EACC and he quietly entered into an out-of-court settlement. He agreed to refund the money quietly. 'So this money has quietly been refunded and now I am okay.' So, yesterday, he was saying, 'if I am a criminal, why has the EACC not arrested me?'

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Mr. Speaker, Sir, there is what we call a trickle-down effect. If the EACC walks to Nyamira County and finds that a governor has fraudulently paid himself Kshs6.5 million and settles that quietly under the table, what will other members of staff serving below the governor do because you have set a precedent? You have said, if you are caught, you sweet-talk the EACC, you settle, and you are left scot-free.

I a senior lawyer. That is not how the criminal justice system works. The criminal justice system says that if you steal public money, you belong to the jails. If you have stolen public money, you have been caught and you have admitted, then you have breached Chapter 6 of the Constitution. You are unfit to occupy public office.

So that we are seen as a House that is objective, I will be pleading with this House that we have the EACC summoned here---

The Temporary Speaker (Sen. Abdul Haji): Thank you, Sen. Omogeni. When this debate resumes, you will have five minutes remaining to conclude your submission.

ADJOURNMENT

The Temporary Speaker (Sen. Abdul Haji): Hon. Senators, it is now 1.00 p.m, time to adjourn the Senate. The Senate, therefore, stands adjourned until today, Wednesday, 31st July, 2024, at 2.30 p.m.

The Senate rose at 1.00 p.m.