

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 28th May, 2024

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

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

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

The Speaker (Hon. Kingi): Clerk, do we have quorum? Serjeant-at-Arms, ring the Quorum Bell for 10 minutes.

(The Quorum Bell was rung)

The Speaker (Hon. Kingi): Hon. Senators, kindly take your seats. I am informed that we do have quorum.

Clerk, proceed to call the first Order.

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION FROM KAJIADO COUNTY ASSEMBLY

The Speaker (Hon. Kingi): Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of five officers from the Committee on Post-Retirement Medical Scheme of the County Assembly of Kajiado, who are on a benchmarking visit with their counterparts in the Senate.

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

(Applause)

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I call upon the Senate Majority Leader to extend a warm welcome under one minute.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, on behalf of my colleagues here in the Senate, I join you in welcoming these colleagues of ours from the County Assembly of Kajiado. I had a brief opportunity to interact with them just before lunch. They were with Sen. Seki, whom I can see in the House. He introduced me to the powerful delegation from the County Assembly of Kajiado.

It is my hope that they will get full value for the time they have taken to come and interact with our very professional staff and understand the workings of the Senate. I hope they will achieve all that they set out to do when they left Kajiado this morning. I welcome them today and any other day they feel that they need to interact with us.

The Speaker (Hon. Kingi): Let us now have the area Senator. Proceed, Senator. Why are you raising your hand?

Sen. Seki: I thought you forgot that they are a delegation from Kajiado.

The Speaker (Hon. Kingi): The Chair knows. Proceed.

Sen. Seki: Mr. Speaker, Sir, I also take this opportunity to join you and the Senate Majority Leader to congratulate particularly members of the secretariat from the County Assembly of Kajiado, led by the Deputy Speaker. Thank you for choosing to come to the Senate to benchmark particularly on issues concerning pension and medical scheme for your members.

I believe you will have an opportunity to get more information to enable you to help our county staff, particularly from the county assembly, to have a pension scheme.

Mr. Speaker, Sir, allow me to donate my time to Sen. Tobiko and Sen. Montet for them to say a word, being members of the county delegation.

I thank you.

The Speaker (Hon. Kingi): Hon. Senators, I have another Communication to make.

CONCERNING TRENDS IN THE CONDUCT OF SENATORS DURING PLENARY PROCEEDINGS

The Speaker (Hon. Kingi): Hon. Senators, I wish to bring to your attention that recently there have been concerning trends in the conduct of Senators during Plenary proceedings. Instances of lack of decorum during debate, divisions and disruptive actions, including use of mobile phones, have become increasingly common.

I have on several occasions cautioned individual Senators on the need to maintain order during plenary proceedings, thereby necessitating me to address this matter substantively. As the custodian of parliamentary etiquette, it is my duty to emphasize the importance of maintaining decorum in the plenary.

Hon. Senators, decorum in parliamentary proceedings is one of the cornerstones of a functional and effective legislature. Maintaining decorum in plenary ensures debates are conducted in a respectful, orderly and systematic manner, which not only upholds integrity and credibility of Parliament but also sets a positive example in the management of public affairs.

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Respectful conduct, adherence to speaking protocols and civility towards fellow Senators are not just formalities but standards that must be upheld by all Senators.

While it is natural for us to have differing opinions and perspectives, it is crucial that we express these views in a manner that is respectful and conducive to constructive dialogue. Disruptive behaviour, shouting matches or personal attacks only serve to undermine the integrity of this institution and erode public trust. We must therefore commit ourselves to a higher standard of conduct as the electorate expects no less from their representatives.

Hon. Senators, for purposes of clarity, Part XVIII of the Standing Orders provides for, *inter alia*: Languages during plenary; points of order; contents of speech; retraction and apologies; matters *sub judice* and responsibility for statement of fact. Further, Part XX of the Standing Orders outlines provisions on order in the Senate and in committees. This part provides for, *inter alia*: Maintenance of order in the Senate; relevance and repetitions; disorderly conduct and gross disorderly conduct.

I must stress the importance of adherence to and respect for these rules by all hon. Senators for the smooth conduct of Chamber proceedings. I therefore call upon every Senator to familiarise themselves with these rules and conduct themselves accordingly.

I wish to make it unequivocally clear that I will not hesitate to invoke the provisions under these Standing Orders on any Senator who is deemed to be disorderly or in violation of parliamentary decorum, including disruptive use of mobile phones. Hon. Senators, we do not have to go to that extent of banning mobile phones in the Chamber.

In conclusion, I implore all hon. Senators to uphold the highest standards of decorum in the discharge of our mandate. I thank you.

Next Order.

PAPERS LAID

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

The Senate Majority Leader (Sen. Cheruiyot): Mr Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Tuesday, 28th May, 2024:

Report of the Auditor-General on the Financial Statements of Kericho Water and Sanitation Company Limited for the year ended 30th June, 2023.

Report of the Auditor-General on the Financial Statements of Kabianga Tea Farm for the year ended 30th June, 2023.

Report of the Auditor-General on the Financial Statements of Bomet Water and Sanitation Company Limited for the year ended 30th June, 2023.

Report of the Auditor-General on the Financial Statements of Amatsi Water Services Company Limited for the year ended 30th June, 2023.

Report of the Auditor-General on the Financial Statements of Kisumu Water and Sanitation Company Limited for the year ended 30th June, 2023.

(Sen. Cheruiyot laid the documents on the Table)

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The Speaker (Hon. Kingi): Next Order.

QUESTIONS AND STATEMENTS

STATEMENTS

The Speaker (Hon. Kingi): We will start with Statements pursuant to Standing Order No.53(1). The first one is by the Senator for Elgeyo-Marakwet County, Sen. Kisang’.

DELAYED PAYMENTS TO DAIRY FARMERS BY NEW KCC

Sen. Kisang’: Mr. Speaker, Sir, I arise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Agriculture, Livestock and Fisheries regarding delayed payments by New Kenya Co-operative Creameries (KCC) to dairy farmers. In the Statement, the committee should:

(i) Explain reasons for delayed payments by New KCC to dairy farmers who have consistently delivered milk since February 2024.

(ii) Provide a detailed breakdown of the pending payments to the dairy farmers following the President’s directive that Kenya Cooperative Creameries (KCC) pays the farmers every month instead of every two months, as was the case respectively.

(iii) State when the pending payments will be remitted to the different farmers.

(iv) Outline the measures the State Department for Cooperatives has taken to implement the President's directive requiring dairy farmers to be paid, every 15 days, in milk deliveries to KCC, commencing June 2024.

Thank you.

The Speaker (Hon. Kingi): Sen. Mariam Omar?

DANGER POSED BY MARAUDING LIONS IN ONGATA RONGAI

Sen. Mariam Omar: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No. (53)1, to seek a Statement from the Standing Committee on Land, Environment, Natural Resources regarding the recent sighting of lions roaming around human settlements in Ongata Rongai area in Kajiado County.

In the Statement, the Committee should:

(i) State the number of lions that recently escaped from Nairobi National Park in Ongata Rongai area in Kajiado County, clarifying whether their whereabouts are known.

(ii) Explain any steps taken by Kenya Wildlife Service (KWS), the local authorities and community leaders to safely capture the lions and return them to the park.

(iii) Outline any action taken by the Government to highlight vigilance in Ongata Rongai and neighbouring areas in view of threats posed by the lions to avert incidents of human-wild conflict.

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(iv) State any plans by KWS to reinforce defence around all the national parks and to install a monitoring system to ensure animals do not escape.

The Speaker (Hon. Kingi): The next Statement is by Sen. David Wakoli. Proceed, Sen. Chute.

ALLEGED MISMANAGEMENT AND CORRUPTION
AT MT. ELGON CO-OP UNION COFFEE MILL

Sen. Chute: Thank you very much, Mr. Speaker, Sir. I am reading this Statement on behalf of the distinguished Sen. Wakoli. It is on the mismanagement and corruption in the Mount Elgon Cooperative Union coffee mill.

Mr. Speaker, Sir, I rise pursuant to Standing Order No.53 (1) to seek a Statement from the Standing Committee on Trade, Industrialization and Tourism regarding the mismanagement and corruption in Mount Elgon Cooperative Union Coffee Mill and other related coffee issues in Bungoma County.

In the Statement, the Committee should:

(i) Provide a list of all assets owned by Mount Elgon Cooperative Union coffee Mill from 2015 to date, listing the current value of each asset.

(ii) Explain the organizational structure and general operation of Mount Elgon Cooperative coffee mill from 2015 to date and state the academic credentials of the current management team.

(iii) Outline the procedure followed during transportation of milled coffee from the company and investigate and report on the alleged theft of over 30 bags of milled coffee that happened on 14th, April 2024, as well as claims that the coffee was transported to Uganda and state whether the matters were reported to the relevant authorities, outlining any remedial action taken so far.

(iv) Investigate the allegation that coffee prices in Bungoma County are irregularly moderated by non-officials.

The Speaker (Hon. Kingi): The Senator for Kisumu County, hon. Tom Ojienda? Is there any Senator holding brief for Sen. Tom Ojienda?

UPGRADE OF JOOTRH TO LEVEL SIX FACILITY

That Statement is dropped.

(Statement dropped)

Hon. Tom Ojienda had two Statements.

FLOOD MITIGATION AND COMPENSATION
TO VICTIMS IN KISUMU COUNTY

The second one is also dropped.

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(Statement dropped)

Next Order.

MOTION

APPROVAL OF THE SECOND REPORT OF THE PRC ON REVIEW OF THE SENATE STANDING ORDERS

THAT, pursuant to Standing Order No. 267, 268 and 270, the Senate approves the Second Report of the Procedure and Rules Committee on the review of the Standing Orders of the Senate, laid on the Table of the Senate, on Wednesday, 22nd May, 2024, and that pursuant to the provisions of Article 124 (1) of the Constitution and Standing Orders No. 270 and 272-

(i) resolves to amend its Standing Orders as contained in Annex 1 of the Report; and

(ii) orders that the amendments to the Standing Orders as contained in Annex 1 to the Report come into effect on 25th June, 2024.

The Speaker (Hon. Kingi): The Vice Chairperson, Procedure and Rules Committee?

Sen. Wakili, are you holding a brief for the Vice Chairperson of that Committee?

(Sen. Wakili Sigei consulted the Speaker)

That particular order is deferred for just a moment.

(Motion deferred)

We will proceed to the next Order.

BILL

Second Reading

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

(Sen. Cheruiyot on 9.5.2024)

(Resumption of debate interrupted on 22.5.2024)

The Speaker (Hon. Kingi): Senate Majority Leader, you may proceed to reply.

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

The Speaker (Hon. Kingi): Sen. Gloria, how do you raise a point of order when there is no Senator on his or her feet?

You are out of order, Sen. Gloria.

Proceed, Senate Majority Leader.

(Sen. Orwoba spoke off record)

There are better ways you can---

Approach the Chair.

(Sen. Orwoba approached the Chair)

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I thank colleagues who took time to speak to the Houses of Parliament (Bicameral Relations) Bill (National Assembly Bills No. 44 of 2023).

In my moving notes on this Bill, I pointed out to the House that in my humble opinion and having seen this battle run for ages, this Bill presents us with an opportunity to succeed or fail spectacularly as a House, in something that we believed to be our turf that has been taken away by the National Assembly.

Therefore, even as we debate, there have been debates on the proper time for a Committee to present a report on a particular Bill. On many occasions, there are two schools of thought. If you are a keen follower of parliamentary practice, you know that in almost every conversation, there are two sides to it.

On this procedure of tabling a Committee report, some hold the view that the proper time to table a Committee report is after debate on the Second Reading by the House. Members of Parliament (MPs) represent the people. They do not speak on their own behalf but for the people that they represent. Thus, their views can also be captured in that report and inform the amendments that the Committee will bring at the Committee of the Whole Stage.

Those who hold the contrary view say that the Committee, having listened to stakeholders including the users of that piece of legislation and eventually members of the public, therefore, have specifics on the issues that are being deliberated on.

When they present their report, Members can eventually read it, which informs their debate. Both are right in a sense because if you follow both schools of thought, then there is merit to both arguments.

However, my position on such is that in certain instances, both schools of thought can be wrong, and this is one such instance. I said that the users of this Bill are the Members of Parliament who are found in the Senate and the National Assembly. This is why the voices of Members need to be heard. Unfortunately, in the last few weeks when this Bill has been before the House, I saw only two or three Members speak to it every time an opportunity was presented.

I have listened to most of them. Nonetheless, in truth and fairness, like last week when many of them spoke, I was out of the country and did not listen to their views.

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However, be that as it may, there may be Senators who have not had the opportunity to say something about this Bill.

This is one such occasion where a written memorandum should be provided to this Committee as they deliberate on the final amendments to this Bill. I say so because the user department of this Bill is Parliament. It is these Members of Parliament in their various Committees who struggle with all these challenges and difficulties.

These same Senators, when they envision a legislative proposal, have to go through the challenges of writing to the Speaker and being told the office of the Director of Legislative and Procedural Services is clearing it. After that, it has to go to the Parliamentary Budget office to go through the checks of Article 114 of the Constitution on whether it is a Money Bill or not. Then, concurrence from the two Speakers.

This is a long, tedious procedure that is not provided with empirical procedures to assist a Member to know from the onset what they can include or leave out in the Bill. This would guide them as they draft legislation. Eventually, they are told that the Bill has fallen through the cracks of the rules of Parliament because it is either a Money Bill or no concurrence was granted from the other House.

This is our opportunity to provide it in legislation so that when a Member sits to partake in their constitutional mandate of oversight, legislation and representation, it is properly guided when the Committee on Justice Legal Affairs and Human Rights Members are here.

Unfortunately, when I said this, only the committee chairperson was present. Today, many Members of the Justice, Legal Affairs, and Human Rights Committee exist. When they sat down, they deliberated and said they would want to kill the Bill at Second Reading. I have spoken on this matter many times and said it is an abuse of legislative privilege to destroy any Bill at Second Reading.

There is nowhere that you are stopped from receiving a Bill that has five to 10 pages, completely removing everything in that Bill and coming up with your own Bill. If we are allowed to change the heading of the Bill, what can you not change?

Therefore, I urge our Justice, Legal Affairs, and Human Rights Committee colleagues to use this opportunity to relook into this Bill and listen to the views that all the Members shared. I listened to almost 15 Members speak to this Bill in the last two weeks. They made proposals on what they think needs to be made better, deleted altogether and what must feature in a proper bicameral relation between two Houses of Parliament as is the practice established elsewhere.

This Constitution did not fall from the sky. There are other jurisdictions with bicameral relations. If those countries or jurisdictions have managed this bicameral process to a point where their legislative agenda works, it can surely work in Kenya. We can refine this Bill and make it better. We do not have to mimic or ape any institutional jurisdiction. We can come up with our legislation.

