

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 7th August, 2024

Afternoon Sitting

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

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

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

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

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

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

(The Quorum Bell was rung)

Hon. Senators, we now have a quorum. Kindly take your seats so that we get down to the business. Sen. Osotsi, kindly take your seat.

(Several Senators entered the Chamber)

Clerk, you may proceed to call the first Order.

COMMUNICATIONS FROM THE CHAIR

STATUS OF THE SENATE MULTIMEDIA DIGITAL CONGRESS SYSTEM AND BROADCASTING EQUIPMENT

The Speaker (Hon. Kingi): Hon. Senators, I have a Communication to make concerning the status of the multimedia digital congress system and the broadcasting equipment in the Senate.

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

As hon. Senators may be aware, in the recent past, the multimedia digital congress system has malfunctioned, most notably when undertaking Divisions. This has necessitated frequent system rebooting to ensure that Plenary proceedings continue with limited interruptions. Likewise, the broadcasting equipment in the Senate has on several occasions malfunctioned, resulting in intermittent transmission of Plenary proceedings with *YouTube* live coverage sometimes lagging in time.

The extent of malfunctions of both systems has occasioned several points of order from several Senators, the most recent one being that raised by Sen. Gloria Orwoba, MP, at the sitting of the Senate held yesterday, Tuesday, 6th August, 2024. The concerns raised by hon. Senators on this matter have not gone unheard.

The multimedia digital congress system and the parliamentary broadcasting equipment have become outdated over time, a situation that has been further exacerbated by the vandalism that occurred during the recent protest event, where the Parliament was infiltrated. Some broadcasting equipment was damaged and now requires complete replacement.

The Office of the Clerk has instituted remedial measures to ensure that live broadcasting of the Senate proceedings continues with limited interruptions. However, due to the damage caused, miss-ups are at times unavoidable.

At the sitting of the Senate Business Committee (SBC) held on Tuesday, 30th July, 2024, the matter of transmission of Plenary proceedings was extensively discussed, whereupon the Committee noted with concern the lack of budgetary provision for the overhaul of the broadcasting system.

Hon. Senators, in the meantime, the Office of the Clerk is directed to implement temporary measures to ensure the continuous transmission of Senate proceedings as the Parliamentary Service Commission (PSC) reviews the financial situation. Kindly be guided accordingly.

Hon. Senators, you may walk in and take your seats before I make further Communication.

(Sen. Cheruiyot and Sen. Githuku walked into the Chamber)

VOTING PROCEDURE IN THE SENATE

Hon. Senators, I have further Communication to make regarding the voting procedure in the Senate. This has been necessitated by a concerning trend that has been observed in the recent past, and as a result, it has become crucial for me to address this matter to ensure that all Senators are fully informed and that the voting process in the Senate is not compromised.

As you are aware, Article 122 of the Constitution provides for voting in Parliament. Article 122(1) states as follows-

(Sen. Methu consulted Sen. Cherarkey)

Senator for Nyandarua County, this is for you. Be keen as I am delivering this Communication.

“Except as otherwise provided in the Constitution, any question proposed for decision in either House of Parliament shall be determined by a majority of Members in that House present and voting”.

The above provision indicates that the voting process is an important component of proceedings, which serves as the mechanism through which the Senate expresses its decision on a question. Each vote cast in the Chamber carries the weight of the decisions made on behalf of the citizens of each county, and therefore, the process leading to an outcome of a vote must be beyond reproach.

Hon. Senators, Article 123 of the Constitution, as read together with Standing Order No.83(1), provides that-

“On election, all Senators who are registered as voters in a particular county shall collectively constitute a single delegation for purposes of voting on any matter in the Senate affecting counties, and the Senator elected under Article 98(1) (a) shall be the head of the delegation”.

Standing Order No.83(2) states as follows-

“Except as otherwise provided in the Constitution, any matter in the Senate affecting counties -

(a) each county delegation shall have one vote to be cast on behalf of the county by the head of the county delegation or in the absence of the head of the delegation by another member of the delegation designated by the head of the delegation;

(b) the person who votes on behalf of the delegation shall determine whether or not to vote in support or against the matter after consulting with other members of the delegation; and,

(c) the matter is carried only if it is supported by a majority of all delegations”

Further, Standing Order No.83(3) provides for the designation of another member of the delegation to cast a vote on behalf of the delegation and I quote-

“The head of a county delegation may, for purpose of Paragraph 2(a) in a letter addressed to the Speaker-

(a) designate another member of the delegation to cast a vote on behalf of the delegation either generally for a specific matter or for a specific period; or

(b) revoke the designation under subparagraph (a).”

Hon. Senators, I have previously issued a Communication on the need for Senators to maintain decorum during Plenary sittings. A key aspect during the voting process is the maintenance of order and decorum.

Standing Order No.91 expressly provides for decorum during division. For the avoidance of doubt, the Standing Order provides as follows-

“(1) No Senator shall be obliged to vote in a division, but those present and not voting shall either-

- (a) in the case of an electronic vote, press the “Abstain” button; or-
- (b) in the case of a roll call vote, record the abstention with the Clerk.

(2) It shall be disorderly conduct for a Senator to fail to record his or her abstention in a division.

(3) A Senator shall not vote on any question in which the Senator has a pecuniary interest.

(4) During division, Senators shall maintain order in the Senate and shall be in their designated seats and shall remain seated until the result is announced.”

Hon. Senators, at the sitting of the Senate held on Tuesday, 30th July 2024, we all witnessed repeated incidents of disorder contrary to Standing Order No.91. I wish to reiterate that going forward, the Speaker will strictly enforce the provisions of Standing Order No.91 and will not hesitate to invoke Standing Orders No.121 on disorderly conduct and Standing Order No.122 on gross disorderly conduct. Kindly be guided accordingly.

Hon. Senators, you may walk in and take your seats.

(Several Senators walked into the Chamber)

The Speaker (Hon. Kingi): What is your point of clarification, Senator for Meru County?

Sen. Kathuri: Thank you, Mr. Speaker, Sir, for your Communication and guidance. I also want to thank you and the management of the National Assembly for facilitating journalists and media houses to access Parliament.

Yesterday, a list was released for the staff from mainstream media houses to access Parliament but, unfortunately, the local vernacular stations and media houses were left out.

Mr. Speaker, Sir, as the Senate, we represent counties. When my good friend the Member for Kitui County, uncle Enoch Wambua, wants to communicate to his people, he does so in Kamba. If that station is in Parliament, we are able to communicate effectively to our people.

Changei FM, Kass FM, Kameme FM, Muuga FM, Meru FM, Weru FM were left out. These journalists are requesting to access to Parliament so that they can support the Senate, especially because it handles matters of devolution that are in counties. Every time I prosecute a Bill or a Statement here, I must go outside and talk to my people through *Muuga FM, Getu FM* and the other stations.

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

Mr. Speaker, Sir, with a lot of humility, maybe the management can reconsider and allow them too. There are only 17. The others who have been around are 70. These 17 stations can support the Senate in communicating to our people in *mashinani*.

The Speaker (Hon. Kingi): Thank you, Senator for Meru County. Your point of clarification has got nothing to do with the Communication that I have made. However, it is valid. It is a matter that squarely falls in the arms of the PSC.

I will take it up with the PSC to see to it that the vernacular FM stations are accorded the same treatment as the mainstream media. I will endeavor to get this to the rightful table; the PSC table.

Yes, Sen. Crystal Asige.

Sen. Crystal Asige: Thank you, Mr. Speaker, Sir, for the direction you have just given on the matter raised by our Deputy Speaker.

As an addendum, it would be great if you can also give direction on how to correct this across all the 47 counties, in all the different languages because, of course, we have many languages. It would be a shame if we only consider 17, when there might be other stations that are smaller, not very well known, but still, they represent a particular constituency or community.

How do we do what has been suggested, but in a way that will be equal and fair across all different tribes?

Thank you.

The Speaker (Hon. Kingi): Very well, Sen. Crystal Asige. I believe the Parliamentary Service Commission (PSC), in its wisdom, will handle that matter.

I have further Communication to make, hon. Senators.

VISITING DELEGATION FROM
FRIENDS SCHOOL, KEVEYE GIRLS

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting teachers and students from Friends School, Keveye Girls in Vihiga County. The delegation comprises four teachers and 41 students who are in the Senate for a one-day academic exposition.

Hon. Senators, in our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful time for learning.

VISITING DELEGATION FROM
STAREHE BOYS CENTRE

Also, I would like to acknowledge the presence in the Speaker's Gallery this afternoon of students from Sterehe Boys Centre, who are undertaking a two-week service in the Senate under the school's Voluntary Service Scheme (VSS).

I request the students to stand so that they may be acknowledged in the Senate tradition.

Thank you.

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

(Starehe Boys Centre students remained standing in the Speaker's Gallery)

You may be seated.

Hon. Senators, in our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful time for learning.

VISITING DELEGATION FROM
MOMBASA COUNTY ASSEMBLY

Also, I would like to acknowledge the presence in the Speaker's Gallery this afternoon, of visiting Members of the County Assembly of Mombasa (MCAs). The Members are in the Senate on a courtesy call to Sen. Miraj Abdullahi, MP.

I request each Member of the delegation to stand when called out, so that they may be acknowledged in the Senate tradition; Hon. Abdirahaman Hussain, MCA, Old Town Ward and Hon. Patrick Mbelle, MCA, Bamburi Ward.

Hon. Senators, in our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to the delegation. On behalf of the Senate and on my behalf, I wish them a fruitful visit.

I call upon Sen. Miraj to extend a warm welcome to the delegation from Mombasa County; Senator for Nairobi City County, Sen. Sifuna to the students from Starehe Boys' Centre and Sen. Osotsi, to the delegation from Friends School Keveye Girls in Vihiga County in under one minute each.

Proceed, in that order.

Sen. Miraj: Asante Bw. Spika. Kwa niaba ya Bunge la Seneti na Maseneta watatu kutoka Gatuza za Pwani, tukiongozwa na Sen. Faki, ningependa kuwakaribisha kaka zangu, MCAs waliochaguliwa kutoka Jimbo la Mombasa; Bw. Anza Fresh kutoka Old Town na Bw. Patrick Mbelle kutoka Bamburi Ward.

Ningependa hii iwe ni ufunguzi wa kuwaleta wale MCAs wengine ili waje washuhudie yale ambayo tunayatendea kazi hapa katika Bunge hili. Mjihisi mko nyumbani kwa sababu majukumu yetu yako sawa; kulinda raslimali ya mkenya. Nawaomba mjihisi mko nyumbani na wakati wowote, milango ya Bunge la Seneti iko wazi ili tuweze kubadilishana fikira kwa kuiendeleza mbele taifa letu la Kenya.

Asante.

Sen. Sifuna: Mr. Speaker, Sir, it is always a pleasure to welcome students from Starehe Boys' Centre. As I have said previously, this is an Institution whose reputation actually goes without saying. The Director, Josphat Mwaura, continues to do a good job.

I was very happy and proud that just last week, one of the more prominent alumni of Starehe Boys' Centre was actually nominated by my party, the Orange Democratic Movement (ODM) to chair the very powerful Public Accounts Committee (PAC) in the National Assembly. So, I am sure that even in the delegation that is here today, we will be seeing future leaders.

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

Mr. Speaker, Sir, I know you told me to limit myself to Starehe Boys Centre, but also, these young ladies from Keveye Girls need to know that I went to Musingu High School and we were very close friends during the time that I was there.

(Applause)

We were very good friends and neighbours as schools of Musingu High School and Keveye Girls. I am talking on a day that I am very proud of my alma mater because we have just qualified for the National Football Finals.

We encourage all these young students here that when you see us here, we also just came from the village. We are not angels from anywhere, we just took our time in school to focus on our education and these days, we have big titles such as lawyers and Senators. I pray that you will follow the same path and that we will see future leaders from this particular group of students.

I thank you.

Finally, I am very happy as a Senator to see that there are delegations back in our galleries. This is a House that is open to the public and I am very happy to see that people are coming back to the Galleries to witness the proceedings here.

I thank you.

Sen. Osotsi: Thank you, Mr. Speaker, Sir, for this opportunity to welcome the students from Keveye Girls High School, which is one of the big girls' schools in my county, Vihiga County.

Just to stress for the interest of Sen. (Dr.) Khalwale and Sen. Sifuna, Keveye Girls High School is one kilometer away from the school where I went to, the famous Chavakali High School. We were closer to Keveye Girls in those days than Musingu High School that Sen. Sifuna is referring to.

I welcome you and encourage you to work hard, so that you can come to this House and make a contribution to this Senate. In this House, we have one of the most distinguished Senators by the name, Sen. Asige, who also comes from Vihiga County.

(Applause)

I encourage you to work hard in school and become serious Senators like Sen. Asige who sits in this House as one of our Senators.

Thank you for coming and welcome again.

The Speaker (Hon. Kingi): Let us go to the next Order.

The Senate Majority Leader, proceed.

PAPERS LAID

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, 7th August, 2024.

SUMMARY REPORT ON COUNTY
GOVERNMENTS FOR FY 2022/2023

The Auditor-General's summary report on the county governments for Financial Year 2022/2023.

REPORT ON PETITION: INSECURITY IN TURKANA COUNTY

Report of the Standing Committee on National Security, Defense and Foreign Relation on a petition to the Senate by Mr. Samuel Esapar on behalf of the residents of Turkana County concerning the state of insecurity in Turkana County.

I beg to lay.

(Sen. Cheruiyot laid the documents on the Table)

The Speaker (Hon. Kingi): Chairperson, Standing Committee on National Security, Defence and Foreign Relations, you may proceed. Where is the Chairperson Standing Committee on National Security, Defence and Foreign Relations?

(Sen. Cheruiyot spoke off record)

You have already laid both Papers. Okay.

Proceed, Chairperson Standing Committee on Lands, Environment and Natural Resources.

REPORT ON THE WILDLIFE CONSERVATION AND MANAGEMENT
(AMENDMENTS) BILL (SENATE BILLS NO.46 OF 2023)

Sen. Methu: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, the 7th August, 2024 –

Report of the Standing Committee on Lands, Environment, and Natural Resources on its consideration of the Wildlife Conservation and Management (Amendments) Bill, (Senate Bills No.46 of 2023).

REPORT ON THE WILDLIFE CONSERVATION AND MANAGEMENT
(AMENDMENTS) BILL (SENATE BILLS NO.49 OF 2023)

Report of the Standing Committee on Lands, Environment and Natural Resources on its consideration of the Wildlife Conservation and Management (Amendment) Bill, (Senate Bills No 49 of 2023).

I beg to lay.

(Sen. Methu laid the documents on the Table)

The Speaker (Hon. Kingi): Next Order.

NOTICES OF MOTIONS

The Chairperson of the Standing Committee on National Security, Defence and Foreign Relations. Sen. Dullo, you are a Member of that Committee. There is a Notice of Motion to be given by that Committee.

ADOPTION OF REPORT ON PETITION ON
INSECURITY IN TURKANA COUNTY

Sen. Dullo: Thank you, Mr. Speaker, Sir. I wish to give Notice of the following Motion-

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 a resident of Turkana County concerning the state of insecurity in Turkana County, laid on the table of the Senate on Wednesday, 7th August 2024.

Thank you.

The Speaker (Hon. Kingi): Sen. (Prof.) Margaret Kamar?

That Order is deferred.

ALLOCATION OF SCHOLARSHIPS AND
BURSARIES BY COUNTY GOVERNMENTS

(Notice of Motion deferred)

Next Order.

QUESTIONS AND STATEMENTS**STATEMENTS**

The Speaker (Hon. Kingi): Statement pursuant to Standing Order No.52(1).
Sen. Karen Nyamu.
That Statement is dropped.

INCESSANT TOI MARKET FIRE INCIDENCES

(Statement dropped)

Statement pursuant to Standing Order No.53(1).
Proceed, Sen. David Wakoli.

BUNGOMA COUNTY GOVERNMENT PENDING BILLS

Sen. Wafula: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Finance and Budget regarding pending bills owed to contractors by Bungoma County Government from the year 2013 to date.

In the Statement, the Committee should-

(1) Provide a breakdown of all outstanding payments owed to contractors by Bungoma county government from the year 2013 to date.

(2) Provide details of the contractors, including the services they rendered.

(3) State how much was allocated in settling the pending bills in the 2013/2014 budget to date and provide a list of all requisitions for payment of the pending bills with evidence and certificates of each payment.

The Speaker (Hon. Kingi): Sen. Alan Chesang’?
Those two Statements are dropped.

ANOMALIES IN THE TRANS NZOIA COUNTY EXECUTIVE PAYROLL

(Statement dropped)

**TRANS NZOIA COUNTY EXECUTIVE PAYMENTS FOR
SETTLEMENT OF COURT JUDGEMENTS AND DECREES**

(Statement dropped)

Proceed, Sen. Wakili Hillary Sigei.

STALLED AND ABANDONED HEALTH
PROJECTS IN BOMET COUNTY

Sen. Wakili Sigei: Thank you very much, Mr. Speaker, Sir. I stand pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Health regarding stalled infrastructure projects in the County of Bomet.

