

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday 28th, 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, can we confirm quorum, please?

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

Serjeant-at-Arms, please ring the bell for 10 minutes.

(The Quorum bell was rung)

We now have quorum. You call now call out the first order.
Next order, Clerk?

MESSAGES FROM THE NATIONAL ASSEMBLY

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

The Deputy Speaker (Sen. Kathuri): Hon. Senators, I have a message concerning the Cancer Prevention and Control (Amendment) (No.2) Bill (National Assembly Bills No.45 of 2022).

(The Senate Majority Leader (Sen. Cheruiyot stood at the Bar)

Majority Leader, you can have your way to your seat.

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

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 Cancer Prevention and Control (Amendment) (No.2) Bill (National Assembly Bills No. 45 of 2022).

The message dated Tuesday 26th March, 2024 was received on Wednesday 27th March 2024 in the Office of the Clerk of the Senate. Pursuant to the Standing Order, I now report the message.

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

WHEREAS the Cancer Prevention and Control (Amendments) (No.2) Bill (National Assembly Bills No.45 of 2022) was published *vide* Kenya Gazette Supplement No.170 of 28th October, 2022 as a Bill to amend the Cancer Prevention and Control Act, 2012, to make provisions for training of field cadres in the specialized medical field of oncology to include cancer treatment as part of the provision of the Primary Health Care (PHC) and to incorporate the use of EL and telemedicine;

(Sen. Lomenen stood at the Bar)

Sen. Lomenen, have your seat. It is a long message.

WHEREAS the National Assembly considered the said Bill in the Committee of the Whole on Wednesday 13th March, 2024, and passed it with amendments on Wednesday 28th March, 2024, 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.

Hon. Senators, the Message was received from the sponsor of the Bill Hon. Abdul Raheem Dawood (MP) of the National Assembly and Sen. Cherarkey; co-sponsors and introduced the Bill in the Senate;

Pursuant to provision of Standing Order No.163(2) which, states that “before a Bill originating from the National Assembly is read a first time in the Senate, the Speaker shall notify the Senate whenever a message is received from the Speaker of the National Assembly naming a Senator or Senators who will have been nominated by the sponsor of the Bill to co-sponsor the Bill in the Senate”

Hon. Senators, in this regard, that the Cancer Prevention and Control (Amendment) (No.2) Bill (National Assembly Bills No.45 of 2022) be read a first as listed in today’s Order Paper.

I thank you.

(Several hon. Senators walked into the Chamber)

Hon. Senators, I have another Message to read. Can you settle down?

PASSAGE OF THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS)
BILL (NATIONAL ASSEMBLY BILLS NO. 44 OF 2023)

This is another Message, which is Passage of the Houses of Parliament (Bicameral Relations) Bill (National Assembly Bills No.44 of 2023)

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 of the Houses of Parliament (Bicameral Relations) Bill (National Assembly Bills No.44 of 2023). The Message dated Tuesday 26th March, 2024, was received on Wednesday 27th March, 2024 in the Office of the Clerk of the Senate.

Pursuant to the same Standing Order, I now report the Message and I quote-
“Pursuant to provisions of Standing Order No.41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly-

WHEREAS the Houses of Parliament (Bicameral Relations) Bill (National Assembly Bills No.44 of 2023) was published vide Kenya Gazette Supplement No.130 of 28th July, 2023 as a Bill proposing to give further effect to the procedures relating to matters of a Bicameral nature between the Houses of Parliament as contemplated in Chapter Eight of the Constitution of Kenya;

AND WHEREAS the National Assembly considered and passed the said Bill on Thursday, 21st March, 2024, with amendments in the form attached hereto.

NOW, THEREFORE, in accordance with the provisions of Article 110 of the Constitution, Standing Orders No.41(1), and Standing Order No.142 of the National Assembly Standing Orders, I hereby refer the Bill to the Senate for consideration.

Hon. Senators, pursuant to Standing Order No.163, which requires that a Bill that originates from the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by the way of First Reading in accordance with Standing Order No.144.

I, therefore, direct that the Houses of Parliament Bicameral Relations Bill (National Bills No.44 of 2023), be read for the First Time as listed in today’s Order Paper.

I thank you.

Next Order.

PAPERS LAID

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

The Senate Majority Leader (Sen. Cheruiyot): Mr. Deputy Speaker, Sir, I beg to lay the following papers on the table of the Senate, today, Thursday, 28th March, 2024-

Report of the Auditor-General on the Financial Statements of Kiambu County Assembly Staff Loan Scheme Fund for the year ended 30th June, 2023.

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

Report of the Auditor-General on the Financial Statements of Kiambu County Emergency Fund for the year ended 30th June, 2023.

Report of the Auditor-General on the Financial Statements of Turkana County Climate Change Fund for the seven (7) month period ended 30th June, 2023.

Report of the Auditor-General on the Financial Statements of West Pokot County Assembly Car Loan and Mortgage Scheme Fund for the year ended 30th June, 2023.

Report of the Auditor-General on the Financial Statements of Trans-Nzoia County Nawiri Fund for the year ended 30th June, 2023.

(Sen. Cheruiyot laid the Documents on the Table)

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

QUESTIONS AND STATEMENTS

STATEMENTS

The Deputy Speaker (Sen. Kathuri): Hon. Senators, we have one Statement under Standing Order No.52(1) by Sen Edwin Sifuna.

EXCLUSION OF KENYA LIONESSES RUGBY TEAM FROM AFRICA GAMES, 2024

Hon. Senators, I am convinced that nobody has been sent by the said Senator. Therefore, that Statement is dropped.

(Statement dropped)

Let us start with Sen. Joseph Kamau.

POOR STATE OF HEALTHCARE IN LAMU COUNTY

Sen. Githuku: Thank you, Mr. Deputy Speaker, Sir. I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Health regarding the poor state of healthcare provision in hospitals within Lamu County.

In the statement, the Committee should-

(1) Explain the strategy the two levels of government have put in place to rescue healthcare in Lamu County from the imminent collapse due to the decrepit state of hospitals and incessant complaints over the lack of essential drugs, dilapidated equipment and poor service delivery exacerbated by lack of vital facilities such as ambulance services.

(2) Explain the measures the County Government of Lamu has put in place to address the rise, the sense of lethargy and apathy among the health workers in hospitals within Lamu County with a particular focus on Lamu West Constituency;

(3) Order an audit of the general status of healthcare in Lamu County with a view of ensuring that the residents of Lamu are enabled to enjoy their rights to the highest attainable standard of health as provided for under Article 43(1)(a) of the Constitution.

The Deputy Speaker (Sen. Kathuri): There is a Statement under Standing Order No.53(1) by Sen. Sifuna. Sen. Maanzo, proceed and read out the Statement on his behalf.

GOVERNMENT-TO-GOVERNMENT AGREEMENT ON
SUPPLY OF PETROLEUM PRODUCTS IN KENYA

Sen. Maanzo: Thank you, Mr. Deputy Speaker, Sir. Speaker. I rise pursuant to Standing Order No.53(1), on behalf of Sen. Sifuna, the Senator for Nairobi City County, to seek a Statement from the Standing Committee of Energy regarding the Government-to-Government (G2G) Agreement on the supply of petroleum products to Kenya.

In the Statement, the Committee should-

(1) Inform the Senate of the current status of the G2G petroleum products supply on an extended credit terms deal entered between the Government of Kenya and the three national oil exporters from the Gulf in March 2023; stating the oil marketing companies in Kenya currently involved in the deal and the intended end date of the G2G oil deal;

(2) Name the banks in Kenya that currently guarantee fuel import purchases under the G2G deal, and further give up a breakdown by month of monies owned to the oil marketing companies under the deal;

(3) Explain why a supply of petroleum products under the G2G deal should continue noting the intended purpose of the deal was to cushion the Shilling against the US Dollar, an objective that has been attained with the Shilling having strengthened against the US Dollar.

(4) State when the country will revert to the Open Tender System (OTS), for importing petroleum products from the local market.

The Deputy Speaker (Sen. Kathuri): Sen. Maanzo, I do not know why you have really struggled to read that Statement. I was wondering whether it was handwritten; you have really struggled. Sorry for that.

There are other Statements. Sen. Chimera, you may proceed.

LAND ADJUDICATION CHALLENGES AND PLIGHT
OF SQUATTERS AT LUNGA LUNGA
RANCH IN KWALE COUNTY

Sen. Chimera: Thank you, Mr. Speaker, Sir. I have two Statements.

I rise pursuant to Standing Order No.53(1) to seek a statement from the Standing Committee on Land, Environment and Natural Resources regarding land adjudication challenges and the plight of squatters at Lunga Lunga Ranch in Kwale County.

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

In the statement, the Committee should-

(1) Provide the criteria and guidelines used by the National Land Commission (NLC) to identify and settle land squatters, stating the rights of squatters to land ownership, specifically those who have been occupying part of the land in Lunga Lunga Ranch for years, citing how the said criteria and guidelines conform to the relevant laws.

(2) Explain measures put in place by the State Department for Lands and Physical Planning to resettle the squatters while ensuring transparency and fairness in the process of land adjudication and the issuance of individual land ownership documents for squatters in the ranch.

(3) Spell out the criteria for allocating ranch land to developers and investors, further, providing an assessment of where the utilization of land allocated to non-squatters aligns with purposes of sustainable development and aspirations of the local community.

(4) Cause the Ministry of Lands, Public Works, Housing, and Urban Development to conduct an audit of current claimants to the ranch and further provide a list of actual squatters within the Lunga Lunga Ranch.

OPERATIONS ON THE NORTHERN WATER WORKS DEVELOPMENT AGENCY

Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Land, Environment, and Natural Resources regarding the operations of the Northern Water Works Development Agency (NWWDA), over the past two years.

In the statement, the Committee should-

(1) State the nature of projects undertaken by the NWWDA from 2022 to date and outline the financial allocations dedicated to the projects lastly.

(2) Provide details of the tendering processes involved in the selection of contractors for these projects and table a comprehensive report on the transparency and legality of the tender awarding process.

I thank you.

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

DEATH OF INSPECTOR FELIX KELIAN KINTOSI OF DCI

Sen. Tobiko: 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 Security, Defense and Foreign Relations regarding the death of Inspector Felix Kelian Kintosi of the Directorate of Criminal Investigations (DCI), Dagoretti Sub-County.

In the statement, the Committee should-

(1) Explain the circumstances that led to the mysterious death of Inspector Felix Kelian Kintosi on Thursday, 21st March, 2024, allegedly following an altercation with a motorist and other persons after a minor traffic incident in Kikuyu, Kiambu County.

(2) Appraise the Senate on the progress made in investigating the death, stating whether the suspects behind the murder of the detective have all been arrested and arraigned in court to face justice.

The Deputy Speaker (Sen. Kathuri): Thank you. Proceed, Sen. Ali Roba.

FREQUENT POWER OUTAGES IN MANDERA COUNTY

Sen. Ali Roba: Thank you, Mr. Deputy Speaker, Sir. I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Energy concerning the frequent power outages in Mandera County.

In the Statement, the Committee should-

(1) State the course of ongoing power outages in Mandera town as a result of load-shedding lasting more than 12 hours, considering that the majority of the county's residents are observing Ramadhan and rely on consistent electricity supply for food storage, health care services such as vaccine storage.

(2) State actions being taken by the Kenya Power to alleviate the load shedding and restore dependable electricity supply to Mandera town.

(3) Provide strategies being implemented by Kenya Power for improving communication with customers and addressing complaints, especially on load shedding.

(4) Outline initiatives by Kenya Power to enhance the power supply in Mandera and Wajir town, including the establishment of infrastructure to support solar power utilization.

(5) State the rationale behind the removal of five megawatts generators from Mandera town operated by independent power generators and steps taken by Kenya Power to restore and upgrade the existing generators to be able to supply sufficient power to Mandera town.

I thank you.

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

IRREGULARITIES IN LAND BELONGING TO KENYA RAILWAYS CORPORATION

Sen. Cherarkey: Thank you, Mr. Deputy Speaker, Sir. I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Land, Environment and Natural Resources regarding irregularities involving land owned by Kenya Railways Corporation.

In the Statement, the Committee, should-

(1) Provide details of the land owned by Kenya Railways in acreage, disclosing disputes pending and successful compensations to land owners for railway use, if any.

(2) Provide a list of farms and individuals in long and short-term land leases in agreements with the Kenya Railways indicating the terms of engagement.

(3) Provide information on the controversies surrounding the Kenya Railways land in Suguta Road in Kileleshwa, specifically regarding the interest of the current Managing Director of Kenya Railways on the said land.

(4) State in acreage, the land that has been successfully recovered and the number of illegal title deeds surrounded by railway land grabbers indicating actions taken, if any, on staff found culpable of conflict of interest through illegal leasing and land grabbing at the Kenya Railways Corporation.

I thank you.

The Deputy Speaker (Sen. Kathuri): Proceed Sen. Kavindu Muthama.

COMPULSORY ACQUISITION OF PRIVATE LAND IN MACHAKOS COUNTY

Sen. Kavindu Muthama: Thank you, Mr. Deputy Speaker, Sir. I rise pursuant to to Standing Order No.53(1) to seek a Statement from the Standing Committee of Land, Environment and Natural Resources regarding the compulsory acquisition of private land, LR No. 2086 belonging to the late Reuben Mutuma, Nthwaka in Mutituni Market, Machakos County by the defunct County Council of Machakos.

In the statement, the Committee, should-

(1) Explain the factors contributing to the delay of compensation on the 7.4 hectares of land compulsorily acquired in Mutituni Market detailing the roles played by the defunct County Council of Machakos, the Ministry of Lands, Public Works, Housing and Urban Development and the National Land Commission (NLC).

(2) Provide an overview of the measures put in place and anticipated time scheduled establishing the NLC and the Ministry of Lands, Public Works, Housing and Urban Development to guarantee prompt compensation of the individuals affected by the compulsory land acquisition.

(3) Offer a detailed explanation regarding the reasons for encroachment on the private land by the Government without obtaining legal possession.

(4) State the measures the Government has put in place to ensure that the family of the late Reuben Mutuma Nthwaka is compensated for the 7.4 hectares of land compulsorily acquired in Mutituni market.

I thank you.

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

Proceed Sen. Miraj.

HEALTH CARE PROVISION TO TEENAGE AND ADOLESCENT MOTHERS

Sen. Chimera: Thank you, Mr. Deputy Speaker, Sir. I will read the Statement **on behalf of Sen. Miraj.**

I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Health regarding healthcare provision to teenage and adolescent mothers in public healthcare facilities.

In the statement, the Committee should-

(1) Provide the medical protocols provided to teenage mothers when they visit public medical facilities, stating the number of underage individuals who have sought prenatal and postnatal care at public medical facilities in the year 2023.

(2) Investigate cases of alleged abuse of teenage and adolescent mothers in medical facilities and labour wards in public hospitals, disclosing whether any arrests have been made.

(3) Explain why teenage and adolescent mothers are mistreated in labour wards, leading them to avoid public labour wards for subsequent deliveries, noting that the law provides the right to medical assistance, fair treatment and the right to health to all.

(4) Outline the measures the Ministry of Health is taking to ensure that everyone seeking medical attention is treated equally, respecting their fundamental right to healthcare without discrimination based on age, religion, or ethnic background.

OPERATIONS OF THE WATER SECTOR TRUST FUND

Sen. Chute: Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.53 (1) to seek a Statement from the Standing Committee on Land, Environment and Natural Resources regarding the operations of the Water Sector Trust Fund (WST).

In the Statement, the Committee should-

(1) State the total amount of funds received by the Water Sector Trust Fund from both the Government and donors, providing a breakdown of how the funds were utilized.

(2) Furnish the Senate with a list of all projects undertaken by the Trust Fund indicating their exact locations and status of completion.

(3) Provide an update on the status of the projects advertised by the Trust Fund to be undertaken in Moyale, Laisamis and North Horr constituencies in Marsabit County.

