

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 17th September, 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?

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

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

(The Quorum Bell was rung)

The Speaker (Hon. Kingi): Order, hon. Senators. I am informed that we do have quorum now, kindly settle in.

Clerk, you may proceed to call the first Order.

COMMUNICATION FROM THE CHAIR

WELCOME TO HON. SENATORS TO PART IV OF THE THIRD SESSION

Hon. Senators, I take this opportunity to welcome you back to these regular sittings of the Senate.

(Applause)

Indeed, it is my hope that you have had time to interact with your constituents, families and friends over the last few weeks.

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I also hope the select Committees took the opportunity during this recess to consider and conclude on pending business.

In accordance with the Calendar of the Senate, Part IV would have seen the Senate transact business until 17th October, 2024, with a two-week break between 18th October, and 4th November, 2024.

However, during a meeting of the Senate Business Committee (SBC) held today, 17th September, 2024, the Committee deliberated on the modalities for varying the dates of the Senate *Mashinani* from the initial date in September to the month of October, 2024.

For this reason, it is necessary for the Senate Calendar for Part IV to be altered. In this regard, at the appropriate time, the Senate Majority Leader will move a Motion on the alteration of the Senate Calendar to alter the dates for the Senate *Mashinani*.

Hon. Senators, a major hallmark of Part III of the Senate Calendar was the passage of a resolution on the current state of the nation on 24th July, 2024.

Hon. Senators will recall that a Motion was introduced and moved in the Senate on the subject following countrywide protests by Gen Zs in June, 2024 due to their dissatisfaction with the policy direction that the country was taking.

In the resolution, the Senate recommended that various Government agencies and a number of select Committees of the Senate take action on critical issues affecting the country. The select Committees to which the recommendations were directed are, therefore, urged to report progress at an opportune time on the measures taken to actualise the recommendations in the resolution.

Hon. Senators, resumption of sittings in Part IV of the Senate Calendar finds the Senate with an already full agenda. In terms of legislative business, a total of 58 Bills are pending conclusion, 22 Motions are pending conclusion, 22 Petitions are due for reporting by respective Standing Committees, while 394 Statements are pending conclusion by Standing Committees.

In addition, questions have been scheduled in the Order Paper for Wednesday morning following the reconstitution of the Cabinet. I urge all Senators with scheduled Questions to prioritise Plenary sittings on Wednesday mornings to prosecute the business.

Additionally, I implore upon Standing Committees to expedite the consideration of business pending before them and table reports pursuant to the Standing Orders.

I also urge the Senate Majority Leader and the Senate Minority Leader to do all that is necessary within the Standing Orders, so that the business before the Senate is fast-tracked.

Hon. Senators, in conclusion, my office remains at your disposal to assist you in discharging your constitutional responsibilities. I will continue to support each Senator individually and in the Committees that you serve.

I wish you the very best for the remainder of this Session.

Thank you.

Take your seats, hon. Senators, I have some Messages to pass.

(Several Senators walked into the Chamber)

MESSAGES FROM THE NATIONAL ASSEMBLY**PASSAGE OF THE COTTON INDUSTRY DEVELOPMENT BILL
(SENATE BILLS NO.5 OF 2023)**

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No. 46(3), I received the following Message from the Speaker of the National Assembly regarding the passage by the National Assembly, of the Cotton Industry Development Bill, Senate Bill No.5 of 2023.

The Message dated Tuesday 20th August, 2024, was received in the Office of the Clerk of the Senate on the same date. Pursuant to Standing Order No.46(4), I now report the Message.

Pursuant to the provisions of Standing Order No.41(1) and 144 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly.

Whereas the Cotton Industry Development Bill, Senate Bill No. 5 of 2023, was passed by the Senate on Thursday 1st August, 2023 and referred to the National Assembly for consideration pursuant to the provisions of Article 110(4) of the Constitution;

And whereas the National Assembly considered the said Bill and passed it with amendments on Wednesday 14th August, 2024 in the form attached hereto.

Now, therefore, in accordance with the provisions of Article 112 of the Constitution and Standing Order No.41(1) and 144 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate.

Hon. Senators, as you may recall, the schedule of amendments by the National Assembly to the said Bill was circulated to all Senators *vide* a letter reference SEN/CORE/LNP-Message 2024(004), dated 22nd August, 2024, pursuant to Standing Order No.165(1).

In order to facilitate the Senate in its consideration of the National Assembly amendments, I directed the Standing Committee on Agriculture, Livestock and Fisheries to consider the amendments and table its report with recommendation on whether the Senate should adopt the said amendments today, Tuesday, 17th September, 2024.

Hon. Senators, the SBC will, at an appointed time, schedule a Motion for the consideration of the amendments by the Senate.

Kindly be guided accordingly.

**PASSAGE OF THE COUNTY GOVERNMENTS ADDITIONAL
ALLOCATIONS BILL (SENATE BILLS NO.19 OF 2024)**

Hon. Senators, I get to report to the Senate that, pursuant to Standing Order No.46(3) and 46(4), I received the following Message from the Speaker of the National Assembly regarding the passage by the National Assembly of the County Government's Additional Allocations Bill, Senate Bills No.19 of 2024.

The Message, dated Tuesday, 20th August, 2024, was received in the Office of the Clerk of the Senate on the same date.

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Pursuant to the provisions of Standing Order No. 41(1) and 144 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly:

Whereas, the County Government's Additional Allocations Bill, Senate Bill No. 19 of 2024, was passed by the Senate on Tuesday, 11th June, 2024 and referred to the National Assembly for consideration pursuant to the provisions of Article 110(4) of the Constitution;

And whereas the National Assembly considered the said Bill and passed it with amendments on Wednesday, 14th August, 2024 in the form attached hereto.

Now, therefore, in accordance with the provisions of Article 112 of the Constitution and Standing Orders No. 41(1) and 144 of the National Assembly Standing Orders, I hereby refer the Bill to the Senate for consideration.

Hon. Senators, as you may recall, the schedule of amendments by the National Assembly to the said Bill was circulated to all Senators *vide* letter reference SEN/CORELNP/Message.2024(004), dated 22nd August 2024, pursuant to Standing Order 165(1).

In order to facilitate the Senate in its consideration of the National Assembly amendments, I directed the Standing Committee on Finance and Budget to consider the amendments and table its report with recommendation on whether the Senate should adopt the said amendments today, Tuesday, 17th September, 2024.

Hon. Senators, the Senate Business Committee (SBC) will at an appointed time schedule a Motion for the consideration of the amendments by the Senate. The House is guided accordingly.

I have a further Message.

CONSIDERATION OF THE SENATE AMENDMENTS TO THE SUGAR BILL
(NATIONAL ASSEMBLY BILL NO.34 OF 2022) BY THE NATIONAL ASSEMBLY

I wish to report to the Senate that pursuant to Standing Order No.46(3), I received the following message from the Speaker of the National Assembly regarding the decision of the National Assembly on the Senate amendments to the Sugar Bill (National Assembly Bill No. 34 of 2022). The message dated Tuesday, 20th August, 2024, was received in the office of the Clerk of the Senate on the same date.

Pursuant to Standing Order No.46(5), I now report the Message. Pursuant to the provisions of Standing Orders No.41(1) and 148(b) of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly.

Whereas on 27th September, 2023, the National Assembly considered and passed the Sugar Bill, (National Assembly Bill No.34 of 2022) and thereafter referred it to the Senate in accordance with the provisions of Article 110(4) of the Constitution.

Whereas on 24th April, 2024, the Senate considered and passed the said Bill with amendments and referred it back to the National Assembly for reconsideration in accordance with the provisions of Article 112 (1)(b) of the Constitution.

