

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Thursday, 19<sup>th</sup> September, 2024

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

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

#### PRAYER

DETERMINATION OF QUORUM  
AT COMMENCEMENT OF SITTING

**The Deputy Speaker** (Sen. Kathuri): Clerk, do we have quorum?

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

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

*(The Quorum Bell was rung)*

Okay. We now have quorum. Clerk, you can now read out the first Order. Next Order.

#### PETITION

INTRODUCTION OF THE HOSPITALITY  
PROFESSIONALS BILL, 2023

**The Deputy Speaker** (Sen. Kathuri): Hon. Senators, pursuant to Standing Order No.232(1)(a), I hereby present to the Senate that a Petition has been submitted---

Order, Senators! I repeat, pursuant to Standing Orders No. 232(1)(a), I hereby present to the Senate that a Petition has been submitted to the Clerk by Mr. Charles Ochola Osango on behalf of other citizens of the Republic of Kenya and residents of Nairobi, seeking the introduction of the Hospitality Professionals Bill, 2023.

As we are aware, under Article 119(1) of the Constitution, and I quote: -

“Every person has the right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation”.

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The salient issues raised in the said Petition are as follows. You can find your way in, Sen. Wakili Sigei.

*(Sen. Wakili Sigei walked into the Chamber)*

(a) That the Petitioner seeks the introduction of the Hospitality Professionals Bill;

(b) That, other professions are regulated through statutes to ensure effective discharge of their mandate. However, the Hospitality profession is primarily regulated by the Kenya Tourism Board (KTB), which oversees the tourism and hospitality sectors. Additionally, the Tourism Regulatory Authority (TRA) is responsible for licensing and regulating tourism and hospitality businesses to ensure compliance with industry standards and regulations;

(c) That, while the tourism sector and the hospitality profession are closely related, each has distinct functions and activities and cannot be regulated by the Tourism industry;

(d) That, the proposed Bill seeks to address several key issues regarding licensing, training and education, the establishment of a professional regulatory body, enforcing of industry standards and enhancing consumer protection;

(d) That the proposed Bill seeks to address several key issues regarding licensing, training and education, establishment of a professional regulatory body, enforcing of industry standards and enhancing consumer protection---

Find your way in very quickly, Hon. Senators.

*(Several Senators walked into the Chamber)*

*(Sen. Tobiko spoke off record)*

**The Deputy Speaker** (Sen. Kathuri): It is your choice, Sen. Tobiko.

*(Laughter)*

*(Sen. Kisang' consulted Sen. Abass)*

(e) That the proposed Bill seeks to address the following issues.

Hon. Senators, I gave you an opportunity to sit down.

Sen. Kisang, you are out of order. ‘

(1) Specialized expertise in the hospitality profession, which may not be found solely in the Tourism Regulatory Authority.

(2) Conflict of interest that arises due to combining the regulation of tourism and hospitality under the same authority.

(3) Industry Representation: Provide for the establishment of a separate regulatory body that will allow for better representation and engagement of the various stakeholders in the industry ensuring that the specific needs and concerns are addressed effectively.

(4) Enhanced Consumer Protection: The Act will help to safeguard the rights and interests of consumers.

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(5) Promotion of Industry Growth and Competitiveness: Establishing clear standards and regulations will foster an environment that is conducive for industry growth, innovation and competitiveness.

(6) Compliance and Enforcement Mechanisms: The institute established within the Act will be equipped with the necessary powers and resources to enforce compliance with regulatory requirements.

(7) Creation of a Professional Regulatory Body: The regulatory body will oversee the activities of the sector, monitor compliance and enforce industry standards.

(8) Establishment of a Regulatory Framework: Set standards for quality, hygiene, safety and service in the industry that should be enforced through a robust inspection and certification system.

(9) Adequate provisions for Training and Development: Training and development in hospitality will be necessary for continuous learning and growth.

(10) Small and Medium Enterprises (SMEs): Provide for measures to support and promote the growth of SMEs through provision of access to finance, facilitating business development and streamlining licensing procedures.

(11) Tourism promotion: Incorporate provisions to enhance tourism promotion efforts both domestically and internationally.

(e) That, the Petitioners pray that the Senate enacts the Hospitality Professionals Bill to address the above concerns. Hon. Senators, pursuant to Standing Order No.238(1), I commit the Petition to the Standing Committee on Trade, Industrialization and Tourism for its consideration.

Pursuant to Standing Order No.238(2) (a), the Committee is required, in not more than 60 calendar days from the time of reading the prayer, to table its report in the Senate for consideration. The Senate shall, thereafter, consider and adopt the report of the Committee.

I thank you.

Sen. Wakoli, are you interested in making a brief comment on this Petition?

**Sen. Wakoli:** No, Mr. Deputy Speaker, Sir.

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

## PAPERS LAID

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

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

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Deputy Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Thursday, the 19<sup>th</sup> of September, 2024.

Reports of the Auditor-General on the financial statements for the year ended 30<sup>th</sup> of June, 2022 are of the following.

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Report of the Auditor-General on Financial Statements of Nyandiwa Level 4 Hospital - County Government of Homa Bay for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Magunda Level 4 Hospital - County Government of Homa Bay for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Tom Mboya Memorial Level 4 Hospital - County Government of Homa Bay for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Nyangiela Level 4 Hospital - County Government of Homa Bay for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Ndhiwa Level 4 Hospital - County Government of Homa Bay for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Suba Sub County Hospital - County Government of Homa Bay for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Mbita Level 4 Hospital - County Government of Homa Bay for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Marindi Sub County Level 4 Hospital - County Government of Homa Bay for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Mutituni Level 4 Hospital - County Government of Machakos for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Masinga Level 4 Hospital - County Government of Machakos for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Mwala Level 4 Hospital - County Government of Machakos for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Matuu Level 4 Hospital - County Government of Machakos for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Sondu Sub County Hospital - County Government of Kisumu for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Masogo Sub County Level 4 Hospital - County Government of Kisumu for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Miranga Sub County Level 4 Hospital - County Government of Kisumu for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Rabuor Sub County Level 4 Hospital - County Government of Kisumu for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Ojola Sub County Level 4 Hospital - County Government of Kisumu for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Nyamarimba Sub County Level 4 Hospital - County Government of Siaya for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Ambira Sub County Level 4 Hospital - County Government of Siaya for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Sigomere Sub County Level 4 Hospital - County Government of Siaya for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Nakuru County Teaching and Referral Hospital - County Government of Nakuru for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Langa Langa Sub County Level 4 Hospital - County Government of Nakuru for the year ended 30<sup>th</sup> June, 2022.

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Report of the Auditor-General on Financial Statements of Molo Level 4 Sub County Hospital - County Government of Nakuru for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Gilgil Sub County Hospital - County Government of Nakuru for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Subukia Sub County Hospital - County Government of Nakuru for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Mirugi Kariuki Sub County Level 4 Hospital - County Government of Nakuru for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Bahati Sub County Level 4 Hospital - County Government of Nakuru for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Olenguruone Level 4 Hospital - County Government of Nakuru for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Kabazi Sub County Level 4 Hospital - County Government of Nakuru for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Samburu County Teaching and Referral Hospital – County Government of Samburu for the year ended 30<sup>th</sup> June, 2022.

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

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

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

Let us go to the next Order.

## QUESTIONS AND STATEMENTS

### STATEMENTS

Hon. Senators, we have several statements under Standing Order No.53(1).

We will start with Sen. Peris Tobiko.

#### ALLEGED ABDUCTION AND DISAPPEARANCE OF AN ACTIVIST AND TWO BROTHERS

**Sen. Tobiko:** Thank you, Mr. Deputy Speaker, Sir. This is on the abduction and disappearance of the Kitengela Three.

I rise Pursuant to Standing Order No. 53(1), to seek a Statement from the Standing Committee on Justice, Legal Affairs and Human Rights regarding the abduction and suspected forced disappearance of Jamil Longton, his brother, Aslam Longton and activist Bob Micheni Njagi, who were abducted on the 19<sup>th</sup> August, 2024, in Kitengela, Kajiado County.

In the Statement, the Committee should-

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(1) Find out the circumstances leading to the abduction of the Kitengela Three in broad daylight by unknown individuals suspected to be police officers in violation of the rule of law and the Constitution.

(2) Explain why the National Police Service (NPS), through the acting Inspector General (IG) Gilbert Masengeli, has been reluctant to follow up on this case of enforced disappearance of the three men.

(3) State measures the Ministry of Interior and National Administration has taken to address the increased normalisation of abductions and disappearances in Kenya, which poses a serious threat to our democracy.

Mr. Deputy Speaker, Sir, I would like the Minority Leader, Sen. Madzayo, to contribute to this Statement, if possible.

**The Deputy Speaker** (Sen. Kathuri): Not at the moment, later.

*(Laughter)*

Sen. Esther Okenyuri, proceed.

ALLEGED KILLINGS OF RESIDENTS OF BOMBABA  
WARD IN KISII COUNTY

**Sen. Okenyuri:** Thank you, Mr. Deputy Speaker, Sir. Request for a Statement on cases of reported killings of residents of Bombaba Ward, Kenya Sub-county, Kisii County.

I rise pursuant to Standing Order No. 53(1), to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations regarding the alarming cases of reported murders of residents in Bombaba Ward, Kenya Sub-county, Kisii County.

In the Statement, the Committee should-

(1) Shed light on the circumstances surrounding the murder of residents of Bombaba Ward, Kenya Sub-county, Kisii County, which have occurred over the last two years, including the notable cases of the murder of a Member of County Assembly (MCA) aspirant, one, Thomas Ontweka, two years ago, and most recent, Geoffrey Mageri, a businessman at Magena Market on 9<sup>th</sup> September, 2024.

(2) State reasons why the NPS has not disclosed any findings from the investigations into these murders and provide an update on the status of the investigations, detailing the steps being taken to ensure that justice is served for the families of the victims.

(3) Outline actions taken by the NPS to enhance the safety and protection of residents in this area in light of the insecurity exposed by these killings.

(4) State the measures that have been taken to apprehend and hold accountable the perpetrators of these gruesome murders, stating arrests made and the identities of the suspects involved.

Mr. Deputy Speaker, Sir, this is my constituency of origin. I attended funerals of some of these people who have been murdered. It concerns me that this has continued to happen without much attention.

Allow me to just comment that those police posts do not even have police patrol vehicles.

**The Deputy Speaker** (Sen. Kathuri): Sen. Okenyuri---

**Sen. Okenyuri:** Allow me to just mention that.

**The Deputy Speaker** (Sen. Kathuri): Sen. Okenyuri, you know you are deliberately doing a mistake.

Sen. Agnes Kavindu, proceed.

#### STATE OF ECDE IN MACHAKOS COUNTY

**Sen. Kavindu Muthama:** Thank you, Mr. Deputy Speaker, Sir. I have two Statements.

First is Statement on Early Childhood Development and Education (ECDE) in Machakos County.

I rise pursuant to Standing Order No. 53(1) to seek a Statement from the Standing Committee on Education regarding the status of ECDE in Machakos County.

In the Statement, the Committee should-

(1) Provide the number of ECDE classes in Machakos County per school, including the number of pupils and ECDE teachers in each class.

(2) Clarify whether the teacher-to-pupil ratio in the county meets the established standards.

(3) Explain remuneration structures of ECDE teachers in the county stating whether the compensation adheres to the guidelines set by Salaries and Remuneration Commission (SRC).

(4) Elaborate on measures the County Government of Machakos has taken to reduce the rate of school dropouts.

#### TRANSITION RATE TO SECONDARY SCHOOL AND TERTIARY INSTITUTIONS

Mr. Deputy Speaker, Sir, the second Statement is on transition rates to secondary school, university and tertiary institutions in the Country.

Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee of Education concerning the transition rates of secondary schools, universities and tertiary institutions in the country.

In the Statement, the Committee should-

(1) Provide the Senate with the data on the number of learners who transition to secondary schools, universities and tertiary technical institutions for the years 2022, 2023, and 2024.

(2) Outline the accountability mechanism in place including any strategies deployed by the Government to achieve 100 per cent transition and detail measures

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instituted to assist learners who do not qualify for placement in any of the institutions of higher learning.

**The Deputy Speaker** (Sen. Kathuri): Next is Sen. Jackson Mandago.

**Sen. Mandago:** Thank you, very much, Mr. Deputy Speaker, Sir. I have two Statements. I request that you allow me to read them.

#### MANAGEMENT AND OPERATIONS OF THE NEW KCC

First, I rise pursuant to Standing Order No. 53(1) to seek a Statement from the Standing Committee of Trade, Industrialisation and Tourism regarding the management and operations of the new Kenya Cooperative Creameries (KCC).

In the Statement, the Committee should:-

(1) Provide a report on the status of reverting the new Kenya Cooperative Creameries (KCC) to farmers as envisioned in the 2003 recovery plan and state whether New KCC is part of the entities scheduled for privatization.

(2) State the reasons for the closure of the milk processing plant in Eldoret and the fate of the employees at the factory, including the casual workers who have been given a one-month notice of termination.

(3) Shed light on why depot sales staff from Eldoret, Nanyuki, Mombasa, Kisumu, Narok, and Sotik have been withdrawn to Nairobi; explaining why all the staff at the headquarters have been deployed to the Dandora factory and the plan in place for the vacated headquarters, that is, the creamery house premises.

(4) Explain the reasons for non-remittance of statutory staff deductions.

(5) Provide a detailed financial report outlining any debts new KCC owes to farmers and suppliers, explaining why these debts have continued to accrue despite several government bailouts.

(6) Provide a report of a comprehensive forensic audit of the property owned by new KCC, detailing the registration status and valuation of the said property.

Mr. Speaker, Sir, my second Statement.

#### PROCUREMENT OF MEDICAL INSURANCE FOR UASIN GISHU COUNTY GOVERNMENT

I rise to Standing Order No.53(1) to seek a Statement from the Standing Committee of Finance and Budget regarding the procurement of medical insurance cover of the employees of the County Government of Uasin Gishu for the Financial Year (FY) 2024/2025.

In the Statement, the Committee should:-

(1) Provide details of the procurement process that led to the awarding of the tender for the provision of medical insurance for the employees of the County Government of Uasin Gishu to Trident Insurance Company.

(2) Indicate whether any consultation or participation involving the employees of Uasin Gishu County Government was conducted prior to the awarding of the tender to Trident Insurance Company.

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(3) State the rationale behind limiting staff access to only two specific hospitals while other leading hospitals, including Moi Teaching and Referral Hospital have been excluded.

(4) Establish whether the tender was competitively sourced and provide a list of all bidders who expressed interest. Supply copies of the tender minutes, tender evaluation report, the professional opinion, the letter of award and the relevant tender documents and state reasons for the disqualification of other bids.

(5) Furnish the Senate with the medical insurance policy documents and the contract agreement between Trident Insurance Company and the County Government of Uasin Gishu, stating details such as the contract sum, the number of staff, the beneficiaries covered and the scope of the benefits.

(6) Outline the measures the County Government of Uasin Gishu has put in place to ensure that the employees receive adequate medical cover.

Thank you.

**The Deputy Speaker** (Sen. Kathuri): Next is Senator Mohammed Sheikh Abass.

UNPAID ALLOWANCES FOR MEMBERS OF WAJIR COUNTY GOVERNMENT  
LANDS TRIBUNAL COMMITTEE AND MUNICIPALITY BOARD

**Sen. Abass:** Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Labour and Social Welfare regarding the unpaid allowances for Wajir County Government Lands Tribunal Committee and the Municipality Board members.

The Lands Tribunal Committee was appointed on 18<sup>th</sup> September, 2020 by the County Secretary in a term of three years, while the County Municipality Board members were appointed on 15<sup>th</sup> February, 2019 through a Gazette Notice No.1157 by the county governor for five years.

Mr. Deputy Speaker, Sir, the failure of the county government to pay the Lands Tribunal and the municipality board members sets a dangerous precedent that undermines the value of public service.

the Statement, the Committee should:-

(1) State the stipulated seating allowances for the Lands Tribunal Committee and the Municipality Board members per the seating.

(2) Disclose the number of months the County Government of Wajir has failed to pay the members of the Lands Tribunal Committee and the Municipality Board their allowances since inception and give reasons for the delay.

(3) Table approved budgets of the FY2019/2020 to date and indicate the total amount allocated for allowances for such boards and committees in the county budget and detail the itemized expenditures that depleted the set allocation of allowances thus resulting in the non-payment of allowances.

(4) State measures the county government has instituted to ensure that the unpaid allowances are paid accordingly.

Mr. Deputy Speaker, Sir, I have another Statement.

## STATUS OF PENDING BILLS IN WAJIR COUNTY

I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee of Finance and Budget regarding the status of the pending bills in Wajir County.

In the Statement, the Committee should-

(1) Provide a comprehensive report on the bills of Wajir County from the FY2013/2014 to FY2023/2024 detailing the categories of these bills by each expenditure unit.

(2) Present a complete list of contractors and service providers paid from the FY2022/2023 to date, detailing the amounts paid.

(3) Explain the criteria used for the settling of the pending bills.

(4) Outline plans implemented by Wajir County to ensure that all outstanding pending bills are paid.

Mr. Deputy Speaker, Sir, as you are aware, many Kenyans today have problems---

**The Deputy Speaker** (Sen. Kathuri): Are you through with the Statement?

**Sen. Abass:** Let me just expound on it.

**The Deputy Speaker** (Sen. Kathuri): No, you will appear before the Committee to explain all those other details.

Next is Sen. Omtatah.

