

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Tuesday, 26<sup>th</sup> March, 2024

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

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

### PRAYER

DETERMINATION OF QUORUM  
AT COMMENCEMENT OF SITTING

**The Deputy Speaker** (Sen. Kathuri): Clerk, confirm whether we have a quorum.

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

Kindly, ring the quorum bell for 10 minutes.

*(The Quorum Bell was rung)*

Hon. Senators, I can confirm that now we have quorum. Clerk, read out the first order.

### MESSAGES FROM THE NATIONAL ASSEMBLY

PASSAGE OF THE DIVISION OF REVENUE BILL  
(NATIONAL ASSEMBLY BILLS NO.14 OF 2024)

**The Deputy Speaker** (Sen. Kathuri): Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.46(3) and (4), I received the following Message from the Speaker of the National Assembly regarding the passage, by the National Assembly, of the Division of Revenue Bill (National Assembly Bills No.14 of 2024).

The Message, which is dated Thursday, 21<sup>st</sup> March, 2024 was received on Friday 22<sup>nd</sup> March, 2024 in the Office of the Clerk of the Senate. Pursuant to the said Standing Order, I now report the Message-

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PURSUANT to the provisions of Standing Orders No. 41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly:

WHEREAS, the Division of Revenue Bill (National Assembly Bill No. 14 of 2024) was published vide Kenya Gazette Supplement No.57 of 8<sup>th</sup> March, 2024 as a Bill to provide for the equitable division of revenue raised nationally between the national and county governments in the Financial Year 2024/2025 in accordance with the provisions of Article 218 of the Constitution in order to facilitate the proper functioning of governments and to ensure continuity of service delivery to citizens.

AND WHEREAS, the National Assembly considered and passed the Bill on Wednesday, 20<sup>th</sup> March 2024 without amendments and in the form attached hereto;

NOW THEREFORE, in accordance with the provisions of Article 110(4) of the Constitution and Standing Orders No.41 and 142 of the National Assembly Standing Orders, I hereby refer the Bill to the Senate for consideration.

Pursuant to Standing Order No.163 which requires that a Bill which originates in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading in accordance with Standing Order No.144; the Division of Revenue Bill (National Assembly Bill No. 14 of 2024) is listed in today's Order Paper and the Clerk will at the appropriate time read the Bill a First Time.

I thank you.

Next Order.

## PAPERS LAID

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

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Deputy Speaker, Sir, I beg to lay the following Papers on the Table of the Senate, today, Tuesday, 26<sup>th</sup> March, 2024-

Report of the Auditor-General on Financial Statements of Kisumu County Alcoholic Drinks Control Fund for the year ended 30<sup>th</sup> June, 2021.

Report of the Auditor-General on Financial Statements of Kisumu County Alcoholic Drinks Control Fund for the year ended 30<sup>th</sup> June, 2022.

Report of the Auditor-General on Financial Statements of Kisumu County Alcoholic Drinks Control Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statements of Kiambu Municipality for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statements of Limuru Municipality for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statements of Ruiru Municipality for the year ended 30<sup>th</sup> June, 2023.

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Report of the Auditor-General on Financial Statements of Makueni County Assembly State and Public Officers Car Loan and Mortgage Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statements of Makueni County Fruit Development and Marketing Authority for the year ended 30<sup>th</sup> June, 2023.

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

Report of the Auditor-General on Financial Statements of Kajiado Alcoholic Drinks Control Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statements of Baringo County Executive Car Loan Scheme Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statements of Baringo County Assembly Catering and Health Services Scheme Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statements of Baringo County Youth and Women Fund for the year ended 30<sup>th</sup> June, 2023.

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

Report of the Auditor-General on Financial Statements of Vihiga County Facility Improvement Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statements of the County Government of Vihiga – Climate Change Fund for the year ended 30<sup>th</sup> June, 2023.

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

Report of the Auditor-General on Financial Statements of Kisii Teaching and Referral Hospital for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statements of Kericho County Executive Staff Mortgage Scheme Fund for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statements of Municipality of Eldoret for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on Financial Statements of Garissa Municipality for the year ended 30<sup>th</sup> June, 2023.

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

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

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

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

**The Deputy Speaker** (Sen. Kathuri): Chairperson of the Standing Committee on Labour and Social Welfare.

Kindly, where is the Chair?

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## REPORT ON THE GAMBLING CONTROL BILL, 2023

**Sen. Murgor:** Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, 26<sup>th</sup> March, 2024-

Report of the Standing Committee on Labour and Social Welfare on the Gambling Control Bill (National Assembly Bills No.70 of 2023).

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

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

**NOTICE OF MOTION**

## STATUS OF PENDING BILLS IN COUNTIES

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir. I beg to give notice of the following Motion-

AWARE THAT, as at 31st December, 2023, according to the County Governments Budget Implementation Review Report for the first half of the Financial Year 2023/2024, county governments had accumulated a total of Kshs156.34 billion in pending bills with Nairobi City County accumulating the largest share of Kshs107,037,053,000 followed by Kiambu and Mombasa counties at Kshs5,711,614,412 and Kshs3,922,131,877 respectively;

CONCERNED THAT, the accumulated pending bills in counties have significantly affected service providers in the counties leading to the closure of businesses, stalling of county projects, adversely affecting economic growth in counties, service delivery and ultimately slowing down the country's economic growth;

*(Loud consultations)*

**The Deputy Speaker** (Sen. Kathuri): Order, Members.

**Sen. Olekina:** FURTHER CONCERNED, that most of the service providers in the counties are battling court cases lodged against them by their financiers and suppliers while others are languishing in poverty exacerbated by the increased cost of living with increased mental health disease incidences and others dying as a result of the effects of colossal amounts of debt owed to them by county governments;

NOW THEREFORE, the Senate-

(1) Recommends that all county governments pay verified pending bills amounting to less than Kshs1 billion by the end of this financial year and those above Kshs1 Billion by the end of the Financial Year 2024/2025; a

(2) Resolves that-

(i) Pursuant to the provisions of Regulation 41(2) and (3) of the Public Finance Management (County Governments) Regulations, 2015, county governments prioritise

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payment of pending bills as a first charge on the County Revenue Fund, failure to which the subsequent quotas budget releases will not be done;

(ii) County governments shall only pay pending bills contained in their respective procurement plans pursuant to Regulation 50(2) and (3) of the Public Finance Management (County Governments) Regulations;

(iii) Supplementary budgets for county governments are prepared in the third Quarter to curb instances of arbitrary re-allocations out of the approved budget estimates; and,

(iv) County governments shall conduct public participation while formulating supplementary budgets, failure to which the Controller of Budget (CoB) shall not, and I repeat, shall not approve the supplementary budgets.

**The Deputy Speaker** (Sen. Kathuri): Thank you. Next Order. Let us get the Statements under Standing Order No.53 (1).

Proceed, the Senator for Kajiado County, Sen. Seki.

## QUESTIONS AND STATEMENTS

### STATEMENTS

#### ENTRY QUALIFICATIONS FOR ECDE TEACHERS

**Sen. Seki:** Thank you, Mr. Deputy Speaker, Sir. This is a request for a Statement on entry qualifications for Early Childhood Development Education (ECDE) teachers.

I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Education regarding ECDE in the country, in light of the change of policy by the Ministry of Education and the Teachers Service Commission, raising the minimum entry qualifications into teaching service from certificates to diploma.

In the Statement, the Committee should-

(1) Indicate the number of ECDE institutions in each county as well as the collective number of teachers that have been employed at their institutions in the last two years, stating the shortfall if any,

(2) Report on the effect of the new directive that raises the minimum entry qualification into the Teachers Service for both Pre-Primary, ECDE and Primary level from certificate to diploma, with a minimum grade of a C Plain in Kenya Certificate of Secondary Education (KCSE), from the previous requirement of a D Plain, and;

(3) Further spell out measures in place to ensure that ECDE institutions will be adequately staffed in light of the directives.

Mr. Deputy Speaker, Sir I want to continue with one more Statement.

**The Deputy Speaker** (Sen. Kathuri): Kindly, continue as you had two Statements.

Proceed, with the second one.

## FATE OF TEACHERS HOLDING P1 CERTIFICATES

**Sen. Seki:** Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.53(1), to seek a Statement from the Standing Committee on Education, regarding the fate of teachers holding P1 certificates following the change in policy by the Ministry of Education and Teachers Service Commission, raising the minimum entry qualifications into the Teaching Service from certificates to diploma.

In the Statement, the Committee should—

(1) Explain the fate of all teachers who only hold a P1 certificate and might not pursue the required diploma course due to high tuition fees charged by colleges per practicum requirement and Kenyan National Examination Council (KNEC) assessment fee;

(2) State measures in place by the Ministry of Education and Teacher Service Commission (TSC) to support teachers who hold P1 certificate upgrade to diploma; and,

(3) State whether teachers who currently hold a P1 certificate will be given priority by the TSC during recruitment once they upgrade to the diploma level.

Thank you, Mr. Deputy Speaker, Sir.

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

Next is Sen. Kavindu Muthama.

APPROVED BUDGETS FOR MACHAKOS COUNTY  
GOVERNMENT FOR FYS 2013/2014 TO 2023/2024

**Sen. Kavindu Muthama:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Finance and Budget regarding the approved budgets for Machakos County Government for the financial years 2013/2014, 2014/2015, 2015/2016, 2016/2017, 2017/2018, 2018/2019, 2019/2020, 2020/2021, 2021/2022, 2022/2023 and 2023/2024.

In the Statement, the Committee should—

(1) Provide the financial search for the company details, CR12 certificates from the registered companies of each of the suppliers contracted to undertake approved projects valued at Kshs500,000 and above, listing all approved suppliers and service provided; and,

(2) Furnish the Senate with a list of all projects funded by the county government during the aforementioned financial years stating the status of each project.

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

DELAYED UPGRADING OF INFRASTRUCTURE  
IN NGURUBANI TOWN

**Sen. (Dr.) Murango:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity.

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I rise, pursuant to Standing Order No.53(1), to seek a Statement from the Standing Committee on Roads, Transportation and Housing regarding the delayed upgrading of infrastructure in Ngurubani Town, Kirinyaga County.

In the Statement, the Committee should-

(1) Explain why the road infrastructure in Ngurubani Town, in Mwea Constituency, has not been upgraded for many years, noting that aside from the town being an important administrative unit in the county, it is also the country's major agricultural market and links Kirinyaga County to other neighboring counties;

(2) State plans by the Kenya Urban Roads Authority (KURA) for the upgrade of the roads infrastructure in Ngurubani Town during the current financial year, listing the planned projects, budget and timelines for the completion of the projects.

**The Deputy Speaker** (Sen. Kathuri): Very well. Sen Beth Syengo, you have two Statements. You can read them concurrently.

#### STATUS OF DAASANACH COMMUNITY IN MARSABIT COUNTY

**Sen. Beth Syengo:** Thank you, Mr. Deputy Speaker, Sir. I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on National Cohesion, Equal Opportunities and Regional Integration regarding the access to opportunities and improvement of the quality of life and status of the Daasanach Community in Marsabit County.

In the Statement, the Committee should-

(1) State the population of Daasanach ethnic community in Marsabit County, explaining why members of the community lack the necessary national identification documentations, and further, state the steps being taken to ensure the issuance of said documents;

(2) State the number of public schools within the areas hosting the Daasanach in Marsabit County and the measures the Government is taking to ensure access to education and infrastructure development for the community;

(3) Outline the projects implemented under the Equalization Fund that seek to address the systematic issues that hamper access to opportunities and equality for the said community since the inception of the fund; and,

(4) Provide details on interventions designed to examine and resolve the systematic issues hindering marginalization of communities, particularly those in border regions, from achieving sustained and equitable development over the next decade.

Mr. Deputy Speaker, Sir, allow me to read the second Statement.

#### COMPLIANCE TO ROAD SAFETY PROTOCOLS BY SCHOOLS

Mr. Deputy Speaker, sir, I rise pursuant to Standing Order No. 53(1) to seek a Statement from the Standing Committee on Education regarding school compliance with road safety protocols.

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In the Statement, the Committee should-

(1) Explain the compliance rate by educational institutions to road safety protocols, including inspection of motor vehicles, adherence to vehicle ferrying capacity, transportation hours and branding of transport vehicles for educational institutions;

(2) Report on any observed shortcomings in the current transportation guidelines for educational institutions and propose legislative interventions, if any; and,

(3) Evaluate the training and qualifications of drivers and personnel involved in the transportation services in educational institutions, providing a record of compliance maintained by the Ministry from 2018 to date and recommend mandatory refresher courses for drivers of educational institutions in the country.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kathuri): Sen. Wafula, read the Statement on behalf of the the Meru County Delegation.

#### DELAYED REMITTANCE OF NHIF FUNDS TO HEALTH FACILITIES

**Sen. Wafula:** Thank you, Mr. Deputy Speaker, Sir. I rise on behalf of the Senator for Meru County to seek a Statement pursuant to Standing Order No.53(1), from the Standing Committee on Health concerning the delayed remittance of funds by the National Health Insurance Fund (NHIF) to health facilities.

In the Statement, the Committee should-

(1) State reasons for the delay by the NHIF to remit funds to health facilities, which has disrupted operations in several health facilities and caused the withdrawal of services by health facilities to beneficiaries of the fund;

(2) Explain plans in place to ensure NHIF settles all pending arrears, including last expense claims, even as the Social Health Insurance Fund (SHIF) is operationalized; and,

(3) Outline measures instituted by the Government to curb fraudulent claims and abuse by SHIF that characterize the NHIF.

**The Deputy Speaker** (Sen. Kathuri): Thank you very much for that support.

We have a Statement by Sen. Wakili Sigei. Is there anyone who has been assigned that responsibility? If not, then that Statement is deferred.

Sen. Olekina, proceed and read the Statement. I know where the Member is. He is on duty, so read the Statement on his behalf.

#### LEGAL COMPLIANCE OF VARIOUS ENTITIES IN BOMET COUNTY

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

I rise on behalf of **Sen. Wakili Sigei** to seek a Statement pursuant to Standing Order No.53(1) from the Standing Committee on Labour and Social Welfare regarding the composition and compliance of various boards, committees and forums in Bomet County.

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In the Statement, the Committee should-

(1) Provide an analysis of the composition of the Bomet Physical and Land Use Planning Liaison Committee, the Municipal Board of Sotik, Longisa and Bomet municipalities, the Bomet County Budget and Economic Forum, the Board of Directors of the Bomet Water and Sanitation Company and the Bomet County Climate Change Planning Committee, stating the criteria used in appointing members and the status of legal compliance of these entities;

(2) Furnish details of the advertisements for membership positions in these boards, forums and committees along with the recommendation letters from the organisations authorised to nominate candidates, appointments letters, the shortlist of selected candidates and documentations of conducted interviews if any;

(3) Present copies of the Gazette Notice pertaining to the appointment and gazette of the members of these boards, forums and committees reflecting on the procedural adherence to statutory requirements; and,

(4) Provide information on the conduct of inaugural and subsequent meetings by these boards, forums and committees tabling copies of the relevant minutes.

This Statement is signed by Sen. Wakili Hillary Sigei, MP, Senator for Bomet County.

**The Deputy Speaker** (Sen. Kathuri): Sen. Kinyua, before we come to Statements under Standing Order No.52(1), let me get a few comments from both sides. This is because your Statement does not require any comments. Let us start with Sen. Sifuna.

**Sen. Sifuna:** Thank you, Mr. Deputy Speaker. I thank the Senator for Meru County for bringing this important matter before this House.

As the people of Nairobi City County, we had the privilege of hosting the Senate Committee on Health yesterday. I take this opportunity to thank the entire Committee led by the Chairperson, the Senator for Uasin Gishu County, Sen. Mandago, for spending time with us to look at the state of health in Nairobi.

Mr. Deputy Speaker, Sir, the National Health Insurance Fund (NHIF) owes most of our facilities, if not all, money. I will just give quick examples of our level five hospitals. At Pumwani Hospital, the NHIF owes Nairobi City County Kshs15 million. That is not to count the Kshs182 million that is owed by the Linda Mama Programme. At the same time, at Pumwani Hospital, we have had to shut down some wards, for example, ward five and six because of the shortage of staff thus, reducing the capacity of the hospital.

Only two out of three of our operating theatres are functional at Pumwani Hospital because of a faulty anaesthesia machine. If this money was remitted to this facility, it would go a long way in addressing our challenges at Pumwani Hospital.

At Mama Lucy Kibaki Hospital, the Linda Mama Programme owes the facility Kshs120 million while the NHIF owes Kshs178 million. At the same time, we have a stalled neo-natal Intensive Care Unity (ICU) construction with a pending bill of only Kshs50 million. This is what has led to the contractor abandoning the site at Mama Lucy Kibaki Hospital.