(4) Inform the Senate of the process used in tendering for the said projects, providing details of the bids received, the contractor who was awarded the bid amount, commencement and projected completion dates.

The Deputy Speaker (Sen. Kathuri): Let us proceed to Statements under Standing Order No. 52(1). Sen. Lemaletian, proceed.

RESPONSIVE BUDGETING FOR MENTAL HEALTHCARE

Sen. Lemaletian: Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.52(1) to make a Statement on a matter of general topical concern, namely, the need for responsive budgeting to buffer the mental health landscape.

We are vividly aware that Kenya is experiencing a rapid increase in suicides, mental health conditions, substance use and abuse and addictive disorders of epidemic

proportions - an indication of enormous social challenges and unmet needs at the social level.

Stigma and discrimination are major barriers to the improvement of the mental health and well-being of the population as they contribute to the violation of the human rights of people with mental and psychosocial disabilities. Furthermore, inadequate investment in mental health worsens the situation by limiting their inclusion in the community.

I urge this House to prioritize responsive budgeting, which would lead to a higher allocation of funds that will buttress the formulation and implementation of mental health policies and intervention strategies.

In this regard, I wish to propose the following measures, which I strongly believe would help in the improvement of the mental health of many Kenyans-

(1) **Funding for Awareness and Training:** Increase funding for mental healthcare professionals and incorporate mental health modules in the Competency-Based Curriculum (CBC) to encompass life skills and resilience training that would address the alarming rates of psychological disturbance, especially suicidal behaviour among adolescents.

(2) **Mainstreaming Mental Health:** Expand mental health awareness programmes, launch anti-stigma campaigns and ensure Social Health Insurance Fund (SHIF) and emergency chronic and critical illness coverage for comprehensive mental healthcare services.

(3) **Taxation and Compliance:** Review the national tax policy to allocate the recommended Kshs250 per capita for mental healthcare from the current amount of 15 cents.

(4) **Increase Budget Allocation:** Strengthen health financing laws to allocate more funds to procure and equip mental healthcare centres and improve such services across all counties.

(5) **Digital Management System:** Implement a digital health management system that would enhance data collection and monitoring of mental health services.

Mr. Deputy Speaker, Sir, these recommendations aim to address the urgent need for improved mental healthcare services and support in Kenya, particularly for vulnerable populations.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kathuri): Thank you, Sen. Sifuna, proceed.

EXCLUSION OF KENYA LIONESSES RUGBY TEAM FROM AFRICA GAMES, 2024

Sen. Sifuna: Thank you, Mr. Deputy Speaker, Sir. I rise pursuant to Standing Order No.52(1) to make a Statement on a matter of general topical concern namely, the exclusion of the Kenya Lionesses rugby team from the Kenyan team to the just-concluded Africa Games, 2024 Edition, which took place in Accra, Ghana.

Even though the country was represented by several sporting disciplines, including hockey and volleyball, inexplicably, the women's Rugby Sevens team was not facilitated to travel. Unfortunately, this happened in the backdrop of the upcoming Repechage Tournament, scheduled for Monaco in June, 2024, at which the Lionesses will be staging one last fight to secure an Olympic ticket to Paris 2024. The Accra Africa games would have been a perfect opportunity to sharpen their bite and build momentum towards the Paris Olympics, starting in July this year.

For decades since Independence, the sport has provided a serene break from the challenges of life bedeviling Kenyans as a source of entertainment, national pride and a symbol of unity. Indeed, some of the most celebrated Kenyans are top sportsmen, past and present, in an immaculate cast that includes but is not limited to, Kipchoge Keino, J.J. Masiga, Eliud Kipchoge, Denis Oliech, Collins Injera, Michael Olunga and Steve Tikolo.

There is no gainsaying that sports has created genuine young millionaires and genuinely credible Kenyan celebrities because it remains the perfect avenue for true talent. However, the decline of Kenyan sports of all cadres in recent years is an indictment on the part of the Government, the federations and the unions. There was a time when Kenyans could watch the Steeplechase confidently, expecting a clean podium sweep, or long-distance athletics with the nonchalant belief that we would win all medals on offer.

As for football, the good times remain back in the 70s and 80s. Cricket was once a World Cup-level game in this land, but all that is history now. Just last season, the Kenya Sevens Rugby team, “Shujaa”, was relegated from the core International Rugby Board (IRB) Rugby Circuit. It is difficult to tell whether they will make a swift return or like their compatriots in other sports, fade into obscurity and consign their long appearance in the circuit to history books. It is a story as sad as it is tragic.

With regard to the exclusion of the Kenya Lionesses from the Africa Games, the Kenya Rugby Union, the Sports Council, and the Ministry of Youth Affairs, Creative Economy and Sports have all shown disturbing levels of incompetence, a failure to learn from the past and a shocking inability to comprehend the gravity of matters within their purview.

While Kenyans parade in front of their TV sets every weekend to follow foreign sports, it is lost on those who manage local sports that the commercial and socio-cultural success that comes with this big following is a product of investment, focus and ambition, which they lack here at home. Tragically, this trajectory portends a scenario where soon all forms of sports will collapse in the country.

As the Senator of the capital city of the country, where youth unemployment is at crisis levels, I am often confronted by the critical need to develop sports, so that it can provide employment opportunities for the young residents of this city.

Mr. Deputy Speaker, Sir, the infrastructure and management of sports rely heavily on the national Government, county governments, federations and unions, which have to do better. The saga facing the Lionesses is a microcosm of the issues in sports in general. It is my honest hope that the authorities will arrest the decline before all hope is lost.

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

The Deputy Speaker (Sen. Kathuri): Thank you. Let us get the Statement by the Majority Leader under Standing Order No.57(1).

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 16TH APRIL, 2024

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Deputy Speaker, Sir. Pursuant to Standing Order No.57(1), I hereby present the business of the Senate for the week commencing Tuesday, 16th April, 2024.

As hon. Senators are aware, at the rise of the Senate today, the Senate will proceed on recess until Tuesday, 16th April, 2024 pursuant to the Senate calendar that we passed on 15th January, 2024. During the sittings of the Senate held on Thursday 21st March, 2024, the Senate considered and passed a record five Bills at the Committee of the Whole Stage, namely-

(1) The Coffee Bill (Senate Bill No.10 of 2023), the Chairperson Standing Committee on Agriculture, Livestock and Fishery sponsored the Bill;

(2) The Prevention of Livestock and Produce Theft Bill, sponsored by Sen. Samson Cherarkey.

(3) The Parliamentary Powers and Privileges (Amendment) Bill, sponsored by Sen. Osotsi.

(4) The Food and Feed Safety Control Coordination Bill, sponsored by yours truly.

(5) The Public Service (Values and Principles) (Amendment) Bill, (National Assembly Bills No. 46 of 2022), sponsored by Senator Sen. Samson Cherarkey.

The aforementioned Bills have since been referred to the National Assembly for consideration.

Mr. Deputy Speaker, Sir, 36 Bills are now pending conclusion by the Senate. Out of these, 30 are Senate Bills, while six are National Assembly Bills. A total of 12 Motions are pending conclusion.

Mr. Deputy Speaker, Sir, 22 Petitions are pending conclusion by respective Standing Committees to which they were committed while 313 Statements are pending before the respective Standing Committees.

I implore the committees to prioritize the conclusion of business pending before them during the recess period and table the reports accordingly.

At its meeting held on Tuesday, 26th March, 2024, the Senate Business Committee (SBC), approved the next set of questions to be scheduled in the Order Paper for Wednesday, 17th April, 2024.

The summary of the questions are as follows-

(1) Question No.1 by Sen. (Prof.) Tom Odhiambo Ojienda, SC to the Cabinet Secretary for Interior and National Administration, on the Sondu town clashes.

(2) Question No.2 by Sen. Gataya Mo Fire.

(3) Question number No.3 by Sen. (Prof.) Tom Odhiambo Ojienda, on the medical insurance file perpetrated by healthcare facilities in Kenya.

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

(4) Question No.28 to the Cabinet Secretary for Defense by Sen. Edwin Sifuna on the status of renovation works at Uhuru Park in Nairobi.

(5) Question No.38 by Sen. Kathuri Murungi to the Cabinet Secretary for Interior and National Administration, on the status of investigations into the abduction, torture and execution of Mr. Daniel Muthiani Bernard, alias Sniper;

(6) Question No.39 by Sen. Lomenen to the Cabinet Secretary for Interior and National Administration on curfew imposed in major towns and centres in Turkana County.

(7) Question No.43 to the CS for Interior and National Administration by Sen. Mungatana, MGH on reestablishment of Wema General Service Unit Camp, in Tana River County, which was closed after it was marooned by floods.

In conclusion, I want to take this opportunity to thank all Senators for the dedication and commitment that they have shown in their work during the part one of the Third Session.

As we proceed on recess later on today, I want to thank them for their commitment. I wish them well as they spend time with their families over Easter and their constituents during the recess period and as they prepare for the second part of the Third Session of the Senate.

Let me take this chance to wish you all and your loved ones, friends, constituents, and associates a peaceful and fulfilling Easter holiday as well as blessings during the holy month of Ramadan.

I thank you and hereby lay the Statement on the table of the Senate.

I thank you, Mr. Deputy Speaker, Sir.

(Sen. Cheruiyot laid the documents on the Table)

The Deputy Speaker (Sen. Kathuri): Thank you very much for the wishes. Next order.

BILL

First Reading

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

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

Next Order.

BILL*First Reading*

THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS) BILL
(NATIONAL ASSEMBLY BILLS NO.44 OF 2023)

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

Next order.

BILL*Second Reading*

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

(Division)

We need your guidance Majority Leader.

(Sen. Cheruiyot spoke off record)

Serjeant-at-Arms, ring the Division Bell for three minutes.

(The Division Bell was rung)

Serjeant-at-Arms, draw the Bar and close the Doors on the front and the rear exit.

(The Bar was drawn and Doors closed)

Hon. Senators, I hope you are now ready for voting. I want to put the question.

(Loud consultations)

Order, Senators.

*(Sen. Chimera walked across the Chamber without
bowing to the Chair)*

Sen. Chimera, you should go back to the Bar. No shortcuts.

(Sen. Chimera walked to the Bar and bowed to the Chair)

Some Senators will take three years to learn the rules of this House.

You are voting electronically. I request you to log out. Let us not repeat some incidents that happened last week.

Serjeant-at-Arms, check whether all the cards---

(Sen. Cheruiyot spoke off record)

Senate Majority Leader, you might be accused that you know what happened that day. Members, log back into the delegate units and proceed to vote. Is there any delegation that should be assisted to vote?

DIVISION

ELECTRONIC VOTING

(Question, that the County Boundaries Bill (Senate Bills No.6 of 2023) be now read a Second Time put, and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abass, Wajir County; Sen. Ali Roba, Mandera County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Chute, Marsabit County; Sen. Crystal Asige, Mombasa County; Sen. Githuku, Lamu County; Sen. Kathuri, Meru County; Sen. Kavindu Muthama, Machakos County; Sen. Maanzo, Makueni County; Sen. Mbugua, Nyandarua County; Sen. Munyi Mundigi, Embu County; Sen. (Dr.) Murango, Kirinyaga County; Sen. Murgor, West Pokot County; Sen. Mwaruma, Taita Taveta County; Sen. (Dr.) Oburu, Siaya County; Sen. Ogola, Homa Bay County; Sen. Olekina, Narok County; Sen. Onyonka, Kisii County; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi City County; Sen. Tabitha Keroche, Nakuru County; Sen. Wakili Sigei, Bomet County and, Sen. Wambua, Kitui County.

NOES: Nil

The Deputy Speaker (Sen. Kathuri): Hon. Senators, this was a very tight race. The results are as follows-

AYES: 24

NOES: Nil

ABSENTIONS: Nil

The "Ayes" have it.

(Question carried by 24 Votes to Nil)

(The Bill was read a Second Time and committed)

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

to a Committee of the Whole tomorrow)

Next Order.

BILL

Second Reading

THE SUGAR BILL (NATIONAL ASSEMBLY
BILLS NO.34 OF 2022)

(Division)

Serjeant-at-Arms, ring the Division Bell for five minutes.

(The Division Bell was rung)

The Deputy Speaker (Sen. Kathuri): Serjeant-at-Arms, close the doors and draw the bar.

(The Bar was drawn and the doors closed)

Order, Senators.

Hon. Members, log out. Log in again and proceed to vote.

DIVISION

ELECTRONIC VOTING

*(Question, that the Sugar Bill (National Assembly Bills No.34 of 2022)
be now read a Second Time, put and the Senate proceed to vote by County
Delegations)*

AYES: Sen. Abass, Wajir County; Sen. Ali Roba, Mandera County; Sen. Cheruiyot, Kericho County; Sen. Cherarkey, Nandi County; Sen. Chute, Marsabit County; Sen. Crystal Asige, Mombasa County; Sen. Githuku, Lamu County; Sen. Kathuri, Meru County; Sen. Kavindu Muthama, Machakos County; Sen. Maanzo, Makueni County; Sen. Mbugua, Nyandarua County; Sen. Munyi Mundigi, Embu County; Sen. (Dr.) Murango, Kirinyaga County; Sen. Murgor, West Pokot County; Sen. Mwaruma, Taita-Taveta County; Sen. (Dr.) Oburu, Siaya County; Sen. Ogola, Homa Bay County; Sen. Olekina, Narok County; Sen. Onyonka, Kisii County; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi City County; Sen. Tabitha Keroche, Nakuru County; Sen.

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

Thang'wa, Kiambu County; Sen. Wakili Sigei, Bomet County; and, Sen. Wambua, Kitui County.

NOES: Nil

The Deputy Speaker (Sen. Kathuri): Hon. Senators, these are the results of the Division-

(Sen. Cherarkey walked towards his seat)

Sen. Cherarkey, you do not need to run along, you just freeze. You are an old Member of this House.

AYES: 25

NOES: Nil

ABSTENTIONS: Nil

The "Ayes" have it.

(Question carried by 25 votes to Nil)

(The Bill was accordingly read a Second Time and committed to a Committee of the Whole tomorrow)

Open the doors and withdraw the bars.

(The Bar was drawn and the Doors opened)

Next Order.

BILL

Second Reading

THE CONFLICT-OF-INTEREST BILL, 2023
(NATIONAL ASSEMBLY BILLS NO.12 OF 2023)

(Sen. Cheruiyot on 27.3.2024)

(Resumption of debate interrupted on 27.3.2024)

The Deputy Speaker (Sen. Kathuri): Sen. Cherarkey Samson Kiprotich, you may have the Floor.

Sen. Cherarkey: Mr. Deputy Speaker, Sir, thank you for allowing us to proceed debating this Bill. From the onset, I support. I think it is a high time that the fight against corruption must be dealt a big blow to the head. Some people imagine that you need to be in a public office to be wealthy or rich.

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

The Bible says in Proverbs - I do not know the specific verse - your children will inherit the wealth that you have created out of hard work, toil and sweat, but the ill-gotten one, will be eaten by moths, rodents and termites. I know the Bishop concurs with me on that.

I agree with the definition of conflict of interest.

(Sen. Tabitha Mutinda and Sen. Tabitha Keroche consulted loudly)

Mr. Deputy Speaker, Sir, can you kindly protect me from the ladies.

The Deputy Speaker (Sen. Kathuri): The two Tabithas, I do not know why they are arguing.

Sen. Cherarkey: Sorry, lady Senators.

The Deputy Speaker (Sen. Kathuri): The two Tabithas, what is the issue with both of you?

Sen. Cherarkey: Coincidentally, they are smiling around the Senate Majority Leader. I do not know if it is because Easter Holiday is near.

Mr. Deputy Speaker, Sir, I will just make four points. When you look at leadership and integrity, it talks about conflict of interest. What we are doing is just to enrich it. This is because, the architect and design of the Constitution is just to give us the structure. As a Parliament, we pass legislation to now enrich the Constitution. The fight against corruption can only be won if we have the right legislative interventions and policies in place. One of them is the conflict-of-interest. We do not want people using their offices to enrich themselves and also give influence.

