

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 28<sup>th</sup> February, 2024

### Afternoon Sitting

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

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

### PRAYER

DETERMINATION OF QUORUM  
AT COMMENCEMENT OF SITTING

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

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

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

*(The Quorum Bell was rung)*

**The Speaker** (Hon. Kingi): Serjeant-at-Arms, you may stop the Bell. We have quorum now.

Clerk, proceed to call the first Order, please.

Proceed, the Senate Majority Leader.

### PAPERS LAID

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

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate, today, Wednesday 28<sup>th</sup> February, 2024 -

Report of the Auditor-General on Financial Statement of the Wajir County Revolving Fund for the year ended 30<sup>th</sup> June, 2015.

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Report of the Auditor-General on Financial Statement of the Wajir County Revolving Fund for the year ended 30<sup>th</sup> June, 2016.

Report of the Auditor-General on Financial Statement of the Nyandarua County Bursary Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the Nyandarua County Emergency Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the Meru County Youth Service Board for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the County Assembly of Meru Staff Car Loan and Housing Scheme Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the County Assembly of Meru Members Car Loan and Housing Scheme Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the County Government of Turkana – Receiver of Revenue for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the Turkana County Emergency Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the County Government of Turkana-County Revenue Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the Turkana County COVID-19 Emergency Response Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the Embu Climate Change Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the Embu County Executive Car Loan and Mortgage (Committee Members) Scheme Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the County Assembly of Embu Car Loan and Mortgage (Staff) Scheme Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the Embu County Education Support Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the County Government of Embu – Receiver of Revenue – Revenue Statements for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the County Executive of Lamu for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the County Assembly of Lamu for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the County Government of Lamu – County Revenue Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the County Government of Lamu – Receiver of Revenue – Revenue Statements for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the Lamu County Youth Development Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the Lamu County Bursary and Scholarship Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the Lamu County Fisheries Development Agency for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the Lamu Car Loan and Mortgage Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the Lamu County Executive Staff Housing Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the Lamu County Emergency Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the Lamu County Disability Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the County Government of Tharaka Nithi – Receiver of Revenue – Revenue Statements for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the County Executive of Nyamira for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the County Assembly of Nyamira for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the Nyamira County Emergency Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the County Government of Nyamira – Receiver of Revenue- Revenue Statements for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the Kericho County Agricultural Development Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statement of the County Assembly of Mandera for the year ended 30<sup>th</sup> June, 2023.

Mr. Speaker, Sir, I beg to lay.

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

**The Speaker** (Hon. Kingi): Proceed, Sen. Mumma.

REPORT ON THE 147<sup>TH</sup> ASSEMBLY OF IPU  
HELD IN LUANDA, ANGOLA

**The Speaker** (Hon. Kingi): That Paper is deferred.

*(Laying of Paper deferred)*

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Next Order

### NOTICE OF MOTION

NOTING OF REPORT ON THE 147<sup>TH</sup> ASSEMBLY OF IPU  
HELD IN LUANDA, ANGOLA

THAT, the Senate notes the Report of 147<sup>th</sup> Assembly of the Inter-Parliamentary Union (IPU) and related meetings held in Luanda, Angola from 23<sup>rd</sup>. to 27<sup>th</sup> October, 2023, laid on the Table of the Senate on Wednesday 28th February, 2024.

That Order is deferred.

Next Order, please.

*(Notice of Motion deferred)*

### QUESTIONS AND STATEMENTS

#### STATEMENTS

**The Speaker** (Hon. Kingi): Statement Pursuant to Standing Order No.52 (1). Proceed, Sen. Kibwana.

#### DELAYS IN PROCESSING OF BILLS

**Sen. Kibwana:** Thank you, Mr. Speaker, Sir. My Statement is on an issue of general topical concern, on delays in the processing of Bills.

Mr. Speaker, Sir, I rise Pursuant to Standing Order No. 52 (1), to make a Statement on a matter of general topical concern, drawing the attention of this honourable House to the persistent challenges faced in the legislative process, particularly, regarding the delays encountered during the processes of Bills at pre-publication scrutiny by the relevant Committee and during the concurrence phase between the two Speakers on whether a Bill concerns counties.

As Senators, we invest significant time, energy and resources into developing legislative proposals that addresses critical issues affecting our constituents and the nation at large. However, it is disheartening to observe that many of these Bills face prolonged delays during these critical levels of processing leading to unacceptable lose of valuable time in the legislative process.

Furthermore, some Bills encounter insurmountable obstacles and, ultimately, are neglected at the scrutiny stage by the Committees, often due to a lack of commitment of prioritization by the membership of the concerned Committees. This not only undermines the efforts of the sponsoring Senator, but also deprives the Senate and nation of potential legislative solutions to pressing challenges.

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Mr. Speaker, Sir, the protracted delays and bottlenecks in the legislative process hinder our ability, as Senators, to fulfil our mandate of representing interests of our constituents effectively.

It also undermines the credibility and efficiency of the Senate, as an institution entrusted with the responsibility of law making and oversight.

Therefore, I urge this honourable House to consider measures to address these challenges and streamline the legislative process. This may include –

(1) Reviewing and strengthening the Standing Orders to ensure timely consideration and processing of legislative proposals at each stage of the legislative process.

(2) Enhancing accountability mechanisms to ensure that Committees prioritize the consideration of Bills promptly and fulfil their responsibilities diligently.

(3) Encouraging greater collaboration and communication between Senators, Committees and relevant stakeholders, to expedite the passage of critical legislations.

(4) Implementing performance evaluation mechanisms to assess the efficiency and effectiveness of the legislative process and identify areas for improvement.

Mr. Speaker, Sir, in my conclusion, addressing the challenges within the legislative process is crucial for maintaining the Senate's integrity and effectiveness, ensuring we fulfill our constitutional duty to pass laws that best serve the Kenyan people.

I am confident that the honourable House will take the necessary actions to resolve these issues and improve our legislative functions.

I thank you, Mr. Speaker, Sir.

*(Applause)*

**The Speaker** (Hon. Kingi): Statement pursuant to Standing Order No.53 (1). Proceed, Sen. Tabitha Mutinda.

STATE OF INFRASTRUCTURE AT  
MWIKI PRIMARY SCHOOL

Sen. Tabitha Mutinda is not in the Chamber. The Statement is dropped.

*(Statement dropped)*

**The Speaker** (Hon. Kingi): Proceed, Sen. Chute.

EXPENDITURE IN MARSABIT COUNTY

Sen. Chute is not in the Chamber. That Statement is dropped.

*(Statement dropped)*

**The Speaker** (Hon. Kingi): Proceed, Sen. Wakili Sigei.

SECURITY AND FREEDOM OF JOURNALISTS  
IN BOMET COUNTY

**Sen. Wakili Sigei:** Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.53 (1) to seek a Statement from the Standing Committee on Justice, Legal Affairs and Human Rights regarding the safety, security and freedom of journalists while performing their duties in Bomet County.

In the Statement, the Committee should-

(1) provide a comprehensive report on the progress made in the investigations into the assault by assailants in Bomet Town, made upon journalists from several media houses, who were covering a demonstration by Early Childhood Development Education (ECDE) teachers, stating any actions taken by the police at Bomet Police Station, where the case was reported under Occurrence Book No.21/21/2/24, to ensure the safety, security and freedom of the assaulted journalists;

(2) state whether the county government official or agent, who is alleged to have instigated the attacks, which took place on the 20<sup>th</sup> February, 2024, due to what the assailants termed as unwarranted coverage of demonstrations against the county government, has since been arrested and if not, inform the House why the said person has not been arrested to date;

(3) state the measures taken by the relevant security personnel within Bomet County to ensure that such unfortunate events are not witnessed again in future; and,

(4) provide a holistic assessment regarding the actions taken by the Media Council of Kenya (MCK) in protecting and promoting the freedom and independence of the media, specifically, the journalists who were assaulted in Bomet County, pursuant to Article 34 of the Constitution and Section 6 (1) (a) and (c) of the Media Council Act, No. 46 of 2013.

I thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Kingi): Proceed, Sen. Kathuri.

RENEWED WAVE OF BANDITRY  
ALONG MERU-ISIOLO BORDER

**Sen. Kathuri:** Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.53 (1) to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations regarding concerns of a renewed wave of banditry attacks along the Meru-Isiolo Border.

In the Statement, the Committee should -

(1) explain the security lapses, gaps and inadequacies along the Meru-Isiolo border in Meru County, particularly in the constituencies of Tigania East, Tigania West, Igembe North and Igembe Central, that has led to renewed wave of bandit attacks,

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resulting to the loss of over 50 lives, 6,000 heads of cattle, destruction of property and disruption of normal activities of the people living in the volatile areas;

(2) indicate any interventions the Government has put in place or intends to put in place, to ensure families that have lost their loved ones, livestock and property are fully compensated, giving timelines within which such compensation shall be granted;

(3) state the interim measures that the Government is taking to reinforce security, restore sanity and peace in the affected areas; and,

(4) outline any sustainable long-term plans the Government is putting in place to end the perennial perpetual banditry attacks in the affected areas.

It has become apparent that the deployed security is unable to flush out bandits or prevent attacks.

I thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Kingi): Proceed, Sen. Mbugua.

#### DELAYED ISSUANCE OF PASSPORTS

Sen. Mbugua is not in the Chamber. That Statement is dropped.

*(Statement dropped)*

**The Speaker** (Hon. Kingi): Proceed, Sen. Mwaruma.

#### BOUNDARY DISPUTE IN TAITA-TAVETA COUNTY

**Sen. Mwaruma:** Thank you, Mr. Speaker, Sir, for this opportunity. I rise pursuant to Standing Order No.53 (1) to seek a Statement from the Standing Committee on Land, Environment and Natural Resources regarding the land boundary dispute between residents of Marungu Village and Oza Group Ranch, in Taita-Taveta County.

In the Statement, the Committee should -

(1) provide the requisite ownership documents for all parcels of land owned by Oza Group Ranch, in Wundanyi Subcounty, Taita-taveta County, stating the total acreage of the land.

(2) Furnish the Senate with survey maps of parcels of land owned by residents of Marungu Village in the subcounty and Oza Group Ranch, clearly stating the geographical boundaries of each parcel.

(3) Outline steps taken by the Government to resolve the land boundary dispute between the residents of Marungu Village and Oza Group Ranch.

Thank you, Mr. Speaker, Sir.

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

RELEASE OF CAPITATION FUNDS  
TO UNIVERSITIES

**Sen. Kavindu Muthama:** Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.53 (1) to seek a Statement from the Standing Committee of Education regarding the status of the release of capitation funds to all universities in the country.

In the Statement, the Committee should -

(1) explain the circumstances that have resulted to the delay in the release of the capitation funds to universities countrywide, providing any remedial interventions aimed at addressing these delays;

(2) provide detailed reports on capitation funds received by each university in the country since Financial Year 2019/2020 to date, outlining the total outstanding capitation and pending bills, if any, covering the said financial year for all the universities nationally;

(3) indicate the number of Government sponsored students admitted by the Scott Christian University and capitation fund grant received by the university since Financial Year 2019/2020 to date, stating any balances owed to the University by the Government;

(4) state strategies and measures taken by the Ministry of Education to ensure that both public and private universities admitting Government sponsored students, receive capitation funds and grants to ensure uninterrupted learning; and,

(5) explain any oversight mechanism the Government has put in place to ensure the students use the public resources allocated to universities countrywide.

Thank you, Mr. Speaker, Sir.

**Sen. Sifuna:** Mr. Speaker, Sir, I read this Statement on behalf of Sen. Tabitha Mutinda, who is a Member of my delegation.

I rise pursuant to Standing Order No. ----

**The Speaker** (Hon. Kingi): Sen. Sifuna, that Statement had been dropped. So, start by giving compelling reasons why I should reinstate it and allow you to proceed.

**Sen. Sifuna:** Mr. Speaker, Sir, she had asked me to do so, but I forgot that her Statement was the first on the list. I profusely apologize and pray that you do not visit the wrath of God on me.

**The Speaker** (Hon. Kingi): Proceed.

STATE OF INFRASTRUCTURE AT  
MWIKI PRIMARY SCHOOL

**Sen. Sifuna:** Mr. Speaker, Sir, I rise pursuant to Standing Order No. 53(1) to seek a Statement from the Standing Committee on Education, regarding the state of infrastructure at Mwiki Primary School in Githurai area.

In the Statement, the Committee should -

(1) report on the state of infrastructure at Mwiki primary School in Githurai, which holds over 4,000 learners, providing details on the total number of learners relative to the land on which the school stands;

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(2) outline any protocols implemented by the Ministry of Education to address the safety and health risks associated with overcrowding at the said school;

(3) state what the Government has done to step up the construction of classrooms and other essential infrastructure such as boarding and sanitation facilities to match the increasing number of learners in public schools, particularly, in urban areas;

(4) explain measures put in place by the Government to mitigate against over enrollment of learners to public schools which strains existing facilities and exposes learners to safety and health risks; and,

(5) highlight other measures put in place to ensure strict enforcement of the Ministry of Education's safety and health guidelines in all schools.

I thank you.

**The Speaker** (Hon. Kingi): Sen. Wakili Sigei, you know you cannot rise on a point of order.

**Sen. Wakili Sigei:** Thank you, Mr. Speaker, Sir. Allow me to correct an impression that might have been created earlier on when I was seeking a Statement. I sought for the Statement from the Committee on Justice, Legal affairs and Human Rights rather than the National Security, Defence and Human rights Relations. I am seeking a Statement from the Standing Committee of National Security, Defence and Human Rights Relations and not Justice Legal affairs and Human Rights Committee, which I Chair.

That is the correction that I desire to make.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Kingi): Very well.

Proceed, Sen. Olekina.

#### STATUS OF LEASE AGREEMENTS BETWEEN MAASAI MARA PROPRIETORS AND COUNTY GOVERNMENT OF NAROK

**Sen. Olekina:** Mr. Speaker, Sir, I rise pursuant to Standing Order No. 53(1) to seek a Statement from the Standing Committee on Trade, Industrialization and Tourism on the status of tourism and the consequent lease agreements entered into by proprietors in the greater Maasai Mara, the Mara Triangle and the County Government of Narok.

In the Statement, the Committee should -

(1) provide a list of all the lodges and camps operating within the greater Maasai Mara and the Mara Triangle, stating their locations and accommodation capacity;

(2) table all lease agreements between the County Government of Narok and the proprietors of the lodges and camps within the greater Maasai Mara and the Mara Triangle, stating any specific obligation placed on the proprietors to Narok residents who reside within the environs of the park;

(3) provide details of the lease agreement between the County Government of Narok and MGM Methu Hotels to manage and operate Keekorok Lodge, which is owned by Narok County Government listing and providing the details of the shareholders and

shareholding structures of the company stating whether there are any loans guaranteed by the County Government and indicate whether the company is registered in Kenya; and,

(4) table the ownership documents for Keekorok Lodge in Maasai Mara including, but not limited to the title deed and list all the revenue streams and their value generated from the lodges and the camps in the greater Maasai Mara and the Mara Triangle for the past two years, which should include, but not limited to bed night fees, royalties and lease ground fees.

Mr. Speaker, Sir, with your permission, I can read the second Statement.

STATUS OF UTILISATION OF DEVELOPMENT BUDGET BY THE  
COUNTY GOVERNMENT OF NAROK

Mr. Speaker, Sir, I rise pursuant to Standing Order No. 53(1) to seek a Statement from the Standing Committee on Roads, Housing and Transportation on the status of utilization of the development budget in the Department of Public Works, Roads, Transport and in the County Government of Narok.

In the Statement, the Committee should -

(1) provide the approved user requisitions for the Public Works, Roads and Transport Department for Fiscal Year 2022/2023;

(2) list all procurement projects under the Public Works, Roads, Transport Department budget line in the County Government of Narok for the Financial Year 2022/2023, indicating the amounts for each approved project and their status of implementation;

(3) list of all prequalified and contracted vendors approved and supply companies awarded tenders for services listing their names, CR12 and their tax identification numbers (KRA PIN), amounts awarded to each in the Financial Year 2022/2023 under the development budget;

(4) provide a list of all tenders awarded during the Financial Year 2022/2023 by the department listing the cost of each award, stating the names of those who applied and who was awarded the tender, the basis of the award, stating their details such as their KRA pin and CR12; and,

(5) state any pending bills in the Public Works, Roads and Transport Department line item budget for FY2022/2023, furnishing the details of the vendors to whom the county government owes money.

Mr. Speaker, Sir, I thank you.

**The Speaker** (Hon. Kingi): Hon. Senators, at this juncture, under Standing Order No. 45(2), allow me for the convenience of the House, to rearrange the sequence of today's Order Paper and proceed to---

The Senate Majority Leader, what is your intervention?

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Speaker, Sir, the intervention button had been on because I hoped to make a comment on one of the Statements requested under Standing Order No. 53(1), if you permit. That is why I was trying to get your attention.