Therefore, it is my sincere hope that the Justice, Legal Affairs and Human Rights Committee will guide us in the right direction and help this House. Either later this week or over the recess period, but at the House's rise on Thursday this week, we shall proceed on a three-week recess period. This should be sufficient time for them. When we resume, we will be properly guided as a House on the procedure and move we expect.

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Finally, I do not see how you can serve in this House and not have a say on such an important Bill. For one reason or the other, many may not have known the importance of this Bill. They should take the time to write to the Justice, Legal Affairs, and Human Rights Committee and inform their views on this Bill and how it needs to move. Eventually, when we convene to do the Committee of the Whole, there will be good logic in how we view things.

I said this the other day when I was moving this Bill; it is not for lack of jurisdiction that the Supreme Court has urged us more than two or three times we sit as a House and give them a Bill and a guide to consider the legislation. They have granted us that opportunity, appearing as if they are not willing to give us a decision on the matters that are before them. If we do not do this, we will pass on our responsibility. We can sit down and agree on something to be determined by other people.

Therefore, as a good student of history, I do not want us to waste this golden opportunity. I want us to use it for the betterment of this House. So that those who will serve in this House in the years to come will thank the Fourth Senate for finally restoring the dignity of this House to where it ought to have been. I want to see something greater than what our Constitution drafters saw in Naivasha when they drafted the Senate, which is as it is.

With those many remarks, I beg to reply and thank all the Members who have taken the time to speak to this. Thank you.

Pursuant to Standing Order No.66(3). I request that the putting of the question be deferred to another day.

The Speaker (Hon. Kingi): It is so ordered.

(Putting of the Question on the Bill deferred)

Next Order.

BILL

Second Reading

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

(Sen. Cheruiyot on 15.5.2024)

(Resumption of debate interrupted on 16.5.2024)

(Division)

The Speaker (Hon. Kingi): Serjeant-at-Arms, ring the Quorum Bell for five minutes.

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(The Quorum Bell was rung)

Order, Hon. Senators, the five minutes are completed.

(Sen. Cheruiyot and Sen. Madzayo stood in their places)

The Senate Majority and Minority Leader, kindly take your seats.
Serjeant-at-Arms, close the Door and draw the Bar.

(The Bars were drawn and Doors closed)

(Sen. Okiya Omtatah stood in his place)

Sen. Okiya Omtatah, kindly take your seat, I want to proceed to put the question.
Hon. Senators, I will proceed to put the Question.

*(Question, that the Meteorology Bill (Senate Bills No.45 of 2023)
be now read a Second Time, put)*

Hon. Senators, we will vote electronically. I am informed that Sen. Ogola, you are voting for and on behalf of the Homa Bay County Delegation and Sen. Mariam Omar, you are voting for and on behalf of the Mandera County Delegation. You may proceed to vote from where you are. You do not have to be called to the Dispatch Box when the voting time comes.

Hon. Senators, I am asking you to log out and pull your cards from the delegate unit. Serjeant-at-Arms, please pick any card left unattended to and still in the delegate unit.

Hon. Senators, you may kindly log back and proceed to vote.

(Electronic voting in progress)

DIVISION

ELECTRONIC VOTING

*(Question, that the Meteorology Bill (Senate Bills No.45 of 2023)
be now read a Second Time, put and the Senate proceeded
to vote by County Delegations)*

AYES: Sen. Abdul Haji, Garissa County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Kavindu Muthama, Machakos County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kisang', Elgeyo Marakwet County; Sen. Joe Nyutu, Murang'a County; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Lomenen, Turkana County; Sen. Madzayo,

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Kilifi County; Sen. Mandago, Uasin Gishu County; Sen. Mariam Omar, Mandera County; Sen. Methu, Nyandarua County; Sen. Mungatana, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. (Dr.) Oburu, Siaya County; Sen. Ogola, Homa Bay County; Sen. Okiya Omtatah, Busia County; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Wafula, Bungoma County; Sen. Wakili Sigei, Bomet County; Sen. Wamatinga, Nyeri County; and, Sen. Wambua, Kitui County.

NOES: Sen. Maanzo, Makueni County.

The Speaker (Hon. Kingi): Hon. Senators, the results of the Division are as follows:

AYES: 26

NOES: 1

ABSENTIONS: Nil

The “Ayes” have it.

(Question carried by 26 votes to 1)

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

COMMUNICATION FROM THE CHAIR

VISTING DELEGATION FROM ALL SAINTS KARAMBARI
SECONDARY SCHOOL, EMBU COUNTY

The Speaker (Hon. Kingi): Before we call the next Order, I would like to acknowledge the presence in the Public Gallery this afternoon, visiting teachers and students from All Saints Karambari Secondary School in Embu County. The delegation is in the Senate for a one-day academic exposition.

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

I will call upon the Senator for Embu, Sen. Munyi Mundigi to extend a word of welcome in one minute.

Sen. Munyi Mundigi: Asante Bw. Spika, kwa kunipa fursa hii kukaribisha wanafunzi wa shule ya upili ya Karambari. Wamekuja kutembea kujifunza yale tunayofanya hapa Seneti. Nawakaribisha hapa Seneti.

Hapa Seneti tumejifunza kuongea vile hili ‘Jumba la Juu’ linaongea mambo ya serikali za kaunti na vile pesa zinaenda huko kaunti. Pia, wakipata hizo pesa, vile serikali za kaunti zinafanya kazi kule mashinani kama mahospitalini, kwa kilimo, kwa elimu na pia mambo mengine.

Niniwahakikishia ya kwamba, wakijifunza vizuri na wakisikiza yale mambo wanayofunzwa huko shuleni, pia wao watakua viongozi wa kesho. Watakua maseneta na magavana pia wakitii sheria inayotakikana.

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Bw. Spika, kule hii shule imetoka, hakuna maji na stima na ningeomba Serikali ya Kenya Kwanza iangalie shule kama hizo ndio zifunzwe kama zile shule zingine za nchi hii yetu. Wakirudi Embu, waseme wanawakilishwa vizuri na Seneta wao wa kaunti ya Embu.

(Kicheko)

The Speaker (Hon. Kingi): Next Order.

BILL

Second Reading

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

(Sen. Tabitha Keroche on 22.5.2024P)

(Resumption of Debate interrupted on 22.5.2024 – Afternoon Sitting)

(Division)

The Speaker (Hon. Kingi): Hon. Senators, we need not go through the procedure as adopted in the first Division. Hon. Senators, just proceed to log in and vote. Voting is electronically.

(Electronic voting in progress)

DIVISION

ELECTRONIC VOTING

*(Question, that the National Construction Authority (Amendment) Bill
(National Assembly Bills No.59 of 2022) be now read a Second Time,
put and the Senate proceeded to vote by County Delegations)*

AYES: Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Chute, Marsabit County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Joe Nyutu, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kisang, Elgeyo Marakwet County; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Lomenen, Turkana County; Sen. Maanzo, Makueni County; Sen. Madzayo, Kilifi County; Sen. Mandago, Uasin Gishu County; Sen. Mariam Omar, Mandera County; Sen. Methu, Nyandarua County; Sen. Mungatana, Tana River County; Sen. Munyi Mundigi,

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Embu County; Sen. (Dr.) Oburu, Siaya County; Sen. Ogola, Homa Bay County; Sen. Okiya Omtatah, Busia County; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Wafula, Bungoma County; Sen. Wakili Sigei, Bomet County; Sen. Wamatinga, Nyeri County; and, Sen. Wambua, Kitui County.

NOES: Sen. Kavindu Muthama, Machakos County.

The Speaker (Hon. Kingi): Hon. Senators, the results of the Division are as follows-

AYES: 26

NOES: 1

ABSTENTIONS: Nil

The “Ayes” have it.

(Question carried by 26 votes to 1)

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

The Speaker (Hon. Kingi): Next Order, Clerk.

BILL

Second Reading

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

(Sen. Kibwana on 24.4.2024)

(Resumption of debate interrupted on 22.5.2024)

DIVISION

ELECTRONIC VOTING

(Question, that the Nuts and Oil Crop Development Bill (Senate Bills No.47 of 2023) be now read a Second Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Cheruiyot, Kericho County; Sen. Chute, Marsabit County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murang’a County; Sen. Kavindu Muthama, Machakos County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kisang, Elgeyo Marakwet County; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Lomenen, Turkana County; Sen. Maanzo, Makueni County; Sen. Madzayo, Kilifi County; Sen. Mandago, Uasin Gishu County;

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Sen. Mariam Omar, Mandera County; Sen. Methu, Nyandarua County; Sen. Mungatana, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. (Dr.) Oburu, Siaya County; Sen. Ogola, Homa Bay County; Sen. Okiya Omtatah, Busia County; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Wafula, Bungoma County; Sen. Wakili Sigei, Bomet County; Sen. Wamatinga, Nyeri County; and, Sen. Wambua, Kitui County.

NOES: Nil

The Speaker (Hon. Kingi): Hon. Senators, the results of the Division are as follows-

AYES: 27

NOES: Nil

ABSTENTIONS: Nil

The “Ayes” have it.

(Question carried by 27 votes to Nil)

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

The Speaker (Hon. Kingi): Next Order, Clerk.

BILL

Second Reading

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

(Sen. Cherarkey on 23.5.2024)

(Resumption of Debate interrupted on 23.5.2024)

DIVISION

ELECTRONIC VOTING

(Question, that Cancer Prevention and Control (Amendment) (No.2) Bill (National Assembly Bills No.45 of 2022) be now read a Second Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Cheruiyot, Kericho County; Sen. Chute, Marsabit County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murang’a County; Sen. Kavindu Muthama, Machakos County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kisang, Elgeyo Marakwet County; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Lomenen, Turkana County; Sen. Maanzo,

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Makueni County; Sen. Madzayo, Kilifi County; Sen. Mandago, Uasin Gishu County; Sen. Mariam Omar, Mandera County; Sen. Methu, Nyandarua County; Sen. Mungatana, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. (Dr.) Oburu, Siaya County; Sen. Ogola, Homa Bay County; Sen. Okiya Omtatah, Busia County; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Wafula, Bungoma County; Sen. Wakili Sigei, Bomet County; Sen. Wamatinga, Nyeri County; and, Sen. Wambua, Kitui County.

NOES: Nil

The Speaker (Hon. Kingi): Hon. Senators, the results of the Division are as follows-

AYES: 27

NOES: Nil

ABSTENTIONS: Nil

The “Ayes” have it.

(Question carried by 27 votes to Nil)

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

The Speaker (Hon. Kingi): Serjeant-at-Arms, you may now proceed to withdraw the Bar and open the Door.

(The Bar was undrawn and the Doors opened)

Next Order, Clerk. We had deferred an Order earlier, so we will proceed to call that order and thereafter we will resume normal flow as contained in the Order Paper. That was Order No. 8.

Proceed, Sen. Wakili Sigei.

MOTION

APPROVAL OF THE SECOND REPORT OF THE PRC ON REVIEW OF THE SENATE STANDING ORDERS

Sen. Wakili Sigei: Thank you, Mr. Speaker Sir. On behalf of the Vice-Chairperson, Procedure and Rules Committee, I beg to move the following Motion-

THAT, pursuant to Standing Orders No.267, 268 and 270, the Senate approves the Second Report of the Procedure and Rules Committee on the review of the Standing Orders of the Senate, laid on the Table of the Senate on Wednesday, 22nd May, 2024, and that pursuant to the provisions of Article 124 (1) of the Constitution and Standing Orders No.270 and 272-

(i) resolves to amend its Standing Orders as contained in Annex 1 of the Report; and

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(ii) orders that the amendments to the Standing Orders as contained in Annex 1 to the Report come into effect on the 25th June, 2024.

Mr. Speaker, Sir, as I move is this Motion, I highlight to the House that several requests came in through the Members of this House on their proposals to amend the Standing Orders of this House. They were committed to the Procedure and Rules Committee, which received them.

The Members who submitted proposals for amendment include Sen. Oketch Gicheru, whose proposals I will in a few paragraphs comment on, Sen. Miraj and Sen. Dullo. There are those amendments which were moved on the Motion by the Liaison Committee on the structure of Statements of Members, particularly on oversight committees, which sought to introduce committee on implementation and the designation of a position of Chairperson.

In its meetings of 2nd May, 2024 and 9th May, 2024, the Procedure and Rules Committee considered the proposals made by Members, particularly the need to make sure that the request for amendments for those proposals. The Committee deemed appropriate in the circumstances and came up with various recommendations. Those which were approved for amendment are as follows-

The amendment to provisions of Standing Order No.42 of the Standing Orders of this House provides for quorum during voting in the House.

The Committee approved that the Standing Order No. 42 of the Senate as presently provides be deleted and replaced by the following-

“Before taking an electronic vote, roll call, division or a voice vote, the Speaker or Chairperson of the Committee of the Whole shall cause a count to be taken of Senators present in the Senate or the Committee”

Sub Section (2),

“If the requisite quorum is present, division or voting shall be proceeded with or (b) not present Standing Order 41(2) to shall apply”.

That is, we will defer the vote.

Lastly, this Standing Order, shall not apply to the process of voting on procedural motion.

Mr. Speaker, Sir, what informed this approval of the proposed amendment is situations where in the course of seeking to vote we would have less than 10 members in the House; and when we are going for a voice vote it is impossible to clearly establish whether the ayes or the nays have had it.

The Committee in the course of its consideration was given an incident where the House had less numbers that would have given a clear position on the vote. The Committee indeed found merit in this proposal hence the approval to amend the provisions of Standing Order No.42 on the quorum during division or voting.

The second approval, that the Committee made was the provisions of Standing Order No.131. Allow me to just highlight for purposes of the Members the appreciation of what it provides. This is the requirement on pre-publication scrutiny.

Whenever a committee is committed to undertake any pre-publication scrutiny, the provisions of the Standing Order currently are that one requires the committee to examine the proposal, seek reviews of the sponsor and those of the relevant Cabinet Secretary or any other person who is likely going to have an impact or be impacted by the pre-publication of that legislative proposal.

The Committee under Standing Order No.131(1)(b), can also make suggestions for purposes of enriching the legislative proposal. As it is right now Standing Order No.131(1)(a) and (b) uses the conjunction “or” meaning a committee is only required to either examine or suggest variations.

The Committee approved the proposal to amend so that when it is considering a legislative proposal prior to publication can undertake both. That is, it can examine the proposal, seek the review and in addition, rather than using the conjunction “or” uses “and” so that the two can become the mandate of the Committee.