Several incomplete and abandoned health infrastructure projects in Bomet County represent a significant waste of public resources and have deprived the residents of Bomet of the health services and benefits they rightfully deserve.

Mr. Speaker, Sir, I would like to highlight the specific projects under the Health Department that have remained incomplete or abandoned between three to ten years, leading to substantial waste of public resources.

The projects are namely, Kagasi Dispensary Lab in Ndanai/Abosi Ward in Sotik Constituency, Chepkalwal Dispensary in Ndanai/Abosi Ward in Sotik Constituency, Kimuchul Dispensary in Chemaner Ward in Bomet East Constituency, X-Ray and theatre Rooms at Sigor Sub-County Hospital in Sigor Ward of Chepalungu Constituency, Kitaima Dispensary in Chesoen Ward of Bomet Central Constituency and Maternity Wing of Segutiet Dispensary in Chesoen Ward of Bomet Central Constituency.

In the Statement, the Committee should-

(1) Provide reasons leading to each of the projects remaining stalled, abandoned or unutilized.

(2) Provide the minutes of the tender awards, copies of tender advertisements and tender evaluation reports for each of the projects listed above.

(3) Provide the Bill of Quantities (BQs) for each of the project and the implementation status and/or development stage.

(4) Outline the budgetary allocations, expenditure, payments made to the respective projects and any such other pending payments.

(5) State the timelines within which these projects are anticipated to be completed or to be put into utilisation.

TERMINATION OF EMPLOYMENT FOR MR. RICHARD
KIPKEMBOI ARAP CHEBUSIT BY BOMET CPSB

Mr. Speaker, Sir, I have a second Statement. With your indulgence, I can proceed to read, pursuant to Standing Order No.53 (1). It is seeking a Statement from the Standing Committee on Education concerning the termination of employment of one Mr. Richard Kipkemboi, an Early Childhood Development Education (ECDE) teacher and secretary of the Bomet ECDE Teachers Association by the County Public Service Board (CPSB) of Bomet.

On 29th May, 2024, Mr. Richard Kipkemboi was terminated from his position without prior notice of clear justification. This termination follows a series of actions taken by the said teacher to advocate for the rights and welfare of ECDE teachers in Bomet County, including filing a Petition that is currently pending before this honourable Senate. This Petition was filed on 20th September, 2023.

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

The Petition highlighted various grievances faced by the teachers in the county, such as salaries, prolonged service without confirmation, non-payment or underpayment of salaries, and lack of professional development opportunities.

This Petition led to the summoning of the governor by the Education Committee of the Senate and the Petition is currently pending before the committee. The petitioner was thereafter threatened with dire consequences for dragging the name of the county before the Senate.

In the Statement, the Committee should-

(1) Provide a detailed account of the circumstances leading to the termination of employment by the CPSB, including the specific reasons cited, if any, and whether these reasons were communicated to him in advance.

(2) Examine whether due process was followed before the dismissal of Mr. Chebusit, stating the legal basis for his dismissal, including internal disciplinary procedures adhered to before his firing.

(3) Investigate any connection between his dismissal and his role in filing the Petition that is pending before the Senate and his advocacy for the ECDE teachers, and list the steps taken by the county government to address the grievances raised by the teacher and state whether these actions contributed to his sacking.

(4) Recommend actions to safeguard the rights of ECDE teachers and other employees in the county, ensuring that individuals advocating for improved working conditions are not victimized, and assess the measures in place to protect employees who raise concerns or file grievances against unfair treatment or working conditions, ensuring they are not subjected to retaliation or personal vendetta.

Thank you.

The Speaker (Hon. Kingi): Proceed, Sen. Beth Syengo.

DELAYED CAPITATION TO ECDE INSTITUTIONS IN NAIROBI CITY COUNTY

Sen. Beth Syengo: Thank you, Mr. Speaker, Sir. I rise to request for a Statement on the delayed capitation to Early Childhood Development and Education (ECDE) institutions in Nairobi City County.

Mr. Speaker, Sir, I rise pursuant to Standing Order No.53 (1) to seek a statement from the Standing Committee on Education regarding the delay in disbursement of capitation funds to Early Childhood Development Education (ECDE) institutions in Nairobi City County.

In the Statement, the Committee should-

(1) Outline reasons for the recurring delay in disbursement of capitation funds to ECDE in institutions across the country, with a specific emphasis on Nairobi City County.

(2) State any measures put in place by the Nairobi City County Government to resolve the issue and to ensure timely disbursement of funds in the future.

(3) Explain the accountability mechanisms in place, as well as any other strategies implemented by the county government to guarantee proper utilization of the capitation funds, disbursed to the ECDE institutions.

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

I have the second Statement.

DELAYED CAPITATION TO TVET INSTITUTIONS

Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a statement from the Standing Committee on Education regarding the delayed capitation to Technical and Vocational Education Training institutions in Kenya (TVET).

In the Statement, the Committee should –

(1) Outline reasons for the recurring delay in disbursement of capitation funds to TVET institutions across the country.

(2) State any measures put in place in the Ministry of Education to resolve the issue and to ensure timely disbursement of funds in future.

(3) Explain the accountability mechanisms in place as well as any other strategies implemented by the national Government, to guarantee proper utilization of capitation funds disbursed to the TVET institutions.

I thank you.

The Speaker (Hon. Kingi): Sen. Chesang, having explained yourself to the satisfaction of the Chair, you may proceed to request for your Statements.

ANOMALIES IN THE TRANS NZOIA COUNTY EXECUTIVE PAYROLL

Sen. Chesang: Thank you, Mr. Speaker, Sir. I rise, pursuant to Standing Order No.53(1), to seek a Statement from the Standing Committee on Finance and Budget, regarding anomalies in the payroll for both contracted staff and those on permanent and pensionable terms, serving the County Executive of Trans Nzoia County Government.

In the Statement, the Committee should-

(1) Provide detailed information to ascertain the circumstances under which the County Executive paid and continues to pay salaries using manual processes instead of the recognized and verifiable Integrated Personnel and Payroll Database System (IPPDS).

(2) Give particulars regarding the manual processing of salaries amounting to an excess of cash, Kshs77.17 million, within the first nine months of the financial year 2023/2024 alone, and indicate details of the beneficiaries' total amount paid to each individual, date and terms of appointment and state how and when such monies were subsequently paid to the state beneficiaries for each of the 12 months in the financial year 2023/2024.

(3) State measures being taken by the County Executive to immediately stop manual payment of salaries and salary-related personnel emoluments, including the use of ad hoc processes in compliance with the approved county IPPD system in processing salaries to county workers.

(4) Disclose monthly salaries requisitions as submitted to the Controller of Budget (COB), for approval for the financial year 2023/2024, detailing when the approvals were granted by the CoB, stating when the approval salary amounts were paid to respective County Executive workers.

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

(5) Indicate whether there was any diversion of exchequer releases meant for salaries. If so, specify the expenditure items, stating reasons for these diversions.

(6) Provide the trend of County Executive wage bill allocation and development allocation for the financial year 2023/2024, including indicating supplementary revisions in the same period and provide approved allocation on the same for the current financial year 2024/2025, ascertaining the status of compliance to fiscal responsibility as required by the Public Finance Management (PFM) Act 2012.

(7) State any in-year reallocation of approved development allocation in respect of financial year 2023/2024 budget estimates, indicating affected projects or programmes and the exact locations of the affected projects or programmes.

Mr. Speaker, I have another Statement. Can I proceed to read it?

The Speaker (Hon. Kingi): Proceed.

TRANS NZOIA COUNTY EXECUTIVE PAYMENTS FOR SETTLEMENT OF COURT JUDGEMENTS AND DECREES

Sen. Chesang: Mr. Speaker, Sir, I rise, first of all, under Standing Order No.53(1), to seek a Statement from the Standing Committee on Finance and Budget, regarding payment of County Executive of Trans Nzoia, for settlement of court judgements and decrees.

In the Statement, the Committee should –

(1) Provide a list of all payments made by the County Executive of Trans Nzoia, in the financial year 2023/2024 for settlement of court judgements and decrees issued against the county government, giving details of the associated judgements or decrees.

(2) Provide a detailed breakdown of all legal fees paid by the County Executive to lawyers and law firms in the financial year 2023/2024, specifying the names of the lawyers or law firms as well as respective court cases for which the fees were incurred.

(3) Disclose the current budgetary allocation for each department within the County Executive for the settlement of court judgements and decrees in the financial year 2024/2025.

I thank you.

The Speaker (Hon. Kingi): Sen. Nyamu, having explained your absence to the satisfaction of the Chair, your matter is reinstated. You may now proceed to read your Statement.

INCESSANT TOI MARKET FIRE INCIDENCES

Sen. Nyamu: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.52(1) to make a statement on a matter of general topical concern, namely, the fire incident that happened on Saturday, 3rd August, 2024, in Toi Market, Kibera Constituency, which has greatly affected several businesses within the area.

Mr. Speaker, Sir, over the years, Kenya has been exposed to a variety of disasters, such as fires, droughts, floods, landslides, Human Immuno Deficiency Virus and Acquired

Immuno Deficiency Syndrome (HIV-AIDS), human conflict, drug abuse, traffic accidents, oil spills, industrial accidents, and terrorism, among others.

Like many other countries in Africa, we have continued to face a rising degree of vulnerability to disaster risk due to increased diversity, frequency of occurrence and intensity of impact over time and space. The recurring nature of these disasters raises serious questions about safety measures and overall management of the affected areas.

Mr. Speaker, Sir, the dawn fire of 3rd August, 2024, which caught traders unawares, is believed to have started at around 4 a.m. on Saturday. While the exact cause of the fire outbreak is still unknown, preliminary reports indicate that it was as a result of electrical fault.

This is not the first time the market has gone down in flames. The market has become prone to frequent fires, as a similar case was reported last year in June when traders woke up to find their stalls ablaze and property worth millions of shillings raised down.

In November 2021, a fire razed down a section of stalls at the market, leaving traders counting heavy losses again. In 2029, two fires broke out in the market. In 2028, the market experienced three fire cases, with 15 people losing their lives, which led to the then President Uhuru Kenyatta to call for investigations into the incident and for culprits to be brought to book.

These frequent fires in this area often fuel frustration and anger among the local community, as lives are also lost in the event of such incidents.

That fateful Saturday morning, four people, including a child, were reported to have been burned beyond recognition as a result of the inferno. The victims were reportedly attempting to rescue their belongings when they were overpowered by the flames. The blaze has had a devastating impact on the market, affecting around 2,000 traders who are now left to assess the extent of their losses.

One of the critical issues contributing to the severity of these fires is the lack of adequate access roads, which often hinders the rapid responses by the fire services. The same issue of lack of adequate access roads to the market was discussed last time the incident happened, and it is still being discussed today, leaving many unanswered questions.

In order to achieve the Sustainable Development Goals (SDGs), and contribute to the achievement of Kenya Vision 2030 for sustainable development, it is imperative to restructure the disaster management system with a view to create a safe, resilient and sustainable society.

In conclusion, I would like to urge the Standing Committee on National Security, Defence and Foreign Relations, in conjunction with the Standing Committee on Devolution and Intergovernmental Relations to take an interest in this matter, to consider the following recommendations-

(1) Promotion of community awareness of potential hazards and preparedness measures which can be conducted through community engagements, dialogue forums and the use of social media.

(2) Training of community by the national and county Governments on effective response to fire disaster in terms of preparedness, evacuation and mitigation, so that they could minimize the loss of life and damage to property.

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

(3) Scaling up infrastructure by the national Government and County Government of Nairobi to prevent such tragedies from occurring in the future. (4) Both the national Government and county governments to put measures in place to compensate the victims of the fire for the harm and loss they have suffered and damages incurred on their properties.

I thank you.

The Speaker (Hon. Kingi): Hon. Senators, I will allow 30 minutes for intervention of the Statements that have been sought. Therefore, we shall terminate at 3.53 p.m.

Sen. Osotsi, proceed.

Sen. Osotsi: Thank you, Mr. Speaker, Sir, for the opportunity to comment on the Statements. I want to comment on the Statement by Sen. Wafula of Bungoma County on the matter of pending bills, and also the Statement by Sen. Beth Syengo on the issue of capitation of vocational training centres.

The greatest risk to devolution in this country is pending bills. I have sat in this House and almost on a weekly basis, I have heard my colleagues raising matters to do with pending bills in their counties. I have also done the same for my county, Vihiga County.

However, even as we do this, we are seeing very little progress being made to address this problem of pending bills. This House passed a Motion sponsored by the Senator for Narok County on the matter of pending bills. We were very clear on what we wanted done to address this problem. I am concerned that the institutions that are supposed to have implemented our resolutions are also moving very slowly in addressing this matter.

In our counties, we are seeing the kind of suffering contractors and suppliers are going through. Two months ago in my county, we buried a contractor who collapsed and died because of the stress emanating from not being paid by the County Government of Vihiga. Pending bills is a serious matter.

I request the Standing Committee on Finance and Budget to follow up on all the Statements that Members have made in this House regarding the payment of pending bills in our counties.

The second issue on capitation of vocational training centres is a very serious issue. You remember last week, I also brought a Statement on the same matter of vocational training centres in my county. These vocational training centres are collapsing because they are underfunded, poorly managed and very little is going on there.

This is also a matter that we would be glad if the Standing Committee on Education took interest to have it addressed. These vocational training centres were supposed to be avenues---

The Speaker (Hon. Kingi): Sen. Kinyua, proceed. Bear in mind you have three minutes only.

Sen. Kinyua: Asante sana Bw. Spika kwa kunipa fursa hii. Nachukua fursa hii kumpongeza Seneta wa Bungoma kwa Taarifa aliyoleta kuhusu madeni. Limekuwa donda sugu kwa sababu tumeliongea si mara moja. Hili jambo la wanakandarasi kupewa kazi na hatimaye kutolipwa inaleta sintofahamu.

Ni vizuri ijulikane kwamba wakati kazi inapeanwa, inasemekana pesa ziko katika bajeti. Kwa hivyo, mtu kutolipwa pesa zake inaleta mtafaruku kwa sababu unakuta mtu alikopa pesa kwa benki halafu anakuja kupigwa mnada na mali yake kuchukuliwa.

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

Sen. Osotsi amesema vizuri kwamba unapata wengine wanaanguka na kufariki kwa sababu ya mshtuko wa roho, kwa kujitolea. Katiba yetu ya Kenya inasema kiwango fulani cha kazi kipewe watu fulani. Unapata wengine ni vilema na vijana ambao hawana zile pesa na wamekopa, halafu mali yao ile kidogo waliokuwa nayo inauzwa.

Kama vile Seneta wa Bungoma alivyosema, ukitembelea sehemu hiyo, utapata ule Uga wa Masinde Muliro uliotengenezwa na mwanakandarasi anayejulikana kama Ruwao. Ametumia zaidi ya Kshs150 milioni na gatuji lenyewe halijaweza kumlipa kitu chochote.

Hili ni jambo ambalo si la kawaida na limekuwa mazoea. Hapa Seneti tunaongea na hakuna lolote linalofanyika. Tunapaswa tusiliongelelee tu, bali tuchukulie watu kadhaa hatua ndio iwe funzo. Katika Seneti tunagawa pesa kuenda kwa gatuji zetu na hakuna jambo linalotendeka kwa sababu ya madeni. Sio Kaunti ya Bungoma pekee yake, ukitembea Kaunti ya Laikipia, mambo ni yale yale.

Bw. Spika, kuhusu Taarifa iliyoletwa na Seneta wa Nairobi, watu wamekuwa chonjo na ngangari. Niliona wananchi wakimtimua Gavana wa Nairobi kwa sababu alienda kuwambia pole na hakufika kwa wakati uliofaa. Gari la wazima moto ndilo lilipaswa kutangulia kuzima ule moto. Niliwasikia Wakenya wakisema ya kwamba gari halikuweza kufika.

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

Sen. Sifuna: Thank you, Mr. Speaker, Sir. I am addressing this House on the 7th August, 2024, and when we talk about pending bills. Let us not forget the longest and biggest pending bills is to the people who lost their lives and were injured during the bomb attack.

I know that there is a Committee of this House that had taken upon itself to resolve that issue once and for all. We will continue to remind them that that matter is still pending.

Secondly, the reason I was drawn to Sen. Wafula's Statement is because I heard the Governor of Bungoma, who is a former Senate Speaker, denigrating this House and saying that we go out there pretending that we are the ones who push money to counties and yet, we are not the only ones.

He went as far as telling us that if indeed we are the ones who cause counties to receive money, let us bang the table, so that that money goes back to prove our power. I was deeply embarrassed for somebody of the stature of Gov. Ken Lusaka to utter such words.

Thirdly, as my sister, Sen. Nyamu has alluded, there was a fire incident. I must say that at first, I was almost not recognizing her because of her new golden crown. I do not remember ever seeing her looking like this, but *iko sawa*.

One of the problems we saw at Toi Market is because we have a lot of stalled projects in that area. As late as five months ago, I was at the Woodley Stadium. At that particular time, the contractor had left the site and we were being told that the contractor was going to resume work very soon.