**The Speaker** (Hon. Kingi): I will permit limited intervention for 15 minutes, starting with the Senate Majority Leader. You have three minutes to do that.

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Speaker, Sir, the Statement by Sen. Wakili Sigei should not pass without notice. As a Senator, I follow news and pay a lot of interest in what happens in all of our 47 counties, much as I have a specific county. When we take the oath of office, we defend the interest of counties, not just your county alone. Therefore, as a Senate, we occasionally get concerned when certain trends are beginning to take shape in many of our counties.

In another life, I would have been a journalist if not a politician. Therefore, I am gravely concerned that journalists serving in our various county headquarters are being forced to live under very difficult circumstances; that if they do not sing to the tune of the local county governor or the county government, they are threatened, attacked and victimized. I can count off the top of my mind, not less than 10 counties where I have seen journalists being attacked in the last few years.

Therefore, this is not a light issue. It is not just in Bomet. If you follow the local news keenly, you will notice that there have been so many attacks on journalists because they have highlighted a story in a particular county government. Therefore, this is not something that we need to treat casually.

It is my sincere hope that the Kenya Union of Journalists (KUJ) and the Media Council of Kenya (MCK) will come to the Senate when this presentation is being made so that we can have the statistics of the number of journalists who have been attacked in our counties on account of simply doing their work. Governors who send goons to attack journalists who have refused to sing their tune must be named and censured by this House.

Mr. Speaker, Sir, we cannot be bystanders. Media practitioners are our partners in highlighting either the good or the bad in our counties. When they go about their duties, it should be in an amiable environment where they are free of threats. They should live their lives normally like any other citizen.

I felt that this issue should not be just left to rest as is and handled by the Committee on Justice, Legal Affairs and Human Rights. This is something that we should speak boldly about. As a House, we must take a decision until our journalists are free in our various counties.

I thank you.

*(Applause)*

**The Speaker** (Hon. Kingi): Clerk, there is a problem with the system. Can you rectify that? I can see hon. Senators coming for intervention.

**Sen. Sifuna:** Thank you, Mr. Speaker, Sir. As a Member of the Senate Business Committee (SBC), I am a bit concerned about the Statement read by Sen. Kibwana regarding the delay in processing of legislative business in the House.

I undertake, both as a leader and Member of the SBC, to work together with my colleagues in the SBC to solve some of the bottlenecks we are experiencing in the

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Committees in terms of processing Bills. She has given me the example of the Nuts and Oil Crops Development Bill that she brought at the inception of the House and until today, she has not seen it.

Mr. Speaker, Sir, regarding the freedom of media, I confirm here that I am facing serious challenges even here in Nairobi. The media of Nairobi can no longer be said to be free.

Yesterday, we had a session with the Governor of Nairobi at the Committee on Roads, Transport and Housing, regarding the largest development of housing in the entire country – 13 estates covering 4,000 acres of land.

Anything negative covering my Governor will never make it to primetime news in any of the networks. It is not coincidence because I have monitored that ever since we began the oversight programme in this county.

We want the media practitioners to be allowed to work freely, whatever it is, impartially. If the Senator of Nairobi is not doing his job, it should be highlighted. If the Governor is not performing, it should also be highlighted. You cannot just nit-pick stories. They are put under conditions where if they have to toe the line. You get to see what is happening in Bomet where people are getting attacked.

Mr. Speaker, Sir, we will stand up for the freedom of the media. However, the media must meet us halfway in defending the independence of this great institution.

*(Applause)*

**The Speaker** (Hon. Kingi): Sen. Kathuri.

**Sen. Kathuri:** Thank you, Mr. Speaker, Sir. I will briefly comment on the Statement requested by Sen. Wakili Sigei.

As my colleague, the Senate Majority Leader has clearly put it, journalists in the counties are under a serious siege. Some operate in areas that are not friendly to the ruling governors and they get into serious problems. They even get roughed up by supporters of those governors.

I remember an incident last year when one of the journalists in Meru County was roughed up in a meeting that was attended by the governor. Since that time, because of the fear that they have, they do not get the news they should cover from administrators in the county because of the intimidation they are getting.

I would like the Committee that will handle this issue to invite the International Court of Justice (ICJ) and other relevant bodies that protect our journalists, so that we can have free journalists who are independent.

Mr. Speaker, Sir, the Constitution defends journalists. They are free and they should be respected. They should not be intimidated at all. I, therefore, agree with my colleagues that we should sanitize and clean this system.

When you are elected as a governor, you are not elected as a ruler. That is the history we read many years ago in the 16<sup>th</sup> Century. This is an era where, once you are elected as leader, you should be consultative, friendly to the people you lead and listen to each and every one. However, what we are witnessing in this current regime is

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unfortunate, but a time will come when all of those behaving like rulers of kingdoms will end.

**The Speaker** (Hon. Kingi): Sen. Dullo.

**Sen. Dullo:** Thank you, Mr. Speaker, Sir. I would like to comment on the Statement by Sen. Kathuri on the insecurity between Isiolo and Meru. I also thank him for bringing it. This is because there has been a big problem in those areas for a long time.

I also thank the Cabinet Secretary for Interior and Administration of National Government, hon. Kithure Kindiki, for doing a wonderful job and visiting those areas several times. He has also provided the National Police Reservists (NPRs) to complement the usual security.

Despite all that, we are losing our people on a daily basis, especially along the borders of neighbouring counties. Isiolo always has a challenge because it is boxed in a corner. We get attacks from Marsabit, Samburu, Wajir, Garissa and from Meru. It is a big problem. It is time we dealt with insecurity in all those areas.

Mr. Speaker, Sir---

**Sen. Kathuri:** On a point of order, Mr. Speaker, Sir.

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

**Sen. Kathuri:** Mr. Speaker, Sir, did my colleague and good neighbour, Sen. Dullo, mistakenly mention that Meru attacks Isiolo or it is vice versa?

She started very well on the problems she is getting. She should clarify whether it is the opposite or it was a slip of the tongue.

**The Speaker** (Hon. Kingi): Sen. Kathuri, you are the Deputy Speaker. You have always---

*(Sen. Kathuri spoke off record)*

Yes, that much I know. The reason I am asking that title is that you enforce rules of this House. You also know the fundamental rule of a point of order is that once you rise, the first thing you should do is state the Standing Order under which you are raising your point of order and then you proceed. You always tell these hon. Senators to do that. It is now your turn to do that.

Proceed, Sen. Dullo.

**Sen. Kathuri:** Mr. Speaker, Sir, I seek clarification from my colleague, Sen. Dullo. We are good neighbours and as leaders, we have never had any issue. However, I would like her to put it on record that there is no time Isiolo gets attacks from Meru. I also know Isiolo is used as a conduit or passage by people from other counties. They pass Isiolo and attack Meru. Even the Samburu and Turkana people bypass Isiolo.

Mr. Speaker, Sir, Sen. Dullo should clarify and also see how to manage that corridor, so that those attackers---

**The Speaker** (Hon. Kingi): Sen. Kathuri, that is a point of information. Sen. Dullo, kindly proceed and conclude.

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**Sen. Dullo:** Thank you, Mr. Speaker, Sir. I thank Sen. Kathuri for that information.

As much as I agree with his last statement, if he wants me to provide evidence that sometimes there are attacks from Meru County, then I can. However, the bottom line is that we need to have a safe environment where we protect our people and properties. That is the most important thing.

Secondly, as far as freedom of speech is concerned, I agree with my colleagues that there are many problems in the counties. Individuals cannot comment about particular leaders because they believe no one can talk about them. It is democratic for anybody to comment on whatever they feel is right. As leaders, we need to protect the freedom of speech in our counties. It is unacceptable for a governor to wake up and threaten anybody who comments about them.

We need to protect the freedom of speech in our counties, more so, for the journalists who are doing their job. Some of them are forced to take money to write information against other individuals, which is unprofessional.

Mr. Speaker, Sir, we need to do something, more so, when we go to carry out our oversight role. There are many challenges on the ground. The Senate and security agencies need to protect our people in the counties.

I thank you.

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

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I strongly agree with Sen. Wakili Sigei about his fears for our media. It is shocking that using the tool of violence and money, governors are making it difficult for the public to know how well we oversight them.

A case in hand is when the Senate Standing Committee on Finance and Budget had a meeting outside the precincts of Parliament to unearth abuse of office and misuse of public funds by the County Government of Kakamega. We were there for two days and some of the functions were being covered in real time by the media, but nothing came out. It is because the Governor had intimidated the media practitioners using violence and money.

Media practitioners, especially the Kenya Editors' Guild, should help us in ensuring that professional ethics are maintained by reporters on the ground and those who are here in Nairobi, so that when information comes from the grassroots, it must be aired from Nairobi.

What happens in between is that money is exchanged and important information dies. If we do not kill the power of money and violence, our oversight responsibility will die. I therefore urge the Committee to do more.

Mr. Speaker, Sir, we should also be alive to the fact that media is a changing profession. A person who yesterday was, say, a practitioner in alternative media – even a far-fetched as those people who write on social media platforms – can now become a media practitioner. We should protect even those who transmit information through social media as long as it is ethical and professional.

I thank you.

**The Speaker** (Hon. Kingi): Proceed, Sen. Madzayo.

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**The Senate Minority Leader** (Sen. Madzayo): Bw. Spika, ningependa kuunga mkono Taarifa hii iliyoletwa hapa na Sen. Wakili Sigei, Seneta wa Kaunti ya Bomet.

Jambo la kwanza kabisa ni kwamba uandishi wa habari ni kitu muhimu sana katika taifa lolote la kidemokrasia. Kama ilivyoandikwa katika Taarifa hili, ni jambo la kusikitisha kwamba polisi au watu waliotumwa walichukua sheria mikononi mwao na kuwapiga, kuwaumiza vibaya, kuwafurusha na kuharibu vifaa vilivyokuwa vinatumiwa kuchukua habari.

Bw. Spika, mara kwa mara, shule za chekechea katika kaunti zote 47--- Wewe ulikuwa gavana na kwa hivyo unaelewa--- Kumekuwa na shida sana kujenga shule hizo. Changamoto nyingine ni kwamba walimu wa shule hizo hawatoshi kwa kuwa wakati mwingine kuna upungufu. Kwa hivyo, kuna changamoto nyingi sana katika shule za chekechea.

Ni jambo la kusikitisha kwamba watu waliokwenda kuangalia kitu gani kilichokuwa kimetokea walitumiwa majangili---

*(Loud consultations)*

Bw. Spika, kila mtu anazungumza---

**The Speaker** (Hon. Kingi): Order, hon. Senators.

**The Senate Minority Leader** (Sen. Madzayo): Bw. Spika, langu ni kwamba waandishi wa habari ambao ni kitengo muhimu sana katika demokrasia yetu tunayojivunia ndani ya Kenya---

*(Sen. Oketch Gicheru consulted Sen. Olekina)*

**The Speaker** (Hon. Kingi): Sen. Gicheru Oketch, you can only kneel before God and not man. Take your seat, please.

*(Sen. Oketch Gicheru resumed his seat)*

**The Senate Minority Leader** (Sen. Madzayo): Kitendo kama hicho ni jambo ambalo linafaa kukemewa. Kwa hivyo, hatua inafaa kuchukuliwa.

Tuna Kamati ya Usalama wa Taifa na Masuala ya Kigeni katika Seneti. Kamati hiyo inafaa kuchunguza sababu za kutokea kwa kitendo hicho na kuhakikisha kuwa waandishi wa habari au wale waliokuwa wakichukua picha pamoja na watu wengine ambao hawakuwa huko Bomet wamearifiwa. Watu kama hao lazima wapewe ulinzi wa kutosha.

Kwa hivyo, Bw. Spika, ninapounga mkono Taarifa hii, ningependa kusema kuwa ni vyema Baraza la Wanahabari Nchini Kenya, ambao ni wakubwa wa waandishi wa habari, linafaa kupewa nafasi ya kuangalia kwa kina na kuhakikisha kuwa haki ya wanahabari wale imetendeka.

Asante.

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

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**Sen. Cherarkey:** Mr. Speaker, Sir, I congratulate colleagues who have brought Statements. What got my attention is one or two Statements.

In quick succession, one is on the issue of media freedom. I said in some forum that it is safer for media practitioners to work in Gaza than in some counties in this country, such as Nandi. In fact, we are thinking about declaring Nandi as “Gaza II” because the other day, a journalist by the name Philip Kipsongok of *Changei FM*, a vernacular radio station under Royal Media Services (RMS), was attacked and his recorder taken while he was covering harassment by county enforcement officers in Nandi Hills Town.

Mr. Speaker, Sir, you having the insights by virtue of being a former Governor, you should dispense Solomonic wisdom to some of the governors; that trying to stifle sharing of information as envisaged under Article 34 on freedom of the media is unfortunate, barbaric, primitive and undemocratic.

I want to challenge the Committee that this Statement will be directed to. I do not know if it is the Committee on Information, Communication and Technology, where yours truly sits, or the Committee on National Security, Defence and Foreign Relations.

What is happening in the county governments is that they are now transforming county enforcement *askaris* to be governor’s goons. We are seeing that everywhere. Nowadays, law enforcement officers are over-glorified goons who are hired as enforcement *askaris* at that level. So, in Nandi, they are being transported such that when yours truly wants to question the use of funds, you find specific people who are in county *Askari* uniforms shouting you down.

It is good that some of us have some technical expertise on how to handle such goons. However, for people who are new in the field, it might be a challenge. I will, however, give them a piece of advice as we take *chai* and *mandazi*. My only concern goes to the Chairperson of the Standing Committee on National Security, Defence and Foreign Relations. I saw him around. Let us know the intention of these county enforcement *askaris* used by the governors.

I agree with colleagues, most of these journalists in Nandi would rather cover national news than county news. They are no longer safe. They are being threatened. Some journalists were telling me that our Governor was sending subtle messages when they were doing media awareness week in Kapsabet. They are living in fear. You know these are people; they are human beings and they do not have security. They live with us. Their only weapon as a media hub is the weapon of the pen.

Yesterday, I saw the high-voltage engagement between the Senator and the Governor of Nairobi City County. However, you did not find it in any mainstream media. It is only on social media that we were given snippets of what transpired at the engagement in the Standing Committee on Roads, Transportation and Housing.

So, I agree that the media must also work with us, so that we can expose the ills that continue in counties. On the issue of Sen. Tabitha on the infrastructure of schools, I agree that we still have a challenge. I think even outside Nairobi, apart from the school she has said in Mwiki, other schools across are also rested. I want to challenge the Chairperson. I saw Sen. Nyutu and other Members of the Standing Committee on



Education. Please, let us take it up. This education system is the greatest equaliser of all of us.

I saw the Teachers Service Commission (TSC) for the first time promoting teachers since 2014. We need to ensure there is motivation through the promotion of teachers. Even as we do reforms in the TSC, we need to also ensure that the issue of delocalisation is removed, going into the future.

Even the Chief Executive Officer (CEO) of TSC is past 60 years. There was a circular that had been issued by the Public Service Commission (PSC) and other agencies. So, the reforms within TSC and the Education Ministry must be relooked, so that we support infrastructure not only in Mwiki, but in other primary and secondary Schools and learning institutions across the country.

With those many remarks, I support.

I thank you.

**The Speaker** (Hon. Kingi): Sen. Osotsi.

**Sen. Osotsi:** Thank you, Mr. Speaker, Sir. Allow me to comment on two Statements. The first Statement is from Sen. Hamida on the delay in processing Bills. I fully agree that we have a very serious problem. We do our duty of developing Bills, but they take a long time to be processed for publication.

So, I think that is an issue that needs to be addressed by the Senate Business Committee (SBC). We can even be told the process and the timeframe it takes to process a Bill, rather than just leaving it like that. You can say for one year you have your Bill not processed.

I have an example. When the Senator of Kiambu County and I joined this Senate, we made a request. We did a legislative proposal for the Ward Development Fund Bill. To date, I have not even seen a copy of what we proposed. So, this is a very serious problem. I think that it is something that the leadership of this House should take up.

On the Statement by Sen. Sigei, the harassment of journalists by the County Governments is one of the tactics of killing oversight in our counties.

*(Applause)*

They are using all manner of tactics, not just on local journalists, but even national journalists. I had a case where a story appeared in one of the dailies and a Governor called one of the media houses and threatened to deny them business for publishing a story that was critical on the issue of pending bills.

*(Applause)*

This is a matter that we need to look at, including many other tactics. This week one of us, the Senator for Busia, has gone to court because of refusal by the Governor to provide documents for oversight.

*(Sen. Olekina spoke off record)*

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Sen. Olekina too. So, there are various tactics that our governors are using to deny us our constitutional right to conduct oversight. I think that the Committee should go beyond just the issue of journalists. They should also look at the issue of access to information because journalists need to access information as well as Senators. This must stop.

*(Applause)*

If we do not stop this, it will now get to different and serious levels. I have seen one of the counties where the Governor organised demonstrations against the Senator because of oversight.