Further, whereas on 1st August, 2024, the National Assembly approved part of the Senate amendments and rejected Senate amendments to Clause 2, Clause 6, Clause 19(A), Clause 29(A)(2), Clause 38(1)(B), Clause 38(2), 59, New Clause 19(A), New Clause

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19(B)(C) and the proposed New Schedule to the Bill, thereby committing it to Mediation Committee in accordance with the provisions of Article 112 (2)(B) of the Constitution.

Now, therefore, in accordance with the provisions of Article 112 of the Constitution and Standing Orders No.41(1) and 148(B) of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate and seek the appointment of seven Senators to a Mediation Committee to consider the Bill in accordance with the provisions of Article 113 of the Constitution.

Hon. Senators, consequent to the said decision, the Speaker of the National Assembly appointed the following members of the National Assembly to the Mediation Committee to consider the contentious clauses in accordance with Article 113 of the Constitution.

Hon. Emmanuel Wangwe, CBS, MP

Hon. Dr. John Mutunga, MP

Hon. Justice Kemei, MP

Hon. John Okwisia Makali, MP

Hon. Nabii Nabwera Daraja, MP

Hon. John Walter Owino, MP

Hon. Peter Masara, MP

Hon. Senators, pursuant to Article 113 of the Constitution and Standing Order No.166(2) of the Senate and in consultation with the Senate Majority Leader and the Senate Minority Leader, I appointed the following Senators to the Mediation Committee:

Sen. James Murango, MP.

Sen. Richard Onyonka, EBS, MP

Sen. David Wakoli Wafula, MP

Sen. Catherine Mumma, MP.

Sen. Samson Cherarkey, MP

Sen. Agnes Kavindu Muthama, MP

Sen. Esther Okenyuri, MP

The names of the Senators who are communicated to the National Assembly via the letter reference N/LMP/MC.2024(07), dated 28th August, 2024.

Hon. Senators, the Mediation Committee will attempt to develop a version of the Bill that both Houses will pass and table its report in both Houses of Parliament. The House is so guided.

Thank you.

Next Order.

PAPERS LAID

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Speaker, Sir. I beg to lay the following Papers on the Table of the Senate today, Tuesday, 17th September, 2024.

LEGAL NOTICE ON PEST CONTROL PRODUCTS

The Pest Control Products (Registration) Regulations, Legal Notice No.130 of 2024.

ANNUAL REPORT OF THE PSC FOR FY 2022/2023

The Annual Report of the Parliamentary Service Commission for Financial Year 2022/2023.

REPORT OF THE CAJ ON SHAKAHOLA TRAGEDY

Report of the Commission on Administrative Justice (CAJ) on Investigative Report on the public officials' role in the Shakahola tragedy.

REPORT OF THE NCIC ON DIVERSITY AUDIT IN COUNTIES

Report of the National Cohesion and Integration Commission (NCIC) on ethnic and diversity audit of the County Public Service for 2023.

REPORT OF THE COB ON ANNUAL BUDGET
IMPLEMENTATION REVIEW

Report of the Controller of Budget (CoB) on the Annual County Government Budget Implementation Review for Financial Year 2023/2024.

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

Report of the Auditor-General on Financial Statements of Athi River Level 4 Hospital – County government of Machakos, for the year ended 30th June, 2022.

Report of the Auditor-General on Financial Statements of Athi River Level 4 Hospital – County government of Machakos, for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Kalama Level 4 Hospital – County government of Machakos, for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Kambu Sub-County Level 4 Hospital – County government of Makueni, for the year ended 30th June, 2022.

Report of the Auditor-General on Financial Statements of Kisau Sub-County Level 4 Hospital – County government of Makueni, for the year ended 30th June, 2022.

Report of the Auditor-General on Financial Statements of Makindu Level 4 Hospital – County government of Makueni, for the year ended 30th June, 2022.

Report of the Auditor-General on Financial Statements of Makindu Level 4 Hospital – County government of Makueni, for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Matiliku Sub-County Level 4 Hospital – County government of Makueni, for the year ended 30th June, 2022.

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Report of the Auditor-General on Financial Statements of Matiliku Sub-County Level 4 Hospital – County government of Makueni, for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Makueni County Referral Level 5 Hospital – County government of Makueni, for the year ended 30th June, 2022.

Report of the Auditor-General on Financial Statements of Makueni County Referral Level 5 Hospital - County government of Makueni, for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Kibwezi Sub-County Level 4 Hospital - County government of Makueni, for the year ended 30th June, 2022.

Report of the Auditor-General on Financial Statements of Kibwezi Sub-County Level 4 Hospital – County government of Makueni, for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Kisau Sub-County Level 4 Hospital – County government of Makueni, for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Kalawa Level 4 Hospital – County government of Makueni, for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Ikanga Sub-County Hospital – County Government of Kitui, for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Mutomo Level 4 Hospital – County government of Kitui, for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Kauwi Sub-County Hospital – County government of Kitui, for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Kyuso Level 4 Hospital – County government of Kitui, for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Zombe Sub-County Level 4 Hospital – County government of Kitui, for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Tseikuru Level 4 Hospital – County government of Kitui, for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Nuu Level 4 Hospital - County government of Kitui, for the year ended 30th June, 2023.

Mr. Speaker, Sir, I beg to lay.

(Sen. Cheruiyot laid the documents on the Table)

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

REPORT OF PARLIAMENTARY DELEGATION TO THE 2024
JOINT UNITED NATIONS IPU HEARING HELD IN NEW YORK

The Senate Majority Leader (Sen. Cheruiyot): Let me proceed to do it for her.

I beg to lay the following Paper on the Table of the Senate:

Report of the Parliamentary Delegation to the 2024 Joint United Nations – Inter-Parliamentary Union Parliamentary Hearing held at the United Nations headquarters in New York, United States of America from 8th to 9th February, 2024.

I beg to lay on behalf of Sen. Veronica Maina.

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(Sen. Cheruiyot laid the document on the Table)

The Speaker (Hon. Kingi): Next Order.

NOTICES OF MOTIONS

ALTERATION OF DATES FOR SITTINGS OF THE SENATE IN BUSIA COUNTY

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, I beg to give notice of the following Motion:

Aware that on the 11th July, 2024, pursuant to Article 126(1) of the Constitution, the Senate resolved to hold its plenary and committee sittings in Busia County from the 23rd to 27th September, 2024; and,

Acknowledging the recommendation of the Senate Business Committee to alter the dates of holding the sittings in Busia County and the need to put in place necessary measures for the successful sittings;

Now, therefore, the Senate resolves to alter the dates for the Senate *Mashinani* in Busia County from 23rd to 27th September, 2024 to 28th October to 1st November, 2024.

Mr. Speaker, Sir, I have another Notice of Motion. Can I proceed?

The Speaker (Hon. Kingi): You may proceed.

ALTERATION OF THE SENATE CALENDAR FOR PART IV OF THE THIRD SESSION

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I beg to give Notice of the following Motion, which is alteration of the Senate Calendar for Part Four of the Third Session-

THAT notwithstanding the resolutions of the Senate made on 15th February, 2024, which was approval of the Senate Calendar, and 19th August, 2024, on the alteration of the Senate Calendar, pursuant to Standing Order No.32(4), the Senate further resolves to alter its Calendar of regular sessions for the Third Session 2024, in respect of Part IV to continue with regular sittings until Thursday, 31st October, 2024---

(Loud consultations)

The Speaker (Hon. Kingi): Order, hon. Senators. Please, take your seats and let the Senate Majority Leader be heard in silence.

The Senate Majority Leader (Sen. Cheruiyot): Then proceed for recess on 1st November, 2024, and resume regular sittings on Tuesday, 12th November, 2024.