This conflict of interest is even outside the public Government offices. We have “sexually transmitted grades” in universities and institutions of higher learning, sexually transmitted job opportunities and many others. When you go to some of the universities, our young women and men are suffering from a disease that is perpetuated within the set up of public and private institutions of higher learning called, “sexually transmitted grades”. These are some of the conflicts of interests. Somebody who is higher up has undue influence against a person within that organization. People should know that they do not need to be in an office to enrich themselves unfairly.

On the issue of conflict of interest; I would like proper elaboration at the amendment stage. However, I know that when the Justice, Legal Affairs and Human Rights (JLAHR) Committee will table a report, we should also look at it, so that we see their definition of conflict of interest. It should not only focus on the public. It should look at even somebody who is a chief, a lecturer or a pastor. There was a pastor who was taking undue advantage in a video that went viral. He said, he was chasing some spirits in some areas that I cannot mention because this is a Parental Guidance event.

Mr. Deputy Speaker, Sir, the issue of unexplained assets is important. I know there is wealth declaration that we usually do as public officers, but we want these issues to be taken seriously. Someone cannot tell us today that they are worth a million, but after staying in an office, two to three years down the line, they are a dollar billionaire. As a

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

country, we must take these issues seriously. Every wealth, even if you buy a watch, a car or property, no matter the worth, as a public official, you must tell us. In this country, we are aware of people who use their offices to enrich themselves. We cannot gerrymander in the fight against corruption.

The Ethics and Anti-Corruption Commission (EACC) has been given a function, but I have little faith in it. I have sat in the County Public Accounts Committee (CPAC). Sen. Ledama and a number of colleagues have sat there as well. We have made many recommendations for bodies like the EACC to follow up and prosecute governors or county officials who continue to pilferage our resources. I am aware that EACC might be struggling with capacity on issues of resource allocation, but they have never shown proof of what they have done. In our last report when I was the Chairperson at the Justice, Legal Affairs and Human Rights Committee (JLAC), the only conviction the EACC had achieved in that year when they tabled their report was convicting someone who had taken a bribe of Kshs20,000, somewhere in Eldoret and it caused a huge uproar on the Floor of the House.

The fight of any elections--- sorry, not elections because they are still far. The fight against corruption, larceny, graft and plundering of natural resources can be won. I remember there was a gentleman who told us at that time that he was not going for small fish or *omena*, but big fish. He ended up with nothing on the plate. That was very unfortunate.

With the enriching of this Bill that has been fronted by the Senate Majority Leader, Sen. Aaron Cheruiyot, then it should be supported by all and sundry, so that we fight corruption in this country. I, therefore, challenge the EACC because I have seen the Motion by Sen. Ledama Olekina on pending bills. How can pending bills be there and when you go to the National Treasury, money has been disbursed? It means that it has been stolen. What is the EACC doing about it? Nothing! When they are reported, they go and call the governors or anyone who has been accused of corruption and see them *hapo nyuma ya tent*.

Mr. Deputy Speaker, Sir, we are aware of even the Controller of Budget (CoB). I would like them to come clean. When a county makes a requisition, the office of the CoB asks them what they want to do and they give a schedule. They then release monies to the counties after paying a certain percentage. We have allegations that some CoB staff own houses in Karen, Runda and Kileleshwa, even in Dubai where they have private summer homes. This is because they are colluding with county governments to release money that is made under requisition. Some of the officers and not the Controller of Budget, are going rogue. That is why governors are misusing and plundering resources. What is the EACC doing about it? Nothing. Yesterday, I saw them releasing a report that said that Nyamira leads in bribery and which county and ministry leads in bribery or corruption allegations. However, after releasing a report, what next? The EACC has never told the country what they are doing in the fight against corruption, yet under the Constitution, they have an obligation to fight corruption in this country.

Mr. Deputy Speaker, Sir, we have many laws like the Anti-Corruption and Economic Crimes Act and many laws in the fight against corruption. The chicken must

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

come home to roost when EACC will tell us what they are doing in Machakos, Kitui, Makueni and Nandi in the fight against corruption. Last time I said that Nandi is the headquarters of corruption. There is a lot of plundering happening, but EACC has done nothing. We have reported on a number of occasions, but what the EACC does is to smile at the camera with the governors and officials and then they say, the matter is under investigation. I also challenge the Directorate of Criminal Investigations (DCI) and the office of the Director of Public Prosecutions, that we must show seriousness.

Mr. Deputy Speaker, Sir, the other day, we visited a number of counties and I know we will be visiting Meru soon. When we go there, people will ask us what the Senate has done now that money has been stolen. Our work is to make recommendations. The people to implement are the EACC and DCI. However, what are they doing? There is a weak link in the fight against corruption in this republic and I hope that this Conflict of Interest Bill will assist.

On the issue of powers to investigate, the EACC has enough powers. It is a creation of the Constitution. They are supposed to do their job as per the Constitution. They do not need to get anybody's permission to do their job. Why is there a perception that people believe that EACC must get orders or phone calls? Colleague Members, the fight against corruption in counties, to be precise, will not be won as long as the biggest stumbling block in the fight against corruption is the EACC. They have never done anything. They can contravene what I have said and give us statistics on the corruption they have fought.

Mr. Deputy Speaker, Sir, we remember in Siaya under the former County Government where air tickets were bought for private individuals and no one has been prosecuted in Siaya. We went to Turkana and the same thing happened, Kshs100 million could not be accounted for. There are many occasions. As we pass this, I have mixed feelings because we have enough legislation, but there is nothing to show for what the country has achieved in the fight against corruption.

Mr. Deputy Speaker, Sir, I also agree with the declarations. In Standing Order No.104 on conflict of interest and avoiding obligation. The third point is on preferential treatment. That is more than obvious---

The Deputy Speaker (Sen. Kathuri): Sen. Cherarkey, I can see there is an intervention, meaning there is a point of order from Sen. Lemaletian Hezena.

Senator, what is your point of order?

Sen. Lemaletian: Mr. Deputy Speaker, Sir, Sen. Cherarkey should substantiate the claims that EACC receives phone calls. Thank you.

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

Sen. Cherarkey: Mr. Deputy Speaker, Sir, I said 'as if' they are receiving phone calls. I am guided by the HANSARD if it is contrary because I said 'as if they are receiving'. 'As if' is maybe. I did not say 'shall'. That is what I meant. I thank my sister. She is doing a good job and maybe, she wants something in Samburu County in future.

Mr. Deputy Speaker, Sir, on the issue of gifts and other benefits, this law on economic crimes was there in 2003. You passed it. At least you have been around these

corridors and you know this law, where you are given a gift, even when we welcome you as a Speaker.

When you come to my home and I give you a gift as a friend, I do not know whether you should declare because I can give you a cow. That is the highest respect my community can give. I do not know whether you will donate the cow to the Senate or what happens because you are a public official. Those are some of the issues that JLAC, through Sen. Sigei, will give us headway on as we progress.

Mr. Deputy Speaker, Sir, on complimentary treatment, we are aware that when some organisations need tenders, they sponsor them. I remember the issue of the tobacco scandal - and may the soul of Hon. Jakoyo Midiwo rest in peace – That committee was taken to Mombasa by the tobacco industry for treatment to pass a law that was not against the tobacco companies. I remember the images of Members of Parliament swimming on the beaches of Mombasa and I know Sen. Miraj understands what happens on the beaches of Mombasa.

Mr. Deputy Speaker, Sir, on the issue of prohibiting contracts with public entities, I ask Members to attend the breakfast meeting for the launch of the caucus for the Open Governance Programme (OGP) on the 16th. They will get to learn the meaning of beneficial ownership of companies, contractual obligation and the fight against corruption.

The Senate has taken the lead in the Senate discourse on the Open Governance Programme. I know the Senators understand what the OGP means. We are trying to push for accountability, legislative integrity and openness, contractual obligation and beneficial ownership; being open through OGP.

I thank you, Mr. Deputy Speaker, Sir, and your office for allowing that caucus to be established. I know that these are some of the things we have been pushed in that caucus to ensure that we have obligations. Corruption happens during procurement processes. That is where it starts from.

I remember there was an American ambassador, but I forget his name who said that Kenya loses around Kshs700 billion through budgeted corruption. It was around the 2020 when that statement was made in the media. We need to be careful. I remember when we were looking through budgetary process and many others, procurement is where issues happen.

On conflict of recruitment, I know whenever the Kenya Defence Force (KDF) and other people are recruiting, we hear parents complaining that they have paid Kshs300,000 or Kshs200,000 et cetra. You have seen even here in Eldoret Recruits Training School (RTS) that before reporting of the recruits, a number of young people are taken to court because they have fake KDF recruitment letters. I am happy it has been captured to protect our people who unknowingly give out Kshs100,000. I know the Bribery Act says punish the “briber” and the “bribee” - The one who gives out and the one that receives. English is a big problem but I know Members understand what I mean.

Mr. Deputy Speaker, on the conflict of interest and the recruitment, allow me to say this in support of this Conflict of Interest Bill. A Government officer should be aware that the courts have ruled that any public officer is subject to open and constructive

criticism. You are aware I am in court for only representing my people, speaking out and raising serious issues. The law has ruled and senior Counsel Sen. Maanzo will agree with me, together with our junior learned friend Sen. Raphael Chimera, that any public official does not have limitation in terms of criticism. So, I find it odd and weird that if Sen. Cherarkey can be sued for speaking about roads---

The Deputy Speaker (Sen. Kathuri): Sen. Cherarkey, there is a point of order from Sen. Chimera.

Sen. Cherarkey: Make it brief.

Sen. Chimera: Mr. Speaker, Sir, I rise under Standing Order No.105. Is Sen. Cherarkey factual by stating that I am his junior in law? He was admitted the other day, I think in 2020. I have practiced law for over six years, so he is actually my junior and not what he is trying to say. Whatever he is saying is misleading the House. Can he clarify? I am actually his senior in practice, he should withdraw and apologize.

The Deputy Speaker (Sen. Kathuri): Maybe I should request both of you to bring your certificates of admission, so that I can make the determination. If I use my eyes physically, you look junior to him but maybe not academically.

Sen. Cherarkey: Mr. Deputy Speaker, Sir, maybe I cannot get factual on the statement of fact under Standing Order No.105, since I do not know when he was admitted. Allow me to withdraw that part called junior and call him my learned friend. However, you do not need to question the chairman *emeritus* of the Justice and Legal Affairs Committee (JLAC) because the fact that I am the chair *emeritus* of JLAC, that surpasses anything else.

It means I have seen a lot in the practice and I am senior. In fact, the Law Society of Kenya (LSK) should have given me senior counsel by virtue of being a JLAC *emeritus* chair when this country was undergoing many challenges, including the issue of Building Bridges Initiative (BBI) which we stood tall.

Finally, Mr. Deputy Speaker, Sir, in support of this conflict of interest, let any public officer know that you cannot sue a Member of Parliament for representing his people. Personally, my suit in court is because I spoke about the roads in Nandi. I will not be intimidated and blackmailed by pedestrian civil suits against me. I will always stand to represent.

The other day, we were discussing Meru and another day other counties because our business is to represent. The moment you gag MPs then we do not have necessity to be elected. This is because one of the roles of a Member of Senate is to do representation and oversight, which I am doing. I know that suit is trying to intimidate me not to oversight the work people are doing. However, we are going to come back better, bigger and with a bang. I want to assure you to take my word.

With those very many remarks, I beg to support this Bill.

Thank you very much.

(Interruption of debate on Bill)

The Deputy Speaker (Sen. Kathuri): Before we proceed with the debate on this Bill, I want to give the chairperson of JLAC a chance to table the report on this Bill, so that Senators interested can also peruse the report from JLAC.

PAPERS LAID

REPORT ON THE CONFLICT OF INTEREST BILL, 2023

Sen. Wakili Sigei: Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate:-

The Report of the Conflict of Interest Bill, 2023 (National Assembly Bills No.12 of 2023).

(Sen. Wakili Sigei laid the document on the Table)

The Deputy Speaker (Sen. Kathuri): Let us get the other Paper from the chairperson, Committee on Finance and Budget. Lay the Paper and proceed to give Notice of Motion.

REPORT ON STATUS OF IMPLEMENTATION OF PROJECTS FUNDED BY THE CONDITIONAL GRANT FOR CONSTRUCTION OF COUNTY HEADQUARTERS

Sen. Ali Roba: Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the table of the Senate today, the 28th of March, 2024:-

Report of the Standing Committee of Finance and Budget on the Status of Implementation of Projects funded by the Conditional Grant of Construction of County Headquarters.

(Sen. Ali Roba laid the document on the Table)

NOTICE OF MOTION

ADOPTION OF REPORT ON STATUS OF IMPLEMENTATION OF PROJECTS FUNDED BY THE CONDITIONAL GRANT FOR CONSTRUCTION OF COUNTY HEADQUARTERS

Sen. Ali Roba: Mr. Deputy Speaker, Sir, I beg to give Notice of the following Motion-

THAT, the Senate adopts the report of the Standing Committee on Finance and Budget on the Status of Implementation of Projects funded by conditional grant for the construction of county headquarters laid on the Table of the Senate today, Thursday, 28th March, 2024.

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

I thank you.

The Deputy Speaker (Sen. Kathuri): The chairperson JLAC, now you can spend your minutes to contribute.

(Sen. Wakili Sigei stood up in his place)

Sen. Wambua: The Chairperson JLAC should take his seat.

Mr. Deputy Speaker, Sir, you know that some of us are sticklers to conventions. Personally, I am a bit lost; I need your guidance on this. We were on the order where we were debating the Conflict of Interest Bill. In between, you have allowed the Chairperson, JLAC to table a report on the same. However, there was also the Chairperson of the Committee on Finance and Budget who also laid a Paper and gave a Notice of Motion. Where are we in the Order Paper? I am a bit lost.

The Deputy Speaker (Sen. Kathuri): Now, that is the discretion of the Speaker. I reorganized what we were doing this afternoon to give them the opportunity to lay the Paper and give notice. Now we are back to Order No.12.

Chairperson JLAC, proceed.

(Resumption of debate on Bill)

Sen. Wakili Sigei: Thank you, Mr. Deputy Speaker, Sir. I believe Sen. Wambua will get an opportunity to contribute to the Conflict of Interest Bill. I hope the intervention was because of his interest to contribute to this particular Bill. Since we have tabled a report, I will wait for his comments on it.

Thank you for allowing me to contribute to this Bill. Before I do, I would like to appreciate the membership of the Standing Committee on Justice, Legal Affairs and Human Rights that sat to deliberate on the Bill the moment it was commissioned before the Committee. We received a number of comments from stakeholders. To be very specific, we received over 13 memoranda from the National Police Service Commission (NPSC), the Teachers Service Commission (TSC), County Assembly Forum (CAF) Kenya Civil Servants Association (KCSA), and the Kenya Law Reform Commission (KLRC) among others.

As I said, we received up to 13 memoranda from various interested stakeholders. As the Committee on Justice, Legal Affairs and Human Rights, we concurred with the majority of the stakeholders, particularly on one aspect, that observed that while the Bill seeks to repeal the Public Officers and Ethics Act, 2003, it does not adequately speak to and provide for fundamental aspects of the ethics spelt out in the Public Officers and Ethics Act, 2003.

The proposed amendments, therefore, to this Bill and this report are a product of extensive deliberations and consultations that have taken place to ensure that we have a good law in place that will stand the test of time. I wish to thank your office and the office of the Clerk of the Senate for the logistical and technical support that was accorded to this Committee during the extensive consideration of the Bill. I equally wish to thank

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

the stakeholders for their submissions and comments that greatly enriched our consideration of the Bill.

Finally, I want to express, as the Chairperson of the Committee on Justice, Legal Affairs and Human Rights, my sincere gratitude and appreciation to hon. Senators of the Committee and the members of the Secretariat who made useful contributions towards the preparation and production of the proposed amendments, which I will briefly run the House through.