*(Laughter)*

You conduct oversight and then some goons are organised to go and demonstrate and accuse you of interfering with the running of the county, when you are doing your duty of oversight as a Senator. So, I think this is just the tip of the iceberg. There are serious tactics that our governors are using to kill oversight in the counties.

So, I support the two Statements, Mr. Speaker Sir.

**The Speaker** (Hon. Kingi): Sen. Mo Fire.

**Sen. Gataya Mo Fire:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I support the Statement by my good neighbour, Sen. Wakili Sigei.

*(Loud consultations)*

Mr. Speaker, Sir, I need your protection. Some people are consulting loudly.

**The Speaker** (Hon. Kingi): Order, hon. Senators. May the good Senator be heard in silence.

**Sen. Gataya Mo Fire:** I think that Statement is timely considering that we have witnessed a lot of chaos in various parts of this country, especially in our counties.

You know journalists are supposed to enlighten the public on some of the things that are happening down in our counties. It is high time that this House stamps its authority to make sure that journalists are protected. They are supposed to enlighten people, especially on the evils and all the corruption deals that are orchestrated by our governors in their counties.

So, this Statement is timely. A very good example is the recent case we had in Meru, where one of the bloggers was brutally murdered, simply because he was trying to give some issues with what was happening in some part of that county.

So, because that Statement has been referred to the Standing Committee on National Security, Defence and Foreign Relations, we expect the Committee to make sure that they sample several countries where those journalists are being threatened. Those people are supposed to be brought before this House, so that we can censure them. As a

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House, we are supposed to make sure that freedom of expression is witnessed as enshrined in the Constitution.

So, Mr. Speaker, Sir, I strongly support the Statement by Sen. Sigei that as the Senate, it is high time we upheld the dignity of our journalists.

I support.

**The Speaker** (Hon. Kingi): Sen. Eddy.

**Sen. Oketch Gicheru:** Thank you, Mr. Speaker, Sir. I wanted to quickly comment on Sen. Hamida's Statement. This is a challenge given that we are in this House for a short time of just five years. Given the nature of our politics, by the fourth year, people start campaigning.

Sometimes it becomes very difficult to rally people to this House to pass some laws. My happiness and pride would be if all Senators could be an authority in an area where they have passed a law. Even if you do not get an opportunity to come back to this House, you can be proud that you passed a law.

However, if you are processing these Bills in a very slow manner, in that case, we can never get a chance to process serious laws and become an authority with this wonderful opportunity. My request would be if a Bill is sent to a committee for pre-publication scrutiny, and the Committee neither addresses the Bill nor invites the author of that Bill to come and defend it in 14 days---

*(Sen. Cheruiyot consulted the Speaker)*

I wish, Mr. Speaker, Sir, you were listening to this because it is a very serious proposal that I am pushing for the SBC.

I request that if a Bill goes to a committee and the committee does not invite the author of the Bill to come and defend it for over 14 days, then it should be assumed to have passed that committee consideration and gone to publication directly, then it gets reconsidered at the time that it is already in the House. The committee can have a bite of the cherry after that.

Very shortly, I also wanted to comment on the Statement by my good friend, the Senator for Bomet County. I have had a chance of traversing Migori County and it is very expansive. Our daughters, brothers, sisters and sometimes even mothers who are in the journalism profession--- We have got advantage of using our big cars and sometimes the Governors have got an advantage of using the county resources to get as far as the areas of Muhuru Bay or Masangora in Kuria or Isebania.

However, the journalists that we have at the county level at times do not have facilitation to get as far as those places to give us the amazing news that we see. It is indeed very inhumane if a Governor, in a position of power, can couple this with the kind of harassment that we have seen in some quarters, including in Bomet County. These are our children, sisters and brothers. We must see that the profession they are in is one that is there to help the public consume and get their right to information.

This is something that this House must stand to and against strongly. I hope that the committee will give this House an opportunity to interrogate some of those notorious

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governors who have become rogue against people in the journalistic world. This is something that, as a Senate, we must not only condemn, but also find ways of punishing to send a message to potential governors who--- Somebody like Sen. Cherarkey says that he has got a tactic of dealing with the current governors who are doing this kind of things.

I wonder if Sen. Cherarkey will use the same tactics to affect those journalists when he becomes a Governor. It should be a deterrent that we put for not only the governors who are currently doing this, but also those who will do it in the future.

I thank you and I support this true Statement.

**The Speaker** (Hon. Kingi): Sen. Tabitha Keroche, please, proceed.

**Sen. Tabitha Keroche:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I congratulate the Senators who have read Statements in this House today. I particularly support the one that has been read by the Senator for Bomet County on media freedom.

I believe everybody in this country knows that I come from a county where intimidation, blackmail and frustrations are the order of the day. I know everybody knows that the confirmed gangsters are the ones controlling Nakuru County.

*(Applause)*

I also believe everybody knows that what the Governor is doing to undermine my oversight role is beyond this world. I have been called with private numbers to be threatened and called names. You have never seen me entering there like a *mlevi*, yet I have been called '*mlevi*' and all sorts of names. You saw how the lawyers joined hands and went to demonstrate because of the way the Governor is not obeying the rule of law. She sent goons who threw stones at those lawyers; the learned friends, such that they could not finish the statements that they were reading.

There is nowhere in this country judges have given up and said they are not going to represent the public on a certain case. You have seen Chief Justice Martha Koome calling out how our Governor has disobeyed court orders. Going there now, where are our people; the electorate, who came out early morning to elect a Governor, thinking that she will take them to the next level?

We need the Committee on Justice, Legal Affairs and Human Rights to write a letter to the Governor and warn her that if she continues that way, the Senator will bring a vote of no confidence in this House. I know you are all going to support me because we cannot allow this.

*(Applause)*

They are saying we are the ones killing devolution, yet it is them.

**The Speaker** (Hon. Kingi): Order!

**Sen. Tabitha Keroche:** The Council of Governors (CoG) should call her governors and caution them because they are the ones killing devolution.

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*(Applause)*

We need support from the Speaker of this House. If we continue this way, there is no use of having governors in counties. In fact, Nakuru County is saying it is better they stay without a Governor than have Gov. Susan Kihika.

*(Loud consultations)*

I am not ashamed to say this. Thank you for giving me this opportunity. The Senators should continue and not be intimidated to do their oversight. We must ensure we bring order in all the counties, starting with Nakuru County.

*Asante* and God Bless.

*(Applause)*

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

**Sen. Olekina:** Mr. Speaker, Sir, I rise to support the Statement by Sen. Wakili Sigei. The Statement by Sen. Wakili Sigei should worry all of us. We are here as the ombudspersons of the citizens who have elected us to come here. If the other ombudspersons, who are journalists, write about what is happening in counties, you hear statements from county governors that the Senator has bought those journalists. If we do not stand firm against the threats and dangers that our young men and women, who are doing their job are facing today, nobody will be able to report.

If you come to Nairobi City County from Machakos County, you will see a big billboard with President Ruto. It says 'if you see something, say something.' That is the message that we want to pass to all the journalists out there.

*(Applause)*

If we cannot defend them for them to give us information--- For instance, today, one anonymous journalist has sent me a clip and said 'Governor of Narok County using trucks owned by the county government to build his own property.' If that journalist did not send me that information, how else would I have known? That Statement by Sen. Wakili Sigei should be taken very seriously. This is because freedom of speech, expression and information will all be contained.

The distinguished Senator for Vihiga County has stated here clearly that two Senators have moved to court to seek for certain information, which will help us carry out our oversight. This is because they are refusing to accept that there is a provision in the law in Article 35 of access to information. So, if they do not respect that, how else do you expect them to respect journalists?

Mr. Speaker, Sir, this Statement must go further. In fact, the Chairperson of Committee on National Security and Foreign Relations –because, initially, it was not in Justice, Legal Affairs and Human Rights, it was in National Security and Foreign

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Relations, Sen. Wakili Sigei corrected - must now involve the Ministry of Interior and National Administration to follow this rogue Governors to find out their communication department and look at the budgets, to see which media houses are being paid the most and which ones are being denied.

*(Applause)*

You will notice that the ones that are being denied are the ones telling the truth of what is happening in the counties. We should not just celebrate here; we should take the Statement by Sen. Wakili Sigei very seriously. We are losing journalists. The distinguished Senator from Tharaka-Nithi has clearly indicated that there is a journalist who was killed. If we do not speak for them, who will speak for these young people?

Mr. Speaker, Sir, it is about time that we play our role clearly and we stand firm. This is a very powerful House. Kenyans do not realize how much power the Senate has. We are the ones who send the money to the governors. Who says that we cannot all conspire and decide that we are not sending any money to them?

I keep on saying that even the office of Auditor General (OAG) has to change the way they carry out their audits. If you audit financial statements, what can you see?

The Statement that I brought up earlier today was about the budget because that is where they divert money to pay for other things. After all, they know when the OAG audit them and so long as they have all the attachments in the row in their financial statements, they will get a clean audit.

Finally, I also support the Statement of Capitation by Sen. Kavindu Muthama. We must know how much is sent to public universities across the country. We expect children who attend public universities to compete well. However, if universities are closed and they cannot pay their lecturers, there is no way a student in Mandera or Narok county will get the same skills as a student in Nairobi City County because the university in Narok County is denied money. That Statement by Sen. Kavindu Muthama is very important and we should support it.

Finally, is the Statement by Sen. Kibwana. It is important for us to put our foot down. It is this House that drafts legislation. It is this House that has been tasked constitutionally to write laws.

I feel so sad for Sen. Kibwana because the first legislative proposal she brought was hijacked by the Ministry of Health. Now she has another proposal which is also being hijacked by the Executive. So, what is her role here?

She sits down and writes legislative proposals, but they are delayed. Before she realizes it, a legislative proposal is brought here by the Executive, published and passed. Why should she carry out serious research and then come here to rubberstamp something that she does not understand?

In most cases, the legislative proposals from the Executive are plagiarizing the work of distinguished Senators in this House. So, that is a matter that we need to take seriously.

We have to defend our role. Our role here is clearly to represent our people, oversight counties and no one should tell us, as Senators, that we do not have the powers to do so. We are powerful. Let us put our foot down.

I am happy to see my sister, Sen. Tabitha Keroche, excited about it, but let us carry out the oversight.

**The Speaker** (Hon. Kingi): Sen. Orwoba, you have the Floor.

**Sen. Orwoba:** Thank you, Mr. Speaker, Sir. I would like to comment on the Statement regarding the delay of issuance of passports by Sen. Mbugua. This issue of delayed passports has been discussed on different fora.

I have gone out to do my investigation with my resources. I have found out that as much as we have challenges with some of the systems, one of the things that we are refusing to acknowledge and highlight is that we have incompetent people who are leading---

**Sen. Faki:** On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Kingi): Sen. Faki, what is your point of order, Sen. Faki?

**Sen. Faki:** Mr. Speaker, Sir, I thought the Statement which was to be read by Sen. Mbugua was deferred.

**The Speaker** (Hon. Kingi): Sen. Orwoba, please, resume your seat.

Sen. Faki, please, proceed.

**Sen. Faki:** Asante Bw. Spika. Mimi ninajiunga na wenzangu kumpongeza Sen. Wakili Sigei kwa Taarifa aliyoleta kuhusiana na uhuru wa maandishi habari.

Kidemokrasia, uhuru wa maandishi wa habari ni muhimu sana kwa sababu wao ndio wanaowajulisha wananchi na wahusika masuala muhimu yanayoibuka katika jamii.

Imekuwa wazi sasa ya kwamba, magavana wengi na hata mawaziri wa Serikali kuu wanawanunua maandishi habari. Wale ambao hawawezi kununuliwa, wanatumiwa wahuni kuwapigwa, kutishwa na hata wengine wamewahi kupoteza maisha yao.

Uhuru wa wanahabari ni kiungo muhimu cha demokrasia. Kama Seneti hatuwezi kuacha uhuru huo uhujumiwe na wale wanaoona ya kwamba ni bora kuficha yale matendo yanayofanywa kinyume na sheria ili wananchi wasije wakayaona.

Kuhusu magavana, sasa wamepata moyo ya kwamba, wengi wakija hapa---

*(Sen. Kisang and Sen. (Dr.) Khalwale consulted  
Sen. Tabitha Mutinda)*

**The Speaker** (Hon. Kingi): Order! Hon. Senators.

Sen. Kisang and Sen. (Dr.) Khalwale, please, take your seats. You may consult, but do so in low tones.

**Sen. Faki:** Bw. Spika, ninashangaa, Sen. (Dr.) Khalwale---

**The Speaker** (Hon. Kingi): Sen. Faki, just proceed to make your point.

**Sen. Faki:** Bw. Spika, umri wa Sen. (Dr.) Khalwale haumruhusu kufanya yale anayoyafanya kwa sasa.

*(Laughter)*

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Bw. Spika, magavana wamepata moyo kwa vile wanapokuja hapa, mara nyingi wanaponyoka na hawapelekwi nyumbani. Wamepata moyo kwamba hata wanaweza kuwatishia wanahabari kule nje. Ninawahakikisia kwamba, atakaye kuja mara ijayo itabidi ajitahidi sana kwa sababu tuko na ari ya kuwapeleka nyumbani.

*(Applause)*

**The Speaker** (Hon. Kingi): Sen. Tabita Mutinda, you have the Floor.

**Sen. Tabitha Mutinda:** Thank you, Mr. Speaker, Sir. I rise to support Sen. Wakili Sigei's Statement regarding the issue of our great experienced journalists who have undergone the inhumane and saddest situations when they are on the ground diligently doing their work.

As a Government, we have been championing for job opportunities. You realize that we have journalists who are freelancing to make their earnings. However, because of poor leadership, the environment become uncondusive.

The Senate Standing Committee on National Security, Defense and Foreign Relations is led by the hon. Sen. Cheptumo and Sen. Nyamu as the Vice-Chairperson. I urge that this time she puts her mobile phone down and looks at this issue with much more priority as a Committee.

Sen. Nyamu, as the Vice-Chairperson on this Committee, I want you to prioritize the issue of our journalists. Journalists need to have and exercise their freedom in this country. It is because of them that we knew about the issue of Shakahola.

It is sad to also remember the issue that happened in Meru County to one of the great young men none other than Mr. Sniper. We have advocated for young people to do content creation, but then someone takes their lives because they do not want them to freely speak as per what they ought to speak about.

It is high time that the members of the Fourth Estate be allowed to freely conduct their role. We are working closely with them in this Parliament. I appreciate them this afternoon because we have walked a very good journey with them.

Looking at Sen. Kibwana's Statement, I agree with Sen. Sifuna that as the Senate Business Committee (SBC) and with its leadership that is here led by no other than you, Mr. Speaker, Sir, we will look deeper and fastrack.

We have started very well this year because we have prioritized Bills that are in the Committee of the Whole stage. We have moved, and I see today we might move more.

I support what Sen. Olekina has said about Sen. Kibwana. As the Vice-Chairperson of the Standing Committee on Finance and Budget, I noticed that we have another Bill that has been presented by Sen. Kibwana with regard to the amendments of the Public Finance Management (PFM) Act.

I have raised this issue in the SBC because being 67 Senators, it is our goal to ensure we support and achieve the legislative business of our colleagues.

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In that regard, with the leadership of the Committee on Finance and Budget, we will look further into it because we have also liaised with the Senate Majority Leader, Sen. Cheruiyot.

With regard to your Bill, the Public Finance Management (PFM) Amendment Act, I promise you that this time round the Bill is in my Committee and we shall get to the bottom of it.

Thank you, Senator for Nairobi City County, Sen. Sifuna, for reading my Statement in my absence concerning the children in Mwiki Primary School. You had earlier brought a Motion that was to be tabled in this House to look at the infrastructure of our schools, especially in Nairobi City County where everybody wants to ensure their children are admitted to this school.

We have the same problem of school infrastructure in Bidii Primary School where every parent wants his children to go there. It is one of the best public primary schools in Nairobi, but the safety of our children matters. The infrastructure that the Ministry of Education approves matters for our children. The other day in Visa Oshwal Primary School, we saw a child drown in the swimming pool under the watch of the school management.

I support and I thank you.

**Sen. Mariam Omar:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I want to add my voice to the Statement raised by Sen. Wakili Sigei. On Sen. Tabitha Mutinda's Statement on the infrastructure of primary education, we are losing our children because of poor infrastructure in schools. Last week, we lost a child because of drowning in a swimming pool in a school in Parklands.

The problem is not only infrastructure, but also staffing. What kind of staff are these private schools employing because that 11-year-old child who was in Grade 4 lost his life because of negligence of staff?

Another child lost his life because of a driver's negligence. How can a four-year-old child sit on the co-driver's seat? That is negligence of schools and the staff they are employing.

The second point is on security of the media people. Without media, we would not know what is happening in Mandera, Busia or Kisumu. Let us give these people freedom and peace to do their work. Let us not interfere with their work because they have the right to do their work.