If NHIF were to give us the Kshs178 million, I am sure, it would go a long way. That is more than half of the proposed budget for the construction of the neo-natal ICU,

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which includes, a burn unit that would have taken care of all the victims from the Embakasi fire blast.

At Mbagathi Hospital, where the Members of the Committee had an occasion to visit, the NHIF owes over Kshs180 million. There is a stalled outpatient department expansion block that requires only Kshs18 million, owed to the current contractor for him to return to site that he abandoned a long time ago.

Mr. Deputy Speaker, finally, Mutuini Hospital has great controversy. When I went there on the 1<sup>st</sup> of February, as part of my oversight activities, I met Dr. Obwanda, the Chief Executive Officer (CEO) of the Hospital. He actually showed me an X-ray room that has been constructed but not completed because it does not have the lead doors required of all X-ray rooms.

What was interesting is that we were told then that, we needed only Kshs700,000 to install lead doors on that building, so that we can use the X-ray machine in that particular room. Yesterday, when the Committee arrived from Nairobi, the CEO had changed the story. He is now saying that they acquired a mobile X-ray machine recently that does not require us to invest in lead doors and yet, the building is there. At Mutuini Hospital, Linda Mama Programme alone owes Mutuini hospital Kshs13 million.

Mr. Deputy Speaker, Sir, this is the right time for this House to direct that before NHIF is wound down, so that we can bring in the Social Health Insurance Authority (SHIA), all the debts owed to all county facilities should be paid.

I strongly support and I have 100 per cent faith in the Committee chaired by my friend, the Senator for Uasin Gishu, to get us this money. Yesterday, he saw for himself that, Nairobi needs this money.

The county was trying to be clever by cleaning City Mortuary with a toothbrush yesterday, thinking that, they could blind the Committee. However, since there is God, there was a nationwide power blackout when we arrived. We then discovered that the facility has had no generator from 2018. I was feeling very bad for some of my colleagues because they could not even get into the facility because of the stench. We are in a crisis in Nairobi and this Statement is timely. I want the Chairperson and the Members of the Committee on Health to save us in Nairobi. *Hatuna mahali pengine pakwenda.*

*Asante.*

**The Deputy Speaker** (Sen. Kathuri): Hon. Senators, there is a Statement by Sen. (Dr.) Khalwale. Can you read your statement as we combine all the comments?

#### DISTRIBUTION OF FAKE FERTILISER IN THE COUNTRY

**Sen. (Dr.) Khalwale:** Thank you, Mr. Deputy Speaker, Sir. This is a request for a Statement on the distribution of fake fertiliser to farmers in various parts of the country and Kakamega in particular.

I rise pursuant to Standing Order No. 53(1) to seek for this Statement from the Standing Committee on Agriculture, Livestock and Fisheries.

In the Statement, the Committee should-

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(1) Explain the circumstances leading to the impounding of over 700 bags of fake fertiliser in Malaba Constituency, Kakamega County, stating how many of this fake fertiliser bags had been distributed to or bought by farmers by the time the fake fertiliser was impounded;

(2) State how many bags of the fertiliser have been impounded countrywide, providing details of the suspects behind the packaging and distribution of the same, assess and report on the impact of the distribution of fake fertilisers and other farm inputs to farmers on food production and security in this country;

(3) Disclose how much of the over Kshs700 million reportedly allocated by the County Government of Kakamega towards the purchase of subsidised farm inputs was utilised in the purchase of the fake fertiliser.

(4) Inform the Senate of the measures in place to investigate and arrest the suspects behind the distribution of fake fertiliser to farmers and any further measures to ensure farmers are not exploited as they seek to access farm inputs during the ongoing planting season.

(5) The Committee should order for a special audit by the Auditor-General of the county's budgetary allocation expended on the purchase, procurement and distribution of the said fertiliser, including an audit on the verification and acceptance report done on the authenticity of this fake fertiliser.

I thank you.

**The Deputy Speaker** (Sen. Kathuri): Hon. Senators, if you look at our clock, you will see that we have only 20 minutes to the end of the Statements Hour. I will give three Members on each side two minutes each to comment on the Statements. You do not need to debate.

We will start with Sen. Joe Nyutu.

**Sen. Joe Nyutu:** Thank you, Mr. Deputy Speaker, Sir, for this opportunity. I will quickly comment on the Statement by Sen. (Dr.) Murango of Kirinyaga about the roads in Ngurubani Town.

I support this Statement because we have had towns that come up every other day that were not previously planned for. In my county, we have Kenol and Kabati. The Government should be responsive because it cares for its people so that when a town springs up, it should provide the necessary road network, sewer lines, water and other amenities. The Government has the Kenya Urban Roads Authority (KURA) and it should be responsive to this. Every other town that springs up should be taken care of.

Mr. Deputy Speaker, Sir, allow me to also comment on the Statement by Sen. Beth Syengo on the safety of learners on the roads. This could not have come at a better time because about two weeks ago, we lost a number of students from Kenyatta University (KU). My concern is that, sometimes the drivers of institutional buses are not used to long distances. There should be a good programme that will ensure learners of either universities or lower levels are safe on our roads.

The National Transport and Safety Authority (NTSA) should see to it that the buses are designed to transport students and the drivers are trained for long distance journeys.

Mr. Deputy Speaker, Sir, you said we do not have much time and I will end there. However, we must take care of our learners on the roads. We must respond to our towns that just spring up where most of our people live. I come from a county where we always talk of *buroti maguta maguta* and when these *burotis* are sold, we then get towns that were not previously planned for.

**The Deputy Speaker** (Sen. Kathuri): Sen. Joe Nyutu, what have you said about plots? Kindly clarify.

**Sen. Joe Nyutu:** Mr. Deputy Speaker, Sir, I meant nice plots. Our people will market them as *buroti maguta maguta*. *Buroti* means plot and *maguta maguta* means oily or good ones. That is what I meant.

**The Deputy Speaker** (Sen. Kathuri): Sen. Maanzo Daniel.

**Sen. Maanzo:** Thank you, Mr. Deputy Speaker, Sir. I will comment on Sen. (Dr.) Khalwale's Statement.

The issue of fake fertiliser is a serious matter in the country. When you hear the amount of monies involved and even the packaging that is done by Government institutions, it means that many farmers are going to be cheated.

It also means that when you plant with fake fertiliser, you are not going to have a harvest despite the good rains in the country. That also means that many residents' efforts are going to go into waste, having worked so hard in their farms believing and honestly so, that they bought the right quality of fertiliser.

This is a matter that involves crime and it should be investigated thoroughly. Most probably, it is institutionalized crime. The police have been vigilant in this matter and caught some of this fertiliser in Molo, while on transit in lorries. This is a matter that should be taken seriously by this Senate.

I am glad that I belong to the Committee on Agriculture, Livestock and Fisheries. Those people must be brought to book, recommendations made to the Directorate of Criminal Investigations (DCI) and prosecution should ensue. As a way of retribution to the farmers by the Government, it should make sure the right fertiliser gets to the farmers in good time.

Mr. Deputy Speaker, Sir, as a Senate, we have the mandate of ensuring that the counties are well taken care of. I thank Sen. (Dr.) Khalwale for taking this very fast action, bearing in mind that the farmers who got conned, believed so honestly in the Government. By the time they were discovering those were stones, they had already been cheated.

I would like to participate to make sure that these people are brought to book.

**The Deputy Speaker** (Sen. Kathuri): Sen. Cherarkey Samson.

**Sen. Cherarkey:** Thank you, Mr. Deputy Speaker, Sir. I support the Statement by Sen. (Dr.) Boni Khalwale on the issue of fertiliser. I also brought a Statement last week.

On Sunday, I said that in Kapcherop in Elgeyo- Marakwet County, that the selling of fake seeds and fertiliser should be declared a capital offence just like murder. In Nandi, we have experienced such challenges in a number of cereals depots. We have also seen this on media.

I request the Government to declare that it is a capital offence to sell fake fertiliser and seeds. If need be, those people should be treated as terrorists. If farmers get fake fertiliser and seeds, we do not get food security. As a result, Kenyans will die of hunger, which is worse than terrorism.

This is a very serious matter and we expect the Minister for Interior and National Administration, Hon. (Prof.) Kithure Kindiki, to report to the nation the mechanisms he has put in place. I also call upon the Cabinet Secretary for Agriculture and Livestock Development to dissuade fears of farmers.

Mr. Deputy Speaker, Sir, he should also call out the Kenya Bureau of Statistics. What were they doing until people, under the subsidy programme, bought fake fertiliser and seeds? Someone is sleeping on the job. They should either shape up or ship out because we cannot risk---

**The Deputy Speaker** (Sen. Kathuri): Sen. Cherarkey, for record purposes, did you just say the Kenya Bureau of Statistics?

**Sen. Cherarkey:** Yes, Mr. Deputy Speaker, Sir. Sorry, it is Kenya Bureau of Standards (KeBS). I thank you and that is why you are one of the *Njuri Ncheke* members.

*(Laughter)*

What was KeBS doing? It is embarrassing. I am told that they are mixing donkey faeces with murrum and selling to farmers. Somebody must be arrested and prosecuted. I thank the President because when he was in the Kakamega County, he declared that this is a serious travesty against farmers.

From where we farm, I assure the country that when we get the right fertiliser and seeds, the price of *unga* shall continue to go down the way it is going down.

Finally, on the issue of P1, Early Childhood Development Education (ECDE) and Diploma teachers, where do we want the D- and D+ children to go? We have a problem and we must ensure that the D- and D+ children enrol to become ECDE and P1 teachers.

Mr. Deputy Speaker, Sir, I support what Sen. Seki has said that the Teachers Service Commission (TSC) must allow affirmative action for those who have those grades. We have heard stories where they became successful.

We should call on county governments to improve on ECDE welfare, salaries and remuneration. We should also protect these teachers and call upon counties to do it as well.

I appeal on behalf of the many people who did not pass very well to go to universities and colleges, where will they go? They are our children. We must agree to allow them to be ECDE, P1 and Diploma teachers. Let us not reduce the D- and D+ preachers, pastors and religious leaders.

Mr. Deputy Speaker, Sir, even "A" people can become pastors and religious leaders. Let us not say that a child who gets a D+ or D- becomes a pastor, a sheikh a Hindu leader or any other leader.

With those many remarks---

**The Deputy Speaker** (Sen. Kathuri): There is a point of order from Sen. Mandago.

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**Sen. Mandago:** Mr. Deputy Speaker, I rise pursuant to Standing Order No.105 on a statement of fact. Can the Senator for Nandi County prove that religious leaders are people of D- and D+? I am aware of my Bishop of AIC Church, who is a Phd holder. My leader, the moderator of Reformed Church of East Africa (RCEA) is a Masters holder. Is the Senator for Nandi in order to mislead this House that religious leaders have low academic qualifications?

**The Deputy Speaker** (Sen. Kathuri): Let us get another one from the Majority Leader.

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Deputy Speaker, Sir, I agree with Sen. Mandago that Sen. Cherarkey must withdraw and apologize to religious leaders for making the assumption that pastors are academic dwarfs. It is not accurate.

My own church, the AGC, Kenya is led by a bishop who is no less than a Phd holder; a very revered academic. Even the chairperson of Ethics and Anti-Corruption Commission (EACC) - just to help Sen. Cherarkey appreciate that many of our pastors are well educated - Dr. Oginde, is an architect by training, who further went on to later study theology. He is now the Chairperson of the EACC.

I am not very sure about Sen. Faki's friend that he is mentioning but those two are very good examples. Therefore, can Sen. Cherarkey clarify that statement? If he meant that pastors or religious leaders are academically challenged, then he needs to rectify that.

**The Deputy Speaker** (Sen. Kathuri): This issue has elicited many interventions. This is not a simple matter. My late dad was a church minister in the Presbyterian Church and he was very educated. I will give five points of orders so that Sen. Cherarkey can clarify this matter of national importance.

**Sen. Joe Nyutu:** Thank you very much, Mr. Deputy Speaker. I join my other colleagues in reminding Sen. Cherarkey that religious leaders are learned people. For his information, in the Catholic Church, for example, the priests study in the seminary for almost 10 years. By Sen. Cherarkey insinuating that they have not gone to school, he should apologize and withdraw.

The second thing that I have an issue with is Sen. Cherarkey's implication again while supporting Sen. Seki's Statement that where do you want D-minuses and D-pluses to go? I want to tell him as a teacher that we should support that affirmative action and allow them to go to teaching but not because it is only in the teaching profession where people who attained D minus can work. He asked: Where do you want them to go?

Mr. Cherarkey should know that teaching is not the only place where somebody with a D- can go but I support affirmative action. That is not to mean that teachers are people of D- and Es.

Thank you.

**The Deputy Speaker** (Sen. Kathuri): Sen. Cherarkey, conclude and clarify those very important point of orders.

**Sen. Cherarkey:** Mr. Deputy Speaker, Sir, I was misheard by my colleagues because I meant people like Yesu wa Tongaren, Pastor Ngang'a and the rest like the Shakahola ones. I have tremendous respect for religious leaders. For your information, my younger brother is a parish priest here in Kitengela. He went to the seminary for 10 years. I cannot be part of people who demonize religious leaders. I said people who lead

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sect organizations in this country, like the Shakahola one. Most religious leaders are my personal friends. Most of them have done very well.

I was saying that there is a perception in society on such people, but we need to have the proper perception. If you are Yesu wa Tongaren and the rest, we will not allow you to be part of it. Also, Joho was a Governor and he was a D-

I thank you and support.

**The Deputy Speaker** (Sen. Kathuri): Sen. Osotsi, do you want to comment? Not on Sen. Cherarkey's issue.

**Sen. Osotsi:** Mr. Deputy Speaker, Sir, let me start by supporting the Statement by Sen. (Dr.) Khalwale on fake fertiliser and to add that the Committee should consider conducting an inquiry into the entire subsidized fertiliser issue. Apart from the fake fertiliser that is being supplied, we have issues around fertiliser subsidy. For instance, this House passed the additional allocation money to our counties. I remember for my county, we passed Kshs97 million.

This weekend, I was with my Governor and he said that they have not received that money. The idea around it was that counties are able to buy fertiliser that suits their soil, so that they can distribute to the farmers. However, we now have an instance where we pass money to the counties but the national Government is also venturing into a devolved role which is fertiliser subsidies. That confusion is there.

It is also important to investigate the entire supply chain because this fertiliser was supplied to the National Cereals and Produce Board (NCPB) stores. Did they check that fertiliser? This fertiliser was approved by the Kenya Bureau of Standards (KeBS). What happened? Those are the questions that we need to ask ourselves.

There was a supplier of this fertiliser to the National Cereals and Produce Board (NCPB). Who is this person? Instead of going around in circles, there are fundamental questions that we need to ask with regard to fake fertiliser so that we get to the bottom of the matter.

Two, there are some counties which are selling fertiliser at almost double the price of the national Government like Kakamega, which are my neighbours. Is there no synergy between the national Government and county governments on programmes like fertiliser subsidy?

Mr. Deputy Speaker, Sir, I want to request the Committee to look at the matter of subsidized fertiliser holistically; fake fertiliser and other issues around it, so that our people get value for money.

**The Deputy Speaker** (Sen. Kathuri): Sen. Osotsi, do you wish to be informed by Sen. Cherarkey? He wants to inform you.

**Sen. Osotsi:** Mr. Deputy Speaker, I do not want any information from Sen. Cherarkey.

*(Laughter)*

Mr. Deputy Speaker, I also want to comment on the Statement by Sen. Muthama on the issue of approved budget for Machakos County and the suppliers. This is a very important Statement. How I would wish the Committee considers doing the same for all

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the counties. What Sen. Muthama wants to achieve is to know the identity of the suppliers in Machakos County.

We have people who are senior officials in the counties, who trade with the counties either use proxy companies or companies in their name. My county is one of them and I have been observing them. Wherever they are, if they are listening to me, they should know the Senator of Vihiga is seeing what they are doing and I am coming for you. We want to know the real owners of these companies. You will find a company doing all the jobs in the county. They are the ones doing the roads, hospitals and supplying things. As a Senate, we must reign on this.

You find Chief Officers and County Executive Committee Members (CECMs) doing business with our counties. All these defeats the purpose and the spirit of devolution. I think the Committee should expand the Statement and do the same for all the 47 counties, so that we ensure that devolution makes sense and that businesses and opportunities that are available in our counties are shared within the counties, not by a few unscrupulous people who do business with our money, who are corrupt in our counties, make money and become billionaires when our people are suffering.