On behalf of the Committee of Justice, Legal Affairs and Human Rights, and pursuant to Standing Order No.148, of the Senate Standing Orders, the Committee, proposes the following amendments to the Bill. As I stated, we received over 13 submissions from various stakeholders. Upon consideration, the Committee made several proposals to amend the provisions of the Bill.

The first proposal is in regards to the provisions of Clause 3 that speaks to the objects of the Bill. The Committee proposes that Clause 3 be amended by rephrasing the Bill. Instead of reading ‘enhance integrity of public office and public confidence in the delivery of public service’, the Committee proposes that sub-Clause 3(c) be amended to read as follows-

“Enhance public confidence in the integrity of public office and delivery of public justice”.

The reason behind this proposition is because of the content of the stakeholders' report on the office as well as the officer. In this case, there are personal conflicts of interest, which are limited to the individual, and those that can come out by the office that a public officer holds.

Secondly, the Committee proposes an amendment to Clause 13 of the Bill. As a Committee, we are proposing that we become very specific to the private interest of the officer. In this case, we are borrowing it from the stakeholders' submission. Besides the office, we should ensure that the Bill speaks to private interest of the officer.

Therefore, Clause 13 is proposed to read that-

“A public officer shall not, directly or indirectly use or allow any person under the officer's authority to use any information that is obtained in the course of performing official duties and is not available to the public to improperly further or seek to further the private personal interest of the officer.”

This recommendation will ensure that we deal with a person who has authority in the entity or authority that is authorized to check on the conflict of interest arising by virtue of the office. The Committee further proposes an amendment to Clause 15 on the requirement on the person of the public officer to disclose when such a person has accepted to perform certain functions. I would like to read for the benefit of the Members-

“A public officer shall not allow himself to be influenced in the exercise of an official power or performance of a duty or function by plans for or any offer outside employment.”

The specific sub-clause which we are proposing an amendment on is a requirement of the public officer to disclose, in writing, to the reporting authority any offer outside of employment.

The Committee proposed to amend the requirement to disclose an offer and instead to disclose acceptance because it does not become an impediment to your judgment before you accept an offer. As such, making reference to an “offer” will be misleading because as long as you have not accepted any offer, it does not in any way impede on your judgment, character and personality. However, the moment you accept, it becomes a conflict on the part of the public officer.

Further, the Committee proposes an amendment to Clause 19 on a requirement of the public officers on contracts with public entities, which are prohibited to an officer holding a public office. The Committee proposes that a public officer being referred to as a beneficiary is over legislation. We have proposed that Clause 19 be amended by deleting-

“The reference to a public officer being denied to be a beneficiary of.”

Therefore, the Clause will only read that-

“A public officer should not at any given time, as long as he or she is holding a public office, be a party to any contract that will directly affect the performance of their role as a public officer holding that particular office.”

We have equally proposed an amendment to Clause 27 of the Bill, which refers to a former public officer. In this case, if you have been holding a public office, and you have quit, you are required not to do certain things.

In this case, provisions of Clause 27 prohibits a public officer from holding a certain office or from performing certain roles of that office. Clause 27 prohibits a former public officer from engaging with that office for two years after exiting the office.

In this case, there is a specific reference to the State. The prohibition from dealing with the State is too wide. It covers almost every other aspect of public office that an individual can deal with. The Committee therefore proposes that instead of referring to a State, we refer to an authorized entity. In this case, it is the reporting entity, which has been described in Clause 2, to mean certain State entities or organs with authority to deal with service delivery to the public.

The Committee further refers to Clause 29 where there is a specific reference to a prohibition of a public officer from representing an entity that he or she previously worked for two years. There are qualifications to that Clause. It says you can only be allowed to immediately upon termination of your engagement with the public office, after two years, if and when you have sought for exemption and met certain qualifications. You can only do so if and when you have sought for exemption and you have met certain qualifications, one of which includes the fact that you can explain that you are not directly involved in decision-making in the previous entity that you were working for.

Secondly, you had no access to important policy information in the reporting entity that was your former employer. Lastly, you are expected to show that you did not possess, or rather you do possess expertise, such that your expertise is required to be utilised in the performance of certain decisions in the entity that is seeking to support

you. In this case, if you want to be exempted, you are required, under the provisions of Section 29, to make an application in writing so that the commission or the entity can exempt you in writing.

This particular section has also given a protection to that application, so that the entity does not stay forever to respond, and it has given, under the provisions of 29(ii), that the request must be responded to within 30 days. So, a decision as to whether or not you can be allowed to represent must be made available to you within 30 days.

The Committee has taken cognisance of the fact that these preconditions do not and should not apply to persons, who in their professional capacity, could be engaged courtesy of the provisions of the Constitution that entitles an entity or an individual to provide - to get services from such individuals.

Therefore, the Committee has proposed an introduction of sub-clause 3, which says that the provisions of Sections 27 and 28 shall not apply to a former public officer representing another person in any proceedings before a court of law or tribunal established by law, including a witness. Why did the Committee seek to propose such an introduction of a subclause? Three reasons. One, we would, in most cases, be required to have expert witnesses who, by virtue of their previous office, know the information that an entity is seeking to establish. That is one of the reasons why the Committee sought to introduce this additional Clause, so that we do not lose on investigations by virtue of the fact that since you were a former employee, the law bars you from participating in an investigation that requires your expertise as a witness.

Secondly, of course, is the protection of representation of clients in courts of law or tribunals where a professional, in this case, like a lawyer, who by virtue of the constitutional edict, a client is entitled to pick a person of his choice. That is why as a Committee, we have proposed to introduce that particular sub-clause.

Mr. Deputy Speaker, Sir, under Clause 29, the Committee has confirmed that the time limitation provided to the commission or the authorised entity to respond to an inquiry as to exemption should be 30 days. Why? It is because we live in Kenya. An entity that would, for whatever reason, be malicious in authorising a representation can take forever the way we talk about investigations taking ages to conclude when an individual has, for example, been suspended. That is coming in the subsequent proposals we have made as a Committee. However, the Committee felt that it is important to make sure that within a period of 30 days, if one has sought to be exempted, that exemption should be done in writing.

Mr. Deputy Speaker, Sir, the next Clause that the Committee dealt with is the provision under Clause 34 of this Bill. Clause 34 of the Bill talks about access to declaration. This being a conflict of interest Bill, the law is proposing that as public officers, we are expected to make certain declarations at certain intervals to the public and for purposes of making sure that we are protected as public officers. For this reason, Clause 34 provides that you are required to avail the declarations upon application to either the Commission or to a reporting entity.

In this case, the Committee has proposed that Clause 34 of the Bill be amended to ensure that the rights of individuals in terms of the constitutional provision on the rights

of privacy and where we are seeking to comply with certain court orders are monitored so that entities do not abuse this particular provision. We have, therefore, proposed that we can only be under an obligation to disclose such information where the Act under Sub-Clause 2 had referred to due process. Due process is very wide. The Committee asked what is due process and how we protect private individuals and confidential information from being abused. This is because an entity can decide to say we have conducted investigations internally and have made recommendations, probably as a committee or as a team in charge of the investigation, to force or compel production of certain confidential information.

The Committee has proposed that in order to protect the public, and in order to protect officers who have been subjected to either a disciplinary process or an investigation process, due process cannot and should not be left as wide as it were. We have sought to say this due process can only be due process, which is subjected to the right to privacy as provided for under the Constitution and pursuant to a court order or the Access to Information Act. That way, we will be protecting privacy, we will be protecting the compliance by institutions with the law, and we will, by extension, ensure that there is no abuse of the right that is provided for by this particular law to ask for and compel individuals to avail information.

Mr. Deputy Speaker, Sir, I notice my time is running up.

Clause 41 is another Clause that the Committee has also sought - suspension from office. Clause 41 says that subject to the Constitution and any written law, a public officer may be suspended from office with full pay pending the investigation and determination of allegations made against that officer where such suspension is considered necessary. The provision that grants the Commission an entitlement or an entity, an entitlement to suspend someone is open to a lot of abuse, especially in terms of the timelines within which you can be asked to be away from office pending investigations. As I earlier alluded, institutions can take more than three months, some more than even one year. We are aware of certain investigations that have been conducted over the last five years, where in any inquiry you get an excuse that we are still conducting investigations.

The Committee, therefore, proposes that Clause 41(2) which requires or mandates an entity to release an individual on suspicion for a period of 90 days, proposes that that should only be the maximum time, and we say that if, therefore, these investigations cannot be timely, such an individual cannot be out there for more than 90 days, even if the investigations are not concluded.

We have therefore proposed that if the Commission or a reporting entity fails to conclude the investigation within 90 days, the investigation shall be deemed to have been concluded at the expiry of the 90 days and the officer shall resume his or her office. The reason we are proposing this is to ensure that investigative entities, whether it is the Directorate of Criminal Investigation (DCI), the Ethics and Ant-Corruption Commission (EACC), or a reporting entity, do their investigations within certain timelines, and also it gets against the witch-hunt. This is one of those propositions where if you leave it open-ended, there will be a lot of abuse of this particular Clause because what will happen is

that institutions will never bring to closure investigations, and if it is just a mere allegation, this is something that is where the law has given you specific timelines, you will be compelled by that law to make sure that you conclude, and if there is no case, definitely allow the person back to office. If there is a case, then charge the individual because the moment that person is charged, then there is a requirement in law that you are then under suspension because you have been charged before a competent court of law, and you are on half salary for a certain period. In fact, the Anti-Corruption and Economic Crimes Act, Section 62, I believe, provides that such a person, once charged, is on half pay and the case should and ought to be concluded within a period of 24 months. That has been a subject of litigation and it informed this Committee to limit the timeline within which the investigation is to be conducted. If that does not happen it is deemed to be concluded and the person is entitled to report back to office.

Lastly, the provisions of Clause 42, entail the recommendations of the Commission. In this case, we are making reference to the Ethics and Anti-Corruption Commission (EACC). The Committee proposes that since this Act will not only be implemented by EACC, there are certain other reporting entities we should also include under the provisions of that Clause, besides the Commission. We have other reporting entities or authorities who can make sure they propose and receive reports for purposes of implementation.

Mr. Deputy Speaker, Sir, yesterday I listened to the Senate Majority Leader when he was moving this Bill. This is one of the reasons I would like to urge members to push for the passage of this Bill. It will not only help in fighting corruption, which is cancer that has been cutting across. Members of this Committee are proposing and asking that this House to support and make sure this Bill is passed.

I am aware that in 2019, the first publication of this Bill was done, but it has never come before the floor of the House. Now that the National Assembly has passed it and we have received it in this House, I urge the honorable Members to read the report together with the comments we have received from the stakeholders, and support the Bill so that we pass it.

The Deputy Speaker (Sen. Kathuri): Are you through or do you need two more minutes?

Sen. Wakili Sigei: Mr. Deputy Speaker, Sir, I am actually concluding. Although the Bill is repealing certain provisions of some Acts such as the Leadership and Integrity Act, EACC Act, Anti-Corruption and Economic Crimes Act, it is amending seven provisions for good cause. The repeal of the Public Officer Ethics Act, where we made comments as a Committee in the first instance is one of the ways to ensure that once this Bill is enacted, we will have a legal framework that is able to fight the corruption across the country. We will make sure that service to the public is made within the confines of the expectations of every individual, including the persons who are serving in such public office.

I support the Bill.

The Deputy Speaker (Sen. Kathuri): Thank you, Chair of the Committee.
Proceed Sen. Wambua.

Sen. Wambua: Thank you, Mr. Deputy Speaker, Sir. I am not sure what Sen. Maanzo is saying. I want to make my comments on this Bill without necessarily committing myself at this point as whether I am in support or opposed.

This is for the simple reason that the Standing Committee on Justice, Legal Affairs and Human Rights has just tabled their report. We will take time to go through it and by the time we get to the Third Reading it will be clear whether this Bill merits our support or not.

I will say a few things about the Bill. First, it begins by creating an obligation on an independent commission established by an Act of Parliament, The EACC Act of 2011. A commission that is deeply rooted on the supreme law, Chapter 6 on Integrity. Now that the Bill creates an obligation for a commission that is established by an Act of Parliament, what would have been easier? Perhaps to amend the EACC Act and load matters to do with conflict of interest or to come up with an independent act to deal with conflicts of interest.

I will look at the report of the Committee to establish whether they have created a nexus between the EACC Act of 2011 and the proposed law. In the absence of that nexus, then we run the risk of creating confusion, by getting one law to create an obligation for another set of laws. Yesterday I followed the release of the bribery index by the EACC. I saw the Chairman and my bishop, Dr. David Oginde at pains declaring that Kenyans are bribing more and the cost of it is has also almost doubled. I saw him at pains saying that if we do not tame bribery, then corruption is going to kill us as a country.

Those words coming from a respected Bishop must begin to ring a bell in the minds of all public officers and every Kenyan. I also heard him prescribe a very easy way out of this corruption problem - do not ask, do not give and do not take. If we were to then follow that prescription, perhaps we would live in a better country.

Part Three, Clause 10 of the Bill makes reference to decision making or people in positions of decision making in elaborating what a conflict of interest means. I want to read it because to me it is very important. Clause 10 (1)(a)-

“A public officer shall not make a decision or participate in making a decision relating to the exercise of an official power or the performance of a duty or function, if the public officer knows that in the making of the decision, the officer would be in conflict of interest”.

I have read this Clause with more than passing interest, because we have just passed a law on affordable housing. If this law had been enacted before passing the affordable housing law, then perhaps the question that we would be asking ourselves is that whether persons holding public office, who have been at the centre of decision making in the affordable housing law, are conflicted or not.

I want to extend that thinking a little further. Is a public officer, who is an expert in national security, working in the Ministry of Interior and National Administration or any other ministry and is paid by the Government of Kenya, conflicted if and when during his free time, he gives lectures in a university to equip young people with matters of national security?

I asked myself the second question: If a medical doctor who is an expert in dental health and is paid by the Government of Kenya in a public hospital, is found offering dental care in a private clinic in his free time, under the proposed Bill by the Committee on Justice, Legal Affairs and Human Rights, are we concluding that the doctor would be conflicted?

Lastly, a mechanical engineer works in the Ministry of Trade, and during their free time, they have established a garage for their son, nephews, cousins, relatives, or friends. Are they conflicted?

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

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

Mr. Temporary Speaker, Sir, this matter of conflict of interest is such an important matter that perhaps – I will take time to look at the report by the Committee on Justice, Legal Affairs and Human Rights – we need to ask ourselves to what extent do we go in defining conflict of interest. Is it possible to define conflict of interest in law? I say those things as I am guided by our own Standing Orders, Standing Order No.104 of the Senate. It mandates and obligates a Senator who wants to make a comment or debate on a matter in which they have pecuniary or proprietary interest first to declare that interest. A public declaration of interest or a declaration of interest in writing, is a cure to the consequences of the conflict. In that case, if I am a medic serving in a public hospital and declare in writing that I am also involved in a private clinic, is the writing enough to cure the consequences of the conflict?

I would like to conclude. However, I would like to see what the Committee has said on the provisions of Clause 7 of the proposed law. The proposal in the Bill is that the Commission can act *Suo Moto* on its Motion to investigate conflict of interest. We live in this country - I am not saying this will happen - however, we know that commissions that are supposed to be independent in the discharge of public service, more than once, have been used by those in authority as weapons to harass and torment people who hold a different view, especially a political view.

My caution is, if this law passes, the law must not be the reason the Ethics and Anti-Corruption Commission (EACC)--- I have heard you say that the Committee on Justice, Legal Affairs and Human Rights is proposing bringing on board other entities and agencies that will implement the provisions of this law. I am praying and hoping that when this Bill becomes law, then it will not create an excuse for either the EACC or any other public entity under the control of the current Government or future governments to harass people who hold a different political opinion. This is not a new thing that I am saying, it has happened before, and I hope it will not happen this time.