I thank you.

**Sen. Kisang:** Thank you, Mr. Speaker, Sir. I wish to conclude this Order by commenting on the Statement by Sen. Kavindu Muthama. About four years ago, the number of students qualifying to join universities were not as many as those who went to private universities. In its own wisdom, the Government found it wise to send students to private and public universities under signed capitation.

Mr. Speaker, Sir, it is unfortunate that for four years, most private and public universities are still struggling because the Government has not sent capitation to those universities. I am even told that Scott Christian University in Machakos which was popular then for studying theology is closing down because they have not received any

capitation from the Ministry of Education. This is a very important Statement to help our universities so that they can grow.

Finally, let me comment on the Statement by the Senator for Bomet. It is unfortunate that our journalists are being harassed everywhere both at the national and county level. It is unfortunate what happened in Bomet County where journalists were harassed by goons hired by the Governor because of political competition among the leaders. It is important that Article 34 of the Constitution is fully followed. The Media Council of Kenya needs to be invited to come to this House and tell us why those who harassed the journalists in Nakuru and Bomet counties have not been arrested or recorded statements.

If there was no media, we would not know that a Member of County Assembly (MCA) was killed in Samburu. We would not know that bandits have terrorized people in Elgeyo-Marakwet, Baringo and across all counties. The media needs to be given space to report so that our people can get information.

I thank you.

**The Speaker** (Hon. Kingi): Hon. Senators, the 15 minutes that I had allocated for intervention by hon. Senators is long spent. We shall, therefore, terminate intervention at this point and proceed to the next Order.

Now, before we proceed to the next Order, I will invoke Standing Order No. 45(2) for convenience of the House and rearrange today's Order Paper. Instead of proceeding with Orders No.8 and No. 9, we shall proceed with the Motion that was adjourned yesterday where hon. Senators were contributing and that is Order No.10.

Clerk, kindly, proceed to call that Order.

## MOTION

### ADOPTION OF REPORT ON INQUIRY INTO HIGH COST OF ELECTRICITY IN THE COUNTRY

THAT, the Senate adopts the Report of the Standing Committee on Energy on the inquiry into the high cost of electricity in the country laid on the Table of the Senate on Wednesday, 27<sup>th</sup> September 2023.

*(Sen. Wamatinga on 27.02.2024)*

*(Resumption of debate interrupted on 27.02.2024)*

**The Speaker** (Hon. Kingi): The Hon. Sen. Kavindu Muthama was on her feet when we adjourned.

*(Sen. Olekina spoke off record)*

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Sen. Olekina, you do not have to do that because the House will not suspend its business to wait for her. We will immediately then proceed to Sen. Mandago.

**Sen. Mandago:** Thank you, Mr. Speaker, Sir, for the opportunity to comment on the Report of the Committee on Energy regarding electricity. I rise to support that Report and thank the Senator for Nyeri and Chairperson of the Committee, Sen. Wamatinga, and his team for the good work they have done.

The cost of electricity in this country has been an impediment towards achievement of industrialization as a nation as it is one of the cost factors that drive the cost of production high. Therefore, if we have to address the cost of living in the country, we must address the cost of production. Energy being a critical factor of production is a matter that cannot be left untouched.

This country has witnessed many challenges in terms of electricity, particularly in dealing with the Independent Power Producers (IPPs). My biggest problem with IPPs is the kind of contracts that are signed by public officers that are skewed towards the IPPs disadvantaging the people and Government of Kenya. It is not possible that a few people can have life-long contracts that disadvantage the nation. It is time the Government took the bull by the horns and sought means and ways of terminating some of these contracts.

Mr. Speaker, Sir, as a country we must also look at affordable ways of generating energy. This country has a very huge potential of solar energy, but there are so many hurdles put across making it difficult for a country and even households to adopt the use of solar energy.

As a House, we support this Report. We need to make a follow-up to ensure that the Ministry works on the recommendation the Committee has put across to ensure that the bills being given by Kenya Power Company (KPC) to the citizens of this country are accurate. These bills do not contain addition of tariffs and repayment of loans resulting from misappropriating public resources.

If you take the wind power project done in Loiyangalani as an example, Kenyans are paying a lot of money in bills to service a debt that was not utilized. This is because Kenya Electricity Transmission Company Limited (KETRACO) and other agencies failed to perform their work.

Those responsible must explain how such billions of money is passed in bills to Kenyans without their knowledge. Also, Kenyans must be informed why they are paying for what they have not consumed.

KPC must improve its network. The number of blackouts we are witnessing in this nation is unprecedented and regular, which is making it difficult for---

*(Sen. Tabitha Keroche, Sen. Munyi Mundigi  
and Sen. Cherarkey consulted loudly)*

**The Speaker** (Hon. Kingi): Order, Sen. Tabitha Keroche and company!

**Sen. Mandago:** Thank you, Mr. Speaker, Sir. I have even lost my train of thought because of that interruption.

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The frequency of blackouts is high, making productivity difficult in this country. Nobody takes KPC to task for household losses, particularly when there are blackouts. Many people have lost their fridges and electronics because of power failures and blackouts.

It is time we became strict with KPC, which is a monopoly. We should open up this space so that we can have more companies distributing electricity in this country and stop the monopoly of KPC, which is making them inefficient.

They cannot innovate because they know whether they are efficient or not, they will sell electricity and determine the tariffs. They will increase the rates as and when they wish. They will make us pay for loans for projects that have not succeeded, like the Loiyangalani Wind Power Project, which took ages. A lot of money was spent by KETRACO on the project, but to date, has not been accounted for.

We cannot have an institution that does not have redundancy measures to maintain its lines. It is impossible to tell us that for the company to maintain a power line, they must switch power. What happened to the power from Uganda and Turkwel? There should be a means of interconnecting this network. So, if you are maintaining a line from Uganda, the power from Turkwel should be sufficient to run the systems.

We cannot have a nation that is not certain of its power simply because we have an institution that is a monopoly and has used this opportunity to be inefficient. Experience in this country has shown that there will be innovation if you open up to competition.

Remember the days when we used to have Kenya Posts and Telecommunications Corporation (KPTC). They were running the mail, telephone and other services. The day this institution was disbanded and new institutions came into place was when Kenyans enjoyed access to telephone services. This is how the mobile telephone sector in this country grew within a short time.

If we can stop the monopoly of KPC, every Kenyan in every part of this country will access electricity. In the northern part of Kenya where we have no dams, we shall have people willing to invest in solar energy and supply electricity to citizens. Those in Moyale and Marsabit, where we have a lot of wind, will get energy through wind power.

I support the work of this Committee and the recommendations they have made. However, as I support this Report, this House must also consider bringing back the Senates Implementation Committee to ensure that recommendations are followed up.

We cannot have Ministries receiving reports and failing to act on them. We should be effective and ensure that such critical and good work of this Committee does not fail. I ask my colleagues to consider bringing back that committee, as one of the committees in the House so that we follow up on the recommendations that the Senate has made.

I beg to support.

**The Speaker** (Hon. Kingi): Sen. Faki, proceed.

**Sen. Faki:** Asante, Bw. Spika, kwa kunipa fursa hii kuunga mkono ripoti iliyoletwa na Kamati ya Kawi ikiongozwa na Sen. Wamatinga.

Ripoti hii ni muhimu sana kwa sababu imeangalia kwa undani maswala yanayosababisha kuwa na gharama ya juu ya kawi ya umeme nchini.

Ripoti imeguzia mambo mengi. Cha msingi ni kwamba wakati umefika kubadili *monopoly* ya KPC katika kusambaza umeme nchini.

Sehemu nyingi hazina umeme. Kauli mbiu ya kampuni hii ilikuwa ni umeme mashinani ila kwa sasa hakuna umeme mashinani.

Kamati ya Kawi imesahau kupendekeza kuondolewa kwa *monopoly* ya KPC ndio wananchi wapate umeme kwa njia rahisi. Asilimia 26 ya umeme ambao KPC wananunua unapotea. Je, kampuni hii itapata faida kwenye biashara hiyo?

Kama alivyozungumza Sen. Mandago, hapo kitambo tulikuwa na shirika moja la KPTC ambalo lilikuwa linauza simu na kutoa leseni ya kupeleka barua. Lakini, huduma za kampuni hii zilikuwa duni.

Mabadiliko yalipokuja na ikawa kuna shirika la *Communication Commission of Kenya*, shirika la Telcom lilipata hasara na halijaweza kusambaza huduma nchini kote.

Tukifungua ruhusa ya kupea kampuni zingine leseni za kusambaza umeme, watu wengi watapata umeme kwa urahisi. Madeni ambayo yamejaa katika shirika la KPC yanazuia shirika hili kupata faida. Kukosa faida inamaana kwamba hawataboresha huduma kwa wananchi.

Mombasa kulikuwa na mtambo wa Kipevu I ambao ulikuwa unasimamiwa na Kenya Electricity Generating Company Plc (KenGen). Kipevu I ilikuwa kampuni ambayo ilikuwa inauza umeme kwa KPLC. Miaka mitatu iliyopita, Kipevu I ilifungwa. Mombasa tumbakia na Tsavo ambayo inaeneza umeme maeneo ya Mombasa. Ni kati ya mashirika ambayo yanaitwa IPPs.

Gharama ya umeme kutoka mashirika haya iko juu kuliko ya KenGen. Hatuoni sababu ya KenGen kuzuliwa kwani hii ni kampuni ya Serikali kama KPC. Kwa hivyo, ni rahisi mashirika haya kufanya biashara katika nchi yetu kuliko kutafuta wawekezaji wa nje kutengeneza umeme na kuuzia Kenya kwa bei ya juu.

Hii ni njama ili Kipevu I ibakie vile bila kutumika halafu baadaye watu kwenye Serikali wauziane ili wauzie wananchi umeme kwa bei ya juu.

Mwisho, umeme wetu mwingi unatokana na maji. Ina maana kwamba mvua isiponyesha kisawasawa inakuwa kwamba hakuna umeme wa kutosha.

Pwani kuna ufuo wa bahari kutoka Lunga Lunga hadi Kiunga. Kwa kutumia mawimbi ya bahari, tunaweza kutengeneza umeme ambao utakuwa ni rahisi kuliko unaotumika sasa ambao unatengenezwa kutumia mafuta ya *diesel*, ambayo ni hatari kwa mazingira. Hii ni kwa sababu *diesel* ni mojawapo ya *fossil fuels* ambazo zinaleta mabadiliko ya tabianchi ulimwenguni.

Kutumia maporomoko ya maji kuzalisha umeme ni kama kutumia upepo kama inavyofanyika kule Turkana ambako kuna pahali pa kuzalisha umeme. Hiyo inasaidia kupunguza uchafuzi wa mazingira. Umeme kutokana na vitu asili kama vile upepo ndio tunastahili kutumia ulimwenguni.

Kwa kumalizia, jua huwa linawaka katika sehemu za Pwani na kaskazini mwa nchi. Linaweza kutusaidia kutengeneza umeme, jambo ambao litasaidia kupunguza gharama za umeme katika nchi yetu ya Kenya.

Cha msingi ni kwamba ni lazima ukiritimba wa KPC uondolewe. Hilo likifanyika, bei za bidhaa zitashuka na wananchi watapata huduma bora kuliko zinazotolewa sasa.

Asante, Bw. Spika, naunga mkono ripoti hii.

**The Speaker** (Hon. Kingi): Hon. Senators, before I call upon the next Senator to contribute to this Motion, allow me to make the following communication.

*(Interruption of debate on the Motion)*

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM KANGARA  
SECONDARY SCHOOL, EMBU COUNTY

**The Speaker** (Hon. Kingi): Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon of visiting teachers and students from Kangara Secondary School in Embu County. The delegation comprises three teachers and 47 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 on my own behalf, I wish them a fruitful visit.

*(Applause)*

I will allow the Senator for Embu, Sen. Munyi Mundigi, under one minute to extend words of welcome and also take that opportunity to make your contribution to this Motion.

**Sen. Munyi Mundigi:** Asante, Bw. Spika, kwa kunipa fursa kuwakaribisha wanafunzi kutoka Shule ya Sekondari ya Kangari iliyoko katika Kaunti ya Embu. Wako hapa kujifunza yale tunafanya hapa kama Seneti.

Sisi katika Seneti huwa ni kitu kimoja. Kazi yetu kubwa ni kuangalia mambo ya ugatuzi na jinsi magavana wanavyofanya kazi katika sekta kama vile kilimo, afya na mambo mengine. Ningependa kuwakumbusha kuwa ninyi ndio viongozi wa kesho.

*(Resumption of debate on the Motion)*

Bw. Spika, sasa ningependa kuchangia Hoja ya Seneta wa Nyeri, ambaye pia ni Mwenyekiti wa Kamati ya Kawi. Wale wasiojua, kwa miaka mingi, KPLC na KenGen zilikuwa kama kampuni moja. Wakati wa uongozi wa hayati Mzee Moi, kulikuwa na shida ambazo bado ziko hadi leo.

Ilisemekana kuwa kazi ya mojawapo ya kampuni hizo mbili ilikuwa kutengeneza umeme. Kampuni hiyo ni KenGen. Mbeleni, KPLC ilikuwa inajulikana kama East African Power and Lighting Company (EAP&L) kabla iwe KPLC na sasa ni Kenya Power Company (KPC).

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

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

Bw. Naibu wa Spika, muda ulipoendelea kusonga na kampuni hizo mbili zikagawanyika, kulikuwa na msukosuko kuwa kampuni ya KenGen itaanguka. Hata hivyo, walitia bidii na kufanya kazi jinsi ilivyohitajika na kuanza kuzalisha umeme kutumia mvuke. Hapo ndipo watu walianza kujua kuhusu uzalishaji wa umeme kutumia mvuke. Hiyo ilifanya kampuni nyingi kutaka kandarasi kwa kuwa ilisemekana kuwa KPLC ingekuwa inanunua umeme kutoka kwao kabla ya kusambaza katika sehemu za nchi.

Wakati waliendelea hivyo, matapeli walianza kujiingiza na kuanza kusema jinsi wangesaidia KPLC kuzalisha umeme. Walipopewa nafasi, walianza kusajili kampuni nyingi. Watu hao walikuwa wafanyakazi wa KPLC. Kazi ya kampuni ya KenGen ilikuwa kuzalisha umeme.

Wale wasiojua, mimi nilikuwa mfanyakazi wa KPLC. Baadaye nilihamishwa na kupelekwa katika kampuni ya KenGen. Nambari yangu ya kazi ilikuwa 348. Nilifanya kazi katika kampuni ya KenGen kwa muda wa miaka 30.

Kampuni ya KenGen iliodhaniwa itaanguka iliendelea vizuri. Kampuni nyingi zilianza kuzalisha umeme baada ya kupewa kandarasi. Watu wa KPLC na KenGen walikuwa wanasambaza umeme kwanza pahali ambapo umeme ulikuwa unazalishwa kama vile Kiambeere, Masinga na Ishiara. Wakati huo, hata shule kama hii haikuwa na umeme.

Ni aibu kubwa sana kwa KPC. Kuna sheria inayosema kuwa unafaa kuacha kitu kidogo pahali unafanyia kazi. Utapata kuwa hawajajenga hata shule au kufanya kitu chochote kwa sababu hawapati faida.

Ilisemekana kuwa KPC ilianza kuwapa watu kandarasi za kununua *transformers*. Makosa yalianzia hapo. Walianza kununua *transformers* ambazo hazikuwa nzuri. Walinunua *transformers* nyingi zikawa zinatolewa kwa mlango wa nyuma. *Transformers* hizo pia hazikuwa zinadumu. Hilo lilikuwa tatizo la *procurement*.

Kulianza kuwa na ukora katika KPC. Mara nyingi nyaya za umeme zinapitishwa kwenye barabara ya Serikali. Milingoti ya umeme ilipopita katika shamba la mtu, walikuwa wanafanya ukora ili pesa nyingi ilipwe. Ukora pia ulianza wakati wa kupitisha nyaya za umeme.

Ilisemekana kuwa kukiwa na *transformer* karibu na shule, watu wangelipa shilingi elfu kumi na tano ili wasambaziwe umeme. Bei iliendelea kupanda hadi elfu thelathini. Ukora huo umekuwa ukiendelea katika kampuni ya KPC hadi leo.

Ningependa kujulisha Seneti kuwa mwaka jana, nilileta Taarifa ambapo kufikia sasa sijapata majibu. Ilikuwa kuhusu umeme ulipopotea kwa muda wa masaa 24 na kusababisha vifo vya watu. Aidha, hali hiyo ilisababisha bidhaa za wafanyabiashara kuharibika. Hata hivyo, hakuna uchunguzi uliofanywa kuhusiana na suala hilo.