Mr. Speaker, Sir, the third proposal which I also feel is important for honourable Members to appreciate is an approval to the amendment of Standing Order No. 228. Previously, the House has been invited on a number of occasions to introduce the establishment of an implementation committee. On a number of occasions still, Members have invited the Speaker and the House leadership to establish that committee. However, the proposal to the amendment of the Standing Order No. 228 is to give the mandate to a particular standing committee that is involved in a subject matter to have a responsibility to follow up and report on the status of the commitments made by the committee or by any government entity, institution or Cabinet Secretary in response to the questions.

This is also going to respond to the question of what happens to the recommendations the committees make, and also to follow-up on the responses of the Cabinet Secretaries-who ordinarily are now required to appear before the House to respond to questions.

The Committee made an insightful proposal and approved the recommendation that instead of establishing an additional committee on implementation, the relevant committee and for obvious reasons--- If it is about the Standing Committee on Agriculture, Livestock and Fisheries, they are best suited to understand the subject matter. They have interrogated the issues and they comprehend the subject.

They should ensure that the recommendations of the committee on those questions are followed up so that the relevant government agency, Cabinet Secretary or government institution implements them.

Thirdly, Standing Order No.237 of the House is also proposed to be amended by deleting it. It allows for comments, observations or clarifications by Members of the House whenever a Petition is filed and committed to a particular committee.

Previously, there have been challenges on whether or not a recommendation of a committee on a Petition is of value to the House. The proposal to delete the provisions of

Standing Order No.237 is informed by the amendments which have been approved to Standing Order No.238.

It is against the current provision where Members upon committal of report the committee, will have no opportunity to comment. In this case, a committee report on a Petition will be subjected to the debate of the House. Members will deliberate because it will be dealt with as a Motion rather than a report being tabled.

So, when we delete provisions of Standing Order No.237, we propose to further amend Standing Order No.238, in order to give Members of the House the opportunity to comment on recommendations of a committee.

This is what the proposed Standing Order No.238 will read-

“Whenever a Petition is committed to a Standing committee, the committee shall not be more than 60 calendar days from the time of reading the prayer, table its reports to the Senate for consideration.”

The key word here is that it would be tabled for consideration by the Members. Therefore, as a matter of procedure, we will not need the provisions of Standing Order No.237 because it becomes superfluous by virtue of the fact that Members have been allowed to deal with that report on Standing Order No.238 by the issue of the report or recommendation as a Motion.

Fourth, the Senate is expected under Standing Order No.238(c), as amended, to consider a report under Paragraph 2 within 14 sitting days of its tabling. This is aimed at ensuring that we do not leave out recommendations of various committees on reports to gather dust in the shelves. That is why a timeline is provided for Members to make sure that they deal with it and a follow-up as of course previously amended under Standing Order No.228. This will be followed up and dealt with by the relevant committee that the Petition was committed to.

Lastly, Standing Order No.239 is proposed to be amended. It provides for copies of responses to the Petition as have been filed. The Committee is proposing that the Petitioner is supposed to be notified of the decision or the recommendation of the committee.

The Clerk of the Senate is mandated under the newly proposed amendments to Standing Order No.239 to communicate within 14 days of the resolution of the Senate under Standing Order No.238 in writing so that the petitioner or the institution is informed of the decision. They will be able to follow up to ensure that if it is something ought to be implemented, they will support the relevant committee.

There are additional proposals that Members had made but the Committee in its wisdom considered. Some were rejected because they are already provided for by the Standing Orders. The eventual effect was not to agree to the proposal for amendment.

Mr. Speaker, Sir, I ask hon. Members to approve this amendment as they contribute to it. This is aimed at enriching the debate in the House. It also ensures that Members are involved in the proposed amendment on how we deal with Petitions and voting, to make sure that at any given time, prior to a decision being taken by the House,

there is a confirmation that we have sufficient Members to undertake the vote and ensure that it is carried as is required.

Lastly, I wish to present this Report and ask Members to look at it and approve it.

I beg to Move.

The Speaker (Hon. Kingi): Who is seconding your Motion?

Sen. Wakili Sigei: Mr. Speaker, Sir, I ask the hon. Senator from Nandi County to Second.

Sen. Cherarkey: Mr. Speaker, Sir, I thank Sen. Wakili Sigei. I second this Motion. It has reached a point that we now need to clean up our Standing Orders. What guides this House is normally our Standing Orders, which, in essence, originated from the Constitution.

I want to make three comments to allow my colleagues to also contribute. I have seen the Senator of Vihiga County looking at me with excitement. The first one is on the issue of amendments to supplementary questions. We amended the new Standing Orders on the appearance of Cabinet Secretaries for question and answer time. However, Members feel that asking only one supplementary question with the roots of the issue that came up has always been a challenge.

I agree that Members should ask questions touching on the entire Ministry. For example, when Cabinet Secretary, Hon. Salim Mvurya came to the House, we asked him a litany of questions and he was able to answer comfortably without saying that the question was not part of the original question.

Members and I believe that if you are in charge of a docket, you must at least have its overview. The retired Judge, the Senate Minority Leader, will tell you that in Law School, you think on your feet. It is the essence of engaging.

I agree that Members should be allowed to ask supplementary questions. That is the essence even when you look at the Commonwealth parliamentary system in Britain and many others that practice Question Time for Prime Ministers or Cabinet Secretaries.

Secondly, on the issue of removing Statements, so that we do not appear brutal, I request your Office not to drop Statements, but at least we consult. This is because some Senators are out of the country and it is important that they liaise with your Office. For example, if the Senator is not in the House and you have given them the official permission to travel outside the country or county visits, you do not have to schedule such Statements.

However, any Senator whose Statements have been scheduled and they have not given you an indication, then I agree with the amendment that they must seek leave.

In future, when we amend the Standing Orders, in my wisdom or lack of it, we should at least include Bills and Motions because there are Bills that have stayed--- The other day when I was moving my Bill, one Member argued why we are prioritizing National Assembly Bills. However, when you looked at the Order Paper, Members who are supposed to move their Bills and Motions were not in the House.

It happened coincidentally that the Bill that was being moved originated from the National Assembly. As the Chairperson of the Rules and Procedures Committee, please, note with a lot of indulgence.

Thirdly, I have also seen a proposal. I wish Sen. Methu would listen to this keenly because he is the Chairperson of the Standing Committee on Land Environment and Natural Resources. They have proposed that if you are a chairperson, you should not sit in the County Public Accounts Committee (CPAC) and County Public Investments and Special Funds Committee (CPIC). Is he saying that he is ready to forego the chairmanship? I can see he is consulting the Senate Majority Leader.

The essence is to ensure that there is efficiency and effectiveness of a committee. It is not that the chairpersons of various Committees do not have the capacity to sit in those Committees. It is because of the nature of CPIC and CPAC; we sit daily from Monday to Friday.

You are aware that we have a backlog of audit queries of many years. We have not updated the Financial Year 2023/2024. So, I know the Senate Majority and the Minority Leaders have consulted extensively on this.

Also, on the use of subcommittees, I want to inform this House that in the County Public Accounts Committee, we have agreed to come up with the latest and clear the backlog of audit queries in counties. As we go for this working recess, we shall form the subcommittees. Sen. Osotsi will agree with me on this.

Finally, so that I allow colleagues to also make their contributions, is on the dormant Members of Committees. The Senate Majority and Minority Leaders need to guide us on how to handle this issue. I agree with the ruling on the Member of Parliament (MP) for Ugenya Constituency, hon. David Ochieng', in the last Parliament. At that time, the Nation Supper Alliance (NASA) wanted to de-whip him. The then Speaker, Hon. Justin Muturi, the current Attorney General, ruled that every MP, either a Senator or Member of the National Assembly must at least be in one Committee. I know Sen. Osotsi was in that session.

I know that Sen. Methu will support this. With this insight, we should propose that if you are a Member of CPIC or CPAC, you should only be on one Committee. You should not be in any other Committee, so that you can channel your energies where they should be.

Finally, on implementation, I agree that Committees should follow up on the resolutions. There is always a matrix on how they can be implemented.

In the last session, and at the beginning of this session, we wanted to have an Implementation Committee to follow on recommendations. We have been consulting. It should not be CPIC, CPAC, or the Standing Committee on Agriculture to follow up on resolutions. We need to have the Implementation Committee.

I agree that on this issue of Implementation Committee, we must agree as a House to allow these resolutions to be done by individual Committees. I do not know about the reporting mechanism. I know you Chair this Committee; there is need to look at the reporting mechanisms.

For example, if CPAC, where the Governor of Kakamega County appeared last week, recommends the Ethics and Anti-Corruption Commission (EACC) follow up on a matter, how do we ensure that EACC has implemented the directions of the Committee?

Those are issues that I want to throw to the Members to agree on. How do we ensure there is a reporting mechanism? How can the Committee know that our

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recommendations or directions have been adhered to? So, we need to ensure that there is a reporting mechanism.

On the Liaison Committee, I agree that there should be a Vice Chairperson, so that it is easy especially for you and the Deputy Speaker to work efficiently. However, in the future, we should be considered to be Vice Chairpersons of the Liaison Committee. I propose to be the Chairperson or the Vice-Chairperson of the Committee.

Mr. Speaker, Sir, the upshot is, that these recommendations are beautiful. We need to agree and move forward.

With those many remarks, I beg to second this Motion that has been tabled by the Committee.

I thank you.

(The Clerk-at-the-Table consulted the Chair)

(Question proposed)

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

Sen. Maanzo: Thank you, Mr. Speaker, Sir. Article 124 of the Constitution says-
“Each House of Parliament may establish committees and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees.”

The Standing Orders apply to the business of the House and the committees. The Standing Orders are like a law, just like an Act of Parliament. However, they also are not cast in stone, they can be amended from time to time, just like has been proposed.

Under Standing Order No.237, there has been a practice of making comments on Petitions when they are presented and when a report on them is presented. Although the main idea of the brief comments was to guide the House or give a general view to the Committee, they have ended up consuming a lot of the House’s time. Most of the time, they will go up to 4.00 p.m. or 4.30 p.m. before we go into the main business; the Bills.

Therefore, I agree with the Committee that this saves time for the House. The House will utilise that time on legislative business. Although it had its own place before it was reviewed, it will be very useful for a Committee. However, how useful?

Sometimes, those comments may not even end up constituting the main part of the Report, a committee will still have to do its work. So, I think the move by the Committee is very positive in making this House efficient in serving devolution and Kenyans much better.

I support.

The Speaker (Hon. Kingi): Sen. Cherarkey, why do you want to speak again, and you are the one who seconded this Motion?

(Sen. Cherarkey spoke off record)

Sen. Mungatana, proceed.

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Sen. Mungatana, MGH: Thank you, Mr. Speaker, Sir. I have looked at the proposed amendments on the procedure to present petitions in the House and I know the Chairman of the Justice, Legal and Human Rights Committee (JLHRC) has spoken on many other amendments.

I particularly want to mention this proposed amendment because of the current procedure where committees receive petitions. A petition is not a normal thing that comes before this House. Normally, a petition originates from citizens who have failed to get their justice. Petitions always say that the matter is not in court and that they have tried to do everything without success. So, a petition is like a special way of approaching the Senate.

Mr. Speaker, Sir, the current procedure is lacking. If the Petition has been negated by the Standing Committee it had been referred to, the committee just merely tables that Report without a debate and the matter ends there.

I particularly like this amendment that says that the committee should file a report that comes to the House as a Motion on whatever it finds. That was a beautiful and superior amendment on how to deal with petitions because when the report now comes before the House as a Motion, we have the opportunity to debate it. Thus, the citizens who presented this Petition before the House can hear the arguments for and against it. The matter will then be prosecuted with the severity and weight with which the people who presented the petition have approached it.

For example, in petitions on land matters, you just hear that the committee sat and negated a petition. The person who presented that petition may have presented it as an individual, but it is affecting hundreds or even thousands of people who would want to listen to what happened.

Mr. Speaker, Sir, the procedure that forces the committees to bring to the House their findings for debate as a Motion is a very beautiful amendment that needs to be supported. I thank the Chairperson of the JLAHRC for that particular amendment.

With those many remarks, I beg to support.

Thank you.

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

Sen. Osotsi: Thank you, Mr. Speaker, Sir, for this opportunity to also make my comments on the Motion on proposed amendments to the Standing Orders of the Senate.

The Standing Order No.267 provides that the committee's procedure and rules may at any time propose amendments to the Standing Orders. This was important because we are living in a changing world and scenarios. We may have situations where we need to change our Standing Orders to align with the current realities we face as a House.

Mr. Speaker, Sir, I fully support the amendment so that this House has an opportunity to debate and make resolutions on petitions because a petition is a very important legislative tool. The practice in this House has been that once a petition is committed to a committee, the committee makes a report, tables it, and it ends there.

This amendment will allow this House to have an opportunity to debate the report of the committee and approve the resolutions proposed therein. This is important because some petitions contain very weighty matters that should be met as a House collectively.

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Mr. Speaker, Sir, there is also the issue of ascertaining the quorum before a voice vote is taken. I have seen on many occasions in this House when sometimes we do not have quorum, a voice vote is put and a matter before us is passed. This amendment will allow this House not to get to a risky situation. Someone who is keen can take this Senate to court when we pass a law without sufficient quorum.

I hold a contrary view on the issue of the implementation committee. I have read the Report by the Committee, but I am not convinced by reasons stated on the need to have the implementation committee. They have cited budgetary reasons and that a parent committee can do that. There are so many issues that arise in this House, which are not necessarily before committees.

For example, when Cabinet Secretaries appear before us and make undertakings, who is supposed to follow up on that? This issue of having an implementation committee is justifiable and we need to rethink. The Procedure and Rules Committee needs to relook at this matter.

Looking at other jurisdictions; implementation committees are critical. The equivalent of the House of Representatives in Commonwealth countries like Nigeria has implementation committees. In India, the Committee on Government Assurances handles all resolutions of the House on a day-to-day basis. Uganda has Government Assurances Committee. They have the same in the Parliament of Ghana. It is important for us to relook at this matter.

Mr. Speaker, Sir, I know for sure that most committees that we have handle current matters. They do not go back to start looking at what was proposed and has not been implemented. Therefore, we need to have a committee that sits in there to handle all resolutions, undertakings and assurances made to this House.

I served in the National Assembly in the Twelfth Parliament, and I was the Vice Chair of the Implementation Committee. I noticed that Implementation Committee performs another role apart from following up on recommendations or resolutions of the House.

It is an appeal mechanism for the House when a committee makes resolutions then someone goes to court as a result of those resolutions or brings a petition questioning resolutions of the House. We need to have an internal appeal mechanism, so that we do not provide an opportunity for people to go to court on every issue. If we want to enhance the supremacy of Parliament in this country, we must have a proper mechanism of ensuring that whatever we pass is implemented.