## REMEDIAL CLASSES FEES IN SCHOOLS

**Sen. Okiya Omtatah:** Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Education regarding the extortion of parents through illegal demands for fees for remedial classes in schools.

In the Statement, the Committee should:-

(1) State the policy the Ministry of Education is using to permit school heads and boards of management to demand remedial fees from parents.

(2) Clarify why remedial fees are being forced on all parents including those whose children are performing well given that remedial education is typically intended for students who need additional help to meet required academic standards.

(3) Establish why remedial fees are often paid by M-Pesa, cash or personal accounts of teachers instead of being deposited into official school bank accounts.

(4) Define the criteria for the determination of remedial fee amount to be charged and how the money is used; noting, for example, St. Thomas Aquinas High School in Nairobi, parents are charged Kshs5,000 per term with the school collecting approximately Kshs5 million per term.

(5) Explain the rationale for remedial education today considering that in previous years, teachers managed to complete the syllabus without charging additional fees for such services.

The Statement is indicated "Sen. Andrew Omtatah, Senator for Busia".

I am Senator from Busia not for Busia. Let me make that correction here. There is no Senator for any county here. All Senators come from counties. They are Senators of the

Republic of Kenya, but elected by different counties. I urge a proper correction of that English.

**The Deputy Speaker** (Sen. Kathuri): Senator from Busia, thank you very much.

**Sen. Okiya Omtatah:** It is governors and Members of County Assembly (MCAs) who belong to counties. Those are the village people. We are the national leaders.

Thank you.

**The Deputy Speaker** (Sen. Kathuri): Next is the Senator from Marsabit County.

NON-PAYMENT OF GRATUITY TO MS. FATUMA NUR IBRAHIM  
BY MARSABIT COUNTY GOVERNMENT

**Sen. Chute:** Mr. Deputy Speaker Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Labour and Social Welfare regarding non-payment of gratuity by Marsabit County Government to Ms. Fatuma Nur Ibrahim.

Ms. Fatuma Nur Ibrahim was appointed on contract as the Chief Officer (CO) in the Department of Education, Skills Development, Youth and Sports by Marsabit County Government, on 6<sup>th</sup> December, 2017, for a contract period of five years.

On 22<sup>nd</sup> October, 2019, she was transferred to the Department of Administration and Coordination, and in 2020, she was further moved to the Department of Lands, Energy and Urban Development. She continued to serve as the CO and on 4<sup>th</sup> February, 2022, she resigned from her position, but she has not been paid her gratuity to date.

In the Statement, the Committee should-

(i) Explain why the former county staff has not been paid her gratuity, giving a breakdown of the total gratuity owed to her by Marsabit County Government.

(ii) Give details of claims for gratuity submitted by Ms. Ibrahim, whether they were reviewed and approved for payment and provide a timeline for the payment of these claims.

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

ALLEGED DEFILEMENT OF A MINOR IN SUBA SOUTH  
SUB COUNTY, HOMA BAY COUNTY

**Sen. Mumma:** Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.53(1)---

**Sen. Onyonka:** Point of order!

**The Deputy Speaker** (Sen. Kathuri): Sen. Catherine Mumma, just a minute. What is your point of order, Sen. Onyonka?

**Sen. Onyonka:** Mr. Deputy Speaker, Sir, I would like to request that you send one of the Clerks-at-the-Table to go and stop the noise that is interfering with the discussions.

**The Deputy Speaker** (Sen. Kathuri): That will be done shortly. Proceed, Sen. Mumma.

**Sen. Mumma:** Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.53(1) to request a Statement from the Standing Committee on Justice, Legal Affairs and Human Rights regarding the urgent and concerning the issue of alleged defilement and incestuous

impregnation of a minor from Kigoto Village in Suba South Sub County in Homa Bay County.

The child victim was 13 years old at the time she was defiled allegedly by her paternal uncle in December 2021. The case was reported in March 2022 when it was discovered that the child was pregnant. The child's mother later filed a case at the magistrate's court in Mbita and it was almost due for judgment but was halted and has had to be started afresh.

The accused has been granted bail and allowed to return to the community in which the minor and her child would ordinarily be residents. His subsequent conduct is in contravention of normal terms of bail, particularly as he is reportedly pressuring the minor and potential witnesses to halt the case, with the minor's mother being the recipient of threats emanating from her in-laws.

It is imperative given the sensitive nature of issues and the power dynamics involved to assess the legality and fairness of the decision to grant bail to the accused as well as its impact on the pursuit of justice for the minor and whether it is in the best interest of the minor.

In the Statement, the Committee should-

(i) Apprise the Senate on the current status of the legal criminal proceedings instituted at the court in Mbita vide Case No.SOAE10/223, concerning the case of defilement and consequent incestuous impregnation of a 13-year old minor from Kigoto Village, Suba Sub County allegedly by her paternal uncle.

(ii) Assess the fairness of granting bail to the accused since it has compelled the minor and her child to reside at a rescue centre away from her home for over a year as she awaits receipt of a just outcome from the legal proceedings, with specific reference to any protective measures in place for the minor and her child as well as her parents.

(iii) Inquire into the adequacy of victims support services being offered to the minor and her family, especially considering the child's psychosocial and economic vulnerability and that of her family.

(iv) Scrutinise the overall treatment of defilement cases in the justice system, with particular attention to the delays and restart of cases, grant of bail to such accused, and the risks of witnesses intimidation and frustration of justice and propose recommendations to ensure that justice for the child victim is neither delayed nor denied.

I thank you.

**The Deputy Speaker** (Sen. Kathuri): Next is Sen. Eddy Oketch.

#### PLIGHT OF CHPs AND CHVs IN MIGORI COUNTY

**Sen. Oketch Gicheru:** Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Health regarding the plight of Community Health Promoters (CHPs) and previously Community Health Volunteers (CHVs) in Migori County.

In the Statement, the Committee should-

(1) State the number of CHPs and CHVs in Migori County and how they are distributed across the sub counties.

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(2) Explain the amount of money owed by the County Government of Migori as spending bills accrued on the stipend payable to CHPs and when the county is planning to pay the health workers.

(3) State the number of CHVs that were absorbed by the county as CHPs.

I thank you.

**The Deputy Speaker** (Sen. Kathuri): I will allow about 30 minutes for Members to make brief comments.

*(Sen. Cheruiyot spoke off record)*

That is Statement under Standing Order No.57(1).

*(Sen. Cheruiyot spoke off record)*

Okay, proceed.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 24<sup>th</sup> SEPTEMBER, 2024

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Deputy Speaker, Sir, pursuant to Standing Order No.57(1), I hereby present the business of the Senate for the week commencing Tuesday, 24<sup>th</sup> September, 2024. I take this opportunity to welcome hon. Senators back from recess.

From today's Order Paper, it is evident that as we begin Part IV of the Third Session, we have a full in-tray. I, therefore, continue to implore hon. Senators to prioritise their presence in the Chamber, so as to ensure that the business before us is dispensed with in a timely manner. I urge the various standing committees to hasten their consideration of business pending before them and table the reports as required.

With respect to the business before the Senate, the status of the legislative business is as follows. We have 60 Bills that are pending conclusion in the Senate, of which 48 are at the Second Reading stage, while 12 are at the Committee of the Whole stage.

We have 22 Motions pending conclusion; 21 Petitions are due for reporting by the respective standing committees and 387 Statements are pending before our various standing committees.

On Tuesday, 24<sup>th</sup> September, 2024, the Senate Business Committee (SBC) will meet to consider the business for the week. The tentative business for Tuesday will include businesses that will not have been concluded in today's Order Paper, as well as businesses indicated in the Notice Paper, which is appended to our Order Paper today.

The tentative business for Wednesday, 25<sup>th</sup> September, 2024, Morning Sitting, will include the Schedule of Questions to Cabinet Secretaries as approved by the SBC.

The summary of questions is as follows –

There will be Question No.41 to the Cabinet Secretary for Public Service Performance by Sen. Mungatana, Question No.91 to the Cabinet Secretary for ASAL and East African Community and Regional Development by Sen. Julius Murgor, Question

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No.32 to the Cabinet Secretary for Tourism and Wildlife by Sen. David Wakoli and finally Question No.89 to the Cabinet Secretary for Tourism and Wildlife by Sen. Julius Murgor.

Mr. Deputy Speaker, Sir, the business for Wednesday 25<sup>th</sup> September, 2024 afternoon sittings will include business not concluded in the Order Paper for Tuesday 24<sup>th</sup> September, 2024 and the following business Bills that are the Second Reading stage –

The Local Content Bill (Senate Bill No.50 of 2023), The Co-Operative Societies (Amendment) Bill (Senate Bills No.53 of 2023), The Early Childhood Education (Amendment) Bill (Senate Bills No.54 of 2023), The County Oversight and Accountability Bill (Senate Bills No.3 of 2024), The County Civic Education Bill(Senate Bills No.4 of 2024), The County Statistics Bill (Senate Bills No.5 of 2024), The Provisions of Sanitary Towels Bill(Senate Bills No.7 of 2024) and The Statutory Instruments (Amendment) Bill (Senate Bills No.10 of 2024).

These Bills are in the Committee of the Whole stage. I plead with colleagues to avail themselves next week for a speedy conclusion of the same, include but not limited to The Gambling Control Bill (National Assembly Bills No.70 of 2023), The Tea (Amendment) Bill (Senate Bills No.1 of 2023), The Maternal, Newborn and Child Health Bill (Senate Bills No.17 of 2023), The Meteorology Bill ( Senate Bills No.45 of 2023), The National Construction Authority (Amendment) Bill (National Assembly Bills No.59 of 2022), The Cancer Prevention and Control Bill ( Amendment) (No.2) Bill ( National Assembly Bills No.45 of 2022) and The Houses of Parliament (Bicameral Relations) Bill.

Mr. Deputy Speaker, Sir, I hope our Committee on Justice, Legal Affairs and Human Rights, has concluded on the request that was made by colleague Senators on a re-edit of that Bill, taking into consideration all the concerns that were raised by Members as they made their presentations during Second Reading stage.

The Public Finance Management (Amendment) Bill (Senate Bills No.40. of 2023), The Nuts and Oil Development Bill (Senate Bills No.47 of 2023), The Public Transport (Motorcycle Regulations) (Senate Bills No.38 of 2023), The Street Vendors Protection Livelihood Bill, (Senate Bill No. 41 of 2023) and The Fire and Rescue Services Professional Bill (Senate Bills No.55 of 2023).

There are various Motions that are present before us and many of which, I humbly plead that we also prioritise and move with business in a speedy manner so as to address these Motions. Number one is –

The report on the County Public Investment and Special Funds Committee (CPIC) on its consideration of audit reports for the various water services companies for the Financial Year 2018/2019, 2019/2020, and 2020/2021.

Mr. Deputy Speaker, Sir, you will struggle to find in this country a county that does not have struggles with these water companies. All of them have serious audit and institutional challenges arising from the reports of the CPIC. We can address those challenges and, as a House, find solutions.

There is a report of the Standing Committee on Energy on inquiry into the Liquefied Petroleum Gas (LPG) explosion in the Mradi area of Embakasi and Nairobi County. There is a Motion on the development of a policy and law for social risk management on infrastructure development projects in Kenya.

There is a projected business for Thursday 26<sup>th</sup> September, 2024, which will include business not concluded in the Order Paper for Tuesday 24<sup>th</sup>, September and any other business scheduled by the SBC.

At the meeting of the Committee held on Tuesday, 17<sup>th</sup> September, 2024 the SBC approved the schedule of Statements by Committee chairpersons, pursuant to Standing Order No.56 (1)(b). The first three Standing Committees that will be scheduled to issue their reports in the Order Paper on Tuesday, 24<sup>th</sup> September are as follows, and I hope the chairpersons can take note -

The Chairperson for the Committee on Agriculture, Livestock and Fisheries, who I had seen in the House, we expect a report. Chairperson for devolution and intergovernmental relations, I know he is in the House. They will be coming up on Tuesday and the Chairperson for the Committee on Education. I have not seen the chairperson, but I know the Vice-Chairperson is here.

Before concluding, allow me to say something. Ordinarily, we do not speak a lot on issues that happen outside the precincts of this House. However, when they are of a nature that appear to impede or interfere with our work here in the Senate, then sometimes we are duty bound to respond.

Mr. Deputy Speaker, Sir, I have been made aware that on a television (TV) show last night, there is a gentleman who made very disparaging remarks against the person of the Senate Majority Leader. Ordinarily, I do not respond to this kind of matters because as a public servant, I know people can say things about us that sometimes either are unfounded, and if you make it your business, then it might be the only thing that you do.

I am deeply troubled that on a live television show, people who are either clout chasing or bait clicking Kenyans can tarnish your name and speak untruths about you. These are things that I have absolutely no idea of and go on to speak at length about the person of Aaron Cheruiyot.

Mr. Deputy Speaker, Sir, for the record, I do not know Mr. Adani as alleged by that particular person. I have never met that individual.

**Sen. Sifuna:** Point of order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kathuri): What is your point of order, Sen. Sifuna?

**Sen. Sifuna.** Mr. Deputy Speaker, Sir, I rise Pursuant to Standing Order No.52. I did not mean to interrupt the Majority Leader, but the Standing Orders require that he should bring a personal statement under Standing Order No.52 and explain these matters. To do it in this particular order is a violation of the House rules. There is nothing that stops him from bringing a personal statement and explaining himself the way that he was doing.

**The Deputy Speaker** (Sen. Kathuri): You know, he requested to speak because there is a matter which happened last night. I was trying to listen to what is it that he must say before the Floor of this House. Nonetheless, you interrupted before I listen to him in order to give guidance.

I wanted to give guidance to him after I listened because I was not privy---

*(Loud consultations)*

Hon. Senators, you cannot guide the Chair on what to do. I did not have the advantage of listening to that gentleman last night. I was trying to get what he said about the Majority Leader. Let us get what he said.

**The Senate Majority Leader** (Sen. Cheruiyot): I will bring a Statement, but because I have been made aware of this matter just before walking into the House and it is an important matter, I felt that I should speak about it.

Surely, Sen. Sifuna, if somebody was to make such allegations about you, do you not owe it to even your own colleagues to clear the air? That is all I wanted to do.

I wanted to put it on record that I do not work for the Kenya Airports Authority (KAA), neither do I work for the Ministry of Roads and Transport. I do not know on what condition somebody can allege that I brokered a deal between Kenya and another foreign entity whose owner and agents I have never met.

Mr. Deputy Speaker, Sir, I have worked extremely hard in my public life to protect my image. Those who know me and have worked with me long enough can speak to my integrity as a person. I do not do those kinds of things. Therefore, even as a country, as we call for new levels of accountability, does it not behove us that we behave better than those that we accuse of committing certain ills? You cannot fight corruption by character assassinating other citizens of your republic.

I wanted to put it straight to that gentleman that my lawyers will be reaching out to him. I have a name to protect. It is in the interest of this House that they know their Majority Leader. Consequently, that is why my colleagues who are here know that this matter has been on the Floor of this House for quite a while. I have not spoken to a single person by asking them to either consider that matter, this or the other way, because I respect the business of this House.

Finally, as I conclude, I also ask myself, what happened to our media stations? If you go to the editorial policy of the British Broadcasting Corporation (BBC), you will read that they even delay their live broadcast, so that in case somebody was to either malign somebody or say information which they cannot prove at that particular time, it is regulated and edited out.

Therefore, even as I seek for justice for my name, the media house that was used to soil my name will equally have to give an account. I will be bringing a Personal Statement to this House. However, in the meantime, before Tuesday, my lawyers will be reaching out to those people.

**The Deputy Speaker** (Sen. Kathuri): Thank you, Senate Majority Leader. Use Standing Order No.58 to bring your Personal Statement. Since a Personal Statement is never debated, even what he has said should not be debated.

*(Loud consultations)*

Order, Sen. Sifuna. I now request the Senate Minority Leader, Sen. Madzayo to make comments on the Statements.

Hon. Senators, two minutes are enough to make comments on the Statements.



**The Senate Minority Leader** (Sen. Madzayo): Asante Bw. Naibu Spika. Kwanza, ni jambo la kusikitisha ikiwa utatoa taarifa ambayo haina ushahidi wowote kutumia jina la mtu mwingine ambaye hakupewa taarifa yoyote.

Kama ingewezekana, pia yeye angeitwa kwa televisheni wakajibizana ili ijulikane nani ni mkweli au muongo. Lakini si vizuri kuchukua upande mmoja kutoa taarifa ya kushambulia upande mwingine. Watu wengine na wengi wetu tuliopo hapa kama ndugu yangu, Sen. Kinyua, ni mtu aliyetengeneza jina lake kule Laikipia kwa miaka mingi mpaka sasa amekuwa Seneta.

Bw. Naibu Spika, pia wewe kule Meru, umetengeneza jina lako kamili, kwa hiyo itakuwa ni makosa mtu akitaja jina lako kwa ubaya bila wewe kupewa nafasi ya kujibu. Naungana na ndugu yangu, Sen. Cheruiyot, kwamba kuharibiana majina si haki.

Onyo iende kwa wanahabari. Si vizuri kuchukua upande mmoja kulaumu upande mwingine. Tunakemea vikali kitendo hicho cha kuchafua majina ya watu. Si vizuri kuharibiana majina hususan kwa wanahabari wanaosambaza habari. Kwa mfano, Sen. Chute anajulikana sana katika Taifa la Kenya. Itakuwa si jambo zuri ajulikane kwa njia mbaya katika umri wake. Taarifa hiyo itakuwa imemharibia maisha yake yote.