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Katika miaka ya nyuma, kuna mambo mengi ambayo yalikuwa yakifanyika kama vile hesabu kutofanyika vizuri. Wakati mwananchi wa kawaida anaposhindwa kulipia umeme kwa muda wa miaka kama mitano, utakuta kuwa ana deni kubwa. Utapata kuwa kampuni ya KPC inadai watu pesa ambazo hawawezi kulipa.

Bw. Naibu wa Spika, ningependa kamati ifanye uchunguzi wa kutosha. Wanafaa kujua ugonjwa ulianza wapi leo. Kuna madeni hadi leo. Ni vigumu sana kumpa mtu kazi na kukosa kumlipa. Madeni yote yanafaa kulipwa na mambo kulainishwa ili kampuni ya KPC iweze kufanya kazi jinsi inavyofaa. Serikali ya Kenya Kwanza imeahidi kuwa mambo mengi yatakuwa yanafanywa kwa njia ya haki.

Kwa hivyo, Bw. Naibu wa Spika, mimi kama Seneta wa Kaunti ya Embu, naunga mkono Hoja hii. Nina huzuni mwingi kwa sababu Kaunti ya Embu ina *sub-county* nne. Kuna shule nyingi na watu wengi hawana umeme ilhali unazalishwa katika maeneo hayo.

Nikimalizia, sehemu za kwanza kuzalisha umeme zilikuwa Masinga, Kamburu, Kiambeere na nyinginezo. Ilijulikana kama Seven Forks Dams. Mbili hazikukamilika. Kwa hivyo, kukawa na shida. Ni shida watu kulipa kampuni ya KPC kwa sababu hata kutoa mchanga ni shida.

Ninapounga mkono, ningependa kusisitiza kuwa Ripoti hiyo iangaliwe vizuri.

Asante, Bw. Naibu wa Spika.

**The Deputy Speaker** (Sen. Kathuri): Asante sana. *Proceed, Sen. Onyonka.*

**Sen. Onyonka:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this Motion. Actually, this does not need us to say many things. I just want to agree with my colleagues.

There is no institution in Kenya today – I am sure Sen. (Dr.) Khalwale will agree with me – that is more corrupt, disorganised, based on employing relatives and friends, buys transformers which are fake and where they inflate the prices of all the wires and equipment used than KPC. They change the price of the amount of tokens one is going to pay on a weekly or daily basis. Nobody can confirm how much money KPC collects on a yearly basis.

Ever since I was born, I went to the university and became a Member of this House, this is the time I realised what cartel capture is all about. I believe that there is a cartel capture between KenGen, KPC and Geothermal Development Company (GDC). The Committee must go and do further investigations on what is going on.

How have certain individuals ended up being majority shareholders in a state corporation where they are now billionaires? How many times have you seen people being told to plant trees because KPC will be buying the trees? People planted thousands and millions of trees. What happened after that? They came back and said they would be buying concrete poles. Then the contract is given to individuals who have already done a tender and made sure that the budget is accommodating the tender for which they will be supplying those concrete poles. It is a mess.

I plead with the Committee and the Members of this House, to disband KPC and make sure we allow private companies to supply power. Let us test set the operational structures of these companies so that we can reduce the cost of power.



Mr. Deputy Speaker, Sir, I will give you an example. If today you went to Meru County and decided to set up a facility that produces solar energy, do you know that you cannot supply that solar to the grid of KPC? Neither can you be allowed to put your poles and sell that power around Meru County.

Do you know you can produce solar power at less than \$25 per kilowatt, yet, KPC keeps buying power? We have been told that there is a possibility that we have signed an agreement with Ethiopia. We do not know what is in that agreement. IPPs are still supplying power to KPC.

What is in these agreements that were signed 30 years ago? Why is the Government of President William Ruto not able to interrogate these meetings and expose the truth so that Kenyans can benefit?

I hope the President will keep his word so that we can dismantle the nonsense that is going on in KPC where we have blackouts and every year, they are changing the place where power is to be supplied to and are increasing the price we are buying power. Right now, the rains are heavy, there is excessive water, yet the reality is that power has never come down.

Mr. Speaker, Sir, with those few remarks, I hope that this House will do something about KPC and the power problem in our country.

Thank you, Mr. Deputy Speaker, Sir.

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

Proceed, Sen. Orwoba.

**Sen. Orwoba:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to make my contribution to the Report that has been tabled by the Standing Committee on Energy.

First, I congratulate the Members of this Committee. I took my time to go through it and I can tell you that they did a thorough job.

The biggest scam in every other industry in this world is IPPs. If you look at how we are engaging them, we have instituted corruption. We are saying that we do not have the capacity as KPC to produce and distribute, yet we do. We are instead putting an in-between person to trade on behalf of the Government.

When the Kenya Kwanza Government came in, we wanted to have a commission of inquiry on state capture. People were asking what state capture is. You cannot be calling out names of state capture. IPPs are a clear example of state capture. This is because this is an intentional system that has been created to facilitate deliberate efforts to weaken an institution.

Yesterday, I heard my colleagues saying that we should have transparency in terms of who are the owners of these IPPs. I absolutely agree with them.

The first thing before we talk about how to disorganise or bring down IPPs, we need to know who has been bringing our country down. That is the first step to do so that we can put the faces of these cartels and see the beneficiaries who are responsible for so many children dying when we have power cuts. That is important.

I am glad that this Report states that the first thing we have to do is unveil these companies. We have to put the faces so that we can see the people responsible for all the deaths and destruction, every single time we have power blackouts.

I am happy to see that there is a recommendation there about honouring the cheaper IPPs and dealing with the ones we have now. I am not of the opinion that we should have IPPs, I think they should be shut down.

I have heard people say that we cannot negotiate contracts. This Government has gone to China to renegotiate past loans. So, who are these people in the name of IPPs who we cannot renegotiate our contracts with? Who are they? Are they God that we cannot renegotiate what we have gotten into? When you look at how we are approaching it, we seem to be walking on eggshells.

That is why I congratulate the Chairperson and the Committee Members because they have come out without fear or favour and they have documented what they found, and have given the proper recommendations that have to be implemented.

On that issue of renegotiating with the IPPs, why should we allow them to be held hostage? We are an independent State. We are no longer under colonial rule. So, for someone to say we cannot renegotiate our contracts, are they trying to say that they are holding us hostage?

I have heard, my Chair of the delegation, Kisii County, worried about Ethiopia and the kind of contracts we have with them. Let me shed some light on that. We travelled with the Committee of National Cohesion, Equal Opportunity and Regional Integration on different matters to Ethiopia. While we were there, because I was also interested in this issue of IPPs, and what is happening and why our electricity is too expensive, the Chairperson of that Committee then, Sen. Chute, organised a sit down with the Chief Executive Officer (CEO) of the equivalent of KP in Ethiopia. We found out that Ethiopia can supply more power to Kenya at less than half the price of the cheapest IPPs that are currently listed. We asked why we were not taking up that offer since Ethiopia had given us the offer on the table.

It was very interesting for me as a legislator to learn that there are so many other offers out here that we could take up and drop these IPPs, so that we can bring down the cost of electricity.

There is a funny story that I want to tell. Before I came to the Senate, I was a Kenyan hustling out there. Ever since I came back to this country, I have lived in the house where I live now. My average electricity bill was between Kshs5,000 and Kshs8,000.

The day that I was sworn in and became a Senator, my electricity bill shot up to Kshs25,000. These are facts. It is documented. Nothing had changed. My consumption was the same. If anything, by that time, my son had gone to a boarding school, so I was even consuming less. I was in so much shock. When I asked for transparency - I have heard us talk about transparency - from the highest office of KPC till today, I am yet to receive an audited report of my metre.

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I requested for a new meter and it took so much drama for them to even come and audit whether they needed to change my meter if it was faulty. I feel like Kenyans have been held hostage because of the monopoly that KPC has.

Mr. Deputy Speaker, Sir, when we are talking about transparency, it is not only on the billing, but Kenyans are not understanding. Yes, you can say, the cost of fuel has gone up and it has affected so many things. However, I urge the Chairperson of the KP Board, my good friend, Joy Masinde to, first of all, conduct sensitisation. Kenyans want to understand what they are paying for exactly in their Bill. Is it the levies or some service charge? It is important.

It is also imperative that when we are talking about transparency, we talk about transparency at all levels in KPC, including the procurement processes. We also want transparency on the employment opportunities. I sit at the National Cohesion and Integration Committee (NCIC) and we are looking at various issues in terms of employment opportunities. You will find some of the reasons why we have a lot of corruption and shoddy deals is also because, we are not transparent on who we are hiring.

Mr. Deputy Speaker, Sir, I am so happy that we have had a Committee sit down, research, analyse and interrogate the operations and even bring out to light this issue of IPPs. Finally, there is an attempt to address the cartelism in KPC.

In summary, we are all in one way or another tied to KPC, whether it is your office or home. The fact that we are not discussing how to bring healthy competition in this industry is the first problem. We can audit the IPPs and the operations, but the question remains, do we want to be held hostage? Do we want to stay in this situation where if KPC wakes up today and they decide they want to play some shoddy business, we will all be stuck to it? No.

Mr. Deputy Speaker, Sir, this conversation should go further to develop mechanisms to open up this market. For a very long time, we had only one Telkom service provider. It took you almost eight months to get a landline. The people within that space made sure that no one else would be a player in that industry. Finally, when we cracked that whip and understood that we have to move forward as a country, look at the kind of competition that we now have in that space. We have Safaricom, Telkom and all sorts of providers in terms of internet. That competition is what we need when it comes to power producers and distributors.

Mr. Deputy Speaker, Sir, I urge my colleagues that as much as we are contributing to this Report, it would be imperative that one of us actually comes up with a Bill. We need to perhaps legislate and ensure that we have competition in that space.

With those many remarks, I am still waiting for KPC to come and conduct and audit on my average use. I have written letters, made noise and knocked on doors when my bills shot up as I said, from Kshs5,000 to Kshs25,000, on just the day that I came here and got sworn in. Those are some of the things that many Kenyans are also going through.

I look forward to the day that, finally, this industry will not be an industry of monopoly. It will be opened up and there will be competition just like the days of

landlines. We would be waiting eight months to get a landline in your home and now, everybody can just purchase a sim card and have a phone in their homes.

I am looking forward to the day that KPC will be a thing of the past.

Thank you.

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

Next is Sen. Cherarkey.

**Sen. Cherarkey:** Thank you, Mr. Deputy Speaker, Sir, for this opportunity. I have read and internalised the Report on lowering costs. The Report has given us the background very well. However, the underscoring principle of this Report with all due respect is that it was like a skirt that was long enough to cover essentials, but short enough to arouse curiosity on what is happening in the energy sector.

It is very unfortunate because the beginning of the report is overwhelming, but the recommendations are underwhelming. I expected earth shaking, radical and atomic recommendations. The Committee has done a fantastic job in research and everything, but, there is a failure at the tail end. It is like shooting in the dark.

Kenyans who are following this Motion would really have wanted to know what ails the issue of power. We have been told what makes it expensive. What is the way forward?

I agree with Senators who said that we need an implementation committee to follow up on the implementation of these recommendations. While I laud the Committee for sitting long hours and doing the research, the recommendation fell short of the target. I hope the Committee will relook at some of the recommendations.

I have heard colleagues talking about ending the monopoly of KPC. Tomorrow morning, we are doing the elections of the Law Society of Kenya (LSK). I wish all candidates for the LSK elections all the best. I can see the Chairperson *Emeritus* of the LSK Kenyan Chapter, who later became *Emeritus* Chairperson of East Africa Law Society and is a Senior Counsel. What I wanted to make---

**The Deputy Speaker** (Sen. Kathuri): What is your point of order, Senator for Kisumu County?

**Sen. Tom Odhiambo Ojienda, SC:** My point of order is for the Senator for Nandi County not to mislead the House. I was not a Chairman of the East African Law Society, I was a President. That should go on record. I was a President of the East African Law Society and a Vice President of the Pan African Lawyers Union. I am a very serious litigator.

**The Deputy Speaker** (Sen. Kathuri): Sen. Cherarkey, you are a seasoned legislator. You have been around for some time. Avoid unnecessary wars. Just stick to relevance and talk about the energy sector.

**Sen. Cherarkey:** Mr. Deputy Speaker, my apologies to my teacher and learned Senior Counsel. He should be the President, not the Chairman. However, when you go to China, Chairman is a very respectable person. So, be using it interchangeably when you travel.

I was making a point because I was taught by him constitutional law. Under the Fourth Schedule of the 2010 Constitution, counties have power to generate electricity and

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even do reticulation. I have heard my colleagues saying that we end the monopoly of KPC. The monopoly of KPC ended when the Constitution of Kenya 2010 was promulgated.

Mr. Deputy Speaker, Sir, under the Fourth Schedule on the functions of the county government, counties and individuals as well have power to generate electricity. What we have are cartels who issue licenses.

The Energy Act has not been conformed to the same standard it was envisaged with in the Constitution of Kenya, 2010. I put it on record to the Kenyans who have not read the Constitution on generation of electricity. Vihiga and Nandi counties and individuals as well can generate electricity. The only problem is that the regulatory body has been frustrated in all instances.

We can generate electricity at any given point, but the question is on the regulations that have been delayed. The issue of the Energy Act has not been reviewed to reflect the intent and its purpose.

The purposive interpretation of the Fourth Schedule on definitions of county governments should have ensured that one can do reticulation and can sue for electricity generation so that there is no monopoly of Kenya Power. That was the whole point.

Mr. Deputy Speaker, I only have five points. Secondly, we need to move from hydro-electricity generation and discuss the option of nuclear energy. I know that is a very contentious issue. We now have the Kenya Nuclear Regulatory Authority (KNRA) so that we have energy sufficiency.

We cannot talk about Sustainable Development Goals (SDGs) without looking at the sufficiency of energy. There is a common saying in the social media among the youth that when it rains, electricity *inahama*. It is like when it rains, they remove clothes from the clothes line because electricity disappears when it rains.

Some of us do not live in homes, but residences. Whenever I am at home in my palatial residence in Mosoriot, I experience continuous interruption of electricity which can run to days and weeks, yet I am somebody in the society. What about the ordinary “Wanjikus” who cannot access or call KPC?

I know there is a region in this country where there are faulty transformers in the other sector. However, I am talking about a faulty KPC generator and no one has given an explanation as to what happened to date. I expected this Report to address those faulty generators.

Mr. Speaker, Sir, I have a number of primary schools in Nandi County who suffer because of these faulty generators. Even next to my house, I cannot access electricity. I am now moving to the solar energy for lighting because KPC does not have sufficient energy to supply.

If we cannot have hydro-electricity, then we need to move to nuclear energy. We have the necessary legislation and are members of international agencies of nuclear energy. The reason we have been cautious is because of international challenges and the perception of nuclear energy has not been cordial as well.

Thirdly, Mr. Speaker, Sir, I expected the Committee to direct the Kenya Revenue Authority (KRA) to zero rate all solar products. Even as the President is pushing us to

plant more than 15 billion trees, we need to zero rate the issue of solar products so that we achieve two things.

The first one is to create competitiveness to the KP and the second one is about clean energy, which is under climate change.

Our President and Party Leader and the Leader of this country is pushing for clean energy. How can we show good will if we do not zero rate solar products? I, therefore, request that we zero rate solar products so that they become cheaply accessible.

If you go to the village nowadays, you will find that our people have bought batteries and a small solar panel for lighting and radio. We need to make them cheaper so that Kenyans can access them.

Mr. Deputy Speaker, I am happy that nowadays, you can access solar products within the country. I would have expected the Committee on Energy to order KRA to zero rate all solar products for their easy access and clean energy in the spirit of President Ruto's agenda on climate change.

Fourthly, I know they have ordered a special audit, but they should have been specific. I am the Vice Chairperson of County Public Accounts Committee (CPAC). You know my work because you have attended our sessions, especially when the Meru Governor attends. There are different forms of special audits. I would have expected the Committee to order a forensic audit because of impropriety.

Secondly, there should be an Information Technology (IT) software audit because we need to be told whether these meters we use and their payment system have been audited. We need an audit report of the IT software used by the KPC because there were allegations of corruption years back.

The third audit should be on governance. We need to be told whether KPC and other agencies such as the Energy and Petroleum Regulatory Authority (EPRA) and KenGen are being run within the governance under the Company Act, Cap 408 (Laws of Kenya).

I did not see that and I expect the entire Committee on Energy to be taking notes because I am making serious submissions that will change the intent and the character of this Report.

Mr. Deputy Speaker, Sir, there is the issue of EPRA and its role. The other day we all saw what happened in Embakasi. I am told that EPRA and some rogue Directorate of Criminal Investigations (DCI) officers collude. They go and close gas plants in Ngara, Bungoma, Eldoret and others towns and cities. It is a collusion.

The report should have recommended a clean-up of EPRA. There were lives that were lost in Embakasi. I am told this matter has been deferred to a later date. Here in Embakasi, the people who were arrested out of criminal culpability and negligence was because of regulation. There is a regulatory body called EPRA.