I thank you.

The Speaker (Hon. Kingi): There was a Notice of Motion to be given by Sen. Veronica Maina.

Senate Majority Leader, you may proceed to give it.

NOTING OF REPORT OF THE PARLIAMENTARY
DELEGATION TO THE 2024 JOINT UN-IPU HEARING

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, on behalf of Sen. Veronica Maina, allow me to give this Notice of Motion on the Report of the Parliamentary Delegation to the 2024 Joint United Nations (UN) Inter-Parliamentary Union (IPU), a parliamentary hearing held at the UN Headquarters in New York, United States of America (USA), from 8th to 9th February, 2024.

I beg to give Notice of the following Motion-

THAT the Senate notes the joint report of the parliamentary delegation to the 2024 Joint UN-IPU, a parliamentary hearing held at the UN Headquarters in New York, USA, from 8th to 9th February, 2024, laid on the Table of the Senate today, Tuesday, 17th September, 2024.

I thank you.

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

QUESTIONS AND STATEMENTS

STATEMENTS

The Speaker (Hon. Kingi): We will begin with Statements pursuant to Standing Order No.53(1), starting with Sen. (Prof.) Tom Ojienda.

UTILISATION OF CESS LEVIED ON SUGARCANE BY
KISUMU COUNTY GOVERNMENT

Sen. (Prof.) Tom Odhiambo Ojienda, SC: Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Finance and Budget regarding utilisation of cess levied on sugarcane by the county government of Kisumu, particularly in construction and rehabilitation.

(Loud consultations)

The Speaker (Hon. Kingi): Order, hon. Senators. You do not need to strain a professor. Just proceed. You are doing very well.

Sen. (Prof.) Tom Odhiambo Ojienda, SC: Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Finance and Budget regarding utilisation of cess levied on sugarcane by the county government of Kisumu, particularly in the construction and rehabilitation of roads in the sugar belt zones in Kisumu County.

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In the Statement, the Committee should-

(i) Explain the legal framework governing collection and utilisation of cess in Kisumu County.

(ii) Provide a year-by-year breakdown of the total amount of funds collected by the county government of Kisumu from cess levied on sugarcane from Financial Years (FYs) 2013/2014 to date, indicating the specific amounts paid by each company.

(iii) Provide a list of all projects for the construction and or rehabilitation of roads in the sugarbelt zones in Kisumu County undertaken during the same period that were fully funded by funds collected from cess.

(iv) Furnish the Senate with all audit reports on the management and application of the cess levied on sugarcane by the said county government from FY 2013/2014 to date.

(v) Explain any measures put in place to ensure transparent utilisation of funds collected from cess.

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

PROPOSED INSTALLATION OF TOLL STATIONS
ALONG DONGO KUNDU BYPASS HIGHWAY

Sen. Chimera: Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Roads, Transportation and Housing regarding the proposed tolling policy on the Dongo Kundu Bypass Highway, which has raised significant public concern. The highway will link Mombasa Mainland West with Mombasa Mainland South without getting into Mombasa Island.

In the Statement, the Committee should-

(1) Detail the extent of public participation undertaken in coming up with the proposed tolling policy, listing the involved stakeholders and debts during which this was done.

(2) Clarify how the tolling policy will ensure equitable access to infrastructure for all citizens regardless of the economic status, and state measures in place to minimise disparities in access to essential services and opportunities.

(3) Assess the economic impact that tolling the Dongo Kundu Bypass Highway will have on local communities, giving an analysis of how increased transportation costs may affect small businesses, commuters, the overall economic growth and competitiveness of products transported along the region.

(4) Outline alternative funding mechanisms that have been considered for maintaining and expanding infrastructure, such as budget reallocations, international grants, and public partnerships, and provide an assessment of potential efficiency improvements by the Kenya National Highways Authority (KeNHA) to optimize existing resources.

(5) Provide an analysis of the environmental impact of tolling concerning increased vehicle emissions due to potential congestion at toll booths and state measures in place to ensure that infrastructure policies align with national commitments to reduce carbon emissions.

Mr. Speaker, Sir, with your permission, I have another Statement to request.

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The Speaker (Hon. Kingi): You may proceed, Sen. Chimera.

TALANTA HELA PROJECT AND LEADERSHIP DYNAMICS
WITHIN NATIONAL SPORTS ORGANISATIONS

Sen. Chimera: Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Labour and Social Welfare regarding the Talanta Hela Project and leadership dynamics within national sports organisations.

In the Statement, the Committee should-

(i) Provide a report on the Talanta Hela Project, including its progress, impact on the development of young talent in Kenya, and the challenges it faces.

(ii) Detail the criteria for appointing leaders in national sports organisations and assess whether these criteria meet the needs and aspirations of our athletes.

(iii) Explain how the Government plans to advance the objectives of the Talanta Hela Project, integrate these objectives with the reforms in sports leadership, and address issues related to administration and resource allocation within the project.

I thank you.

The Speaker (Hon. Kingi): Sen. Madzayo, the Senate Minority Leader, had a Statement pursuant to Standing Order No.52(1).

WITHDRAWAL OF SECURITY DETAIL OF
HON. JUSTICE LAWRENCE MUGAMBI

Sen. Sifuna: Mr. Speaker, Sir, I have been deputized to make this Statement on behalf of the Senate Minority Leader, hon. Stewart Madzayo. This is a Statement on withdrawal of the security detail of hon. Justice Lawrence Mugambi.

I rise pursuant to Standing Order No.52(1) to make a Statement on a matter of national and general topical concern, namely withdrawal of the security of hon. Justice Lawrence Mugambi, judge of the High Court of Kenya.

On 13th September, 2024, hon. Justice Lawrence Mugambi issued a ruling in contempt of court proceedings against Mr. Gilbert Masengeli, the acting Inspector General (IG) of Police, sentencing him to six months in prison.

This ruling has drawn a seemingly retaliatory action from the National Police Service (NPS), which withdrew the judge's security detail over the weekend. This action by the NPS is a violation of the rule of law and the principle of judicial independence enshrined in our Constitution. It is not only illegal but outrightly unconstitutional.

Article 160 of the Constitution of Kenya provides for the independence of the Judiciary and states that the Judiciary shall be subject only to the Constitution and the law and not controlled or directed by any person or authority.

The withdrawal of security for a sitting judge in response to his discharge of judicial duty is a direct contravention of this constitutional provision and must be condemned. Judicial officers must be at liberty to make decisions based on law, free from intimidation or coercion.

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I strongly condemn the intimidation of hon. Justice Lawrence Mugambi. We must all take cognizance of the appeal processes provided in our laws for any party who feels dissatisfied with a court ruling, rather than resort to revenge missions against the Judiciary. Such actions not only seek to undermine the authority of the courts and administration of justice, but also suggest that judicial decisions can be influenced by external factors other than the law.

Mr. Speaker, Sir, it is imperative that we take note of these actions by the NPS and their potential impact on our judicial system. As a retired judge and Senate Minority Leader, I have also suffered the wrath of holding the Executive accountable that resulted in the withdrawal of my security detail. This unjust behaviour of the National Police Service (NPS) of withdrawing security detail without stated and justifiable reasons for the same must stop henceforth.

Mr. Speaker, Sir, we must respect the principle of separation of powers and uphold the rule of law. The independence of the Judiciary is a fundamental tenet enshrined in our Constitution. It is essential for the protection of human rights, promotion of fairness and upholding of democratic values.

The Judiciary must be allowed to operate free from external pressures and interference, ensuring that every case is heard and adjudicated based solely on its merits.