I support the two Statements

**The Deputy Speaker** (Sen. Kathuri): Sen. Chute Mohammed.

**Sen. Chute:** Thank you very much, Mr. Deputy Speaker, Sir. Let me take this opportunity to thank Sen. Beth Syengo for highlighting the issues of the Dassanach Community from my county. They are in North Horr Constituency. These people are super minorities. In Marsabit, we have people who are not only marginalized, they are super marginalised to the extent that even Kenyans do not know if there are people called Dassanach. If you google them today, you will realise that they have been there for many years.

During the Second World War, the Italian Panzer Army wanted to invade Kenya through the Ethiopia Border. Fortunately, the Dassanach Community defended that border to the last man. The Panzer Army could not penetrate that border. The same people are suffering today.

These people have been called Galebas, some are calling them Merilles, but they are known as Dassanach. When we visited the Dassanach about three weeks ago, we asked them how many of them had identity cards (IDs), the whole community raised their hands because they did not have IDs. The only secondary school they have has classes up to form three.

We went to the police quarters. If you go there, you will see something you have never seen in your life. It is completely dilapidated. There is nothing. The police station looks as if it had been bombed. It is like they were in Iraq or even Gaza today. That is a police station in Kenya today. I would like Hon. (Prof.) Kindiki to visit Ileret Police Station to see what is happening there. Those people are completely neglected.

The population of these people is about 40,000 as of 2007. They have no access to roads, water, employment, IDs and even hope. I asked the President some time back if these people can be given their own sub-county. That process has started and visibility of public participation has been done. Hopefully, very soon, they will get their own sub-county.

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**The Deputy Speaker** (Sen. Kathuri): Sen. Chute, remember we had agreed we take two, three minutes each. From where I sit, I can see this Statement is referred to the Committee you chair.

**Sen. Chute:** Yes.

**The Deputy Speaker** (Sen. Kathuri): So, I think it is---

**Sen. Chute:** Just give me 30 seconds to finish.

**The Deputy Speaker** (Sen. Kathuri): Okay, finish.

**Sen. Chute:** Thank you very much. Basically, what I am trying to say is this.

**The Deputy Speaker** (Sen. Kathuri): If you think the community will not be assisted when you are the Chair of the Committee, you will have a problem.

**Sen. Chute:** I will try my best, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kathuri): Conclude, Sen. Chute.

**Sen. Chute:** Let me conclude. In conclusion, there are two groups of people who are marginalised in Kenya; that is, the Elmolos and the Dassanech. My request to the Government is to empower these two groups of people. If possible, they can be given the position of a Nominated Member of Parliament. It will be very good for us.

Thank you very much, Mr. Deputy Speaker, Sir Speaker. You have cut me short, but thank you very much.

**The Deputy Speaker** (Sen. Kathuri): Those are the recommendations you would expect from your Committee. So do not preempt what you are going to do.

Sen. Olekina Ledama?

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. I would like to comment on three Statements.

I will begin with the Statement by the Senator of Meru County. The issue of the National Hospital Insurance Fund (NHIF) is something which is going to be the biggest cancer in this society. Many Kenyans are trooping into hospitals with their NHIF card, having paid the NHIF contributions, but they are sent back home without being given services.

As of June last year, NHIF owed hospitals; both private and public hospitals, about Kshs20 billion. Out of the Kshs20 billion, Kshs11.1 billion was released by the National Treasury to pay the NHIF, so that they can further pay the capitations or refund the capitation to the hospitals. Four days ago, the Cabinet Secretary of Health stated that the National Treasury had released an additional Kshs1 billion to pay these hospitals.

We all know that this House and the National Assembly passed a new SHIF Fund Act, which essentially means that we are now winding up the services of NHIF. Yesterday, when we were doing our oversight in Nairobi City County, the Chief Executive Officer (CEO) of Mbagathi Hospital lamented and complained heavily that they are now being crippled by NHIF because it is not paying these hospitals.

This reminds me that when citizens pay their contribution, it is deducted, but when they go to the hospital, they do not get services. Our courts have already spoken on this matter. Last year, there was a citizen who the court ruled that he should be refunded all his NHIF contributions. This is a very serious matter. We are now going to face one of the biggest crisis in this country because as we speak right now, all Kenyans who are

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trooping into public hospitals and private hospitals, are being sent back home if they go with their NHIF card.

So it begs the question, that we are all so eager to pass a new Health Act or SHIF Fund, which is supposed to pay for medical services for these Kenyans. What will happen to these hospitals, which are supposed to provide services, when you now go into the hospital with a new card of SHIF and that hospital is owed over a billion by NHIF?

This is a crisis. I know that you brought up this Statement, but this is one of those things that we say we should convert it into an inquiry because it only means that either our county governments are not remitting the deductions to NHIF or once the money gets there, it is diverted to other things. This is a very serious crisis and all of us seated here should be very worried about the outcomes.

The second Statement that I would like to comment briefly on is the issue of fake fertilisers. This is very interesting. A couple of days ago, I saw packets of supposedly unga, or flour, being disposed off in Naivasha. However, it was part of the fake fertiliser. People were being asked now to eat that fake fertiliser. There was an expose of a factory along the Nakuru, on the Highway that was putting soil into bags, sealing them fertiliser.

Is this a country that we live in? A country that has institutions including the Ethics and Anti-Corruption Commission (EACC), the National Intelligence Service (NIS) and the Directorate of Criminal Investigations (DCI). What exactly are we telling our Kenyans? We, as legislators, must now act and this is what it calls for us to convert even this House into a full House Committee to investigate these matters. Everyone is complaining. Life is difficult, yet you are still selling them fake fertilisers. What exactly are we telling Kenyans? That we are a man-eat-man society?

Mr. Deputy Speaker, Sir, the last Statement that I want to comment on is the brought by Sen. Kavindu Muthama. This is a very important Statement. All the 47 elected Senators ought to pay attention to that Statement. We have pending bills amounting to Kshs156 billion. These pending bills, which are over Kshs156 billion, did not start yesterday. Some of them go back to 2013.

The most important thing the Committee should do is to call for the registry to provide CR12 for every single company doing business with counties. You will find that in a county like mine of Narok, one family owns all the businesses. Is that wise? We are accumulating all these pending bills.

Once a contractor has completed their work, the Controller of Budget (CoB) is requested to remit money, but once the money gets into the county government, it is diverted to pay for other services not rendered. This is a very serious matter.

I would like to request all 47 elected Senators to follow the footsteps of Sen. Kavindu Muthama and demand for budgets and CR12 for all companies that are doing business with their county. You will be surprised. You will see that all the money is going into one pocket. This is a shame.

**The Deputy Speaker** (Sen. Kathuri): Hon. Members, my screen is full, but we need to move out of this. It is now four minutes to the end of the Statement Hour. I want to allow two Senators from this side and one from the other side.

Let us have Sen. Tabitha Mutinda.

**Sen. Tabitha Mutinda:** Thank you, Mr. Deputy Speaker, I rise to support the first Statement by Senator Boni regarding the issue of the fake fertiliser---

**The Deputy Speaker** (Sen. Kathuri): Just pick one Statement, comment on it and move to the next.

**Sen. Tabitha Mutinda:** I stand guided, Mr. Deputy Speaker, Sir. No problem.

Direct to the point, the issue of the fake fertiliser that we have seen out there is trying to paint the Government in a very negative way. Cartels are trying to come up with fake fertilisers in the National Cereals and Produce Board (NCPB) stores so that it can be seen that the Government is giving its people fake fertiliser. I agree that the cartels, that are doing this should be brought to book.

**The Deputy Speaker** (Sen. Kathuri): Sen. Tabitha, there is a point of order from the Senator for Nairobi City County, Sen. Sifuna.

**Sen. Sifuna:** Mr. Deputy Speaker, Sir, I do not mean to interrupt my colleague, but could she substantiate her allegation that it is nothing more than a scheme to paint the Government in a bad light? This is because this is a matter of concern for all Kenyans.

Some of this fertiliser has been sourced from Government stores. Some of them have come from county governments. It is a matter of concern for all of us. If indeed she has evidence that it is nothing, but a bad public relations scheme, let her substantiate it.

**The Deputy Speaker** (Sen. Kathuri): Under which Standing Order are you raising that?

**Sen. Sifuna:** Mr. Deputy Speaker, Sir, Standing Order No.105, on responsibility for statements of fact.

**The Deputy Speaker** (Sen. Kathuri): Okay. Sen. Tabitha Mutinda, proceed.

**Sen. Tabitha Mutinda:** Thank you, Mr. Deputy Speaker, Sir. The concerns for the Senator for Nairobi City County are valid. If you would have let me, as you have always been a very good listener--- My point is that the cartels should be brought to book because it paints it negatively.

That was the point that I am driving in support of this Statement by Sen. (Dr.) Khalwale, so that Kenyans stop worrying like they are doing right now. They are not sure if the fertiliser that is in the market is good or fake. I am in agreement that they should be brought to book.

Quickly, let me support the Statement by Sen. Seki regarding the issue of the ECDE teachers. I agree with this Statement. This is because our students are getting low grades, as low as grade E. I am in the front line supporting the Kenyans who got grade E in this country by offering them scholarships of International Computer Driving License (ICDL) so that they can be able to better their lives.

In that regard, you realize that the Ministry of Education curriculum has a grading system of grade A to E. Where do we leave our students who have not been able to score the highest grade and yet they contribute to the economic empowerment of this country? It is very key.

Lastly, to Sen. Kavindu Muthama's Statement in regards to the pending bills. As the Vice-Chairperson of the Standing Committee on Finance and Budget, I have asked our Clerk to submit all the pending bills for all the counties. We have realized all elected leaders are asking for the pending bills, which is very important and to which we agree.

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Further to the issue of the CR12, we cannot wait to fast-track this. I would request that you do not only ask for Machakos County. As we speak, there is an allegation of Governor, Hon. Wavinya Ndeti, that they are doing business with the son. It is all over social media. It would be prudent if we do not execute for Machakos County, but for all 47 counties, so that we can get an all-inclusive report in our Committee and share it with all Members.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kathuri): Sen. (Dr.) Khalwale, you have been overtaken by events. You did not ask much as she was concluding.

Let us get Sen. Hezena and then the two important leaders; the Deputy Minority and Majority Leaders to conclude this.

**Sen. Lemaletian:** Thank you, Mr. Deputy Speaker Sir. I rise to support the Statement by “Madam President”, Sen. Beth Syengo, on the regional integration regarding the access to opportunities and improvement of the quality of life and status of the Daasanach Community in Marsabit County.

Coming from a very marginalized community, I reiterate and add to the voice of the Senator for Marsabit County that the Daasanach Community is super marginalized.

This is a community that spans across three countries; that is, Ethiopia, South Sudan and Kenya. We have realized as pastoralists that those in the South Sudan and Ethiopian side are very well taken care of. They are given the respect and decency they deserve to as citizens of those respective countries. However, the ones in Kenya are living under complete marginalization and abject poverty. They are fit to be living like wild animals.

Coming from Samburu County, they are my neighbours. I know that most of them do not even go to school. They are just live like headless chicken in the forest. It is unfair for us to consider our nation as a sovereign State that is taking care of its citizens when we do not ensure inclusivity of all marginalized communities.

Article 100 of our Constitution advocates for the promotion of representation of marginalized groups and minority groups. It gives Parliament full power and responsibility to take care of these marginalized groups by enacting laws that protect them.

Article 204 of the Constitution establishes the Equalization Fund, which also provides basic services like roads, water, and health facilities. This community considers those things very foreign.

Article 56 of the Constitution also states that the State should put in place affirmative action programmes. The other day, we were just discussing the Equalization Fund. These are the communities that were in my mind while I was trying to argue this.

Mr. Deputy Speaker, Sir, marginalized and minority groups should be given the right to participate in governance and given special opportunities in education to restore their human decency.

Some may argue that the Daasanach people belong to Ethiopia more than to Kenya. However, our Constitution equally gives rights to dual citizenships, and through that, we need to take this matter with the seriousness and urgency it deserves.

I am so happy that the matter has been referred to the Standing Committee on National Cohesion, and Integration, which is chaired by the esteemed Senator for Marsabit County, Sen. Chute, and these people come from their community.

So, I beg that whatever report they come up with, we support it fully as Kenyans. This is because we cannot be proud to be a majority community without taking care of the marginalized community.

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

**Sen. Tabitha Keroche:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I support Sen. (Dr.) Khalwale's Statement. I know why Sen. Tabitha Mutinda is struggling to talk when the Senate Deputy Majority Whip is correcting. It is a shame being on this side of Government considering what is happening on the ground. It is a big shame that we can allow fake fertiliser to be distributed in Kenya. We know what that means. It is about food security, which will affect all of us even those selling fake fertiliser.

Sen. Olekina has mentioned a Nakuru County based company, which we all saw in the media. However, we all know who ran the story; the journalist by the name John Allan Namu. Everybody knows that when he runs a story we need to revisit it again. I am saying so because the story is about Nakuru County. We need to determine whether what he said was true or false. The Senator for Nakuru County is watching day and night to ensure that the county does what is required of it and it is not depicted negatively by those cartels distributing fake fertiliser. As a county, we must set a good example in this country. We have always strived to be number one. If you want to know how to govern counties, come to Nakuru.

I will bring that report here and check on the company that was mentioned by John Allan Namu. We all know him and what he does. We deserve to have all the information, so that we do not get lost and say things that sometimes makes us look stupid. I am on it and I shall bring the report here to ensure we all know what is happening.

*(An hon. Senator spoke off record)*

I thank you. He have always been a very good listener.

**The Deputy Speaker** (Sen. Kathuri): Lastly but not least, Senate Deputy Minority Leader.

*(Loud consultations)*

Order, Senators! Sen. (Dr.) Khalwale, Order!

**Sen. Wambua:** Mr. Deputy Speaker, Sir, this is a House of records and as a journalist in this country, it is important that we also protect the industry. It is not fair or right to despise a practicing journalist in the manner that I have heard. Having said that, I will be brief on the comments for the Statement sought by Sen. (Dr.) Khalwale.

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Mr. Deputy Speaker, Sir, we are talking about fake fertiliser, but we are getting it wrong. What we are dealing with is not fake fertiliser, but stones and donkey faeces. When you say fake fertiliser, somebody might think there are elements of fertiliser in that substance, but there is not. We have had many scandals around the fertiliser subsector in this country.

In most cases, it has been issues of overpricing, hoarding and delivering it too late to be of benefit to farmers. However, what we are dealing with now is new row; the NCPB depots have been used to store and distribute stones and donkey faeces in the name of fertiliser. In a functioning democracy, the NCPB---

*(Several Senators spoke off record)*

**The Deputy Speaker** (Sen. Kathuri): There is a point of order from the Senate Majority Leader.

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Deputy Speaker, Sir, under Standing Order No.105, Sen. Wambua knows that as you go on record you need to be factual on statements. We have all followed this fake fertiliser scandal or whatever you want to call it. However, up to now Sen. Wambua, I do not think there has been any clarification or confirmation that a farmer went to the NCPB stores and bought fake fertiliser.

The fake fertiliser that is in distribution - and gathering from all the stories I have watched, so far - is from people tricking farmers by selling them bags on the side as they wait from the Government sourced fertiliser. However, to bring down a reputable institution like NCPB for whatever gain, is not fair. Unless he wants to table before this House a confirmation that he has bought fake fertiliser from NCPB, then we will be convinced.

As it is, I wish that he confirms to this House that, indeed, he knows someone who bought fake fertiliser from NCPB. Moreover, he can carry on like the rest of the colleagues and everyone concerned, but he should tread within the realms of logic and truth.

**The Deputy Speaker** (Sen. Kathuri): Sen. Wambua can you clarify or substantiate that statement?

**Sen. Wambua:** Mr. Deputy Speaker, Sir, I respect the Senate Majority Leader. I do not understand where he is coming from because that is a matter in public domain, that farmers have complained that the fertiliser they have received is not fertiliser, but stones and donkey faeces.

Secondly---

*(Several Senators spoke off record)*

**Sen. Wambua:** Wait, kindly. Mr. Deputy Speaker, Sir, we can only speak through you. Kindly relax, hon. Senators.

For the information of this House, this is a Statement that has been brought here by no other than the Senate Majority Whip. It is on record, that a multi-agency team has impounded fertiliser in NCPB depots.

**The Deputy Speaker** (Sen. Kathuri): Sen. Wambua what you are supposed to do is either withdraw or provide those facts. It is very easy.