We do not want to see EPRA when they are adding or removing one shilling for selling diesel or petroleum. There is more than that. This Authority must be relooked into. I would have expected them to order within 90 days structural governance reorganization of EPRA. We saw the former Managing Director get arrested for taking Kshs600,000 some time back and he went on to become a Member of Parliament (MP).

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Mr. Deputy Speaker, Sir, I know you know the name because you were with him in the last Session at the 'Lower' House of the National Assembly. He would be given Kshs600,000 to approve a petrol station yet we have seen adulterated fuel on our major corridors. From Mombasa to Malaba, you will see adulterated fuel being sold, but EPRA only appears to give us pricing yet they do not do their jobs.

At Kaburengu and the interchange of Kakamega and Lwandeti, all the way to Mombasa, you will find adulterated fuel being sold. There is compliance which needs to be looked at. The Committee should look at the role of EPRA.

Mr. Deputy Speaker, Sir, the fifth point is on IPPs. However, I am perturbed and shocked by this suggestion as I was because one of the leaders in this country wants to be the Chairperson of African Union.

I know a number of IPPs personally and out of conflict of interest, I do not do this kind of business. It is unfortunate that the Committee did not give a recommendation on these expensive contracts because the final pricing is given to the consumer.

My professor of land law on conveyancing, Sen. (Prof.) Ojienda, will tell you that under the Land Law Act, if a title is acquired through misrepresentation or by fraud, that title can be cancelled.

Mr. Deputy Speaker, Sir, I would have expected that we relook this contract and order cancellation, review and renegotiation of this contract so that we save Kenyans. How can a local company be selling power to a local company using dollars? It is very unfortunate.

These are the issues that continue to undermine the cheap electricity in this Republic. I agree and call upon the Committee to still relook at this. I know their worry was that if they order a cancellation, review or renegotiation of the contract because of fraud or misrepresentation, maybe they will run afoul of court jurisdiction in terms of their jobs. However, the contract law is very clear, even in other aspects and jurisdictions.

Mr. Deputy Speaker, Sir, on the issue of approximately Kshs40 billion plus that is being owed to the KPC, I would have expected the KPC to show proof of the recovery process of these debts. I saw that Nairobi City County owes KPC more than Kshs2 billionm but the KPC has never showed any proof of how they are recovering that debt.

If I owe you or you owe me a loan, before moving to court, you must show that you have sent auctioneers and intention to collect. So, there should have been a process to show that there is recovery of that debt. There should have been proof so that we have a tide to ensure that there is a recovery process.

Regarding KETRACO, I know of Lessos, the transmission line from Chemase and old lines need to be replaced. My people around Lessos have never been compensated by KETRACO yet for their parcels of land which were taken for wayleaves.

Going into the future, we must ensure that these wayleaves are--- Both senior counsel are here, but we do not want to go to court; we want KETRACO to pay Kenyans their compensations that are being delayed.

Finally, let the KPC ensure that last mile connectivity is completed, especially in our villages. Where you come from and where I come from are predominantly agricultural areas. We need electricity for proper use.

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In conclusion, this is work in progress. I do not want to say this is an end in itself. I am happy that in terms of the Regulations and Energy Act, I have seen senior counsel Sen. Omogeni looking into this issue of the law and regulations. I want to ask him to support one of his voters, Edna Arati in becoming the general member of the LSK in tomorrow's elections.

I thank you.

*(Interruption of debate on the Motion)*

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM KISIMA GIRLS,  
SAMBURU COUNTY

**The Deputy Speaker** (Sen. Kathuri): Hon. Senators, in the Public Gallery, we have 52 students accompanied by four teachers from Kisima Girls in Samburu County who are undertaking an educational visit in the Senate.

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 visit.

I thank you.

Sen. Lemaletian, I am sure you come from Samburu County. Is it not?

**Sen. Lemaletian:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kathuri): Proceed to welcome the visitors.

**Sen. Lemaletian:** Thank you, Mr. Deputy Speaker, Sir.

I take this golden opportunity to welcome our students from Kisima Girls Secondary School. I want to encourage them to pursue their dreams with the fierceness of a northern girl and the bravery of a pastoralist child.

At the moment, we are facing a lot of attacks from our neighbouring Pokot neighbours, the bandits. As much as we are going through this tumultuous moment, I want to assure my sisters that just like Lupita Nyong'o said, that no matter where you come from, your dreams are valid. I couple that up with a quote from Colin Powell that says there is no secret to success; it is a result of preparation, hard work and learning from failure.

Without a humble, but reasonable confidence about yourself, you cannot be successful or happy. With that, I leave you with one message that to be empowered you do not have to be rude, loud or obnoxious, but to just be firm, bold and knowledgeable.

With that, I am sending each of you hugs and I promise to visit your school soon through my mentorship programme in school called Mentoring of Mentors. I promise to walk this journey with you to bust open the many doors of opportunities and to kick down all gatekeepers.

Thank you and God bless you.

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*(Resumption of debate on Motion)*

**The Deputy Speaker** (Sen. Kathuri): Thank you. Sen. Cherarkey, you mentioned a candidate for the LSK post. How did you sneak this candidate before me? Immediately after you mentioned this Edna Arati, I have just seen this candidate before my eyes. You are out of order, where I sit is not a campaign Table.

Next is Sen. Tabitha Mutinda.

**Sen. Tabitha Mutinda:** Thank you, Mr. Deputy Speaker, Sir. I rise to support the report by the Committee on Energy led by its Chairman, none other than the Senator of the great County of Nyeri, Sen. Wamatinga, and his colleague Members. They have gone down and worked on the feedback on this Report as far as power is concerned in this country.

Mr. Deputy Speaker, Sir, I join my colleagues on the concerns that have been raised as far as power in this country is concerned. I have heard colleagues champion on the issue of monopoly of the KPC. You and I know very well that any moment there is a monopoly, there is more disadvantage to the beneficiaries or the end user of the commodity. That is an indication mostly by KP.

We have cried for the longest time regarding the issues of monopoly of KPC. It is high time the way we saw companies like Safaricom coming in, enjoying a lot of monopoly and then we had Airtel and others that have come up. As much as Safaricom has still been on the lead, it is because of coming on board of other mobile service providers that today we enjoy minimal charges as far as the provider is concerned because of the different competition mechanisms that have been put in place.

With different power suppliers in this country, then more innovation will come aboard and through this, there will be more job opportunities that will be created. Where we are with KPC is like a status quo. Nothing is new or exciting. There is nothing more in the market that is different. We are still in the same space.

Mr. Deputy Speaker, I want to note and to say that today I was trying to pay for my power and I experienced the challenge of the Mpesa payment because the system is down. I think it is still down up to now unless I try again. That tells you, if I had another alternative apart from the solar issue that has been mentioned by my colleagues, I would go for it. However, I have Kenya Power which is connected to my property. So, I get stuck as much as there are other ways. The easier way, from where I sit, and being a digital ambassador, is paying *via* Mpesa, which is prompt and easy. However, they experience the same challenge. So, it stalls a lot of processes.

The Report has also shown that KPC has not invested so much in repair and maintenance. For any organization to continue carrying its objectives well, repair and maintenance is very important.

We have seen situations whereby power has to be switched off for maintenance to be done. This affects productivity and the process that should be taking place because Kenyans have to wait. There should be a mechanism that Kenya Power gives as an alternative. It can be on different lines but switching off power to do maintenance is an old culture that should be discouraged.

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I am happy that my Senator for Nairobi, Sen. Sifuna, has a Bill which I have also noted in the Report. It is going to look at the transparency issues as far as energy agreements are concerned.

It is through this old system that cartels know the tender that is coming aboard. So, agreements are done prior. In the eventuality that the agreements are settled, the output, or what that supplier needs to do, does not meet the goals. There needs to be transparency on these energy purchase agreements.

We have had issues with power loads. I am talking about issues that I have experienced as a home end user of Kenya Power. At the same time, a manufacturer of non-woven bags and a member of the Kenya Association of Manufacturers. Manufacturers have also been affected by the cost and unexpected power loads. It ends up affecting the machines or the end-home users.

This brings about the issue of compensation to the affected individuals or manufacturers which takes a long period. I am happy that the Chairperson of the Standing Committee on Energy is here to listen to this. The Report also needed to emphasize the compensation issues.

You have noted how Kenyans have invested both in their households and in their manufacturing industries. When it comes to the compensation timelines, it is a nightmare. However, when you have not paid your bill even as little as Kshs3, 000, the rate of disconnection is higher than the rate of compensation. In case of eventuality, it is very low.

I urge the Committee to try, on the different Bills that they look forward to proposing and ensure that Kenyans are compensated as per the current value. It should also factor in all the inflation rates. At the same time, the lead time that is needed to ensure that these compensations are done on time.

When the Cabinet Secretary for Energy, Hon. Chirchir, appeared before this House last year, I had the privilege to ask him the question of the supply of transformers.

Kenyans are paying. My current quotation of Kenya Power is Kshs3 million. I am expected to pay. There are no negotiations of 50 per cent. The Kshs3 million is just the cost of supply. The Value Added Tax (VAT) and the other charges are not included. That will total to around Kshs4 million. You are expected to pay but there are delays in the supply of transformers.

As I was saying, when I asked the Cabinet Secretary last time, he indicated that there were procurement challenges and delays. However, one thing that is unfair with Kenya Power is you only become their client the time you are paying or committing your funds to a supply that you need. However, the level of commitment when they are going to supply and deliver that transformer to your homestead becomes a challenge.

The issue of the Kenya Revenue Authority (KRA) has been mentioned. I agree with the proposal of alternatives to power including solar systems which are cost-effective. We urge KRA to zero-rate the solar power products so that we can have a lesser cost of productivity.

I can see my Chairperson of the County Public Investments and Special Funds Committee, Sen. Osotsi, is requesting some time so that we go to our Report on water

issues. Out of respect and aware of the input that we have put as a Committee in the Report on CPIC, I agree to his request and wrap it up at that point.

I congratulate the Committee on Energy for the good job that they have done. I also congratulate the Senate Business Committee (SBC) for prioritizing reports that the Members have wrapped up and need to be tabled in this House.

Thank you.

**The Deputy Speaker** (Sen. Kathuri): Sen. Thang'wa?

**Sen. Thang'wa:** Asante sana Bw. Naibu Spika. Naomba kuchangia hii Ripoti kwa lugha ya Kiswahili. Hii ni kwa sababu kulikuwa na wanafunzi wa shule inayoitwa Kisima, nimeona ni vizuri niongee Kiswahili.

Hapo jana, wakazi wa Kiambu walipokuwa wanaelekea nyumbani baada ya kazi, wengi wao walifika kwa nyumba zao wakapata giza. Walilala giza, wakaamkia giza na wameshinda giza mchana kutwa.

Inasemekana kuna miti iliyoanguka karibu na nyaya za umeme kwa sababu ya mvua. Hivyo ni kusema kwamba, tukijadili Ripoti kama hii ambayo imetengenezwa na Kamati ya Kudumu ya Kawi, ni vizuri kukumbusha kampuni ya Kenya Power, iwe tayari tunapopata mambo ya dharura kama hayo.

Nikichangia na kuunga mkono Ripoti hii, ningesema ya kwamba, Waziri wa Kawi, Mhe. Chirchir, akiwa na Katibu wa Kudumu wake, Mhe. Wachira, wanisikize. Wako na siku kumi na nne baada ya sisi kupitisha Ripoti hii kuleta ripoti ya waekezaji binafsi wa kuzalisha umeme. Wale *Independent Private Partners (IPPs)*.

Kenya mzima ingetaka kujua hawa watu ni akina nani na wametoka nchi gani wanaolipwa na Kenya kutumia dola ambayo iko juu sana. Tungetaka kujua hao ni akina nani. Sio hao tu, tungetaka kujua pia wenye hisa ambao wanamiliki hii kampuni. Ndio tujue ni wananchi kutoka nchi gani wanaomiliki Kampuni hii ya Kenya Power.

Bw. Naibu Spika, Ripoti hii pia imeongea kuhusu ripoti ya ukaguzi wa fedha. Hiyo inamaanisha kwamba Mkaguzi wa Fedha anafaa kutuambia kiasi cha pesa ambazo zimetumika na kampuni ya Kenya Power kwa muda wa miaka mitano iliyopita. Tunafaa kujua pesa hizo huenda wapi wakati wananchi wa Kenya wanatozwa kodi wanaponunua umeme.

Wengi hapa wamesema kwamba lazima tuondoe ukiritimba wa kampuni ya Kenya Power. Haifai kuwa na *monopoly* kwa sababu hiyo si kampuni pekee katika nchi nzima ambayo ina watu waliosoma na wanajua kuzalisha umeme. Eti lazima upate leseni kutoka kwa kampuni ya Kenya Power, ukitaka kuzalisha umeme kutumia jua. Tunafaa kumaliza *monopoly* ya kampuni ya Kenya Power. Naunga mkono yale yote yaliyosemwa na Maseneta.

Bw. Naibu Spika, ningependa kumnukuu Rais wetu, Dkt. William Ruto. Wakati alipokuwa anatoa Hotuba yake ya kwanza katika Bunge. Alisema maneno ambayo yalilenga kumaliza *monopoly* ya kampuni ya Kenya Power. Alisema kuwa Serikali yake itakubali watu kujiunga katika vikundi. Vikundi hivyo vitapewa leseni za kuviruhusu kuzalisha umeme na kusambaza kwa nyumba za watu kule vijijini.

Hiyo ni kumaanisha labda sisi ndio tumelalia masikio kama Seneti. Labda tungekuwa tumeleta Mswada hapa ili watu wa kule vijijini wapate fursa ya kuzalisha na kuuza umeme.

Bw. Naibu Spika, kaunti zina jukumu la kuzoa taka. Katika nchi ambazo zimeendelea, taka ni rotuba. Unaweza kuzalisha umeme kutoka kwenye taka. Tunapeleka pesa nyingi kwenye kaunti ilhali hakuna kaunti yoyote katika nchi nzima ambayo imeanzisha mradi wa kuzalisha umeme ili kusaidia Serikali kuu kupunguza gharama za umeme ambazo zinaendelea kupanda.

Endapo watazalisha umeme kutoka kwenye taka, itasaidia kupunguza gharama za umeme ambazo wanalipa kwenye hospitali na taa zinazowaka barabarani. Hakuna gavana yeyote amefanya hivyo. Hata kule Turkana, mahali ambapo jua linawaka mpaka usiku, hakuna mtu ameanzisha mradi wa kuzalisha umeme. Hii ndio maana tunaambia magavana kutumia pesa za umma vizuri wanapozipata. Hawafai kutumia pesa hizo kufurahisha au kuchekesha raia ama kupatia 'vifaranga'.

Bw. Naibu Spika, kule Kiambu, tunapewa mpaka samaki ambao wamewekwa kwenye vibuyu. Wananchi wengine wanawaweka kwa karai. Ni kama hawajui karai inatengenezwa kwa chuma. Inapopata moto, samaki wanakufa. Hivyo ni kusema kuwa ni vizuri wale magavana ambao tunawapa pesa wazitumie vilivyo sio kupatiana *handouts*.

Nikimalizia, hili ni jambo ambalo Kamati ya Kawi inatafikana kuangalia; gharama ya umeme katika kaunti. Matumizi ya umeme yanalipwa na kaunti. Zikilipa, pesa inaenda kwa Kenya Power ambayo ni kampuni ya Serikali kuu. Inakuwaje Serikali kuu kupatia serikali za kaunti pesa kisha baadaye kaunti zilipe tena? Tunahitaji kufanya kitu.

Bw. Naibu Spika, kama kaunti haina pesa za kulipia umeme, sio lazima Serikali kuu iwape ndio walipe. Jinsi wanavyosema, wanaweza kukata kwa kigingi. Badala ya kutuma pesa ndio walipwe, waikatie hapa kabla hawajapeleka kule, ili magavana ambao hawajui kufanya kazi wasije wakaumiza watu wetu. Wakishindwa kulipa gharama ya umeme za hospitali, wananchi wetu wanaumia. Ni vizuri pia tuangalie hilo ili umeme usije ukakatwa katika kaunti yoyote.

Naunga mkono na nashukuru rafiki yangu, Seneta wa Kaunti ya Nyeri, ambaye ndiye Mwenyekiti wa Kamati ya Kawi katika Seneti. Wamefanya kazi nzuri sana. Ni vizuri tukipitisha Hoja hii, katika siku ambazo wamesema, 14 au 21, wale wote ambao wamepatiwa majukumu lazima wayatimize kwa haraka.

Asante.

**The Deputy Speaker** (Sen. Kathuri): According to my screen, I can see two Senators willing to contribute. However, they are not around. That is Sen. Orwoba and Sen. (Prof.) Tom Odhiambo Ojienda, SC. Since there is no other Senator willing to contribute, I will call upon the Mover to reply.

Sen. Wamatinga, please, proceed.