Mr. Speaker, Sir, we must safeguard judicial independence and ensure that the Judiciary can fulfil its role without compromise. Let us uphold the principles of justice, fairness, and the rule of law for the benefit of all Kenyans.

I thank you.

Sen. Justice Retired Stuart Madzayo, EGH, MP, Senator for Kilifi County.

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

PERSONAL STATEMENT

NOMINATION TO THE POSITION OF DEPUTY PARTY LEADER OF ODM

Sen. Osotsi: Mr. Speaker, Sir, I rise Pursuant to Standing Order No.58 to make a personal statement regarding my nomination by the Orange Democratic Movement (ODM) Party to serve as the Deputy Party Leader.

(Applause)

In light of the significant vacancies created by the recent resignation of our two Deputy Party Leaders, as well as the National Chairperson of ODM, the Secretary of Political Affairs and a member of the Party Election Coordinating Committee, the Party Central Committee, convened on 9th August, 2024 to deliberate on the critical leadership matters.

These departures steered substantial interest within our party, demonstrating the members' dedication and passion towards the party's leadership and future.

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Mr. Speaker, Sir, I stand here with profound gratitude to our party Leader, Hon. Raila Amolo Odinga, and the entire ODM fraternity for placing their trust in me for this important role.

My nomination as the Deputy Party Leader is not only a personal honour, but also a reflection of the party's confidence in this Senate and the essential role we play in the governance of our nation.

(Applause)

The ODM has been a strong pillar in the promotion of devolution and the passage of the Constitution of Kenya, which remains central to our democracy. My selection is a reaffirmation of the party's unwavering belief in the principles of devolution, which we, Senators, are entrusted to safeguard.

As I embrace this responsibility, I pledge to serve our party with the same dedication and integrity that have guided many of us in our various capabilities.

I extend my deepest appreciation to all those who supported me, including my friend and SG, Edwin Sifuna, Siaya Sen. (Dr.) Oburu Odinga and all the ODM Members in this House.

(Applause)

Sen. Sifuna: Present and former ODM members.

Sen. Osotsi: Yes, present and former ODM members.

(Laughter)

The Speaker (Hon. King): Order.

Sen. Osotsi: Mr. Speaker, Sir, I encourage those who were not selected to unite with us in advancing and strengthening our party mission. Together, we continue to build on the legacy of ODM and lead the party to greater success for the betterment of our nation and the devolution process, which is dear to this House.

I thank you.

(Applause)

The Speaker (Hon. King): Now, Hon. Senators ---

(Sen. Sifuna consulted loudly)

Order, Sen. Sifuna. Pursuant to Standing Order No.53(3), I will allow comments on the Statements that have been sought under Standing Order No.53 and that excludes the Statement by Sen. Madzayo, read on his behalf by Sen. Sifuna, and the Statement by Sen. Osotsi. Your comments shall be restricted to the Statements made pursuant to Standing Order No.53.

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(Loud consultations)

Proceed, Sen. Maanzo. Read your Standing Orders, Hon. Senators.

Sen. Maanzo: Thank you, Mr. Speaker, Sir. I had prepared myself to make comments on Sen. Sifuna's matter, but unfortunately, from your ruling, then I am unable to proceed.

The Speaker (Hon. King): Then take your seat. Proceed, Sen. Cherarkey.

Sen. Cherarkey: Thank you, Mr. Speaker, Sir. I hope you will allow under Standing Order No.1 as I contribute. I wanted to say something about cess.

The Speaker (Hon. King): I have made a ruling.

Sen. Cherarkey: Okay. Mr. Speaker, Sir, we have not seen cess money in Nandi, especially on the issue of sugar and tea. I thank Sen. (Prof.) Tom Ojienda for bringing that up and the Deputy Party Leader of ODM, who is my neighbour from Vihiga. We are working closely under the broad-based engagement to address the issue of cess.

(Applause)

I have had a sitting and I am happy that he enjoys unlimited access to broad-based engagement within Government as the Deputy Party Leader, so that we can discuss the issue of cess going into the future.

I encourage Sen. (Prof.) Tom Odhiambo Ojienda. When the Committee shall be looking into this matter, we need to ensure that we demand for the cess money. Should it be given to Kenya Rural Roads Authority (KeRRA) or the Kenya Urban Roads Authority (KURA) or even the county governments, going into the future? Meanwhile, of late I have seen the Professor wearing more of orange colours unlike before, and I hope the Secretary General (SG) is noting that.

Mr. Speaker, Sir, even as we look at the cess money across Kericho County, Bomet, Nandi, Vihiga, where our Deputy Party Leader of ODM comes from, we must sit as a Committee and House to audit this money. You recall when you were the Governor of Kilifi, where you left a very indelible mark in terms of governance and leadership in that county, you used to receive what we call Road Maintenance Levy Fund (RMLF).

I am happy I have served long enough in the County Public Accounts Committee (CPAC) and you were a very good client when you used to appear before our Committee, Therefore, I am happy that you continue to maintain the same tradition.

(Laughter)

I insist that the issue of taking Road Maintenance Levy Fund to counties should be returned. The issue of cess money should be given to the Roads Authority, so that we can have roads in Nandi, Kisumu or elsewhere.

Mr. Speaker, Sir, I support this statement and also wish the Deputy Party Leader of ODM all the best. He has our support. We will ensure we support him before the Floor of

the House. However, out of curiosity, ODM has never brought even one governor in the spirit of devolution, so that we can impeach or not.

I thank you.

(Laughter)

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

Sen. Sifuna: Mr. Speaker, Sir, allow me to comment on the Statement that has been requested by Sen. Raphael Chimera, on this issue of tolling along the Dongo Kundu bypass. Indeed, we at the Senate Committee on Roads, Transportation and Housing, which is ably chaired by Sen. Thang'wa, have resolved to invite the Cabinet Secretary for Roads and Transport to give us the Government's position; the Kenya Kwanza Government's position, on tolling on roads.

(Loud consultations)

The Speaker (Hon. Kingi): Order, Senate Majority Leader. You are the Majority Leader for Kenya Kwanza.

Sen. Sifuna: Correct.

(Laughter)

The Speaker (Hon. Kingi) Proceed.

Sen. Sifuna: Mr. Speaker, Sir, thank you for that protection. We, as the Committee on Transport and Infrastructure, wanted to know what the Kenya Kwanza Government position is on road tolling. Since, we will wake up one day and we hear that here in Nairobi they are going to start tolling Thika Road, for instance, a road that was built using taxpayer's money and Kenyans have been using these roads all this time.

You cannot just wake up one day and start tolling Thika Road or the Southern Bypass. We had proposed to summon the Ministry, so that they come and tell us what the policy position is. However, I was very happy reading in the newspapers this week that out of the public outcry, they have abandoned that path. That they would come up with a new tolling policy for the roads that have been constructed, especially the ones done recently, including the Dongo Kundu Bypass.

Mr. Chairman, Sir, we still continue to see the Kenya Kwanza Government insisting on rates that have been declared unconstitutional and un-leviable by the courts in the calculation of the prices of fuel, including this month. We want to know the policy.

The people of Dongo Kundu might not be as lucky as the people of Thika Road and the Southern Bypass because that is a fairly new road. If they start off by tolling it, maybe it would be different from the policy. That you allow people to use roads, and then out of the blue decide that you are going to toll those roads.

In the response, the Committee must insist that one of the problems we have is no clarity of Government policy. It is not fair for people to be ambushed every day by changes of policy. I wish the Chairperson of the Roads and Transportation Committee was here.

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Even on the question of concessions to the airport, one of the problems is that this Government does not know how to communicate its policy.