As I conclude, let me reiterate that we legislate because we do not legislate for ourselves, our political parties or coalitions. We legislate for this country and posterity. I hope that after going through the Committee on Justice, Legal Affairs, and Human Rights

report, we shall be properly guided and a decision will be made as to whether to support or oppose this Bill.

With those remarks, I submit.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Maanzo, proceed. **Sen. Maanzo:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute to this important law.

Corruption is the biggest problem in Kenya, in African countries and countries worldwide. This proposed law on conflict of interest safeguards the resources of citizens in the country. Corruption has brought down many countries especially the corruption of officials within Government entities. Conflict of interest may not be properly captured or defined in this Bill. This Bill was in the National Assembly and was forwarded to the Senate. I thank the Justice, Legal Affairs and Human Rights Committee in the Senate for going further to come up with amendments to make the law stronger as opposed the usual practice of getting laws forwarded from the National Assembly, we rubber stamp and forward to the Executive for assent. In this Bill, there has been an extra effort from the Committee.

The Bill defines conflict of interest as-

"a conflict between the public duty and private interests of a public official, in which the public official has private capacity interests that could improperly influence the performance of his official duties and responsibilities."

One area in which this Bill will be applied is the Judiciary. Many judges have been honest when parties come before them to say that one of the parties to the suit is personally known to them, and they declare their interest. The judge could state that a party was a classmate and give other reasons why they are likely to be biased, and they recuse themselves from presiding over the matter. The file is transferred to another judge who does not know the parties and can adjudicate. However, how often are judges, judicial officers, and officers performing quasi-judicial functions honest? This goes to arbitration and other government organisations.

Several Acts of Parliament have been affected by this law and will touch on other laws. There is a phenomenon called conflict of laws. How conflicting is the law? We have the Official Secrets Act. What do you do to a person who has been the Cabinet Secretary for Interior Security and has many secrets about the nation? Quite a number of things are handled secretly for the nation's benefit, especially security information. The generals in the army deal with the external security of the country. What of the people dealing with the country's internal security? People with information which, when leaked, can be used by our enemies to create mayhem or cause harm to the nation.

People holding those positions have information with them, which if conflicted can result into a lot of damage to the country. Therefore, the declaration of interest is important. It begins with this House from our Standing Orders and it goes on to other parts of public officers and a lot of it is when the public officer has to gain. Thereafter, it comes to the implementing commission, meaning the Ethics and the Anti-Corruption Commission (EACC) established under Section 3 of the EACC Act, 2011.

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

Mr. Temporary Speaker, Sir, EACC is one of the major institutions and a key element. I am happy with what the Chairperson of EACC did yesterday to release the corruption index in the country; the Ministries, where a lot of money is being lost. Earlier on there were reports that billions of shillings get lost every day through corruption. That means that the people of Kenya are losing a lot of their taxes to individuals' pockets, whereby, instead of the Nation prospering, individuals prosper.

Mr. Temporary Speaker, Sir, in this regard, this law is very important. As I have said, I like the fact that the Senate, under your leadership in the Justice and Legal Affairs Committee (JLAC), has taken the matter very seriously. I have consulted some of the stakeholders in this and mainly, one of the major stakeholders is the Law Society of Kenya (LSK) and many other organizations and individuals who have an interest in having a better nation. However, how do you deal with corruption and conflict of interest when the EACC is not strengthened enough to deal with corruption in the counties? From the information we have, counties are likely to face extinction and we are here to protect devolution.

Mr. Temporary Speaker, Sir, when you go by the latest judgment, it says that some parts of the Government Proceedings Act are unconstitutional and therefore now anyone can auction Government. This means then counties from the debts they have can be auctioned to the last coin. Therefore, it affects devolution in a certain way. Additionally, some of the counties have been very difficult. Some conflicted officers in the counties have refused intentionally to pay people who have worked for the counties and Government. The Government refuses to pay them for years and you force those people to go on their knees or to close down their businesses and livelihoods. This law will go a long way to make sure that most of these things are taken care of.

The most important thing is, if you are found to be conflicted and you are doing business with the Government, or your companies are the ones which are associated with the procurement and are procuring business from Government and you happen to be there as just a broker, then are we giving business to the right people in this country? Is it just cartels or just making sure that certain individuals are the ones who benefit? Even when people go for tendering, the tendering is just a cosmetic affair. Whoever will win the business is known. The same thing applies when we are doing recruitment for prison officers, Kenya Wildlife Service (KWS) warders and the army.

In fact, it is rumoured that it is so difficult for one to be recruited into the army. Although they announce there is no corruption and that qualified individuals will be recruited into the army, you go and participate in the recruitment process, you are very fit and are qualified, you meet the health requirements, but somehow even if you run and become number one, you never end up in the army. Unless some of the retired generals recommend from different regions of the country.

It could be good if security scrutiny is done because if there are rogue elements in the army then you have many secrets leaking out. How do we make sure that there is no conflict of interest that certain people were not just marionetting in the whole exercise and make sure everybody is playing as they wish? Additionally, how do you make it equal for every individual, so that a poor person who has no influence through whatever

means, can make it to the army or to all those agencies including the prisons fairly and without paying a bribe through agents who are conflicted?

It has become common practise that every Kenyan knows before you are conflicted there must be corruption. Sometimes they use big names that, for example, unless your name comes from State House, an MP, Senator or Governor, you cannot be recruited in the army. Therefore, what is the use of holding a recruitment exercise if all that is a wastage of people's time and you will finally just recruit as you please? These are some of the things this law wants to check, to provide equity in the country and to make sure that each young person in this country, whether rich or poor, has an equal opportunity as the other.

How do we kill this corruption? It is high time we amended the Constitution to bring back the death sentence. For instance, in a jurisdiction like China, if you are found participating in corruption, you are actually causing death of other people and, therefore, you should also be sentenced to death. It will create sufficient fear. If you are stealing from your own country, if you are stealing from the others, if you are disadvantaging others so that they cannot live, then why should you live?

It is high time when considering the amendment of the Constitution, we bring back the death sentence and especially in matters related to corruption. Consequently, whoever is convicted and found to have stolen resources from the nation, then we must have a proper recovery mechanism.

Mr. Temporary Speaker, Sir, just like the verse in the Proverb says that whoever works hard then leaves wealth for their generation, but whoever steals then loses everything, so that people will stop the practise of shortcuts and stealing.

There are people who have worked hard, had savings, paid taxes and when the taxes are put together, they are just stolen by a few individuals from certain regions of the country and the rest of the country continues to be poor.

We really want to make sure that this law goes through and the punishments given under Section 43 of the miscellaneous provisions, you find that a person who contravenes any provisions of this Act, for which no penalty is provided, shall upon conviction be liable to - if the person is a natural person, a fine not exceeding Kshs4 million or to a term of imprisonment not exceeding 10 years or to both.

It goes on to state that if the person is a body corporate like a Ministry or State corporation, a fine not exceeding Kshs10 million in addition to the penalty under subsection one, the person shall be liable to a further mandatory fine, if as a result of the conflict that has constituted the offence, the person receives qualifiable benefit or any other person suffered a quantifiable lose, I believe that the most important thing is to recover back what this particular person has stolen. That has not come out fundamentally in this law, although we have laws dealing with recovery and all those things. They have also been choked by corrupt and conflicted practises.

In the same breath, Kenyans have found it very difficult to get themselves out of this. We continue to lose as a country. The only way we are going to do affordable housing is to first kill corruption in the country.

The only way we are going to do our roads networks and have every village tarmacked, is by doing away with the corruption in the Ministry of Roads and Transport. The only way we can make sure we provide every Kenyan with water in their homes and farm for irrigation, is first by dealing with corruption. The moment we do not deal with corruption and conflicted civil servants, it will be a waste of time. If this law is not implemented, it is a waste of time. Kenyans need to go back to history and our morals. Many successful countries survive on morals.

Our children should know that it is wrong to encourage corruption, receive or give a bribe. They should know this from primary school, secondary school, university, churches, Non-Governmental Organisations (NGOs) and through a culture of a general goodness of a nation, but not the individual benefit. This way, we will begin to build our nation. In my view, that will take a generation or two before we achieve such a country.

I support and look forward to the Third Reading, where we can bring in amendments and make the law stronger and strict. That way, we will achieve the purpose it is intended for so that it does not become like Chapter 6 in the Constitution and the Anti-Corruption and Ethics Act, which are just there, with no resources to implement. We have many other laws that we hardly implement for lack of goodwill of the nation.

I thank you. I support.

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

Sen. Thangwá, proceed.

Sen. Thang'wa: Thank you very much, Mr. Temporary Speaker, Sir, for this opportunity to also weigh in on The Conflict of Interest Bill, 2023 (National Assembly Bills No.12 of 2023).

As I do that, it is also good to say that in today's Order Paper, I see my Bill, the Public Holidays (Amendment) Bill, (Senate Bills No.31 of 2023), is scheduled to be debated. I take this opportunity to say that, maybe we can discuss it after the holidays because tomorrow is Good Friday. We have a Saturday and Sunday in between and again Monday is a holiday. I would want Kenyans to take these four holidays and see what they can do with it. Then, from there, we will get to know whether the Public Holidays (Amendment) Bill, (Senate Bills No.31 of 2023) is still viable.

Mr. Temporary Speaker, Sir, the issue of conflict of interest, as much as I would not want to say whether I am in support of this or not or probably bring amendments or not, in our culture, society and country, conflict of interest is immeasurable. We should have come up with a Bill that has indicators that will mention them by name and words. That, if you do this, you will have broken the law. If we leave it like that, just everybody needs to declare a conflict of interest on a certain matter, what will you call these examples that I want to give you?

When we talk about bias in your work as a public officer, personal relationship, self-dealing, preferential treatment to somebody as a friend, that is conflict of interest. In this House, we have conducted a few impeachment hearings. I want to give you an example of the impeachment of the Governor of Meru County, whereby a deputy governor was a witness, and he wanted his governor to be impeached. Would you call that conflict of interest because he was the next beneficiary if that impeachment

occurred? He is the person who could have gotten that seat. Does that mean that is conflict of interest or he was exercising his mandate to make sure that Meru County get rid of the governor as per the allegations that were there then?

In the impeachment of the Deputy Governor of Kisii County that we just did the other day, we saw a father and a son giving their accusation and testimonies on the Floor of this House against one another. One was a friend of the Deputy Governor, and the other one was conned by the said person as per the allegations that were there. Would you say that is also conflict of interest?

This Bill, as I said, should come out clearer. If you look at the definitions, what is a private interest? It says-

“It means a personal benefit, privilege, exemption or advantage that a public officer or a person affiliated to a public officer may gain from the office that the public officer holds, and which may influence the judgment of a public officer in the exercise of the public duty but does not include interest in decision or a matter to that.”

Mr. Temporary Speaker, Sir, I believe a deputy governor, who would benefit from such a seat when a governor is removed from office, from this definition, that will be conflict of interest. When you talk about conflict of interest, sometimes it is unrealistic if we do not give it proper indicators.

The Members of Parliament from the National Assembly issue bursaries through the National Government Constituencies Development Fund (NG-CDF). They are the Members of Parliament and the ones who issue these bursaries, and they still benefit from that politically. Would you not call that conflict of interest? When it comes to an MP issuing bursaries to the people and he is only doing that within the period that he is an MP. That means somebody in that ward or that constituency who would want to vie for that seat, will be somehow disadvantaged in the future, because this MP is issuing bursaries yet you are not giving anything at that particular time.

The Bill should be clearer. We shall be moving some amendment.

If you look at Section 31A (1), if I could read-

“This Section determines the responsible Commission for a public officer for the purposes of this Act. “

The Commission that will be mandated to oversight certain entities, agents and other Government officers and officials.

It goes ahead, in Section 31A (2) to say-

“The Committee of the National Assembly responsible for the ethics of members is the responsible commission for-

- (a) The Cabinet.
- (b) Members of the National Assembly.
- (c) The Director of Public Prosecution.
- (d) The Secretary to the Cabinet.
- (e) Members of the Judicial Service Commission.

(f) Members of Commissions and independent offices specified under Chapter 15 of the Constitution; and

(g) members of the Ethics and Anti-Corruption Commission and staff of the Commission holding the rank of deputy director and above.”

I have no problem with that. However, if you read Section 31A (3), it says-

“The committee of the Senate responsible for the ethics of Members is the responsible Commission for Senators.”

If you read that, a whole Senate that is mandated to oversight Cabinet Secretaries has only been reduced to oversight themselves. That is why they appear before the committees of the House. We cannot ask them when it comes to matters of conflict of interest. That is where everything begins.

I will bring in an amendment. Instead of saying; the “Committee of the National Assembly”, we will be saying, the “Committee of Parliament”. This is so that either House, that is the National Assembly and the Senate can check on matters conflict of interest to the Cabinet, Members of Parliament (MPs), each House will take care of their Members, the Director of Public Prosecution (DPP), Secretary to the Cabinet, the members of Judicial Service Commission (JSC), members of the commission in the independent offices and members of Ethics and Anti-Corruption Commission (EACC). Can you imagine that this House was only mandated to check themselves? This clause will call this whole Senate to first of all, pause everything that we are doing and discuss this issue.

Mr. Temporary Speaker, Sir, the other day the EACC gave a report. The report was on the bribery index. They mentioned some of the counties that bribe as much money. They talked about Nyamira County which on average, somebody is bribing Kshs163,000 to get employment. Yet you see, on the Floor of this House, somebody said that they gave Kshs800,000 to get an opportunity to work for the County of Kisii and that person was also from Nyamira.

What I am trying to say is that these bodies that we are giving this mandate can give us statistics and tell us people are bribing in this county and yet, they are not doing anything. They are just acting - I am talking about EACC - as just an opinion poll kind of commission. A commission that will just come and tell us; the people of this county are known to be bribing and yet, they have not arrested or taken anybody to court or even issued warnings, if the law permits that. Yet, as a Senate, we are told that we should not call them and ask them questions.

The National Transport and Safety Authority (NTSA) was among the Government bodies that are accepting huge amounts of bribes. They were number one followed by the Judiciary and county governments in that order. County governments are not in Section 31(a)(3). As the Senate, we are taking away our mandate to check the county governments when it comes to conflict of interest. Who are they giving this mandate? The committee of the county assembly responsible for the ethics of members is a responsible commission for County Executive Committees Members (CECM), MCAs and the members of the secretary of respective county public service board.

No one has been given an opportunity to oversight governors. Governors are free to do whatever they want to if this Bill was to pass the way it is. They have not been mentioned anywhere, even when it comes to the MCAs. Once we get to the Third

Reading, we will be bringing such amendments. This is because governors are the ones who are exercising conflict of interest more than anybody. If you read the law in this country, no one is a CEO of a certain government other than governors. The President is not even a CEO of the country but the governors are.

They are the ones who through their CECMs executive mandates and implement budgetary allocations. The issue of governors should be here as a section by itself. Governors are the ones who are not paying pending bills, they are the ones who are convincing MCAs to pass budgets that are unrealistic, so that they can commit county monies even without having it.

I am happy that the other day, the President of this Republic, President William Ruto, convened a sitting with all heads and CEOs of parastatals. He told them not to execute or commit a budget of monies that they do not have. If you do not have that amount, do not commit it. That is the way to go to fight pending bills.

This is what we need to do to the Governors also because they are committing money. In the case of Kiambu County, we have had four Governors. When somebody realises that they cannot be re-elected, they commit monies to entities in the name of collecting bribes from contractors. The moment they commit money, they issue contracts and they get their bribes. Then, they are not voted for and they go home leaving the contractor asking for the next Governor to pay their pending bills. The next governor will never pay because one; you did not have proper papers, probably you did not execute or support that governor. This issue of pending bills will only end once we stop the governors from over projecting a certain percentage of their own-source revenues.

That is to say I have an amendment to the Public Finance Management (PFM) Act that will be coming to this House. I am requesting Members of the Senate to support it when it comes before the counties pass their budgets. That, you cannot over project your own-source revenue for the next financial year more than 20 per cent of what you collected in the previous audited year. This is because, if you do that, you will also spend what you do not have and if you spend what you do not have, you will never ever cure the issue of pending bills.