**Sen. Wamatinga:** Mr. Deputy Speaker, Sir, I would like to start by thanking all Members for their enormous contribution and support. Indeed, this was a great job that the Committee did.

As it has been pointed out by various contributors on the Floor of this House, the energy sector is one of the areas that Kenya needs to get right for us to move forward. We know that energy is one of the key enablers of industrial development.

We know that the Kenya Kwanza Government is committed to starting agro-processing parks in all the 47 counties to provide hundreds of thousands of affordable houses. All this will have to be supplied with power. Without getting the matrix of power supply right, and getting and managing the cost of power, we will continue losing investors to neighbouring countries.

A lot has been said as to why the cost of energy is so high in Kenya, starting with electricity. We got it wrong when we brought on board Independent Power Providers (IPPs). The contracts were skewed to favour investors with little regard to consumers.

Mr. Deputy Speaker, Sir, it has been said repeatedly by various contributors to this Report that there is no contract that is cast in stone. One of the main reasons we want to know the owners and shareholders is because we want to establish a linkage that will point to misuse of power and abuse of office, so that we start a nullification process in order to save Kenyans millions of shillings that they lose every year.

It is not lost to us that the inefficiencies and issues of accountability in some of the organisations like Kenya Power that are mandated with distribution of power have led to some of the inevitable high costs. As I pointed out yesterday when I was moving the Motion, we have transmission losses of about 26 per cent.

The best practice across the globe falls under 10 per cent in some countries. If we were to get this right, that would mean we would save 15 per cent. However, there are things that must be done.

We have come to the realisation that unless we get the cost of energy right, we will not attract industrialisation, mitigate the high cost of production or attract foreign investors in this country. As a result, it is imperative that we, as Senators and leaders, sit down together, and with the implementation of the resolutions that were made by the Committee, move the energy sector towards the direction that it must take to reduce the cost of power.

Mr. Deputy Speaker, Sir, it is also not lost to us that power metres supplied by Kenya Power can be produced or assembled locally. There is a time when the Government had put in place systems and mechanisms to encourage local assembly and production to create employment.

As a country that has many challenges in creating employment, it is quite unfortunate that even some of these things like smart metres continue to be imported from foreign countries. These are things that can be produced within our institutions of higher learning that will---

*(Sen. Joe Nyutu Spoke off record)*

I will wait for the Senator of Murang'a County to finish before I continue.

As I was saying, the smart meters are something that can be produced locally by our local institutions. This will create employment and at the same time allow technology transfer.

We repeatedly do some of these things wrongly. We know that there is expected demand and in collaboration with institutions of higher learning, we can start manufacturing or assembling the smart meters so that we create employment.

As I wind up, I thank all the colleagues who contributed. I thank all the Members of the Committee for the several hours that they put in this Report. We know that we went through a tedious and frustrating experience.

We request the Members of the House that once we make the resolutions and start the implementation within the timeframes that are given, we want to see this Report realised so that we deliver to Kenyans what they expect of us.

As I conclude, the use of generators as a power generation in the matrix, is not only environmentally a major pollutant, but we also know that it is very expensive. That is why I urge all Senators in this House to start considering the technologies that are being applied by other countries. That is why I would tell people that it is important to start a conversation about whether it is indeed not time we went the nuclear way.

I say this because most of our energy sources depend on natural factors and with climate change, the reduced forest cover and the reduced water levels in our rivers will mean that the hydropower that we get will at some point get exhausted.

We know that geothermal is touted as one of the cleanest energies, yet it is being harvested in an area that is subject to tectonic movement. We can produce 10,000 megawatts of geothermal, but it is high time we ask the question, what will happen if there is a tectonic movement of the bricks underneath? We will have the pipes underneath dislocated, and the country will lose power for several years.

Therefore, it is high time we started asking ourselves, is it not the right time to go nuclear?

With the introduction of the small modular reactors with the advanced technology of non-enriched uranium, it is high time that we started this conversation just in line as we are talking about Genetically Modified Organisms (GMO). It is high time that this country started looking at that option of going nuclear.

I thank you and I beg to reply.

**The Deputy Speaker** (Sen. Kathuri): Thank you, Chairperson. Hon. Senators, according to Standing Order No.84(1), this Motion does not concern counties and, therefore, I put the Question.

*(Question put and agreed to)*

Let us go to the next Order.

**MOTION****ADOPTION OF REPORT ON NON-REMITTANCE OF PENSION  
DEDUCTIONS BY COUNTY GOVERNMENTS**

**The Deputy Speaker** (Sen. Kathuri): Chairperson of the County Public Investment and Special Funds Committee (CPIC), Sen. Osotsi, please proceed.

**Sen. Osotsi:** Thank you, Mr. Deputy Speaker, Sir. I beg to move the following Motion-

THAT, the Senate adopts the Report of the Select Committee on County Public Investments and Special Funds on non-remittance of pension deductions to the Pension Schemes by County Government entities laid on the Table of the Senate on Wednesday, 14<sup>th</sup> February, 2024.

Mr. Deputy Speaker, Sir, the CPIC in its usual engagement with counties particularly water companies, noticed that most, if not all, water companies and even county governments had a problem with the non-remittance of pension deductions. The problem was twofold.

We had non-remittance of pension by the defunct local authorities and the problem continued post-devolution. So, the Committee in its wisdom, of dealing with the problem which was a recurring query in most of the counties, decided to carry out an inquiry into this matter; that is the non-remittance of pension deduction by the county entities to the pension schemes.

We noted that counties to date, since the days of the defunct local authorities, owe pensioners over Kshs80 billion with interest and our pensioners are languishing in poverty. Some of them have even passed on, some are very poor and others have been staging demonstrations at the two schemes; the Local Authority Fund (LAPF) and County Pension Fund (CPF).

The Committee has undertaken this inquiry and has come up with several issues, which I am going to raise while moving this Motion.

Mr. Speaker, Sir, because of the interest and the huge amounts of money involved, we had an engagement with several stakeholders, and we received submissions as well.

We had an engagement with the National Treasury and Economic Planning. I thank the Cabinet Secretary, Hon. Prof. Njuguna Ndungu, for being very cooperative with the Committee; and the Kenya County Government Workers Union (KCGWU), which is the trade union wing. We had the Local Authorities Pension Trust (LAPT) which post-devolution changed to the County Pension Fund (CPF).

We had the Local Authority's Provident Fund (LAPF); the Inter-Governmental Relations Technical Committee (IGRTC); the Council of Governors (CoG) particularly the County Executive Committee Members (CECMs) for Finance and Economic Planning; the Controller of Budget (CoB); the Retirement Benefits Authority (RBA); the Kenya Revenue Authority (KRA) and the National Social Security Fund (NSSF).

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Mr. Deputy Speaker, Sir, in its appearance before the Committee, the Ministry of the National Treasury and Economic Planning submitted that the matter of outstanding pension liability was weighty and therefore requested the Committee to take the matter seriously and ensure that the pensioners who are languishing in poverty are assisted by the House. They requested the Committee to plan for a public participation forum bringing all the relevant stakeholders for deliberation. I thank the National Treasury and Economic Planning for supporting this initiative. There was a forum held in August, 2023 in Mombasa County to deliberate on this matter.

We arrived at a number of resolutions and strategies on how to resettle this huge pension debt. The Report I am presenting to the House has several observations.

First, we observed that there were great discrepancies between the data provided on the outstanding pension debt by the county governments through Council of Governors (COG) and the respective pension schemes, which are Local Authorities Provident Fund (LAPFUND) and County Pension Fund (CPF) which require further analysis and reconciliation.

Mr. Deputy Speaker, Sir, for instance, the records submitted by the pension schemes show that the liabilities amount to Kshs80.1 billion, while the data submitted by the CoG show that the liabilities stand at around Kshs40.5 billion. This is because of the interest and penalties that have been charged on the principal amount owed.

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

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

Mr. Temporary Speaker, Sir, the second observation was that there has been a significant increase in debts owed to pension schemes post-devolution. This disease did not end at the commencement of devolution. It has continued to date. Therefore, the outstanding debts owed to LAPFUND is totaling to Kshs57.5 billion out of which Kshs6.9 billion was inherited from the defunct local authorities- pre-devolution.

It was observed that Kshs50.6 billion was owed by the county governments, post-devolution. The same was observed in the data provided by the other pension schemes. The outstanding debt owed to Local Authorities Pensions Trust (LAPTRUST) by the county governments stood at Kshs33.5 billion, out of which Kshs10.9 billion represented the debt owed pre-devolution, while Kshs22.5 billion represented the debt owed post-devolution.

In the case of the National Social Security Fund (NSSF), the debt inherited from the defunct local authorities totaled to Kshs1,873,078,769 while the debt owed by county governments totaled to Kshs2.7 billion. The Committee also noted that the debts owed by the defunct local authorities were not transferred effectively thus bringing challenges in their payments.

The third major observation was that there has been an accumulation of penalties and interest due to the delay in remittance of the pension deductions and contributions. For instance, out of the Kshs2.7 billion owed to NSSF by county governments, Kshs2

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billion represented accumulated penalties. In case of the debt owed to NSSF by the defunct local authorities, out of the Kshs1.8 billion owed, Kshs1.6 billion represented the accumulated penalties.

These penalties are provided for in law as I will demonstrate later. This is also evident in the data submitted in the other pension schemes. For instance, out of the KShs57.5 billion, owed to LAPFUND in respect of pensions, Kshs51.7 billion represented accrued interest and penalties. In the case of LAPTRUST and CPF- which are managed together - LAPTRUST was before devolution and CPF was after devolution. However, the LAPTRUST and FUND still exists.

Out of the total pension debts of Kshs33.7 billion and Kshs3.7 billion owed to the two schemes respectively, Kshs23.6 billion and Kshs1.7 billion accounted for accrued interest of the two schemes respectively.

Mr. Temporary Speaker, Sir, the fourth observation was that five county governments namely; Nyeri, Tana River, Nyamira, Kakamega and Kwale signed debt payment agreements with CPF and have so far made efforts to offset the debts amounting to over Kshs160 million. Out of the five counties, only Nyamira and Nyeri Counties have fully settled their principal pension contribution.

Additionally, Kisumu, Kirinyaga, Makeni, and Bungoma counties agreed on a repayment plan with CPF. There are some counties that have entered into debt repayment plans or agreements with pensions schemes particularly CPF. A few of them have paid and others after signing the agreements have not paid.

The fifth observation was that there were shortcomings on the Retirement Benefit Act of 1997 such that it does not adequately support the collection of pension debt by Kenya Revenue Authority (KRA) when it is appointed as a collection agent under the Act. We noted this, that although Retirement Benefits Authority (RBA) has the powers under the law to regulate or manage the pension scheme, they are incapacitated. The law does not give them the power to support the collection of the pension money through KRA. We have proposed amendments in our Report to the RBA Act and KRA Act.

The sixth observation was that the stakeholders attributed to the non-remittance of pension contribution to financial challenges; the usual financial challenges that counties talk about. One was the issue of diverted pension contribution to other activities. This was brought out very clearly by the Controller of Budget (COB) that when counties make requisition, they are approved but end up paying another amount. The first casualty in that arrangement is usually statutory deductions such as pension.

The other challenge was non-sustainable pension contribution rates in the public sector, changes in employer institutional arrangements, delay in disbursement of funds by the National Treasury and State Department of Economic Planning and also administrative lapses caused by poor record keeping particularly pre-devolution.

The other observation was that successful county governments have failed to recognize or honour pension liabilities owed by counties when they came into power. Every governor who has come in has had this problem of not honoring the statutory obligations, including payment of pensions and the National Social Security Fund (NSSF).

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Mr. Temporary Speaker, Sir, we have listed other observations in the Report. The ones I have highlighted are the most crucial that the Committee considered. Out of the observations, the Committee has come up with watertight recommendations with an intention of ensuring this Senate helps the pensioners get the rightful and legally money owed.

Allow me to go through the recommendations, which are well thought-out and generated after extensive engagement with the stakeholders.

The Committee has recommended the following –

THAT the Cabinet Secretary in charge of the National Treasury and Economic Planning establishes a multi-agency task force within 30 days of the adoption of this Report by the Senate.

The agency task force will comprise the following –

A representative of the Cabinet Secretary in charge of the National Treasury, Attorney General, CEO of County Pension Fund (CPF)/LAPTRUST, Chief Executive Officer (CEO) LAPFUND, the Controller of Budget(CoB), CEO of NSSF, CEO of Retirement Benefits Authority (RBA), CEO Intergovernmental Relations Technical Committee (IGRTC), leadership of County Assembly Forum (CAF), Chair of the Council of Governors (CoG) and the Chair of County Executive Committee Member(CECM) of Finance caucus or their respective representative.

The idea behind this was to have a structured way of dealing with this problem, particularly of agreeing on the balances that are due to the pension scheme by the county governments. The balances, we thought would likely be contentious.

The Taskforce shall -

(1) Establish the actual pension liabilities by reconciling and harmonizing the amounts owed, including the principal amount owed, the accrued interest, and accumulated penalties.

(2) In the reconciliation, the Task Force shall ensure that the contribution rates of chargeable interest levied and accumulated penalties on non-remitted contributions are per the law and regulation establishing each scheme.

We had to put in this because we noted that this was the best approach to dealing with the issue of the charges and the interest. There is every possibility that there was a need to ensure that the interest and penalties charged were within the law and reasonable.

The other critical function of this task force was to develop specific strategies for implementing the Senate recommendations.

Further, they are expected to develop an appropriate formula and framework for paying pension liabilities that will enable the county governments to clear the outstanding pension debt.

Further, they will be expected to submit a bi-weekly, status report to the Senate on its activities. This is the internal mechanism the Committee has put in, to ensure that this House monitors the implementation of its recommendation.

Lastly, this task force is expected to submit a final report to the Senate within 60 days of its establishment. So, within 30 days, after passing of this Report, the Cabinet Secretary for National Treasury and Economic Planning is supposed to set up and gazette

this task force. Then 60 days after their establishment, they are supposed to present a final report to this Senate on how they want to go about resolving this issue.

Mr. Temporary Speaker, Sir, I think this is the system we have put in place to ensure that county governments will not run away, the Ministry of National Treasury and Economic Planning will do its job and all the stakeholders will be involved.

I hope that if this Report is submitted to this House, within that period we will be in a position as a Senate to have started the process of dealing with this problem.

The Committee has further recommended:

THAT, once the report of the task force is adopted by the Senate, the Attorney-General formulates debt settlement agreements between the county entities with outstanding pension liabilities and pension schemes.

The agreement shall be formulated and signed within 90 days of the adoption of the taskforce report by the Senate and shall also be signed by the Controller of Budget (CoB) and the Attorney-General as witnesses and a copy shall be submitted to the Office of the Auditor-General.

Mr. Temporary Speaker, Sir, we are putting this mechanism because we noted that, though some county governments had signed debt settlement agreements with pension schemes, they have not honoured those agreements.

Therefore, we have decided that, let the Attorney-General lead this process and have the CoB and the Auditor-General involved, so that we put in place a watertight mechanism to ensure that those agreements are adhered to.

The third major recommendation was that, if counties fail to settle the amount owed to the Pension Funds as agreed in the debt settlement agreement, the Retirement Benefit Authority (RBA) shall appoint the Kenya Revenue Authority (KRA) as a collection agent in accordance with Section 53(b) of the Retirement Benefit Tax.

In this case, the first option is to ensure that counties adhere to the debt settlement agreement they will sign. If they fail to honour those agreements, then we go to the next step. We get RBA to instruct the KRA to deduct money at source.

Subsequently, this recommendation further enhances the collection strategy that we are recommending to this House.

The fourth recommendation is that the National Treasury shall initiate stoppage of funds in accordance with Article 225 of the Constitution and Section 96 of the Public Finance Management (PFM) Act, 2012 to counties which fail to cooperate with the task force during the reconciliation process as well as counties which fail to sign the debt settlement agreement or honour the debt settlement agreement.

Mr. Temporary Speaker, Sir, this House has an important provision in law which is Article 225 on stoppage of funds. We cannot allow this problem to go on. It is unfair to the pensioners and the Committee, if we go through the process of instituting debt settlement agreement and it does not work. If we go through the Kenya Revenue Authority (KRA) way and it does not work, the next thing should be to enforce Article 225 of the Constitution, which talks about stoppage of funds.

Recommendation No.5 is that the National Treasury ensures that a county share of revenue raised by the national Government shall be transferred to the county without undue delay in compliance with Article 219 of the Constitution.

Mr. Temporary Speaker, Sir, one of the reasons counties gave for non-remittance of funds, was delayed disbursement of sharable revenue. In that case, we propose that Article 219 be enforced.

This is not just a matter of pension, but something that this House must think through. This is because the law is very clear that the money we pass when we pass the disbursement schedule, must be sent to the counties in time without due delay.