We were here with you in November of last year when the then Cabinet Secretary, hon. Kipchumba Murkomen, told us that they were going to put out an international tender to invite expressions of interest to upgrade Jomo Kenyatta International Airport (JKIA), only for us to be told months later that there is a different process that is going on under the Public Private Partnerships (PPP) Act.

In fact, he had told us that the international tender would go out in January of this year. That confusion, lack of communication when policy changes and the lack of involvement of the public in policy decisions, is what is bringing this problem.

I hope that when the Committee deals with this issue, there can be some formal clarification of what the government policy is on tolling. We had abandoned tolling because we introduced Road Maintenance Levy Fund (RMLF). That instead of charging tolls on the road, let us put it as part of a cost of fuel, and then use it to maintain our roads.

If there has been a policy shift, it is incumbent upon the Government to give information on the new policy. That they have abandoned RMLF and gone back to tolling, when it will begin and whether it is on all the roads of Kenya or certain roads.

However, for things to be happening like this, shrouded in secrecy and lack of clarity of policy, is what is bringing problems for the Kenya Kwanza Government. I can advise the Government from those of us who are outside, that communication is key. Clarity in policy is important if you are going to win the support of the people.

I thank you.

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

Sen. Orwoba: Thank you, Mr. Speaker, Sir. I rise to add my voice on the Statement by Sen. Chimaera. Before that, I congratulate Sen. Osotsi on his new position as the Deputy Party Leader of Orange Democratic Party (ODM). We are very happy to see you there. I am sure that my governor of Kisii County---

The Speaker (Hon. Kingi): Sen. Orwoba, you are out of order.

Sen. Orwoba: Congratulations, Sen. Osotsi.

On the Statement by Sen. Chimera on the Talanta Hela Project, there are three issues that he has raised. Two of them touch on how we are developing talents. I ask Sen. Chimaera to go and look for Sen. Sifuna's proposed Bill on the county sports fund because some of the issues that he is raising on this Statement are being cured there.

Mr. Speaker, Sir, we have had a situation where we had a former Cabinet Secretary for Youth Affairs and Sports who launched an app that is not working to date. The Talanta Hela Project is theoretically supposed to deal with sports issues from end to end. I hope that our new Cabinet Secretary for Youth Affairs and Sports, who has just been sworn in, will be able to address these issues.

As we talk about sports and try to devolve it to the county level, there are several issues, including the one on this statement, where Sen. Chimera is asking for a detailed criteria for appointing leaders in national sports organisation.

Most of these organisations have had the same leaders for over 10 years. They do not hold elections; and they have cartels. We have a situation where, as a national

Government, we are trying to develop our sports, but the institutions and organisations that are there are so rotten that we are unable to go to the grassroots and deliver.

As a member of the Standing Committee on Labour and Social Welfare, which this statement is being committed to, I encourage those interested to go find the county sports fund and find out the issues that we are trying to cure there. That is a good Bill.

Mr. Speaker, Sir, I still want to congratulate Sen. Osotsi and the governor for Kisii County, who is also a Deputy Party Leader.

Thank you.

The Speaker (Hon. Kingi): Sen. Orwoba, you cannot defy the ruling of the Chair. I am tempted to ask you to withdraw, but since it is the first day, you will remain in for the remainder of the afternoon.

Sen. Wafula, proceed. Is Sen. Wafula not in the Chamber?

We now proceed to the next Order.

(Sen. Wafula walked into the Chamber)

(Laughter)

(Sen. Cheruiyot spoke off record)

Senate Majority Leader, you know the challenges we have with the system. I do not have any name on my dashboard.

You may proceed, Senate Majority Leader.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I want to react to two Statements. The first one is by Sen. (Prof.) Tom Odhiambo Ojienda, my good neighbour, on cess that is levied by county governments.

In the second Senate, immediately after the promulgation of the new Constitution and this House came into being, we put up a spirited fight to stop county governments from levying cess on farmers, particularly tea farmers. In the Budget and Finance Committee, we forced Kenya Tea Development Agency (KTDA) to refund monies to the farmers through their county governments.

This is because we held the view that it is double taxation. We still hold the same view right now. The farmers of any crop, be it sugarcane, like what Sen. (Prof.) Tom Odiambo Ojienda is talking about or tea, cotton and coffee, pay their fair share of taxes.

Therefore, they deserve to receive as much service as anybody. However, given the financial difficulties and space that we are in as a country, we have come to accept that charging cess and levies perhaps may be a way to better strengthen and give advantage to our farmers with regards to various things like repair of roads in the fields and such like things.

Mr. Speaker, Sir, I am, however, disturbed because county governments do not help their cause. We might be here as Senate and are interested in pushing the cause of devolution, but given how county governments continue to treat the farmers---

I know of counties where farmers have been levied cess on transportation and other things, but two or three financial years down the line, that money is accumulated in the

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accounts of county governments with no roads being done in the regions where they had collected that money. Therefore, unless counties are ready to provide and give good account of the monies that they collect from our farmers, I hold the view that as a House, we should not allow them to pursue that road.

Mr. Speaker, Sir, this is known in the public. I had an engagement last week with sugarcane farmers from my county. They know that the Sugar Bill, 2022 is now on the mediation stage. There is a debate between the Senate and the National Assembly.

Part of the amendments the National Assembly has rejected is a proposal by the Senate to have the road levies or part of the cess money that do roads in the sugarcane zones be done by county governments. The National Assembly holds the view that that money needs to go to Kenya Rural Roads Authority (KeRRA).

When I asked the farmers whom they prefer that we take this money to and asked them to instruct me as their representative so that as I go to speak out on their behalf; they were unequivocally clear that money should be given to the Kenya Rural Roads Authority (KeRRA). If you give it to county governments, they will never see that money.

Mr. Speaker, Sir, unless counties become prudent in how they use these resources, it will be a long time before citizens trust them with levies as much as we are pushing for these resources to go to county governments. I, therefore, hold the view that Sen. Ojienda is right in his place.

I also hope the Committee on Budget and Finance can do justice to the people of this Republic by ensuring that they put in place mechanisms; a time period within which if a county charges cess to farmers, they will need to dispense with either providing services to *wananchi* or returning that money if they are unable to procure the services that are needed.

The last one is on the issue of cess or the road tolling that has been brought by Sen. Chimera. This matter is not as simple as Sen. Sifuna wants to put it.

(Sen. Orwoba approached the Chair)

The Speaker (Hon. Kingi): Sen. Gloria, you are out of order. Standing Order No.117 – you cannot walk in between the Speaker and the Senator speaking. That is exactly what you have done.

Proceed and conclude, Senate Majority Leader.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I was saying that this issue of toll roads is not as simple as many of our colleagues want to put it. I represent the people of Kericho in this House and I know that the Government wants to build a toll road from Rironi here in Nairobi, all the way to Malaba.

The people I represent in this House continue to pay for the loans that were taken to build Thika Road, Dongo Kundu and many other roads that have been done elsewhere. Tell me, why in my rightful mind I need to stand to defend citizens of a part of a country where monies borrowed by the Republic of Kenya were used to do roads for them and they are driving on those roads free of charge, whilst my own citizens as they travel upcountry have to pay to use the so-called toll roads?

This conversation must be holistic. It is as simple as saying that do not toll this one or the other one. We have to classify the roads and the Ministry of Roads and Transportation must come before this House and set a limit within which the Government of Kenya, either by funds appropriated by Parliament or through loans have built roads in various parts of the country. If a certain threshold is reached on the amount of money spent on a road, we will need to agree---

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

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

Sen. Sifuna: Mr. Speaker, Sir, my point of order is that the Senate Majority Leader is misleading the House because it is not true to say that---

The Speaker (Hon. Kingi): What is the Standing Order that is being contravened?

Sen. Sifuna: Standing Order No.105 on statement of facts.