Most resolutions passed here and in the other House are never implemented. A case in point is that this House passed a resolution on non-remitted pensions by county governments estimated to be Kshs80 billion. I was surprised that the Attorney-General who was directed by this House to gazette a taskforce to implement that instead questioned the resolution of the committee. These are challenges we are facing. We will make progress if we have a substantive committee whose role is to follow up on resolutions of the House.

It is also important that we have administrative mechanisms within Parliament to follow up on implementation of our resolutions. Once this House passes a resolution, we must have a unit within the Parliamentary Service Commission, just like the

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Parliamentary Budget Office (PBO), whose role is to manage resolutions that are made in this House.

Other parliaments have what we call monitoring and evaluation units that do that. We do not have that in this Parliament, yet that is the most important unit that this Parliament should have. We need a special unit whose role is to administratively deal with resolutions passed and undertakings made before this House and report back to this House.

Maybe in that case, we may not need an implementation committee. However, in a scenario where we have no administrative unit or implementation committee to handle that, many of the resolutions we pass in this House will be in vain.

On the issue of oversight committees, there was a request to enhance the numbers, so that they fast-track their work and be current in terms of how they engage with the counties. I fully support that proposal, although the committee rejected it on budgetary reasons.

The County Public Investments and Special Funds Committee had 11 Members, just two more than other committees. The reason was to have flexibility to establish subcommittees and do parallel meetings to catch up. We need to revisit that issue so that we help oversight committees to be current.

Even though we have nine Members each, the County Public Investments and Special Funds Committee and the County Public Accounts Committee (CPAC) will be the first to start questioning governors who are in office on their reports. With effect from August, we will start dealing with reports of the Auditor-General for Financial Year (FY) 2022/2023.

By the time we finish our five years, we will have at least done up to FY2025/2026. That is important because we have problems questioning governors on financial statements of other governors who already left office. The only solution is to fast-track the reports before us, so that before one leaves office, we would have cleared with their reports to enable them go in peace.

Mr. Speaker, Sir, I have also seen a proposed amendment to the Constitution by Sen. Chimera, that Governors should not run as Senators. Although the Bill is not before us for debate, to me, it is something we need to look at. It is something that arises because we are not able to do our work. We should ensure that reports are done.

We should have a mechanism of vetting, so that those with questions are not allowed to contest for seats. Those who are cleared by this House should be allowed to contest for any seat. I do not see any problem with a Governor becoming a Senator if they have been cleared by this House. Likewise, there should be no problem when a Senator wants to become Governor, like my friend Dr. Boni Khalwale here, who is going to be one.

Speeding up the processing of the oversight committee reports is very important. The answers lie in expanding the Members slightly, so that they can have subcommittees and Members who are committed.

There was a proposal that you should not belong to another Committee. They can belong to other Committees, but they need to be committed. They need to be there to read

volumes of documents. If we have Members of this Committee who are not committed, then we will not catch up.

Mr. Speaker, Sir, I do not mean that my Members are not committed. My Members in the CPIC are very committed. That is why we have done so many reports. Still on the oversight committees is the issue of budgets. It is not fair that CPIC and CPAC have the same budget as other committees. These are Committees that deal with so many reports that require a lot of input and study. Therefore, they need to have adequate budgetary resources to do the reports.

I have run out of my budget as a Committee. Therefore, I cannot process any more reports. So, if we have the same budget and considering that budgets have been slashed, it becomes very easy to achieve our objective.

On the request to amend the Standing Orders to define a parliamentary party, I agree with the Committee on their final decision that a parliamentary party can have five Members. However, it should not belong to a coalition. I think this request was made in view of the Jubilee Party.

The Jubilee Party has a right to get out of the Azimio Coalition, but they must do that within the law. The documents that are there indicate that Jubilee is still legally a member of the Azimio Coalition until they exhaust all the legal mechanisms, including the court process, so that they can become independent from Azimio.

The amendment is fair to both parties. It says that they can become a parliamentary party, but they should not belong to a coalition. This is fair, unlike the request that was made which said that a party can have five members and become a parliamentary party.

We also need to discuss the privileges of parliamentary parties. In the National Assembly, I have seen that there is a party of 17 Members, which has been allowed to appoint a Whip alongside the Minority Whip. If we allow these kinds of things, we will be creating confusion in our Houses. This is because there can only be two leadership sides: the Minority and the Majority side. If the Minority side has a Minority Whip, the other side should have a Majority Whip. We do not want a scenario where we have another layer in between. It creates confusion.

I want to thank the Committee for being wise and recommending that parliamentary parties must first of all meet the criteria of five Members and should not belong to a coalition of parties.

On the issue of the format of Statements, I support the request that was made that a Statement must have a background. The Statements we do in this house do not have a background. Sometimes, when they are sent to the people who are supposed to respond, they end up not responding adequately or capturing the basis of the Statement because the background is not there or is inadequate.

I think it is important for the background to be there, stating the facts of the case and then the questions or the issues that need to be undertaken stated after that. I think it is important for us to continually improve on our Standing Orders to make them better and align them to the realities of our Parliament.

For those very many remarks, I support these amendments that have been proposed and request that we rethink on this issue of implementation. How do we want to

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do it, not just in this House, but even administratively within our system of the Parliamentary Service Commission (PSC)?

How do we deal with the issue of implementing the resolution of the House which are quite diverse? They include the budgetary resolutions that we pass and undertakings that are made in this House and in Committees. How will they be followed up? That is very important.

I support this Report.

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

Sen. Dullo: Thank you, Mr. Speaker, Sir. I beg to move an amendment to the Motion that is before the House:

In paragraph 1, by inserting the following words immediately after the word report-

“Subject to deletion of the word ‘not in a coalition with another party’, appearing in the proposed amendment to Standing Orders No.2 on page 33 of the report.”

I am requesting to amend this, so that political parties can have the freedom to be on their own and also be within the coalition. I think this is the freedom that we seek.

This will help in sorting out the challenges we face within the coalition. This will also give association by political parties within different parties. Again, even within a coalition, if you are five members, you can belong to a political party. That will help a lot.

With that, I request the Senator for Kakamega to second.

I thank you.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I rise to second the amendment. Listening very carefully to the spirit in this letter of the amendment, it attempts to write something that Standing Orders are not explicit on, namely, once you walk through this door, stand there and you are sworn in as a Senator, you must be able to enjoy all the Committees in this House.

You must be able to enjoy all the privileges that are extended to Members for purposes of making their work easier. Therefore, since this amendment is curing exactly that, I support it strongly.

We now have an opportunity where reports of committees with very strong recommendations lie on the shelves with not too much that we can move concerning our counties.

Statements from Members are worked on by Committees. Recommendations are made, but no action is taken. With this amendment, both the first one and the second one, where we are now introducing the Implementation Committee, it means that those reports of committees will have a chance to be acted upon by the Committee on Implementation.

I second this amendment.

(Question of the amendment proposed)

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

Sen. Faki: Asante, Bw. Spika, kwa kunipa fursa hii kuchangia Ripoti ya Kamati ya Utaratibu na Kanuni. Ripoti imezungumzia kwa ufasaha mambo kadhaa. Lakini mimi nitagusia mambo mawili peke yake.

Kwanza ni kwamba---

The Speaker (Hon. Kingi): Sen. Faki, we are now debating the Motion on the amendments as proposed by Sen. Dullo.

(Sen. Cheruiyot spoke off record)

Senate Majority Leader, the Motion on the Floor is the Motion on Amendments. This is the Motion we are supposed to debate. We finalize this matter, and then we can resume debate on the original Motion in whatever form, depending on the outcome of this vote. What is before us is the Motion as proposed by Sen. Dullo.

Sen. Faki: Mr. Speaker, Sir, I had no intention of debating the amendment.

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

Sen. Mungatana, MGH: Mr. Speaker, Sir, I listened to Sen. Dullo when she was moving these amendments. Every Senator who walks into this House and takes the oath is entitled to participate fully in its activities. Irrespective of the external and party politics, every Senator who walks into this House, especially those elected by delegation, should participate in Committees and contribute.

This amendment is helping us achieve that goal. This is what we want. We should not have rules that limit the participation of elected Senators, people who have come here by the voice and vote of the people. Irrespective of whatever politics are happening outside, this amendment gives the power to allow full participation of Members in various Committees.

This is a beautiful amendment, the kind that helps us move forward rather than backward. It is opening doors for us as a House to benefit from the wisdom of those colleagues who are elected and, for whatever reason, could be having issues with their arrangement of politics outside the House.

I rise to fully support that amendment and ask all Members to support it.

The Speaker (Hon. Kingi): Sen. (Prof.) Kamar, proceed.

Sen. (Prof.) Kamar: Thank you, Mr. Speaker, Sir. I stand to support the amendment that has been introduced by Sen. Dullo. The one reason that in democratic Parliaments there should be allowance for people to make decisions and moves of their own choice. It becomes difficult when we lock the system through our own Standing Orders and forbid Members who may wish not to be aligned with any political coalition.

I, therefore, support that it is good for us within the House to know that once we are in the House, for democracy to prevail we allow Members to exercise their duty and right of association within the House. I support that this amendment be included to allow for that room.

It may be today that those of us who are in Jubilee have found ourselves in an awkward situation, but it could be another group tomorrow. The House needs to have this

flexibility and it allows for this democratic movement, so that coalitions can be brought in or out in a democratic manner.

For that, I support the amendment.

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

Sen. Orwoba: Thank you, Mr. Speaker, Sir. I rise to support Sen. Dullo's proposed amendment. In the same spirit, we should make sure that no Senator who comes to this Chamber, either specially elected or through the ballot, is made redundant. They cannot participate in certain activities because of their political affiliations, especially now that we have all these alliances.

The train left the station for me. I do not know why I did not bring an amendment. In this same spirit, I think specially elected Senators who have been elected to represent women, working groups, and People with Disabilities should be allowed to participate in all activities, including voting.

As you know, because of our Standing Orders, the specially elected Senators fall on a delegation, and it is only the elected Senator, who is the chair of the delegation, who votes on certain issues. However, on matters concerning working groups, women, and People with Disability, there should be a way that we are progressive enough to say that at this point, all the Nominated Senators under the special interest group of gender should cast a vote.

Most Senators do not know that some have been specially elected to represent working groups. They sit in the Chamber, but do not have a vote. As a matter of fact, in the spirit of supporting Sen. Dullo's amendment that alliances and coalitions are not put out in participation in Committees, there needs to be a conversation either through *kamukunji* on Nominated Senators. What is our duty? Sometimes, we appear redundant and have been sworn in to be body counts.

The train has left the station, and I do not know why I did not bring my amendment. However, I thought I should voice this out, so we can support Sen. Dullo in her Jubilee affairs. Nonetheless, as an elected Senator, she should remember that when we bring our amendment as Nominated Senators representing women or special interest groups, we have supported her. She should support us when fighting for our rights on Senate oversight and our right to vote.

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

Sen. Cherarkey: Mr. Speaker, Sir, I rise to support the amendment by Sen. Dullo. This amendment originates from the spirit, letter and principle of the Constitution 2010. No Kenyan, be it elected or not elected, should be denied the sacrosanct right to associate with anybody.

The era of the *Kipande* system during pre and colonial times should not be allowed. Article 38 on political rights states that everyone has a right to associate not only within a given specific timeline, but also within a short time.

We know the politics of the country and parties change within a week, a year, five years, or two years. It is in the same spirit that every Member of this House--- We are the House of the Union.

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Today, I was having a conversation with some of the working groups in this country. They told me the credibility of the Senate as the ‘Upper House’ of Parliament of the Republic of Kenya is always high.

I support Sen. Dullo's amendment that any Member of the Senate, whether elected through the Azimio la Umoja One Kenya Coalition party, Kenya Kwanza Coalition, or Jubilee party, has a right to participate.

In essence, even the Deputy Party Leader of the Democratic People's Party, Sen. Alex Munyi Mundigi, should be given the right of freedom of association and political rights as envisaged in the Constitution.

Therefore, the upshot of this Amendment will allow the ease of running even the Committees because, at the end of the day, no Senator should feel lesser simply because they come from either the Minority or Majority Party - with the freedom of association, political rights and in the spirit of Article 1 of the Constitution of Kenya.

Mr. Speaker, Sir, every Member of the Senate and I hope the nominated, specially elected Senators are listening to this, including Sen. (Prof.) Kamar, should feel that they are part of the decision-making of the Committees and Plenary Sessions of this House.

I have heard what Sen. Orwoba has said about the decisions of the Senate as per Article 123 of the Constitution. I am bringing a Constitutional Amendment Bill as proposed under Article 123 and, Sen. Orwoba, you should include that, so that the decisions of the Senate---

(Sen. Methu moved Sen. Cherarkey's notes)

Mr. Speaker, Sir, can you protect me from Sen. Methu who is moving my notes to distract me, but *tunasema ashindwe*.

What we are saying in an upshot is that these decisions can be made. With those very many remarks, I beg to support and allow us to move to other agendas of the day.

The Speaker (Hon. Kingi): Hon. Senators, there being no other Senator wishing to contribute on the proposed amendment, and pursuant to Standing Order 97 (1) (2) (c), where –

“The mover of a Motion of amendment shall not have a right of reply to a Motion of Amendment.”

I will proceed straightaway to put the question.

(Question of the amendment put and agreed to)

(Question of the Motion as amended proposed)

Hon. Senators, I will again have to propose the question as amended, so that debate will ensue on the Motion in the amended form. I will now proceed to propose the question as amended.

THAT, pursuant to Standing Order Nos. 267, 268 and 270, the Senate approves the Second Report of the Procedure and Rules Committee on the review of the Standing Orders of the Senate, laid on the Table of the

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Senate, on Wednesday, 22nd May, 2024, and that pursuant to the provisions of Article 124 (1) of the Constitution and Standing Orders 270 and 272-

(i) resolves to amend its Standing Orders as contained in Annex 1 of the Report, subject to deletion of the words “*not in a coalition with another party*”, appearing in the proposed amendment to Standing Order No. 2, on page 33 of the Report; and

(ii) orders that the amendments to the Standing Orders as contained in Annex 1 to the Report come into effect on the 25th June, 2024.

Hon. Senators you may proceed to debate the Motion as amended. There being no Senator wishing to make any intervention, I will now proceed to put the question.

(Question of the Motion as amended put and agreed to)

(Applause)

Resolved accordingly-

THAT, pursuant to Standing Orders 267, 268 and 270, the Senate approves the Second Report of the Procedure and Rules Committee on the review of the Standing Orders of the Senate, laid on the Table of the Senate, on Wednesday, 22nd May, 2024, and that pursuant to the provisions of Article 124 (1) of the Constitution and Standing Orders 270 and 272-

(i) resolves to amend its Standing Orders as contained in Annex 1 of the Report, subject to deletion of the words “*not in a coalition with another party*”, appearing in the proposed amendment to Standing Order No. 2, on page 33 of the Report; and

(ii) orders that the amendments to the Standing Orders as contained in Annex 1 to the Report come into effect on the 25th June, 2024.