The sixth recommendation is that where there is a delay in transfer of funds from the Exchequer to County Revenue Fund (CRF), any interest or penalties attributable to the delay, shall be paid by the national Government. This is a further recommendation we are giving.

The seventh recommendation is that counties should ensure timely remittance of current and future pension obligations through the administrative and existing legal framework, including amendment to the law, to attach personal liability to the accounting officer in the event of non-remittance of funds once the funds have been received from the Exchequer.

Mr. Temporary Speaker, Sir, it is time for the accounting officers to be accountable for not remitting statutory deductions. This recommendation deals with that.

Recommendation No.8 is that the Public Finance Management Act, No.18 of 2012, be amended to provide for statutory dues such as taxes and pension deductions, as a first charge on the CRF. This is to ensure that counties pay the statutory deductions in time.

Recommendation No.9 is that the Controller of Budget (CoB) to ensure monthly payroll payments request are inclusive of any statutory dues deduction contribution before authorizing withdrawals, and to monitor payment of the same once funds are released.

This is very important because people have been asking how is it that the CoB is approving requests without factoring in the payment of statutory deduction. This recommendation will deal with that bit.

Recommendation No.10 is that the national Government, through the National Treasury, considers issuing conditional grants to counties for settlement of pension liability owed pre-devolution. However, for counties to be eligible to access the above conditional grants, the county has to produce clearance certificates or documents showing that they have cleared all the statutory duties, including tax and pension contributions that were accrued in the post-devolution period.

Counties had a problem paying debts before devolution. We are proposing that we have a conditional grant to help counties clear these debts. However, before they are given this conditional grant, they must demonstrate that they have cleared debts which they have incurred during post-devolution period.

Recommendation No.11 is that Parliament shall initiate amendments to the Kenya Revenue Authority Act, No. 2 of 1995, to anchor the collection of unremitted

contributions as part of the functions of KRA under the Act and Retirement Benefit Authority Act, 1997, to adequately guide and support the collection of pension debt by KRA. The proposed amendments are annexed to this Report.

This recommendation is important because this was one of the limitations that the KRA cited. They are unable to recover money at source because of the limitations in the Kenya Revenue Authority Act. We propose amendments to the Kenya Revenue Authority Act so that we give the KRA powers to collect non-remitted contributions included in the Kenya Revenue Authority Act.

The last recommendation is that the proposed task force considers issuance of bonds by the National Treasury for debt values above Kshs1 billion and the same deducted from the county sharable revenue. This is particularly for counties with huge debts such as Nairobi City County, which has about Kshs39 billion owed to pensioners. We propose that the Government considers giving them bonds to pay the money but the same be deducted gradually from the sharable revenue.

Mr. Temporary Speaker, Sir, before I conclude, it is important to note that the Committee appreciates the determination made by various stakeholders to appear physically before the Committee to present their responses and submissions. These appearances allowed the Committee and stakeholders to collaboratively come up with the solutions that I have presented to this House on the pressing matter of non-remittance of pension deductions.

In conclusion, I wish to register my appreciation to the Office of the Speaker, the Office of the Clerk of the Senate and the Office of the Auditor-General (OAG) for facilitating the work of the Committee and making production of these reports possible.

The Committee also appreciates members of the secretariat and liaison officers from the Office of the Auditor General, the Ethics and Anti-Corruption Commission (EACC), the Controller of Budget (CoB), and the National Treasury for their commitment and dedication to duty.

Final appreciation goes to the distinguished and dedicated Members of the Committee who are in this House. They are; Sen. Godfrey Osotsi; yours truly, Sen. (Prof) Tom Ojienda, SC; the Vice Chairperson, Sen. William Kisang', Sen. Paul Karungo Thangw'a, Sen. Miraj Abdullahi, Sen. Eddie Oketch Gicheru, Sen. Hamida Kibwana, Sen. Maureen Tabitha Mutinda and Sen. Ledama Olekina, for their dedication and creating time out of their busy schedule to attend and actively participate in the proceedings of the Committee and final production of this Report.

Mr. Temporary Speaker, Sir, on behalf of the Committee, I wish to urge the Senate to adopt this Report and the recommendations therein. This is going to unlock over Kshs80 billion that pensioners are owed by the Pension Schemes, so that pensioners are paid their money because they have suffered for long. The only House that can do that is the Senate. I beg to move.

There are so many requests to second. I request Members to allow me to ask the Senator who feels the most pain of Kshs39 billion, that is Sen. Sifuna, the Senator for Nairobi City County, to second.

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**The Temporary Speaker** (Sen. Wakili Sigei): Sen. Sifuna, proceed to second the Motion.

**Sen. Sifuna:** Thank you, Mr. Temporary Speaker, Sir. I also thank the Chairperson of the Committee on County Public Investments Committee (CPIC) for the honour of seconding the Motion. I assure Sen. Olekina that I will only take five minutes. It is the American gangster Al Capone who said that you should not mistake his kindness for weakness.

This Senate needs to get tougher on governors because they have heard Sen. Sifuna and others are strongly pro-devolution and that we will defend devolution every single day. They have started taking advantage of our kindness, even showing us a lot of what we call *madharau* in the streets of Nairobi.

Mr. Temporary Speaker, Sir, this is another opportunity for us to demonstrate to these governors that they cannot be coming to the Senate to cry for us to defend and give them resources but poor pensioners, the people retired from county governments, are not receiving their pensions and the pension funds are not receiving remittances. This is because counties have refused to remit the money.

I strongly agree with the suggestions that have been made by the Committee here. I wonder why Sen. Osotsi and the Committee went for a task force that will buy these county governments more time. I am in strong support of the recommendations by Sen. Osotsi that we need to deduct this money at the source the way the Kenya Revenue Authority (KRA) does and governors will come and cry here.

Mr. Temporary Speaker, Sir, I have seen on page 20 of the Report that counties are blaming the non-remittance of money from the Exchequer and that is why they are not remitting money to the pension fund. That would be true if they were also behind payment by only the same time the Government has failed to remit exchequer releases to them.

If you look at page 20, county governments are saying that the main cause of non-remittance of pension deductions was delayed disbursement of the County Government's Equitable Share of Revenue, where the National Treasury has consistently on average been three months in arrears when it comes to disbursement of Equitable Share, causing the delays in disbursement of pension deductions.

Our expectation is, if that is the correct position, all county governments should only be at the maximum in arrears of three months' contributions. What we know from the ground is that because these deductions are easy, and they are effected on people's payslips. What the county governments are doing is using and diverting these resources for payment of other pending bills within the county governments.

Mr. Temporary Speaker, Sir, I am a strong proponent of the Senate either doing what has been recommended here; making sure that KRA is utilised to retain these monies at source or the Senate to ring-fence monies for the payment of statutory deductions at source, in this House and on this Floor so that county governments do not continue giving pensioners stories that do not make sense.

Therefore, if you look at the breakdown of the date on page 13 of that Report, you will see that the amount of debt accumulated before devolution pales in comparison with

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what has been accumulated over the years, especially the penalties imposed for those non-remittances. As Sen. Osotsi has said, Nairobi has now become notorious and infamous. If there is any money owed by county governments, Nairobi always takes the bulk of the share.

Mr. Temporary Speaker, Sir, if you talk about pending bills, Nairobi leads in pending bills with almost Kshs100 million unpaid to suppliers. The other day when we were discussing the Report by the Committee on Energy, Kenya Power is owed Kshs3.5 billion by all counties. Out of that, Kshs2.17 billion is for Nairobi County alone.

Now, again, Nairobi is featured as the number one county. Out of the Kshs80 billion that is owed to the pension funds by county governments, it takes the share of almost half at Kshs39 billion. When you speak to the counties, you will see that in the Report, they are saying that their own-source revenues are low.

Nairobi collects almost Kshs20 billion in own-source revenue. Our total budget this year is over Kshs40 billion, in addition to the Kshs20 billion that comes from the Equitable Share.

Mr. Temporary Speaker, Sir, this House must take very strong positions on these issues because we are fighting for people who retired from these county governments years ago. People have passed on, their families are camping at the offices of CPF, Local Authorities Pensions Trust (LAPTRUST) and Local Authorities Provident Fund (LAPFUND) looking for payment of pensions that should have essentially been paid for by now.

Therefore, some of the suggestions I saw there of debt swaps with assets of county governments, and you will see that was a suggestion made by LAPFUND on page 17. I would not support that at all because this is how county government assets are going to be stripped in the guise of payment of debts. Let us use the money that is collected from Nairobians, which is due to Nairobians under the division of revenue or the equitable share to pay these pension funds because they are deducted from the employees' payslips.

Mr. Temporary Speaker, I conclude by saying that it is very unfair for you to deduct monies from an employee. If you look at the average payslip of a *Kanjo* worker here in Nairobi; they are suffering under the labour of all the taxes that have been imposed by this current regime which includes the housing levy we hear is coming before the House, the revised rates of National Health Insurance Fund (NHIF) and National Social Security Fund (NSSF).

It is only fair that if you deduct money on pensions, even if they are getting the short end of the stick in terms of taxes, they are not seeing the value of payment of their taxes. At least when they retire, we should make sure we ringfence this amount so that they are paid their dues.

For Nairobi, we will not allow the Governor to get away with this. He must remit the monies. I will do everything recommended in this Report including deducting this money here so that we find a reason to come to talk to the Senate at last.

I thank you and beg to second.

*(Question proposed)*

**The Temporary Speaker** (Sen. Wakili Sigei): Sen. Olekina, what is your point of order?

**Sen. Olekina:** Mr. Temporary Speaker, Sir, because of the interest in this matter and we only have 13 minutes, I propose that we limit debate to 5 or 3 minutes.

**The Temporary Speaker** (Sen. Wakili Sigei): Hon. Senators, let us agree. Do we limit the debate to 3 or 5 minutes?

*(Loud Consultations)*

The time limit is 5 minutes. I have my dashboard full; it means we will not conclude on this Motion. Therefore, whoever will speak, I will be very strict with time. I call upon Sen. Tabitha Mutinda.

**Sen. Tabitha Mutinda:** Thank you so much, Mr. Temporary Speaker, Sir. I will go directly because of time. I appreciate my colleagues from the County Public Investments and Special Funds Committee (CPIC) which is new. We are very happy led by our Hon. Chairperson, Sen. Osotsi, for ensuring we table this Report.

Mr. Temporary Speaker, you can see the Members of CPIC are here. This is a matter that has affected our employees in different counties. This is a matter that each Member of CPIC has been very passionate about, and it extends to other Senators in the different counties that they come from. This is because there has been a big thorn on the issue of pending, unpaid and unremitted pension.

As you know very well, the reason we have pensions is to ensure our people after retirement can get their benefits so that they can sustain their cost of living. However, on our impactment, at this point, I want to appreciate all the stakeholders that were able to come aboard led by the Ministry of National Treasury and Economic Planning, LAPTRUST, LAPFUND, the Kenya County Government Workers Union (KCGWU), the Retirement Benefits Authority (RBA), Kenya Revenue Authority (KRA) and the Real-Time Gross Settlement (RGTS). They appeared before the Committee to deliberate on the thorny issue of unremitted pensions.

We looked at what has also caused this delay. Some of the factors ranged from one of the issues that the Chairperson has pointed out on untimely disbursements of the funds to the counties.

The other thorny issue that goes way back before even some of us were born was that of the transfer of functions from the defunct local authorities. It also carried these debts during the transition to the devolved governments in 2013 which amount to about Kshs.9 billion.

It ranges from Kshs5 billion from Local Authorities Pension (LAPTRUST), Kshs3.8 billion from the LAPFund, and Kshs1 billion from National Social Security Fund (NSSF). To date there are non-remitted funds in these different institutions.

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When we met with the County Government Workers Union, they also pointed out penalties that have accrued and its interest. It also increases the cost and the outstanding bills of these pension amounts.

As Nairobi City County leads with the highest pending bills, part of those pending bills are also part of the pension funds that have not been remitted by the same counties for the longest. It has also brought a huge amount that is not remitted as of today.

We have focused on pensions as our priority as a Committee, as we realise our employees have not been able to access what has been remitted even earlier. This is simply because of the excuses even by the same stakeholders in the name of “still waiting for the employer to remit these funds.”

We are looking at a modality that is going to ensure that the Kenya Revenue Authority (KRA) is going to be an agency that will assist in collecting from the employers. We met with the KRA and they pointed out a loophole that is within the Retirements Benefit Authority (RBA) that gives it a leeway that hinders KRA from collecting the funds.

As a Committee, we have pointed out that. I believe that when this amendment is going to take place, it will sort out this issue. KRA will thus come in and be an agent between the employer, stakeholders and the Authority to ensure that they collect the funds on time.

Mr. Temporary Speaker, Sir, we also as a Committee---

**The Temporary Speaker** (Sen. Wakili Sigei): Your time is up Sen. Tabitha. Sen. Olekina, proceed.

**Sen. Olekina:** Thank you, Mr. Temporary Speaker, Sir. I will try to be very first. Five minutes is a very short time. So, I will time myself as well.

I rise to support this Report. I can find my clock here or I am wasting my time? This is a Report that demonstrated a lack of fiscal discipline in our county governments and our governance in this country.

It is about time that we try to have a balance to ensure that whatever we commit ourselves to, we fulfil. There is something we call a fiducial duty; a legal obligation for all accounting officers to ensure that whenever they deduct money from employees, they remit it.

When we were investigating this matter as to why these retirements schemes are owed so much money, it shocked me. I think sometimes when we draft legislation, we also must be very careful.

If you keenly look at this Report, and I will try to be very fast, the money owed to all these pension funds is about Kshs85 billion. However, what is Kshs85 billion? Kshs56 billion of the Kshs85 billion is penalties and interest. In essence, the principal amount owed is only around Kshs23 billion. Do you, honestly, want to tell us that, as a House, we cannot sit and decide to force these county governments, including the national Government, to ensure that the first charge of account is the Kshs23 billion in the next financial year?

Mr. Temporary Speaker, Sir, we need to have foresight on how we deal with these issues. If today, some of the Kenyan civil servants who have given their life and worked so hard for this country retire, they would spend half of their remaining time in this life going to the pension funds to collect their retirement benefits and they will be told there is no money because county governments have not remitted the money.

There are certain recommendations that we gave here. Some of them unfortunately, I was not here on the last day, I did not agree with them. This is because of the limitations of the law. Article 225 of the Constitution is very complex, where it says a Cabinet Secretary (CS) may stop the transfer of funds to county governments. That is conditional and will only last for 60 days. After 60 days, that stoppage ends there. We need to be proactive.

We need to ensure that we amend the Public Finance Management (PFM) Act, and we have an opportunity to do so. We look at Article 228 of the Constitution on the powers of the Controller of Budget. That Article 228 of the Constitution is interpreted differently based on where it sits. We know the problem and fiscal indiscipline in our counties where they requisition money and they do not pay what it is intended to do.

Mr. Temporary Speaker, Sir, I support Recommendation No.8 where we talked about the National Treasury setting up a task force. We went to Mombasa and met with the CS for National Treasury and Economic Planning at around 6.30 p.m. to discuss this issue. We agreed to go to Mombasa and call all these accounting officers.

I believe the most important things and one of the best recommendations that we ever came up with is the one that forces these accounting officers. We look at the PFM Act and make it a personal responsibility that if money is diverted, the people who are going to face the consequences are not the governors. This is because we already decided that any governor who is brought before this House will be sent home.

Article 179 of the Constitution is clear. He is the Head of the Executive authority of that county. We need to amend the---

*(The red light was switched on)*

I hate this time of five minutes.

**The Temporary Speaker** (Sen. Wakili Sigei): Sen. (Prof.) Tom Odhiambo Ojienda, please proceed.

**Sen. (Prof.) Tom Odhiambo Ojienda, SC:** Mr. Temporary Speaker, Sir, let me contribute to the adoption of the Report. I will take a very short time.

As the Vice-Chairperson of the Committee, I wish to commend the Committee specifically for the recommendations made. The recommendation for a task force will unlock the debt owed by counties. This is because the task force is not only multilateral but also because the incorporation of the National Treasury and the Auditor-General will see to it that funds are deducted at source so that non-compliant counties can respond to the framework that will be adopted by the taskforce.

The proposed taskforce recommendations were specific in terms of the time given, the 30 and 60 days, for a report and a final report made to this House. It is clear

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that in terms of the PFM Act, the strict controls that we have recommended and the role of the Controller of Budget, we will ensure that the two counties that owe the most; Nairobi City County at Kshs30 billion and Mombasa County at Kshs8 billion, are able to pay their debts through a check-off system.

Mr. Temporary Speaker, Sir, the Kenya Revenue Authority (KRA) had to be roped into this process so that, eventually, what is outstanding can be collected. The last recommendation is that it is important that bonds come into play with the need to ensure that---

### 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, 29<sup>th</sup> February, 2024 at 2.30 p.m.

When we resume, Sen. (Prof.) Ojienda will have a balance of three minutes to conclude his contribution.

The Senate rose at 6.30 p.m.