Five months down the line, nothing is happening at Joseph Kang'ethe grounds. It is part of the reason for the anger that you saw when the Governor went to visit Toi Market after the fire. You saw the anger that was exhibited and the manner in which he was treated. It is not something that we want to encourage, but there is a great frustration that projects on the ground are not moving.

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

We have passed Motions here, as Sen. Osotsi told you, that we needed every pending bill below Kshs1 billion to be paid by the end of the last financial year. We needed to see county governments filing payment plans with the Controller of Budget; those plans should also be filed with us.

As far as I am concerned, I have not seen any county that has actually filed or complied with that Motion. So, it becomes very difficult for us to explain to the people why this is happening.

I am happy that now I have someone that I can directly access at the National Treasury to explain to me if there are going to be any delays in the disbursement of money to counties. As opposed to the previous occupant of that office, this is somebody who I know where he lives both here in Nairobi and I have been to his home. I can walk there and ask questions.

We want to see change in that office. We just do not want people to be given positions that they are not ready to execute the mandate of those offices.

We want to see the counties complying with the Motions that have been passed by this House. We need the projects on the ground to be financed and timely disbursement of money from the National Treasury, so that we can explain to the public where these problems are because we cannot be a House of lamentations.

Honestly, we had proposed very radical proposals here. Let us stop giving counties money if they are not going to pay contractors. We can pay those contractors from source-

--

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

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. I would like to congratulate the young Senator of Bungoma for raising the issue of pending bills. As Sen. Sifuna has said, it is so unfortunate that our former Speaker could hold this House in contempt.

I want to appeal to the Governor of Bungoma County, Hon. Lusaka, not to provoke me. He owes us because he has spent Kshs25 million planting grass on a stretch of 600 meters, and he is saying it cost him Kshs25 million.

If you want to question the integrity of an institution like the Senate, you should start with demonstrating integrity in your own office. As Sen. Sifuna would say, he who seeks for justice should come with clean hands.

Finally, I want to comment on the issue of the Toi Market. It is concerning that we are picking information that Kshs100 million in the last budget had been allocated for the improvement of that market.

We want to see how much of that money had been expended, so as to discount the possibility that this could have been a deliberate action of destroying evidence should this House have wanted to find out how that Kshs100 million had been expended.

We want to call upon the Planning Department in the City of Nairobi to help the Governor to plan properly, put strategic positions for fire stations, so that they can access incidents faster and to create proper routes; proper roads for ambulances and fire trucks into our low-income residential areas because we cannot wish them away. We will always have these low-income residential areas and marketplaces. They should be accessed properly by ambulances and firefighters.

Thank you.

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

Sen. Okenyuri: Thank you, Mr. Speaker, Sir, for this opportunity. I want to support the Statement by Sen. Beth Syengo on disbursement of funds to technical vocational training institutions. The TVET education is very critical in this country. We are basing on equipping young people with technical skills, so they are able to do whatever initiatives they do on their own.

Allow me also to indicate that on that same line of education, we can keep following up on why money is delaying going to these institutions, but at the same time, you also need to demand for an audit on how some of that money is being used.

For example, regarding the Elimu Scholarship that is being given by the Ministry of Education, taxpayers need value for their money. I saw an audit by the Auditor General, Nancy Gathungu, indicating so many failures out of the students who are actually beneficiaries of this scholarship.

I do not want to say that students who are performing badly do not qualify for those scholarships, but at least taxpayers who are contributing largely to this need to see the value by these scholarships having an academic performance report attached to them, so that other needy students who are doing very well do not miss out.

In as much as we want money to go down there, we need an audit, a report of how beneficiaries are performing and who are these beneficiaries. Look at even the international scholarships. We want to know which students have benefited, so that they come back to this country and contribute to growing this nation.

I thank you.

Sen. Methu: Thank you very much, Mr. Speaker, Sir. I rise to comment on the Statement that has been sought by the Senator of Trans Nzoia, Sen. Chesang', on the anomalies in the payroll for the County Executive for Trans Nzoia County Government.

Looking at the numbers, I actually do not know why this was sought from the Committee on Finance and Budget because this is a matter that we in the County Public Accounts Committee (CPAC) are seized of and we look at every day and every time. This is a matter that every time there is an audit in counties, it is a matter that is flagged out.

I know Sen. Sifuna will support me that every time this matter comes up, governors will always give an excuse that the reason they do not use the Integrated Personal and Payroll Database (IPPD) is because they have casual workers.

They have been given a template on how to treat casual workers in all the counties. The National Treasury gave a template such that casual workers are treated and their dues are also processed through this particular system, so that nobody is able to introduce ghost workers or people who are not members of a certain county staff establishment.

Just the other day, we were seized of a matter where two people were introduced into the payroll. They were paid for six months and yet, they were not employees of the Nyamira County Government.

We must also look into the issue raised by the Senator for Trans Nzoia. I am speaking for Nyandarua. County executives make requisitions for allowances for their staff. However, once that money hits County Revenue Fund (CRF) accounts, they void those transactions and use the money for other unintended purposes.

It is a sad state of affairs that some members of staff of some county establishments like ward administrators in Nyandarua have only gotten allowances for one month for the

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

FY 2023/2024. However, that money was budgeted for by the Department of Public Administration of the County Government of Nyandarua.

The money budgeted for allowances of ward and sub-county administrators was Kshs31 million. However, they received only Kshs3 million. The rest of the money was used as imprest. You know how imprest is used by the county executives.

This Statement must unearth the transactions, especially for allowances for members of staff. Since most of them are junior, they do not have the avenue of paying themselves. Transactions are voided and the money is used for other unintended purposes.

Mr. Speaker, Sir, I submit.

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

Sen. Miraj: Asante, Bw. Spika, kwa kunipa nafasi hii kutoa mchango wangu kuhusu Taarifa ya Seneta wa Bungoma kuhusu swala la malimbikizi ya madeni kwa wanakandarasi wanaopeana huduma tofauti tofauti katika kaunti zetu.

Ni jambo la kutamausha kwamba unapotembea katika kaunti yako, unakumbana na wananchi ambao walitoa huduma kwa wakati mwafaka lakini lazima watafute yule watakayemwongelesha ili wahusika waweze kulipa madeni hayo.

Ningependa kulaani na kukashifu vikali vitendo kama hivyo kwa sababu watu walipokuwa wanatoa huduma tofauti tofauti katika kaunti zetu, walijitolea wakijua wanaonyesha uzalendo kwa jamii zetu. Hata hivyo, imegeuka na kuwa kirba goji goji kirba na wakati wa malipo inakuwa kilio.

Bw. Spika, nikinukuu usemi wa mwenzagu, tungependa pia kujua miradi iliyofanywa na wale wanaodai. Tungependa kujua walijenga zahanati gani katika kaunti zetu au walipeana huduma za aina gani. Tungependa pia kujua magavana wanatumia mbinu gani kulipa baadhi ya wanakandarasi na kubakisha wengine.

Naomba kupeana mfano wa mama kutoka Kaunti ya Bungoma. Mama huyo alikuwa anapeleka bidhaa katika Soko la Kamukuywa. Alilia ili alipwe deni lake. Hatimaye alifariki. Jambo la kusikitisha ni kuwa hadi leo, familia yake haijalipwa.

Ningependa kujua kwanini tunaweka Wakenya katika hali ngumu. Wanachukua mikopo ili kufanya biashara na serikali za kaunti. Licha ya kuwa Serikali inatuma pesa kwenda katika kaunti zetu, bado watu wanahangaishwa bila kulipwa madeni yao.

Kama Seneta wa kike mchanga, najua kuwa vijana wa kiume na kike wanajaribu. Wangependa sana kufanya biashara na Serikali lakini wanaingiwa na uoga wa kuchukua mikopo katika taasisi tofauti tofauti ili kujihusisha katika biashara na Serikali. Ningependa sisi kama viongozi turekebishe tabia hiyo ili tulisukume gurudumu la Serikali yetu mbele.

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

Sen. Cherarkey: Mr. Speaker, Sir, I rise to comment on the fire incident at Toi Market. My heart goes out to at least four families who lost their loved ones and many Kenyans who are hustling to make a living.

For those of us who are not opulent and flamboyant, we get most of our clothes from Toi Market. The Senate Majority Leader has previously been accused of being opulent and buying a pair of expensive shoes. So, he might not be aware of what is sold at Toi Market.

It goes without gainsaying. In the last financial year, Kshs100 million was allocated. I have gone an extra mile to check the budget of Nairobi City County. Could it

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

be that somebody burnt down Toi Market to ensure that the Office of the Auditor-General (OAG) does not audit where Kshs100 million allocation for the market went? It is very unfortunate!

You saw how the Governor ran from the rain of stones because people do not believe the actions being taken to address their issues. The fire that consumed Toi Market was fiercer than that in hell, where Sulphur will be used as narrated in the Book of Revelations.

I am surprised that the Vice Chairperson of the Standing Committee on National Security, Defence and Foreign Relations, Sen. Nyamu, while reading the Statement, told us that the Committee should take note. I encourage the Committee to visit Toi Market and assess the situation.

Our big brother and the next Africa Union Commission (AUC) Chairman, Rt. Hon. Raila Odinga, donated Kshs1.5 million. I encourage Sen. Sifuna that we should do some contributions to complement what “Baba” did.

I also discourage him from saying that Hon. Mbadi has gotten a Cabinet position. Let us allow the National Assembly to adopt the report before you start saying that you will walk to the National Treasury. I would like to teach Sen. Sifuna how to get to the National Treasury. I know the closest he was there was during last year’s *maandamano*.

We should investigate the fire incident at Toi Market and other rampant market fires that we are witnessing in Nairobi. Could it be because of “*landgrabiosis*”?

I thank you, Mr. Speaker, Sir, and support.

The Speaker (Hon. Kingi): Next is Sen. Abass.

Sen. Abass: Mr. Speaker, Sir, I would like to take this opportunity to add my voice to those who have talked about the issue of pending bills in support of the Senator for Bungoma.

Pending bills have become a cancer in the counties. Many people are suffering because they are unable to pay bills. When you get into contracts with the counties, you sign agreements and there are conditions. After finishing the job, you are supposed to be paid.

There is no reason there should be pending bills because the money is budgeted for. Counties should live within their means. In my county, it is a sorry state. The current government inherited pending bills to a tune of Kshs5.5 billion. Some of the money cannot be accounted for because there is no documentation, but contractors have their documents. The problem is that there are no records in the counties. Therefore, it is difficult for money to be paid.

Many people are facing a lot of problems. Some have been sued and their property auctioned by banks. It is a worrying situation.

I request the Committee on Finance and Budget to take this matter seriously. When we release funds to the counties, they should be compelled to release lists of contractors and businessmen and women who provided services. They should tell the Senate how much money they owe them. The Senate should step in and help the people of Kenya who have not paid up to date.

It is now more than 10 years since 2013. In my county, there are some pending bills that date back to 2013, yet money is always released to go to the counties. We need to help the counties.

Even those who worked in the counties cannot access their pension or gratuity, yet they contributed. The money is being used for other purposes. That is a criminal case. I request the Standing Committee on Finance and Budget to help us out of these problems. Every time I go to my county, people come to me and say “*Mheshimiwa* Senator, we are owed a lot of money and we are not being paid”. This nuisance should stop and peoples’ money must be paid.

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

Sen. Seki: Thank you, Mr. Speaker, Sir. I also add my voice to the statements from Sen. Beth Syengo and Sen. Wakoli on the issue of pending bills and capitation of Technical Training Institutions (TTIs). We know very well that TTIs and Technical and Vocational Education and Training (TVETs) are integral and important institutions that offer skilled labour to our young men and women within the counties. Therefore, we need to focus on them.

The capitation from the national Government through the Ministry of Education is a very important programme that needs to be observed. The national Government need to look into it and ensure that students in these institutions are paid that money, so that we do not have problems of skill. We are all aware that students admitted to these institutions have low grades. Therefore, we are expected to have skilled labourers in our factories in the counties.

The issue of pending bills is a big problem in our counties. However, we do not have a focused and programmed way to handle pending bills in our counties. It is upon this House to come up with a procedure on how to handle these problems, once and for all.

I appreciate that hon. Sen. Olekina has come up with a Bill that will assist us to fast-track settling of pending bills, which have caused a lot of problems and harm to our people in the country. Our business people and contractors are owed a lot of money by both the county government and national Government. They have continued to suffer losses.

Mr. Speaker, Sir, I support these two Statements. I thank you for the time that you have given me.

The Speaker (Hon. Kingi): Sen. Tabitha Mutinda, proceed.

Sen. Tabitha Mutinda: Thank you, Mr. Speaker, Sir. First, I want to support Sen. Beth Syengo’s statement in regards to the issue of the TVETs. I also support my colleagues on emphasizing the importance of the skills and knowledge normally acquired by young people. I also note that TVETs are much more affordable in this country.

Without this capitation, it brings challenges. We have seen young people up and down in the streets. Ensuring that these institutions are well financed gives them the opportunity that they deserve.

Secondly, is on the Statement regarding the pending bills. This is an issue that the Standing Committee on Finance and Budget has really tried to look into. During the last Division of Revenue Act (DORA) on the approval for the Kshs400 billion, we had the delegation of the Governors led by the Chair of the Council of Governors (CoGs), Madam

Ann Waiguru. I personally emphasized on the thorn and animal called the pending bills, which has affected contractors highly in our counties.

Mr. Speaker, Sir, it is time, as a Committee, to rethink the amendments in the Public Finance Management (PFM) Act. Before any new contracts are awarded to any new suppliers and contractors, the pending bills must be cleared. Payments must be made even before the new contracts are awarded. An amendment on the procurement laws should be the way to go. The animal has been there because when the new governors come in with their new people, the old ones remain in the same system without being paid.

Lastly, I would like to comment on the issue of the Toi Market. Markets in Nairobi City County have really been affected by fire. This is something that we have also communicated as people of the county. The Governor should take different strategic measures. For example, he should ensure that each and every market has set aside a fully equipped lorry to take care of the fire tragedies that we have seen. My condolences go to the families that have lost their loved ones.

Mr. Speaker, Sir, as far as the issue of the National Treasury is concerned, I heard the Senator for Nairobi City County, Sen. Sifuna, talk about liaising closely with the nominee who will be appointed to the National Treasury. It is an indication that the Secretary General (SG) of the Orange Democratic Movement (ODM) is embracing broad-based government. He supports his brother as he settles in the Ministry of National Treasury. It is positive because with those efforts, then we will ensure that issues of capitation, pending bills or any other that arise will be taken care of.

We look forward as the Committee on Finance and Budget to get full support from the Ministry of National Treasury through the current nominee as he settles in.

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

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I have two quick issues. I say this quickly after the Vice-Chairperson of the Standing Committee on Finance and Budget. As a House, we must also become a bit more serious in how we undertake our duty because of the people of this Republic who voted us to this House to legislate, represent, oversight and ensure that we propagate solutions that make their lives better.

Even as issues are brought to fore every afternoon *via* statements by our colleagues, we must then ask ourselves how we can quickly resolve many of the issues that come before us either at committee or plenary level of the entire House. This issue of pending bills in our county governments has been with us for about six years now. Is it not about time that our Standing Committee on Finance and Budget sets the bar a bit higher, so that the contracting agent - that is the county governments - can be more fiscally responsible?

Apart from the many nice things that we say this afternoon to appear to be concerned for the people of this Republic, I would expect either Sen. Ali Roba or Sen. Tabitha Mutinda begin to move us towards an amendment to the PFM Act that sets pending bills as a first charge to the consolidated fund of our county governments. This will ensure that governors do not end up contracting new services before, first of all, paying for that which they consumed the previous financial year.

Otherwise, year after year, we shall continue dealing with this problem the same way we have dealt with it the last six years. Occasionally, such a matter appears before the Senate, we speak on behalf of the people we represent and say how we are concerned and

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

dismayed at the behaviour of governors. However, we are the only ones who have the powers to resolve this issue.

Mr. Speaker, Sir, I expect that when we resume from recess, the Committee on Finance and Budget will be ready with an amendment towards the fulfilment of the desire and benefit of many citizens who work and contract services for and on behalf of our county governments.

Mr. Speaker, Sir, lastly---

(An hon. Senator spoke off record)

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

The Senate Majority Leader (Sen. Cheruiyot): No, Mr. Speaker, Sir. I was interrupted and that is why I kept quiet for about a minute.

The Speaker (Hon. Kingi): Clerk, how many minutes has the Senate Majority Leader spoke for?

The Senate Majority Leader (Sen. Cheruiyot): For like a minute only---

The Speaker (Hon. Kingi): Okay, proceed to conclude in two minutes.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I hope you will save me the time.

The final issue is on the Toi Market fire. Last week, we moved the Land (Amendment) Bill before this House that is now pending before the Committee of the Whole. Part of what we expect to do from that particular piece of legislation is to ensure that all public utility lands are given titles in their name.

These fires that you see in Gikomba, Mutindwa and Toi markets are all about people trying to take ownership of this land. Therefore, I hope that Senators can find time, either this afternoon or tomorrow, to conclude on that Amendment Bill, so that we can wind up this issue of public land meant for building of public institutions.