**The Deputy Speaker** (Sen. Kathuri): Sen. Madzayo, Sen. Tobiko aliomba utoe taarifa kidogo kwa ile---

**The Senate Minority Leader** (Sen. Madzayo): Ndio, naenda huko. Nilikuwa nataka---

**The Deputy Speaker** (Sen. Kathuri): Naomba uende huko kwa sababu muda wako unaisha.

**The Senate Minority Leader** (Sen. Madzayo): Ndio, niko barabarani kuelekea huko. Barabara ni ndefu sana. Tunalaani vikali kitendo kilichotendeka kwa taarifa ya habari.

Nikirudi upande ule mwingine, ni jambo la kusikitisha vile vile kuona kwamba Kenya hii kuna watu wanaovaa magwanda ya kuficha sura na hatujui kama ni polisi ama majambazi. Kwa mfano, leo utapata mtu anakuja nyumbani kwako na humjui ni nani, na unapotoka kwa gari lako, anakuvamia na unatoweka.

Tuliona kitendo hicho wakati Mhe. Alfred Keter alishikwa na polisi. Alishikwa akiwa barabarani wakati yeye ni mheshimiwa. Si jambo nzuri kwa Mkenya kushikwa kiholela akiwa Kenya.

Nikija upande wa dada yangu, watu wake watatu wameshikwa na polisi. Familia yake imeenda kortini kudai wapendwa wao waachiliwe na polisi, lakini hadi wakati huu tunavyoongea, hao vijana watatu bado hawajaachiliwa na polisi.

Bw. Naibu Spika, je kama ingekuwa ni mtoto wako, wangu, wa Sen. Chute au Sen. (Dr.) Khalwale? Saa hii familia hizi hazina raha ndani ya nyumba kwa sababu ya wapendwa wao kupotea.

*(Applause)*

Jambo la kusikitisha zaidi, watoto wa kiislamu---

*(Sen. Madzayo's microphone went off)*

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**The Deputy Speaker** (Sen. Kathuri): Tumpatie Kiongozi wa walio Wachache dakika moja amalizie.

**The Senate Minority Leader** (Sen. Madzayo): Jambo la kusikitisha zaidi, watoto wa kiislamu wanashikwa kila uchao na baadaye hawapatikani, ama wapatikane wamekufa ama wasiachiliwe. Tunataka jambo hili likome. Polisi wakishika mtu, wampeleke kortini na kumshataki ili afungwe kisheria. Wakifanya hivyo, jamii yake itaamua kama itamuwekea mawakili ama itamsaidia namna gani ili arudi nyumbani.

Asante Bw. Naibu Spika.

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

**Sen. Cherarkey:** Thank you, Mr. Deputy Speaker, Sir. I always shudder in fear, especially when the police allegedly abduct individuals. I do not find any reason the police should blur their numbers or wear unmarked uniforms or do not have registration numbers. I said it yesterday that I have been a victim on several occasions, especially on 'Kamata Kamata' Fridays. I remember one instance where I was sleeping alone when I was arrested. It is by God's grace that--- They tracked me from Kibos in Kisumu County all the way to my palatial home in Mosoriot in Nandi County. I was arrested alone naked.

*(Laughter)*

That is why we need to be very careful.

As the former chairperson of the Standing Committee on Justice, Legal Affairs and Human Right, we did an investigation on forced disappearance and unregulated abductions. I challenge the police that if they are going to arrest Sen. Sifuna, why not use official numbers, wear their uniforms and identify themselves, so that they are known?

As we speak, the people of Dela Ward cannot explain where hon. Hussein Ahmed Yussuf, the Member of the County Assembly (MCA) of Dela Ward in Wajir County is. The family went to court yesterday and demanded that Inspector General of The National Police Service to produce hon. Hussein Ahmed Yussuf of Dela Ward in Wajir County.

We do not want the police to perpetuate a tribal move, attacking certain communities in this country. I was appalled when I went to Kwale County because I went to a meeting where I met many women without their husbands, whom the police had allegedly abducted in the guise of terrorism. We must be honest as a country---

*(Sen. Chererkey's microphone went off)*

**The Deputy Speaker** (Sen. Kathuri): The next is Sen. Maanzo.

**Sen. Maanzo:** Thank you, Mr. Deputy Speaker, Sir. On issues of enforced disappearance, before the President, His Excellency Dr. William Samoei Ruto became President, he said that no more people will be found dead in River Yala. We have now found people dead in Quarry.

The worst that can happen to a Kenyan is to disappear, and then your family makes an application for *habeas corpus*, it goes to the court, and then the court is not given the person whether dead or alive and that becomes the end of that family. That means the

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family will never know where their kins are. That is in the department of the Executive, particularly the National Police Service.

I urge the Acting Inspector General of the National Police Service because he is aware it. If he wants to get away with this because he has been convicted by the court, then he should produce the bodies or the persons alive. He will then purge the contempt and everything will go well. The moment you are contemptuous before a Judge, you can only go back to that judge. The only way to purge the contempt is to comply with the court order.

I am pleading with the Inspector General of the National Police Service, whom I know is a Christian, even if he has been forced by other forces, let him make sure these children are delivered, either dead or alive. It is an absurdity for the current Government if these children are never going to be seen. We have more disappearances coming up.

Mr. Deputy Speaker, Sir, it is illegal, unconstitutional and it puts the Government of Kenya, locally and internationally in a bad corner on human rights. We have a very good constitution as a country, which if we adhere to, all Kenyans will be happy and no family will suffer because their dear one has disappeared.

**The Deputy Speaker** (Sen. Kathuri): Sen. John Kinyua.

**Sen. Kinyua:** Asante Bw. Naibu wa Spika, kwa kunipa fursa hii. Kwanza, kulingana na ripoti iliyoletwa na Seneta Tobiko kuhusu watu kutekwa nyara, ningetaka kusema ya kwamba, Mkuu wa Polisi, Douglas Kanja, ameteuliwa rasmi. Anapaswa atokee kimasomaso ili aweze kupambana na haya mambo na aweze kuyakomesha.

Hii ni kwa sababu, kuna sheria zinapaswa kufuatwa. Kama mtu ametenda kosa, ashikwe, apelekwe kortini na ahukumiwe. Hakuna kosa ambalo haliwezi kupewa adhabu yake. Tunapoongea hapa, mwakilishi wa Wadi ya Dela hajulikani alipo. Kwa sababu sasa tuko na askari mkuu aliyeteuliwa kirasmi, ana majukumu ambayo anapaswa awe akiangalia.

Bw. Naibu wa Spika, si hiyo tu, Taarifa ililetwa na Seneta Okenyuri ya watu kuuwawa kiholela. Kazi kuu ya Serikali ni kulinda mali na maisha ya wananchi. Itakua ni jambo la kuvunja moyo sana ikiwa watu wanauliwa kiholela na familia zao zinaendelea kusunoneka na hawapati jawabu ya yale mambo wanayoulizia.

Vile vile, kuna Taarifa iliyoletwa na Seneta wa kutoka Uasin Gishu, kuhusu KCC. Wakulima wanaendelea kusunoneka wakiuliza watapata malipo yao lini, ilhali wanaendelea kupeleka maziwa yao kule KCC. Ukitembea kule Nyahururu, kila wakati, asubuhi na mapema, watu wanapeleka maziwa yao KCC. Lakini, wakati wa kupata malipo yao, inakua ni mchongoma.

**The Deputy Speaker** (Sen. Kathuri): Kindly, keep your eyes on the lights to avoid embarrassment.

Sen. Beatrice Akinyi Ogola.

**Sen. Ogola:** Mr. Deputy Speaker, Sir, I rise to condemn the defilement case of a young girl, who was 13 years then, that has been brought by my senior sister, Sen. Catherine Mumma, in Kigoto village. Homa Bay County is fighting the triple threat led by Governor, Hon. Gladys Wanga and all the women leaders. However, it is unfortunate that we have very pathetic numbers.

As I stand here, in 2023, we had over 8,000 young adolescents, between 10 and 19 years that were presented as pregnant. I support this Statement and I call for justice for the young girl and the young family.

Mr. Deputy Speaker, Sir, I also condemn the abductions and disappearances that have been brought forward by the Nominated Senator, Sen. Peris Tobiko. It points to us that we have a system that is so fearful of its citizens. Why should we have people disappearing in this country and they cannot be traced?

What is appalling in these cases, as my colleagues have said, is that the Government was firm about disappearances we had in the other years, but it is unfortunate that the scene only changed from a river in Yala to other points like the quarry we had---

**The Deputy Speaker** (Sen. Kathuri): Sen. Sigei Wakili.

**Sen. Wakili Sigei:** Thank you, Mr. Deputy Speaker, Sir, I rise to comment and also condemn the position that has been played out in the Statement by Sen. Tobiko as well as Sen. Catherine Mumma. The two Statements are seeking the intervention of the Committee on Justice, Legal Affairs and Human Rights, especially with regard to the disappearance and the defilement of the young girl respectively.

As the Chairperson of this Committee, I commit to support and undertake appropriate investigations to make sure that the House is also given sufficient information, so that appropriate actions be ultimately taken so as to ensure that justice is served, both to the girl and to the family of the gentleman who disappeared.

Mr. Deputy Speaker, Sir, I also support the two Statements.

I thank you.

**The Deputy Speaker** (Sen. Kathuri): Sen. Sifuna Edwin.

**Sen. Sifuna:** Mr. Deputy Speaker, Sir, we all heard President Ruto during the campaigns tell the country that under his administration, abductions and disappearances of persons, and extrajudicial killings will be a thing of the past. We continue to hear him say that his is a Government that observes the rule of the law.

As we speak today, the Acting Inspector General (IG) of Police has been convicted and is subject to a six-month jail term, just because he has been instructed by his superiors not to honour court summons to explain the disappearance of Bob Njagi, someone that I know personally, Jamil Longton and Aslam Longton.

There is no one who can be happy to live in a country such as this one. You can hear from both sides of the House that no one supports these happenings in our country. Just across our border, in Dar es Salaam, the police plucked an opposition leader from the Chama cha Demokrasia na Maendeleo (CHADEMA) party from a moving bus, in the full glare of the public and in hours, he turned up dead with his face disfigured by acid.

Mr. Deputy Speaker, Sir, we cannot be spoken to in the same terms as countries like Tanzania. Even this young Member of County Assembly (MCA) from Wajir was plucked from the streets of Nairobi. We would want all of us leaders to take a very strong position and ask William Ruto. We will not ask him about the other promises he will break, even if he does not build the roads and the stadiums he promised us, can he please stop killing us? Stop abducting people and bodies showing up in quarries.

*(Several Senators raised points of order)*

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At the end of the day, it is the responsibility of the Government to protect lives and limbs and every disappearance must be explained by none other than William Ruto.

I thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kathuri): The Senate Majority Leader, what is your point of order?

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Deputy Speaker, Sir, I rise under Standing Order No.105 on statement of facts, for my good friend, Sen. Sifuna, to understand it because, it is clear that he does not understand the Standing Orders.

“105. Responsibility for statement of fact

(1) A Senator shall be responsible for the accuracy of the any facts that the Senator alleges to be true and be required to substantiate any such facts instantly.”

You have heard Sen. Sifuna allege that William Ruto, the President of Kenya, is killing Kenyans. Can he substantiate that claim, failure to which, he withdraws, apologizes and that statement be expunged from the records of this House?

**The Deputy Speaker** (Sen. Kathuri): Sen. Sifuna, you have been accused that your statement is bordering on some allegations.

**Sen. Sifuna:** Mr. Deputy Speaker, Sir, it is like the Senate Majority Leader met me yesterday. I will stand by the truth without fear. It is the responsibility of the Government to protect the lives of Kenyans. It is public knowledge that these people are being abducted by police officers. It is his Government and he cannot run away from the responsibility.

Who are we supposed to ask, Samia Suluhu? He is the person responsible for the protection of the lives of Kenyans and he is the one we will ask. I will not be intimidated on this Floor.

*(Loud consultations)*

**The Deputy Speaker** (Sen. Kathuri): Sen. Sifuna, the issue is that you mentioned--

**Sen. Sifuna:** Let him read back what I said. I said, “his Government.” He is responsible for the killing of Kenyans.

*(Loud consultations)*

Yes! You can refer back to the HANSARD. I know what I said. You cannot speak for me.

Go back to the HANSARD!

**The Deputy Speaker** (Sen. Kathuri): Considering we have rules in this House, I will request for the HANSARD in the next Sitting.

*(Several Senators spoke off record)*

Order Members! When there is a dispute, that HANSARD can be produced.

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Listen, Hon. Senators, Sen. Sifuna, before the end of this sitting, the HANSARD should be produced before me.

*(Sen. Cheruiyot spoke off record)*

*(Loud consultations)*

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

*(Sen. Sifuna spoke off record)*

**The Deputy Speaker** (Sen. Kathuri): Sen. Sifuna, restrain yourself from making a lot of noise.

**Sen. Onyonka:** Thank you, Mr. Deputy Speaker, Sir. I would like my colleagues to go and listen to American political analysts on how they talk about President Joe Biden. They used to call him Crooked Joe. They call former President Trump an abuser, a rapist. Sometimes, we need to be honest with ourselves.

Mr. Deputy Speaker, Sir, I would like to say something to my colleagues in this House. I am not pontificating; it is just my reality. I feel that because of the issues that I have been raising, I could be abducted.

I am not anti-government. What I am saying is that our country deserves better. President William Ruto can continue to govern this country and even win the coming elections if he does the basic things that Kenyans want. Please, let us not kill our young people.

It is only in Latin America that drug dealers and warlords organise for certain individuals who disagree with them to assassinate or abduct people, to violate women's rights. I am begging my colleagues; in fact, I am begging the President of the Republic of Kenya, President William Ruto, the history of this country will never forgive you if these abductions continue. If individuals have extra-judicial killings where they are murdered because they have a different political opinion or where they are questioning Government policy and decisions.

This is why the young men went to the streets. They felt that we were not doing our job, to tell the truth.

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

**Sen. Mariam Omar:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity.

Mr. Speaker, in Kenya's Constitution, there is a right to life, and life starts at conception. If we continue like this, abducting and extra-judicial killing, then there will be no democracy in Kenya.

How can we explain to the new family of the Member of the County Assembly of Wajir? His Child is now two years old. We need justice in every part of Kenya.

If this trend continues in this country, what will be the difference between Kenya and Somalia? Where do we live? Kenya is home. We need a safe place to take care of our children and our properties. Let us follow the rule of law.

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Human beings are to err. If somebody is to err, there is a rule of law and a court. Take the person to the court, convict him or her. For six or seven days, where is the MCA? How can we explain this to the parents? How can we explain to his mother, who is old? She cannot understand –

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

**Sen. Abass:** Mr. Deputy Speaker, I would like to thank all the Members for standing with the people of Wajir.

*(Sen. Sifuna spoke off record)*

**The Deputy Speaker** (Sen. Kathuri): Sen. Sifuna, are you forgetting that I gave you and Sen. Onyonka opportunity to speak consecutively?

**Sen. Abass:** Mr. Deputy Speaker, please protect me, I am losing time.

*(Loud consultations)*

**The Deputy Speaker** (Sen. Kathuri): Order, hon. Members! The MCA comes from Wajir County.

**Sen. Abass:** Mr. Deputy Speaker, I want to share with the suffering and the fears of the family of the Hon. Yusuf Ahmed, the MCA of Dela, who has been missing for the last seven days. The absence of their loved one is painful. Missing your most loved person without any communication is unfortunate. This country is going back to the days of the 1990s, where we came from. We thought we had moved forward.

Last time, the President promised us that there would be no extra-judicial killings or abductions. However, now we are seeing a funny trend.

The Acting Inspector General of Police is not responding to court summons. That is impunity of the highest order. This is why they can take people how they want—many people are missing in Kenya today.

Kenyans have the right to live. Every life is sacrosanct. People must be brought to court and must be listened to. I am not a lawyer, but the law states that everybody is innocent unless proven guilty.

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

**Sen. Mwaruma:** Thank you, Mr. Speaker, Sir, for this opportunity to support Sen. Kavindu Muthama's Statement on a 100 per cent transition to secondary and tertiary institutions. All children must achieve education. Kenya is a signatory to Article 26 of the 1948 Declaration on Human Rights and the right to education. However, many factors have impeded this. As long as secondary and tertiary education funding depends on the National Government-Constituencies Development Fund (NG-CDF), you are not likely to meet the 100 percent transition.

The NG-CDF is given in a discriminatory manner. As long as Members of Parliament (MPs) patronise that NG-CDF, if you do not vote for the MP, then you do not get the bursaries. Then we will not achieve 100 per cent transition, and most of these children will fall by the wayside.

Right now, we have the Junior Secondary school (JSS), which is not financed through NG-CDF. Many children are falling by the wayside because JSS fees are being charged, and we do not have NG-CDF funding JSS. We need to look for a modality of financing, even JSS because we lose many children at the JSS level.

The new funding model for financing higher education is not clear. Some people have been put in high clusters and will not achieve university and tertiary education.