As I conclude, for you to get clarity on what I meant by this, Kiambu County has projected to collect Kshs8 billion because it is Kshs7.9 billion. So far, they have only collected Kshs1.6 billion. Half within the financial year so that means, within the next half of the financial year, they are going to collect another Kshs1.6 billion. That will be Kshs3.2 billion.

If you minus Kshs3.2 billion from Kshs8 billion, that is a county that has gone short of almost Kshs5 billion yet, they have committed that amount and given contractors work worth Kshs5 billion. They have pending bills of Kshs5.7 billion so by the end of this year, I am telling you, the County Government of Kiambu will have pending bills of Kshs10 billion.

For us to cure this, we have to support such kind of laws and come up with such amendments. As I support this Conflict of Interest Bill, allow me to bring some amendment when we get there.

Thank you very much.

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

Sen. Crystal Asige: Thank you, Mr. Temporary Speaker, Sir, for the opportunity to contribute to this Bill. I am not sure if a Bill will really solve the deeply entrenched problem of corruption in our country. I would have hoped that would something that would be left to our population to look into our morals and values as people and as a society. The need for bringing a Bill to try and curb corruption, conflict of interest and all the other issues that ensue, for me, may not really go into solving the true problem that Kenya faces as a country.

I will highlight a few data sets from the EACC national survey. This is just so that Kenyans can understand what types of issue that we are really dealing with. The study surveyed about 5,100 households across the country who are above 18 years of age. It says that 53.7 per cent considered that corruption is high in the country.

Ministries most prone to corruption; the Ministry of Interior and National Administration was the first, 47.1 per cent. The Ministry of Health, 13.2 per cent. The ministry of Roads and Transport is at 5.8 per cent. Government departments and agencies most prone is the next one I will highlight. The police, 60.6 per cent, that is of national share of bribes. Next is Immigration at 4.4 per cent. Registrar of persons 4.0 per cent. There is the National Transport and Safety Authority (NTSA) and then the Teachers Service Commission (TSC).

Mr. Temporary Speaker, Sir, the county services most prone to bribery according to this report are the county health services at 39.1 percent, county transport at 11.9 percent, trade development at 10 percent, county commissioners' offices and next are county public service boards.

I will next highlight the counties that are most prone to bribery according to this report - Nyamira is the first one. Next is Baringo, Siaya, Bungoma, Turkana and it goes on and on. The average size of bribe went from Kshs6,865 in 2022 to about Kshs11,625 in 2023, almost double in a year.

Mr. Temporary Speaker, Sir, jobseekers were at the top, giving about Kshs160,260 as a bribe to look for jobs. People who are looking for passports pay about Kshs4,000 and people seeking police abstracts pay about Kshs20,300. People pay to obtain a tender about Kshs17,000 and solving land conflicts an average of Kshs12,673.

I will move to another piece of data that was interesting to me. The top five forms of corruption nationally. Bribery is at 41.0 percent is what we are talking about. I have concluded that we need to find a long-lasting and sustainable solution to corruption. We talk about a Bill and yet, we all know that the huge problem in our country and several other jurisdictions is implementation of legislation. Legislation can be good, well meaning and the spirit of different provisions and clauses to curb particular issues can be very good and written very well. However, the implementation part is always the problem. Therefore, if we see such high and exorbitant data sets with regard to corruption and bribery in the country, how can we say that this piece of legislation will solve our problem holistically?

Mr. Temporary Speaker, Sir, Clause 23 of the Bill introduces stringent restrictions on public officers requiring prior approval from both the reporting authority and the EACC before engaging in additional employment. This Bill casts a wide net in its definition of a public officer, encompassing individuals serving the Government in various capacities, whether appointed or elected, on a full-time or part-time basis and regardless of their permanency.

This expansive definition to me extends to include state officers, employees, consultants, volunteers and even medical professionals. However, this provision raises concern for me. It fails to acknowledge the numerous opportunities that public officers create to their supplementary employment ventures.

Mr. Temporary Speaker, Sir, many public officers as you know, particularly, the medical professionals often face financial challenges such as irregular salaries as we are seeing with the Kenya Medical Practitioners and Dentists Council (KPMDU). They must support their family in some way. Imposing restrictions on their ability to seek additional sources of income may exacerbate their financial hardship.

Furthermore, the proposal overlooks the temporary nature of certain public office tenures. For example, Members of Parliament (MPs) may serve for only a limited term of the minimum five years. Is it fair to prevent them from pursuing additional employment opportunities during that tenure, effectively pausing our growth in different income streams across the term we are serving?

Mr. Temporary Speaker, Sir, that is a question that has not been fulfilled for me through this Bill. As we know, many MPs and public officers from the top all the way to the bottom talk about having a side hustle. That is something that needs to be looked into in this Bill. While it is crucial to uphold integrity and prevent conflict of interest, any measure should consider the diverse circumstance and the needs of public officers. In my view, simply restricting to earn a livelihood could have widespread repercussions. It jeopardizes both their financial stability and the capacity to serve the public effectively and maybe, pay longstanding debts.

The Bill further stipulates that each public officer must submit a declaration of income, which is good, also assets and liabilities for themselves and their spouse or spouses and any independent children under 18. For this, the provision contradicts Article 31 of the Constitution which guarantees the right to privacy.

Article 31 states that every person has the right to privacy, which includes protection against unwarranted intrusion such as seizures and unnecessary disclosure of family or private information or infringement on the privacy of communication.

Mr. Temporary Speaker, Sir, how does this Bill set to reconcile this issue? It is evident from this constitutional provision that no one should have access to information concerning the family or private affairs of a public officer, such as myself. While it may be reasonable to require some level of declaration, to those who willingly accept the positions, this should not extend to family members, spouses and children who did not choose this public life.

There are many other issues that I cited in this Bill, but because of time, I will just conclude by saying that corruption is not going to be curbed by provisions, verbiage,

legal language on a piece of paper. We really need to go into the heart, which is more of how we bring up our children. What kind of discussions are we having in our households? What kind of talk and lessons are we imparting to our children on the dinner table? How are we treating family affairs?

Mr. Temporary Speaker, Sir, I feel that there are many other things that need to come before and will have to precede this kind of a Bill and what it is trying to achieve and that does not lie on a piece of paper. We may be at the risk of just doing this cosmetically, just to say that we have a Bill, and it says one, two or three but we are not solving the problem at hand and are not doing it in a long-lasting and sustainable way.

We really need a revolution in Kenya if we are to curb corruption, even in Africa as a whole. However, we are talking about Kenya, the country we are all here to serve. I feel that a revolution is the only thing that will get rid of corruption in our country.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. Crystal Asige.
Sen. Olekina Ledama.

Sen. Olekina: Thank you, Mr. Temporary Speaker, Sir. This is a Bill that requires people to wear their spectacles in order to understand its clear objectives.

If I was to be asked, this is a Bill which no Member should stand to support or oppose, before they get an opportunity to read the report on the Committee on Justice, Legal Affairs and Human Rights (JLAC). I have attempted to understand the gist of this Bill and it sounds to me like one of those Bills imposed to this country by the World Bank. One of the biggest challenges I have in absorbing the contents of this Bill is because most of it, is utopian. If you ask me what the Object of this Bill is it clearly says management of conflict of interest in discharging of official duties. The first question that I ask is what are official duties? It also talks about administration.

Mr. Temporary Speaker, Sir, if you look at this Bill, it repeals sections of other existing legislations which I dare say play a critical role in governance in this country. Bills that were drafted after the promulgation of the constitution. Some of the Bill's consequential amendments which are listed in the Third Schedule include repeal of sections of the Anti-Corruption and Economic Crimes Act No. 3 of 2003.

It also talks about repeal amendment of Section 1 of the Ethics and Anti-Corruption Commission Act No.22 of 2011. Then the other section of another legislation that it repeals is the Leadership and Integrity Act No.19 of 2012. If you look at Section 2, Section 6.3 and Section 6.4 are deleted. Section 13(1)(a) is deleted and substituted thereof with a new paragraph. Sections 14, 16, 17, 18, 23, 26, 27, 28 and 52 are all deleted. If you read further, you will understand that this is really not a Bill that has been thought out clearly and legislators have not been given an opportunity to understand what this Bill hopes to achieve.

Mr. Temporary Speaker, Sir, I have looked at what this Bill is trying to deal with, and I can narrow it down to about four issues. Issue No. 1 is of disclosures which is required for every public officer. You know, it is the same forms that we fill, although the Bill extends it a little bit further because it requires feedback from the reporting agencies. It talks about the recusal. In the event that there is a conflict of interest, you have to recuse yourself. However, even that in itself has not been fully thought out because there

are certain sectors of this public office entity that have been left out. It tries to focus on issues of transparency. It is trying to inculcate a culture of transparency.

Mr. Temporary Speaker, Sir, the next thing that this Bill talks about is the issue of penalties, like what happens. I am trying to demystify the gist of the entire Bill because it talks about certain penalties and whereas there are penalties that have not been spelled out, it says if you are a person, you will be charged Kshs4 million with 10 years imprisonment and Kshs10 million if it is an entity.

We have a tendency in this House of fast-tracking National Assembly legislations. When they are brought, we put them through the conveyor belt so fast and most of us not even understand them while our Bills originated from this House are collecting dust at the National Assembly. If you read this Bill, you will get to a point where the National Assembly is given so much power as a reporting agency.

I will try and look at certain provisions of this Bill, which I think the drafters have thought about but need to expand it. I hope that this time around, distinguished Senators can get an opportunity to internalize this Bill. We do not want to be counted as those people who go in and clap for a Bill they do not even know what it is about because they have not read. Then tomorrow when it is affecting us, we start complaining.

Mr. Temporary Speaker, Sir, when you are told as a public figure or a state officer, that you have to disclose all the money that you earn, the money that your wife earns and the money that your children earn, what sort of draconian laws are these? You will find families that the husband and wife, do not talk to each other but live in an arrangement. They make their own money. Imagine this, your wife or your child with his or her life, whom you do not talk to, as a state officer, you must disclose how much money they earn and all their income.

Seriously! Just because we want to please the World Bank, we come up with legislation that do not help us. I long for the time when we, as a country can be able to develop our legislation, taking into consideration our culture - how people struggle to be there.

If you meet the people who are tasked with the administration of this conflict of interest legislation--- No.5, it says the Act shall be administered by reporting authorities - I will define who those reporting authorities are - and the Ethics and Anti Corruption Commission (EACC). Why should we not just look at the EACC Act, go through it together and see what we can change because no law is static. Things change.

We are very good as a country in drafting legislation. We pass it, but are only good on paper. There is one section which is very utopian in its nature. It is still on No.6 - The function of the commission under this Act shall be; 6b, develop an effective system of reporting violations of this Act. So, the EACC goes out and develops a reporting mechanism. Then below it in No.7, says-

“The Commission shall in performance of its function under this Act have the powers to: one, “conduct investigation on its own initiative or on a complaint made by a member of the public”.

I wish it went further and said what are the requirements. Once you complain, how are you put the know on the entire investigating mechanism? When is it reported

back to you because you made a complaint? You are a consumer of this Bill, you have complained to the commission, how does the commission write back to you? We need to be able to expand and amend that section because I know this is going to pass.

There is a provision which I think is very dangerous and all of us must really pay attention to it. Still on No.7, it says “delegate to another person or body by notice in the Gazette, any of its powers or functions under this act in respect to classes of public officers specified by the commission and that persons or bodies shall be deemed to be responsible for the administration and management of conflict of interest”. That is a very dangerous clause. We are already seeing what is panning out there if you read Article 156 of the Constitution of Kenya where it gives the powers to protect public interest to the Attorney-General. Then when you go to the Attorney-General's Act, you will see that he is now given the powers to delegate and in most cases, he will delegate to the Solicitor General.

Mr. Temporary Speaker, a very mischievous government will bypass the Attorney-General and goes to the Solicitor General because the Act gives that person the power to delegate. Who is this person to whom the Commission shall delegate the powers if we have set up a Commission under an Act of Parliament? Why not then either amend that Act of Parliament or do away with it? I would propose that this very dangerous clause be deleted. The independence of a body and everybody out there will, therefore, not be confused with the powers of that commission. Allow that commission to perform its function, but not restrictively.

We should not create room for it to be abused by setting up another agency that has delegated powers. Hypothetically, if the powers that be are not happy with the independence of the Commission, then they will just go to the other person who is delegated. It creates room for corruption, which is what we are trying to deal with here.

If you read Clause 7 (d) it states-

“The Commission shall, in performance of its function under this Act, have the powers to cooperate and collaborate with any public entities or agencies, any foreign governments and international or regional organizations in the management of conflict of interest and enforcement of this Act.” What is it that we do in this House? We have two and, hopefully soon, we will get a third committee on oversight. We have the County Public Accounts Committee (CPAC) and the County Public Investments and Special Funds Committee (CPISF).

I would have hoped that now that we are trying to deal with the issue of corruption, incorporate the aspect of these two committees to work there. Why leave out the Senate, yet sometimes we have the Ethics and Anticorruption Commission (EACC) people sitting with us in our committees? Why not then say that even the Senate, so that you can deal with the corruption in the counties?

Later on, I hope we will have time, I will be moving my Motion on pending bills. However, if you want to deal with the matter decisively, you have got to create room for this oversight House to work directly with the Commission, to punish these governors and these people who are stealing all this money that belongs to the public. In my view,

this is not an Act that has been thought out clearly. It is a Bill that is being rushed to please other agencies like the World Bank.

If you read Section 13(1), which I do not know whether it is the one that you are saying you are going to amend, it says that-

“A public officer shall not, directly or indirectly, use or allow any person under the office authority to use any information that is obtained in the course of performing official duties and is not available to the public to improperly further or seek to a further the interest of the officer or the interest of another person.”

I was looking at it and I said they should limit it to strictly private and personal interests. You know, when I was born and you will allow me to use a phrase in Maasai, when I was coming out of the womb of my mother, my mother said “*Bung’a oltao lino, maibung’a olalai.*” “Hold your life and I hold mine.” We should never be penalized.

The Temporary Speaker (Sen. Wakili Sigei): You should qualify that to say you were told.

Sen. Olekina: I paraphrased it. I did. Let me tell you, some of these things we grew up knowing.

The Temporary Speaker (Sen. Wakili Sigei): It is a good one although I am saying you should have qualified that to say, ‘I was told.’ This is what my mother said.

Sen. Olekina: Yes. Oh, I like what you just said. I wish I had more time. How many minutes do I have?

The Temporary Speaker (Sen. Wakili Sigei): Five minutes.

Sen. Olekina: I hope that five minutes will drag and maybe you can give me some additional time. This is something that I believe we need to be very diligent. We need to take our time. What I was saying is that in Section 13, it must be limited to an individual. You know, my brother has got no business dealing with my issues.

Clause 19 states-

“A public officer shall not be a party to or a beneficiary of a contract for the supply of goods, works or services with any reporting entity.”

Mr. Temporary Speaker, Sir, it is wrong to deny Kenyans an opportunity to perform certain functions. If, hypothetically, you own a company that trades with the Senate, it does not say that Sen. Wakili Sigei, the Senator of Bomet County, is trading with us. I just want us to put this thing into perspective. It should only be limited to an individual. If it is coming under your name, by all means, I agree you should not benefit. So, this issue indirectly ought to be removed.

I can dare say that if you go to these developed countries, you will not find such draconian laws. They are so quick to impose them on us, but they do not have them. I am a firm believer that Clause 27 ought to be deleted completely in its entirety.

I know the Committee was probably recommending for it to be amended, but in my reading of this Bill, where it says-

“A former public officer shall not-

(a) act for or on behalf of any person in connection with any specific proceeding, transaction, negotiation or case in which the State is a party and with respect to which the former public officer had acted for, or provided advice to the State”

I will read (b), (c), and (d) briefly. The word “former” means I no longer benefit from it. If we are clever enough, former staff have got historical memory. They will better advise someone because they can easily save public money. In other jurisdictions, former officers set up offices to offer consultancy services. In the United States of America (USA), former Internal Revenue Service (IRS) officers set up consultancy services and they will tell you, ‘I was a former officer of the IRS.’ They help you to save your time, and negotiate better. This Clause 27, I believe, has to be deleted.