Otherwise, we will end up being like my good friend, Sen. Cherarkey, who is speaking about opulence while wearing the most expensive watch I have ever seen in this House.

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

Sen. Kavindu Muthama: Thank you, Mr. Speaker, Sir, for giving me this opportunity to add my voice to the two statements from Sen. Wakoli and Sen. Beth Syengo.

Just like many of the Senators have said, this issue of pending bills runs across all the 47 counties. I have heard the Senate Majority Leader talk of pending bills for last six years. However, in Machakos County where I am counting more than 10 years of pending bills carried forward.

Mr. Speaker, Sir, I recommend that the Standing Committee on Finance and Budget come up with an amendment law. The law should see to it that the Controller of Budget (CoB) will not release money to the counties with pending bills until they clear all of them because before they give any work, they have money allocated for that work. Where that money goes for it to become a pending bill is a mystery to this House.

Mr. Speaker, Sir, capitation for TVETs, secondary schools and universities are delayed so much, yet TVET centres train our youths who come out as useful and good

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

citizens with a lot of skills to work and ready to do something with their lives in this country. Therefore, their capitation should be released like yesterday, even for universities and secondary schools.

Thank you, Mr. Speaker, Sir.

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

Sen. Olekina: Thank you, Mr. Speaker, Sir. This afternoon, I am at a loss of words as I rise to support the Statement by Sen. Wakoli. I have been in this Senate for more than seven years now. When I came to this Senate, I was told by those who came before me that the Senate pronounces itself through Motions and Bills.

I was told that if anybody failed to comply with the resolution of the Senate, that person faces various consequences, which include censure and even the extent of being removed from office. We have censured Cabinet Secretaries in this House for failing to comply with the Senate's resolution.

I am at a loss of words as to why we should continue lamenting on this issue of pending bills. This Senate passed a resolution by delegation. Article 123 of the Constitution is quite clear; it says that the Senate shall vote by 24 delegations. In fact, we had 38 votes, if I can remember.

So, this issue of pending bills is very simple, we should follow the law. The Senate should stop the funds from going to counties, not talk about amending the laws. Why do we need to amend the laws when the regulations are very clear that pending bills form a first charge of an account? It is very simple.

Some of us will have to take other extra measures to ensure that they comply since we are told that they will only comply if we stop them in court. Article 255 of the Constitution says that it is only the Cabinet Secretary who can stop money from going to counties and for period of 90 days.

So, if this Senate is failing, the only thing we have is to now resort to court to force the implementation of a resolution of this House, which was quite clear. It said that all counties must pay a minimum of Kshs1 billion by the end of the last financial year.

Mr. Speaker, Sir, what the Standing Committee on Finance and Budget Committee should do now that we do not have an Implementation Committee, is to self-implement. We follow through, check and ensure that they are paying. If they are not paying, we move forward.

As far as I am concerned, you might end up seeing me in court in the next few weeks to compel these counties to respect this Senate.

(Applause)

I cannot sit in this Senate if these counties cannot respect it. What are we doing here then? Senate Majority Leader, can we please move? This is your House and your Motions have to be respected. We have a bunch of lawyers here, including Sen. Chimera, who instead of taking us to court to try and stop us from getting---

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

Sen. Okiya Omtatah: Thank you, Mr. Speaker, Sir. I would like to contribute to the Motion on pending bills.

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

These pending bills have basically morphed into a form of borrowing by county governments because they are given budgets. However, for some reason, they end up with pending bills, which then again have to come back to the public to be financed.

Borrowing by counties is regulated by the Constitution in Article 212. It says:

“A county government may only borrow if the national Government guarantees the loan and with the approval of the county government's assembly.”

You find that these pending bills are creations of the Executive who refuse to operate within their budgets and manipulate the issuing system by voiding what has been approved and diverting money.

I think governors who were in office when these pending bills were created should not go scot-free. Their fate must be held to the fire and they must tell us why they are creating a public debt contrary to the Constitution. The people of Kenya are being forced to pay for what they should have sorted out using supplementary budgets and similar stuff.

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

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

As we go forward in terms of settling pending bills and to dissuade this culture from continuing, I urge that the consideration of this statement go as far as making recommendations on how to handle rogue governors, who end up using their procurement powers within budgets approved by the CoB to create pending bills. If they do not pay bills, they must face the music. They should not come back to the public to go and pay pending bills.

We cannot be crying here about pending bills when the Constitution is very clear on how we should incur public debt. Backdoor public debt should not be paid. It is not a sovereign debt, but it is a regime debt. If the public pays it, the regime owners must be held to account.

This thing of handling the pending bills issue with kid's gloves will not solve it unless we punish individual governors.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Veronica Maina): Sen. Karen Nyamu proceed.

Sen. Nyamu: Madam Temporary Speaker, thank you for the opportunity. I will speak to the issue of pending bills. As my colleagues before me have said and since I got to this House, this is about the eighth time we are having this issue of pending bills being debated before this House.

When companies such as the Kenya Airways (KQ) apply for bailouts, we see the Government paying off Kshs55 billion, Kshs7 billion or Kshs37 billion almost immediately. However, we give a deaf ear to our Small and Medium Enterprises (SMEs) who are actually the backbone and have the potential to significantly affect our economy. We are saying that we want to grow the economy through a bottom-up approach.

I do not know if you are aware that in Nairobi, for example, Gov. Sakaja will not pay Gov. Sonko's pending bills. It is out there in the public domain.

Gov. Kidero's pending bills will also not be paid. I wonder why we are punishing our people for doing business with the county government. We are the ones who should be encouraging this relationship with our young people and giving them hope that the Government can be trusted. The rich and the big business people take advantage because they are connected.

Sometimes you find that bids have been floated, but only one person or sometimes not even one person has responded to the bid because of the fear that they will not be paid. That makes the big business people thrive because they are the only ones doing business with the county governments since they are assured of payment.

If we decide to sort this issue of pending bills as a Senate because it concerns the counties, we can put our foot down and have the pending bills paid as far as the first county government. When talking about the pending bills, are we aware that there are contractors who have never been paid as far as 2013?

The Temporary Speaker (Sen. Veronica Maina): Proceed, Sen. David Wakoli Wafula.

Sen. Wafula: Bi. Spika wa Muda, asante kwa nafasi hii. Kwanza, nawapa pole walioathirika na janga la moto katika soko la Toi. Hili ni jambo ambalo lazima tuangazie kama Seneti. Ni vipi magatuzi yetu yamejiandaa katika kukabiliana na janga la moto?

Jambo la kusononesha sana ni kwamba baadhi za kaunti za Kenya hazina magari za kuzima moto na vifaa mahususi vinavyoweza kutumika kuzima moto. Janga linapotokea, wao ni kushika simu kuuliza moto ulianza wapi, unafanana namna gani, watu wamejaa au la, barabara inapitika au haipitiki, ilhali mali ya watu inachomeka na maisha kuangamia.

Jumba la Seneti liangazie kujiandaa kwa kaunti zetu katika kukabiliana na majanga ili mali ya wanabishiara wa Kenya isije iharibike.

Jambo la pili ni Hoja iliyoulizwa na Mhe. Beth Syengo kuhusiana na vyo vikiu. Tunapoangazia miundo mbinu na jinsi vyo hivi vinafadhiliwa, ni jambo la kusononesha sana katika kaunti zetu.

Zuzi tumekuwa na Gavana wa Kaunti ya Bungoma na wanaotia sahihi matumizi ya pesa, baadhi ya akaunti zao za benki hawajulikani. Ni ishara kwamba tusipoangaza macho jinsi pesa zinavyotumika, baadhi ya vyo hivi vitatumika kama ng'ombe za kiuchumi ambazo zitakamuliwa kwa niaba ya Wakenya.

Mwisho kabisa ni kuwarai Maseneta wenzangu kwamba wakati umefika Serikali inapokaza kamba kuhakikisha utepetevu na kutolewa katika idara ya mawaziri kadhaa tuliyonao hata katika sekta ya wizara na kaunti zetu. Tuhakikishe kwamba ugatuzi na fedha inatumika ipasavyo.

The Temporary Speaker (Sen. Veronica Maina): The last person to comment is Sen. Erick Okong'o Omogeni.

Sen. Omogeni: Thank you, Madam Temporary Speaker. I want to comment on this issue of pending bills and inform the Senate Majority Leader that if we were to have an honest conversation around this issue of pending bills, it is all about the interests of certain governors who will never release payments to certain contractors, unless there is something

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

they are getting as a kickback. That is where the problem is. Senate Majority Leader, through you Speaker, we need to have a very honest conversation on how we can deal with this cancer called corruption.

It is all around the interests of a sitting governor. If a new governor comes into office and finds a contractor who was recruited by the previous governor, there is fear that they will not approach them to get a kickback. They will divert the money that they get in that financial year to pay another contractor whom they are able to cut a deal with.

Let us involve all the stakeholders in this industry. We need to have a conversation with Ethics and Anti-Corruption Commission (EACC), so that they can give us a proposal on how we criminalize this idea of leaving out contractors who are given contracts by the previous governor, but whom the new governor does not intend to pay. It is the same problem Sen. Mutinda is talking about of Sen. Sakaja.

It is the same thing in Nyamira. We are unable to complete our county referral hospital because the sitting governor is not willing to pay the contractor because the contractor was recruited by the late Gov. Nyagarama. The same thing with Manga stadium.

You see these things in the audit reports year in, year out. The best thing is to amend the law, especially ethics and corruption legislation. We can make it a criminal case. If there is a procurement plan and work has been done and certificates issued yet a governor refuses to pay. All we want to confirm is that work was given out and that it was done. There is confirmation from professionals that that service provider should be paid and then we release the money.

Worldwide the biggest trading partner is normally the government. The government must demonstrate that when you are doing business with it, you are dealing with a business partner that has integrity; we will be able to pay for services and work rendered. How can we allow people who are in business to have their homes auctioned?

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM MOGOMA
SECONDARY SCHOOL, BOMET COUNTY

The Temporary Speaker (Sen. Veronica Maina): Hon. Senators, I would like to acknowledge the presence in the public gallery this afternoon of visiting teachers and students from Mogoma Secondary School in Bomet County. The delegation comprises six teachers and 68 students who are in the Senate for a one-day academic exposition.

Hon. Senators, in our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful time of learning.

I request the Senate Majority Leader to welcome them very briefly.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Madam Temporary Speaker.

I take this opportunity to welcome these students from Mogoma School, my neighbouring County of Bomet. Sen. Wakili Sigei was here earlier. He must be somewhere within the precincts of Parliament.

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

I hope they have a full value for the time that they have taken to come and learn one or two things from operations here in the Senate. I wish them well in their endeavours. Work hard in school so that you can be trailblazers and leaders in all the spheres of society, from the political to all aspects that you can imagine you want to be in future.

I wish these students well. Thank you.

The Temporary Speaker (Sen. Veronica Maina): Thank you, Majority Leader. I will now reorganise the Order Paper and defer Order Nos.8 and No.9.

BILLS

Second Reading

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

(Bill deferred)

Second Reading

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

(Bill deferred)

I request the Clerk to call out Order No.10.

MOTIONS

ADOPTION OF REPORT ON APPROVAL OF DR. PATRICK OMWANDA AMOTH
FOR APPOINTMENT AS DIRECTOR GENERAL FOR HEALTH

(Sen. (Dr.) Lelegwe Ltumbesi on 1.8.2024)

(Resumption of debate interrupted on 6.8.2024)

THAT, the Senate adopts the Joint Report of the Standing Committee on Health of the Senate and the Departmental Committee on Health of the National Assembly on the approval of a nominee for appointment as Director General for Health, laid on the Table of the Senate, on Thursday 1st August, 2024 and further that, pursuant to Section 16 (2) of the Health Act (Cap. 241) and Section 8 (2) of the Public Appointments (Parliamentary Approval) Act, approves the nomination of Dr. Patrick Omwanda Amoth, EBS, for appointment as the Director General for Health.

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

The Temporary Speaker (Sen. Veronica Maina): Hon. Senators, I now want to put the question with respect to the joint reports of the Senate Standing Committee on Health and the National Assembly Departmental Committee on Health on the approval of Dr. Patrick Omwanda Amoth, EBS, for appointment as the Director General for Health.

(Question put and agreed to)

Next Order.

Sen. Oketch Gicheru: Point of order, Madam Temporary Speaker, Sir.

The Temporary Speaker (Sen. Veronica Maina): What is your point of order, Senator?

Sen. Oketch Gicheru: Madam Temporary Speaker, thank you for the Communication. However, I do not know whether you observed the way the hon. Senator for Bungoma was roaming all over the House, while you were making the Communication.

It is really demeaning for him to be moving about. First of all, he does not respect you, neither does he respect Dr. Amoth or the broad-based spirit in this House.

(Laughter)

Madam Temporary Speaker, I think you should reprimand him.

The Temporary Speaker (Sen. Veronica Maina): If the Senator for Bungoma did that, he is lucky to have escaped my eye. Therefore, he will not be reprimanded because I did not see him. I would hope that the Senator for Bungoma does respect the broad-based Government, the Chair and Dr. Amoth.

Next Order.

I want to invite Sen. Tabitha Mutinda on behalf of the Chairperson Standing Committee on Finance and Budget to move the Motion.

CONSIDERATION OF THE NATIONAL ASSEMBLY AMENDMENTS
TO THE EQUALIZATION FUND APPROPRIATION (NO.2) BILL
(SENATE BILLS NO.30 OF 2023)

Sen. Tabitha Mutinda: Thank you, Madam Temporary Speaker. I beg to move the following Motion-

THAT the National Assembly amendments to the Equalization Fund Appropriation (No.2) Bill (Senate Bill No.30 of 2023) be now considered.

Madam Temporary Speaker, I want the House to note that the Equalization Appropriation Bill 2023 was also the Senate Bills No.30 of 2023. After it was published, it was taken through the normal process of the Bill, which was concurrence at the National Assembly level.

The National Assembly considered and passed the Bill on 13th June, 2024, with amendments. These amendments came in with a reduction of an amount of Kshs790 million. The reduction came from Kshs10.8 billion to Kshs10.0 billion.

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

This budgetary reduction was affected during the Supplementary Estimates for the Financial Year 2023/2024 due to the significant delay in the passage of the Equalization Fund Appropriation Bill into law.

I emphasized on the issue of the delay and significant delay for that matter. On our side as the Senate, we have ensured that we have done timely approval and passage of the same Bills after concurrence. Nonetheless, there has been a delay, which now affected this appropriation.

Madam Temporary Speaker, at the sitting of the Senate on 3rd July, 2024, the Speaker of the Senate on the Floor of this House made the same communication regarding the amendments by the National Assembly on the same Bill and these issues were referred to our Committee.

Through the membership of the same Committee where I am always very grateful to sit, two issues were noted; that there is a routine tendency on reduction of allocations to the Equalization Bill among other amounts. As we have also seen in the Division of Revenue, the National Assembly has always alluded to and executed reductions of funds that the Senate does allocate. This Equalization Fund has been affected by the same. There has been massive reduction.

It is good for the House to note that the total allocation for this Fund since inception amounted to Kshs62.4 billion. However, there have been arrears because the only disbursement that has been done is Kshs22.4 billion. As I speak, there are actual arrears amounting to Kshs48.8 billion.

As much as we, as Senators, do highly support devolution, we know the purpose of the Equalization Fund. Therefore, without the adherence to the law and the effects that come with it, then it affects the achievements that needed to be met with the Equalization Fund. This is due to simple terms of English that I keep on repeating and saying, delay.

In this regard, the National Treasury had also not honoured its commitment to the Senate, that the arrears due to the Equalization Fund will progressively be provided in the budget and transferred to the Appropriation Fund for its utilization.

We had as a committee summoned the former Cabinet Secretary for National Treasury and Economic Planning on the same. He gave his word that these funds would be disbursed on time. We did our due diligence as required, but to our disappointment this had never been effected.

Additionally, the Equalization Fund Appropriation Act, which is in place, does not have any resource allocation. Notably, the National Treasury committed to the committee that this amount would be allocated in the supplementary budget for financial year 2023/2024, but it was not done.

The Equalization Appropriation Bill was meant for the financial year 2023/2024, which has also lapsed. As a committee, we deliberated very much on this issue as far as the amendments of the National Assembly were concerned. We came to a conclusion that the Senate Committee on Finance and Budget rejects the amendments of the National Assembly on the Equalization Fund.

Madam Temporary Speaker, this is where I would want the House to support our recommendations as a Committee. If we continue allowing for the reductions to be always

put in place - as I speak, the funds have not been appropriated - it becomes a challenge and yet it is in law.

Madam Temporary Speaker, allow me to quote Article 219 of the Constitution, which states that –

“A county's share of revenue raised by the national Government shall be transferred to the county without undue delay and without deduction, except when the transfer has been stopped under Article 225.”

Since this had been approved, all that was needed was appropriation and timely disbursement, but this has not been adhered to. There have been reductions with the amendments by the National Assembly. Our recommendation as a Committee was simply to reject those amendments.