**Sen. Osotsi:** Mr. Deputy Speaker, Sir, can I inform him?

**Sen. Wambua:** I am ready to be informed by Sen. Osotsi.

**The Deputy Speaker** (Sen. Kathuri): No, kindly substantiate first then you shall be informed.

**Sen. Wambua:** Mr. Deputy Speaker, Sir, the level of agitation with the Senate Majority Leader is scary. For purposes of making progress, let me withdraw the statement---

**The Deputy Speaker** (Sen. Kathuri): Proceed. You are a wise gentleman.

**Sen. Wambua:** Let us make progress. As you insist, the Kenya Bureau of Standards (KEBS) and NCPB have a responsibility and duty of care to farmers in this country. They are the State agencies through which all important commodities are processed and distributed to farmers. They must ensure that the product that gets to farmers is legit. In a functioning democracy, the bosses of these institutions would have resigned to pave way for serious investigations.

*(Sen. Sifuna spoke off record)*

**The Deputy Speaker** (Sen. Kathuri): Sen. Sifuna avoid speaking on behalf of other Members. Hon. Senator, you have been doing so well for the last few weeks. However, I can see that you want to ruin the good things you have been doing.

Kindly proceed, Sen. Wambua.

**Sen. Wambua:** Mr. Deputy Speaker, Sir, let me---

*(Sen. Sifuna spoke off record)*

**The Deputy Speaker** (Sen. Kathuri): Sen. Wambua is very well informed. I do not think he---

**Sen. Wambua:** Mr. Deputy Speaker, Sir, I would not mind being informed by Sen. Sifuna or Sen. Osotsi because they are consumers of fertilisers. They are farmers---

*(Loud consultations)*

**The Deputy Speaker** (Sen. Kathuri): Sen. Wambua, your time is almost over. Kindly conclude.

*(Sen. Sifuna and Sen. Orwoba consulted loudly)*

Order, Sen. Sifuna and Sen. Orwoba!

**Sen. Wambua:** Mr. Deputy Speaker, Sir, I thought I was in the Senate.

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**The Deputy Speaker** (Sen. Kathuri): Sen. Wambua, conclude your statement.

**Sen. Wambua:** Mr. Deputy Speaker, Sir, I will move from the fertiliser business because it brings unnecessary tension in the House. I will comment on the Statement by my neighbor, the Senator of Kajiado, Sen. Seki, on the matter of ECDE teachers.

As a House, we must understand that the Constitution of Kenya has devolved ECDE to build strong foundations for the education of our children. The teachers who are given the responsibility to teach our young people must be properly qualified.

As the Committee handles this matter, I would strongly suggest that the scheme of service for ECDE teachers be rolled out uniformly for all the counties so that the teachers who are beginners at the entry point know what their starting salaries are and their career progression path.

An ECDE teacher in Kitui County should aspire, and rightly so, to be a university professor in seven years. However, the situation is that ECDE teachers are being treated badly by almost all the county governments in this country. I come from a county where somebody woke up in the morning and decided to reduce the salaries of ECDE teachers and sent others home without following procedure. The Committee should take this matter seriously.

Lastly, Sen. Kavindu Muthama, thank you for daring to open a can of worms because that is precisely what you have done. For daring to lift the lead on the level of corruption and theft of county resources by county governors, their families and cronies through companies that are registered either directly under their names or through proxies. I urge the committee to which this Statement will be committed to invite Senators from all 47 counties to look at the rot in our counties and expose the theft that has been taking place for all these years.

I support the Statement and I ask the majority leader to relax. We are okay.

**The Deputy Speaker** (Sen. Kathuri): Thank you, Senator. Sen. Kinyua, let us get your Statement under Standing Order No.52(1).

ONGEZEKO LA WIZI WA MIFUGO KATIKA  
KATA YA YETHI, KAUNTI YA LAIKIPIA

**Sen. Kinyua:** Asante, Bw. Naibu Spika, kwa kunipa fursa hii. Nimesimama kuambatana na Kanuni ya Kudumu 52(1) kutoa kauli ya jumla kuhusu suala muhimu la kitaifa kuhusu hali ya usalama katika Kaunti ya Laikipia.

Hali ya usalama katika Kaunti ya Laikipia imekuwa ya kutatanisha, hasa katika kipindi cha wiki moja iliyopita. Visa vya kutishia hali ya usalama katika Kaunti ya Laikipia vimekuwa vikiongezeka kadri siku zinavyopita.

Kisa cha hivi punde ni kile kilichotokea usiku wa jana, tarehe 25 Machi, 2024. Wezi walipovamia Kata ya Yethi katika eneo la Daiga, Wadi ya Mukongondo mashariki katika Kaunti ndogo ya Laikipia Kaskazini. Katika kisa hicho, wezi waliokisiwa kuwa tisa waliiba na kutorosha ng'ombe wanne na mbuzi 30, mali ya Bw. Martin Mugi Wangai, Chifu wa Kata ya Yethi, pamoja na jirani yake Bw. Boniface Muriithi. Siyo hayo tu, walimshambulia Bw. Muthoga wa Karuiru, kumchapa kichapo cha mbwa na kumuacha hali mahututi.

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Hali hii ya utovu wa usalama inazua hofu miongoni mwa wakazi wa Kata ya Yethi na maeneo jirani, hasa ikizingatiwa visa hivi vya utovu wa usalama vinazidi kukithiri kila uchao. Inatia hofu zaidi, visa vya utovu wa usalama vikiwalenga maafisaa wanaotarajiwa kuisaidia Serikali kuu katika utekelezaji wa usalama mashinani kama vile machifu.

Wakazi wanadai kuwaona wezi hao wikitokomea porini. Licha ya polisi kuwa andamana wezi hao kwa magari maalum ya vyombo vya usalama na ndege ya Ranchi ya Borana kutoa usaidizi wa angani kuwatafuta wezi hao, hawakuwapata. Hatimaye jioni saa tatu kasoro dakika kumi walishambulia chifu na kumuibia mifugo yake.

Ikiwa chifu atalengwa katika mashambulizi ya aina hii, basi ni dhahiri kuwa usalama umedorora sana na raia hawapo salama kamwe. La kusikitisha zaidi ni kwamba shambulizi hilo la hivi punde katika Kata ya Yethi lilifanyika katika makazi yalio karibu sana na kituo cha polisi ila polisi hawakuwakabili kwa dharura.

Nikihitimisha kauli yangu, ningependa kuvisihi vyombo ya kitaifa vya usalama kukabili hali hii ya utovu wa usalama katika kaunti nzima ya Laikipia ili kuwahakikishia raia uhuru wa kuendelea na shughuli zao za kila siku pamoja na usalama kama ilivyonakiliwa kwenye Katiba ya nchi.

Hasa ningependekeza maafisa zaidi wa vitengo mbalimbali vya kudumisha usalama kuelekezwa kwa dharura kushika doria nyakati za usiku katika maeneo yaliolengwa sana na wizi wa mifugo na visa vyovyote vile vya ukosefu wa usalama katika Kaunti ya Laikipia. Kwa kufanya hivyo, wakazi wa Kaunti ya Laikipia watahisi kuwa vilio vyao vimesikizwa na hatua kuchukuliwa. Rumuruti kulishambuliwa vijana wawili walipokuwa wakitoka kanisani na kuuwawa papo hapo. Kwa hivyo, tunahitaji usalama.

**The Deputy Speaker** (Sen. Kathuri): Thank you. Clerk, next Order.

## BILL

### *First Reading*

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

*(Order for First Reading read – Read the First  
Time and ordered to be referred to the relevant Senate Committee)*

**The Deputy Speaker** (Sen. Kathuri): Thank you. Clerk, next Order.

## BILL

### *Second Reading*

#### THE COUNTY BOUNDARIES BILL (SENATE BILLS NO.6 OF 2023)

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*(Sen. M. Kajwang' on 5.3.24)*

*(Resumption of debate interrupted  
on 20.3.24 – Afternoon Sitting)*

**The Deputy Speaker** (Sen. Kathuri): Hon. Senators, the debate on this Bill was disrupted on Wednesday, 20<sup>th</sup> March, 2024. Sen. Oketch Gicheru had eight minutes. If he is around, he can use his eight minutes. If not, we can get to the next Senator who wishes to contribute. My screen is full again. I do not know who is for this Bill or the previous order that is Statements. Sen. Olekina and Sen. Crystal Asige are appearing on the screen and are not in the House. Sen. Faki, would you wish to contribute?

This is the County Boundaries Bill (Senate Bills No.6 of 2023). It is only the Majority Leader who wishes to contribute. We have Sen. Osotsi requesting. However, I can see you spoke twice.

Let me give you two minutes to rectify this mess.

Proceed, Sen. Cherarkey.

**Sen. Cherarkey:** Mr. Deputy Speaker. Sir, from the onset, I want to congratulate my super Chair and ranking Member, my brother, Sen. M. Kajwang', for bringing this Bill.

This Bill is long overdue and it will cure many challenges that we have seen over time. I want to say that as Nandi County, we want this Bill to be enacted to law as per the provisions of Article 188 of the Constitution that provides for the procedure of altering county boundaries.

Mr. Deputy Speaker, Sir, I know even as we have a discussion of this, we have had a challenge of delimitation of boundaries, especially since last year when we had postponed it. I saw in an advert or a newspaper that 24 constituencies across the country are supposed to be wiped out; what we call protected constituencies. I know you understand - because you are an immediate former Member of the 'lower' House - that there are specific constituencies that were called protected. They are 24 in number.

On the issue of county boundaries, we have challenges. For instance, in Taita and the neighbouring county of Kwale. We have challenges in Nandi County with Kisumu and Kakamega. There is the issue of Sondu between Kericho and Kisumu counties. I want to agree that the people who will review these boundaries will have the status of a High Court, so that when they sit, it can be approved by the President. In this resolution, we must be very careful with these county boundaries because it breeds inter-community differences or fights. It also affects revenue collection.

Mr. Deputy Speaker, Sir, the Chair who is also the sponsor of this Bill understands very well that most of the counties have found it to be a big challenge, especially in terms of revenue collection on own-source revenue. For instance, Sen. (Dr.) Khalwale will tell you that Maseno Town is in Kakamega while Sen. (Prof.) Ojienda will tell you it is in Kisumu. The same thing with other areas.

Consequently, the status that has been given in these county boundaries disputes, we must ensure there is a committee that looks into it. I want to propose that people who

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sit in these mediation committees should be people who are above 60 years; people who have “eaten salt” ama *wamekula chumvi* or who have experience because they have what we call institutional memory. We cannot form a mediation committee and put a 20-year-old. You know, these things also need reason, sobriety and veterans - I can see Sen. Faki is excited. These are people who become repository of history and wisdom.

Mr. Deputy Speaker, Sir, while I agree that we must have a reflection of women and young people in these mediation committees, the majority should be people who are old enough, have experience and a background on the issues of land adjudication and the legal background. Nonetheless, at the end of the day, we must ensure that this mediation committee is properly constituted and also ensure that it has people with a good track record. For instance, in Chemase and Kisumu, there is what we call Peace Corps.

Under Clause 12 on powers of the committee, they should be given, so that we summon or resolve the challenges. It is the intention of this law that has been proposed to resolve the challenges. When they have the status of the High Court, it will have the same status as the Senate. They will enjoy the quasi-judicial powers to ensure they summon any witness, especially on boundary issues.

On the issue of a petition, this is a right given to every Kenyan. I saw somebody talking about representation. We represent Kenyans and you can ask something about Nandi or Meru. Everybody can make a petition to Parliament. It is their obligation. We should not be worried that so-and-so has brought a petition. Therefore, it should be treated like that. Under Clause 17, it has provided that even a Senator, a Member of the County Assembly and any other person can petition.

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

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

On the issue of the Independent Electoral and Boundaries Commission (IEBC), I know now we are having challenges in the reconstitution of the IEBC. I remember we were somewhere where we were overseeing the selection panel of IEBC. They were supposed to recruit commissioners, but because of the National Dialogue Committee (NADCO) report, we were told to wait. However, are you realizing that the number of wards and constituencies like Banisa and the rest do not have Members of Parliament? Therefore, where do we disfranchise? Do we dis-represent?

Those are some of the challenges that we, as a House, need look into. Clauses 23 and 24 provide that the IEBC should have one commissioner. If we were to pass this law and the President has appointed the Chair under Clause 24, where will this commissioner come from if the IEBC at the moment is not constituted?

We are waiting for the NADCO report to be implemented. I am happy there is the Principal Secretary of the National Land Commission representing fiscal planning, PS License Surveyor, another of secretaries and practising advocates. Additionally, qualifications, conduct and removal from are obvious.

On inquiry, that is what I want to react on. The second last point of the clause provides that-

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“A commission established under shall within 90 days of receipt of the petition.”

Since the issue of boundaries is sensitive, I would propose that three months is a bit shorter. If we are looking at historical boundary issues, we cannot tell me that 90 days is sufficient. I wish the sponsor of the Bill would listen very keenly as I dispense wisdom on this. He should have a notebook and a pen because I am making Solomonic directions from here.

Mr. Temporary Speaker, Sir, on the issue of petition, looking at historical issues, including injustices - you are the Chairpersons of the Justice and Legal Affairs Committee and you understand this - six months should be sufficient, so that we get into the in-depth of the challenges. I think 90 days is not sufficient.

I happen to have been taught by the Senator of Kisumu and he has written a book called *Conveyancing*. When you read the first line in the front page of that book, it says “land is an emotive issue”. It goes ahead and says “land is the identity of a real man.” In my culture, and even in the African set up, if you do not have land, you are nobody. Therefore, land is a sensitive issue. Today when you go and say I want to listen to an issue of Kisumu and Nandi, it can shock the entire counties.

Today if you go to Sondu and listen to a submission in Kisumu and Nandi, Kakamega, Taborwa between Chimoi and Nandi and Kakamega and Mosop, you might find the entire county will come there.

Mr. Temporary Speaker, Sir, let us add more days like six months so that we become thorough when we are presenting our position. I am happy they have included members of the public, which is provided for under Article 118 in terms of public participation.

On Clause 41, I will combine with the other clause as those are just procedural issues. This issue of 14 days under Clause 42 where it says the commission shall within 14 days of expiry of the period specified--- I would propose that we change it into three months now. This is to finalize the report because of report-writing, review and ensuring that we go through all that. The Sponsor of the Bill, Sen. M. Kajwang’, should relook at that so that we give them time after submission and review. Let us give them a maximum of 60 days or 90 days.

I am happy that Clause 43 has captured this. I agree with them that where the commission does not recommend alteration of the boundaries of a county, no further action shall be taken in respect of a petition. If there is a recommendation for alteration of the boundaries, the Senate shall within 14 days resolve to either approve or reject the recommendation.

Mr. Temporary Speaker, Sir, Members of the National Assembly have a habit of shooting down our Bills. We should use the word “Parliament” so that we fast track our Bills. If we use the word “Senate”, they will go and shoot down our Bills.

In the spirit of your direction and the chair of co-sponsoring, we can agree to put “Parliament” instead of “Senate”. When altering boundaries, they are within those constituencies. That is why in the last session when the issue of security came to this House, some people argued that it is a national Government function, but it is within counties. Therefore, in the spirit of good faith, let us just say “Parliament” so that we include the National Assembly and pass this Bill.

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When you reply on the issue of public land, especially forests and other things, respond to what we should do when we find out that the boundary of a forest has been altered. For example, what happens if the cut line of Mau Forest, Tinderet Hills or the Bungoma Hills, has been altered? I challenge the sponsor to ensure that is looked at.

On concurrence resolution, it should be as easy as is in Clause 44. If the mediation committee arrives at a common resolution, each House shall vote to approve or reject parliamentary mediation. That is very easy, we can go for Division. I do not know what we should do because it will create disharmony. For example, if you are to alter the border between Nandi and Vihiga counties, how will Sen. Otsosi and Sen. Cherarkey vote? What will be the implication?

We should also be careful so that we do not antagonise communities who have lived side by side historically. This is because some names have been changed. In Nandi, we used to have Nandi Escarpment. However, the people doing maps called it Nyando Escarpment, yet it is in the middle of Nandi, around Chemase, around Tinderet Sub-County towards Chemelil-Chemase ward and also, parts of Aldai constituency. There are names that have been changed over time. We must agree under this Bill on the renaming of some of those areas. Why would we call it Nyando Escarpment yet it should be Nandi Escapement? Those are some of the challenges that we should look into.

I agree on the resolution. On presentation of a petition, a petition shall not be admissible by the Senate. However, I think that it should be “a petition shall not be admissible by the Senate or National Assembly where a general election is to be held within one year.”

Mr. Temporary Speaker, Sir, the Sponsor of the Bill should look at the wording. The Constitution under Article 93 says that Parliament comprises both the National Assembly and the Senate. Therefore, you can either present a petition to the Senate or the National Assembly. We should be careful so that we do not give fodder to our brothers in the National Assembly who have a habit of shooting down our Bills.