Hon. Senators, before I call the next Order, I will allow Sen. Gloria Orwoba to make her Statement pursuant to Standing Order No.52 (1), today being the World Menstrual Hygiene Day.

Sen. Orwoba, you may proceed.

STATEMENT

INTERNATIONAL MENSTRUAL HYGIENE DAY

Sen. Orwoba: Thank you, Mr. Speaker, Sir, for giving me this opportunity to make a general Statement on this day of International Menstrual Hygiene Day, 28th May 2024.

Mr. Speaker, Sir, I rise pursuant to Standing Order No. 52 (1) to make a Statement on a matter of general topical concern, namely the commemoration of World Menstrual Hygiene Day observed annually on 28th May.

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Today is World Menstrual Hygiene Day and this year's theme is: *'Together for a Period-Friendly World.'* The global platform of raising awareness about the challenges that women and girls face regarding menstrual hygiene and advocating for the necessary changes to ensure their dignity, health and well-being are well catered for.

Mr. Speaker, Sir, in Kenya, many girls face significant barriers in managing their menstrual health. Lack of access to affordable sanitary products, inadequate sanitation facilities in schools and pervasive cultural taboos lead to high rates of absenteeism in schools, school dropouts and compromised dignity.

According to recent studies, nearly one in 10 African girls miss school during menstruation, with some dropping out entirely due to the challenges they face.

Mr. Speaker, Sir, on this Menstrual Hygiene Day 2024, we celebrate the strides made by the Kenyan Government in ensuring that every girl in Kenya has access to menstrual hygiene products.

The State Department for Gender and Affirmative Action received Kshs876,548,482 in the supplementary estimates towards the supply of sanitary towels to school girls in all public primary and junior secondary schools in Kenya in the Financial Year 2023/2024.

Mr. Speaker, Sir, it should be noted that that the budget has gone up from Kshs265 million after the Kenya Kwanza Government put in the intervention to ensure that we are ending period poverty. The procurement process is complete with contracts signed.

It is also clear to the suppliers that the delivery points will be at the sub-county level and each supplier upon pre-inspection exercise and clearance is expected to share the distribution schedule for seamless delivery to the counties to the counties, up to the sub-county level.

So far, 27 counties have been supplied with sanitary towels, while the remaining 20 are either awaiting the scheduled delivery dates or ongoing pre-inspection or communication has been done by the supplier for the late delivery.

Mr. Speaker, Sir, I would like to emphasize that these sanitary towels are being distributed as we speak by our county Women Reps. I also applaud the efforts of the Cabinet Secretary for Gender, Culture, the Arts and Heritage, hon. Aisha Jumwa, who has seen this exercise to fruition. There have many queries on checks and balances and accountability of the same. The same is being raised in the Senate on ensuring that the over Kshs800 million was spent, and the beneficiaries are the vulnerable girls and women in the society.

I also congratulate the Kenya Kwanza Government for this initiative and being on the forefront heading the menstrual hygiene campaign to end period poverty and shaming on this day. I applaud every champion that is out there, including our male Senators who have been out there ensuring that we end the stigma.

Mr. Speaker, Sir, to you and to all the Members of the House, I say happy Menstrual Hygiene Day, 2024.

I thank you.

The Speaker (Hon. Kingi): Before we call the next Order, allow me to make this Communication.

COMMUNICATION FROM THE CHAIR

SUBSTANTIATION OF STATEMENT BY SEN. SAMSON CHERARKEY

As you may recall, at the sitting of the Senate held on Tuesday, 14th May 2024, the Senator for Nandi County, Sen. Samson Cherarkey, made utterances while contributing to a Petition to the Senate, by Mr. Japhet Makokha, seeking an amendment to Section 32(3) of the County Governments Act.

The Senator for Siaya County, Sen. (Dr.) Oburu Oginga, MP, rose on a point of order, pursuant to Standing Order No.105(1), seeking the intervention of the Speaker to require the Senator for Nandi County to substantiate the utterances.

The Statement that Sen. (Dr.) Oburu Oginga, MP, required substantiation from Sen. Samson Cherarkey, MP, was as follows: -

“---for example, we have seen governors frustrate their deputy governors.

For example, we have seen that the deputy governor of Siaya County cannot access his office. He does not have a vehicle, fuel, or any resources allocated---”

In the opinion of Sen. (Dr.) Oburu Oginga, MP, the statement made by Sen. Samson Cherarkey, MP was a wild allegation that needed to be substantiated.

I then directed Sen. Samson Cherarkey, MP, to substantiate the above allegation as required pursuant to Standing Order No. 105(1). In line with Standing Order 105(2), Sen. Samson Cherarkey, MP, requested to table documents in support of the statement at the next sitting.

At the sitting of the Senate held on Wednesday, 15th May, 2024, I invited Sen. Cherarkey, MP to forthwith substantiate the claims, as raised in the point of order by Sen. (Dr.) Oburu Oginga, MP.

Thereupon, Sen. Cherarkey, MP, tabled a letter dated 6th May, 2024, from the Deputy Governor for Siaya County, Hon. (Dr.) William Oduol, addressed to the Speaker of the Senate.

In the letter, the Deputy Governor of Siaya County sought the intervention of the Senate concerning alleged refusal by the governor to accept the deputy governor back to the county despite the Senate’s verdict on this proposed removal by impeachment.

Hon. Senators, as you may recall, in my communication to the Senate made on 1st and 16th November, 2023, I indicated that any document/evidence tabled by a Senator as evidence for substantiation of any allegations made under Standing Order No.105, must pass a certain threshold.

I highlighted the parameters for undertaking an assessment of the evidence tabled to include:

(a) Is the evidence tabled from a source which by parliamentary practice is official and admissible?

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(b) If the answer to (a) is in the affirmative, does the evidence relate to and verify the claim(s) that were made and for which substantiation was required?

The requirement by the Speaker in this matter was to review the document tabled by Sen. Cherarkey, MP, establish the connection with the utterances made by the Senator, and to finally make a determination on whether the evidence was admissible or not.

A reading of the contents of the letter by the Deputy Governor at Pages 3 and 4 state that he has been excluded from the Siaya County executive committee meetings, his utility car and security officers have been withdrawn, fuel provision for his official car had been stopped and that attempts to resolve the matter with relevant authorities within the county government proved futile.

That being the case, and having examined the contents of the letter, by the Deputy Governor and tabled by Sen. Cherarkey, MP, I make a determination that the contents thereof have met the established threshold. Consequently, the letter tabled is admissible as evidence in the Senate and serves to fully substantiate the claims made by the Senator.

Thank you.

(Applause)

The Speaker (Hon. Kingi): Hon. Senators, pursuant to Standing Order No. 45(2), I seek to rearrange today's Order Paper. We will proceed to Order No.21 before resuming the normal flow as contained in today's Order Paper.

BILL

Second Reading

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

Sen. Kibwana: Thank you, Mr. Speaker, Sir. I will only use a few minutes on the Amendment Bill.

Pursuant to Standing Order No. 146(1) of the Senate Standing Orders, I move that The Public Finance Management (Amendment) Bill (Senate Bills No.40 of 2023) be now read a Second Time.

The Standing Committee on Devolution and Intergovernmental Relations has prepared amendments to the Bill, which incorporate the views of the public.

(Sen. Kibwana consulted the Clerks-at-the-Table)

The Speaker (Hon. Kingi): Proceed to move, Senator.

Sen. Kibwana: Mr. Speaker, Sir, according to Standing Order No. 145(5) of the Senate, the Committee invited interested members of the public and stakeholders to submit their proposal on the Bill. The principal object of this Bill is to amend the Public

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Finance Management (PFM) Act No.18 of 2012 to establish a collaborative framework for collection of revenues by the county governments and the national Treasury.

This will boost revenue collection by the county governments and ensure they realize their revenue targets. This Bill speaks to the collection of the county government's revenue and establishment of their own source revenue.

Mr. Speaker, Sir, with your permission, I shall proceed to highlight the various provisions in this Bill. The proposed new section of Clause 2 of the Bill requires the county treasury in consultation with the National Treasury, to put in place a county revenue collection system. It requires that such a system that respects the distinctiveness of the two levels of Government be secure, effective, efficient, and transparent.

Clause 3 of the Bill seeks to amend The Public Finance Management Act by inserting New Section 160 A, 160 B and 160 C. The proposed New Section 160 A intends to provide framework for collaboration between the county governments and the National Treasury in regard to the collection of revenue by counties.

The proposed New Section 160 B, on the other hand, provides for reporting on the status of revenue collection at the county. It requires county treasury to report to the county assembly and submit copies of the reports to the Senate, the National Treasury and the Commission of Revenue Allocation on the status of the county revenue collection and performance.

The proposed New Section 160C provides for the transfer of functions between the levels of Governments and how such functions shall be funded. It requires county assemblies to appropriate monies as may be required for the transferred functions. That amount shall not be less than the amount appropriated by the county assembly in the preceding financial year. Such monies shall be audited by Auditor-General, who shall prepare a special audits report on the performance of the entity to which a county government functions has been transferred to.

Mr. Speaker, Sir, I beg to move and ask Sen. Faki to second, since he is a Member of the Finance and Budget Committee.

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

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

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

Sen. Faki: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to second the Bill by Sen. Kibwana. The Bill is very important because it provides a further framework for county governments in terms of revenue collection in their respective jurisdictions.

Own source revenue has been a thorny issue in our counties. Most counties overstate their own source revenue, thereby resulting in pending bills at the end of the financial year. The amounts collected are not enough to cater for the projects that they had planned for in the course of the financial year.

The other aspect of the matter is that there are no systems in most of the county governments. There are no foolproof management systems that are able to collect

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revenue and ascertain how much has been collected at any given point by the respective county governments. The systems they have are normally charged on a percentage basis.

In some instances, the amount that goes to the owner of the system is much more than what goes into the coffers of our county governments. At the end of the day, we still have projects that have not been completed because of lack of finances.

The issues of the own-source revenue is the next frontier, which county governments should be encouraged to invest in. This will enable them to meet the shortfalls that they expect from the equitable share. Yesterday, we concluded the mediation on The Division of Revenue Bill. The negotiations were so intense that we ended up settling for Kshs 400.1 billion for the Financial Year 2024/2025, although our expectation was Kshs 415.5 billion.

We wanted to enable counties meet the non-discretionary budgeted expenses that have come as a result of the passing of the several Bills by Parliament. Counties should be encouraged to invest and maintain stronger supervision on own-source revenue. That is the next frontier where they are likely to get money to develop their respective counties.

The second aspect of the amendment is with regard to the reporting to the county assemblies. Most of the assemblies are in the dark as to how much is being collected. The other day, we had Machakos County Assembly appearing before the Senate Finance and Budget Committee. We discussed issues to do with enhancement of their ceilings in terms of recurrent expenditure.

The county government of Machakos had put a budget of Kshs4 billion on own-source revenue. However, by December last year, they had only collected Kshs1 billion for the Financial Year 2023/2024. So, you can see the disparities between the projections and what they are raising in reality on own-source revenue.

Reporting to the county assemblies and the Senate will provide the oversight committees with the tools to use to monitor and take corrective measures as they progress.

Mr. Temporary Speaker, Sir, I second the amendment to The Public Finance Management Act as proposed by Sen. Kibwana.

Thank you.

(Question proposed)

The Temporary Speaker (Sen. Wakili Sigei): Hon. Members, I will now call those Members who have requested to speak to this Bill. I will start with Sen. Cherarkey.

Sen. Cherarkey: Mr. Temporary Speaker, Sir, I thank and congratulate Sen. Kibwana. She has been doing tremendous work, especially in legislative business. I am happy that these are issues we have been grappling as the Senate County Public Accounts Committee (CPAC). As the Vice-Chairperson of CPAC, one of the audit queries that we have always considered has been own-source revenue and the running of the county treasury. So, the amendment of The Public Finance Management Act is to make sure we put in place necessary mechanisms for accountability purposes and to ensure revenue collection.

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In our brief in the CPAC, we normally ask revenue potential of each county. You will find that there is no county that has ever met revenue system. I remember today there was a county that we were meeting, Laikipia County Executive, and they had missed their own source revenue target by over Kshs411 million, apart from the revenue they had set, which is not realistic.

Nandi County Executive has a potential target of Kshs630 million on own source revenue according to Commission on Revenue Allocation (CRA). However, it has never gone beyond Kshs400 million. So, it means most of the counties are missing their own-source revenue target by half. Therefore, borrowing the best practices from the National Treasury does not undermine devolution in any way.

Mr. Temporary Speaker, Sir, I know there are people who imagine and think that when Sen. Kibwana proposes that they should do so in consultation with the National Treasury, we are undermining devolution. We are not. We are complementing it because they are mutual, distinct and complimentary in borrowing what we call best practices.

I know this word 'consultation' was famous during Grand Coalition Government and agreement between the former President Mwai Kibaki and Prime Minister Raila Odinga. It does not mean that we are lording over another entity.

There is also a challenge of revenue collection. For example, in Nandi County, they produce several triplicate receipts. However, the receipt they surrender to the County Treasury is only one. Where are the other two receipts? That is how they are stealing money. The *boda boda* operators pay around Kshs300 per stickers for single permit. This also applies to land rates, rent, fees and daily parking.

It always becomes a challenge because crooked county government officials take advantage and steal. The issue is same receipts with the different serial numbers.

I remember there was a time every evening when Nandi County used to bank their money at Kenya Commercial Bank (KCB) in Kapsabet and they used to lose over Kshs96,000. There are lots of leakages.

They have set up cess points. I do not understand when I am transporting building stones from Thika I pay Cess as I enter Nairobi City, Nakuru, Uasin Gishu and Nandi counties. We are encouraging double taxation by counties. Why can I not pay cess at the origin of the product or the end of delivery? This is overcharging.

Mr. Temporary Speaker, Sir, the money that counties collect does not have value. We have never seen value. For example, when you go to Kapsabet County Market - I know Sen. Osotsi knows this - the county *askaris* and county revenue officers will enforce with fire and fury. However, at Kapsabet Town Market, you will find no toilets, clean water, electricity or anyone collecting dirt from the *mama mbogas*.

When it comes to collecting receipts, you will see governors sending their *askaris* and revenue officers. At the end of the day, that money goes to the county treasury. There is no value for money. It is the same for Kaptumo, Mosoriot, Kabiyet, Maraba and Kobucho. Women are selling along the road in an open market. They cannot sell because of the rain and dust. Yet, counties will be quick to collect the revenue.