I also believe that Clause 28, ought to be deleted, where it says-

“A former public officer shall not, during the period of two years immediately preceding the termination of service represent, vouch for or defend any person, whether for remuneration or not, before any reporting entity with which the former public officer had direct and significant official dealings”.

Why are you incarcerating me? Why are you making it difficult for me to make a life? Supposed that is the only training that I have had? So, for two years, I will stay hungry just because I happen to have been working in that department. This is draconian and it has to be removed.

Because of time, I will state other provisions, which I think are very problematic. Clause 31 states that-

“Every public officer shall submit to the Commission a declaration of the income, assets and liabilities of himself, his spouse or spouses and his dependent children under the age of eighteen years”.

That is ridiculous. “Dependent children:” They depend on me but the fact that they are dependent, means they do not own anything. If I am paying for their college, and maybe they get a job as a waiter, I have to follow them to know how much money they are making because there is this ridiculous, draconian law that we passed that requires me, as a public officer, to declare how much they are paid as a waiter.

Mr. Temporary Speaker, Sir, I want to request two more minutes, so that I conclude this matter.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Olekina, you have two more minutes.

Sen. Olekina: Thank you, Mr. Temporary Speaker, Sir.

If you look at Clause 31A(2), the National Assembly is given so much power.

It says that the Committee of the National Assembly responsible for the ethics of members is the responsible commission-

- (a) The cabinets;
- (b) Members of the National Assembly;
- (c) The Director of Public Prosecution;
- (d) The Secretary to the Cabinet;

I propose that that section be amended to state as ‘Parliament,’ which is both Houses of Parliament.

It is important. I am happy that we have the Powers and Privileges Committee that deals with the ethics of our committees. However, even in terms of the National Assembly, it ought to be reduced to that on its own.

Clause 32(3) is another dangerous provision.

“A public officer shall within 30 days appointment as a public officer, submit an initial declaration relating to his financial affairs for the period of one year prior to appointment.”

Mr. Temporary Speaker, Sir, we have Members of Parliament who spend a lot of money running for re-election. At the time of running, they had so much money, but they lose unfortunately. You want to embarrass that person, that after 30 days, they come to tell you they are bankrupt. Where is the level of respect and privacy to such things? You know that he is no longer in office. I also believe that Clause 34 has to be repealed. I invite members of the Senate to read through it. Clause 39 (2) (a) is also dangerous. It states-

“A reporting authority and the Commission shall not conduct concurrent investigations over the same complaint”

Mr. Temporary Speaker, Sir, we are two distinct Houses. The reason---

(There was a technical hitch)

Take it to public participation, just the way the National Assembly does because we are two independent institutions that give different opinions. That means that if the Committee on Energy of the National Assembly is seized of a matter of high electricity bills, then the Senate Standing Committee on Energy will not be investigating that matter. That issue needs to be taken up.

Mr. Temporary Speaker, Sir, I wish I had more time, but I shall say the following. Yes, we may want to appear as if we are compliant with the terms of modern structural adjustment policies, but we have to look at our situation. I will instruct my office to draft amendments and submit them, whether they pass or not.

The time the Bill becomes punitive and starts hurting people, is when people shall say I wish I knew or listened. I wish I had more time, but I do not. Let us look at our situation here. Let us create legislation that fits our interest, but not that of Bretton Woods Institutions. I reserve my comment on whether I support or not. However, I know my submissions lead to one conclusion.

I thank you.

The Temporary Speaker (Sen. Wakili Sigei): Hon. Senators, that brings us to the end of contributions on the Bill. I call upon the Mover of the Bill to reply. Give the Senate Majority Leader the microphone.

Proceed.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Temporary Speaker, Sir. I thank colleagues who have taken time to respond and share thoughts on this Bill. They are as far and wide as you can imagine in a House of 67 legislators. Some agree while others do not. That is the essence of democracy.

Sen. Olekina has gone into the lengths and depths of this Bill. It made me curious to know what business he is doing that he does not want many others to know. I know him to be a humble farmer, who goes about his business in an honest way.

As I listened through the presentation, there were very useful insights that came from our colleagues together with yours, Mr. Temporary Speaker, Sir, being the Chair of the Committee. I have had the opportunity to read through what you have proposed as the Standing Committee on Justice and Legal Affairs (JLAC). There are various amendments but, curiously, as Sen. Olekina says, it is something I want to encourage every Chairperson of a Committee. This is a trick we have used as a House over the years, which, unfortunately, some of our chairpersons have yet to appreciate, and this is something you need to do.

There is the story of the camel and the tent. The camel only asked to have its head shelter because of the sweltering heat of the desert. Before long, the whole body was inside the tent, pushing in slowly. This is the policy we adopted as a Senate a long time ago. Each time we have legislation before us, anything that states "National Assembly does this" is replaced by "Parliament." I do not know why Committee Chairpersons, the Legal Services Directorate staff, and the committee clerks forget this golden rule. This is something we have done over the years.

It will take time for the organs and instruments of the Government to appreciate that we are a bicameral Parliament. It has been 14 years or 12 years, suppose you remove the two years before the election of 2012, since the Constitution was promulgated. In that case, it is now 12 years into a bicameral system of Parliament, yet, when you get Bills, so long as they have come from the Government Printer and the Office of the Attorney General, then 90 per cent of the time, even on matters that the Constitution has specified that it is something that Parliament will handle, chances are they will write that it is a National Assembly. Sometimes, I do not know whether it is mischief on their part or lazy drafting.

I believe this is an effort of copy pasting. You know how people worked in this country long before the days of Chat GPT. Copy and paste was a way of doing the assignment and carrying out your responsibility. Therefore, the drafters who handle many of the Bills from outside the precincts of Parliament would simply copy any provisions. Where there is the word "Parliament," they are likely to write "National Assembly." Many have yet to appreciate that those two names are no longer synonymous, as they were before 2010, and are distinctively different.

I encourage the drafters of the Bills, Members of various committees, the Chairpersons and Members of staff who work with our committees that so long as it is not a Constitutional provision and this will only be limited to Money Bills – even though we will get to eventually.

If it is being stated that "the National Assembly Committee" responsible for this as Sen. Olekina pointed out, the obvious amendment I expected was deleting that clause and inserting the word "Parliament." This makes it plain and simple. People appreciate the Senate and move away from this.

Sen. Crystal Asige mentioned something that I totally agree with regarding the overall objective of this Bill. It is not for want of good laws that we continue to struggle with the challenge of corruption and conflict of interest. We have a values problem, which is the challenge.

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

People are not corrupt because there is a lack of good legislation or lack of enforcement. As a society, we have accepted that as a way of life. Everybody wants a shortcut, to be bribed and make a quick buck out of whatever situation; from voters to politicians, members of the private sector, and anyone.

There are very few people who can stand and say 'no' and just do the right thing. We have many legislations we consider in Parliament, the reports, and the offices we created in the 2010 Constitution. They will not work until we begin to appreciate that corruption is a values problem and begin to teach it from a young age in our school systems, so that it is inbuilt in the culture of the younger generation. Unfortunately, there is little you can do with people once they have clocked the age of 18 and even sometimes less than that.

If they have accepted that this is the way of life, there is very little we can do. You can only deter and that is what this legislation will do. It is the threat of going to jail and being exposed that will limit people. However, if you want to live in a country where people have discipline and obey traffic rules, then we must begin to teach this practice and culture to our children at a very young age. Unfortunately, there is very little the rest of us in this Parliament today and in this room can do. All of us who are adults already, there are very few habits that we can pick up late in life and begin to accept as a way of life. This is a fact of life

As much as I agree with Sen. Crystal Asige that corruption is a values problem, which we have to deal with, then we do not have a choice. We cannot simply sit pretty and say, so long as that is how Kenyans are and that is how the world is, what do we do?

Countries that have succeeded in limiting all these vices and societal ills, is on account of laws such as this, where the threat of being exposed, going to jail or losing ill-acquired wealth, makes you hold back because that is human nature. People, so long as they know that there is a risk in doing certain practices, then long after all this is said and done, at least somebody will reflect at night and think through and say, “my goodness, if I do this, what is going to happen?”

Mr. Temporary Speaker, Sir, I hope one day we can have a conversation with the Chief Justice and the Judiciary in general. I have a strong feeling that circuit is yet to be complete. I know that previously at the Bomas of Kenya, there was a conference. If you remember the infamous conference where former President Uhuru quipped, “what do you want me to do?” That was a conference that had brought together all the instruments and state agencies that are involved in this fight against corruption.

We had the office of the Director of Public Prosecution (ODPP), the Ethics and Anti-Corruption Commission (EACC), the Directorate of Criminal Investigation (DCI), the Judiciary and the Legislature. I am not sure if the Legislature was represented at that particular conference.

We must also begin to ask very difficult questions about our Judiciary. How can they keep on coming back to us and tell us that it is on account of poor investigations and that the cases are not properly handled, that the conviction rate is so minimal? How comes it so difficult to nab these people that are engaged in these vices, yet eventually,

we know that at the end of the day, those courts like the Magistrate Courts and the High Courts, have their cases drag on forever.

I was watching news today and I was shocked that the High Court has today dismissed the 2013 case of that imposter of a police officer called Waiganjo. Even a kindergarten kid knows in this country that this was an impostor. He was exposed and was in police uniform. He was doing police duties. Police officers confessed, but a judge dismissed the case.

The greatest disservice we ever did to ourselves is that the Judiciary, in the passage of the 2010 Constitution, succeeded in insulating themselves against any form of scrutiny. That so long as a judge knows that whatever decision they make in the course of their duty, there is nothing that can be done to them. We will continue to have this kind of struggle. We must ask of our Judiciary, with all these billions that we continue to send to the judicial systems of this country, how comes the convictions rate are so minimal?

If you say it is a case of poor investigation, surely, you want to tell me that there is not even one good investigator or one good case that EACC has handled, that a judge can look at and say this is an open-shut case, call all the witnesses, have the responses filed and set a conviction even for these simple traffic offenses.

Mr. Temporary Speaker, Sir, you have watched many times EACC raid the police officers by the roadside. If you want to kill that vice, how comes after that exposé you will never hear of that case again once they have been taken to court? This is because people know what happens. That the judges will most likely tell you to wait for the pressure to ease off. They are likely to be out on bail, then after maybe a few months, somebody reaches out to the judge from the accused side and say, 'you know you are guilty, but if you can get me this---

Mr. Temporary Speaker, Sir, we must speak about these issues. If we are to win this war and have a country that is governed by the rule of law, we must be able to look at our Judges right in the eye and tell them that they are doing a disservice to this country. Their handling of corruption cases is wanting.

As we reflect and do this law, the Conflict of Interest Bill, which is good, Judges are also State officers. They will equally file their reports. It will be possible to look back and tell what business they have transacted. Unfortunately, people in this country know corruption only through the eyes of politicians. They only see MPs and maybe Cabinet Secretaries, yet to complete this circuit, we must have a conversation about what is it that we missed in our judicial system that will help us fine people.

How many times have you seen the Director of Criminal Investigations (DCI) or the Ethics and Anti-Corruption Commission (EACC) officers raid a county officer, a Chief Officer or a County Executive Committee (CEC) Member, found with money that they have collected as bribes, yet you know that, that case will never get anywhere?

Mr. Temporary Speaker, Sir, I encourage colleagues, as much as you may have one or two reservations about this Bill and the overall thought process of trying to tighten the reins and noose around all these challenges that we have with our country and trying to make us a better nation, a nation that is governed by good values, let us support this Bill.

Let us propose amendments, as Sen. Olekina has said, make it better and work for everybody. In fact, tighten it around Judges. We want to put it in law, so that they go and strike it again in court and eventually, the people of Kenya can know the challenges that we are having with our judicial system. In fact, I wish, as a Committee, you had taken time to find ways of also making it possible for Judges to declare conflict. I know it is properly stated for state officers and the rest, but it needs to be specific, including mentioning whenever people reach out to them when they are handling certain matters, so that they report and it is known that you cannot do this or the other.

With those very many remarks, I beg to reply and thank colleagues who have taken time to contribute to this Bill.

In accordance to Standing Order No.66 (3), I beg to request that the putting of the question be deferred until a later date.

Thank you.

The Temporary Speaker (Sen. Wakili Sigei): Pursuant to the Standing Order No.66 (3), the putting of the question to this Bill is deferred to the next sitting of the Senate.

(Putting of question on the Bill deferred)

Next Order.

MOTION

DECLARATION OF CATTLE RUSTLING AND BANDITRY AS A NATIONAL DISASTER

(Sen. Cheptumo on 28.02.2024)

(Resumption of debate interrupted on 6.3.2024)

THAT AWARE THAT, cattle rustling/banditry is a major menace and security threat in the South and North Rift regions and some other regions of the country;

CONCERNED THAT, the menace has since left irreparable and negative socio-economic impact which include but are not limited to increased number of widows, widowers, orphaned children, poverty, displacement of people leading to Internally Displaced Persons (IDPS), disruption of educational health programs and other economic activities owing to the destruction and/or closure of educational, health and other institutions;

FURTHER CONCERNED THAT, the people living in the affected regions have been denied the enjoyment of their social, economic and political rights as guaranteed to them under the Bill of Rights as enshrined in Chapter Four of the Constitution;

NOW THEREFORE, the Senate resolves that the National Government through the Ministry of Interior and National Administration and in collaboration with the Council of Governors:

1. Declares cattle rustling a National Disaster;
2. Establish a National Task force on cattle rustling/banditry to:
 - (i) Investigate the causes of the rampant cattle rustling and banditry in the said region and the Country at large;
 - (ii) Establishes the extent of suffering, loss and damage the cattle rustling/banditry has occasioned to the communities in all the affected Counties;
3. Create a Special Fund for mitigating the losses suffered by and in compensating all victims of cattle rustling/banditry and settle all internally displaced persons occasioned by the menace.

The Temporary Speaker (Sen. Wakili Sigei): This Motion is deferred to the next sitting.

(Motion deferred)

Next Order.

MOTION

STATUS OF PENDING BILLS IN COUNTIES

Sen. Olekina: Thank you, Mr. Temporary Speaker, Sir. I beg to move the following Motion-

AWARE THAT, as of 31st December, 2023, according to the County Government's 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 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 closure of businesses, stalling of county projects, adversely affecting economic growth in counties, service delivery and ultimately, slowing down the country's economic growth;

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; and,

(2) resolves that-

(i) pursuant to the provisions of Regulation 41(2) & (3) of the Public Finance Management (County Governments) Regulations, 2015, County Governments prioritize 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 approve the supplementary budgets.

Mr. Temporary Speaker, Sir, today, one lawyer in Kenya instructed auctioneers to go and attach Nairobi City County vehicles. This is after a ruling by Justice Sifuna, which essentially removed the privilege that governments enjoyed in the Civil Procedures Rule 16 and 131. This essentially meant that if you are owed money by a county government, the only way that you can get your money is simply when you bribe.

In most cases, if you attempted to follow the due process of the law, the only time you can get some redress is if you go to court three times. The first time you go, you will get a decree; orders of *mandamus*. After that, you will now pursue that officer and enforce to have him arrested for contempt of court for you to get your money. Even after, you do not get the money.

Mr. Temporary Speaker, Sir, earlier on, before coming to move this, I circulated a list of how much each county owes suppliers. Machakos County, which is number four in the list, owes about Kshs3 billion. In fact, the actual figure is Kshs3,031,332,471. Mandera County owes another Kshs3 billion. Busia County, owes about Kshs2.2 billion. Embu County owes kshs1.9 billion. Laikipia County owes Kshs1.7 billion. Wajir County owes Kshs1.6 billion. In fact, the Senator for Wajir said they owe more. However, these are the verified figures as at 30th December.