At this point, allow me to appreciate the office of the Speaker, the Clerk and also the Secretariat that we always walk with. I will not forget the commitment that the Members of the Committee on Finance and Budget have always dedicated and shown. This is led by our able Chair, Sen. Ali Roba, our colleagues, Sen. Oketch Gicheru, Sen. Faki, Sen. (Dr.) Khalwale, Sen. Shakila Abdalla, Sen. Onyonka, Sen. Korir and Sen. Tabitha Keroche. They have been committed and ensured that we execute our roles and mandate at this time.

I beg to move and call upon Sen. (Dr.) Khalwale to second.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, I rise to second this Motion. I strongly request colleagues in this House is to reject the attempt by the National Assembly to reduce the money that was meant for equalization to any other figure.

I am talking about the letter and spirit of the Constitution of Kenya. In 2005, when delegates carefully drawn from all groups of stakeholders met in Bomas of Kenya and unanimously agreed that we needed to right that wrong of historical injustice that had been vested upon some of the arid and semi-arid counties, where they were deliberately marginalized from 1965. We not only wrote it into the Constitution, but even stated that it is a deliberate move not to fight poverty.

At that time, 14 beneficial counties were identified. Senate Majority Leader, I do not know what happened while I was away for five years. I do not understand how marginalisation morphed into the need to use equalisation funds to fight poverty. Poverty exists in all our counties, Nairobi City County and the privileged Kiambu County included. Kiambu County is privileged because it has written in the history of this country that they have produced two presidents; one for 15 years and another one for 10 years, giving a total of 25 years.

Mr. Speaker, Sir, the old bad mindset, part of the reason our children are pouring in the streets in the name of Gen Z, is that development has tended to follow where the executive comes from. So, we needed to right this.

The Temporary Speaker (Sen. Veronica Maina): Hon. Senator, do not confuse the public any further by referring to the Chair as Mr. Speaker. Please, correct that.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, receive my apologies. However, some of us come from the old school of English and religion that defines that

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

when you say ‘he,’ you mean all the women and men. However, with all due respect, I am so guided.

Madam Temporary Speaker, I am reflecting on this point. When we moved from 14 counties to benefit from this fund to now 34 counties, we missed it by several kilometres. If today you look at the counties that benefit from equalisation fund, you will be shocked.

A green county, the green jewel of Kenya called Kericho, is one of the counties benefiting. I say this with due respect to the Senator for Kericho County, who is the Senate Majority Leader. Really? That you allow Kericho County, the green county, to compete for funds for water with the Turkana County. The Senate Majority Leader made a very emotional speech in this House last month.

The Temporary Speaker (Sen. Veronica Maina): Sen. Faki, would like to inform you. Would you be obliged to receive that information?

Sen. (Dr.) Khalwale: Yes, I would like to be informed by my good colleague.

The Temporary Speaker (Sen. Veronica Maina): You may proceed.

Sen. Faki: I would like to inform my brother and colleague in the Finance and Budget Committee that there is a Lake Turkana and another river that traverses the centre of the county of Turkana known as River Turkwel. So, there is no shortage of water in Turkana County.

Thank you.

The Temporary Speaker (Sen. Veronica Maina): You may proceed, Sen. (Dr.) Khalwale

Sen. (Dr.) Khalwale: Madam Temporary Speaker, if in the good old days of the *Emeritus* Speaker, Hon. Ole Kaparo, and I am not casting in any way any aspersions against you, the Senator for Mombasa County would have been thrown out of the House immediately for that remark that there is too much water in Turkana.

This is the same impunity that we saw in South Africa when Steve Biko was lying there dying from hunger. The white leaders who were in Parliament that day were saying that Steve Biko was just having a headache and he would be fine. We have to be mindful of the challenges in Turkana County. I know the Senator for Mombasa County is not a well-travelled man. He is a professional who has been a bookworm all the way from the days he was in high school up to now when he is a good lawyer. He has to read all the time.

There is no water in Turkana, Tana River, Baringo, Wajir and Mandera. Those are the counties that we wanted to give water, electricity, roads and health facilities, so that they can come close to Nairobi City, Kiambu, Murang’a, and Meru counties. Today, Meru County is competing for those funds.

Anyway, I support that we should reject this deliberate effort to water down the intention of Equalisation Fund. It is now only remaining seven years. Before we know it, in seven years' time, the period for equalisation will have come to an end. The billions that were supposed to have been taken there, now amounting to Kshs48.8 billion, have never gone there into the Equalisation Fund account. We will soon be asked by this Constitution to extend the period of equalisation.

Madam Temporary Speaker, with those many remarks, I second this Motion. I beg colleagues to reject this proposal from the National Assembly.

I thank you.

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

(Question proposed)

The Temporary Speaker (Sen. Veronica Maina): Thank you. I will invite Senators to make contributions to this Motion.

Sen. Mungatana, proceed.

Sen. Mungatana, MGH: Thank you, Madam Temporary Speaker, for giving me the opportunity to make my contribution. On the onset, I---

The Temporary Speaker (Sen. Veronica Maina): Sen. Mungatana, I hope you will mind the fact that several people would like to contribute. On your own volition, make it a business of three minutes.

(Loud consultations)

Sen. Mungatana, MGH: Madam Temporary Speaker, make it five minutes.

The Temporary Speaker (Sen. Veronica Maina): It is agreed. Let each Senator contribute for five minutes. Thank you.

Sen. Mungatana, MGH: Madam Temporary Speaker, Tana River County is a beneficiary of the Equalisation Fund. These are realities. Last week, when I was at home, I was informed that large areas like Vumbwe, Sailoni, Wema and all those areas near the Tana River Delta Irrigation Scheme do not have electricity. They had high hopes that they will be able to access electricity.

Madam Temporary Speaker, I hope that they will be able to access electricity because the processes of equalization fund, which included sitting down at the ward level, agreed that instead of voting for water and the other things, they would all agree on electricity because electricity would affect the entire ward.

An amount of Kshs30 million was allocated for that purpose and everybody has been wondering, where is the electricity? It is very sad to hear today that the National Assembly has voted to remove Kshs790 million from the monies that Senate had passed, Kshs10.7 billion.

For us, it is a reality that what the National Assembly has done is that it has voted against the interest of Tana River County. I stand on behalf of the people of Tana River County, as a delegation that we say that we must reject that reduction. Why? Because we are waiting for the electricity, the Kshs30 million that we voted for this equalization fund; we are waiting because of the various projects that we had passed.

Sometimes the National Assembly does not connect as much as we do with our counties. So, sometimes they pass votes, they pass Bills, they pass decisions that are anti-people. How can you marginalize those who are already marginalized?

When you cut money that is supposed to go to the 36 counties where marginalisation was orchestrated from the 1965 Sessional Paper No.10 up to today, it is marginalising those already marginalised.

So, I will just end it there by saying what the Senate Committee on Finance and Budget has recommended in this report is what we should all stand with. We should stand

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

behind them and reject the reduction of the money to the counties that have been marginalised because it defeats the whole purpose of the equalization fund.

We wanted this equalization fund so that it can help our people. So, I am trying to be as brief as I can and so I beg to support.

I thank you.

The Senate Majority Leader (Sen. Cheruiyot): Madam Temporary Speaker, I will be very brief because I just want to correct one misnomer that has been said by my good friend, Sen. (Dr.) Khalwale. It is good that I give him history. The reason I did not interject him is because he posed a very important question before actually saying the things he said about Kericho County.

He asked what happened because by its design and architecture, the equalization fund is set aside to rectify wrongs of years gone by where certain sections of the country were marginalised. Either intentionally or unintentionally by successive regimes to a point that if you compare the living standards of residents in a particular part of the country and those of another, then you appreciate that there is need to bring all our citizens at par and appreciate that we live in one country. We all contribute to taxes and we should get services in equal measure.

Before Sen. (Dr.) Khalwale left this House in 2017, the first allocation of equalization fund - and we served with him in the Committee on Finance and Budget - was by counties. At that particular point, we believed that there are certain regions or even counties that had been marginalized for long time.

In their review post the 2019 Census, the Kenya National Bureau of Statistics working together with County Revenue Allocation (CRA) and the Senate reviewed the qualifications of equalization fund not to be on a broader geographical space like a county and region, but brought it actually to the ward level, which is the least administrative unit that is known to the Kenyan constitution.

Madam Temporary Speaker, it is not right to think just in terms of a particular county or even a constituency. If you see a particular county listed, it is because there are one, two, three, or even four sometimes, wards in that particular part of the county, that if he was to visit today---

I would wish to challenge Sen. (Dr.) Khalwale that as he drives home this weekend instead of driving the Londiani route, which he is fond of using, to drive all the way through Kericho Town. I wish you would visit the lower parts of Kericho, the sugarcane-growing regions because he will appreciate why Soin and Soliyat wards, for example, qualify to benefit from equalization fund. He will appreciate that indeed those regions are needy and they are there by right.

That was brilliant work that was done by the Senate Standing Committee on Finance and Budget together with the CRA and Kenyan National Bureau of Statistics. They mapped out the poverty levels in the various parts of the country. If it was left to Governor Fernandez Barasa on his own to distribute these resources, chances are that he may just do what we politicians do many times, which is to distribute resources depending on political whims of the day.

We did a good job as a Senate to map out the specific wards. If you check the allocations to Kakamega County, it is specific wards where these funds have to go to and as the County Assembly of Kakamega does their annual budget they include these funds.

I think to that level, as a Senate, we did a good job. We can actually improve on it and go as far as naming the specific location because we are already at ward level, which is quite impressive. We have travelled an important journey.

Madam Temporary Speaker, the final point is that I agree with our committee that this reduction is not justified. Much as we are down in the Finance Bill 2022/2023 and 2023/2024, this reduction is too drastic unless we sit in a mediation committee and agree and it is demonstrated to us as a House, why specifically the equalization fund. Already what should have been devolved in terms of equalization fund to these regions is Kshs64 billion, but what has only gone, so far, is a paltry Kshs13 billion.

Madam Temporary Speaker, we are still short by Kshs48 billion even without the reduction. Therefore, to reduce it even further does not solve our problem.

I support.

Sen. Faki: Asante, Bi. Spika wa Muda, kwa kunipa fursa hii kuchangia ripoti ya Kamati ya Fedha na Bajeti ya Bunge la Seneti kuhusiana na kupunguzwa kwa fedha zinazokwenda kwa mfuko wa usawa na Bunge la Kitaifa.

Kifungu cha 204 cha Katiba yetu kinasema ya kwamba kutakuwa na mfuko wa usawa, yaani Equalization Fund, ambapo kila mwaka kutalipwa asili mia nusu ya fedha ambazo zimekusanywa na Serikali kama mapato ya mwaka uliopita.

Accounts ambazo zinatumiwa kwa sasa ni za mwaka 2021---

The Temporary Speaker (Sen. Veronica Maina): Sen. Chararkey, what is your point of order?

Sen. Cherarkey: Bi. Spika wa Muda, kwa ajili ya lugha ya Kiswahili, sanifu ingekuwa vyema, Sen. Faki kutumia “hazina ya usawa” badala ya “mfuko wa usawa.” Hii kwa sababu tunajua mfuko ni zile ambazo tunatumia kubeba pesa na yale mambo mengine. Itakuwa vyema akisema “hazina ya usawa” ndio Wakenya waweze kuelewa kwa sababu “mfuko wa usawa” ina maana nyingi.

The Temporary Speaker (Sen. Veronica Maina): Sen. Faki, please, take note and proceed.

Sen. Faki: Bi. Spika wa Muda, Hazina ya Kitaifa ni National Treasury. Sasa sijui nimfunze Kiswahili ama nichangie mada. Ukiangalia katika Kamusi ya Kiswahili sanifu, mfuko ni *fund* kwa lugha ya Kiingereza. Kwa hivyo, Sen. Cherarkey, sijakosea chochote. Utajifunza mengi kutoka kwangu.

Hesabu inayotumiwa kutenga fedha ni ya Mwaka 2020/2021 ambayo ndio ya karibu sana ilipitishwa na Bunge la Taifa. Mbali na kuwa pesa hizo ni chache sana kulingana na jinsi mapato ya Serikali yamekuwa, sasa tuko katika Mwaka 2024/2025 ambapo mapato yake ni tofauti na yale yaliyopatikana Mwaka 2020/2021.

Jambo la pili ni kwamba pesa hizo zinatakiwa ziwe nusu ya mapato. Kwa hivyo, hawawezi kukaa katika Bunge la Taifa na kusema kuwa Serikali imetenga Kshs10,867,400,000 na kupunguza Kshs790 milioni ili ibaki Kshs10,077,400,000. Kiwango hicho kimewekwa na Katiba. Hivyo basi, Wabunge hawana mamlaka ya

kupunguza Kshs790 milioni ili ibaki Kshs10,077,400,000. Hicho ni kinyume na Katiba. Sisi kama Seneti hatuwezi kukubali hilo.

Jambo la tatu ni kwamba tangu hazina ya usawa ianzishwe, ni juzi tu, mwaka 2021, nilipokuwa Mwenyekiti wa Kamati ya Sheria Endelevu, yaani Committee on Delegated Legislation. Tuliweza kupitisha kanuni zinazotumika sasa kuendesha hazina hii.

Kwa miaka kumi, hazina hii haikuwa na kanuni za kuendesha fedha hizo. Walipeleka kanuni zilizokataliwa na mahakama. Hivyo basi, kwa miaka kumi, miradi ilifanya bila malipo kwa sababu ya ukosefu wa sheria endelevu za kuhakikisha Hazina hii inafanya kazi.

Ni masikitiko kwamba mpaka sasa, Hazina hii haijasaidia sehemu zilizotelekezwa kwa muda mrefu. Kwanza zilikuwa kaunti 14 na sasa ni 34. Nina hakika tukiangalia mfumo wa mgao wa mara ya tatu, labda Kenya nzima itakuwa na sehemu zilizotengwa. Kwa mfano, Kaunti ya Kiambu ina utajiri mkubwa na matajiri wengi. Hata hivyo, kuna sehemu zilizotelekezwa katika kaunti hiyo.

Ugatuzi uliletwa ili kuleta usawa katika kaunti zetu. Hata hivyo, sehemu nyingi zimetelekezwa kwa sababu pengine hawakukubaliana na Gavana aliye mamlakani ama Mwakilishi wa Wadi wa eneo fulani hana uhusiano mzuri na gavana.

Kwa hivyo, ni muhimu hazina hii itumike kwa mujibu wa Katiba ili kuleta usawa. Kwa sababu imekiuka Katiba, lazima tukatae mapendekezo hayo---

The Temporary Speaker (Sen. Veronica Maina): Sen. Mohamed Mwinyihaji, you have one minute.

Sen. Faki: Asante, Bi. Spika wa Muda. Nilikuwa nasema kuwa sisi kama Seneti ni lazima tusimame kidete kwa sababu hazina hii ilitarajiwa kusaidia kuleta usawa katika nchi yetu. Hata hivyo, sehemu zinazopaswa kusaidika hazisaidiki japo karibu Kshs48 bilioni hazijatumika. Huo ni upetepetevu kwa upande wa Serikali. Ni kinyume na Katiba na hatuna budi kupinga.

The Temporary Speaker (Sen. Veronica Maina): Let us listen to Sen. Cherarkey.

Sen. Cherarkey: Madam Temporary Speaker, I request that in future, when pupils and students visit the Public Gallery, they should not leave without being acknowledged. It is good for their experience here. Kindly talk to the Secretariat.

Madam Temporary Speaker, I am proud of the Committee on Finance and Budget. Since the promulgation of the Constitution 2010, the initial allocation was Kshs62.4 billion that had been appropriated. However, only Kshs22.5 billion has so far been disbursed. That means that close to Kshs40 billion is yet to be disbursed in accordance with Article 204. That is clear violation of Article 219.

When Parliament appropriates money, it should be disbursed henceforth because it is meant to bring equalization. That money is not for office expenses. It is meant for establishment of dispensaries in Murang'a, Migori and Nandi counties. It should be used for electricity and roads among other basics.

We were having a conversation and people were asking why is it that Nandi is a land of honey and milk like Murang'a? However, when you fly over Nandi Hills, you think we live in Canaan because of the beauty of tea plantations. Those plantations are not ours. We are living in a neo-colonialism era.

Those are areas where our people were evicted from and taken to other deplorable places and are living like animals. Multinational companies are the ones managing tea estates. For example, when you go to Kapchorwa Ward, the roads are impassible. The land there is not good because of occasional landslides.

It is the same case in areas such as Cherondo and Tereno in the same Kapchorwa Ward. Access to electricity and water is a problem. The situation is the same in Chemilil-Chemase where we border Kisumu. Soba/Songor is one of the biggest wards in Tinderet Sub County. It also faces same challenges such as lack of roads, water and electricity.

The National Treasury has violated the provisions of Article 219 and that is a big problem. I would have wished the Committee on Finance and Budget to sanction a few officials from the National Treasury who have violated Article 219 of the Constitution of Kenya.

I hope that with the approval of the Cabinet Secretary Nominee, Hon. John Mbadi, we shall not see such incidences. I am happy that his county and village mate, Sen. M. Kajwang', is in the House. Let him take this message to the Cabinet Secretary nominee for the National Treasury that violation of Article 219 should not be tolerated.