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

**Sen. Munyi Mundigi:** Asante, Bw. Naibu Spika. Naunga mkono Kauli ambayo imeletwa na Sen. Mandago kuhusu wakulima wa mifugo. Wakulima kutoka Kaunti ya Embu; Runyenjes na Manyatta ni wakulima wa mifugo. Wanafanya kazi ngumu lakini malipo imeleta shida. Pia wafanyikazi waliokuwa wakifanya kazi kwenye kampuni ya maziwa ya *Kenya Cooperative Creameries (KCC)*, miaka 30 iliyopita bado hawajalipwa.

Hivi sasa tunasikia Kenya Cooperative Creameries (KCC) inataka kuleta mambo mengine yakupeleka hiyo kampuni kwa watu. Ningeomba wale watakoenda kufanya uchunguzi waangalie vizuri ndiposa wakulima wafaidike kwa sababu wameumia sana.

Nikimalizia, nataka kumjua Seneta wa Nairobi kuwa tukiwa hapa kama Maseneta ni vyema tuwe na heshima kwa Serikali kwa sababu tuko kwa Serikali ya Muungano. Kama Seneta mzima hawezi kumheshimu Rais wa Kenya, nataka kumwambia Seneta wa Nairobi ya kwamba Rais sio Ruto. Anaitwa Rais William Samoei Ruto. Sio kumtaja jina tu. Ni sharti umheshimu kwa sababu hata wewe kesho unaweza kuwa rais.

Jana tulisikia hutambui hata Cabinet Secretary. Ni aibu kubwa sana. Kwa hivyo, Seneta wa Nairobi wewe ni rafiki yangu. Ni sharti uheshimu watu wengine kwa sababu wakati mwingine wewe ndiwe utakuwa pale juu. Kama hauna heshima, utaheshimiwa na nani, ndugu yangu? Shauri yako.

Hivyo basi, mheshimu Rais William Samoei Ruto. Next time, tutakutafutia cheo kikubwa uje kwa Serikali ya Muungano.

Asante, Bw. Naibu Spika.

## COMMUNICATION FROM THE CHAIR

### SUBSTANTIATION OF UTTERANCES BY SENATOR PERIS TOBIKO

**The Deputy Speaker** (Sen. Kathuri): Hon. Senators, the hour for Statements is over. As you may recall, at the morning sitting of the Senate held yesterday, Wednesday, 18th, September 2024, I directed Sen. Tobiko to substantiate utterances made in the course of her contribution on a supplementary question to the Cabinet Secretary for Roads and Transport.

The direction arose out of a point of Order by the Senator for Uasin Gishu County, Sen. Mandago pursuant to Standing Order No.105 (2).

Standing Order 105 provides that:

(i) A Senator shall be responsible for the accuracy of any facts that the Senator alleges to be true and may be required to substantiate any such facts instantly; and,

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(ii) If a Senator has sufficient reason to convince the Speaker that the Senator is unable to substantiate the allegations instantly, the Speaker shall require that such a Senator substantiate the allegations not later than the next sitting day, failure to which the Senator shall be deemed to be disorderly within the meaning of Standing Order 121, which is disorderly conduct unless the Senator withdraws the allegations and gives a suitable apology if the Speaker so requires.

So, Hon. Senators, in the point of order by Sen. Mandago, Sen. Tobiko was required to substantiate the claim that and I quote, “a rogue public servant has gone on record publicly to say that this road will never be constructed as long as the current Member of Parliament (MP) for Kajiado South, hon. Parashina, is the MP. These utterances were made by the State House Comptroller.”

Hon. Senators, Sen. Tobiko was not able to substantiate her statements as required pursuant to Standing Order No.105 (1) and subsequently requested the Speaker to provide the evidence at the next sitting day in accordance with Standing Order No.105(2).

Having acceded to the request, I directed that the Senator substantiate the allegations at the next sitting day. Pursuant to Standing Order No.105 (2), I now invite Sen. Tobiko to forthwith substantiate the claims as raised in the point of order by Sen. Mandago failure to which the Senator shall be deemed to be disorderly within the meaning of Standing Order No.121.

In the absence of such substantiation, the Senator will be required to withdraw the statements and apologise to the Senate.

I thank you.

Sen. Tobiko, you have the Floor.

**Sen. Tobiko:** Thank you, Mr. Deputy Speaker, Sir. I would also have loved that you informed the House that I am the one who has come to remind you that I had evidence to table. I was very eager to do that and I did not want it to be forgotten.

*(Laughter)*

**The Deputy Speaker** (Sen. Kathuri): Sen. Sen. Tobiko, you are out of Order.

*(Laughter)*

I had set exactly that at 4:01 p.m., you were to do the statement.

*(The Senate Minority Leader (Sen. Madzayo) consulted loudly)*

You are out of order, Sen. Madzayo. What is it? Why are you making noise? Let Sen. Tobiko be heard in absolute silence.

**Sen. Tobiko:** Yes, Mr. Deputy Speaker, Sir because I was eager to table and I hereby to table a video recording.

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

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

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**The Deputy Speaker** (Sen. Kathuri): So, Sen. Tobiko, your evidence will be reviewed to ascertain whether it meets the threshold of evidence. That will not be done right away because I can see your evidence is a video. We do not have the gadgets to do it now.

Hon. Senators, we are rearranging the Order Paper. Order numbers 8 to 14 are therefore deferred.

Let us go to Order No.15.

## MOTION

### ADOPTION OF REPORT ON THE 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 Murangá 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 7.8.2024 - Afternoon Sitting)*

*(Division)*

*(Motion deferred)*

## BILL

*Second Reading*

THE CONSTITUTION OF KENYA (AMENDMENT)  
(NO. 2) BILL (SENATE BILLS NO.52 OF 2023)

*(Bill deferred)*

## BILL

*Second Reading*

THE LOCAL CONTENT BILL  
(SENATE BILLS NO.50 OF 2023)

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*(Bill deferred)*

**BILL**

*Second Reading*

THE EARLY CHILDHOOD EDUCATION (AMENDMENT)  
BILL (SENATE BILLS No.54 OF 2023)

*(Bill deferred)*

**BILL**

*Second Reading*

THE LAND (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILLS No.40 OF 2022)

*(Bill deferred)*

**BILL**

*Second Reading*

THE INTERGOVERNMENTAL RELATIONS  
(AMENDMENT) BILL (SENATE BILLS No.12 OF 2024)

*(Bill deferred)*

**BILL**

*Second Reading*

THE ENERGY (AMENDMENT)  
BILL (SENATE BILLS No.42 OF 2023)

*(Bill deferred)*

**BILL**

*Second Reading*

THE NATIONAL DISASTER MANAGEMENT BILL

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(NATIONAL ASSEMBLY BILLS NO.24 OF 2023)

*(The Senate Majority Leader (Sen. Cheruiyot) on 18.09.2024)*

*(Resumption of debate interrupted on 18.9.2024-Afternoon Sitting)*

**The Deputy Speaker** (Sen. Kathuri): So, Sen. Murgor, you had a balance of 11 minutes. If you are ready, you can proceed and utilize those 11 minutes. If you are done, then we can give another Senator to proceed.

**Sen. Murgor:** Thank you, Mr. Deputy Speaker, Sir. I was interrupted when I was contributing. I was saying that there are activities that we run as human beings that contribute very much to the disasters we encounter and that make life difficult for us. For example, cutting off trees has made some portions of land barren and bare. As a result, no trees and grass hold good soil along rivers and escarpments.

We have cut down trees. That makes the soil to be soft and loose. When it is soaked with water, it just runs downstream or down the escarpments where it causes devastating situations and problems to those who live below the hills. There is need to make our people aware that some of the contributions we make are negative and should be avoided so that we can live in peace and harmony and in an environment that is safe for us rather than cutting trees, making the land bare.

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

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

There is need to train our people. Yesterday, somebody said that we have many graduates and engineers who can be involved in creating awareness on soil, forest and nature conservation so that these disasters that happen will not be as frequent as they are today in our time. We can also teach people to plant and conserve forests. Forests now are nearly depleted because of lack of knowledge. People do not know how to take care of trees.

A few days ago, I was talking to somebody who is in charge of seedlings and he said that they were ready to distribute---

*(Loud Consultations)*

**The Temporary Speaker** (Sen. Mumma): Order, hon. Members.

**Sen. Murgor:** He said that they were ready to distribute over 250,000 seedlings--

**The Temporary Speaker** (Sen. Mumma): Sen. Oketch and Sen. Okiya Omtatah, kindly, listen to the Senator in silence.

**Sen. Murgor:** They were ready to distribute more than 250,000 seedlings that are ready to be planted. However, he said the sad part about it is, that people will take seedlings and just place them anyhow or plant them and not really take care of them. He is saddened

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that all the seedlings might not have the chance to become trees. Therefore, places where the seedlings are supposed to be planted and grow to be trees will remain bare and without trees to hold the soil that enables grass to grow.

There is a lot of need for skills and carefulness, especially on taking care of materials and supplies that we get to attend to situations that have become disastrous such as foodstuffs, blankets and mattresses. We need to have a culture and develop a habit of taking care of such donations, so that we can attend to the needs of our people when a disaster strikes. We need to be faithful and trustworthy people on behalf of our people and also to those who donate. Donations need to be given to trusted hands that will make sure that they reach the people who deserve it. I support.

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

**Sen. Orwoba:** Thank you, Madam Temporary Speaker. I rise to support the National Disaster Risk Management Bill. As I add my voice to this, I want to particularly draw the attention of the House to what a national disaster is.

If you look at Page 3 of that Bill, they have explained that a disaster means a progressive or sudden widespread localized natural or human-caused occurrence that causes or threatens to cause death injury, or disease or a significant disruption of the life of a community.

As I support the Bill, I want to talk about disasters that nobody talks about. Nobody wants to pay attention to the challenges that the women of Kenya are going through. I want to get the attention of the public on matters Sexual and Gender Based Violence (GBV) because we continue to turn aside and ignore them. Even the Statements that have been read today have touched on several national disasters---

**The Temporary Speaker** (Sen. Mumma): Sen. Orwoba, what you are speaking to is important but today's business is the National Disaster Risk Management Bill. If you want to place context, please, situate it in the Bill.

**Sen. Orwoba:** Thank you, Madam Temporary Speaker. I stand guided. That is why I went back to look at what the Bill is defining as a disaster. I want to ask the proposer or those who are fronting this Bill--- I know that it has come from the National Assembly, to give clarity of the definition of a national disaster.

I do not think that all the regulations that we are putting here; the committees, the structures of the funds, how these resources should be placed, the resiliency plans and what we are supposed to do when we are managing the national disaster speak to all the disasters that we have. At what point will we as a community and country understand some of the things that are happening in this country?

In the same way we have spoken very passionately about the disappearances and the extra-judicial killings to the extent that they are causing death, injury or disease or a significant disruption of the life of the community, I also want to add here that when we are drawing these regulations or committees, we must also understand that disasters are not only limited to floods, fires or certain things as they have put in the definition.

A disaster also means that it is a progressive or a sudden widespread of localized natural or human-caused occurrences and the issue of SGBV---

Madam Temporary Speaker, I wish Sen. Cherarkey, who is being distracted by Sen. Mariam Omar, would listen because this is a very important point. The issue of SGBV and

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the femicide we continue to see and bring as Statements should be declared by the President as a national disaster. The definition is there; it is causing a significant disruption of the life of the community. When all of these regulations are being placed here, my question and the voice that I am adding to this Bill is, are we really thinking through all the natures or characteristics of what we are calling a national disaster?

Madam Temporary Speaker, a simple example of how we are proposing to deal with disaster risk reduction does not speak to some of the disasters that we are experiencing. We have had so many incidences of delayed justice based on disasters. On the issue of the gender-based courts, we have severally gone on record and asked that the Chief Justice (CJ) allocates a timing such that most of these SGBV-related cases are prosecuted within six months.

However, when I read the proposals on how we are dealing with disaster management, then I beg to ask my fellow colleagues whether we are thinking through that disaster is not just limited to floods and fires. We are also experiencing a femicide disaster as women in Kenya. That is what I am trying to say. As women representing women in this Senate, we must speak the truth on what we are going through.

Madam Temporary Speaker, to move on from that, if you read the Bill, it says that the objective of this Act is to provide for a legislative framework for disaster risk management, enhance the effectiveness and coordinated disaster preparedness prevention response and to reduce disaster risks and vulnerabilities at the national and the county levels.

My question then to the proposers of this Bill is; while we are setting up the committees, the funds and the regulations, are we really thinking about the big constituency of women and girls who end up being victims of many of the natural disasters that we have in this country?

So, I encourage the proposers of this Bill to not limit our thinking to fires, floods and natural calamities such as climate change but to also, think of the disasters that are pushed by human interaction and created by human beings which are here with us. Every day, we speak on them in form of statements.

I particularly highlight the national disaster of gender-based violence, intimate partner violence and femicide.

Thank you, I support the Bill.

**The Temporary Speaker** (Sen. Mumma): Sen. Moses Kajwang', proceed.

**Sen. M. Kajwang'**: Madam Temporary Speaker, I rise to support The Disaster Risk Management Bill that is before the House. Yesterday, I listened to the Senator for Migori County, who is also my party leader, because he is the secretary for disaster in the Orange Democratic Movement (ODM) party.

Sen. Eddy Oketch did a wonderful job in the wake of the recent floods; where, he mobilised resources and well-wishers to go around to support those who were affected by the floods. However, Sen. Eddy spoke strongly against this Bill yesterday. Today, I encourage him and other Members of the Senate to have a different view of this Bill.

The situation we have in the country is that, disaster risk management has been scattered all over the place. We have a National Disaster Risk Management Policy of 2017. This policy places responsibility for disaster risk management in the hands of a

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National Disaster Risk Management Unit. This Unit falls in the Ministry of Interior and National Administration and was established through an executive order in August 2013.

The policy also delegates that function to a National Disaster Operations Centre, established in 1998. It goes ahead to provide or assign responsibility to the National Drought Management Authority, established by an Act of Parliament.

At the Ministry of Defence, in line with the constitutional provision that the Kenya Defence Forces (KDF) can be called upon to respond to disasters, there is a disaster response battalion.

Madam Temporary Speaker, then, there is the Kenya Red Cross Society, established by an Act of Parliament, CAP 256 of 1965, which has been placed right in the centre of disaster response in this country. Sometimes, when we speak about the Kenya Red Cross Society, people think that this is a foreign organisation or a Non-Governmental Organisation (NGO), yet, it is established by the laws of Kenya.

So, it means that when county governments contract the Kenya Red Cross Society, it is a government-to-government procurement rather than a government-to-business procurement.

You cannot then place a finger on who is responsible for disaster risk management in this country. In the Office of the Deputy President, there are bags of beans, maize and rice, which are distributed whenever there are floods across the country. For those of us who have seen these bags of rice being distributed, the means of distribution is more expensive than the items that are being distributed.

I have seen people flying in using state helicopters and Army helicopters to distribute a plate or a dish of rice or beans to flood victims in the areas of Nyakach and Osodo in Karachuonyo Constituency.

So, the Senate, in the 11<sup>th</sup> and 12<sup>th</sup> Parliament, made a proposition that we needed to have better coordination within this disaster space. I recall that it must have been Sen. Mutula Kilonzo Jnr, and perhaps, Sen. Sakaja, who is now in Nairobi City County, who were spearheading this Bill. This Bill collapsed simply because the other House considered it to be a money Bill. There was no other reason.

This is why today, if this Bill has originated from the other House, we are happy to support it, of course, with the necessary amendments. As we support and speak to this Bill, we must remember that disaster management is a concurrent function.

The Fourth Schedule assigns that function to both national and county governments. Therefore, we cannot have legislation and entities or new creations that then take away the role of county governments.

Madam Temporary Speaker, Kenya is a signatory to the Sendai Framework on Disaster Risk Reduction. It means that we have signed up to certain international obligations that requires to streamline, put in place legislation and adopt best practises on disaster risk management.

Disasters in this country have caused untold suffering. It is very rare for the school calendar to be affected by disasters. In living history, perhaps the other time that the school calendar was disrupted was during the 1982 coup. After that, the next time the school calendar was adversely affected, was during COVID-19. The third time the school calendar was affected because of a disaster was Hurricane Adai. It was not too long ago. I think it

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affected the reopening of the second term, where, everyone was holding their breath to see how that manmade hurricane or cyclone that was supposed to hit the coastal part of Kenya was going to play out.

We thank God for being good to us. The intensity of the cyclone reduced out in the high seas and we were not affected.

Those are the grand disasters that sometimes people think about, but disasters can manifest in the form of fire. It could be fire that has burnt down shops in a marketplace.

In Rodi Kopany Town in Homa Bay County, a few weeks ago, fire razed down a number of shops belonging to small-scale business people. Even though the county government attempted to respond by sending fire engines, they ran out of water and extinguishing materials. It was quite an embarrassment because they had to be refilled. By the time they were refilled, the fire had already done what we feared it should not do.

Disasters can represent itself in the form of flooding that affect my people every rainy season. We head to the area of Karachuonyo bringing in aid, support and assistance.

We find families that have been chased from their homes because they have been flooded. You find in-laws, parents, children, adult men and daughters, sleeping on the floor of a classroom. You find people set up in camps without proper sanitation, food, medication and protection against the mosquitoes that obviously are there whenever it floods.

Madam Temporary Speaker, recently, when the President came to my region, we made it clear that to avoid this annual disaster of flooding, the solution is simple; build dams upstream. The colonial government identified the areas where these dams should be. One dam should be in the area of Magwagwa in Nyamira County. Dam the area and control the flow of water.