In Cheptarit and other centres in Nandi County, they will go for motorbike stickers. In Chemase, they do not have a *boda boda* shade, but the county will demand for the stickers. In Soba, Rikibokat, Mombwa and Chepteruat centres, they have not been

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given a standard shade. The former President Mwai Kibaki used to tell us *kulipa ushuru ni kujitegemea*. That has been the essence.

I do not know whether the mover noted that we passed the Facilities Improvement Financing Act, 2023. Through cost sharing aspect we allowed that if you are collecting money in Kapsabet County Referral Hospital, or any other hospital such as Mbagathi Hospital, you are allowed to spend money at source, for ambulance and support services. We should relook at this in the Committee of the Whole, more specifically on the aspect of cost sharing in our hospitals so that we capture it.

The wisdom of passing Facilities Improvement Financing Act, 2023 was to spend at source. If you take somebody to a hospital in Kapsabet, Mosoriot, Chepteruat or Kabiyet at night and you need to take them to Moi Teaching and Referral Hospital (MTRH) you are informed that there is no fuel. Our people end up paying Kshs1,000 or Kshs2,000 so that they can get an ambulance.

There is a lack of drugs in the hospitals. In Kapsabet there are so many chemists. This is because there are no drugs in Kapsabet County Referral Hospital. If there were drugs, it would have been easier.

The essence of this transparency that we are talking about is very critical. The other day, there was an attempted rape within the Kapsabet County Referral Hospital. This has been reported in Kapsabet Police Station. I know that Sen. Kibwana being a member of the Standing Committee on Health is aware of the Occurrence Book (OB). Patients are not safe. Patients must feel safe in hospitals. Women are being sexually molested. These were allegations in Garissa County Referral Hospital too. We are also seeing them in many hospitals.

Mr. Temporary Speaker, Sir, the sad reality is that you will find the management committee of county referral hospitals sitting and instructing the complainant to drop the charges in order to not taint the image of the hospital. That is abuse of the dignity of women across the country. Therefore, when we talk of the Facilities Improvement Financing Act, it is important for Sen. Kibwana to note its provisions as she proceeds with the amendment.

Mr. Temporary Speaker, Sir, on the county revenue system, we used to have organisations such as Jambo Pay and Safaricom. I know that you have been a senior practitioner in this city.

(Sen. Madzayo spoke off record)

Why is the retired judge referring to your practice in Eldoret? I think he needs some information.

In the last session, you are aware that the revenue collections for the Nairobi Metropolitan Services (NMS) was in partnership with Kenya Revenue Authority (KRA). Their organisations were Jambo Pay and Safaricom. No one is telling us that counties are hiring revenue systems.

I know the chairperson of the Standing Committee on County Public Investments and Special Funds (CPISF) will tell us later in his contribution whether this is the case. No one knows how much is being paid through agency fee.

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If Safaricom, Jambo Pay and KRA are collecting, we need transparency and value for money. For example, In the case of Kwale or Kilifi County, the agency fee was more than half of what they were collecting. It is not fair in terms for the county treasury. Even as we do the system, it must be simple, transparent and verifiable.

The best practice we can borrow is from KRA. I know to some of us, KRA is not a good name to mention to, but it is the one that collects revenue on behalf of all of us. Even as we outsource the system, we must request counties to employ an automatic revenue system. Even in your county of Bomet, Mr. Temporary Speaker, Sir, we need to know if they have automated revenue collection system and how much agency fee they are paying?

That is why most counties are using a principle of shooting at the sun and land on the moon. I am trying to recall the revenue potential for Bomet County.

For example, in Nandi County, the Commission of Revenue Allocation (CRA) potential that we should collect per year is Kshs630 million, but normally we do not go beyond Kshs300 million. It means there are a lot of leakages, corruption and ineffectiveness. Sometimes, you are told the systems are down when you are to pay for any of own source revenue.

The third point is that the county treasury shall submit copies of the quarterly statement and report to the Senate and the National Treasury. This will allow transparency and accountability so that we know, for example, when Jambo Pay is collecting for Meru County, how much they are collecting and the agent fees they are taking.

If, for example, Safaricom is collecting on behalf of Makueni County, how much are they charging? How much are they raising? How much is the agent fee and what is the contractual obligation? That is what we want to see.

Secondly, you submit these reports to county assemblies because they are supposed to do the primary oversight. They are supposed to be part of the oversight to ensure the collection of revenue system is up to par. I agree with this statement that we must also submit these reports to the Senate and the National Treasury. I know that when some people hear the mention of the National Treasury, they will say that we are undermining devolution. We are not; we are just borrowing best practices.

On the flipside, Sen. Kibwana, as you consult, I know the Senate Minority Leader was somewhere the other week. Maybe, he is telling you the fairy stories of the sojourner and the journey across the world.

I have been thinking. Why should you submit to the National Treasury? We should just submit to the county assembly and the Senate. Those are enough so that the national Government does not overreach the functions of devolution.

Finally, we must build the capacity of the county assembly. I am the biggest supporter of Members of County Assemblies (MCAs). However, my only concern even as we give these powers to MCAs, can they stop being a rubberstamp of governors? Sometimes, we give them powers, but when you go to a function and an MCA stands and becomes a public relations officer of a governor. I saw that one in Vihiga County. A whole MCA who is supposed to be doing oversight, is the one explaining the governor's project more than the governor.

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I always get surprised. I was in that county, I was like, what is happening? MCAs are supposed to do the oversight. We are pushing for a Ward Development Fund (WDF) for MCAs in this House. The President and all of us have agreed that they should get WDF.

We are amending the Public Finance Management (PMF) Act to give them financial autonomy so that they do not wait for County Executive Committee Member (CECM) for Finance and Economic Planning to give them resources. We are supporting the financial autonomy of MCAs.

Third, we are pushing the Salaries and Remuneration Commission (SRC) to review the remuneration and salaries of MCAs so that they are not reduced to over-glorified beggars because we know MCAs are the last line of defense.

I have told the Secretary General of the Association of MCAs, (AMCA), Mr. Karanja, to bring a legislative proposal so that we amend the law and give AMCA a legal impetus just like the Society of Clerks-at-the-Table (SOCAT), just like Council of Governors (CoGs) and the County Assemblies Forum (CAF) of the Speakers

Even as we push for their interest, to whoever much is given, much is needed. So, as we say MCAs should be given the WDF, financial autonomy, better remuneration, allowances and all the support through SRC and the Government, we also request them to do their work without fear or favour from anybody because that is their work.

When I went to Vihiga County, I realized that MCAs--- Let me not go through that story. I was horrified. I could not sleep because I thought the roles had changed. It was the governor who was explaining the role of MCAs and MCAs were explaining the role of governor more than---

Finally, on the transfer function, we have agreed on this. The cost must follow functions. For example, in health, under the Fourth Schedule, is a devolved function. The issue of standards belongs to the national Government. We all saw what happened the other day when there was a crisis of labour within the health sector.

The CoGs went into hiding and they disappeared. When we are discussing resources, they say that health is devolved function. Yet when there are labour crises in the health sector, they say that the national Government can handle it.

Mr. Temporary Speaker, Sir, they must tell us the truth. If health is devolved function, why are people missing drugs in hospitals? Why is there a labour crisis? The intern issue was resolved, but laboratory technicians are still on strike. They are negotiating and are yet to be given recognition. Clinical officers are also on strike. The CoG says health is devolved function, but when you tell them to address a health crisis, they say the national Government is the one to address.

The President has shown goodwill. I know the Principal Secretary in charge of Devolution has signed those transfer functions. I have heard *fununu*---

I am happy that Sen. Oketch Gicheru is here. When a few Members were nominated to serve in mediation committee, the House said that Kshs415 billion was our last baseline. However, I am surprised to see in social media and sections of the media that they have agreed to Kshs401 billion. They have betrayed our trust as a House. We are waiting for that report when it comes here because we had agreed that Kshs415 billion should go to counties.

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Our mediation team went and renegotiated downwards. We should have agreed with the National Assembly; there was no need for a mediation committee. I know they can argue that they added Kshs8 billion. A sum of Kshs8 billion is a small drop in an ocean of problems that we are facing in counties.

How can we talk about the cost of transfer functions when they do not have resources? I want when I question my governor about performance; I do so with a lot of confidence, because I am aware we have given them enough resources. So, the mediation Committee from the Senate must give us a proper explanation as a House why they came down from Kshs415 billion to Kshs401 billion.

I remember Sen. Mumma was excited about the names that you are proposing. I do not want to go beyond that.

Mr. Temporary Speaker, I want to thank you. I saw you over the weekend supporting one of the young writers---

Can you please, add me 30 seconds?

The Temporary Speaker (Sen. Wakili Sigei): Senator, your time is up. Please, finish in 30 seconds.

Sen. Cherarkey: Mr. Temporary Speaker, Sir, I support. This amendment is one of the best. Let us improve on it.

I wish Sen. Hamida Kibwana all the best.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Oketch Eddy.

Sen. Oketch Gicheru: Thank you, Mr. Temporary Speaker, Sir. I did not want to respond to Sen. Cherarkey's allegation on Members of the mediation Committee. I knew I was coming after him. I did not want him to enjoy any Standing Orders' time.

Sen. Cherarkey must understand that many Senators who were sent to the mediation committee are experts in finance and matters of mediation as well where. We did a give and take situation.

Sen. Cherarkey must also take time to read some of the conversations that go on between these two Houses. For instance, he must understand that the Mediation Committee went to talk about the money that was being added to counties, both the CoGs and the National Assembly were stuck in a figure of Kshs391 billion. That meant that in this financial year, the counties could only have been added about Kshs6 billion.

That was a hard figure that people were not able to move. However, the team from the Senate, where a Member like me, Sen. Eddy Okech, sits, were able to go and argue for Kshs400 billion which increased Kshs9 billion above what the National Assembly had put.

Sen. Cherarkey must also know that of the Kshs30 billion that we were proposing, which we passed in this House, four of those items were non-discretionary items. This means that they were items that are fixed and cannot be moved in any way. However, the bigger chunk; the Kshs30 billion that we are proposing---

The Temporary Speaker (Sen. Wakili Sigei): Eddy, I draw your attention to the provisions of Standing Order No.99 on anticipating debate. The direction you are headed is with regard to what that mediation committee is yet to table tomorrow. Please, stick your arguments and contribution to the relevance of supporting the Public Finance Management (Amendment) Bill, (Senate Bills No. 40 of 2023).

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Sen. Oketch Gicheru: Mr. Temporary Speaker, Sir, I wish you could have said that to the Senator because if you allow Sen. Cherarkey to get away with casting aspersions on a wonderful mediation committee during that entire time---

The Temporary Speaker (Sen. Wakili Sigei): Sen. Eddy---

Sen. Oketch Gicheru: I am trying to frame my conversation within the same context.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Eddy Oketch, kindly confine your comments---

Sen. Oketch Gicheru: Mr. Temporary Speaker, Sir, I get it, but I think it is unfair to allow an Hon. Member to get away with casting aspersions to a serious committee that did a good job to give counties money. When I am trying to counter that, I am confined---

The Temporary Speaker (Sen. Wakili Sigei): You are testing the accommodation of the Chair.

Sen. Oketch Gicheru: Mr. Temporary Speaker, Sir, I do not have a problem with the ruling, but I think that it is extremely---

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

Sen. Oketch Gicheru: Mr. Temporary Speaker, Sir, do you want me to debate or to sit down? You are not going to teach me how to debate. That is not being fair.

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

The Temporary Speaker (Sen. Wakili Sigei): Sen. Eddy, kindly take your seat, you are out of order.

Sen. Mungatana, proceed.

Sen. Mungatana, MGH: Bw. Spika wa Muda, nashukuru kwa kunipa nafasi nami nitoe maoni yangu kuhusu Mswada huu ambao tunaujadili mchana huu.

Mswada huu hasa ni juu ya vile kaunti zetu zinaweza kuongeza ushuru katika gatuji zao kupitia mtambo wa kijitali. Ni maoni ya Kamati ya Bajeti na Fedha kuwa tuwe na sheria ambayo inayosema kila gatuji nchini Kenya iwe na namna ya kuchukua hela bila kutumia wanadamu ama *a computerized system*, kwa lugha ya kiingereza.

Kila wakati wafanyikazi wa Serikali, iwe ni wa kaunti au Serikali kuu wakiitishwa kubadilisha mambo kutoka kwa mfumo wa kuchukua hela kupitia mwanadamu iende kwa mashine ambazo hazijui mwanadamu, huwa wanaipinga sana. Wanapinga kwa sababu wanajua ya kwamba wakati ambapo unaondoa mwanadamu katika ile hali ya kuchukua hela zozote za Serikali, shimo la kuchukua rushwa linazibwa.

Kwa hivyo, watu wengi Serikalini kwa nafasi kubwa ama ndogo kwenye sehemu ya kuchukua hela hawapendi tukibalisha namna ya kuchukua hizi pesa kutoka kwa wananchi; badala ya kutumia mwanadamu kuandika risiti, iandikwe na tarakilishi. Lakini, sasa tunataka kuipitisha hii sheria---

Hapa Seneti, tumeona shida kubwa sana. Kwa mfano, kule Tana River, hadi leo hawajaweka *automated system* ya kukusanya pesa za kodi zinazotolewa na wananchi ili kufanya kazi ya serikali ya kaunti hiyo.

Watu wanaofanya kazi katika kaunti yetu wamekataa kabisa. Sababu moja wanayotoa ni kwamba *automated system* ni bei ghali sana. Katika Kaunti ya Tana River, pesa zinazofujwa kupitia njia hiyo ya kukusanya ushuru bila kutumia mashine ni nyingi sana.

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Ukitaka kulipa ada yoyote ya serikali ya kaunti, unaambiwa utoe pesa *cash* ili uandikiwe risiti, upeleke kwa akaunti ya benki au ulipe kupitia *paybill*. Shida ni kwamba *paybill* unayopewa ili kulipa, kwa mfano, ada ya soko ya Tana North Sub-County, ni tofauti na ile ya Tana Delta Sub-County.

Baada ya pesa hiyo yote kuwekwa kwenye hizo *paybill numbers* inachukuliwa na mwanadamu ambaye ni *Director for Revenue*. Kule Tana River, nambari kadha wa kadha zinatumika kama *paybill*. Zikifika idadi fulani, nambari hizo zinadhibitiwa na *Director for Revenue* katika kaunti yetu. Yeye ndiye huchukua pesa hiyo na kuipeleka kwa akaunti ya kaunti inayojulikana kama *County Revenue Fund (CRF) Account*.