I am happy that for the first time, the Senate has rejected amendments from the National Assembly. The National Assembly has made a habit of even overlooking basic and obvious things. This is a violation of the Constitution.

It is the National Assembly that should be forcing the National Treasury to release money from the Equalization Fund. Who is the beneficiary? If the National Assembly fights the Senate, who benefits? The money we fight for from morning to evening belongs to ordinary *wananchi*. They are the "Wanjikus", "Onyangos" and "Kiprotiches" of this world. When you reject amendments from the Senate, are you fighting the Senate, Senators or the people?

Madam Temporary Speaker, with those many remarks, I support the rejection of these National Assembly amendments.

I thank you.

The Temporary Speaker (Sen. Veronica Maina): Sen. Cherarkey, just for your information, three schools have visited the Senate today; Magoma Secondary School from Bomet County, Starehe Boys Centre and Friends School, Keveye Girls from Vihiga County. They have all been acknowledged, but they came in different tranches. Maybe, that is why you saw some walking in and out. However, the secretariat desk is alert to make sure they acknowledge every school.

Proceed, Sen. Oketch Gicheru.

Sen. Oketch Gicheru: Thank you, Madam Temporary Speaker, for giving me this chance to also pass a few comments on this particular Bill and report from the Committee that I am humbly part of.

This proposal by the National Assembly should be rejected in totality. I hope that this House will be bolder to even reject any other proposition to deny counties money.

For instance, I have seen in the fiscal consolidation proposal from the National Assembly that the monies for the counties from Division of Revenue Act (DORA) should be reduced from Kshs400 billion to Kshs380 billion. That must also be rejected. There is

a reason for this. The important fact is that counties do not have the instruments of alternative revenue generation through borrowing as the national Government does.

Madam Temporary Speaker, if we keep on denying counties monies that belong to them it is detrimental to their financial health. More importantly, there is a part that Kenyans must understand in this particular Equalization Fund Appropriation Bill. A few Senators have confused a few facts here and there.

I want to clarify that under Article 204 of the Constitution, there is establishment the equalization fund into which one-half per cent of all the revenue collected by the national Government each year, calculated on the basis of the most recently audited accounts of revenue shall be put into that fund. A few Senators have gotten it wrong.

The Kshs 62.4 billion is what counties are entitled to using that formula. It is not the money that the National Treasury has allocated for the equalization fund. This is what the counties are entitled to. The National Treasury has allocated Kshs22.5 billion. That means that we have got about Kshs39.9 billion as a deficit in allocation. This is important because in terms of actual disbursement, the National Treasury, since inception has only disbursed Kshs13.6 billion.

That means that this particular fund, which as Sen. (Dr.) Khalwale had indicated has a sunset clause, only received Kshs13.6 billion, leaving a debt by the National Treasury of about Kshs48.8 billion. This is serious because the National Treasury has consistently committed to finance that Kshs48.8 billion. I have been in the Standing Committee on Finance and Budget and any time the Cabinet Secretary for National Treasury has showed up, they have committed.

Madam Temporary Speaker, we have the Equalization Fund Appropriation Act of 2023 in place that covers financial year 2021/2022. We also have 2022/2023 in place. Notably, the National Treasury committed to our committee that they would pay this money, but they have not.

Migori County has been denied this money. Miuru Bay, Miuru Ward, North Kanyamkago Ward, and Komosoko-Nyamosense in Kuria West Constituency are examples of wards that qualify for this fund in Migori County. I hope that one day the Senate will come to Senate Mashinani in Migori County.

The economic potential between Miuru Bay, Luanda Konyango, North Kanyamkago, Komosoko-Nyamosense, Getonganya in Kuria West Constituency and Migori Town, is so---

The Temporary Speaker (Sen. Veronica Maina): Time is up, Senator. Half a minute.

Sen. Oketch Gicheru: Yes, just half a minute, Madam Temporary Speaker. The economic potential of those areas is so immense, but they have never even seen a quarter Kilometre of tarmac roads that we are talking about. Therefore, this fund is extremely critical. As Senators, we must fight for it to come.

I support this Bill. As I said, I hope that the Senate will always stand against any money being deducted from the counties.

The Temporary Speaker (Sen. Veronica Maina): Sen. Mariam Omar proceed.

Sen. Mariam Omar: Thank you, Madam Temporary Speaker, for giving me this opportunity. I stand here to support the reports from the Standing Committee on Finance

and Budget on the Equalization Fund. If you intend to reduce the Equalization Fund, you have to justify it. We have to know the reason.

The Equalization Fund is established under Article 204 of the Constitution, which states that 0.5 per cent of the revenue collected annually is specifically allocated to marginalized areas; which are 14 counties. Its function is to develop water, roads, electricity and health facilities. When you touch that fund, you must have a justification. Does it mean there is electricity in these counties? Does it mean there are tarmac roads in these 14 counties or that the health sector is perfect?

Madam Temporary Speaker, currently with the Competency Based Curriculum (CBC), children are normally given a homework, which includes downloading and printing. Without electricity, we cannot do so. Parts of Mandera County, which is among the 14, have no electricity. I heard the Senator for Mombasa County intervene Sen. (Dr.) Khalwale on the issue of Turkana County having water.

Madam Temporary Speaker, does it mean that when there is a river, there is water? When we talk of water, we mean running water. People cannot go to the river to drink water. We are not animals. This money is meant for running water in the households. Electricity is part of the life and livelihood of human beings. Our area is hot. We need cold drinks.

Most of our women use the electricity to conduct business of selling cold drinks. If there is no electricity, then they cannot. If there is electricity in each of the 14 counties, there is job creation and economic growth.

Madam Temporary Speaker, in my opinion, there must be justification for touching this Equalization Fund.

With those remarks, I thank you.

The Temporary Speaker (Sen. Veronica Maina): Thank you, Sen. Mariam Omar. Sen. M. Kajwang' proceed.

Sen. M. Kajwang': Thank you, Madam Temporary Speaker. I rise to support the Standing Committee on Finance and Budget and the Motion they brought to the House that we reject the amendments of the National Assembly on the Equalisation Fund Bill.

Article 204 of the Constitution establishes the Equalisation Fund and says- there "shall," not may, be paid one-half per cent of all the revenue collected by the national Government each year calculated on the basis of the most recent audited accounts of revenue received as approved by the National Assembly. The base is not an estimate. It is actual revenue as audited and approved by the National Assembly. It is science, not voodoo, not politics and not an estimation.

Madam Temporary Speaker, on the basis of that science, the Senate proposed that we allocate Kshs10,867,400,000 to the Equalisation Fund. The National Assembly proposes we allocate Kshs10,077,400,000 to the Fund and we wonder, what science or mathematics they are using? The base is prescribed and specified in the Constitution. If we are to agree with the National Assembly, we will be abdicating our role and running away from the Constitution.

I cannot support that proposal by the National Assembly because, Homa Bay County was meant to get Kshs138 million. If we go with the National Assembly's proposal, Homa Bay loses Kshs10 million. We get only Kshs128 million and yet, we have

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

many pockets of marginalisation in Homa Bay County. The islands of Ringiti, Remba, Takawiri, Mfangano and Rusinga are places that have been forgotten over the years. This money must go to Homa Bay in full as approved by the Senate.

Madam Temporary Speaker, as a House, we must revisit the regulations under the Equalisation Fund. In the last Parliament, this House passed the regulations under very acrimonious circumstances. Sen. Faki was the then Chair of the Committee on Delegated Legislation when the National Treasury promised that they would bring back those regulations to this House for them to be corrected. This is because the regulations place the responsibility of identifying and making decisions on projects under the Equalisation Fund to county commissioners, Members of National Assembly and likely excluded even county governments. Those regulations must be looked at.

We must revisit the Marginalisation Policy. Of course, under the Marginalisation Policy, we came up with some English called, pockets of marginalisation. So, you could even go to the President's home area and claim that there is a location, a sub location or a ward that is a pocket of marginalisation.

In the eyes of the public and the nation, this marginalisation fund ideally ought to have gone to those places that have suffered historical injustices. Today, this Fund is going to the backyard of current and past Presidents. That is as a result of a flawed Marginalisation Policy that this House approved.

The Equalisation Fund is not there forever. Under Article 204(1)(6), the Equalisation Fund has a sunset of 20 years. In the last 10 years or 11 years, the arrears to the Equalisation Fund is Kshs39.9 billion. When will we ever achieve the objectives of this Fund as specified by the drafters of our Constitution?

Madam Temporary Speaker, I reject the National Assembly's proposal and add this; funds that have already been sent to the grassroots should never be allowed to come back to the centre.

I take the view, even on the National Government-Constituencies Development Fund (NG-CDF). Even though we do not like the manner in which the NG-CDF is organised and sometimes administered, the Senate should never on any day, say that those billions of shillings that have already been ring-fenced for grassroots development should come back to the centre.

If we have issues with NG-CDF and of course, we have issues with NG-CDF, we should look at the structure, the governance, the management and remove politicians from it. It would not be proper for this Senate, which stands for devolved governments, to oppose any funds that have already found their way to the grassroots.

This is simply because, when they remain in Nairobi, they will be stolen and used for helicopter rides and fundraisers that do not add value to the Gross Domestic Product (GDP) of this country. We must allocate money to the Equalisation Fund as per Article 204 of the Constitution. We must ring-fence, protect and safeguard all funds that have gone to the grassroots, including what we call the NG-CDF. We can rename it, change the management structure but we should never ever say that that money should come back to the centre.

Madam Temporary Speaker, I support the Report of the Committee to reject the amendments of the National Assembly.

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

The Temporary Speaker (Sen. Veronica Maina): Thank you, Senator. Sen. Tobiko Peris, proceed.

Sen. Tobiko: Thank you, Madam Temporary Speaker.

I rise to support the Report by the Senate Standing Committee on Finance and Budget on the proposed amendments by the National Assembly.

I am actually dismayed that the proposed amendments by the National Assembly went through the National Assembly without Members of the National Assembly from those affected counties objecting to this kind of proposal.

I note with concern that the National Assembly is proposing a reduction of the Equalisation Fund by Kshs790 million. There is no justification for such a reduction. I, therefore, support the proposal by the Committee of Finance and Budget to reject the National Assembly proposed amendments.

We will hear none of it. We will not support such a move of money that was meant for marginalised areas of our country to come back to the centre; in the words of Sen. Kajwang’.

Madam Temporary Speaker, this money was meant for roads, electricity connectivity, health services and water. Our counties are still extremely needy.

I understand that the National Treasury needs to bridge the gap of what was left after the rejection of the Finance Bill 2024/2025. However, the National Treasury can scoop and bridge that gap by addressing the leakages and wastage within the mainstream ministries, but never, by returning money that is devolved to our rural areas where this money is really needed.

We cannot continue paying lip service to equality in this country to a purportedly just Government of the people, by the people, for the people, yet, we never seem to stand with the people when the right time comes for us to stand with the people. If I take an example of Kajiado County, I know of three constituencies that receive the Equalisation Fund; that is, Kajiado West, Kajiado Central and Kajiado South. Even those constituencies such as Kajiado East and Kajiado North that are not receiving should be receiving because, every time, we are here lamenting of bad roads, never seeing tarmac and our roads being raised to bitumen standards like in other counties of this country.

Our friend from Nandi County says that what we see in their areas could be farms owned by multinational companies and yet, they have had the presidency for several years just like the counties in central Kenya. If they have not been able to address such things as the multinational companies and historical injustices, then, we cannot agree for the little that has been given to our counties by the Constitution to be returned to the national Government.

The National Treasury is yet to honour its commitment to increase the Equalisation Fund from what has so far been disbursed of around Kshs22.5 billion. What they should have disbursed by now is around Kshs62.4 billion.

There is almost Kshs40 billion yet to be disbursed. We cannot go for the little that has already been disbursed. It should be added. Let the National Assembly be on notice that even---

The Temporary Speaker (Sen. Veronica Maina): Your time is up, Sen. Peris. Finish the sentence.

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

Sen. Tobiko: Okay, Madam Temporary Speaker.

I was just saying that the National Assembly should be on notice that even if they return the Division of Revenue to this House, we will not support any reduction of funds to the counties. I support.

The Temporary Speaker (Sen. Veronica Maina): Proceed, Sen. Okoiti Andrew Omtatah.

Sen. Okiya Omtatah: Madam Temporary Speaker, thank you for the opportunity to address this House in support of the Report that is before us for debate. Under no circumstances should we stand by as the Constitution is being violated.

The Constitution is an absolute bar to what the National Assembly has attempted to do. These figures are not based on the budget of 2024/2025, which was rejected when the President declined to sign the Finance Bill into law, following the pressure by Gen Zs and others. There is no way we will peg the Equalisation Fund to the current budget. They are pegged on what has already been spent by the Government. There are constitutional requirements and you cannot depart from them. My county of Busia was supposed to get Kshs18.9 million. It is been reduced by about Kshs1.5 million to Kshs17.5million. So, Bunyala South, Malaba North and Ang'urai South which were beneficiaries, will lose out drastically.

As you can see, Kshs18 million is a drop in the ocean given the challenges in these wards that were approved for Equalisation funding. I pray that this House speaks with one voice and rejects what is being done. You have also seen that the National Assembly has proceeded to do a Supplementary Appropriations Bill, which I am told the President signed into law, yet the Court of Appeal said that an Appropriations Act must contain both estimates of revenue and expenditure. The Supplementary Appropriations Act that the President has signed only contains estimates of expenditure. It is time for these people to realize that some of us will not tire from going to court to strike these unconstitutional laws down. If this particular Bill is forced through, we will be forced to call upon the Judiciary to defend the Constitution by striking it down.

Madam Temporary Speaker, this House must speak with a very clear and loud voice that it is a House that respects the rule of law, it is a House that respects the Constitution of Kenya and a House that defends the Constitution of Kenya. If the National Assembly thinks it is a law unto itself, that thought must end with this Bill.

I support the position that the Bill be rejected and the Constitution be upheld over everything else, not even the figures or whatever amounts of money. The trump card is that the Constitution says no and it is an absolute bar to what the National Assembly is attempting to do. They better be advised.

I thank the Committee for having rejected this attempt to violate the Constitution of Kenya. We are against and are at the backdrop of demonstrations demanding that the rule of law and constitutionalism be respected.

With those few words, I thank you for the opportunity. I donate my time to Sen. Olekina.

(Laughter)

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

Sen. Orwoba: Madam Temporary Speaker, thank you for this opportunity to add my voice on to this Report by the Committee on Finance and Budget. I hate to be the devil's advocate, but I know my colleagues are expecting me to sing to the chorus of the Senate. However, especially after what has happened and with the revelations and the outcry of Gen Zs, it is time that we start telling each other the truth.

I stand here to speak the truth to my colleagues. This is not because I am in the Senate and there is a battle between the National Assembly and the Senate. However, the truth of the matter is that after many years of devolution, we have to ask the question of how we are accounting for the funds that we keep on fighting for to send to the county assemblies. If you look at the rejection being faced on the proposal from the National Assembly, we are talking about a reduction from Kshs10.8 billion to Kshs10.07 billion. This is a reduction of less than five per cent.

The President and the Executive asked us to live within our means, we must cut back and exercise austerity measures. We also said that every single Ministry has to cut back on the expenditures. So, what is different with the county assemblies, Madam Temporary Speaker?

What is so special about the National Assembly that they cannot cut back on the expenditure? I am a member of the African Parliamentarian's Network Against Corruption (APNAC). Last night, I was reading an analysis ---

(Sen. Olekina and Sen. Kajwang' consulted loudly)

Madam Temporary Speaker, protect me from Sen. Ledama and Sen. M. Kajwang', who are distracting me with the noise. I can barely hear myself speaking.

Madam Temporary Speaker, last night, I was going through an analysis of Migori County where Kshs2 billion was misappropriated. Until today, we cannot get back that money. Apparently, the Ethics and Anti-Corruption Commission (EACC) has gone into some sort of agreement so that they can get 10 per cent back and then let go of the alleged person who has misappropriated the funds.

We have to tell ourselves the truth, which is that we no longer live at the times when we would come here to fight and say you cannot reduce budgets of the counties. Until today, some counties keep on receiving supplementary budgets because they are marginalised or that they need more money for more roads. However, counties like where Sen. Chute comes from cannot even tell us what they are doing with their supplementary budgets.

When a proposal comes from the National Assembly that we are living in the times where we do not have this money, we need to cut back. Less than five per cent is what is being proposed. When my colleagues stand to say that we will go to court, where will we get money from after going to court?

We are the same people who stood here after the invasion of Parliament and congratulated the Gen Zs for reminding us that we must live within our means. The same people are standing here to become popular and being sensational with this particular Bill to say no, we must send more monies to counties. I beg that my time is preserved.

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

The Temporary Speaker (Sen. Veronica Maina): Sen. Eddie Oketch, what is your point of information? Would you like to be informed by the very well-schooled Sen. Eddie?

Sen. Orwoba: Yes, Madam Temporary Speaker. I saw the light going off and my time was lost in between. If I can be added my time, kindly.