When you have a dam, you can generate electricity, do irrigation and create employment so that we do not have to send our children out of the country to do menial jobs.

Madam Temporary Speaker, those are some of the things we were discussing yesterday as far as job creation is concerned. We challenge the President to set up the next dam in Konoin or up the hills of Kericho because it is the floods that come from the hills of Kericho that then affect the people of Kisumu County.

The rains that come from the Magwagwa area affect the people of Homa Bay County. The solutions are simple, the solutions have been quantified, the designs have been done and all that is needed is a government that can prioritize the needs and the lives of the people of that region. However, because you have dithered and continue to procrastinate from Independence to date, we have got a disaster every year.

I want to call these manmade disasters. I do not want to call them natural disasters anymore because God has given us the wisdom, the knowledge and the foresight on what to do to prevent them. This Bill proposes that we collapse all those other entities that I have talked about so that we have one national disaster risk management authority.

Yesterday, the Majority Leader and the Majority Whip were commenting that we are creating a new entity. However, a proper reading of this Bill and the reports that the House has done in the past is that we are collapsing the various desks, units, operation



centres and authorities that have been vested with that responsibility into one for better coordination for efficiency and synergies. It is for that reason that I support this Bill.

Madam Temporary Speaker, the Bill also makes provisions for county disaster risk management committees to be chaired by the county governors. Part of those who will be sitting in those committees is the County Commissioner. We need to be very careful on this. Sometimes, through national legislation, we have come up with structures and proposals for county governments that ended up not working.

You do recall the conversation at the devolution donor working group earlier today where one participant said that sometimes we legislate at the national level and tell counties to establish committees which never work. The county policing authority which was established by national legislation has never been actualized to date.

Madam Temporary Speaker, this is the painful bit that through legislation, the Basic Education Act, we established the county education boards. Most county education boards across the country are understaffed, underfunded and not effective in any form or shape.

I recall in Homa Bay County, the inaugural chair of the county education board was a very distinguished educationist, a lady called Mrs. Roselyn Onyuka. She had become a provincial education officer, who had been a principal of many schools. I am sure that even here in Parliament, a number of the ladies here are her protégées.

She was made the chair of the county education board but given no funding and budgetary support. She had to resign out of frustration. The reason why I bring these parallels is that we are creating a county disaster risk management committee through this Bill. If we are not careful, it will go the direction of the county education boards, the county environment committees and the county policing oversight authorities.

I have seen a few county governments that have come up with county disaster risk management laws. We need to ensure that when we make national legislation, we do not make it too prescriptive for county governments. Let us make it descriptive so that county governments can then come up with their own legislation to ensure that they do what is useful and what is possible in their areas.

The disaster management committees must be agile. They cannot be bureaucracies because a disaster strikes sometimes when least expected. In the definition of disasters, they are those that can be foreseen, but they are those that come when least expected. Therefore, you do not need a strong bureaucracy. You do not need committees where the proceedings are guided by normal rules of procedure to manage disaster issues in counties.

In Nairobi City County, when the Governor appeared before the Committee of Public Accounts, there had just been a fire incident in Gikomba Market.

In Nairobi, it has become a ritual also that there will be fire in Toi Market and Gikomba Market yet the amount of money that we collect from Toi Market and Gikomba Market is sufficient to acquire firefighting equipment and to support a disaster management unit in this city. However, the traders in those markets never see that service come back to them, even after they have faithfully paid their dues on a daily basis.

The Nairobi County Disaster Risk Management Act provided that the disaster committee would be chaired by the deputy governor and it made very elaborate and clear provisions on how it ought to be run. It even included incorporation of the local elected leadership in Nairobi.

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Unfortunately, when the Governor appeared before my Committee and we put him to task, it emerged that even in his response to the fire incidences in Nairobi, he never convened the disaster committee. In his defense, he brought us a memorandum that he had written arguing that the law was defective.

Madam Temporary Speaker, we must deal with the law as it is rather than the law as it ought to be. We recall dismissing the Governor and directed that if he is dissatisfied with the law that was validly passed by the County Assembly of Nairobi, he should sponsor amendments. In the absence of amendments, he must therefore, ensure that the county disaster committee is in place.

Nairobi is too important for important instruments like a county disaster committee to be run at the whims of a Governor. Even as I support this Bill, on the part of county disaster committees, I hope that the relevant Committee will look at the other legislations that various county governments have already enacted to ensure what we are proposing will make sense to their operations.

Madam Temporary Speaker, even as we speak, I challenge you to dial 999. When I was growing up in Nairobi, we knew that 999 was a number that you would call when you are in problems. If you are faced by muggers, call 999. If there is fire, call 999. If thieves break into your house, call 999. I do not know what you will get today if you call 999. That shows you the kind of breakdown that we have in our disaster risk and response strategies. If we will be serious about this matter of disaster management, the national Government should not leave that responsibility wholly to county governments.

I know in it is assigned to county governments in the Fourth Schedule. Even housing is assigned to county governments and the President is going around the country launching houses. Water is a function of the national Government and the President is going around launching water projects.

What is special about firefighting? Why do we want to leave this responsibility with its huge budgetary and coordination mechanisms to county governments?

I want to challenge the national Government that in as much as this is a county function, the Intergovernmental Relations Act requires the National Government to support county governments in areas where county governments might not have the capacity.

Madam Temporary Speaker, there is something we need to clean up in this Bill. It talks about a national state of disaster; that the President can declare a national state of disaster. The wording is different from what is in the Constitution. The Constitution talks of a national state of emergency. Under Article 58, the President can only declare a national state of emergency through parliamentary approval.

What is this other thing called national state of disaster that the President can then use to curtail movements and the Bill of Rights because it is not subject to approval by Parliament? We need to be careful that we do not introduce another state of emergency and call it a state of disaster in this Bill.

Madam Temporary Speaker, I hope that the Committee will bring their report so that we make an informed decision on the issues and areas that need to be amended to ensure that this Bill is fit for purpose.

**Sen. Oketch Gicheru:** On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Mumma): What is your point of order, Sen. Eddy?

**Sen. Oketch Gicheru:** Madam Temporary Speaker, I rise under Standing Order No.105. As you might have observed, I was very patient. I did not want to interfere with the thought process of my dear brother, Senator from Homa Bay, Sen. M. Kajwang’.

Madam Temporary Speaker, you have heard Sen. M. Kajwang’ arguing about the necessity of this Bill in places such as the Office of the President and other places that I do not want to mention because we are on the HANSARD. You have seen people trading items like beans and other foodstuff when a disaster occurs. That shows that there is inadequacy in terms of proper disaster response and coordination.

Could Sen. M. Kajwang’ help us to understand this as a statement of fact---

**The Temporary Speaker** (Sen. Mumma): Sen. Eddie, what is your point of order?

**Sen. Oketch Gicheru:** Madam Temporary Speaker, it is a statement of fact. Is it factual that because of bad behaviour that we see like in the Office of the President, the National Disaster Operations Centre (NDOC) has failed because other ministerial bodies--

**The Temporary Speaker** (Sen. Mumma): Please, explain instead of asking. You cannot give a point of order on an opinion. What do you want him to clarify?

**Sen. Oketch Gicheru:** Madam Temporary Speaker, it is not an opinion. I would like him to clarify whether the necessity of this Bill is because the NDOC has failed or not.

**The Temporary Speaker** (Sen. Mumma): I have ruled you out of order. That is asking for an opinion.

Continue, Sen. M. Kajwang’.

**Sen. M. Kajwang’:** Madam Temporary Speaker, I wish Sen. Eddie had challenged me to provide evidence. I would have tendered evidence that when there were floods in Nyakach, none other than a Member of this House flew in a military helicopter to go to the flooded areas with a few bags of maize, rice and beans. The cost of flying a military plane from Nairobi to Nyakach is higher than the goods and items they had sent there.

We can take away the bags of maize, beans and rice from these other arbitrary centres of power and put them in one agency that will be answerable to Parliament and audited by the Auditor-General, and whose CEOs and executives can appear before Parliament, unlike now where political brokers are the ones who are entrusted with disaster response measures.

Madam Temporary Speaker, I support.

**The Temporary Speaker** (Sen. Mumma): Next is Sen. Cherarkey.

**Sen. Cherarkey:** Madam Temporary Speaker, from the outset, this Bill is crucial in terms of many issues. You are aware that disaster management is---

Madam Temporary Speaker, I do not know why the amber light is on. I need your guidance.

**The Temporary Speaker** (Sen. Mumma): Please, ensure that Sen. Cherarkey’s time is fully for him.

**Sen. Cherarkey:** Thank you, Madam Temporary Speaker, for that guidance.

When you look at the Fourth Schedule of the Constitution, one of the functions of the national Government is disaster management. It is co-shared between national Government and county governments. When we have a national legislation, it will harmonise functions in terms of disaster management in the country.

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One of the Funds that are normally misused are those for disaster response and management in the counties and even at the national level. For example, in Nandi County, in the Financial Year 2023/2024, according to the Report of the Auditor-General, the approved budget for disaster response and management was Kshs100 million.

The exchequer release that was made to the County Revenue Fund (CRF) before moving to the next financial year was Kshs50 million. However, when the auditors went to ask for financial statements to ascertain how Kshs50 million was spent, they could not trace how that money was used by Nandi County Executive.

I have been sitting in the County Public Accounts Committee (CPAC) for almost eight years now. One of the critical issues has been misuse and abuse of funds meant for disasters. For example, sometimes Persons with Disabilities (PWDs) are called to go to Nandi Show Ground. From that money, they are only given loaves of bread and blankets worth Kshs250 each. They get bread and soda which we could use to call zero diets when we were in school. As they are given, photos are taken to show that they are helping the vulnerable. We need a law to guide on the issue of disaster management.

As you know, disaster can come in many forms. There are traditional disasters that we know, such as droughts, floods, landslides, and school fires which have become predominant for the past few months. We continue to condole with families who have lost their loved ones, especially the Hillside Endarasha Academy incident where more than 21 children lost their lives.

There are a number of school dormitories and houses across the country that have been burnt because of what is happening. The biggest support system in terms of disaster response and management has been the Kenya Red Cross Society (KRCS).

I remember when we lost some children in Kiptuya Ward, we had to get young men, the famous Cheploch Gorge Divers. I am still surprised why neither the national Government nor Baringo County Government has not hired Cheploch Gorge Divers who always assist in retrieving bodies of people who have drowned in rivers especially during rainy seasons.

The other day, a television station aired a story where young men were crossing dangerous rivers because of rain, especially in Kapkangani Ward in Nandi County. The dynamism of disasters continues to evolve. As we pass this law, we need to define what a disaster is and how it should be handled.

The other day, Nandi County Executive carried out a massive human resource audit. The unfortunate thing is that after seven years, it is when the Governor has realised that there is a disaster of ghost workers.

We were shocked. There are a number of people close to him referred to as professional radio callers who praise and worship him on famous radio stations. There are also online bloggers and close family members who were on the payroll of Nandi County Government.

Even as we talk about spending of funds, the Ethics and Ant-Corruption Commission (EACC) should improve their networks, so that as we discuss about funds set aside for disaster management, the wage bill and development expenditure, we should agree that something is wrong in terms of management.

I am disappointed because the disaster we have in Nandi County is running down both disaster response and management. The Governor hired three of his siblings. One of them is the Assistant Director of Education. Another one, who was his chief campaign soloists, is the Chief Officer (CO) for Education. We also have online bloggers. Most of those people have never been to their duty stations.

These are issues that continue to bedevil us especially in Nandi County and I condemn them with the strongest terms possible. In the next one month, the County Executive of Nandi County should appear before the National Cohesion and Integration Commission (NCIC) and even the CPAC.

I want to assure the people of Nandi that we are still following up to establish how Kshs100 million was used. They must account for everything that they do. You can run, but you cannot hide. That is why last time I said that the headquarters of corruption is Nandi County. I am irritated by the mess that we see, where cronies and siblings are hired by the Governor of Nandi to work for him. We shall resist.

I want to assure the people of Nandi. If I had the power to initiate an impeachment, I would have done it a long time ago. It is MCAs who initiate and the Senate upholds impeachment charges.

Secondly is on the issue of evictees from Mau Forest. We must find a way of handling forest evictees. In disaster, there are what we call forest evictees, like in Serengonik and Mau Forest. There is also a new form of evictees referred to as infrastructural evictees.

Those infrastructural evictees are in Nairobi and in major cities, such as Eldoret, Kisumu and other cities across the country. In fact, in Mosoroi, in my local centre, there were infrastructural evictees who were being evicted by the County Government of Nandi. They are even found along Namgoi. That is what we call infrastructural evictees.

Madam Temporary Speaker, you will realize that is another challenge of disaster. When you evict people, like what happened in Toi Market in Nairobi, you create what we call infrastructural evictees. The traditional evictees that we have known are maybe flood evictees because the floods were here in Nairobi the other day. We have Mau Forest evictees, Serengonik forest evictees in Nandi Hills and across the country. This continues to be a challenge.

In the last session when I was the Chairman of the Committee on Justice, Legal Affairs and Human Rights, we did investigate the issue of Solai Dam Tragedy, where it killed a number of Kenyans. I am happy that the Senate at that time made a recommendation. The recommendation was done by the current Governor of Makueni and the former Senator of Makueni, Hon. Mutula Kilonzo Jr.

Madam Temporary Speaker, at that time, the famous Nakuru County Commissioner Joshua Nkanatha, Chief Kiragu and Mansukul Patel had connived to pay off the victims without being charged before the court of law. As much as I sympathise that the outcome of the court has been that every family be compensated between an amount of Kshs800,000 to Kshs1.2 million, I expected a harsher penalty since that famous Patel Dam in Solai killed many Kenyans.

It swept away more than 3,000 coffee farms. There were more than 200 million cubic metres of water that were washed downstream and many lives were lost. It is

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unfortunate that we lost those lives in May, 2018 when that unfortunate disaster happened in Nakuru County. These are challenges that we should learn from. I am happy there is a legal framework in terms of disaster management going into the future.

Additionally, even at that time, we lost more than 45 Kenyans. Schools and homes were destroyed. As a Committee that followed up on the implementation, the people of Solai Dam Tragedy up to today have nightmares. When they hear even a tyre burst, they always get scared. Therefore, as we pay them off, we should ensure we have counselling services.

Madam Temporary Speaker, when I had the opportunity of visiting Brazil with the Committee on National Security, Defence and Foreign Relations then, there was a case of Brumadinho, collapse of dam in the State of Minas Gerais, in Brazil. Apart from being impressed with other things in Brazil, I was impressed by the disaster preparedness of that country. Within 20 seconds, almost a hundred choppers had been mobilised after the collapse of Brumadinho Dam, where 270 people died in that Brumadinho Disaster.

When we visited Brazil two or three months down the line, we found the responders were still on the ground collecting every bone of anybody who lost their lives in Brumadinho. The way the response was organised was of master class. At that time, the state prosecutor of Brazil had already fined the owners of that sludge US dollars 7 billion and the owners were still in court.

The other day in the same incident of Brumadinho Dam collapse in the State of Minas Gerais in Brazil, the courts have also fined through the union, because the indirect contracted of that dam had not been compensated. They have even fined the same owners over US dollars 200 billion and yet the owners are still being prosecuted by the state prosecutor. That is when the rule of law is functional.

Apart from compensating families, the prosecutor has also pushed the owners of Brumadinho Dam to do environmental regeneration to ensure the environment is left better than it was before the destruction by the Brumadinho Dam. We have failed to do this in Solai Dam in Nakuru County.

I am happy with this national authority in terms of National Disaster Management Authority (NDMA). Through this Authority, we are able to ensure that anybody who is found out of criminal negligence is held liable. The Ad Hoc Committee of the Senate, and I do not know whether Sen. M. Kajwang' was part of it, found that the owners of Patel Dam or the Solai Dam were criminally liable.

I am happy although I hope the Attorney General will appeal that matter. We need to give harsher penalties, because we know there are many people who own ranches and dams that have not been certified. There is what we call the National Environmental Management Authority (NEMA) and we need to know their role.

We have the Kenya Water Towers Agency. What are they doing when they approve the building of small dams and ponds? What is their role? We know when we had heavy rains, most of the dams in the country were over flowing. However, what is the National Water Harvesting Authority doing, so that when these dams and ponds are over flowing with water, they might not affect the lives of people?

We saw another form of pandemic called COVID-19 pandemic. If you may recall, at the Senate Committee at that time, there were allegations that more than US dollars 7.8

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million was lost during the fiasco of COVID-19 scandal and the whole world went on lockdown.

On the issue of COVID-19 funds, when the COVID-19 happened, many counties were able to give supplementary budget together for what was happening across the country. Subsequently, by the Office of the Auditor-General (OAG), we found out that most of the counties misappropriated funds. That is when we had the new birth of COVID-19 billionaires in town.

Madam Temporary Speaker, when you see new money in town, it is the birth of COVID-19 billionaires. There are people who when other Kenyans were dying, others were becoming billionaires. It is sad that up to today, no one has prosecuted COVID-19 billionaires. That is why some of us always question, what is the role of the Ethics and Anti-Corruption Commission (EACC)? Besides, the people who stole the COVID-19 billions are also disturbing us up to today.

Madam Temporary Speaker, apart from the few people that the EACC and the Directorate of Criminal Investigations (DCI) have taken to court, no governor has been charged over misappropriation of COVID-19 funds. There are no former Government officials who were there in 2020 during COVID-19 have been charged in court. This is why when the EACC say they do not have resources, sometimes we ask them what have you delivered? What are the results that can drive more resource allocation in terms of capacity and resource to remunerate the functionality of the EACC?