The Speaker (Hon. Kingi): Then state as much.

Sen. Sifuna: Mr. Speaker, Sir, it is not correct to say that the people represented by the Senate Majority Leader, the people of Kericho are the only ones paying for the roads or they do not use the roads that were built using our taxes. I can assure the Senate Majority Leader that even residents of Kericho get to benefit from the use of the Thika Super Highway and the Southern Bypass.

This is because, they do not just stay in the village as has been demonstrated by Sen. Cheruiyot himself. He is from Kericho but he does not drive on the roads in Kericho only when he is here. I have seen him in other parts of the country and we use the same roads. It is not proper for him to make that assertion that the people of Kericho are paying for roads they do not use because they use those roads.

The Speaker (Hon. Kingi): Senate Majority Leader, kindly proceed to conclude your contribution.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, Sen. Sifuna is completely lost and he does not understand what I am trying to say.

The point is, there is a specific reason a road to a particular place, region or location is built because the people that head to that part of the country use it more than others. You cannot say that because I drive on Thika Road, once in five years when I am going to watch a football match at the Moi International Sports Centre, Kasarani Stadium, then my people have used that road. It is not the same as the road from Total, Westlands here to Nakuru County as I drive home over the weekend.

The point I am trying to make and I hope that colleagues can be convinced is that the conversation on the tolling of our roads cannot be limited to particular roads that have been built over a period of time. It must be based on value. That is what the rest of the world does. If the Government spends money beyond a certain limit, then that road is tolled. It does not matter whether it is done now, yesterday or in 1963.

This is so that the principle of equity is observed.

I thank you.

The Speaker (Hon. Kingi): Sen. (Dr.) Boni.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. I rise to comment on the Statement by Prof. Ojienda and agree with him on the issue of use and misuse of cess is a

matter of grave national importance. I would like to combine that with the clarification required by Sen. Chimera on the Dongo Kundu Road.

The Senate Majority Leader has been spot on; whereas emotions of defending devolution are forcing us to disagree with the National Assembly, that cess money should not go to KURA and instead it should come to counties, matters are not the same on the ground. People do not want that.

During the recess, I was on a road twice which is now impassable from Kambi ya Mwanza to Shivagala, Kambiri, Shiamberere, Ikolomani up to Rondo and Shinyalu. People were there with twigs, planting bananas on the road and saying that their Governor must go because he is not fixing that road. Why am I quoting it?

This is a road that traverses between Shinyalu and Malava, net producers of sugar. In those areas, we have West Kenya, Butali Sugar, which pay cess. If that is not enough, even Mumias Sugar, pays cess. The governor for the last two years has never spent a single cent on any road there to justify the money he collects as cess.

Mr. Speaker, Sir, before devolution, the defunct local authorities when cess used to be taken were fixing our roads. I am not in the habit of activism or picketing because I am a respected national leader and also because I do not believe that sufurias can be hats and caps. Therefore, when you see me join *wananchi* in activism by saying that governor so and so must go, it is because there is justification.

Even if there are no roads in Kilifi where you come from, Mr. Speaker, Sir, or there is a challenge of roads in Meru for example, you do not have the luxury of cess that we collect in Kakamega, Bungoma and Busia. I, therefore, put the governors of Busia, Kakamega, Bungoma, Kisumu, Homa Bay and Migori counties on notice because they are abusing cess. The primary intention of cess was to fix roads so that cane will not rot in farms. However, they do not do it.

I would like to congratulate the Controller of Budget (COB) and I urge Members to visit that website. She has exposed the shame that is our counties. She is telling us how our governors use the money we fight for here once it is in their custody.

Mr. Speaker, Sir, a county like Kakamega can spend a whopping Kshs418,640,000 million purely for purposes of flying around. They fly in and out of Dubai, Washington and everywhere at the cost of *mwananchi*.

When the same Kshs418 million is the same money, we are asking for it to be spent on compensating people in Muranda Ward who are supposed to be resettled so that we can construct the new airport. Instead of committing that money to that development expenditure, the Governor of Kakamega chooses to enjoy, as President Kibaki would say in this House, “Ku-enjoy”. That is how President Kibaki used to say it.

Mr. Speaker, Sir, this issue of how we spend our money must become the main debate here soon after we pass the Division of Revenue Bill. Right now, we are fighting hard, as a committee, to ensure that the Government does not effect the deduction from Kshs400.1 billion due to county governments to Kshs380 billion. Nonetheless, I ask myself, why are we struggling when the money will be misused?

I cannot stop without congratulating the Governor of Homa Bay, Hon. Gladys Wanga, and the governor of Nairobi, Hon. Johnson Sakaja, who have led in raising their

own source revenue. This is commendable, together with the 14 other governors who have led, including Professor Anyang'-Nyong'o.

He raised his own source revenue by 45.8 per cent. We want to congratulate this kind of governor. How, even as we congratulate governor Sakaja, again, we want to ask him if it is not enough for him to tell us how he collected Kshs12.9 billion. You should also tell us how you are using that money. If governor Sakaja was using those billions well, which are collected from us, the residents of Nairobi would not be seeing garbage and blocked sewers. You are on Mombasa Road and can see raw sewage moving around.

It is forcing the Cabinet Secretary in charge of the environment, hon. Aden Duale, to speak as if he wants to run the county government of Nairobi. Cleaning up River Nairobi should not be the work of the national Government. The devolved government of Nairobi is the most funded county in this country.

It is the one which controls the biggest economy among the 47 counties. It should be able to provide us with services.

Thank you, Mr. Speaker, Sir, for this chance.

(Sen. Orwoba spoke off record)

The Speaker (Hon. Kingi): Sen. Orwoba, you continue being out of order. You know, under Standing Order No. 98, I want to believe you have a copy of the Senate Standing Orders. You can only rise on a point of order when another Senator contributes. No one is contributing, as you can see. So, whom do you want to call to order? Let us leave it there.

Next, Sen. Wamatinga.

Sen. Wamatinga: Thank you, Mr. Speaker, Sir. I also rise to support the Statement by Sen. (Prof) Tom Ojienda. Indeed, we must hold the county governments into account for how they spend the revenue that has been raised.

I also want to take this opportunity to congratulate all the governors and county governments that made it possible to increase their own source revenue. It is, indeed, high time that we came up with innovative means and mechanisms for raising our own source revenue. I would also want to challenge ourselves as Senators to start defining the empowerment programmes undertaken by various county governments.

Mr. Speaker, sir, a lack of this definition has seen all manners of empowerment programmes being employed and leaves many questions about what should be an empowerment programme. I know that for devolution to work, people at *mashinani* must feel that money and services have been devolved. Most importantly, they want to see sustainable development that will change their lives.

That begs the question, if we fail to define two things, one, what is empowerment? Two, what is public participation? We have seen in various county governments, without wanting to name any, where public participation is held, a few members of the public come, and it is deemed to be public participation. They make a decision, which is contested in a court of law and thrown out.

Maybe it is high time we, as Senators came up with a formula for defining the spirit of public participation. What did our constitution intend to achieve by saying there must be public participation? We must look at the composition. Who must attend? Is it enough to have ten people participate in a public discussion where a decision ought to be made that will affect hundreds of thousands of people? If these 10 people come, what is the composition of these 10 people? We must look at that. We must borrow a leaf from the likes of Sen. (Prof) Tom Ojienda, who understands the spirit of the Constitution of this country and the law.

We must come up with a formula so that the counties that are not endowed with highly literate minds do not suffer at the hands of selfish governors who would go and spin the law so that they can force laws and judgments to be made by the public only for the public to realise later that they end up harming themselves---

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

The Speaker (Hon. Kingi): Sen. Wamatinga, do you wish to be informed?