By and large, I agree with the Bill. I hope when it comes to the Committee of the Whole, this time round, with the spirit of your office of co-sponsoring and the interpretation of Article 113 in terms of Money Bills and other challenges, we shall allow it to pass as Parliament. This is what will spur the issue of boundaries. The National Assembly should be busy ensuring that the IEBC is reconstituted. These constituencies called “protected constituencies” should be working with us to ensure IEBC is properly reconstituted. Therefore, when we pass such laws, there is a way they can ensure that going into the future.

I do not know where Sen. M. Kajwang’ got the schedule and how this has been done. I believe it is probably from the 1992 district map that was used in the Districts and Provinces Act of 1992 for drawing district boundaries.

These counties are intertwined. Over the weekend, I was in Kapcherop. This is a forest that borders Pokot South, Moiben and Cherangany in Kitale. On this other side, it borders Marakwet East and Marakwet West. So, these communities are the same.

When you meet a Maasai of Kenya and a Maasai of Tanzania, they are the same people. When you go to Mt. Elgon, you have Kalenjins of Kenya and those of Uganda. These boundaries were just put there by our colonialists. I ask Kenyans, even as we pass

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this, let it not be a way of dividing us as a nation. It should unite us and ensure that we have a more civil and decent way of ensuring boundary issues are not going into the future.

Mr. Temporary Speaker, Sir, with all those many remarks, I support this Bill and congratulate Sen. M. Kajwang' and wish him well with it. I assure Kenyans that we shall do what needs to be done and allow this nation to move into the future.

I also send my condolences to the family of the famous TikTokker called Brian Chira, who was being buried today, in Kiambu. We commiserate with their family and friends and ask young people to be responsible with their lives, especially when we go to rave around the city and our towns.

Asante sana.

**The Temporary Speaker** (Sen. Wakili Sigei): Sen. Lomenen, proceed.

**Sen. Lomenen:** Mr. Temporary Speaker, Sir, I support this Bill with amendment. If you look at what is happening in West Pokot, Turkana, Samburu, Marakwet and Tharaka Nithi counties, you will find---

*(Sen. Kinyua and Sen. Cheruiyot consulted loudly)*

**The Temporary Speaker** (Sen. Wakili Sigei): Sen. Kinyua and Senate Majority Leader, please consult in silence if there is anything of the sort. Consult in silence, if you must.

**Sen. Lomenen:** Thank you, Mr. Temporary Speaker, Sir, for protecting me. This is a very important issue. Many killings that happen in the Northern part of Kenya are due to boundary disputes. People and leaders have imagined boundaries. What happens is that the pastoralists follow the livestock and the livestock do not know boundaries. They do not understand the demarcation. They are supposed to be led.

I need the amendments because majority of the leaders were not involved in the Districts and Provinces Act of 1992. For example, the Turkana leadership was not involved in the decision of the boundary in 1992. However, in 1963, they were very comfortable with the size of the county. The Sponsor of this Bill should consult all the Acts available from 1984.

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

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

Resume your seat, Sen. Lomenen.

**Sen. Kinyua:** Mr. Temporary Speaker, Sir, I want clarity from Sen. Lomenen. I heard him say that the pastoralists follow animals and the animals do not know boundaries. Where I come from, I am a pastoralist and a person is supposed to be leading the animals.

**The Temporary Speaker** (Sen. Wakili Sigei): Sen. Kinyua, you are out of order. That is not a point of order.

Proceed, Sen. Lomenen.

**Sen. Lomenen:** Thank you, Mr. Temporary Speaker, Sir. First and foremost, I had asked the sponsor of the Bill to consult the leadership, key elders, professionals and all the people working with the public administration.

If you are very keen, you will find that some problems were caused by the public administration. For example, an area such as Kapedo, which is just a sub-location, has 10 chiefs. You will find chiefs who are employed by the public administration in Baringo area and another five chiefs employed by the same administration in Turkana County. So, how will we solve this overlapping? The Government is using money to pay all these people, and in the process, they create more harm in these communities.

The other thing that the sponsor should realise is that during colonialism every county was given a size of land. For example, Turkana County is 77,000 square kilometres. These 77,000-kilometres keep reducing. The question is; who has taken part of the land? We realised that there are some people in counties who have the tendency of expanding their territories claiming that soon, when the Commission will be established, they will have a county.

Mr. Temporary Speaker, Sir, the Government is in a position to solve this problem between West Pokot and Turkana. If the Government can demarcate all the boundaries, I am very sure there will be no problem. This is because these boundaries are there; they were demarcated by the colonialists. It is not possible to form other boundaries at this time. This is an emotive issue. It is not possible to select or nominate people to come and talk about boundaries between Pokot and Turkana. If the public administration has created a problem, let them be honest to the citizens of the affected counties and admit that there is a problem. For example, I hope that if a person is appointed a county commissioner, they are given a map of the area they will supervise. However, you will find that some people do not even know where they are supposed to supervise.

Mr. Temporary Speaker, Sir, the land between these counties has resources such as water and minerals. You will find that when a certain community realises that there are many resources where they live, they start to fight the other community saying that the land belongs to them.

Therefore, the sponsor of this Bill has to provide the timeline, where each county will organise itself by bringing all their maps, acts and memorandum by their elders, leaders and professionals so that everybody is involved in public participation and when a decision is made, no one will complain that a certain committee was biased.

The sub-committee that will be formed should take time. I support what Sen. Cherarkey said that it has to take even more than six months. This is because this is a very emotive and sensitive issue. Elders, former political leaders, church elders, Non-Governmental Organisations (NGOs) and civil society groups have to be listened to. You will find that these NGOs and civil society groups have created some maps. That is not an easy thing to do.

Mr. Temporary Speaker, Sir, I urge the sponsor of this Bill to let us replicate the best practice from the Kenya Forces. The Kenya Forces has been there and their maps are respected. They have demarcated these counties in a very respectable way. Therefore, in

public participation, also consult Kenya Forces. This is because, they know where to start and end when they are mapping these counties. They are well informed.

I support this Bill with amendments. Since the minutes we have been given are few, I urge the Sponsor of the Bill to give the professionals and leadership of Turkana County enough time, to give you the heavy memorandum on this issue so that, we can see the problem between us and West Pokot.

**The Temporary Speaker** (Sen. Wakili Sigei): Sen. Orwoba, you may have the Floor.

**Sen. Orwoba:** Thank you, Mr. Temporary Speaker, Sir.

I support the County Boundaries Bill by Sen. M. Kajwang'. I hope that this is the House that is going to pass this Bill. This is because the issue of conflicts between different counties has been there year in, year out. There have been proposals and Bills in the past trying to legislate around the conflicts that are in these various counties.

Currently, we have over 18 counties that are in dispute. You have heard our Senator for Turkana speaking about the Kapedo area, which has been a dispute between Turkana and Baringo. I am glad to see Sen. Wambua here because he has raised a couple of statements with regard to boundary issues of his neighbouring counties. It is not only about these current 18 counties, there are certain communities that have not been brought to the forefront where the situation is upraising. I come from Kisii County and we saw what happened in Keroka Market, where we had both Kisii and Nyamira counties claiming a huge part of that market. It took a lot of intervention, including going to court. Lives were lost and property destroyed.

There is a conversation that is not being had on why the conflict is first of all there. If you look at the issues around the various disputes, not only from Kisii and Nyamira or Turkana and Baringo, but as far as Kisumu, Siaya and Vihiga who were fighting over Maseno, it is not only about resources or the people who are living there, but also about revenue collection.

Mr. Temporary Speaker, Sir, I have heard our Senator for Turkana saying that even the police should be involved because they understand and they have been there in the past, by ensuring that there is peace in the various counties. However, perhaps the Council of Governors (CoG) should have a conversation. This is because the issue of revenue collection propels most of the issues arising. As can be seen in the Nyamira and Kisii counties dispute, it was over a market and it was mostly on the revenue collection.

As I support this Bill, the implementation is what we should be looking at even in terms of who will be the players. I have heard the other Senators saying that we need more than six months, but I believe that if all the stakeholders are brought to the table, like the CoG – the players of devolution - you do not need more than six months. If you have all the stakeholders in place, these disputes can be resolved even within the proposed three months. The issue is how to ensure that all the stakeholders are brought to the table. It should not be only the religious leaders, administrators and the governors, but we are talking about the people with historical knowledge of certain geographical positions.

Mr. Temporary Speaker, Sir, this is because some of the disputes are so complicated. They are not just about markets, but also about people who value certain

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geographical features. It could be a mountain, a hill or something else. While we legislate, we should remember that we are Africans and, as Africans, we hold onto many things, including culture, which is deeply rooted in historical values. Therefore, these are the stakeholders we should be consulting or ensuring that while we legislate, they will be brought to the table.

I support this Bill and also tell Sen. M. Kajwang' that I hope most of the notes have been borrowed from past legislators. Hon. Sakaja was on this Bill before and there are many legislators who have tried to push this particular piece of legislation. I also hope that the previous deliberations considered what has been tabled today in this House.

I thank you, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Wakili Sigei): Sen. Wambua Enoch.

**Sen. Wambua:** I thank you, Mr. Temporary Speaker, Sir. I take this opportunity to thank Sen. M. Kajwang' for reviving this important debate on county boundaries, by bringing forth the County Boundaries Bill, 2023.

As Sen. Orwoba has rightfully said, this is a matter that has engaged debates on this Floor severally. It has precipitated conflicts in many counties across this country. For acknowledging that this Bill is meant to provide for proper county boundaries, make provisions for dissolution of disputes among and between counties, I thank the Senator for coming up with the Bill.

I will open my debate on this matter by also acknowledging that county disputes are serious disputes. They pose an existential threat to peace, stability, order and national cohesion in any country, not just in Kenya. It is worrying that as we speak today, we have running conflicts between counties, numbering not less than 20. The most recent being the Kisii and Nyamira counties dispute, based on a desire by respective county governments to collect revenue from towns that are declared disputed.

Mr. Temporary Speaker, Sir, I come from Kitui County, which has a running dispute on boundaries with Tana River. To put the record straight because there are people who like seeing disputes where they do not exist, or just assume there are disputes, Kitui does not share a border with Garissa. There has never been any dispute between Kitui and Garissa counties in as far as boundaries are concerned. We do not share a boundary, but we share a boundary with Tana River, but on the way to Garissa.

It will go on record that this matter needs to be resolved as fast as possible, as is the case with all the other disputes in other counties. Why do I say this? I say this because the recent disputes over boundaries are largely precipitated by a genuine legitimate desire by counties and their governments to collect revenue and raise their own-source revenue in order to give services to their people.

Mr. Temporary Speaker, Sir, there is a standing dispute today on where exactly Konza City lies. Is it in Makueni, Kajiado or Machakos counties? Some of these disputes are easy to resolve if there is goodwill to resolve them. I have just glanced at the First Schedule of the proposed Bill by Sen. M. Kajwang'. I dare say to my brother, Sen. M. Kajwang', that the First Schedule is the more reason we must review our boundaries. When you look at how those boundaries are captured and even drawn - and I have taken this Bill and read through it - I cannot locate the boundaries of Kitui using this First Schedule. It is not just Kitui, but all the counties.

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Mr. Temporary Speaker, just to make reference to it, maybe I should start with the first county, 001, Mombasa. I am not very sure because Sen. Faki is not here, but he is coming back. The boundary of Mombasa defined in the First Schedule as commencing at the centre of the mouth of Mtwapa Creek on the coastline of the Indian ocean, thence due East to the limit of the territorial waters of the Indian ocean.

The descriptions of these counties leave no doubt to an average reader that somebody is just deliberately creating confusion. Boundaries and definition of boundaries should be done in simple and straight language that anybody reading where they are, will know where it is.

When we are told that Kitui County- that is where I want to go- and I am the elected Senator of Kitui County serving my second term, I have difficulties understanding that Kitui County commences at the confluence of the Rojewero (Mackenzie) Tana River, thence south-easterly by a straight line to the trigonometrical beacon Katumba; thence continuing south-easterly by straight line to the beacon Kandelongwe. This is “Greek”.

Why not just define our boundaries using features and language that is easy and straightforward to understand? I know that Sen. M. Kajwang’ is of course not guilty of this. He has put it here so that he may buttress his reasoning for coming up with a better system of dealing with our counties and the boundaries.

Mr. Deputy Speaker, Sir, I want to briefly comment on Part 1, Part 2 and, of course, the First Schedule of the Bill. The opening of Part 1 of the Bill says in clear simple language that this is an Act of Parliament to provide for the county boundaries, to provide for a mechanism, resolution to resolve county boundary disputes and give effect to Article 188. That is what I want to comment on.

Article 188 of the Constitution begs a provision for a procedure to be followed in establishing boundaries in resolving disputes arising from boundaries and in the composition of an independent commission that is supposed to effect resolutions on boundaries and boundary disputes. Clear reading of that Article of the Constitution is that one cannot alter boundaries or pretend that they can resolve permanently, county disputes in the absence of an independent commission.

This Bill seeks to give effect to the formation and operationalization of that independent commission. How I pray that when we get there, the commission that will be set up, which procedure is provided for in the Bill, would truly be independent.

I wish Sen. Cherarkey was here because I heard him talk about the people who should form part of that commission. He made reference to age, saying that 20-year-olds should not sit in this commission; it needs people who have institutional memory, which fine. However, age should not be an absolute consideration for people to qualify to sit in that commission.

Experience and longevity could be a hindrance to development. When people have entrenched interest in a matter, at times they are unable to think straight. We cannot say that because a man has lived in a county for 20 or 30 years, they understand it. The more you live in a county, the more you have entrenched interest in the county and the boundaries, and the more likely for your views to be blurred by personal interest.

Since the commission is the key and answer to the challenges we face on boundaries as a country, it must be constituted by credible people of integrity, who command respect across the board.

I refer to Part 2 of that proposed Bill. Let us talk about the boundary mediation committee. Clause 5 of Part 2, Sub-clause 2: I urge Sen. M. Kajwang' to rethink the wording of Clause 5 (2) (a), which reads-

“a person under subsection 1(a)(c) shall submit the request to the Senate together with evidence that notice was given to every county government over a county whose boundary is a subject of a dispute referred to in subsection (1) addressed to the governor and the county executive member of the county.”

Mr. Speaker, Sir, I have a challenge with that provision because what the Senator is proposing in that section of the Bill is that the disputes that are forwarded to the Senate must have gone through the office of the Governor of the respective counties that disputes. I have a challenge with that because in the Constitution of Kenya, 2010, the roles of representation and protection---

*(Sen. Sifuna consulted Sen. M. Kajwang')*

Mr. Temporary Speaker, Sir, Sen. Sifuna is disturbing Sen. M. Kajwang'. I want to help him in the Bill. The role of representation and protection of counties and county governments and their interest is assigned by the Constitution to the Senate and the Senators.

I want to convince Sen. M. Kajwang' to consider that as a requirement, if a matter of a county dispute is going to be presented to the Senate of the Republic of Kenya, then the Senator of that County must also be notified in writing by whoever it is that is bringing that matter to the Senate.

I say that because in that provision that the Senator is making reference to, Clause 5(1)(a), in fact it is contemplated that the governor could be the one requesting. If he is the one requesting, he cannot also be writing to himself, telling himself that he is bringing this matter to the Senate. The governor should be given a responsibility, duty or obligation to notify the Senate or the Senator of the dispute that they are bringing up for resolution in the Senate.

Mr. Temporary Speaker, Sir, lastly, this matter of county boundaries and disputes is bigger than what the Senator for Homa Bay has captured in his Bill. I am happy because when he moved this Bill, he made reference to the decisions that occasioned the creation of counties in this country.

I have gone on record many times on this Floor, and in other fora, saying that there is nothing scientific about the creation of counties in this country. You cannot put your finger on any science, to say that we have a county called Kitui, Makueni Machakos, Kiambu and Nyeri. There is nothing scientific in that decision. Those were political decisions.

These political decisions seemed to favour certain areas and regions in this country at the expense of other areas and regions. That is why today you have a county called Kitui, which is 30,496 square kilometers in landmass, and we have a county called

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Kirinyaga with a landmass of 1,400 square kilometers, and both are called counties. I have no problem with Kirinyaga County. I have no problem with Lamu County.

I, however, have a problem with an impression being created that those counties, the number 47 counties, is a magic number and you cannot touch it. You know, these counties are 47, you cannot touch this. That is a wrong premise to begin in trying to entrench devolution.

It is known and Sen. Cheruiyot will bear me witness, that I appeared before his Committee, the National Dialogue Committee (NADCO) as I also did before other committees of Parliament and pushed forward the agenda of the creation of Mwingi County with a reason.