As we look at this, I know there are people who sit in the County Public Investments and Special Funds Committee (CPIC) like Sen. Oketch Gicheru. I am pleased that he has taken the advice of the Majority Leader of staying put in the House. The CPIC have looked at those investment funds on several locations, and they will give recommendations.

I heard the Majority Leader saying that most water companies are struggling and I agree. For instance, the Kericho Water and Sanitation Company (KEWSCO) is also struggling. I think the one functioning is the Eldoret Water and Sanitisation Company (ELDOWAS). The one for Nandi has collapsed. In fact, people are running around in Kapsabet with jerricans and women are struggling.

This should be a gender-based violence issue because you find women struggling to get water in Kapsabet Town instead of going to the saloon. The famous mode of transport is donkeys. Therefore, whenever you pass as you go to Western Kenya, do not be shocked, because the Kapsabet-Nandi Water and Sanitation Company (KANAWASCO), under the leadership and governorship of Sang, has failed in terms of water provision in Kapsabet Town. This is what is scaring the investors.

The reason many people do not live in Kapsabet or Eldoret town including the governor, is because there is no water, sanitation and sewerage. This is what discourages investors even from Migori from investing in Kapsabet Town.

I hope the County Public Investments and Special Funds Committee (CPISFC) will be able to tell us how we will salvage these water companies across the country and make them functional.

On Clause 9, I ask the Senate Majority Leader that we amend Clause 9 (f) that says, "The management of the Authority shall vest in a Board which shall compromise the Chief Executive Officer of the Council of Governors". We need to replace it because we are

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giving the Council of Governors too. Can we put it as “Youth, Persons with Disability (PWD) and women?”

I agree with Clause 27 that we need a national command centre. When we went to Brazil and visited Brasilia, the former president of that time---

**Sen. Oketch Gicheru:** On a point of information, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Mumma): Sen. Cherarkey, do you want to be informed.

**Sen. Cherarkey:** Yes, I do not mind. He looks informative today.

**Sen. Oketch Gicheru:** Sen. Cherarkey, your concerns are very well placed on the state of water service providers. The County Public Investments and Special Funds Committee that you were hoping will deal with that issue, had dealt with it in the previous session. We have done it very well and the report has been tabled in this House and debated. I know you are sometimes very busy with a lot of things. Perhaps, it has passed you and was not able to read, but it is in the House. You can perhaps to look for it and read all the reports on water service providers in the entire country. You will get very rich report on it.

**The Temporary Speaker** (Sen. Mumma): Proceed, Sen. Cherarkey.

**Sen. Cherarkey:** I do not look better with that information, but I will try to look for that report.

Madam Temporary Speaker, we went to the Brazil National Command Centre. When a disaster happens across Brazil, it takes 20 seconds to reach the National Command Centre. I hope we will borrow from the best practices as we form this Authority.

I am objecting Clause 31. Why are you giving a governor and county commissioner to co-chair? We know the fights we have been having between the national Government and county government. Can you make county commissioners be part of the membership of County Disaster Risk Management Committee? I will be proposing amendment to that.

On Clause 41 on appropriation of funds, why are we legislating ourselves out of Parliament? Senate Majority Leader, you should note that it says “The funds of the Authority shall consist of such monies as may be appropriated by the National Assembly.” We need to amend it to say “Parliament” because we participate in budget making process through the Division of Revenue Bill. Let us not legislate ourselves out of Parliament or close business before knowing.

I agree on the issue of appointment of the President that we need to have mobility because he is the Chief of the Kenya Defense Forces (KDF). When they mobilize the resources through the KDF, the National Police Service Police, the Office of the Deputy President and the Ministry of Interior and National Administration, there is a way---I always find it funny when the Government officials fly in with choppers to give out beans and maize. Let us look for a better way to do it.

With those many remarks, I support this Bill.

I thank you.

**The Temporary Speaker** (Sen. Mumma): I cannot see any other requests. I therefore call upon the mover to reply.

**The Senate Majority Leader** (Sen. Cheruiyot): Thank you, Madam Temporary Speaker. I thank the colleagues who have taken time to speak to this Bill proposing various amendments, including the last one by Sen. Cherarkey that we should not legislate

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ourselves out of work. I did not know that he loves his job that much. I now know what to do if I want people to concentrate. In the last few days, we have been speaking about presence in the House. Very soon, we will also introduce certain clauses which will make people sit here. They are likely to pass it and later on reflect back and ask who put it in law. Such things have happened in our Parliament.

I appreciate the thoughts that have gone to this Bill. I concur with many of the thoughts that there is a lot that can be done to improve and make this Bill better. I share in the very valid concerns that I spoke to in raising this Bill. This is a National Assembly Bill. I spoke off the disagreement with their proposal to create an entity without wounding up certain entities that do similar roles. This is because the overall idea and thinking of a Senate for so many years on disaster response has been lack of a proper coordination in this effort.

We have been quite clear as the Senate that when creating an entity such as this, you need an institution that will bring together all the players and stakeholders. This is to have a sort of a national command centre that will have representatives, say, from different stakeholders like the fire department and divers. If it is weather related disasters like floods or drought, they all coordinate mitigation measures sitting under one roof, under the command of a disaster response expert, who will give the mitigation measures as well as the response. The same can be replicated across all our 47 counties.

I thank colleagues who have spoken on this Bill. I hope that when the Committee returns its verdict on the proposed amendments, they will guide this House towards that direction. That is why I continue to plead with our chairpersons to do a decent job at the committee level. We do not have any other better mechanism in the legislative process. The most important part is the amendments. That is why in my time as the Senate Majority Leader, I strive never to disagree with committees because I know that they do a far more thorough job than we can do during debate and Committee of the Whole. This is because they go clause by clause, listen to stakeholders and interact with them and deeply internalize these Bills. I hope that the Committee that will consider this Bill will guide us in taking into consideration the concerns of colleague Senators in making this legislation better.

Madam Temporary Speaker, with those very many remarks, I beg to reply. In accordance to Standing Order No. 66 (1), I beg to request that you defer the putting of question on the Bill until a later date.

I thank you, Madam Speaker.

*(The Clerk-at-the-Table Consulted with the Temporary Speaker)*

**The Temporary Speaker** (Sen. Mumma): Hon. Members, I hereby defer the putting of the question on Order No. 15 to the next time when we have the quorum.

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

Next Order.

**MOTION**ADOPTION OF REPORT ON INSECURITY  
IN TURKANA COUNTY

THAT, the Senate adopts the Report of the Standing Committee on National Security, Defence and Foreign Relations on a Petition to the Senate by Mr. Samuel Esapar on behalf of residents of Turkana County, concerning the state of insecurity in Turkana County, laid on the Table of the Senate on Wednesday, 7<sup>th</sup> August, 2024.

**The Temporary Speaker** (Sen. Mumma): We can defer that Order.

*(Motion deferred)*

Next Order.

**BILL***Second Reading*THE DIVISION OF REVENUE (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILLS NO.38 OF 2024)

**The Temporary Speaker** (Sen. Mumma): Senate Majority Leader, proceed.

**The Senate Majority Leader** (Sen. Cheruiyot): Thank you, Madam Temporary Speaker. I beg to move that the Division of Revenue (Amendment) Bill, (National Assembly Bill No.38 of 2024) be now read a Second Time. I must appreciate with great enthusiasm and excitement the very diligent and indefatigable Senator for Homa Bay this Fourth Part of the Third Session of the Senate. I do not know what has happened to him, but I like it. This is the Moses Kajwang' that I knew of in the 11<sup>th</sup> Parliament. It is not the one I had seen the last few months. He has always been present in the House up to this hour.

Madam Temporary Speaker, we all know the journey of this Bill. It was first published on 8<sup>th</sup> March, 2024 by the National Assembly and we debated it here. I need not go into the history of why we find ourselves with the Division of Revenue Bill again before us. You all understand what happened in the country. However, for purposes of record, it is good to state that the Division of Revenue Bill is normally prepared in line with Article 218 of our Constitution that talks of the vertical distribution of resources between the national and the county governments.

We pass this legislation on a yearly basis with the hope and view of ensuring that our counties and the national Government are properly funded.

Madam Temporary Speaker, if we ever have the numbers to do a constitutional amendment, those that love devolution must ensure that we seal this DORA and ensure that there is no way the national Government accesses funds without counties accessing the same funds.

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Today, as I speak, most counties are yet to receive their allocations and the justification is that we have not passed the DORA and the CARA. We are aware these issues because we all live in Kenya.

While that is the case, the national Government continues to function, They are able to access their funds because the National Assembly passed the Appropriation Bill. They have amended and passed a further supplementary budget if I am not wrong although I could be wrong.

I hope we can set a mechanism through which we ensure that in all instances such as these, where for reasons beyond the control of Parliament, or parliamentary reasons, we did Kshs316 billion for two financial years, 2017/2018 and 2018/2019 after we haggled and fought with our colleagues from the National Assembly up to late October, without agreeing.

One of the delaying tactics that were used to bog down counties into submission was the fact that while the national Government was operational, many of them were grinding to a halt. In fact, it took the governors like the former Governor of Nairobi accompanying President Uhuru alongside other governors to some function who asked the former President to give them what was available. They did not care for our fight and castigated the Senate for holding out for long without appreciating the suffering.

Madam Temporary Speaker, such are the things you have to deal with when you are dealing with governors. It does not matter how nice the meal you are preparing is, if someone is greedy, they do not have the patience to wait. They will say, just serve it as it is, we think it is ready as has been prepared.

Article 202 needs fine-tuning where revenue raised nationally is divided equitably between counties and the national Government. How you divide, it needs to be a conversation and at what point you access those funds. If you ask me, it needs to be same between counties and the national Government.

This Bill proposes the following. Clause 1 of the Bill provides for the short Title. Clause 3 contains the provisions on objects and purposes of the Bill, which they have taken time to explain. Clause 4 prescribes allocation for the national Government and county governments from the revenue raised nationally, for the current financial year 2024/2025.

Clause 5 of the Bill outlines mechanisms for adjusting variations in revenues emanating from revenue performance during the financial year in which this Bill relates to.

The Schedule contains the schedule of revenue raised between the national Government and county governments for the financial year 2024/2025.

Madam Temporary Speaker, speaking of revenue raising measures, there was a report this week about county governments that have grown their own-source revenue. We must commend them because there are governors who are diligent in their work. When they do well, we must celebrate them. I saw Homa Bay, Nairobi City and other counties-- - I am not familiar with that list, but this is something we must discuss further.

When a county grows its own-source revenue, it is testament to the fact that the Governor is not dipping his or her hand into the county till at source. That is the reality. It is a fact of nature that many of our county governors have refused to digitize their revenue systems so that you have men and women who walk around in yellow and green coats in

our markets, collecting Kshs20 and Kshs50 from our *mama mbogas* and *bodaboda* operators. However, that money never makes its way to the county revenue tills.

We have a Bill before this House that will ensure we put systems in place that are tamper-proof. It was Sen. Cherarkey who once told us of a T-junction that some governors put in some of these systems, such that, even when you think that they have collected electronically, there is a leak somewhere. There is a tap you can open and it is accessible through a back channel.

That is why there is a Bill to ensure that you standardize digital collection of revenue at the county level, so that you grow your own-source revenue. Counties must also learn to make-do without having to rely solely on the exchequer. As much as it is not possible or feasible that a county can rely on own-source revenue, survive and meet its obligations, there needs a deliberate effort by our governors to grow their own-source revenue and find it as a means of running services in their counties.

Madam Temporary Speaker, in conclusion, I wish to state the DORA plays a crucial role in ensuring the distribution of financial resources between the national and county governments for promoting economic developments.

I urge hon. Senators, to consider and pass this Bill. I am also aware that the committee will be leading us through the amendment stage. I know the figure that has now been proposed is Kshs380 billion, but I hold a completely different view.

In my moving notes I have not dwelt deep on the figures, I will leave it to the committee Members to give us the justification on the figure they are proposing. We are alive to the fact that as a country, we are still in deep financial woes. Kenyans have told us that there are savings that can be made without making additional demands on taxation. I believe that is true.

Madam Temporary Speaker, I have spoken of the need to make sure that we run a leaner government so that we do not end up collecting and paying only a handful of civil servants at the expense of a million of other Kenyans who are jobless and hopeless.

With those remarks, I wish to move and request a Member of the committee, the Senator for Migori, Sen. Eddy Oketch, to second and do justice to this Bill by speaking more to it.

**The Temporary Speaker** (Sen. Mumma): Sen. Eddy?

**Sen. Oketch Gicheru:** Madam Temporary Speaker, I thank the Senate Majority Leader for the honour of seconding this Bill. This is a very tough conversation considering he is my senior and he has been in these parliamentary precincts longer together with Sen. (Dr.) Khalwale, therefore, akin to other issues of rank. On seniority, he will appreciate and acknowledge the fact that this would be the first time we are attempting to amend DORA.

Initially, DORA used to include conditional allocations. However, the amendment that was done on DORA in 2018 was not substantive to the issue of equitable share. That amendment happened because in 2018, there were more available funds to add to the conditional allocations. Therefore, it was amended without talking about the equitable share. However, we have never had a situation in this country that required the amendment of DORA so as to touch on the equitable share.

The reason is and this is true even during the time of COVID-19 pandemic, which Sen. Cherarkey talked about, there were bigger shocks which could have necessitated the

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amendment of DORA, but that did not happen. The shocks now are not bigger than at that time.

Madam Temporary Speaker, as a matter of principle, the framers of the Constitution would have expressly indicated in the Constitution that in terms of a shortfall of revenue, then the national Government should bear the entire shortfall. The reason for that is that counties do not have the luxury of raising their resources by floating bonds or any other means of raising money like the national Government does.

Although the framers of the Constitution did not put this in the Constitution, there is the spirit in the Constitution, which technically could have made Parliament *functus officio*, that we should not touch the DORA by any means possible. This is found in Article 175 of the Constitution.

If you read Article 175 of the Constitution, it talks about the principles of devolved government. Article 175(b) says:

“County governments shall have reliable sources of revenue to enable them to govern and deliver services effectively.”

The thought is furthered in Article 203 of the Constitution, which I will also refer to. This is Article 203(1) (J). It says:

“The desirability of stable and predictable allocations of revenue” must be considered when equitable share and other financial laws come to do.”

Why am I referring to these two fundamental Articles? It is because despite recognizing that we are in hard financial times as the Senator for Kericho has indicated well; despite recognizing that we are facing some serious economic hardships as a country that have necessitated this conversation around fiscal consolidation, the money that was given to counties should remain as it was. I want to put it directly as such.

Yes, I support this Bill because there are some subsequent clauses and a number of figures that I will touch on. If you look critically at what the Bill is proposing, the number one issue that we need to address fast, the Senate Majority Leader will perhaps agree with some of my observations, which also reflect the observation of the committee.

The Bill under Clause 3 proposes that we delete Section 5 of DORA, which is being amended. Deleting Section 5 basically means that whenever we have shortfalls within this year, the National Treasury can choose to arbitrarily look at whatever figures they revise with regard to county governments without coming to Parliament.

If you read Article 94 of the Constitution, all legislative powers lie with Parliament. If we allow Clause 3 to pass on this Bill as is, it has two parts. Number one, it requires that in case of a shortfall in revenue, the national and county governments will bear the shortfall. That is the first faction of the clause. I will dispute this clause as a Member of the Committee and as a Senator for Migori County.

If we do not dispute that clause, then it would mean that at any given time when there is a shortfall, we do not have our hand in looking at that shortfall as Parliament, specifically as Senate.

Part (b) of that clause also proposes that the county governments bear no more than 15 per cent in case of that shortfall. This is dangerous. With that calculus, you can easily go ahead and deny counties so much money.

Let me give you an example: The shortfall we are talking about here is Kshs346 billion. The Bill from the National Assembly has indicated that counties need to reduce their budgets by Kshs20 billion, which is six per cent of the current shortfall.

This means that even in that conversation alone, we have not reached 15 per cent, yet counties will have lost money that is even lower than what they received in 2023 and 2024. Now, you can imagine if you pass a Bill that expressly indicates that in case of any shortfall, counties will get to partake in that shortfall up to 15 per cent. That means we can end up reducing the money for counties more than in previous years three times back.

We cannot allow that clause to pass. So, I would say that we support this Bill by deleting Clause 3.

Number two, there is an indication that in the shareable revenue, there needs to be about ---

*(Sen. M. Kajwang' spoke off record)*

**The Temporary Speaker** (Sen. Mumma): What is your point of order, Sen. M. Kajwang'?

**Sen. M. Kajwang'**: Madam Temporary Speaker, I am confused with the sentiments of the Senator who is seconding the Motion because he is saying we support the Bill, but we delete Clause 3. Yet Clause 3 is the heart of this amendment.

It is the door that is being opened to allow this amendment and downward revision because the argument is that there will be a revenue shortfall. So, the minute we delete Clause 3, we do not have an amendment Bill. I am just wondering whether the seconder is supporting or opposing.

I would be happy for him to say that he opposes it so that this matter dies at this point because it is a bad Bill.

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

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

Senator for Migori, you have the option of opposing the Bill and then it dies. Thank you, Mr. Temporary Speaker, Sir.