Pesa hizo zinalipwa kutumia *paybill* kisha mwanadamu mwingine huenda na kuzitoa ili kuweka kwa akaunti. Kwenye harakati hizo, kuna shimo kubwa ambapo pesa za wananchi wa Tana River zinafujwa. Hakuna namna ambayo kodi au ada ambazo zimetozwa na risiti kuandikwa zinakaguliwa kuthibitisha usahihi wa pesa inayowekwa kwa akaunti.

Shimo hilo limefanya watu ambao wanafanya katika Idara ya Kukusanya Ushuru katika Kaunti ya Tana River kuwa matajiri. Utapata kuwa mtu ni tajiri ilhali hana kampuni au shamba lakini amejenga nyumba nyingi. Wanahepa kujenga kule Tana River na kwenda kujenga Malindi, Mombasa na Nairobi. Hii ni sheria ambayo tukipitisha katika Seneti itasaidia kufichua wizi unaofanyika katika kaunti zetu.

Siyo Tana River pekee. Watu wengi wanajua kwamba risiti zinaandikwa lakini pesa zinazolipwa hazifiki kwenye *CRF Account*. Kwa mfano, kule kwetu, watu wanapewa *paybill numbers* ambazo hazilinganishwi na rekodi. Hujui kama pesa unayolipa itakwenda kwa akaunti au la. Ukimaliza kulipa, stori yako inaishia hapo.

Ni watu wanaotumia hizi systems kuiba usiku na mchana.

Katika Kaunti ya Tana River, Gavana alianzisha Inuka Fund. Hizi zilikuwa ni pesa ambazo watu wetu walikuwa wanaomba ili wajinue kibiashara. Halafu shida ikatokea kwamba, watu hawarejeshi pesa walizoomba.

Halafu, sasa kuna mtu ameanza kusema tuwapatie *Paybill Numbers*. Hiyo ni sawa na ile wanayofanya huku kwa *County Revenue Fund (CRF)*. Wanataka tena kuintroduce system ile ya kwamba eti wewe lipa kwa hii *Paybill* halafu sasa utakuwa umekwishalipa. Lakini, hiyo pesa *haziendi* kwa *account* ya CRF ama Inuka Fund.

Kile wanachotaka kufanya kwa hii *account* ya Inuka Fund ni wizi tu wa kimabavu. Sio system ambayo inatumika Kaunti ya Tana River peke yake. Nimekwishaelezea ya kwamba katika Kaunti ya Tana River, wananchi wanapeleka pesa zao kwa *Paybill Numbers* na zinaibwa kwa sababu hazifiki akaunti ya CRF. Mpaka leo, ukiangalia pesa ambazo Tana River County wameandikisha kwamba wamekusanya kutoka kwa watu wetu kama ushuru wa moja kwa moja ni kiwango cha chini. Kawaida, tunawekwa nambari ya mwisho au ya pili kutoka mwisho.

Watu wetu wanalipa ushuru. Watu wakifanya biashara ya ng'ombe, wakiuza dukani, wakikata leseni za mwaka na kufanya biashara zao, wanatoa pesa. Lakini, hizi pesa hazifiki kwa akaunti ya CRF kwa sababu hapa katikati kuna mashimo na wizi unaofanyika.

Kila wakati, watu wanasema eti tukitafuta mtambo au *utomated system* ni ghali. Lakini, ukiangalia zile pesa ambazo zimeibwa tangu Kaunti ya Tana River ianze mpaka leo, hata afadhali tutumie mamilioni lakini tununue *system*, japo hawataki kufanya hivyo.

Ukiangalia Magavana ambao wamekuwa hapo, hakuna hata mmoja ambaye ameisukuma hii *system*. Swali tunalouliza ni kwa nini hawataki kufanya *automated system* ya *revenue collection*. Sababu ni kwamba, hapa katikati, kuna mashimo. Haya mashimo wanajua ya kwamba hizi pesa zinafaidi maafisa na sio watu wa Tana River. Ndio maana watu wengi wanapigania kuwa *Revenue Collection Officers*.

Wanataka hiyo kazi. Kazi hii ni sawa na ile ya polisi wa trafiki. Sababu ni kwamba kuna kitu watu wanachofanya. Mpaka leo, hilo shimo halijafungwa. Kila kaunti hapa Kenya imeachiwa kuchagua vile itakusanya kodi kwa kaunti.

Ukija Nairobi wako na *system* yao, Mombasa wako na *system* yao pia. Pia kaunti zingine ziko na *system* zao. Kaunti yetu haina *system*. Ni vile tu babu zetu wa Tana River County Council walikuwa wanakusanya kwa kuandika risiti za uwongo. Hiyo ndio *system* inayotumika mpaka sasa.

Mswada ambao umeletwa leo tuujadili kwa makini kwa sababu ukiwa sheria italeta usawazishaji wa ukusanyaji wa kodi katika kaunti zetu zote. Kaunti zote za Kenya zitakuwa zinatajikana kutumia *automated system* za *Revenue collection* tutakapopitisha Mswada. Kila pesa tunayokusanya ili kufanya kazi ya wananchi itaenda kwa akaunti ya CRF ambayo kwa sasa haiko.

Kwa hivyo, mimi nasimama hapa kwa niaba ya watu wa Tana River kusema ya kwamba tunataka sana kuupitisha Mswada huu.

Sheria hii italeta uwazi na tutajua wale wezi. Tukipitisha Mswada huu kuna watu watajiuzuru kazi kule Tana River na kwingineko. Kwa sababu wamekuwa wakiiba pesa kupitia hii *system* ambayo haifanyi kazi. *System* ya zamani ambayo haiko *automated* na haina kompyuta.

Ni aibu kufanya kazi na kupata mshahara lakini unakula pesa kidogo inayotoka kwa wananchi na wanakosa maendeleo. Kaunti ya Tana River ni Kaunti ya tatu ama pili au mwisho kwa kukusanya ushuru wa moja kwa moja ilhali watu wetu wanalipa ushuru.

Maseneta wote wapitishie Mswada huu ili magavana ambao hawafanyi haki kwa wananchi na kuficha siri za pesa wanazozichukua kutoka kwa wananchi waanikwe mbele ya Wakenya wote.

Wizi mkubwa unaendelea na magavana wanajua kuwa katika *County Revenue Fund* kuna pesa ambazo kaunti zingekuwa zinapata lakini hazifiki kwani hawataki kununua *automated systems*.

Mswada tunaopitishwa leo unasema kuwa ripoti ya pesa kutoka kwa wananchi lazima ziende kwa *County Assembly*. Bunge la Gatuzi linafaa lipate ripoti ya pesa ambazo zimekusanywa. Pia Seneti na Serikali Kuu zinapata ripoti ya pesa zilizokusanywa kupitia *National Treasury*.

Uwazi ni muhimu sana. Tukiwa na uwazi tutapunguza wizi. Maovu yote yanafanyika kukiingia giza. Giza ikiingia mambo machafu yanafanyika. Lakini ukiweka taa katika giza, watu wanaogopa kufanya udhalimu ama uchafu wanaofanya kwa upande wa fedha.

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Magavana na mawaziri wa kaunti inafaa washurutishwe kupitia kwa Mswada huu kuweka *automated System*. Pili, waweze kuhimizwa kwamba baada ya mwezi wanatoa ripoti ya pesa ambazo wamekusanya. Hili jambo litapunguza wizi.

Yeyote atakayetaka kuiba lazima ahusishe wote waliochaguliwa kwenye Bunge ya Gatuzi. Nafahamu kuwa kuna waliochaguliwa kwenye *county Assembly* na wana roho ya kusaidia wananchi. Hawakuingia kwenye bunge kuiba na kujitajirisha.

Bw. Spika wa Muda, huu ni Mswada mzuri na inafaa tuupitisha. Hasa kwa sababu ya kaunti zetu ambazo zinaongozwa na watu ambao hawana moyo wa kusaidia wananchi.

Mwananchi anapeleka ng'ombe zake kwa soko ambayo ushuru unachukuliwa. Lakini soko kama ile ya Bangale ambayo ndio kubwa na inakusanya pesa nyingi katika Kaunti ya Tana River, hakuna choo kilichojengwa. Serikali ya kaunti inachukua pesa kila siku katika soko hiyo. Soko ya Garsen haina *facilities* kusaidia mwananchi wa kawaida kufanya kazi yake na wananchi wanalipa ushuru.

Mwisho wa mwaka, Kaunti ya Tana River inaandikwa kama Kaunti ya pili kutoka mwisho kwa kukusanya pesa za *Own Source Revenue*. Hii ni kwa sababu hakuna sheria ambayo inafaa.

Hii ndio sheria ya kwanza ambayo tunasawazisha kaunti zote ili wizi unaoendelea na utajiri wa udhalimu uishe. Ndio maana wengine wanakuwa wagonjwa. Unaona tajiri ambaye anasafiri kutafuta matibabu. Hakuna raha katika nyumba yake kwa sababu pesa ambazo amesomesha watoto wake ni pesa za wizi. Pia watoto wanakuwa wezi na wanafyatuliwa risasi. Pia Watoto wanakuwa *drug addicts* kwa sababu walisomeshwa na pesa za wizi. Hakuna baraka katika nyumba hizo.

Wao wanakaa na kufa kwa magonjwa mabaya kwa sababu walikula pesa za uwizi za Tana River. Walisomesha watoto wao na pesa za uwizi na udhalimu. Ninasema hii sheria itasaidia sana kaunti zetu na italetu uwazi katika matumizi ya pesa. Ikiwa kila mwezi kuna ripoti ambayo itawasilishwa mbele ya *County Assembly*, watajua kama kuna pesa zinazofunjwa. Ikiwa kila mwezi kuna ripoti inakuja hapa Seneti, tutajua kwamba kuna pesa zinaibwa ama zinatumiwa njia mabaya.

Bw. Spika wa Muda, mimi nimefurahi sana. Kama kuna Mswada mmoja ambao tumeupitisha kwa Bunge la Seneti ambao utasaidia wananchi na watajua ukweli wa mambo ambao unaendelea kule nyumbani, basi ni Mswada huu tunaoujadili sasa.

Tunasema na kuchukua nafasi hii katika hii Seneti kuwaambia wale jamaa ambao wanafikiria kwa sababu wako kwa kaunti ambazo ziko mbali, kwamba watafanya vile watakavyofanya na watahongana kwa vitengo vya kiserikali ati wasishikwe na kufanya mbinu washike wale majamaa ili wawape mkataba, sisi hapa Seneti tunawaangalia kwa macho mawili.

Katika kiingereza tunasema '*there is no limitation for criminal liability*'. Yaani ikiwa wewe umeiba au umefanya makosa, hata ukitoka hizo nafasi zako ambazo umeshikilia saa hii, hata kama ni miaka kumi, tukichukua ule ushahidi na tukikuweka pale, wewe utakuwa ni mzee na unataka kustaafu, tutakushika na tutakufunga wakati huo.

Tunataka kuwaambia wafanyikazi wa Serikali, sisi hatutaki tena miaka ile ya kusema pande ile tutafanya vile tutakavyofanya, halafu sisi tutaishi kama wakubwa kwa sababu ya pesa. Wewe kama unataka kufanya kazi ya kutafuta pesa, kwa nini usiende kufungua kiwanda au kufanya biashara? Kwa nini unaingia kwa Serikali?

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Mimi ninakumbuka wakati wa Mhe. Rais Barack Obama, mawaziri wengine walisema sisi hatutaki kuandikwa kwa muhula wako wa pili kwa sababu tunataka kwenda kufanya biashara tupate pesa. Kama unafanya kazi ya Serikali, kaa kama mtu wa Serikali.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Mungatana, your time is up. Proceed, Sen. Osotsi.

Sen. Osotsi: Thank you, Mr. Temporary Speaker, Sir, for this very important opportunity to also make my contribution to this Bill, The Public Finance Management (Amendment) Bill (Senate Bills No.40 of 2023), sponsored by Sen. Kibwana.

I start by congratulating Sen. Kibwana for the excellent work she has done to bring this very important Bill to this House. She has demonstrated that she is a very committed and dedicated Member of this Senate, looking at the quality of the Bills that she has brought to this House.

I remember Sen. Kibwana also sponsored the Digital Health Bill that came for the First Reading. At the point of the Second Reading, the Government also brought their own Bill which was similar to her Bill word by word.

Mr. Temporary Speaker, Sir, listen to this: What will be done on the matter of plagiarism of Bills, especially by the Executive? When a private Member sponsors a Bill, and then it comes in here; it is processed in the usual manner, it goes for the First Reading, the Second Reading and then the Government side brings a similar Bill, word by word. What is the Senate supposed to do on this matter?

At some point, we will need to have this discussion because, on this side of the Minority, we felt really bad. That a Member can spend his time, research, do a Bill, then the Members of the Executive come and plagiarise that Bill and present it to the same House.

This means we are not able to protect the Member who has invested his or her time and resources in processing a Bill and instead we go to the Executive side. This really demoralizes that Member.

Mr. Temporary Speaker, Sir, going to the substance of this Bill, this Bill is long overdue. This is because we have been trying to deal with the issue of management of own-source revenue in our counties. We have been trying to deal with the issue of automation revenue systems in our counties.

One time in this House, I questioned why our county governments do not perform well in own-source revenue collection. Whereas the defunct local authorities in the old system used to do much better revenue wise. They used to collect enough money. You know at that time, those local authorities were led by councilors; people who had no education and people who were there in the villages. They did not have the human resource like what we have currently in the counties, and they did not have the right tools as well.

Mr. Temporary Speaker, Sir, however, they were able to raise more money compared to the current scenario where we have counties which are better resourced with better tools, but they collect less money. They do not meet their targets. Where is the problem? This is a study that I encourage the Committee on Devolution and Intergovernmental Relations to undertake. They must find out how it was possible for the

defunct local authorities to perform well in revenue collection than the current county governments.

There is also the issue of counties not being able to meet their revenue targets. They do budgets and most of them exaggerate their own-source revenue targets, but they do not meet them. This is a serious problem and this Bill helps to a large extent on how to deal with this challenge of managing own-source revenue.

Mr. Temporary Speaker, Sir, this Bill is very timely and I know discussions have been going on amongst the stakeholders on how to deal with this problem. We have had the national policy that is meant to support the enhancement of counties own-source revenue. It proposed that we have an integrated county revenue management system so that we promote revenue collection, transparency, accountability and seal revenue leakages.

This is a good discussion, but it has taken too long. This Bill is ahead of them by proposing that we have a legislation that will anchor their proposals into law.

We have also had a multi-agency taskforce on the integrated county revenue management system so as to have standardized revenue collection systems in our counties. What happens in the counties is that we have diverse systems for revenue collections in different counties. Talking as an Information Technology (IT) expert, these systems are not type approved. We need to have a type of approval process so that we have an entity that analyses these systems and indicates that a certain system is suitable for revenue collection.