Kisumu County owes Kshs1.6 billion; Tana River County owes Kshs1.6 billion; Nakuru County owes Kshs1.4 billion; Kakamega County owes 1.4 billion; my beloved County of Narok owes suppliers and contractors Kshs1.4 billion, yet it is the county that generates more own source revenue. I bet that money is now used to create kingpins and all manner of things, instead of paying bills.

Turkana County, one of the counties we allocate most of the money owes suppliers, contractors and people who are now battling with mental illness and some have died. They owe them about Kshs1.4 billion. Kajiado County, my neighbouring county,

where I got my wife from, owes Kshs1.3 billion. Kilifi County owes Kshs1.3 billion; Kisii owes Kshs1.2 billion; Vihiga County owes Kshs1.1 billion; Bungoma County owes Kshs1.1 billion; Trans-Nzoia County owes Kshs 1 billion; Migori County owes Kshs1 billion shillings; Homa Bay County owes Kshs921 million and Taita-Taveta owes Kshs791 million. Murang'a County, where my good friend comes from - who wants to pass a law on public holidays and I hope during the public holidays---

(A Senator spoke off record)

Kiambu? Sorry, that is Kiambu County. I will read it, but let me go back. Murang'a County owes Kshs700 million, Garissa owes Kshs663 million and Kiambu was second at Kshs5.7 billion. Garissa County owes Kshs663 million, Meru County owes Kshs648 million, Kirinyaga County owes Kshs636 million, Bomet County owes Kshs512 million, Siaya County owes Kshs485 million and Kericho County, where the Majority Leader comes, from owes Kshs465 million.

Samburu County, a County that gets very little allocation, owes Kshs412 million. Kitui County owes Kshs400 million, Tharaka Nithi owes Kshs353 million, Marsabit County owes Kshs340 million, Nandi County owes Kshs306 million, Nyamira County owes Kshs255 million, Nyandarua County owes Kshs233 million and West Pokot owes Kshs225 million. Makueni County owes Kshs184 million, Kwale County owes Kshs173 million, Lamu County, another County that gets very little allocation and I hope that during the next revenue formula, we can assist them, owes Kshs173 million. Nyeri County owes Kshs69 million, Uasin Gishu County owes Kshs41 million, Baringo County - it is interesting - owes Kshs4 million and Elgeyo-Marakwet owes Kshs2.8 million.

Mr. Temporary Speaker, Sir, one of the reasons I would like each one of us today to come here and participate in contributing to this Motion, is that if we do not compel county governments to pay their pending bills by the end of this Financial Year, we will create a monster that we will never resolve. Unscrupulous governors will clap hands when businessmen rush to court, now that most provisions of that Act of Parliament have been declared unconstitutional, in order to attach properties owned by county governments. Very soon, Mr. Temporary Speaker, Sir, you will see the Kenya International Convention Centre (KICC) being sold or attached. You will see buildings of national heritage being attached by people to sell them.

In this House, we have lawyers who have already gone to court. They have received *mandamus* orders, but what this law or the declaration of that Section of that Act of Civil Procedures as unconstitutional will do to this country, is something that we will not comprehend.

Mr. Temporary Speaker, Sir, when you create an avenue for people to only get their payments when you corrupt a system, even if we pass and I hope we do pass the previous legislation we are discussing here, corruption will still prevail. This is very dangerous and we are treading on dangerous paths and dealing with things we cannot control.

I have seen contractors from Narok County, who have rushed to the Controller of Budget (CoB). They have camped to there and told the CoB that when Narok County requests money, do not give out because the law under the county government's regulations demands that pending Bill must be the first charge of a county.

Seeing my time, I will try to summarize so that at least my colleagues can contribute on it because this is a matter that affects all of us. If you look at the Public Finance Management Regulations, debt services payment shall be a first charge on the account of revenue fund and the accounting officer shall ensure this is done to the extent possible that the county government does not default on debt obligations.

Governors have now found a very mysterious way of them ensuring that they pay their cronies, make their money or they only benefit from outside. When they request money from the CoB, they divert the money, so it is not in the budget. Supplementary budget is the way. During the transitioning periods from the former governors to the current, because of the time that we vote, when the new governors come in place, they would say, "that is not my budget but the former governor's." What do they do? They now introduce supplementary budgets.

In the case of Narok, when the current governor was taking over from the former, the former had given around Kshs600 million in one-line item that dealt with the issues to do with the transport sector. He brought in a supplementary budget and increased it by Kshs1.6 billion, moving it from Ksh600 million to Kshs2.1 billion without public participation.

Mr. Temporary Speaker, Sir, this Motion is now calling on Kenyans to be aware and compel county governments to do public participation whenever they pass a supplementary budget.

Since you have already gone through it and carried public participation on your County Integrated Development Plan (CIDP) for five years and public participation on your annual development for one year, why then should you be bringing supplementary one, two, three and four without going back to the public to tell them that you now want to change priorities, instead of what you had budgeted for?

I have taken a few minutes to mention each county and what is owed. This are your constituents or Kenyans who are owed; who are now becoming insane. They have gone gaga because they cannot do their business just because somebody in the county government has decided not to pay them their bills.

Mr. Temporary Speaker, I would like to beseech all the 47 delegates to pass this Motion. From there, now we implement it so that we can save this country.

I beg to move and I request the Senate Majority Leader to second.

The Senate Majority Leader (Sen. Cheruiyot): Thank you. Mr. Temporary Speaker, Sir, I second this Motion; a very important conversation that Senate must lead the country to have.

Sen. Ledama, this is long overdue. I have mentioned this a couple of times, but have not been as diligent as Senator Ledama to actually do something about it. If we continue to stare at our counties make the economic mess of themselves as they continue to do, in a few years' time, we will be devolving funds to counties, but all of it will be

recovered by people who are owed money by county governments and, therefore, development will be hindered.

As they say, you make hay while the sun shines. This is an opportune time to look at Governor Sakaja and ask him what he plans to do with Kshs107billion and move to Governor Wamatangi, our good friend, and ask him what he plans with this Kshs5 billion, so that we can have onward, up to Governor Wesley Rotich of Elgeiyo-Marakwet, who only owes his suppliers Kshs2.7 million.

It is good to have this conversation with our various county governments because part of the essence of leadership, colleagues, is the ability to feel the pain of other's empathy. Just imagine yourself if you are a simple supplier. I used to do business with counties before I became a Senator. I long stopped after that. I know the pain of a supplier chasing paperwork from one department to the other, then finally you are told, there is something called an I.B., which finally has sent so many people to their graves because they have been waiting.

They were told that it was just in the I.B. Auctioneers do not give a care or a hoot in the world about I.Bs. All they know and care for is whether you have their money or not. I said this a long time ago, Sen. Ledama. Nobody in their right senses still does business with county governments in this country. Unless the governor is your personal friend or even your father, you cannot try because you will be auctioned.

It is on that account that we must lead the Senate of the Republic of Kenya to decide on this Motion. Sen. Ledama, I will amend this Motion of yours further later on, because we must be stringent and tough on our county governments. The Senate must resolve to demand of each county that, first of all, classify your debts.

Of course, we know that the Kshs107 billion is not money or expenditure that Governor Sakaja incurred, for example. However, we must question what he has incurred since he came into office. I am sure the same can be said of all our county governments, so that you divide your debts into two. Tell us what you intend to do with the previous debts that you found, and the debts that you have personally incurred under your administration. This is so that we make a decision and tell our county governments not to incur or roll out any works before they first pay off those suppliers that continue to struggle. That is why I am a bit disappointed.

You remember last week, from that Chair, the Speaker gave directions that the Controller of Budget (CoB) was to appear before this House on Wednesday of this week. Unfortunately, the Controller of Budget did not appear. I hope that matter is not left to slide. Immediately we resume on the 16th April, 2024, I hope that on the 17th April, 2024 the Controller of Budget shall appear before the Senate because she is an important cog in this challenge. She is an enabler of this challenge.

Therefore, with those very many remarks, because this is a conversation that we will have for a long time--- I have requested Sen. Ledama that we be permitted to amend it, put more stringent measures and resolutions. You know, a resolution of the House is not idle talk. Once the House resolves something, county governments will be forced to act, so that we clear all these pending bills. We verify and nobody will have to part with a

coin to be paid for work that they did in our various county governments. Nobody will give an excuse.

Therefore, with those very many remarks, Mr. Temporary Speaker, Sir, I beg to second and appreciate the industry of Sen. Ledama Olekina in leading the Senate in having this important conversation upon whose successful determination will set our counties on a solid platform of transformation and success, unlike what is the case presently.

Mr. Temporary Speaker, Sir, I beg to second.

(Question proposed)

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

The Temporary Speaker (Sen. Wakili Sigei): What is your point of Order, Sen. Cherarkey?

(Interruption of debate on Motion)

PROCEDURAL MOTION

ADJOURNMENT OF DEBATE UNDER
STANDING ORDER NO.110(1)

Sen. Cherarkey: Mr. Temporary Speaker, Sir, I beg to move that the Debate on this Motion be adjourned pursuant to Standing Order No.110(1) to enable the Motion of the Senate to be moved.

As you are aware, just in quick succession, today, we are going for recess for the next 10 days, and as per the tradition of the House and our Standing Order, we normally must do an adjournment Motion.

This is a very important Motion. I agree with Sen. Olekina that every Senator, the 47 of us, should contribute to this Motion and I hope we can hear all the voices of our people.

As the Vice-chairperson of the CPAC, I have a number of way forwards, including stoppages to some counties, circulars from the Ministry of National Treasury, and many others.

So, considering the importance of an adjournment Motion also, I move and beg that Sen. Githuku seconds this Motion.

Sen. Githuku: Mr. Temporary Speaker, Sir, I second.

*(Question, that debate on the Motion be
now adjourned, put and agreed to)*

The Temporary Speaker (Sen. Wakili Sigei): Hon. Members, pursuant to the passage of that Motion, Order Nos. 15, 16, 17, 18, 19, 20 and 21 are hereby deferred to

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

allow the Motion of Adjournment of the Senate to be moved by the Senate Majority Leader.

Therefore, I call upon the Clerk to call Order No.23 on the Order Paper.

BILL

Second Reading

THE PUBLIC HOLIDAYS (AMENDMENT) BILL,
(SENATE BILLS NO.31 OF 2023)

(Bill deferred)

BILL

Second Reading

THE STREET VENDORS (PROTECTION OF LIVELIHOOD) BILL
(SENATE BILLS NO.41 OF 2023)

(Bill deferred)

BILL

Second Reading

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

(Bill deferred)

BILL

Second Reading

THE NUTS AND OIL CROPS DEVELOPMENT BILL
(SENATE BILLS NO 47 OF 2023)

(Bill deferred)

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

MOTION**APPROVAL OF CONDITIONAL GRANT FOR THE
CONSTRUCTION OF MOMBASA MUNICIPAL STADIUM**

THAT AWARE THAT Part 2 of the Fourth Schedule to the Constitution of Kenya obligates County Governments with the responsibility to develop, establish, manage, and maintain sports and cultural facilities which includes stadiums, sports arenas, cultural centers, and other related infrastructure;

NOTING THAT the entire Coastal region of the Country lacks a modern stadium built to international standards, thereby depriving the people the benefits that come with stadia and sports facilities;

CONCERNED THAT the construction of the Mombasa Municipal Stadium has encountered delays and setbacks since the inception of the project in 2019 due to financial constraints, which has since been halted depriving the community of the much-needed facility;

NOW THEREFORE the Senate resolves that the National Treasury and the Ministry of Youth Affairs, Creative Economy and Sports allocates a conditional grant to the County Government of Mombasa amounting to Kshs1.7 billion for the completion of the Mombasa Municipal Stadium.

(Motion deferred)

MOTION**ADOPTION OF REPORT ON CONSIDERATION OF AUDIT
REPORTS FOR VARIOUS WATER SERVICE PROVIDERS**

THAT, the Senate adopts the Reports of the Select Committee on County Public Investments and Special Funds on its consideration of the Audit Reports for the year ended, 30th June, 2019, 30th June, 2020 and 30th June, 2021 of the following Water Service Providers

- (i) Amatsi Water Services Company Limited -Vihiga County;
- (ii) Bomet Water Company Limited-Bomet County;
- (iii) Gusii Water and Sanitation Company Limited-Kisii/Nyamira Counties;
- (iv.) Kisumu Water and Sanitation Company Limited-Kisumu County;
- (v) Kwale Water and Sewerage Company Limited-Kwale County; and
- (vi) Nyeri Water and Sanitation Company Limited-Nyeri County;

and the Audit Report of the Wajir Water and Sewerage Company Limited for the year ended 30th June, 2021, laid on the Table of the Senate on Thursday, 23rd November, 2023.

(Motion deferred)

MOTIONADOPTION OF REPORT ON FINANCIAL STATEMENTS OF
VARIOUS COUNTY EXECUTIVES

THAT, the Senate adopts the Report of the Select Committee on County Public Accounts on its consideration of the Reports of the Auditor-General on the Financial Statements of Tharaka Nithi, Homa Bay, Kakamega, Kirinyaga, Makueni, Meru, Bomet, Murang'a, Nandi, Nyamira, Nyeri, Siaya, Vihiga, Wajir and Samburu County Executives for the Financial Year 2019/2020 laid on the table of the Senate on Tuesday, 5th March, 2024.

(Motion deferred)

MOTIONADOPTION OF REPORT ON FINANCIAL STATEMENTS OF
VARIOUS COUNTY ASSEMBLIES

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

(Motion deferred)

MOTION FOR ADJOURNMENTADJOURNMENT OF THE SENATE PURSUANT TO THE
APPROVED CALENDAR FOR THE 2024 SESSION

The Temporary Speaker (Sen. Wakili Sigei): Proceed, Senate Majority Leader.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Temporary Speaker, Sir, I beg to move the following Motion-

THAT, pursuant to Standing Order No.31(3), the Senate do adjourn until Tuesday, 16th April, 2024.

It has been long Part One of the Third Session of the Senate. I appreciate colleagues who have taken their time. To the best of my recollection, I do not think that there has been a session that we have considered and processed the number of Bills that

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

we have. There have been robust debates about them and committees have done a lot of work. Therefore, it is time to reconnect with constituents. Unfortunately, Kenya is not at the place where the only way you can be ranked as a legislator is on the work you do in the House. Voters still insist that they must see Sen. Olekina in Emurua Dikirr, Narok South, Kilgoris and Angata Baragoi, so that they can appreciate that they have a Senator and there is work going on. Therefore, to provide colleagues with the opportunity to catch up with the work in the constituencies, it is important we have this two-week recess, so that we take time to plan, organize and oversight responsibilities now that we have a little funding, so that we can finish this work.

With those many remarks, because I understand we are limited for time, I request colleagues to support this Motion, so that we can rise and be back here on the 16th April, 2024, God willing.

I request the Senator for Lamu County, Sen. Githuku, to second.

Sen. Githuku: Thank you, Mr. Temporary Speaker, Sir. I beg to second this Motion because we are approaching a very important season of Easter holiday. I believe that most Members will get an opportunity to interact with their constituents and members of their counties. I come from Lamu County where most of our brothers and sisters are in the holy month of Ramadhan. I believe the Muslim Senators will also get time to interact with their families too.

Therefore, I beg to second and wish all the Senators and staff of this House a very joyous and happy Easter holiday.

I thank you.

(Question proposed)

The Temporary Speaker (Sen. Wakili Sigei): I call upon hon. Members who wish to speak on this Motion---

(Several Members spoke off record)

Sen. Cherarkey: Mr. Temporary Speaker, Sir, kindly put the Question.

The Temporary Speaker (Sen. Wakili Sigei): Alright. Hon. Senators, since there are no Members interested in speaking to this Motion, I will proceed to put the Question.

(Question put and agreed to)

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 Tuesday, 16th April, 2024, at 2.30 p.m.

The Senate rose at 6.30 p.m.

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