When counties were created in the Constitution 2010, the decision to leave out Mwingi County was amorphous. It was an amorphous decision because Mwingi District was created at the same time that other counties and districts were created in the 1992/1993 Financial Year. However, simply because Mwingi County was not gazetted as a district, it missed out on the creation of a county. I would urge Sen. M. Kajwang to be magnanimous because he knows the journey we have walked with him to help the people of Mwingi through this Bill. We met them and received memoranda and presentations from them to enrich this Bill. We listened to them argue their case for the creation of their county. That is how we legislate I like it because I know Sen. M. Kajwang is a man who listens. He can listen to good advice and then that matter will be brought here and people will decide which way to go.

I will be okay if a proposal is brought to the Floor of this Senate requesting the creation of Mwingi County and the Senators of Kenya say no to it. I will be okay with it because I will have done my duty to represent the interests of my people and the decision lies elsewhere. It is not my decision to make. It is the decision of the House to make and we will be bound by the decision of the House.

Mr. Temporary Speaker, Sir, with those remarks, I submit.

**The Temporary Speaker** (Sen. Wakili Sigei): Sen. Chimera.

**Sen. Chimera:** Asante sana Bw. Spika wa Muda kwa kunipa fursa hii niweze kuchangia katika mjadala wa swala hili lote la Mswada huu wa *boundaries* za kaunti zetu.

Kwanza nianze kwa kumshukuru sana na kumpongeza kaka yangu Sen. M. Kajwang kutoka Kaunti ya Homabay kwa Mswada huu. Nafikiri ni wazi kwamba Mswada huu ni wa maana sana katika hali hii yetu ya kauli zetu katika nchi hii.

Nafikiri unafahamu ya kwamba kaunti tofauti tofauti ziko katika hali ya migogoro hususan kuhusu swala la mipaka. Mimi mwenyewe nikiwa Seneta kutoka Kaunti ya Kwale na nikiwa wakili vile vile, niko mahakamani ninapo zungumza hapa kwa niaba ya wananchi wa Kijiji cha Kanjaocha katika Wadi ya Samburu Chengoni eneo ubunge la Kinango Kaunti ya Kwale, wakizozana na Kaunti ya Kilifi kuhusu mpaka baina ya Kaunti ya Kwale na Kilifi.

Vile vile, nikizungumza hapa, Kaunti ya Kwale ina mgogoro ambao umekithiri kwa wingi. Kaunti ya Taita-Taveta imeweza kuvamia ule mji wa Mackinon. Mimi tangu nizaliwe, na sitaki kusema umri wangu lakini nimeishi kwa miaka mingi. Sio mingi vile

lakini sijaona siku hata moja Kaunti ya Taita-Taveta imeweza kuja Mackinon na kusema ule ni mji wao.

Lakini leo hii, Gavana wa Kaunti ya Taita-Taveta, Mheshimiwa na mjomba wangu na pia rafiki yangu sana, Mhe. Andrew Mwadime, kwa kejeli na majivuno na kwa kujigamba, ameweza kuvamia mji wa Mackinon na kuchukua kodi kwa wafanyibiashara mbalimbali kutoka Kaunti ya Kwale.

Nimeona kwa *First Schedule* ya Mswada huu kwamba Kaunti ya Kwale ukiangalia sehemu ya pili imesema kwa kifupi kwamba Kaunti ya Kwale imeanzia upande wa kushoto katika kona ya Mackinon Road. Hii ni wazi kwamba Mswada huu umeweza kuleta mfumo wa kisheria. Sisi kama viongozi katika kaunti tofauti tofauti, tukiwa na swala la mjadala kuhusu mipaka ya kaunti, tunaweza kurudi kwa sheria tukaipekuapekua na tukapata mwongozo au ufahamu ni jinsi gani tutatua swala hili.

Mimi tu nisiseme mengi kwa sababu nafikiri wenzangu wamezugumzia mengi sana kuhusu Mswada huu. Nizungumzie kwa kifupi kuhusu hii kamati ambayo imewekwa katika sheria hii, Kamati ya *Mediation*. Nimeona kama imepewa nguvu nyingi zaidi. Nimrai tu kakangu Sen. M. Kajwang pengine kuna haja ya kupiga msasa Mswada huu kuhakikisha ya kwamba yale mapendekezo ya kwamba kaunti yoyote inaweza kuruhusiwa kubadilisha mipaka yake, yasikuwe pale katika sheria hii kwa sababu itazidi kuleta migogoro zaidi. Kutakuwa na chuki baina ya kaunti tofauti tofauti na tunajaribu kupata suluhu ya kudumu.

Niweze tu kusema kwa kifupi kwamba mimi ninaunga mkono Mswada huu. Nawauliza Maseneta wenzangu, ingekuwa vyema kama Mswada huu ungekuwa wa Kiserikali ndio tuweze kufanya haraka, tuipitishie kwa haraka, ili tupate suluhu ya kudumu katika kaunti zetu hizi za Kwale na Taita-Taveta; Taita-Taveta na Makueni, hata Kaunti ya Kericho na Kisumu waweze kuwa na mfumo wa kisheria ambao watatumia kutatua mgogoro huu. Mimi naunga mkono Mswada huu.

Asante Bw. Spika wa Muda.

**Sen. Kavindu Muthama:** Thank you, Temporary Mr. Speaker, Sir, for giving me this opportunity to contribute towards this Boundaries Bill. Sen. M. Kajwang, I congratulate you for the work that you put in here, but I want to support this Bill with amendments.

Mr. Temporary Speaker, Sir, the other day, I sat in a room with Sen. M. Kajwang' and our surveyors from Machakos County because this Bill suggests that Kalama Ward be moved to Makueni County. Kalama is in Machakos County, and this demarcation, which was done in 1992 moved Kalama Ward to Makueni and the people of Kalama demonstrated. They wanted to be returned to Machakos County. They were returned to Machakos. If this Bill passes the way it is, Kalama Ward will go back to Makueni County, and the Kalama people do not want to go to Makueni because they belong to Machakos County.

When we had the Building Bridges Initiative (BBI), we suggested that Machakos County be divided into two, so that Kalama be made a sub-county. We had also suggested that Mwala be divided into two, so that we can have two sub-counties in Mwala.

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The other day, I saw some counties being given more sub-counties and we did not see anything for Machakos County. We had also suggested that Masinga be divided into two, and Mavoko be divided into two.

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

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

Madam Temporary Speaker, Sen. M. Kajwang' should reverse it back to the 1960s instead of 1992, because the people who made the boundaries in 1992 did not conduct proper public participation.

I suggest that even the people who will be now working on this Bill should have public participation broadly because there are those elders in every county who know the boundaries of the counties where they were, even from the colonial days. Like in Machakos County, we are talking of Machakos being from the Museum Hill here in Nairobi. However, we were moved, until now Machakos County is having issues with almost every county that surrounds us. I am in talks with my county government, especially the County Executive Committee Member (CECM) for Lands in Machakos County, and the surveyors to know exactly where the boundaries of Machakos were.

The sponsor of this Bill, Sen. M. Kajwang', should meet with the people of Machakos County, and hear their cries and grievances because, in Machakos, we have been pushed so much, even Nairobi City County has pushed us so much, and it is all about revenue. We are not going to push anyone out of Machakos County, but we want also to collect revenue the way we should be collecting it.

Sen. Wambua has made it very clear that we should also know where Malili and Konza City stand. Is it towards Machakos, Makueni or Kajiado counties? Those boundaries are made clear where they are, so that there will not be more fights even after this Bill is passed into law.

So, Sen. M. Kajwang, before you move very far with this Bill, make sure you visit the counties that have issues, meet with the governors, the Senators, and the elders who know where their boundaries from the colonial days were to date. That will help.

Thank you, Madam Temporary Speaker. I will support this Bill with amendments.

**The Temporary Speaker** (Sen. Veronica Maina): Thank you, Senator.

Sen. Tobiko, you have the Floor.

**Sen. Tobiko:** Thank you, Madam Temporary Speaker. I rise to support this Bill and congratulate Sen. M. Kajwang' because this Bill is coming at the right time.

Being more than 10 years now after the creation of our counties and the passing of the 2010 Constitution, this is the time. The review of county, constituencies and ward boundaries is overdue. There are even constituencies that are already threatened in their existence because time and the grace period that they had lapsed. If we do not review these boundaries, the people of about 27 or so constituencies will be threatened because the law then must either be reviewed for those constituencies to continue existing, or they are given a new lifeline,

This law in particular comes also at the time that we have given devolution 10 years. We have given the existing counties 10 years to see how governing the counties at the lower levels will go. I remember when the counties were created after the 2010 Constitution, a lot of considerations were made. The premises that were considered included the population density, demographics, community interests, historical and cultural ties. Many of those issues were considered.

It is actually that Kenyans generally are very peaceful people because boundary issues are very emotive. Kenyans have tried to live with issues that this Bill would cure. However, because of the patience of Kenyans, we have seen a little eruption of violence and disruptions here and there. However, by and large, Kenyans have become patient, waiting for both Houses of Parliament, the National Assembly and the Senate, to pass the necessary laws that will cure issues of boundaries.

I also know that the Independent Electoral and Boundaries Commission (IEBC) is mandated with the issues of boundaries on wards and constituencies matters, but the issue of county boundaries needs some special attention. As has been mentioned by many Members of this House, several counties have disputes. Kajiado County is one of them. At the border of Kajiado County and Makueni County, we have a place called Oloirien, where over 74,000 acres are in dispute.

The communities have been fighting. Sometimes schools including Oloiyoambu School have been burnt and children have had to vacate the school. People have lost lives and these are the issues that we need to forestall with the passage of this Bill.

At the boundary of Machakos County and Kajiado County, right here at Mavoko, just very close to East African Portland Cement, we have communal land called Sheep and Goat. There is a community that lives in this land and some of us have our homes there. We belong to Kajiado County; the land belongs to Kajiado County.

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

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

We did not understand how this whole place ended up being in Machakos County, yet the people have cultural ties in Kajiado County. It is the same community that is in the Sheep and Goat land.

Madam Temporary Speaker, these people vote in Kajiado County.

**The Temporary Speaker** (Sen. Wakili Sigei): Sen. Tobiko, kindly note the change of Chair and correct.

**Sen. Tobiko:** Mr. Temporary Speaker, Sir, I am extremely sorry about that. I was concentrating on issues that are touchy and sensitive to the people of Kajiado County. I did not even realise the change of Chair, but I acknowledge your presence.

Mr. Temporary Speaker, Sir, between Kajiado and Kiambu counties, we also have a bit of turmoil. It has been managed so far, but this Bill will come and cure all this. It is time because this Bill will help us sort issues. The Mediation Committee is very important. The creation of this Committee will help to maintain peace, listen to the views of the people and consider more current issues, including the population increase.

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Mr. Temporary Speaker, Sir, when the Equalization Fund was passed on this Floor, there are counties or regions that missed out, yet they deserved it. Moreover, because we have never considered the issue of one man, one shilling, you find that places such as East and North Kajiado missing out in the Equalization Fund, yet they have the population that would warrant them to get more resources if issues of boundary and population density were considered.

Even when it comes to consideration of landmass, Kajiado County is bigger than Rwanda. However, with all those challenges, including infrastructural and service provision, it is time that the county boundaries are reviewed. That Committee will handle these issues because we would not want to create problems and tension between Kenyans. We want to solve issues at the various county boundaries.

I rise to support and strongly state that communal and historical ties must be considered. From the colonial time, the boundary between Kajiado and Machakos counties is marked by the old railway line. At Ol Oloirien, our people can identify the beacons of where the county reach. We have documentation to support it. However, today that part is considered Makueni County. They have given it another name that we do not even understand. However, we know the place is called Ol Oloirien.

We need such issues to be resolved amicably. Let the rights of communities be considered and protected.

I thank Sen. M. Kajwang' for bringing this Bill.

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

**Sen. Murgor:** Thank you, Mr. Temporary Speaker, Sir, for giving me the opportunity to also add my thoughts to those of my colleagues. This is a very sensitive issue all over the country and among many communities. So, it is an opportune time for it to be looked into. I am grateful to Sen. M. Kajwang' for bringing it at this time, so that it can be looked at and cure some of the issues that have been there for a long time in some places.

Most of the conflicts that are there are as a result of one community or group wanting more territory. They want to add more because land does not expand. So, they encroach into their neighbours' areas and claim it as theirs by adding it to their own. It is interesting that for some of the communities who are in conflict, there is usually land behind them, which is not occupied. They just occupy the area where they want to claim or add onto theirs, yet there is space behind them where nobody lives and there is no much activity.

It is an attitude of being expansionists. They want to expand their territory, so that there is more land. Some neighbours claim different square kilometers nearly every two or three years. There is usually an addition of a square kilometers to theirs, which is not agreeable with the original that is known. Some of these are encouraged by territorial expansion attitude. Resources such as grass and water are also a reason for the conflicts, especially for us pastoralists.

These are some of the things - in my thinking - that will be cured by this Bill, so that resources are shared equally or provisions are made so that whatever is on one side is also in the neighbouring side to avoid conflicts. For example, if there is no water in one neighboring area you can expect conflict in the area that has the resource. This Bill will

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probably solve that by bringing more resources to both sides so that there is equal sharing.

Politics also plays a key role in some of the conflicts that we face, especially those instigated by politicians such as ourselves and others by inciting one community against another. People will fight because a politician has said they are being marginalized and so forth and, therefore, they conflict. This Bill will tame such utterances, so that no politician will utter words that will make communities fight.

Maps and history are key components that should be followed when pursuing territories and boundaries between communities, areas and counties. For example, where was it in the colonial times? The maps will also help, so that we do not fight over what we think we know. Some of our opinions are as new as in the 1980s and may not be true or agree with what was there in the 1940s, 1930s, and 1920s. Some old maps should be used to determine which area belongs to whom and which community occupied where.

Some of the resources could be the reason for redrawing new maps and moving into new territories. However, if we look into older maps and history, especially, for us pastoralists, we made movements into areas that should be looked into. Who was grazing in which area when and such traces of the past will help.

In addition, it should be emphasised at this point, that services to the people matter. These services should be given equally to the citizens on either side. Sometimes, services are given discriminately, which brings conflict among people. You will find that a minority group under a certain county will be given limited service. Whereas the majority will take the lion's share. This is also a reason for conflict and the desire to move out or bring in new people so that they can join their efforts to survive and get services from another county. Therefore, if services were given adequately and, in a way, that there is no discrimination, it would limit and eradicate some of the conflicts we have.

I support the Bill.

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

Hon. Members, there seems to be no other Member interested in contributing to this Bill. I call upon Sen. M. Kajwang', the Mover of the Bill, to reply.

**Sen. M. Kajwang'**: Mr. Temporary Speaker, Sir, I beg to reply. I thank the Senate Leader of Majority, Sen. Cheruiyot, for seconding the Bill. I also thank all the Senators who have contributed to it.

This is one of the Bills that have received the contributions of many Senators considering the situation of county boundary disputes across the country. As we speak, there are active conflicts between Kisii and Nyamira counties, Makueni and Taita Taveta counties, Kisumu and Kericho counties, and Vihiga and Kisumu counties. When moving this Bill, I indicated about 40 Petitions relating to boundary disputes. I also mentioned some things that some Members did not consider when they made their contributions.

This Bill does not attempt to rewrite the boundaries of counties. It will be good for us to go back to history. As I was processing this Bill, I took the opportunity to read some of the transcripts from the 1962 Constitutional Conference. Some of those conversations were held at Lancaster. The Independence Constitution defined districts.

It was in Article 36 of the Independence Constitution which addressed the composition of the Senate. It is under the composition of the Senate that the districts were

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defined. Article 36 of that Constitution said that, Kenya shall be divided into 40 districts and Nairobi region and each district shall elect one Senator. That was at independence. Therefore, the definition of the number of districts was in the Constitution. The independence Constitution did something that the 2010 Constitution did not do. This is because the boundaries of these districts were put in the Constitution and there was a Schedule to Part 1.

Mr. Temporary Speaker, Sir, the first district whose boundaries were defined was Tana River. The District and Provinces Act by and large took the boundaries of districts as contained in the Independence Constitution. Between 1963 and 1992, from the 40 independent districts, by 1992 we had 46 districts that formed the basis of the counties that we have today.

The additional districts were Migori which was hived off South Nyanza, so we ended up with Migori and Homa Bay instead of South Nyanza. Tharaka Nithi was hived off Meru. Makueni came off Machakos. Bomet came off Kericho. Vihiga which came off Kakamega in 1990 and Nyamira came off Kisii in 1989. That is how we ended up with the 46 plus one.

Subsequent to that, President Moi and Kibaki, created almost 200 additional districts. We must also recognize that when the Constitution was being written, interestingly in the history of this Republic, I think President William Ruto was the Chair of the Select Committee on Constitutional Reform in Parliament. Consequently, when people went to Naivasha, they were looking for a quick solution to something that was very sticky on how the territory of Kenya would be divided. Would it be on the basis of regions or districts? However, at the time people were going to Naivasha, there had been almost 200 districts that had been created by the late President Moi and Kibaki since, the districts were being created for political reward.