**Sen. Oketch Gicheru**: Mr. Temporary Speaker, Sir, I am surprised that a senior member of the Senate like Sen. M. Kajwang' would be confused by this important conversation. Are we talking about the same Bill? The most important part of the Bill is Clause 4. It proposes different numbers to be looked into. For instance, Clause 4 proposes the schedule that we should be able to look at.

I started by looking at Clause 3, first, because it proposes a principle going forward. This is the principle I have indicated, but I do not support it in its entirety. Even though I support the Bill because we definitely need to look at some adjustments in the figures, the amendment is a complete deletion of Clause 3, which is in order. It kills the principle that we must be able to reject.

The principle that is being proposed is that we delete Section 5 of the existing DORA. Section 5 of the existing DORA says that in terms or in case of shortfall in national revenue, the national Government shall take the entire amount. However, what is being proposed in the current clause is that there needs to be a share between the national Government and county government.

This is a principle that we are rejecting as a committee and also personally because it will put us at a serious risk that, as a House, we will never participate in any conversations of DORA going forward in case of shortfall. I hope that Senator M. Kajwang' is not confused. I am not addressing Sen. M. Kajwang' directly.

In Clause 4, we, as a committee, feel strongly that the numbers that we must go with are that the total share of revenue must be revised downwards, so that we reduce the burden on Kenyans. The downward number we are proposing is Kshs2.6 trillion. This is in tandem with what the National Treasury had adjusted to. So, Kshs2.631 trillion is what we will propose.

Secondly, we believe that the national Government's share of that should be Kshs2.223 trillion. This means that in that schedule, we must maintain the county government's share at Kshs400.1 billion.

I will justify why this is important as I finish the schedule. On the schedule also we propose that the equalisation fund remains at Kshs8 billion.

Now, for people such as my good friend, the Senator of Homa Bay, we are insisting on this Kshs400.1 billion simply because when we passed the DORA, financial year 2024/2025, we went through a mediation.

It was very difficult to make any adjustments downwards on this particular DORA conversation. This is because at the time we passed DORA, all the monies that we could argue about that were going to counties were non-discretionary amounts. The county governments would close literally if you take a shilling out of that Kshs400 billion.

Mr. Temporary Speaker, Sir, for instance, when we went to mediation, there was no possible way of removing Kshs4 billion out of the housing levy deductions. These are statutory deductions that are going on in all counties and they must pay. So, if you touch that Kshs4 billion, you do not get any money that counties will rely on.

There was also Kshs3 billion into this Kshs 400.1 billion that was going to new National Social Security Fund enhanced contributions. Again, this is another statutory deduction that there is just no wiggle room around it.

The county governments were also committed to County Aggregation and Industrial Parks (CAIPs) with a tune of Kshs11.75 billion. Some contracts have already been signed and committed to by counties.

That means that even if you were to take the ongoing projects in the 18 counties and then reduce that amount by Kshs7.25 billion, you would still need over Kshs3.2 billion to help these counties go on.

There were also Community Health Promoters (CHPs) that we negotiated for Kshs3.235 billion that have to be paid in the counties. We also have the Collective Bargaining Agreement (CBA) implementation that took about Kshs5.8 billion. This notwithstanding the increment and adjustments of salaries based on inflation that is going on in the entire country that also the counties are subjected to.

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If you try in any way to remove a shilling out of the Kshs400 billion, you are touching on non-discretionary resources of counties which will not make it possible for the counties to do any operation.

Mr. Temporary Speaker, Sir, while we support the DORA amendment to the extent that it touches on the reduction of the total shareable revenue to Kshs2.631 trillion, we object to any reduction of the shareable amount to county governments. We also reject any addition of Clause 3.

I hope that the Senate will stand with us and be able to delete it completely from the Bill so that we can always allow for revision of any shortfall to be brought into this House for conversation.

With those many remarks, I support the Bill with the amendments that we have proposed in looking at the Schedule in Clause 4 on the total shareable revenue national Government share and county government share, and also deletion of Clause 3 of the Bill.

**The Temporary Speaker** (Sen. Wakili Sigei): Thank you, Sen. Eddy.

*(Question proposed)*

What is your point of order, Sen. Maanzo?

### QUORUM

**Sen. Maanzo:** Mr. Temporary Speaker, Sir, on a point of order, I would like to rise under Standing Order No. 41 on Quorum. This matter is so grave and important for every single county and it has to proceed when there is a full quorum of the House.

*(Several Senators spoke off record)*

I have also applied it under the Standing Order No.39. The quorum should be 15 Members.

**The Temporary Speaker** (Sen. Wakili Sigei): Order, hon. Members! I have confirmed that we do not have quorum as of now.

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

*(The Quorum Bell was rung)*

*(Loud consultations)*

Order, Hon. Members! Sen. Tabitha Mutinda and Sen. Maanzo, the House is still in session. Senate Majority Leader, you are out of order. Sen. M. Kajwang' kindly take your seat. Sen. Cherarkey Samson, proceed.

**Sen. Cherarkey:** Thank you, Mr. Temporary Speaker, Sir, for this opportunity. I thank Members for running to our refuge immediately.



While I rise to oppose this amendment, I request that we proceed with the matters of the House. I agree that this is a very important Bill, in fact, for all of us, under Article 210.

I rise to oppose any reduction of monies to counties. The Mover said that in the last financial year of 2023/2024, counties got Kshs385 billion of the shareable revenue. In fact, I remember Kshs401 billion that we had before this amendment came, was out of mediation as per Article 113 of the Constitution.

I expected the Standing Committee on Finance and Budget to give us a report on what they have considered. However, I am happy that the Mover has indicated that we allow the committee time to come up with proper numbers. The minimum amount we took to the counties through the mediation process is Kshs401 billion.

While we appreciate that counties still struggle, cannot account for money and we do not see developments or their functionality, the best thing that ever happened to this country is devolution. So, I object the reduction of money going to counties. I agree that we retain the Kshs401 billion to go to counties.

My proposal is very simple. I am happy Members of the Standing Committee on Finance and Budget are here. We need to scrap off money meant for the National Government Constituency Development Fund (NG-CDF). This is because the NG-CDF kitty that was increased per county is unconstitutional. That matter is still in the Supreme Court. We should not even look far, we should just take the money that was being allocated to an illegal entity called NG-CDF and give it to counties.

In any case, NG-CDF almost has similar functions to those of the counties. As we talk, the construction of ECDE classrooms is being done by counties. On the issue of construction of police stations, the national Government can do that. So, we do need to get money from anywhere else. I propose we scrap NG-CDF and take that money.

We have also agreed on the issue of bursaries. You heard the Speaker of the National Assembly proposing that we amalgamate the bursaries. There is already a proposal within Parliament to bring bursaries into one basket. I do not see any justification why we should still allocate money to the NG-CDF through bursaries.

As a country, we have agreed to put all the money that was in bursary from the National Government Affirmative Action Fund (NGAAF), NG-CDF and the Ministry of Education into one basket. We make education free. This will ensure every Kenyan child walk to school without the bureaucratic process of obtaining bursary funds.

It is still unclear how the Controller of Budget (CoB) approves payments to counties. Can you believe that counties have a pending bill of almost Kshs120 billion? We have a problem with voiding of payments whereby counties apply with company 'y' but when they get approval of payments, they pay company 'x' through voiding of payments process. We want to ask the CoB if there is any legislative intervention when counties apply to pay companies. I wish my Chair of CPAC was listening. There is a dark valley in the issue of voiding of payments.

I am happy that Members of the Finance and Budget Committee are here. They need to assist the CoB. Sen. Boni through the Chair, you might find that Kakamega County would want to pay company 'y', but after the release of funds by CoB, they pay company 'z' who is closer to the governor or powers within.

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Mr. Temporary Speaker, Sir, we must confront the issue of pending bills. Many people in our counties are diabetic or have pressure because for five, six or ten years down the line, they have not been paid their dues. We must agree as a country that there is a lacuna in law, especially on issues of voiding of payments.

When you see counties owing a pending bill of Kshs120 billion, it makes some of us sad because counties were supposed to create opportunities for most of our businesses in Kapsabet town, Wote, Homa Bay, Migori and Turkana. That is why when we went to Turkana as CPAC, we found more than Kshs110 billion could not be accounted for. That is the reason why the CPAC declared Turkana County a crime scene.

The issue of subsidized fertilizer in Kakamega County is shrouded in secrecy. I have seen Sen. Boni Khalwale, the astronomical and ranking Member of this House, trying to raise the issue of fertilizer where people were told that the fertilizer is subsidized yet Kakamega County was selling to them and misappropriating funds.

We must agree on how to handle this issue of pending bills.

Number four is on the shared functions. You are aware that industrial parks were being set, where counties were supposed to give Kshs250 million. We do not know if we will reduce this amount because where will the counties get that amount to put in industrial parks?

Mr. Temporary Speaker, Sir, another function was Community Health Volunteers (CHVs). If you touch this money going to counties where will you get money to pay for CHVs? Those are shared functions between national and county governments. We had pushed also on the issue of subsidized fertilizer. For example, those of us who come from areas where people are predominantly farmers, we wanted to have a subsidized fertilizer programme in terms of last mile distribution of fertilizer.

Today in the afternoon, we discussed the establishment of disaster management authority across the country. The Bill just came from the National Assembly.

It is sweet and sour. For example, in Nandi, there are no developments. The other day, I said that Nandi is the headquarters of corruption. I have been vindicated.

The payroll audit revealed that there were 1,800 ghost workers. Some of them are siblings to the Governor, others were his campaign soloists, while others were radio callers who hero-worship the Governor in Nandi. Others were what we call court jesters and political brokers who have never stepped at their duty stations. One of the lead soloists of his song was never vetted as a CO for Education. He used to earn, yet he was not a CO.

There are radio callers who have been insulting Sen. Cherarkey for 24 hours. I did not know they were on the county payroll until it was exposed the other day. They hero-worship the Governor. If the Senator questions the Governor on development in Nandi, you bash them in the morning shows of all the famous radio stations.

If you have worked in a Chinese restaurant, there is food called sweet and sour. While I want money to go to Nandi, I also feel sad that that money might not be used for the intended functions. Every Senator here want more money to go to *mashinani*, but we cannot see---

By the way, there is a reggae song that says that when you look outside the window, there is nothing to smile about in our counties. When you go to Kapsabet County Referral Hospital, you cannot find even Panadol. When you go to Kapsabet Town, do not think that

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we are doing well in terms of business. There are so many chemists and pharmacies because there are no drugs at Kapsabet County Referral Hospital.

Go to Setek, Maraba, Kobuchai, Kaptumo, Chepterwai and Mosoriot. When you go to all those health centres, including Kapkangani, there are no drugs yet we fight here.

You could see how Sen. M. Kajwang' and the Senate Majority Leader were. Every body here was animated. We want resources to go to Makueni, but do we see the value for money that we are pushing for?

As I wind up, there are two institutions that have let us down. One of them is the EACC. For example, around 2019, there was what we called ECDE Cement Scandal in Nandi. There were allegations that some senior officials had participated in stealing cement. We reported to the EACC, but up to now, no one has been charged. Even on this exposé on the mega scandal of ghost workers, no one has been charged.

Sen. Maanzo, who is one of the newest senior counsel in this country, knows because this is under labour relations laws. By the time you give someone an appointment letter, there should be minutes, interviews, advertisement and enrolment to the Integrated Personnel and Payroll Database (IPPD).

You will find a person waking up one day and terminating employees' services accusing them of having irregular appointment letters, yet you are the one who gave them those appointment letters. That is the tragedy we have in this country. That is why I am saying that it is sweet and sour because on one hand, we want money to go to counties.

Nandi County should get even Kshs20 billion per year because I want to see *maendeleo mashinani*. However, that money is used to enrich a few county elites. People become millionaires overnight. We create 47 billionaires in the counties, yet we fight hard here for the money to go there.

Whenever we go to *mashinani*, the Governor do not even recognise the efforts of Sen. (Dr.) Khalwale, despite him fighting that more money should be allocated to Kakamega County, for example.

I want to challenge the EACC, the Directorate of Criminal Investigations (DCI) and the Controller of Budget (CoB), to ensure that the money---

Mr. Temporary Speaker, Sir, you and I know that the economy is not doing well. Kenyans do not have money, but we want taxes.

The other day the Finance Bill 2024 collapsed when the Gen Zs decided to visit the House. I can see a number of Clerks-at-the-Table are Gen Zs.

Mr. Temporary Speaker, Sir, when they visited and came to Parliament, it is because of the taxation in the Finance Bill. That is the challenge that we face as a country. We cannot sit with the challenges of taxation. I am happy that the Cabinet Secretary, Hon. John Mbadi, said the other day that the Value Added Tax (VAT) will come down from 16 per cent to 14 per cent even on Pay as You Earn (PAYE) taxes.

I do not know whether he consulted Sen. M. Kajwang' because the son of 'Subanese' was telling us that the VAT will drop from 16 per cent to 14 per cent. However, I was shocked yesterday when Sen. Kajwang', through you, Chair, demanded that we give him back Mbadi yet the 'Subanese' is trying to work hard in ensuring that he fixes the economy, through the broad-based Government.

I must admit and I want to challenge the Committee on Finance and Budget. I can see three Members from that committee. Kindly, maintain Kshs401 billion. I have not seen your report. However, if you have maintained Kshs401 billion, you will be the heroes of devolution.

*(Applause)*

We must defend devolution with blood and sweat. Let us cut on flowers, newspapers, *mandazi* and *chai* in Government offices, but not cut the money that goes to counties. Let us cut the foreign travels that we undertake. For example, in my County of Nandi, the Governor spent Kshs310 million in gallivanting, parambulating and sightseeing through foreign and international travel across the world. More so, this was a report from the CoB.

Mr. Temporary Speaker, Sir, in one of the international travels, he was attending a meeting on tarmac roads in China. I was wondering why he was going to such a meeting yet the counties do not even have the capacity of tarmacking roads, but he was able to attend that meeting.

I was wondering what he was going to do in China where people were discussing bitumen standards and issue of tarmacking roads. My Governor was well-dressed while attending that meeting, but he has not even tarmacked half an inch of tarmac road after coming back from China.

I saw another one where he traveled to visit and receive an award. I tried to google that award and it does not exist. Therefore, this gallivanting, parambulating, sightseeing or tourist-like habit by the governors is very disappointing. Nairobi City County was leading with Kshs1 billion in foreign travel alone. I think two counties were leading. Almost Kshs20 billion are used by counties for foreign and domestic travel. You wonder where they are going.

Some governors are visiting Jerusalem. They want to see where Jesus walked in Jerusalem. I want to ask those governors who gallivant and parambulate to go and see where Jesus was born, let Jesus be born in our hearts, if you are a Christian. That is the only way.

If you want to see whether Jesus is walking, fix the road in your neighbourhood. Make sure there are drugs in your neighbourhood. Make sure there are passable roads in Migori, bursary to the children and there are ECDE centres, that is when you can say Jesus has been born in your heart.

Why go all the way to Israel to see agriculture yet Israel is a desert. You are living in a rain-fed agriculture in Migori to go and see it in Israel. I was shocked by the CoB report on the foreign and local travels. I must ask the Committee on Finance and Budget to increase the resources for our committees so that we visit these projects and expose who they are.

We went to Isiolo and the headquarters building has stalled. In Kapsabet, newborn mother and baby project has stalled. Kabir Diary's has stalled. Kabuchai Hospital, where Governor Sang comes from which is a distance of 100 metres from his home has stalled. God forbid if he gets sick. Where will he get the medication yet it is the nearest hospital.

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You go to Kapsengere, when will the helicopter arrive to ferry you away? You must need first aid. Sen. (Dr.) Khalwale, will tell you that you need Kapsengere Hospital. If you come here at Nandi Hill Sub-County Hospital, the only thing that has been fixed by the Governor is a mortuary. He has decided that he cannot treat us. He has decided that we go and meet the maker. That is the bad manners with all due respect that we see counties make.

That is why as I support more money to go to counties as per the advice of the committee, the *wananchi* will ask us over the weekend why we are you pushing for more money to come go counties *ndio ikulwe*. They will tell you, “*na walikula*.” I am sorry for using that language. I know I am violating the Standing Orders.

They will ask you, Sen. (Dr.) Khalwale and Sen. Lomenen, why you are pushing for more funds, *na hiyo kazi haionekani mashinani*? That is the question we are always asked as Senators. We are asked what we are doing about it?

Mr. Temporary Speaker, I assure the public that this is the question many people are asking. For example, in Bomet, we are asked why we keep on saying so and so has been misappropriated funds. However, the far we can go is to recommend. We do not have the power to prosecute nor arrest. By the way, if I had the power of prosecuting and arresting, I would have arrested Governor Sang a long time ago. However, the law does not allow.

The much we can do is to recommend to the Ethics and Anti-Corruption Commission (EACC) or the Director of Criminal Investigation (DCI). I want to ask the public to understand us. Unless we amend the Constitution and give the Senate powers to prosecute, arrest and jail, I can tell you we will jail them for who they are.

In conclusion. the issue of wage bill in is becoming a monster. There are counties that are at 60 per cent. However, when you look at the people that have been hired, some of them are carrying chair or Very Important Person (VIP), toilets for the governor, while people do not have toilets where they are taking the VIP toilet and carrying the seats. For example, there are no public toilets in Mosoriot Township. You will find our women sitting the whole day without using the washrooms. That affect the sanitary facilities.