Sen. Oketch Gicheru: Madam Temporary Speaker, I wanted to inform my very good friend, Sen. Gloria, that I hear where she comes from, but I do empathize with the fact that we are not discussing whether to reduce the money spent by county assemblies or the executive or not. The money we are talking about is Equalisation Fund, which is a fund that was put in place to intervene for communities that were marginalised under Sessional Paper No.10 of 1965.

The current problem we are facing, as a Senate, is that since the Financial Year 2021, the National Treasury has committed to give money to counties to this Fund and they have failed consistently towards that. That money has actually been ringfenced. It is not even county government money.

It is national Government's money that is executed by the national Government and that needs to go to counties. It has nothing to do with the spending of counties or the County Assembly. It is a simple fact that the National Treasury has not honored its commitment. This money could as well be wasted in the National Treasury. It is important to distinguish that, hon. Senator.

The Temporary Speaker (Sen. Veronica Maina): Sen. Orwoba, you may proceed and finalize in your minutes.

Sen. Orwoba: Thank you, Madam Temporary Speaker. I have allowed Sen. Oketch Gicheru to speak because we are both in the youth bracket. Nonetheless, I have that information. Whether it is the Equalisation Fund, the Appropriation Fund that we send to counties or the Fund that we use for whatever purposes, the rallying call by Gen Zs and by us in this House was that we cut back on expenses.

On that point of the Equalisation Fund, I challenge Sen. Oketch Gicheru, to actually go and ask the Senator for Turkana, Sen. Lomenen, on how they have been using that Equalisation Fund over the years. They get a very huge amount and they cannot showcase what they are doing with that Equalisation Fund.

Sen. (Dr.) Khalwale: On a point of order, Madam Temporary Speaker.

Sen. Orwoba: Madam Temporary Speaker, with those few remarks, I must say that we must speak the truth. The truth of the matter is that we are cutting back, whether on Equalisation Fund, Appropriation Fund and the Executive Fund on State House or on whichever Fund. We are in the times where we must cut back.

I support the proposal by the National Assembly.

The Temporary Speaker (Sen. Veronica Maina): Sen. (Dr.) Khalwale, what is your point of order?

Sen. (Dr.) Khalwale: Madam Temporary Speaker, I rise pursuant to Standing Order No.105, to request that the distinguished Sen. Gloria to withdraw her remarks and apologise to the successive governors of Turkana. They have never misused the Equalisation Fund. They do not have that money and that money has never been disbursed.

Consequently, her failure to appreciate the clarity of this Motion, should not allow her to cast aspersions against governors who have no opportunity to defend themselves

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

here. The governors I am talking about is His Excellency the former Governor, hon. Nanok, who works at State House as a Comptroller and His Excellency is the current Governor. She is out of order. She must withdraw and apologize.

The Temporary Speaker (Sen. Veronica Maina): Sen. Gloria, there is a point of order raised by Sen. (Dr.) Khalwale with regard to what constitutes a fund that is under discussion and whether you do appreciate what that fund is intended for and who utilizes it; whether it is the national Government or county governments.

Sen. Orwoba: Madam Temporary Speaker, I beg that the HANSARD pulls out a report where I have actually referenced the particular governor that Sen. (Dr.) Khalwale is stating. At which point then, I will apologize and withdraw because I have been consistent in what I say in whatever fund we are discussing. I am very much aware of the Equalisation Fund.

Sometimes when you speak the truth, those who do not expect the truth get very uncomfortable. That is why you can see Sen. M. Kajwang' and Sen. (Dr.) Khalwale getting very agitated. We must cut back and it is not ring-fenced to State House. Cutting back means all funds including the Equalisation Fund, which the National Assembly has said it should be reduced to less than five per cent.

If the HANSARD confirms that indeed the allegations that Sen. (Dr.) Khalwale is placing on me is correct that I said the former Governor, hon. Nanok, had misappropriated funds, I will withdraw and apologize.

The Temporary Speaker (Sen. Veronica Maina): What is the point of information, Sen. M. Kajwang? Sen. Gloria, would you like to be informed?

Sen. M. Kajwang': Of course, Gloria.

Sen. Orwoba: Madam Temporary Speaker, on being informed, I am well informed and I do not think I want to be informed further.

Thank you.

Sen. M. Kajwang': Okay.

The Temporary Speaker (Sen. Veronica Maina): Sen. Gloria, I think we rest the matter there. However, your truth may not be the truth to Sen. (Dr.) Khalwale. People have different sets of truth, but facts remain facts. Let us proceed on to Sen. Olekina.

Sen. Olekina: Thank you Madam Temporary Speaker. I am very concerned that in this House, we are now comparing apples to bananas instead of apples to apples. It is really sad because what we are talking about is not money which is sent to county governments. This is money that has been utilized by the national Government.

The Constitution under Article 204 sets the Equalisation Fund with a sunset clause. The Constitution determines how much money is going to be set aside to uplift the living standards of the people of this nation who live in different pockets of this country and who have been left behind by any other form of development.

It saddens me when I see a colleague standing here and becomes a populist just because we have got a crisis in this country and completely misadvises and misguides the nation on what we are talking about. This fiscal indiscipline of the National Treasury must be stated very clearly.

What we are talking about here, in simple English, is that Sen. Olekina here, completely rejects the unconstitutional actions of the National Assembly by attempting to

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

rewrite the Constitution by proposing to reduce the amount of money which has been set by an independent body that is given powers using a particular base.

Sometimes before we talk here, we need to be educated on exactly each and every role that we are discussing. If we are discussing the issue of the Division of Revenue Bill, which I heard my sister, Sen. Tobiko, talking about and saying that there is an amendment to it from the National Assembly that is to be brought here. Then this would be the first time in history that I have heard that the Division of Revenue Bill has been amended. This explains why until today the President has not signed the County Allocation of Revenue Bill (CARB) that we passed in this House.

Section 5 of the Division of Revenue Bill is very clear. If there is a shortfall in any revenues, the national Government absorbs it. First of all, I hope that when we are talking about all these issues, the Committee which is going to be mediating on this should not go out there and shame us. We cannot relook at or entertain any amendment to the Division of Revenue Bill.

Secondly, the National Treasury has not released money that has been set aside by the Constitution to uplift the standard of living of our people. Therefore, I disagree with my colleague, Sen. M. Kajwang', that there are a few things that we may need to change.

I believe that counties, especially such as Narok, have got pockets of marginalization. These counties are skewed by the leadership that comes in. They decide we are not going to support the people from Mosiro; we are not going to give them water or a hospital.

I want to persuade my colleague, Sen. M. Kajwang', that I am in pain today, because Narok County was supposed to get about Kshs850 million to help these pockets of marginalization. This was advised by the wisdom of the Commission on Revenue Allocation, who went around, looking at studies on the poverty indexes in this country. He said the people in Leshuta or Mosiro do not have water or hospitals.

Therefore, instead of saying the entire Narok county is marginalized, let us be realistic and say that there are parts even in Kilifi that are not marginalized.

Madam Temporary Speaker, I request that you give me three more minutes because these are things which we are discussing and are very important. It is important for us to demystify them.

The Temporary Speaker (Sen. Veronica Maina): Just one minute, Sen. Olekina.

Sen. Olekina: Thank you, Madam Temporary Speaker. I hope that next time we have such Bills or Motions to discuss, we will be given the 15 minutes time that is in our Standing Orders instead of curtailing debate.

People out there will not understand if we are told by our own colleagues that we should not agree to reduce money that goes to our counties, yet the Equalisation Fund is not going to the counties. We have to explain to the public.

Since inception, the money that has been released on Equalisation Fund is not quantum physics. It is money that everybody knows. It is only Kshs13 billion, and county governors have not even seen a penny of it. These ministerial state agencies are the ones that implement those things. In fact, they have not even paid the people who did those works. If you go to Narok County and go to Kilgoris today, you will find hospitals that were built under the Equalisation Fund and the contractors have not been paid. When we

come here, let us separate fact from fiction. The facts are, there is a lot of indiscipline in the National Treasury that we need to correct. We are now correcting them. Let them send any money that has been set aside for Equalisation Fund.

Two, it is imperative that when we are trying to be musical, the first thing that the National Assembly should do is try to pull up their socks. I call it musical because of trying to correct all the misgivings and bad things in this country. This will enable them to base the revenue which is sent to counties to current financial statements which are audited and adopted by Parliament. If we look at the Financial Year 2020/2021, are we being honest with each other?

Madam Temporary Speaker, I plead with the President to sign the County Allocation of Revenue Bill (CARB). We divided money between the national Government and the county governments. CARA divides money among our counties.

(Loud Consultations)

The Temporary Speaker (Sen. Veronica Maina): Sen. M. Kajwang'and Sen. Orwoba, can you consult in low tones. Sen. Orwoba, you were complaining a few minutes ago that you could not be heard on the Floor of the House because of Senators making noise.

Proceed, Sen. Olekina.

Sen. Olekina: Thank you, Madam Temporary Speaker. I hope you have stopped my time.

Let me repeat that, Mr. President, please, since we are in this musical of trying to please everybody and correct all the misgivings, all the indiscipline in the National Government must be corrected. Tell your folks at the National Assembly to pull up their socks so that we can be able to audit current financial statements. This will enable money to be divided based on current financial statements audited.

Three, please sign the CARB. There is no way we are going to sit here and amend the cash disbursement schedule to the counties. Seriously, why should we be sensational? That is the problem of having a Government with a policy of being reactionary. We should be able to think---

(Sen. Olekina's microphone went off)

The Temporary Speaker (Sen. Veronica Maina): Senator, your time is up. Thank you. There are no more Senators who would wish to contribute to this Motion.

I call the Mover of this Motion, Sen. Tabitha Mutinda, to reply on behalf of the Chairperson, Standing Committee on Finance and Budget.

Sen. Tabitha Mutinda: Thank you, Madam Temporary Speaker. I start by giving my thanks to all the colleagues in the House who have contributed to the Motion on the Equalisation Fund. I am very grateful. We have keenly listened to all the concerns that have been shared before this House. Allow me to say a few words to emphasise the issue of the Equalisation Fund.

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

It is good for Members to appreciate and note that the issue of the Equalisation Fund is a constitutional issue. After the enactment of the Constitution of Kenya 2010 is when the Equalisation Fund was put in place under Article 204. Further to that, the exact duration is 20 years. I heard one of my colleagues talk about 10 years. The duration that the Fund had been given is 20 years, and is supposed to lapse in the year 2030.

The Equalisation Fund was set aside to look at the four issues of concern; that is water, roads, health facilities and electricity. It is more specific to the regions that have low developmental levels as far as these four areas are concerned. There are 34 counties that have been identified through the Commission on Revenue Allocation (CRA) using the eight parameters of the formula. They did not just come up with figures and decided blindly, but followed a process. The process was constitutional and has all the parameters that are needed. These funds were to go down to the village level through the constituencies. You will realise that each county has constituencies that were to benefit from the Equalisation Fund.

Is the Equalisation Fund new? What is the issue before the House from the Committee on Finance and Budget? As I started moving, I said, we sat down with the former Cabinet Secretary for the National Treasury and Economic Planning. Our question to the Cabinet Secretary was very simple. We asked when they were going to disburse these funds. He gave us a timeline. The issue before us is when these funds were to be disbursed to the beneficiary counties. It is not about additional allocation of the funds. The animal that is before the House as far as the Equalisation Fund is concerned, is the disbursement of those funds.

Madam Temporary Speaker, one issue is the point that the National Assembly has reduced those funds. However, the critical issue is the disbursement of those funds. That is where the problem is. Apart from the amounts being a challenge, the issue is when those funds will benefit the people of those counties. Article 204 says that there is established an Equalisation Fund into which shall be paid 1.5 per cent of all the revenue---

Sen. Olekina: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Veronica Maina): What is your point of order, Senator?

Sen. Olekina: Madam Temporary Speaker, I hate to interrupt my dear sister. I am very fond of her because of her diligence. However, is she in order to allege that the Committee has allocated Kshs62 billion, yet the figure is calculated based on what the Constitution states? It is imperative that we provide facts. When you hear that the Committee has allocated Kshs62 billion, it is not. It is imperative to come out clearly because the HANSARD will bear us witness. She should be very clear on the total amount that has already been disbursed scientifically. It is that simple.

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

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

Mr. Temporary Speaker, may I repeat what I was saying. I rise on Standing Order No.105 on statement of facts. My dear sister has alleged that the National Treasury has

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

allocated Kshs62 billion. However, is that a statement of fact? The Constitution is quite sensible. It states a percentage of the national revenue to be set aside for the Equalisation Fund. I want us to put the record straight so that, if I heard it wrong, then we can go back for my dear sister, Sen. Tabitha Mutinda, to clarify that point.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Olekina, I believe Sen. Tabitha Mutinda has run through your point of order. She definitely will clarify. I just wanted to give you the comfort that as the Vice Chairperson of the Committee, she is definitely in a position to clarify that.

Senator Tabitha Mutinda, please, proceed.

Sen. Tabitha Mutinda: Thank you, Mr. Temporary Speaker, Sir. When I started moving this Motion, my big brother, Sen. Olekina, was not in the House---

(Sen. Olekina spoke off record)

The Temporary Speaker (Sen. Wakili Sigei): Sen. Olekina, you had your time. Allow the Senator to continue without interruption.

Proceed, Sen. Tabitha Mutinda.

Sen. Tabitha Mutinda: Thank you, Mr. Temporary Speaker, Sir. I appreciate and respect when Members are on the Floor and when the same is reciprocated.

I was saying that when I was moving the Motion, the good Senator, my big brother, Sen. Olekina was not in the House. Actually, when I am replying, I have not even talked about figures. I have talked about the years. However, just to mention, let me read it for him:-

“The total allocation to the fund since inception is Kshs22.5 billion against a total entitlement of Kshs62.4 billion. Thus, there are arrears to Kshs39.9 billion. However, the actual disbursement to the Fund to date is Kshs13.6 billion and as such, it can be argued that the actual arrears to the Fund is Kshs48.8 billion.”

Mr. Temporary Speaker, Sir, I know my brother is always very keen, which I appreciate, and I like it because he really is also very passionate on matters of finance, as I am always. I am happy because now we are on the same page.

As I continue, I was on Article 204 of the Constitution, telling the House that the issue of Equalisation Fund is not a new issue to the Committee on Finance and Budget. Our issue as I have clearly emphasized, is that one of delayed disbursement of the same funds.

Article 204 of the Constitution which talks about the Equalisation Fund says:-

“One half percent of all the revenue collected by the national government each year, calculated on the basis of the most recent audited reports of revenue received and approved by the National Assembly, is what shall be allocated as Equalisation fund.”

Mr. Temporary Speaker, Sir, the other animal that we have, which Sen. Kajwang' had also pointed out and as I have always emphasized, is the issue of delayed approval of the last audited reports by the National Assembly.

This has been a thorn. If these audited reports are as up-to-date currently, our revenues definitely would be much higher. However, we are using last financial year approved as at Financial Year 2019/2020, four years down the line, which then we will not be able to maximize on the percentages that have been constitutionally allocated.

So, our concern as a House and as supporters of the devolution is on this delayed disbursement. Since now, we have moved to a broad-based Government and I am happy because our colleague, hon. John Mbadi, will be taking the seat very soon. I have seen that he has also gotten his approval at the National Assembly today. We look forward to some of these thorny issues that we had pointed out being looked into.

These delays of disbursement and especially more specific to this issue of the Equalisation Fund, right now they will be taken care of. They will be taken care of and we will ensure that the funds will be able to achieve what they were set to achieve.

What is important to note is that within the duration of the 20 years, as long as the funds have been disbursed, they will have to complete the projects that have been approved by the subcommittees of the Equalisation Fund within the village levels.

I have heard my colleague talk about the issue of County Allocation of Revenue Bill (CARB) being approved. It is important to inform the House that before any amendments are done as far as CARB issues are concerned, we cannot amend CARB without amending Division of Revenue Bill (DORB). It is at this time that colleagues should be able to look forward to the DORB amendments or any issues. I am aware that the National Treasury has also sent their approval. It is within our mandate to either approve or reject those amendments---

Sen. Oketch Gicheru: On a point of information, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Tabitha, would you like to be informed by Sen. Eddie?

Sen. Tabitha Mutinda: Mr. Temporary Speaker, Sir, they are distracting me. They are saying point of order, point of information; I do not know which one is it.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Tabitha, would you like to be informed by Sen. Eddie?

Sen. Tabitha Mutinda: Mr. Temporary Speaker, Sir, I would not like to be informed. Thank you.

The Temporary Speaker (Sen. Wakili Sigei): Thank you and proceed.

Sen. Tabitha Mutinda: Mr. Temporary Speaker, Sir, as I conclude, allow me to say that where we are with the issue of the Equalisation Fund---

Sen. M. Kajwang': On a point of order, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Wakili Sigei): What is your point of order, Sen. M. Kajwang'? Let us hear the point of order by Sen. M. Kajwang'.

Sen. M. Kajwang': Mr Temporary Speaker, Sir, anticipation of debate is disorder as per the Standing Orders. I have just listened to the very gracious and graceful Senator tell us about how we should vote on a certain Bill or legislative proposal that is before the

House, which has not been called for debate. The manner in which she is speaking is as if she is directing us to debate and vote on that matter in a particular manner.