Sen. Wamatinga: Mr. Speaker, Sir. I will let her inform me privately because I think she will take a little of my time. So that is okay, but it will happen in private.

(Laughter)

The Speaker (Hon. Kingi): In other words, you have denied. Proceed.

Sen. Wamatinga: Thank you, Mr. Speaker, Sir. I know it is important to tap into my colleagues' resources and knowledge, but choosing when to tap into that knowledge is equally important. I will approach her after this.

If we want to see the advancement of devolution in our counties, it is important that we look at the things that our people complain about. When we had an impeachment debate in this House, the word empowerment fell several times. I heard from both sides that the people prosecuting their cases here try to say this is empowerment, and the other threshold does not meet empowerment.

As diverse as this country is, as diverse as our counties are, it would be good to come up with a threshold where we indicate whether giving a cup, a spoon, or a knife is empowerment. I have seen some counties do all manners of things in terms of empowerment. As Senators, I would want us to discuss how we can define the threshold to ensure that Kenyans are not taken for a ride.

Mr. Speaker, Sir, I support the Statement.

The Speaker (Hon. Kingi): Next Order.

BILL

First Reading

THE ENVIRONMENT LAWS (AMENDMENT) BILL (SENATE BILLS NO.23 OF 2024)

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

Next Order.

BILL

First Reading

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL
(SENATE BILLS NO.27 OF 2024)

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

Next Order.

BILL

First Reading

THE COUNTY LIBRARY SERVICES BILL
(SENATE BILLS NO.40 OF 2024)

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

MOTIONS

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

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

(Sen. Tabitha Mutinda on 6.8.2024)

(Resumption of debate interrupted on 7.8.2024 – Afternoon Sitting)

(Question to be put)

The Speaker (Hon. Kingi): Hon. Senators, the debate on this Motion had been concluded. I will now proceed to put the question, but before I do that, Clerk, do we have the requisite quorum?

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

Now, hon. Senators, voting shall be by voice. Therefore, I will proceed to put the question unless the Chairperson of that Committee has any other observations.

Sen. Tabitha Mutinda: Thank you, Mr. Speaker, Sir. We had debated on this. I just want to clarify that the issue with the Bill from the National Assembly on the amendment of the Equalization Fund is that they reduced Kshs10 billion. Hence, the Committee resolved to reject the amendments. I therefore urge my colleagues to reject the amendment.

The Speaker (Hon. Kingi): That report was laid before the plenary. I think the Members are adequately informed on what to do.

Sen. Tabitha Mutinda: They were asking me what the issue is. I thank you for allowing me to just put forth my voice and ask them and request them to vote “no”.

The Speaker (Hon. Kingi): No, you cannot campaign, Madam Chairperson. I am afraid you may not be able to have that latitude. Now, Hon. Senators, I will proceed to put the question.

(Question put and negatived)

Next Order.

ADOPTION OF REPORT ON THE FINANCIAL STATEMENTS
OF VARIOUS COUNTY ASSEMBLIES

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

(Sen. M. Kajwang' on 30.4.2024)

(Resumption of debate interrupted on 8.8.202 – Afternoon Sitting)

(Division)

The Speaker (Hon. Kingi) Now, this particular Order is deferred.

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(Motion Deferred)

Next Order.

BILL

Second Reading

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

(Sen. Chimera, on 30.5.2023)

(Resumption of debate interrupted on 23.7.2024)

(Division)

We will defer Order No.13.

(Bill deferred)

Next Order.

BILL

Second Reading

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

(Sen. Wamatinga on 26.3.2024)

(Resumption of debate interrupted on 7.8.2024P)

(Division)

That Order is also deferred.

(Bill deferred)

Next Order.

BILL*Second Reading*THE EARLY CHILDHOOD EDUCATION (AMENDMENT) BILL
(SENATE BILLS NO.54 OF 2023)*(Sen. Oketch Gicheru on 29.2.2024)**(Resumption of debate interrupted on 7.8.2024P)**(Division)*

That Order is deferred.

(Bill deferred)

Next Order.

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

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

*(Sen. (Dr.) Khalwale on. 24.7.2024)**(Resumption of debate interrupted on 6.8.2024)*

The Speaker (Hon. Kingi): Now, hon. Senators, we recall that when the debate was interrupted on 6th August 2024, Sen. M. Kajwang' was on his feet and had a balance of 15 minutes. I do not see him in the House. Therefore, this Motion is still very much on the Floor. It is open for debate. So, no Senators wish to further contribute to this Motion.

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Sen. Cherarkey, I can see your name on my dashboard, but your physical being was not felt. Also, you had already spoken to this Motion. From the record, you had already contributed to this Motion. So, there being no other Senator wishing to contribute, I will ask the Mover to reply.

Sen. Boni, if you are not in a position to reply, we can defer it so that you prepare yourself accordingly.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. I am the one who moved this Motion on behalf of the Chairperson of the Committee. I am glad that several Members were able to contribute in support of the nomination, of one Lynette Washiali, as a member of this Commission.

I thank all the Members who spoke in support of this Motion. Without belaboring the debate, I want to request that Members, again, as you have demonstrated on the Equalization Fund, stand with the Report of the Senate on Finance and Budget Committee and vote to support this decision.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Now, Hon. Senators, I will at that juncture defer that Order.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, before I had failed to draw your attention. Pursuant to Standing Order No. 66 (3), I request that the putting of the question be deferred to another day.

I thank you.

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

(Putting of the Question on the Motion deferred)

Next Order.

BILL

Second Reading

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

(Sen. Tobiko on 1.8.2024)

(Resumption of debate interrupted on 1.8.2024)

The Speaker (Hon. Kingi): When the debate was interrupted on Thursday, 1st August, 2024, the Hon. Sen. Peris Tobiko was contributing and had a balance of three minutes. Hon. Senator, you may proceed to take your three minutes.

Sen. Tobiko: Mr. Speaker, sir, I think I was done.

Thank you.

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

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Sen. Sifuna: Mr. Speaker, Sir, let me state that I rise to support this Bill that seeks to amend the land regime in this country. This is a very brief Bill. If you look at it, I can count only one material clause because it is Clause 3 that seeks to now provide for a regime of registration of land that is held by a public body or institution, being able to apply to the registrar for the registration of public land allocated by the Commission in the prescribed form.

Mr. Speaker, Sir, in Nairobi City County, and I am sure even across the country, we have had serious challenges with the registration of land that is owned by public entities and bodies. In fact, we had occasion one time to have a conversation with the governor of Nairobi City County before the Standing Committee of Roads and Transportation. When the question was put to him on whether the county government had titles for the old city council estates land which are earmarked for redevelopment, his answer at that particular moment in time was in the negative.

The challenges that we face, especially in Nairobi City County with public land, is that for as long as a piece of land remains untitled, it is susceptible and exposed to the land grabbers and other nefarious characters who want to take the land away from the public. In fact, the highest number of complaints reaching my office now are about land that has been grabbed. Just today, I have received at least two of those, and it is becoming too much.

I have heard even senior Government leaders complain that we must stem this spectre of land grabbing in any piece of land that has been set aside even in estates for public use. These days, you wake up to find a wall going up and hear that a private developer has taken it up to the extent that when the Cabinet Secretary for Lands, Public Works, Housing and Urban Development appeared before this house, then Hon. Alice Wahome, told this House that somebody had grabbed the land on which Tom Mboya Social Hall was standing.