Mr. Temporary Speaker, Sir, it is on record that in 2009, the High Court declared that all districts created after 1992 were unconstitutional. The reason was the Presidents would issue decrees to create districts and then they legalize thereafter.

This is what led to the men and women who gave birth to this Constitution in Naivasha to go back to the 1992 District and Provinces Act. It was safer. It was easier to go back to 1963, which had 40 districts but because the districts had been validated only up to 1992, that was the threshold or benchmark that the crafters of our Constitution utilized. Was there a science? Perhaps, not.

If you read the report of the Commission, there was something called the Royal Boundaries Commission. The 40 original districts were created on tribal grounds. It was more of ensuring that each tribe had its own conclave which they could control and where they could feel comfortable.

On the 40 original districts, history tells us that three quarters of them were composed of entirely one tribe and the other quarter you would find one tribe would dominate almost 90 or 80 per cent. We keep having these problems with our counties because they have been inherited from districts created on tribal basis.

Those of us who sit in the accountability committees such as Sen. Cherarkey and Sen. Sifuna, every time the Auditor-General tell us that county "X" has failed to leave up to the requirements of the law on ethnic composition. Therefore, we must go back to the

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law and ask ourselves whether we are being relevant. A county that was formed on the basis of a district that was formed on the basis of ethnicity, how then do we expect to be heterogeneous all of a sudden and yet it was ethnically homogeneous at the point of creation? I want to assure and allay the fears of those colleagues, who think that in this Bill we are attempting to rewrite the boundaries of counties.

I want to challenge them to go to the Constitution that we had during Independence which defined the original 40 districts and compare with the District and Provinces Act. If they can cite any alteration, I will gladly withdraw this Bill because it is not my intention to cause any further strife over and above that which has existed.

Mr. Temporary Speaker, Sir, the team that was in Bomas, the National Dialogue Committee (NADCO) team, and the report which this House has already adopted, pointed out that boundary disputes are a threat to cohesion. They encouraged Parliament to quickly enact a law that will give effect to the constitutional provision on alteration of county boundaries. I want to call upon Senators that when we go back to our base, let us not give the impression that this Bill seeks to rewrite or amend anything. There are those who have argued about the districts created after 1992, and my colleagues, Sen. Wambua mentioned Mwingi District and Sen. Kavindu Muthama mentioned the 1997 additional districts that were created.

It is the courts of law that declared them to be unconstitutional for reasons that were even canvassed in Parliament. I have seen the parliamentary HANSARD where each Member of Parliament wanted a district to be created in their backyard because they thought it would come with benefits, but then the court ruled that it was improper and unconstitutional.

I just want to give that comfort that this Bill does not intend to introduce any alteration. This Bill has been moved by a Member from the opposition and has been seconded by the Senate Majority Leader. I will take time, in consultation with the leadership of the Majority and Minority sides, to ensure that all the good suggestions that have come from Members are incorporated as we proceed to the next stage of this Bill.

I want to thank hon. Members of Senate for their dedication, commitment and living up to their calling as defenders and protectors of devolution. I want to assure them that when the amendments come, we shall consult to make sure that every amendment that we put forth, we are able to explain its merit or demerit. We are going to learn lessons from past attempts and make sure that this Bill does not suffer in the other House, the same way it has done in the past.

Mr. Temporary Speaker, Sir, with that, I beg to reply and request that you defer the putting of the question to a later date pursuant to Standing Order No. 66(3).

Thank you.

**The Temporary Speaker** (Sen. Wakili Sigei): Thank you Senator Kajwang'. Putting of the question of this Bill is deferred to the next sitting.

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

**BILL***Second Reading*THE SUGAR BILL (NATIONAL ASSEMBLY  
BILLS NO.34 OF 2022)*(Sen. Wafula on 21.3.2024)**(Resumption of debate interrupted on 21.3.2024)*

**Sen. Wafula:** Thank you, Mr. Temporary Speaker, Sir. As I was spewing wisdom last time, the sugar industry serves at most 400,000 small-scale farmers. These numbers, when you do your multiply effect, many Kenyans rely on the sugar industry to put food on their table and take their children to school.

That is why the Bill comes in handy to ensure that we boost productivity, streamline processing, enhance value addition, and create favourable regulatory framework. This legislation is expected to revive the industry to meet the domestic needs and generate surplus for export.

As we were going across the country in Bungoma, Vihiga, by extension, Kisumu, Kericho and Busia, there are a few challenges that came across this Bill. There are a few challenges and observations that came across. They include challenges of sugar production. Sugar producers face many challenges including, inadequate infrastructure, high production costs and limited access to modern technology. This Bill will put into framework an environment within which these producers can mitigate these challenges. The county in conjunction with the national Governments will help improve on that.

The market dynamics also came into play because the local industry faces many challenges from the importation of sugar. As we all know, the lack of the sugar board to ensure that we only import when there is a deficiency gave leeway to cartels who use Government opportunities to flood the market and deny the common farmer and the industry the capacity to flourish

Mr. Temporary Speaker, Sir, the need for investment and the importance of increased investments in the sugar industry to improve and modernise infrastructure to improve competitiveness is the reason why this Bill must go through.

On stakeholder collaboration, this Bill captures many stakeholders. You have the national and county governments and the millers. When all these stakeholders come together, you have a collaboration that is geared towards ensuring that the farmer gets good from his hard work. Therefore, Kenyans are waiting for us to debate and contribute on this Bill. As I had said earlier, we have an aspect of pricing committee and adjudication of issues. All these is to ensure that the industry is sustained. This is because, if you have a pricing committee that will look at the pricing of the sugarcane from farmers, at the end of the day our people will enjoy.

Mr. Temporary Speaker, Sir, another element that Members would want to know is, that we have some catchment areas and zoning which have come in handy. History has

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shown that we have millers and companies who have flourished in overriding and domineering over others. They exhibit dictatorial tendencies and, therefore, make the farmers suffer. This Bill gives zones and catchment---

*(Sen. (Dr.) Murango crossed the aisle  
without bowing to the Chair)*

**The Temporary Speaker** (Sen. Wakili Sigei): Hold your thoughts, Sen. Wafula. Senator for Kirinyaga County, you have been in this House enough to know the procedure of crossing over from one side of the aisle to the other. Go back and comply then we proceed.

*(Sen. (Dr.) Murango moved to the Bar and bowed to the Chair)*

Proceed, Sen. Wafula.

**Sen. Wafula:** Mr. Temporary Speaker, Sir, on zoning and the catchment areas, millers have been put together in a zone that provides a catchment area for them. This ensures that companies have an opportunity to operate and compete in terms of pricing. This gives the farmer an opportunity to benefit from that catchment area. That catchment area turning into a zone gives the farmers an opportunity to equally get representation in the sugar board.

Therefore, we are dealing with a scenario where the boundaries will give the companies an opportunity to harvest cane from those areas and give farmers from those areas a chance of representation.

Mr. Temporary Speaker, Sir, this sugar board will give guidance to sugar inspectors to ensure that the millers do the right thing in terms of human resource, hygiene and environmental concerns. They will ensure the quality of sugarcane given to farmers is monitored both by the county government and the millers.

Mr. Temporary Speaker, Sir, therefore, I do not want to go into much detail, but I assure Kenyans that today, we have begun a new chapter. We are bringing to them a Bill that will sort out the mess in the sugar industry and bring sanity to it.

I thank you.

I, therefore, call the Senate Majority Leader, my good friend, Sen. Aaron Cheruiyot to second.

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

**The Senate Majority Leader** (Sen. Cheruiyot): I thank you, Mr. Temporary Speaker, Sir. I rise to second the Sugar Bill (National Assembly Bills No. 34 of 2022).

This is an extremely important Bill, touching on an industry that has been long neglected over the years. It has the opportunity to give livelihoods to millions of Kenyans and save our country billions of shillings that we spend importing sugar from other countries that have organized their sector better than us, making their farmers earn while ours continue to wallow in poverty.

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First, I congratulate my colleague, Sen. Wakoli, a new Member in this House but has quickly studied and established himself into the ways and practices of legislative culture. Today, he has moved a Bill of an important industry in this Republic. He has done so with zeal and dedication. Over the last few weeks, I have consulted with him and listened to the stakeholders of this industry when they came to present before Sen. (Dr.) Murango's Committee. I made sure to find time and go listen.

I always try to create time, although I am not a Member of any Committee as the Senate Majority Leader, to listen especially to presentations before the Committee on Agriculture, Livestock and Fisheries, touching on issues to do with the livelihood of our farmers. I would not wish to one day pass a Bill in this House that would end up affecting negatively, the livelihood of the people I represent. I represent sugarcane farmers. Kericho is more known for tea, but three constituencies in the southern part of the county to be specific, have sugarcane plantations. They are so lush, green, well-manicured and equally useful to the economy of the County of Kericho just like tea.

Mr. Temporary Speaker, Sir, a few days ago, I had visited a friend in Trans-Nzoia and later on, I was to visit another friend who lives closer to Lake Kanyaboli in Siaya County. As I traversed from Trans-Nzoia to Bungoma, Kakamega, Vihiga and eventually to Siaya and back to Kericho, I could not help notice the quality of cane that my farmers in Kericho continue to cultivate.

I was extremely proud of them because even the pilot we were with on that journey, commented on the dedication of our farmers and the kind of work they continue to do. Many Senators in this House do not perhaps appreciate and know how much potential sugarcane farming has in their specific counties and how much it can alleviate millions of their constituents out of poverty if we manage this sector better.

Mr. Temporary Speaker, Sir, it is unfortunate that we allowed this sector to collapse due to greed and the many people who wanted to make a quick kill and money out of this industry. The quickest way to make money out of the sugar sector is to open importation where people purchase from either Uganda and other Common Market for Eastern and Southern Africa (COMESA) or non-COMESA countries.

This is because, statistically, every four or five years, there is a sugar deficit in the COMESA zones. On such occasions, you will find that countries in the COMESA region open up for importation of sugar from non-COMESA regions. The closest season was in 2022, towards the end and the entire 2023. This was a phenomenon that was observed in almost all East African countries; from Tanzania, Uganda to the rest of the COMESA region, where there was a shortage.

Therefore, unscrupulous business people have, over the years, taken advantage instead of only importing during that particular season, because of the money they make in that particular season, they want to extend that culture over and above even beyond periods, which our own farmers can produce. If we do not put the checks and balances---

I am particularly impressed that in this Bill, we are proposing the creation and setting up of the sugar board. This is a return to back in the days where the sugarcane was thriving in the villages. Where you had a board that would guide the operations and would even give approval complete with statistics of what is expected deficit of sugar in the country. They would only open up importation only to shore up the numbers, ensure

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there is enough supply in the country but at the same time caution our farmers and ensure that you do not open the market for cheap imports from other parts of the world to the detriment of our poor farmers.

I am impressed that in this Bill, we shall be returning to the good old days of the sugar directorate just like we did with the Tea Bill. Where you have a board that is dedicated and specific people with organic knowledge on a particular area and field, where if things go wrong, you can take on that particular board chair or members.

I like the fact that even in this Bill; we are proposing the election of representatives to this board so that the people of Narok where Sen. Olekina comes from, a key sugarcane-growing county with immense potential, will have an opportunity to elect a representative to this Board. This applies as well to the rest of our colleagues; so that if we find ourselves in a situation such as we are today; where cheap imports are competing with sugarcane produced in our various factories, we will take on our board members and ask; who granted this approval? What were the statistics that guided you in making this particular decision?

Therefore, I am particularly impressed with the direction we are taking. Sen. (Dr.) Khalwale is not here but Whip Sen. Ledama and Sen. Sifuna are here, I request that, if possible, once Members have debated this Bill, either today or tomorrow, before we proceed on recess, if we can do Committee of the Whole on Thursday, it will be an important exercise.

Sen. Sifuna, you know this for a fact and I see many times that when you go to functions, for example, in the western belt of the country and even in my own country of Kericho - in the sugarcane growing areas, farmers are getting jittery with us, as Senators, and continue to ask: "What happened? This Bill came to you more than a year ago. You are taking too long with it." I hope that we will conclude on the Bill, so that it proceeds to the National Assembly, they either agree or disagree with our amendments; we do the mediation and give sugarcane farmers a new lease of life.

Mr. Temporary Speaker, Sir, it continues to break my heart that each time you travel to the former giant town or 'city' of Mumias, the epitome of the failed industry that used to be the sugar industry. A town was thriving back in the 1990s and early 2000 when Mumias Sugar Company was roaring in profitability. They did many things including, running of schools and social programmes like football clubs. Some of the best footballers that we produced came from the teams that were being supported by the various sugar industries.

Today, you cannot speak of the same. Not to forget the millions of livelihoods that were affected by the collapse of our industry. I am impressed with the proposal that is made in this Bill. First, to convert and remove sugar as directorate from Agriculture and Food Authority (AFA) and set up this sugar directorate.

The introduction of sugar levy that will particularly be used to first do cane development, an extremely important exercise that provides stability to our farmers. Many times, you travel to countries like Mauritius, you will see they have a farmers' bank. Apart from having a farmers' bank, the last time I was in that important country that grows its cane, they had a sugar bank. There is nothing else they can do other than provide capital support to their farmers so that they can develop their farms in good time.

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During break season, since sugar takes long before it matures in the farm, if a farmer is not provided with proper capital support, they are either bound to abandon that trade or even sometimes sell their cane before it is properly mature. They may also abandon the trade altogether and prefer to do other farming such as such dairy and tea where one is paid frequently.

I have seen the proposal and other documentation of what this administration intends to do with the sugar sector, including privatization that is not particularly mentioned in this document. I however know that it is important and interrelated.

Zoning has been mentioned prominently. I know that there are people that have concerns about zoning. When we went to the Committee, we were particularly interested in telling the Committee that much as zoning is important so that farmers can also learn the culture of sticking.

When the millers came to us and made their presentations before their Committee, they said unfortunately, Kenyans have not learnt the art of being decent and disciplined. Many times, you find farmers who come to you as a factory, they take farm inputs, but unfortunately, during the time of delivery of cane, they deliver it elsewhere.

Therefore, there was a need to engage in this business of zoning so that you are able to have farmers that have a working relationship that is solid and established between the farming community and the millers. On the other side to counterbalance zoning, it is important to also provide an avenue for competition, so that farmers do not feel that they have been clogged up and are being forced to mill with a particular miller only where there is no competition, with regards to two things.

Number one is the price of cane. I like that with the return of the pricing committee, they will be able to determine. There is a scientific formula that is set out on determining what the price is. That will be the work of the Board. The sugarcane farmers are supposed to be paid per tonne for delivery of cane to a particular factory and to all factories depending on the region where they are.

It is important because we do not have many operational mills. Many of our Government mills you know are no longer operational or they do not pay farmers in time. It is unfortunate that each time these industries try to take strides in the direction such as with privatization, there are people who go to court and stop the exercise in its entirety. Part of the reason some of our regions farmers gave up on this exercise of planting cane was because they were delivering to Government mills, which could not afford to pay them. We do not have enough private millers to take care of this.

That is why I support the decision on privatization. So long as we continue to guard these mills and ensure that the nucleus and the farm remain under the ownership of our county governments, privatization is a step in the right direction.

I was making my point on zoning and why it is important so that particular farmers deal with the facts in their region. Opening it and making it free of charge where there is cane hawking and all these other practices, are items that were properly dealt with for those of us that were in Kisumu in 2022 when the former Governor of Kakamega Wycliffe Oparanya presented their report of the sub-sector taskforce.

They delved on the importance of zoning. I agree with the proposals that they have made. The only addition that I make is that we must open up to counties. For

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example, the Nandi where Sen. Cherarkey comes from. There are farmers in specific regions including areas of Chemase who they feel left out because there is no sugar mill in that area.

If you zone them to a particular region, they either have to operate with West Kenya, which is fairly distance of West Valley in Kericho or Kiboss, Chemilil and Muhoroni. It is important for the Board to be given powers to look at such rare occurrences on case by case basis and grant permission to pick and collect cane from such farmers.

Mr. Temporary Speaker, Sir, I want to urge my colleagues to support this Bill in the proposal that is being made and the very solid proposals on how to grow and move this sector on issues of licensing and setting up of the sugar arbitration tribunal so that if there are changes, you can propose to it.

The only part of the Bill that I hold a different view much as I second, is on the breakdown of the levy given what is about to be done in this sector on privatization and on farmers now being able to access input. The fertiliser subsidy programme has contributed immensely to the growth of this sector.