Could you rule Sen. Tabitha Mutinda to be completely out of order for anticipating debate and trying to direct this Senate to support reduction of allocation to county governments---

The Temporary Speaker (Sen. Wakili Sigei): Sen. Kajwang', you have made your point.

Sen. Tabitha, please, confine yourself to the Motion that is before the House. Do not wade into a Motion or a Bill that is yet to be a subject of debate.

Proceed.

Sen. Tabitha Mutinda: Thank you, Mr Temporary Speaker Sir. That is well noted and I am well guided. It is just the passion that we have for CARA, DORA and the Equalisation Fund, but that is well noted, my big brother.

As I conclude, I wanted to tell the House that as far as this issue of the Equalisation fund and where we are with the Bill from the National Assembly, it is good for the House to note that if we vote no, of course we will go for mediation on this particular Bill.

Due to the issue of the quorum today, which we are not able to vote at this point, pursuant to Standing Order No.66 (3), I request that the putting of the question on the Motion be deferred to a later date.

I thank you.

The Temporary Speaker (Sen. Wakili Sigei): The putting of the question as regards to this particular Motion is deferred to the next sitting of the House, pursuant to Standing Order 66(3). So, Hon. Members, we will deal with that in our next session.

(Putting of the Question on the Motion deferred)

The Temporary Speaker (Sen. Wakili Sigei): Next Order.

ADOPTION OF REPORT ON SENATE NOMINEES ON BEHALF OF
COUNTY GOVERNMENTS TO THE POSITION OF SRC MEMBER

THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the Senate nominees, on behalf of the county governments, to the position of Member of the Salaries and Remuneration Commission, laid on the Table of the Senate on Tuesday, 23rd July, 2024, and further pursuant to Article 230 (2) (b) (vii) of the Constitution and section 7 (2) of the Salaries and Remuneration Commission Act, recommends Ms. Lynette Washiali Muganda and Mr. Mohamed Aden Abdi to the Cabinet Secretary for the National Treasury and Planning for transmission to His Excellency the President for consideration for appointment to the position of Member of the Salaries and Remuneration Commission.

(Sen. (Dr.) Khalwale 06.08.2024)

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

(Resumption of Debate interrupted on 06.08.2024)

The Temporary Speaker (Sen. Wakili Sigei): Sen. (Dr.) Khalwale, kindly approach the Chair.

(Sen. (Dr.) Khalwale consulted with the Temporary Speaker)

The Temporary Speaker (Sen. Wakili Sigei): Hon. Senators, kindly resume your seats. From the consultations we have had with the Mover of the Motion, we will defer further debate on this Order to the next sitting. You will remember that, yesterday, a point of order was raised concerning this Report.

The Chair directed the secretariat to provide a complete report with all the annexures that Members had indicated were missing. They have now been provided. However, Members have not gone through to acquaint themselves with the full document.

As such, I direct that we defer this Order. When we resume debate on this Order, the House will conclude on it.

(Motion deferred)

The Temporary Speaker (Sen. Wakili Sigei): Clerk, call the next Order.

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

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

(Sen. M. Kajwang' 30.4.2024)

(Resumption of debate interrupted on 31.7.2024)

The Temporary Speaker (Sen. Wakili Sigei): Hon. Members, when the debate on this Motion was interrupted, Sen. Omogeni was on the Floor and he had a balance of five minutes to conclude on his contribution to the Motion.

He is not in the House now. So if there is any other Member who is interested in contributing to this Motion on the Select Committee on County Public Accounts (CPAC) on its consideration of the Report of the Auditor General on the financial statements of

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

West Pokot County Assembly for the Financial Year 2018/2019 and Reports of the Auditor General on the financial statements of Isiolo, Kiambu, Kitui, Marsabit, Narok, Nyamira, Trans Nzoia, West Pokot and Murang'a County Assemblies for the Financial Year 2019/2020.

The Motion is now open for debate. Members who are interested in contributing may put in their request, so that they can speak to it.

Sen. Mungatana, MGH: Mr. Temporary Speaker, Sir, I have put in my request. May I address or is it not showing?

The Temporary Speaker (Sen. Wakili Sigei): Senator, proceed to make your contributions to this Motion.

Sen. Mungatana, MGH: Mr. Temporary Speaker, Sir, I will be brief. First of all, I thank the Select Committees for the work and effort they have put although the reports are still postmortem. I saw the Chairperson here. I urge them to do more so that these reports are up to date.

Mr. Temporary Speaker, Sir, if we are debating reports of the Committee covering the financial years 2018/2019 and 2019/2020 at this time in 2024, you can appreciate the concerns that Kenyans have.

We have to bring the review of these reports up to date. There are a few things in the reports that one can notice straightaway. There are a lot of financial errors and unaccounted for expenditures. Many of these county assemblies that have been mentioned here like West Pokot, Kiambu, Isiolo, Marsabit, Narok, Nyamira and so on, have financial gaps and misappropriations that have occurred within the mentioned years.

Mr. Temporary Speaker, Sir, what surprises me is that every time the PAC is sitting, we have representations from the Office of the Auditor General (OAG) and the Ethics and Anti-Corruption Commission (EACC). They sit there and collect allowances while they see these mistakes every time the PAC sits.

These agencies, particularly, the EACC are spending public money to sit there, hear that a certain officer or a certain governor has been accused of misappropriation of funds and abuse of office in these county assemblies and Executives and they take no action.

So, I propose that we remove some of those officers because it is a drain on public money. If you go there and you are not adding any value, you should be removed from sitting in the PAC. We know what the Senators, the Secretariat, the Auditor General and his officers are doing there, but why does the EACC sit there?

Mr. Temporary Speaker, Sir, up to now, they have not prosecuted a single person. This Report has even mentioned officers who have misappropriated public funds and failed to account in these county assemblies and yet, not a single one has even been called to record a statement yet, the EACC is just sitting there.

I propose that we now relook--- If we are serious, then people should be arrested and charged. If we do not want to do it, then let us at least save the public money that is spent on allowances. People sitting there every day the Committee is sitting, going home tired, listening to all this jargon and there is nothing that comes out of it---

I have wondered; why is it that even the Director of Public Prosecutions (DPP) does not sit there? The DPP is actually the prosecuting authority, the DCI and EACC are

investigating agencies. Why should we put the EACC there to earn allowances and yet, the DCI and the DPP do not sit in the PAC?

Their mandates are very clear, that, if there is a complaint or an issue, you are supposed to make a formal request, they act upon it and then forward the file to the DPP for further action. There is no justification of the DCI sitting in the PAC. That is why they do not sit there. Equally, there is no justification for the EACC to sit in that Committee and drain public resources, being paid money for attending Senate meetings. The initial idea was that when these officers sit there, they are able to act in real time, but there is nothing they do. I ask that we review this.

I pray that the Chairman of the Senate PAC, Sen. Kajwang' and the Members will review if there is a justification for these people sitting there. Who have they seen being prosecuted from the work they have done up to now? If there is no result in what we are investing in, as a good businessman, you withdraw that investment and put that money where it matters.

Mr. Temporary Speaker, Sir, the other thing that needs to be said about this is that; in Kenya now, nobody really actually cares whether we do these reports or not. Why? It is because people no longer fear. Accounting officers who are in charge of the county public assemblies have no fear because there are no consequences.

Mr. Temporary Speaker, Sir, apart from these ones that we are debating here today, even in county government, accounting officers have no fear. This is because since the beginning of this Fourth Senate, not a single individual has been arrested, charged or taken to court.

Those who served, like in this report, 2019, in these county assemblies that we have enumerated here, not a single one of them has been even called to record a statement. We have created a culture where "stealing a goat worth Kshs7,000 or Kshs8,000 is not a problem but stealing Kshs2 million or Kshs20 million from the county assembly or county government coffers is not something to worry about."

Those officers come before the Senate and leave freely without any action being taken against them. My humble prayer is that---

The Temporary Chairperson (Sen. Wakili Sigei): Sen. Mungatana, did I hear you say stealing a goat worth Kshs7,000 is nothing to worry about?

Sen. Mungatana EGH: Did you hear, Mr. Temporary Speaker, Sir?

The Temporary Chairperson (Sen. Wakili Sigei): I am asking if I heard you say that stealing a goat worth Kshs7,000 or 8,000 is nothing as compared to stealing Kshs2 million from the county government?

Sen. Mungatana EGH: Absolutely, Mr. Temporary Speaker, Sir. If these gentlemen had not distracted you, the fundamental point I was making is that we have created a culture. The underlying statement was that stealing a goat worth Kshs7,000 is punished seriously. The Directorate of Criminal Investigations (DCI) investigates it, they take it to the magistrate and the thieves are punished. However, when you steal millions from the coffers of the county assemblies, these ones mentioned here, nothing happens to you.

We have created a culture in Kenya where financial misappropriation is, in fact, a heroic act but when you steal a goat, you are persecuted. You are not only prosecuted but

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

also persecuted. For us to develop this nation, to push it one step ahead, we must change this culture. We must put more strict laws and arrest people.

We must return the fear back into public service. If you are working in these county assemblies and you have misappropriated funds, people must see you recording a statement with the DCI and answering charges. This does not happen in this country yet we ask ourselves why we are not moving forward in terms of our development. The leakages are there, the T-junctions are so many in the Public Accounts reports for this county assembly. Something needs to be done.

With those few remarks, I beg to support this report.

I thank you.

The Temporary Chairperson (Sen. Wakili Sigei): Hon. Members, from my dashboard here, no other Member who is keen on contributing to this Motion. Similarly, we do not have a Mover who we could have given the opportunity to reply. Therefore, in the circumstances, we will defer so that we allow the Mover of this Motion to reply when the House resumes in our next sitting.

Therefore, we defer this particular Motion to the next sitting.

(Debate on the Motion was adjourned)

We will rearrange the Order Paper from Order No.13, so that we can facilitate further proceedings.

Clerk, call out Order No.25.

BILL

Second Reading

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

The Temporary Speaker (Sen. Wakili Sigei): Sen. Oketch Gicheru, proceed to move the Bill.

Sen. Oketch Gicheru: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity. This is a very important Bill because it seeks to look at the welfare of teachers at the Early Childhood Education and Development (ECDE) level. We propose to amend a number of sections of the Act to ensure that we take care of the welfare of teachers at the ECDE level.

One of those problems that we are facing at the level of ECDE is the issue of the welfare of teachers. We have got a teaching fraternity that is –

The Temporary Speaker (Sen. Wakili Sigei): Sen. Oketch Gicheru, just for your attention, you need first move that the Bill be read a Second Time before you embark on your notes.

Sen. Oketch Gicheru: Mr. Temporary Speaker, Sir, I beg to move that the Early Childhood Education (Amendment) Bill (Senate Bills No.54 of 2023), be read now a Second Time.

Mr. Temporary Speaker, Sir, ---

The Temporary Speaker (Sen. Wakili Sigei): Resume your seat, Sen. Oketch Gicheru. Ask somebody to second.

Sen. Oketch Gicheru: Mr. Temporary Speaker, Sir, I was just highlighting some elements of the Bill that are very important. I would then ask my friend to second it for me after moving.

The current state of affairs is that the wages that the teachers in the early childhood section of our counties are earning is enough to take care of their lifestyle. There is need to consider things like inflation, minimum wage, cost of living and even developing a robust scheme of service, where the teachers can develop their career and move just like their colleagues who are in the higher levels of education.

This is a very straightforward Bill that will change the life of teachers in our counties. I wish to move that the Early Childhood Education (Amendment) Bill (Senate Bills No.54 of 2023), be now read a Second Time. I wish to request my colleague, the wonderful Senator of Narok, Sen. Olekina, to second.

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

Sen. Olekina: Thank you, Mr. Temporary Speaker, Sir. I rise to second the Early Childhood Education (Amendment) Bill (Senate Bills No.54 of 2023).

This is a very simple amendment that my colleague is bringing, which is important for me to highlight. My colleague is adding a provision to the existing Act, Section 31 (f). He is adding Section 31 (f) (a), which essentially takes care of the recommended measures for the welfare of teachers, which is very important. Currently, Section 31(e) of the Act only says that –

“ensure the provision of adequate equipment and facilities within the education centre that such equipment and facilities are well maintained;”

However, it does not take care of the welfare of the teachers.

Secondly, my colleague is also amending section 38 of the Act by adding section 2(a) of that 38, which is essentially saying that - when the Salaries and Remuneration Commission (SRC) is considering or county Governments are considering adding revenue, they should not come out arbitrarily but look at issues such as inflation, minimum wage and cost of living.

This is a very interesting concept that my colleague is bringing in terms of the issue of minimum wage. Most of our ECDE teachers should essentially be paid more money. Consequently, when you are talking about the minimum wage, that should have been defined better. I thank my colleague for doing that.

Finally, my colleague is also amending Section 38, which inserts a new paragraph that is to consider the welfare of teachers. It is imperative that we look into the welfare of teachers. We should not only look at the facilities that they work on, but also at giving teachers more money.

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

Mr. Temporary Speaker, Sir, I second.

(Question proposed)

Sen. Mungatana, proceed.

Sen. Mungatana, MGH: Bw. Spika wa Muda, kwa ufupi sana, naunga mkono Mswada huu wa sheria mpya inayosimamia walimu katika shule za chekechea. Hivi majuzi, watu kadhaa walijiriwa kazi katika Kaunti ya Tana River. Watu walifurahia kwa sababu watu wengi hawana kazi lakini mishahara ya hao walimu waliopata hizo kazi na kufurahia iko chini sana. Sheria hii tunayoileta leo itasaidia walimu wale kupata mishahara inayofaa zaidi kwa maisha yao. Mwalimu anashinda na watoto wadogo kutoka asubuhi mpaka jioni lakini pesa anayopeleka nyumbani mwisho wa mwezi ni kidogo. Nashukuru sana kwamba leo nimepata fursa hii, kwa niaba ya watu wa Kaunti ya Tana River, kupitisha sheria hii mpya itakayosaidia walimu wa Early Childhood Development (ECD) wapate mishahara zaidi.

Bw. Spika, kwa hayo mengi, naunga mkono Mswada huu wa sheria hii mpya. Asante.

(Applause)

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. Mungatana. I have no other Member interested in making contributions to this Bill. In the absence of any other Member, I call Sen. Oketch Gicheru to reply.

Sen. Oketch Gicheru: Mr. Temporary Speaker, Sir, I believe this is one of the most important Bills that we will pass this year. I thank Sen. Olekina for standing very strongly with the ECD teachers to make sure that they will have proper scheme of service and more salary increase to them. I also thank Sen. Mungatana for standing with the ECD teachers to ensure that through this Bill, they will have better life, pay and working conditions.

I also thank all the other Senators who have spoken to this Bill since inception, including Sen. Joe Nyutu, who was very instrumental in conducting public participation through the Standing Committee on Education and bringing this Bill to where it is. We got very good ideas that will open up space for the empowering of teachers.

Mr. Temporary Speaker, Sir, because this Bill concerns counties, pursuant to Standing Order No.66 (3), I request that putting of the question on this Bill be deferred to a later date. I am also very grateful to all the support. I hope that this Bill will empower our counties to empower teachers.

I thank you.

The Temporary Speaker (Sen. Wakili Sigei): Thank you very much. Putting of the question on this Bill is hereby deferred to the next sitting, pursuant to Standing Order No.66 (3) of the Standing Orders of this honourable House.

(Putting of the question on Bill deferred)

Hon. Members, we will defer Order Nos.14 to 24 to the next sitting of the House.

COMMITTEE OF THE WHOLE

THE GAMBLING CONTROL BILL
(NATIONAL ASSEMBLY BILLS No.70 OF 2023)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE TEA (AMENDMENT) BILL
(SENATE BILLS No.1 OF 2023)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE MATERNAL, NEWBORN AND CHILD HEALTH BILL
(SENATE BILLS No.17 OF 2023)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE METEOROLOGY BILL
(SENATE BILLS No.45 OF 2023)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE NATIONAL CONSTRUCTION AUTHORITY (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS No. 59 OF 2022)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE CANCER PREVENTION AND CONTROL (AMENDMENT) (No.2) BILL
(NATIONAL ASSEMBLY BILLS No. 45 OF 2022)

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

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

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

(Committee of the Whole deferred)

BILLS

Second Reading

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

(Bill deferred)

Second Reading

THE WILDLIFE CONSERVATION AND MANAGEMENT
(AMENDMENT) BILL (SENATE BILLS NO.46 OF 2023)

(Bill deferred)

Second Reading

THE WILDLIFE CONSERVATION AND MANAGEMENT
(AMENDMENT) BILL (SENATE BILLS NO.49 OF 2023)

(Bill deferred)

Second Reading

THE CO-OPERATIVE SOCIETIES (AMENDMENT) BILL
(SENATE BILLS NO.53 OF 2023)

(Bill deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Wakili Sigei): Hon. Senators, it is now 6.30 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until tomorrow, Thursday, 8th August, 2024, at 2.30 p.m.

The Senate rose at 6.30 p.m.