Most of those systems do not meet the required standard. There is the issue of agency fee that has been raised by Sen. Cherarkey is true. Some of them have exorbitant agency fees. The question is, where does that money go to? If you ask someone to pay money and then you say 20 per cent of that money is agency fee. Why does that money go to?

Mr. Temporary Speaker, Sir, these are the questions we ask and that is another avenue of stealing from our counties. We know some of these systems are timed not to operate at times, so that at a particular time when they think the revenue is high, the system goes down and they go back to the manual system. That is when the stealing takes place.

Mr. Temporary Speaker, Sir, I support this process of having an integrated county revenue management system. This will ensure we can have uniformity so that this House can audit that system. In fact, in some counties we have multiple revenue collection systems. So, this Bill by Sen. Kibwana helps us to standardize the systems that we have in our counties. This will ensure that there is transparency, efficiency and verifiability of these systems. We will also be able to deal with security issues like fraud and related issues.

As we do this, counties must run these systems distinctively from the national Government. So, we need to relax the proposal that, “the counties shall, in consultation with the National Treasurer and Kenya Revenue Authority (KRA) decide”, and maybe say, “maybe”. This is because, as the people who are supposed to help in implementation of Article 96, we also do not want to be seen making our counties subsidiary to the national Government. Sen. Kibwana, I propose that we have an improvement on that part.

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Secondly, the county treasury is just an entity in counties. This decision to come up with this system is a bigger decision that requires the input of the County Executive. So, we should not make it as a preserve of the county treasury.

We need to say that the County Executive will be taking the lead in this. This is because a county treasurer is a junior member of the county. He reports to the Chief Officer and CEC, Finance and Economic Planning. Those are people who are supposed to make substantive decision regarding financial matters in the county. So, we cannot keep them off this. We need to amend that so that we give this power to the County Executive.

The requirement that reports be presented to the Senate and County Assembly is very timely. However, I have a problem with presenting the reports to the National Treasury. This again, makes counties subsidiary to the national Government.

The issue of the transfer of functions and their cost is one of the areas that this Senate must take the lead. We have been taken in circles on this matter. Even the current regime, the Kenya-Kwanza regime, among the many promises they made to Kenyans, I remember one of them was that within six months of them coming to power, they will ensure 100 per cent transfer of functions. That has not happened. We are now in the second year, and there is no sign that that will happen.

I remember last year, the Intergovernmental Relations Technical Committee (IGRTC) said the same thing. That they were almost finalizing and one month away to transferring functions to the counties. However, they have not done that. It was just a talk. This is a conversation that we must take the lead as a Senate and push it. We have so many functions which are in the national Government, and they should be in the county government. We are not just talking about transfer of functions. This Bill is now giving us the legal mandate to say that money must follow functions. We are not just transferring functions.

I ask governors to be very careful on how they engage the national Government on the matter of functions. This is because nowadays, the national Government has now devised another way of controlling devolved functions.

They have now come up with what we call counterpart funding where they say we are going to give you 50 per cent and give us 50 per cent. A good example is the funding for Community Health Providers (CHP).

In most counties CHPs they have not been paid a stipend. For the last three months, CHPs in my county have not been paid because of the delay in releasing the 50 per cent counterpart funding by the national Government.

Mr. Temporary Speaker, Sir, we have also seen the issue of industrial parks where they said counterpart funding is 50 per cent. Most of the money has not been taken to counties. The projects that were launched are still lying there. They are going to become white elephants.

We ask our governors to try and avoid getting into agreements with the national Government under the pretext of counterpart funding. Funds must follow all the devolved functions, even for liquor.

I have heard the Deputy President say that they want to take over liquor licensing in counties. I want to tell him that he has better things to do. Leave counties to run their function.

Liquor is a county function where some counties get their revenues. If you say you want to take it over because you want to run it better, yet the national Government has functions which they are not running better, who is going to run those functions for them?

Mr. Temporary Speaker, Sir, on Early Childhood Development Education (ECDE). We have a lot of ECDE related functions which are still being run by the Ministry of Education. All those functions should be taken to counties and funds should follow. We want our counties to be run better, but they must have more resources to run those functions.

This is a very timely Bill and with the little panel beating that I have indicated, we should all support and make it better. I am sure the National Assembly will also fast track this Bill so that we have a uniform, integrated county revenue management system. Probably this will help us deal with the problem of mismanagement of own source revenue which also affects budget control and performance.

The leading audit query in most counties is the issue of budget control and performance because counties are not able to meet the set targets of own source revenue. Therefore, they end up having budgets which are not working and that becomes a query. In a way, this Bill will help in dealing with accountability and budget issues in our county and make our counties run better.

Mr. Temporary Speaker, Sir, as I finish, I am very disappointed. I know my friend Sen. Oketch Gicheru was a bit emotional on this issue. However, I also want to join my friend, Sen. Cherarkey, to say that I am disappointed with the mediation committee. We all agreed we passed the Budget Policy Statement (BPS) here. We made a majority decision and agreed that we will stick with the Kshs415 billion---

The Temporary Speaker (Sen. Wakili Sigei): Sen. Osotsi, you are wading towards where Sen. Oketch Gicheru went. Do not anticipate debate on that report. We are yet to receive it. We will receive it tomorrow and you will get an opportunity to castigate the mediation committee on what they have done if you want to.

Sen. Osotsi: Mr. Temporary Speaker, Sir, I am well guided. I was just saying that because we are talking about revenue.

There are two levels of revenue: The shareable revenue and own source revenue. The shareable revenue may also affect the own resource revenue. County governments may want to invest in these systems, they need money. Anyway, we will leave that debate for another day.

This is a wonderful Bill and I fully support it. I also encourage the Members of this House to support and fast-track it to become law with a few amendments that have been proposed by the Standing Committee on Finance and Budget and those that are going to be proposed by Members of this House.

I support.

(Applause)

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The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. Osotsi. Sen Mumma, you have the Floor.

Sen. Mumma: Thank you, Mr. Temporary Speaker, Sir, for the opportunity to speak to this Bill. I rise to support it.

I have said here before, that as we go into the 13th year after devolution, the Senate should work harder to strengthen the intergovernmental relations between the two levels of government in order for devolution to perform well.

Most of the laws that we should bring should strengthen intergovernmental consultation and cooperation to ensure that the two levels of government recognize that they do not serve separate citizens. They serve the same citizens.

Mr. Temporary Speaker, Sir, the 13 years of negative competition that has been there between the two levels of government needs now to tone down. We need to get to a level where they assist us to move the devolution as is envisaged in the Constitution of Kenya.

The issue that has been brought up in this Bill is absolutely important. I support that we are at that level where we need to put in place a legal framework to ensure that county governments do better in terms of own source revenue, collection and accountability for those monies.

The proposed Clause 160A speaks to principles that exist in the Constitution. The principles of transparency, efficiency, effectiveness and a verifiable system. A system that is simple, secure and one that should prevent any fraud or losses, and one that promotes the distinctiveness of the national Government and the county government.

That is what any law that we are bringing in place that strengthens inter-governmental relations should enable us to do. To strengthen systems while delivering on devolution as provided for in the Constitution. So, the principles that we are reaffirming in this Bill already exist in the Constitution. We are reaffirming because, for 13 years, those principles have not been properly implemented, not just at the county level, but also the national level.

You will recall just a few weeks back, we had the report from the Office of the Auditor-General that questioned a whopping Kshs15.5 billion transacted through the e-Citizen platform. So, it is not as if the national Government and the e-Citizen are necessarily foolproof. We need to put in place systems at the national Government and at the county government that will ensure Kenyans are not defrauded of their monies and full accountability, whether it is national Government or county government.

So, I want to disabuse a few comments made by those who believe automation means safety because as the Auditor General has demonstrated recently, the e-citizen collection system that we have has issues.

In fact, it says that the controls are weak. They have the potential to be compromised and they are heavily reliant on vendors. As Sen. Cherarkey said, we are allowing the so-called digitization and automation to squarely be in the hands of the people who have decided to reap money from Kenyans.

Mr. Temporary Speaker, Sir, if we are paying taxes just for 20 per cent of that to be given to one businessman because they gave us a system, I think we have lost it. We

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need to revisit those issues. So, even as we are thinking of “integrated system”- a good-sounding word--- We need to ask ourselves what it means.

I will go back to those principles being put in this Bill that say to what extent we are putting in place a system, whether in the national or county Government. That it will ensure every contribution by a citizen be it in a market, will go where it is supposed to go, and that money will contribute to the service delivery of this nation.

So, I want us to be careful not to send the message that accountability is required at the counties and not at the national Government. We need to move in that level.

As we do so, I also request Sen. Hamida to relook at a few of those clauses. When you look at Clause 191(f), it is talking about funding relating to transferred functions while Clause 191(f)(1) suggests that where the national Government has transferred a function to a county government pursuant to Article 187 of the Constitution, the Cabinet Secretary shall determine the cost of the transferred function.

Mr. Temporary Speaker, Sir, in a similar Clause in 191(g)(4), you say that where the function is being transferred by the county government to the national Government, the cost shall be determined by both the national and county governments.

Sen. Hamida, I hope I can persuade you that it takes the two to determine that cost. You cannot make it the business of only the national Government to decide. For example, if the national Government were to momentarily decide that we are transferring our security function at the village to county X and we think it will cost so much, then, it turns out to be only half the cost, you are going to cause an issue. So, that decision of determining cost must be a consultative process that should involve both the national and the county governments.

You might want to do this through the relevant CoG committee. So, I urge that you relook at that and see how to move that issue.

Mr. Temporary Speaker, Sir, even as we are thinking through this, I believe that if this law were to be passed as is, it would not necessarily bring a new accountability requirement that is not in the Constitution. We need to ask ourselves why we have both the national and county governments defying the Constitution and the law. What other laws can we bring to complement this law and ensure that we achieve what we hope to achieve with this law?

I, therefore, urge Sen. Hamida to speak to Sen. Chute who is trying to bring a Bill to strengthen the role of Controller of Budget (CoB), so that beyond the CoB just clearing the appropriation or the requisition by county governments, he has the powers to further find out if the monies are going to where they are supposed to.

Today we sat as the Committee on Devolution and Intergovernmental Relations. One of the things we found out is that counties are requisitioning money for pending bills that are expected to go--- For example, they submit papers indicating that money is going to be paid to “X” but in the actual fact they pay “Y”.

We were told how some counties have up to 300 commercial bank accounts that are illegal. If we use the generality of principles of transparency and accountability and do not visit bits that facilitated fraud, we will not get far.

I urge that Sen. Hamida finds a way in which we can complement this, so that the laws of other oversight bodies like the CoB are also strengthened. If we have a CoB with

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integrity like the one we currently have, we will be able to call out counties that are pilfering money through other means.

Mr. Temporary Speaker, Sir, the National Treasury should also be held accountable and responsible on the expenditure by the national Government. We rarely get to know how much the national Government is supposed to disburse to different counties for development.

I have brought a Question, but I do not know whether the Cabinet Secretary will come tomorrow--- The laws we make seem to keep the National Treasury above reproach as though it does not have accountability responsibilities. Whereas the National Treasury keeps monies for the nation, it is also a national Government entity. We need to hold them accountable for the budgets they propose.

I believe that as we strengthen the counties, it will help if we equally strengthen the national Government. Our counties are the recipients of development budgets of the national Government. So, we have a responsibility as the Senate to also hold the National Treasury accountable on budgets that the national Government receives on development for the nation.

As I speak about accountability, let us not make it appear as if the National Treasury is good and knows it all. We need to strengthen both levels in order to deal with this issue.

I am happy that we will require quarterly reports to come to the Senate. The Committee on Devolution and Intergovernmental Relations should so often report on how counties are performing on different issues in relation to revenue collection, expenditure and revoting of monies not spent in a financial year. That way, we will be able to call out and the people of Kenya will know how their counties are performing on a particular issue and if they need to do better or if they are doing well.

Mr. Temporary Speaker, Sir, with those proposals, I support this Bill and acknowledge that we need to strengthen laws relating to accountability to ensure that all goes well.

I was about to forget a very important issue. Sen. Hamida, I hope you re-look at this. In Clause 6(4), you have provided that a national Government entity to which a county government function has been transferred shall submit a quarterly report to the Senate and respective county assembly.

Functions can only be given to the national Government or county government. They are not given to a national Government entity. It is only the national Government that can take responsibility for a function that it has taken.

I think you will need to revise that so that we do not give the impression that it is possible for a county government to transfer, for instance, a function to a parastatal. That is not provided for in our Constitution.

Functions belong to the national Government and county government. They do not belong to national Government entities. So, I suggest you correct. Functions can only go to the governments and not government entities.

Thank you very much.

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

I call upon Sen. Peris Tobiko.

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Sen. Tobiko: Thank you, Mr. Temporary Speaker, Sir. I do not know how to execute my submissions in four or so minutes. However, I support this Bill.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Tobiko, you do not have to conclude your submissions in four minutes. Your time is not four minutes.

Sen. Tobiko: Yes, but the time remaining is around four minutes. However, thank you for this opportunity to support this Bill.

I congratulate Sen. Hamida for coming up with this very timely Bill.

The amendment to The Public Finance Management (Amendment) Bill (Senate Bills No.40 of 2023) is timely. What ails our counties or the devolved units, is the lack of systems and structures that work.

Our counties are still grappling in the dark. A lot of them need a lot of capacity building. On the issue of capacity building, Sen. Hamida, I do not know how you will include this in this Bill. What is ailing our counties may not be the lack of manpower or even goodwill, but the necessary capacity.

When she proposes that a revenue collection system be created and that the National Treasury will liaise with the county treasury so that there is a transparent system in place and an adequately secure system which is also simple to understand and verifiable, it will go a long way to cure what ails our counties.

Reporting to the county assemblies is also very good. This is because they are the people's representatives and the first level of oversight before the report is submitted to the Senate.

We have met many Government agencies, including the Intergovernmental Relations Technical Committee (IRGTC). We have seen that the Transition Authority (TA) to IRGTC are still labouring to see how to get functions transferred from the national Government to the county governments to get adequate resources.

In the Committee of Education, counties are struggling to pay Early Childhood Development Education (ECDE) teachers and establish the ECDE centres. Today, we were discussing in the Committee of Education that ECDE is not just the education part of it. It is also the development of the child. There is a proposal that in ECDE centres, immunization of the young ones should take place. Therefore, the counties need adequate resources for the devolved health functions.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Tobiko, you will have 16 minutes to conclude your submissions in support of this Bill when the House resumes.

ADJOURNMENT

Hon. Senators, it is now 6.30 p.m. time to adjourn the Senate. The Senate, therefore, stands adjourned until tomorrow, Wednesday, 29th May, 2024, at 9.30 a.m.

The Senate rose at 6.30 p.m.

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