For those of us that come from North Rift and South Rift, we have sports people. When you look at the Nandi Stadium, it is in pathetic state. Nandi is rainy most of the time. Nandi Stadium is always flooded and our young men cannot run in the morning. That is why I will object any cutting down of resources going to counties. Let us maintain it at Kshs401 billion, so that our counties can get enough resources.

I support with amendments---

**The Temporary Speaker** (Sen. Wakili Sigei): Sen. Cherarkey, your time is up.

Sen. M. Kajwang’, proceed.

**Sen. M. Kajwang’:** Mr. Temporary Speaker, Sir, I rise to oppose this amendment having had the privilege of getting an explanation from Sen. Oketch Gicheru, who is a Member of the Finance and Budget Committee. How I wish this House would have benefited from the report of the Finance and Budget Committee. We had a little bit of a heated exchange with the Senate Majority Leader not too long ago. I insisted and he informed me that the Finance and Budget Committee intends to retain the Kshs401 billion, which this House appropriated to county governments.

If that is the intention, then this amendment is what you would call in law, *otiose*. It is unnecessary. We do not need to be processing it. I wish that report was here. I told the Senate Majority Leader that I cannot trust intentions. I can only trust action and a report that has been tabled before the House.

Mr. Temporary Speaker, Sir, if, indeed, it is true that the seconder of this Motion has convinced me and has demonstrated that it is the position of the Finance and Budget Committee that the Kshs401 billion that was allocated to county governments through a mediated process; will obtain, then let us not waste the time of the Senate debating this Bill.

Article 96 of the Constitution obliges the Senate to represent and protect the interests of counties and their governments. That is our primary duty. This morning, Sen. Mumma and I had the privilege of joining the Devolution Donor Working Group. They were reflecting on the public finance management space in this country. We were reflecting on additional grants, which has become a problem and how to make effective transfers to county governments.

This Senate has been called upon at critical junctures. Those of us who have been here from the 11<sup>th</sup>, 12<sup>th</sup> and now the 13<sup>th</sup> Parliament, we recall in the 11<sup>th</sup> Parliament, Sen. (Dr.) Khalwale led a march to the office of the Inspector General of National Police Service to demand the arrest of governors who had refused to submit themselves to the Senate.

Mr. Temporary Speaker, Sir, this Senate went to the Supreme Court to seek an advisory on the role of Senate in the division of revenue. This gave rise to ground-breaking jurisprudence that restored the right and the obligation that the division of revenue must be processed by the Senate. This is because when devolution started, some people thought that dividing revenue will be a National Assembly responsibility and allocating revenue would be a Senate responsibility.

In the 12<sup>th</sup> Parliament, some of the Senators present although not many of them are here right now marched to the High Court in Milimani. We were led by the late Sen. Yusuf Haji, Sen. Amos Wako, Sen. Gideon Moi and other Senators who had never tasted teargas in their lives. On that day, they decided as they say; *kama mbaya, mbaya*. If we are going to face teargas on the streets in our march to the High Court, so be it.

We went there and we secured a ground-shaking precedent that developed jurisprudence when it came to inter-governmental relations. It led to the collapse of a number of Bills that had been processed without concurrence of the Speaker of the Senate.

Mr. Temporary Speaker, Sir, this House should never preside over a session where the allocation of resources to counties is being reduced for reasons that counties have nothing to with. I say so because the basis for allocation and sharing is not the revenue that was supposed to have been collected in this financial year. I know Sen. Oketch has been trying to convince me and I disagree with him.

The Constitution says that revenue shall be divided on the basis of the most recent audited accounts as adopted by the National Assembly. To that extent, it is the 2021/2022 revenue. In the financial year 2022/2023, revenue grew. We cannot then confuse ourselves with the drop of revenue in the financial year 2024/2025. We shall deal with it when we get to it. We shall apply a revenue growth factor on the 2023/2024 revenues on the day the National Assembly shall process and adopt the financial statements for 2023/2024.

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Mr. Temporary Speaker, Sir, to me, even changing the basis, the shareable revenue is a matter we cannot accept because the revenues have already been audited and adopted. There was an actual growth in financial year 2022/2023. Of which, we must share. Additionally, the high courts have ruled on a matter of national interest. Whenever we set out to divide revenue, we first deduct some billions and call it national interest.

When I joined this Senate, I must have listened to the Senator for Kakamega back then. We used to have debates on national interests. I would follow the debates and ask myself, what is this national interest that must first be deducted before revenues are divided? You would find that the National Youth Service (NYS) was part of the national interest. It ended becoming, one of the biggest corruption scandals in this country.

Mr. Temporary Speaker, Sir, you would find functions that should be devolved being deducted up there as national interests on national Government programmes. When you look at it carefully, you might find that housing, the NYS, police reforms and housing for the police are part of national interests.

Those are functions of the national Government and the expenditure should come from the share of the national Government. We do not have another level of government called national interests. We only have the national and county governments.

I will object even to the proposed amendment as Sen. Eddy has explained to me. That the Committee on Finance and Budget has agreed to revise the shareable revenue from the figure we had approved, but has objected to revising the disbursement to the counties. You either reject it all or accept it all.

Mr. Temporary Speaker, Sir, there is also the principle on who bears the shortfall on revenue. For the last 10 years of devolution, we have had that provision in DORA; that any revenue shortfall shall be borne by the national Government. Which means that any bonus in revenue collection is enjoyed by the national Government.

For the last 10 years, the national Government has enjoyed the bonus without passing it down to county governments. If there will be one year of shortfall of revenue, why then should county governments take the haircut when the national Government has failed to share the bonus and largesse over the last 10 years? Many times, when you look at this DORA, we talk of a revenue growth factor.

Again, in the earlier days, whenever I debated DORA, Members scrutinised the revenue growth factor. They would come here with statistics and data to challenge the figures and projections coming from the National Treasury.

The principle in Clause 3 is extremely faulty and we should never accept it. We should never accept it because unlike county governments, the national Government has the opportunity to go to the markets to look for additional finances.

The President can take a trip to China, sign bilateral agreements and deals and arrangements, return with Kshs300 billion. County governments cannot do so. In fact, the County Government Additional Allocations Act is so restrictive. We were having that discussion with the devolution donor working group that we have put it in such a way that once you pass the County Government Additional Allocations Act, it cannot be amended in the course of the financial year.

It is my view that any Act of Parliament can be amended. However, we should take a position of principle as the Senate that an amendment should never leave any entity worse

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off. An amendment should lead to incremental improvements in the monies that go to counties and in the services that counties offer.

Mr. Temporary Speaker, Sir, I oppose because the Bill as it is before us, proposes a reduction to Kshs380 billion.

This Senate, through the Finance and Budget Committee, which we gave the responsibility to carry out public participation, advised us that the right allocation to county governments ought to be Kshs415.9 billion. All of us across the aisle, it was a unilateral agreement that counties need Kshs415.9 billion and reasons were given. The reasons included the non-discretionary expenditure that Sen. Oketch Gicheru has talked about. The non-discretionary expenditure amounts to Kshs30 billion.

When the two Houses went into mediation, Sen. (Dr.) Khalwale and I were part of the Mediation Committee. We put up a strong fight. We insisted on the Kshs415 billion, but we were convinced that fiscal consolidation and other big English would not allow that money to be realised. We settled on Kshs401 billion. That did not take away the discretionary expenditure.

We even proposed scrapping the money allocated to county aggregation and industrial parks for the counties that had not started. We were told that this was a presidential initiative that could not be touched. We ended up with 47 aggregation and industrial parks that will be highly exalted warehouses costing Kshs500 million without anything productive going on inside.

In aggregation and industrial parks, you must look at the value chain. It is not just putting up a building on one model. On one model, one Bill of Quantities is done in Nairobi. You are telling Tharaka Nithi County to build a county aggregation and industrial park, the size and scale equivalent to Uasin Gishu. This cannot be practical.

If we talk about reduction, we must also identify the expenditure areas we should avoid. For that reason, we agreed in mediation to go for Kshs400 billion. If we now say that counties should get Kshs380 billion, then counties will shut down.

The allocation in the prior financial year was Kshs384 billion. The National Assembly tried to be clever by saying that out of the 384 billion, an amount was earmarked for road maintenance levy, so that it should be deducted from the baseline. That is conmanship.

There is no way this Senate, looking at its constitutional mandate under Article 96, can preside over and tolerate an amendment Bill that wants to reduce the allocation to Kshs380 billion when the prior year was Kshs384 billion and when our original proposal was Kshs415.9 billion. I oppose this amendment.

If the report was here saying that we are only deleting Clause 3 and only amending the row on shareable revenue and national Government share of that and retaining the Equalisation Fund, the County Equitable share to what was in the Bill as originally passed then this amendment is not a very useful one.

**Sen. Oketch Gicheru:** Point of information, Mr. Temporary Speaker, sir.

**The Temporary Speaker** (Sen. Wakili Sigei): Sen. M. Kajwang', would you like to be informed by Sen. Eddy?

**Sen. M. Kajwang':** Yes, since he is on the Finance and Budget Committee.



**Sen. Oketch Gicheru:** I take Sen. M. Kajwang' very seriously because he is the Chairperson of the CPAC. He has helped to stabilise counties by reviewing what is going on there. Therefore, I want to allay his fear that there is any mischief by the Finance and Budget Committee of not tabling the report.

I assure this House that today in the morning we spent over two hours in the Finance and Budget Committee finalising the report which has informed my seconding of the Motion. That report was signed by available Committee Members. Therefore, it has been dispatched.

I think that maybe this Bill came a little bit earlier today than perhaps was expected just before the report. However, the report certainly was commissioned by the Committee and should be in this House, I believe in the next session. Since I sit in that Committee, I just wanted to allay the fear that the report was signed and is available.

**The Temporary Speaker** (Sen. Wakili Sigei): Proceed to conclude Sen. M. Kajwang'.

**Sen. M. Kajwang':** I thank Sen. Eddy Oketch. If that report was there, it would have saved me the heated exchange with the Senate Majority Leader. I said that I cannot trust intention. I can only trust what has been tabled and put before the House. We hope that those intentions will be purer than scheduling this debate at 5 p.m. on a Thursday when the House is in low season

This is a debate that cannot and should not end today. It is a debate that every Member of this House needs to lend their voices to. Any adjustment in the amounts of money allocated to county governments will result in a downward adjustment in the amounts of money allocated to those counties.

We may not like the people who have been elected to run our counties, their style, their ethics and integrity, but we must love the people who are in those counties. When we allocate this money, it is not for the governors, their cheerleaders and the County Executive Committee Members (CECMs) and all those other people who make life a living hell in county governments.

It is supposed to be for the people. The Senate must stand up to say that when money was being shared between the national government and its wasteful habits, we stood up to send more money to county governments so that water and health could be provided, roads could be built, houses could be provided and markets could be built.

I was extremely embarrassed recently when I had the opportunity for the first time to sit with President Ruto in a room when he visited my region. When it came to what leaders were asking for from the national Government, you would find those who already had a responsibility and a budget to deliver devolved services were still asking the President for houses, markets, water and roads. Yet, this Senate works very hard. We are here up to this time to send Kshs400 billion so that roads and markets can be built, water can be provided and hospitals can be built.

Mr. Temporary Speaker, Sir, let us not despair. Those bad habits sometimes run for five years. I know Sen. (Dr.) Murango has waited longer than many of us. However, as sure as dawn, it will come. Sometimes it appears darkest when it is close to dawn.

You have entrusted us, as members of the committees, to ensure there is proper accountability for those resources. We must step up our game, do more, bring more reports,

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and build greater synergies with the EACC, the Directorate of Public Prosecution (DPP) and with the Judiciary to ensure that action is taken against those who are caught with their fingers in the till.

I was happy to read the Cabinet dispatch from the Cabinet meeting of this week. One of the first action items that they resolved was to strengthen governance. I saw that we are going to bring an omnibus Bill talking about governance laws. I hope that will tighten the loopholes that many of these corrupt people have been slipping through.

Mr. Temporary Speaker, Sir, the guy who attempted to shoot Donald Trump at a golf course in Florida was arrested that afternoon and taken to court the following day. Proceedings are ongoing and judgment will be rendered quickly. Why does it take five years for us to investigate corruption cases? What is it that the prosecutors are hoping will happen? Is it a tree they are hoping will grow so that they go and demonstrate to the judge that it has grown? We must ask ourselves what makes it take so long?

Sen. Mumma brought up a very sad story here of a girl who was defiled in 2021 and that the charges are still on, the prosecution is still ongoing and judgment has not been entered. If there was assault, or defilement of a 13-year-old, what other evidence does the prosecutor hope will come for that matter to be closed?

We must style up. I hope that those governance laws that the Cabinet is talking about will address some of those loopholes that have to do with economic crimes--- My legal team in the CPAC helped me to understand what economic crimes are all about. Economic crimes are those matters to do with pilferage or loss from public funds and that is the responsibility of the EACC.

The EACC has let us down in a major way because they have told us stories that cases of Kshs20 million sometimes are too small for their investigation. What if someone stole Kshs20 million from a hospital? It means that there would be death and no provision of blood or antivenom. From where the EACC sits, they think that in terms of materiality, they should be going for the Kshs1 billion cases and not the Kshs20 million cases. As they say, there is no small nor big sin. Sin is sin. So, our agencies and our partners must style up.

Today I am opposing this amendment because I want counties to retain the Kshs400.1 billion that we approved. Today there is no governor in the village; all the governors are in Nairobi because there is no money in counties. In the months of June, July, August and September, you can barely get activities in counties because there is no money. From next week, all governors will be trooping back to the village. They will be there for a week then they will disappear again. There is a problem, but let us think about the people in the counties rather than the emperors and the rulers in the counties.

Mr. Temporary Speaker, Sir, if I saw the report of the Standing Committee on Finance and Budget, I would have said I support the amendments. In the absence of it, I reject this amendment.

**The Temporary Speaker** (Sen. Wakili Sigei): Sen. (Dr.) Khalwale proceed.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Temporary Speaker, Sir. I am glad to be coming soon after the Senator of Homa Bay County. Senator, when you read our report, you will find that it is very explicit. We have rejected the proposal by the National Assembly that we entertain any reduction. We are really upbeat.

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Mr. Temporary Speaker, Sir, may I start by requesting the Senate Majority Leader that when he sees the disconnect that is there on matters of budget in the National Assembly, it invites him to talk to his compatriot, the Leader of Majority in the National Assembly, that reduction would totally collapse the policy of the President and Government on critical areas if it was not properly listened to.

The Members of the National Assembly are quick to accept the proposal from the National Treasury, not realizing that the key things that the President is carrying almost like his flagship issues will be affected if county governments do not get the Kshs400.1 billion. I will not go into dissecting issue by issue. My colleague in the Committee, the Senator for Migori County has already done so.

Senate Majority Leader, next time, because this thing will come to pass again, let the National Assembly see that some of the policies of the President and Government are domiciled in the counties.

The Kshs39.5 billion non-discretionary expenditure that will be at risk if we cut this money, is at the heart of the housing flagship project of the President. It will collapse. The county aggregated industrial parks and the voluntary community health promoters will collapse.

What is even more scaring is the Collective Bargaining Agreement (CBA) that was signed by the Ministry of Health with the doctors on behalf of county governments. A whopping Kshs5.8 billion in that CBA is supposed to be spent by county governments in paying salaries for those doctors.

So, if we just blindly adopt that reduction, then the drama of deaths in hospitals and doctors on the streets will be the order of the day. So, it is out of respect that the Whip of the Government is opposing this Bill because we want those flagship issues that I have spoken to, to succeed.

Number two, my brother, the Senate Majority Leader, the amendment of Section 5, which is in Clause 3, is extremely dangerous. This is because, as was ably mentioned by the Senator for Homa Bay; from 2013, we have always known that any shortfall in revenues realized, is borne by the national Government. Now, with this single amendment, it means that we shall be sharing.

We adopt this new standard and, indeed, we will have watered down the ruling of the Supreme Court which that before any appropriation is done in the National Assembly, it should be preceded by the DORA. So, if we do not insulate by refusing this amendment, it means that now, that ruling of the Supreme Court, that helped us to protect funds from being tampered with during appropriation, will now be vulnerable. We do not want to lose that.

I know I will continue the following day because as I can see my time is up, but let me make this last point.

Tomorrow afternoon at 2.30 p.m. there will be a ruling on NG-CDF. I can assure you that the Supreme Court will find that thing unconstitutional. This year, in this Bill, NG-CDF is supposed to receive Kshs68.1 billion. So, there will be a floating Kshs68.1 billion tomorrow. They do not have to take away our Kshs20 billion from our county governments. Let them just allow Kshs20 billion to remain and then they can do whatever they want with the balance of Kshs48.1 billion that will be available tomorrow.

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Mr. Temporary Speaker, Sir, this is patriotism that we are demonstrating by committing ourselves to the lives of the people of Bomet. Picture your mind to the lives of the people, not in these upper areas of Bomet where you grow tea, but Chepalungu. We have been in this country; we know where Kenyans live.

When you deny Bomet money, you are killing the people of Chepalungu and the villagers in---

Thank you, Mr. Deputy Speaker, Sir.

**The Temporary Speaker** (Sen. Wakil Sigei): Sen. (Dr.) Khalwale, you will have a balance of 13 minutes when we resume.

Hon. Members, let us rise.

### ADJOURNMENT

Hon. Senators, it is now 6.30 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until Tuesday, 24<sup>th</sup> September, 2024 at 2.30 p.m.

The Senate rose at 6.30 p.m.