That is why last year, a bag of 50 kg of sugar was costing upwards of Kshs9,000 or Kshs10,000. Today, if you go to a wholesale supermarket, it is Kshs5,200 because of the supply of fertiliser and other inputs, so that our farmers can produce. Of course, God has also been good to us by ensuring that there is sufficient rain.

With this Sugar Levy, we have to rethink our numbers because, unfortunately, Sen. (Dr.) Murango, you will bear me witness; when the various players of that industry appear before the Committee on Agriculture, you will see that because of the long history of this particular industry, there are no farmer association and organization committees that you would say this one specifically handles a particular task. You will find that they are fragmented and broken. They say, South Nyanza Sugar Farmers Association and so on.

Therefore, when you dedicate such huge amounts, say five per cent of the Sugar Development Levy to farmer associations without providing specifically which these associations are, you can end up providing an avenue where certain well-connected cartels can end up lining their pockets with money that would have been otherwise put to good use, such as may be extending credit services to farmers who are waiting for long periods before they are paid or before their crop is ready.

The sugarcane farmers organization, in my honest opinion, and I hope the Ccommittee can listen to me, instead of using a percentage, you would rather set it to a particular figure, Kshs70 million or Kshs100 million maximum because their duty is just to voice out the concerns of farmers. Otherwise, farmers already have a representative who sits on the board.

I do not think that through such amorphous organizations where they are not properly defined in law, it is prudent use public funds to set billions of monies in their direction.

Therefore, with those very many remarks, I beg to second and urge our colleagues that we conclude this business, kindly, before we proceed on recess.

*(Question proposed)*

**The Temporary Speaker** (Sen. Wakili Sigei): Hon. Senators, I have seen, from my desk, a good number of you who are seeking to contribute to this Bill. However, since the Chairperson of the Committee on Agriculture is tabling his report, which has just been approved for tabling, I will allow him to table the report and contribute to the Bill and immediately thereafter, I will allow the membership to contribute.

Sen. (Dr.) Murango, you may proceed to table that report and then contribute to the Bill.

*(Interruption of debate on Bill)*

### PAPER LAID

#### RIPOTI YA MSWADA WA SUKARI WA 2023

**Sen. (Dr.) Murango:** Asante Bw. Spika wa Muda. Ninaomba kuwasilisha Ripoti ya Mswada wa Sukari wa 2023 katika Seneti.

*(Sen. (Dr.) Murango laid the document on the Table)*

*(Resumption of debate on Bill)*

Bw. Spika wa Muda, sukari imekuwa tamu kwa wenye wanaitumia lakini imekuwa chungu kwa wakulima.

Wakati tumekuwa tukizunguka kama Kamati ya Ukulima, Uvuvi, Mifugo na Uchumi Samawati, katika maeneo yanayokuza sukari, tumejionea wakulima ambao wamenyanyaswa na kuteseka kwa muda kwa sababu ya sharia na usimamizi mbaya wa kampuni za sukari nchini.

Mswada uliotufikia kupitia mdhamini Sen. Wafula, ulifanya tuzuru mashinani na kuongea na wakulima wenyewe kama ilivyo kawaida yetu. Tulienda katika maeneo ya Busia, Bungoma, Kakamega hadi Chemelil katika Kaunti ya Kisumu. Tulipokea nakala kutoka kwa wakulima wa miwa kutoka Kaunti ya Kwale pamoja na malalamishi yao. Nawashukuru Maseneta wote tuliyo shirikiana nao katika safari ile, akiwemo Sen. (Dr.) Khalwale, Sen. Wafula, Sen. Okiya Omtatah, Sen. (Prof.) Tom Odhiambo Ojienda, SC, na pia wale wengine kama Sen. Sifuna aliyekuwa anafuatilia kwa kina na ukaribu Mswada huu wa kunufaisha wakulima wa miwa.

Bw. Spika wa Muda, ukiona majonzi yaliyokuwa na wakulima hawa walipokuwa wanahudhuria vikao vya kamati ya Kilimo, Mifugo na Uvuvi ya Seneti, ili kujieleza, ungejua kuwa wakulima wa maeneo yale wametatizika kwa muda. Wakulima kutoka kaunti za Nandi na Kericho walikuja Chemelil ili kuyawasilisha maoni yao hawajasahaulika kwa sababu ya shida zilizokuwepo. Sitakawia kueleza lakini niruhusu kusema haya.

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Vyama vya ushirika vya kusaga miwa kama Nzoia Sugar hawajawalipa wafanyikazi mishahara yao ilhali miwa inavunwa na kupelekwa katika viwanda hivi. Hili ni jambo la kutia hofu. Tuliweza kuweka *zoning* kwa mipaka ili tuangalie mahali ambapo miwa inapelekwa na pia kwenye uchaguzi wa wanaosimamia ukulima wa miwa. Katika bodi ya Sukari, Seneti hii ilihakikisha kuwa wakulima wana waakilishi wengi zaidi ili malalamiko ya wakulima itatuliwe na kama kuna upigaji kura katika jambo linalotokea sauti ya mkulima itasikizwa.

Bw. Spika wa Muda, baada ya miwa kusagwa na sukari kuuzwa, kuna matokeo ya pembejeni ambayo inabaki katika mitambo kama “sukari nguru” na vinginevyo ambavyo hutumika kutengeneza chakula cha ng’ombe na husaidia uchumi wa nchi hii. Wakulima walilalamika kuwa wanapouza mabaki haya, pesa zile haziwafaidi kamwe. Mswada huu unafaa kutatua mambo kama yale.

Usafirishaji wa miwa kutoka eneo moja hadi lingine lazima udhibitishwe. Mswada huu unaelekeza kuwa tutauwa vyama hivi vya ushirika na wale wanaopeana pembejeo kwa wakulima. Mkasa uliopata kiwanda cha Nzoia Sugar ulisema kuwa kuna wakulima waliopewa pembejeo, wakalimiwa shamba lakini baadaye wakachukua miwa na kuuzia wasiohusika kamwe katika upanzi wa miwa ile.

Nzoia Sugar ilipata deni ya milioni Kshs900, ikasambaratika na wakulima wakaumia. Mgala muuwe na haki yake mpe. Kama tutakuwa na nchi nzuri ambayo ina maendeleo katika kila kona, lazima tuhakikishe kuwa magatuzi yote 47, yatapata nafasi ya mimea ambayo itawapa pesa. Ndio maana Kamati hii imejitahidi sana na kuleta Miswaada ya Pamba, Ndengu na Kahawa ambayo ilipitishwa na Maseneta.

Naomba kwamba, mwisho wa wiki hii tutaupitisha Mswada huu wa sukari, ili tuwasaidie wakaazi na wazaliwa wa nchi hii.

Asante.

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

Proceed Sen. Sifuna.

**Sen. Sifuna:** Thank you, Mr. Temporary Speaker, Sir, I am a contracted farmer with Nzoia Sugar in my other life. This is something many people might not know. I am not rich, but my grandfather, the late Mr. Joel Mabele Sifuna had a farm in Kitinda Village of Bungoma County. The Mover of this Motion is my Senator at home. When he died, in his will, he instructed that the grandchildren would till that land. I have a four-acre section where I grow cane and was contracted by Nzoia Sugar, where I delivered my cane for some years before the factory collapsed. It became untenable for me to continue with that business.

I thank the sponsor of this Bill in the National Assembly, Hon. Wangwe, with whom we share many things. Other than him being a sugarcane farmer like me, we are also travelers and users of that infamous C41 road, which has taken forever to complete construction despite assurances by successive governments that contractors are working on it. That is the road that leads to my rural home. One of these fine days, I might invite you and Members of this House to meet my mother, and you will use that road.

I want to start by saying that there are many positives I can see are a direct response to the challenges that farmers have faced over the years. First, it has been the complaint of the Minority in this House that successive Bills that have been brought to

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this House have tried to usurp the powers and roles of county governments. From the beginning of the provisions of this Bill, there is clear recognition of the role of county governments, which starts in Clause 4 on the constitution of the sugar board.

In Clause 5 of the Bill, there are functions of the county government that are clearly outlined, including extension services, which we used to have when we were growing up, but somehow, somewhere, they disappeared. These extension services were important in providing farmers with critical support for crop growth. They are responsible for building the road network to supply and deliver cane. This was critical.

In Bungoma County, the roads that were assigned as county roads or were being used to deliver cane were well maintained. Those of us like myself and Hon. Wangwe, the Member of Parliament for Navakholo, are unfortunate that our homes are on a road that has been handed over to a contractor who is not there. The road is so terrible that I have to find *panya* routes through the villages. Roads maintained by the county governments and used to deliver cane are smoother than C41. I am happy that the role of county government is recognized. Clause 6 provides for nominees of county governments in this sugar board.

Allow me to address this question of zoning or protection against poaching that has been provided for under Clause 19. During the task force discussions, this was a difficult debate between farmers, millers, Members of the Committee on Agriculture, Livestock, and Fisheries, and the sponsors of the Bill.

The Chairperson of the Committee on Agriculture, Livestock, and Fisheries has said one thing that I have also experienced. We had the spectra of farmers getting inputs from specific mills. You would get fertiliser and seed cane from Nzoia Sugar. However, when the crop is ready, there are delays, and you have financial pressure to take your children to school, whoever comes with money, which is now called, poaching, would pay the farmer and go away.

As a result, there were not only debts that failed you from the miller, but also the out-grower companies. This is because the fertiliser used to be distributed through the out-grower companies, for instance, the Nzoia Out-Grower Company, of which I am a member. The problem has been after the Government forgave the debts of the millers, it forgot that similar circumstances exist for out-grower companies.

In this instance, I have been directed by the out-grower companies to request the Government that, just the way they forgave or waived the debts owed to the millers, we also consider waving the debts that are still on the books of the out-grower companies that arose out of similar circumstances of farmers being contracted by one miller and then selling that crop to another person.

Mr. Temporary Speaker, Sir, I have seen that the Bill has introduced a fine of not less than Kshs 1 million or three times the value of the cane, whichever is higher if you are found as a miller poaching cane. Therefore, while others might look at it as a zoning issue, we are also trying to deal with this question of poaching of cane. We have millers who do not develop any of their nuclear assets. They do not spend any time recruiting farmers to cultivate this crop, but they poach other people's cane. Additionally, I have been informed of a spectre. When you see a sugar mill existing in an area where there is no sugar cane being grown, it always raises a red flag.

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Mr. Temporary Speaker, Sir, under Section 23 of the Bill, there is provision for anybody who wants to import sugarcane to import only what is called a deficit, an established deficit of the supply of sugar locally. Therefore, one of biggest complaints of farmers has been that we are being forced to compete with those people who import sugar when we have sufficient sugar on the ground. Therefore, it will be the responsibility of the Board to establish that before an import license or import permit is given, there is actually that deficit.

I am also happy with the provision on sugar inspectors under Section 34 and 35, who have the powers to enter any premises. In the past few years, we have seen smuggling of sugar into the country, and importation of sugar that is either a substandard or unfit for human consumption, or even criminals importing sugar which is laced with very hazardous chemicals.

Mr. Temporary Speaker, Sir, these sugar inspectors will have that power to enter any premises and seize any product for as long as there are reasonable grounds to suspect that there is something wrong with that sugar. Likewise, I am very happy that the proponents of this Bill have in the Bill provided for sugar agreements. These are agreements between growers and millers or agreements between growers and outgrower institutions or millers and outgrowers.

Mr. Temporary Speaker, Sir, if you read the Bill and the provisions on what those sugarcane agreements should contain, they provide clarity between the farmer and the miller on how that relationship will be governed. It is something that I would support very much.

There is also the introduction of the sugar pricing committees, which also have representatives of growers, and two representatives of the counties under Section 58. The responsibility of this Pricing Committee is to come up with pricing formulas and when they are doing that job, they have to consider various factors, including, cane related charges paid by the farmer.

You will also see that they have provided for a formula that considers delayed harvesting. Since one of the issues we have in the sugar growing areas is that you will be told this sugar can mature in 18 months and we have farmers who have stayed with their crop for over two years waiting for harvesting. The losses that they incur in that instance should be compensated.

Mr. Temporary Speaker, Sir, allow me to say that I would be proposing only a few amendments about a few things that are of concern to me. I have the benefit of not only being a sugarcane farmer in Bungoma, but I also represent a county where the biggest source of revenue and jobs for our people, are industries. I have had a conversation with both sponsors of this Bill in the National Assembly and even in the Senate, about the concerns that have been raised by industry with regard to the introduction of the sugar development levy on industrial white sugar.

Mr. Temporary Speaker, Sir, if you look at the definition of industrial -white sugar under Section 2, it is sugar that is used as a sweetener or a preservative. This industrial white-sugar is used in many consumer products. The biggest of course, is the beverage industry. It is use in soft drinks, your sodas, juices, jams, jellies, and in baked

goods, pharmaceuticals and even in cosmetics. Those of you who use moisturisers, it would be nice for you to know this.

*(Sen. Crystal Asige spoke off the record)*

Mr. Temporary Speaker, Sir, I do not use moisturisers. Protect me from Sen. Crystal Asige. I am a Bukusu man and our skin takes care of itself. They use industrial sugar in the manufacture of dairy products such as yoghurt. The problem is that if you put that levy on industrial sugar, we are going to see an increase in these consumer prices.

I forgot to mention that it is also used in the manufacture of beer. We need to look very closely at that because in this country, we do not have the capacity to manufacture this industrial sugar.

The manufacturers are telling us for as long as we do not have that capacity to manufacture white industrial sugar, imposing that levy at four per cent, similar to the regular sugar, is going to inconvenience many of these manufacturers because of the constraints of supply.

If we do not have the capacity to produce, then we should not be levying that four per cent sugar development levy until we have the capacity to produce locally.

When I spoke to Hon. Wangwe, he told me one of the key concerns was that people want to import sugar under the guise of it being white industrial sugar, and it has happened before. Then, sooner or later, you find it in the markets being used for purposes other than as a sweetener or as a preservative. I have tried to persuade him that it is possible for us to deal with the few bad eggs and not necessarily castigate the entire manufacturing industry.

I will give you the example of beer because this is something I understand very well. It is a record in this House, that in Nairobi they call me the Minister of Celebrations. If this levy is passed, we are looking at an average increase of between Kshs6 and 15 on the average retail price of a bottle of beer. This is very critical coming at a time when the Government is involved with a very serious war of consumption of illicit alcohol.

During a recent seminar that was organised by the Alcoholic Beverages Association of Kenya, it was revealed that 59 per cent of Kenyans consume illicit alcohol. I am telling you the truth. I have that report. I do not know why Sen. Cherarkey is expressing shock.

Out of the Kshs180 recommended retail price of a bottle of, say, Tusker Lite, Kshs110 goes to taxes. If you increase that further by Kshs6 or 15, it pushes it out of the reach of many Kenyans. This is something that is going to affect our war on illicit alcohol.

It is also projected that if we are to impose that four per cent development levy on imported industrial sugar, a 300-millilitre mug of the cheapest beer, which is named after this House, Senator Keg Lager, is going to increase by at least Kshs2. This is also going to impact the war on illicit alcohol.

This House should consider that there is a value supply chain in the manufacture of some of these products that I am talking about. For instance, there are farmers who have been contracted recently to supply raw materials for the manufacture of beer. There

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is a lot of employment that is created in the agricultural sector. In places such as Homa Bay, I have seen many contracted farmers growing sorghum.

There is also the spectre of employment being lost in the manufacturing itself, including at East African Breweries Limited (EABL). Last year, for the first time in many years, a company as big as EABL declared some redundancies and some job losses, which is something that we are staring at. For as long as they are not making the sort of sales that they used to, we are going to have a problem.

Then there is work that is in the distribution network and the service industry. Many suffered during the time when pubs were closed in Nairobi during Covid-19 pandemic. We speak to those people. They are a good source of employment.

Looking at the provisions of the Bill at Section 23, we spoke about this need for import permits at Section 23 of the Bill, we think those of us in Nairobi that the Government should be able to control the importation of industrial white sugar, because at the end of the day, you need an import permit for you to be able to import this sugar.

I want to read Section 23, subsection 3-

“A person who imports sugar into Kenya shall prior to importation, provide evidence that the sugar they intend to import is not available in the local market.”

The evidence that we do not provide or produce industry white sugar is there. I believe that then there is no need to subject the manufacturers to this particular levy.

If you go to Section 24 (1)---

**The Temporary Speaker** (Sen. Wakili Sigei): Hon. Sifuna, you will have five minutes of your time to conclude on your contribution when the Bill is next in the Order Paper.

### 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, Wednesday, 27<sup>th</sup> March, 2024 at 9:30 a.m.

The Senate rose at 6.30 p.m.