I am happy that at that particular moment in time, she had assured the people of Nairobi City County that we were going to recover the land upon which Tom Mboya Social Hall sits and make sure that it is never grabbed again. Unfortunately, the intervening events meant that there were changes in the Ministry, and we hope that going forward, the Government will ensure the sanctity of these pieces of land. I am happy this amendment will now require the registration of land that is set aside by persons or even land belonging to land-buying companies for a public purpose.

I remember, again, in last year's session, the Cabinet Secretary for Education was before this House, and we confronted him with the spectre of Visa Oshwal Primary School. If you ask a regular Nairobiian or anybody in Kenya, they will tell you it is a public primary school. However, it was being claimed by the Oshwal Community, which is a private entity.

Therefore, we want to make sure that the gap that was there in the registration of such pieces of land is closed so that we can have title deeds for all land that is allocated to public bodies or even land that is donated by individuals and land buying companies for purposes of a public use.

Mr. Speaker, Sir, this will see to it that these disputes that we have between private persons, private individuals, the so-called land grabbers and public bodies are solved. For

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as long as there is a public body, such as county government or even a national Government institution does not have the title deed, this creates a leeway for people within the lands departments and other places to come up with forged documents. Then you hear that land that was set aside for a public purpose has been grabbed.

Therefore, without going into too much, this is an amendment that is timely. I believe that it is responding to a real problem and we need to move with haste to pass it. We are hoping that once titling is complete and all the public spaces have title deeds registered to the public bodies that own them, then, we can cut down on the number of cases that involve grabbing of public spaces in our counties.

I thank you.

The Speaker (Hon. Kingi): There being no other Senator wishing to contribute, I will call upon the Mover to reply.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I want to thank all the Senators who have taken time to contribute to the Land Amendment Bill (National Assembly Bills No.40 of 2022).

It is quite a straightforward Bill that will secure the interests of our public institutions which have fallen prey to these land grabbers that are so vicious across the length and breadth of our Republic, but mostly targeting vulnerable public institutions for obvious reasons.

Mr. Speaker, Sir, public institutions are not necessarily owned by anybody, so to speak. Therefore, on many occasions, they fall victim to these dubious characters who go and change land records and alter boundaries.

Almost every public institution in this country, especially those that have big parcels of land, from technical training institutions, universities, and hospitals, have fallen prey at one time or another to these kinds of schemes.

Mr. Speaker, Sir, you do know for a fact that almost every university in this country is in court with one character or another, from the University of Nairobi, Jomo Kenyatta University of Technology (JKUAT), Moi University, all these, especially the old universities that the previous governments had taken time to allocate sufficient land so that as the institutions grow, they can expand to become great institutions. Today, they are in court, with this or the other land grabber.

Therefore, that is the importance of this Bill; to ensure that these institutions have titles in their name, so that when anybody tries to play any monkey games, they can provide evidence that the land belongs to them.

I thank colleagues who have taken the time to speak to this. I hope we can conclude on this particular Bill, vote and pass it so that the President and the Ministry can go on to give these public institutions their title deeds in their name; so that nobody ever dreams of altering the ownership of land that is owned by them.

With those many remarks, I beg to reply.

The Speaker (Hon. Kingi): Senate Majority Leader, are you making any requests for postponement of the putting of the Question, or do we proceed?

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, pursuant to Standing Order No. 66, I wish to request that we defer the putting of this question until such a time as we shall agree on your advice. I thank you

(Putting of the Question on the Bill deferred)

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

BILL

Second Reading

THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL
(SENATE BILLS NO. 12 OF 2024)

(Sen. Cheruiyot on 8.8.2024)

(Resumption of debate interrupted on 8.8.2024)

The Speaker (Hon. Kingi): Now, on interruption of debate on 8th August 2024, Sen. M. Kajwang' was on his feet and had a balance of five minutes. I do not see him here, neither do I see him on my dashboard. Any Senator wishing to contribute to this Bill? I will therefore call upon the Mover to reply.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I beg to reply on this Intergovernmental Relations Amendment Bill. Actually, this is an Act of Parliament to provide for the anchoring in law of various organs of the devolution family, many of which are up to date.

I say this in my moving notes, that it is unfortunate that all these years down the line we have been unable to anchor some of these key institutions in the devolution family in law.

I gave an example of the Council of Governors (CoG), County Assembly Forum (CAF) and the rest. These are very key institutions. Each time we go for either the Legislative Summit or Devolution Conference, we keep on giving assurances to all these institutions that the Senate will set in place the legislative mechanism for enshrining into law these institutions. Unfortunately, we have not been able to do it.

Therefore, I appreciate colleagues who have spoken to this Bill, especially, with regards to the Council of Governors (CoGs) and the establishment of the County Assemblies Forum (CAF). This is something which we promised in 2016, when I attended the first Legislative Summit in Mombasa, and eight years down the line, is when we are doing it.

Therefore, I hope our Whips; Sen. Sifuna and Sen. (Dr.) Khalwale, can help us conclude on this law before we next meet Members of the County Assemblies (MCAs). We owe it to them to give them an anchor institution where they can converse about issues that affect their institutions and so on and so forth.

Mr. Speaker, Sir, the same can be said of the CoGs, an institution that the Senate has learnt to live with, if I may put it that way. In the very first days of existence, the Senate and the CoGs, we were not the best of friends.

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There are many things that we have said, including yours truly, about the existence of CoGs. However, we have come of age and we appreciate the important role it plays in entrenching devolution in our country.

All the successes and challenges that devolution continues to face are better addressed with CoGs and Senate working in sync. Therefore, to pass this legislation and ensure that we anchor them in law, it will be a step in the right direction.

Mr. Speaker, Sir, with those many remarks, I beg to reply.

I thank you.

Mr. Speaker, Sir, pursuant to Standing Order No. 66(1), I wish to place a request before you that we defer the putting of the question until such a time that we will agree jointly, subject to the availability of delegations needed to vote.

I thank you.

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

(Putting of question on the Bill deferred)

Let us go to the next Order.

BILL

Second Reading

THE HERITAGE AND MUSEUMS BILL (SENATE BILLS NO. 8 OF 2023)

The Chairperson Standing Committee on Labour and Social Welfare, proceed.
That Order is deferred.

(Bill deferred)

Let us go to the next Order.

Sen. James Murango, proceed; that Order is deferred.

BILL

Second Reading

THE AGRICULTURE AND FOOD AUTHORITY (AMENDMENT) BILL (SENATE BILLS NO. 13 OF 2023)

(Bill deferred)

Let us go to the next Order.

Sen. Miraj Abdullahi Abdurrahman, proceed. That Order is deferred.

BILL

Second Reading

THE COUNTY HALL OF FAME BILL
(SENATE BILLS NO. 18 OF 2023)

(Bill deferred)

Let us go to the next Order.

Sen. James Murango, proceed. That Order is deferred.

BILL

Second Reading

THE RICE BILL (SENATE BILLS NO.19 OF 2023)

(Bill deferred)

Let us go to the next Order.

Sen. Karungo Thang'wa, proceed. He is not present; that Order is deferred.

BILL

Second Reading

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

(Bill deferred)

Let us go to the next Order.

Sen. Chute, proceed.

BILL

Second Reading

THE COUNTY ASSEMBLY SERVICES (AMENDMENT) BILL
(SENATE BILLS NO.34 OF 2023)

Sen. Chute: Bw. Speaker, I am not ready to move the Bill.

(Sen. Oketch Gicheru consulted the Chair)

The Speaker (Hon. Kingi): I thought Sen. Chute is in the House.

Sen. Chute: Yes, Mr. Speaker, Sir, I have just said that I am not ready.

The Speaker (Hon. Kingi): You are not ready?

Sen. Chute: Yes.

The Speaker (Hon. Kingi): Okay, we will defer that particular order.

(Bill deferred)

Let us go to the next Order.

BILL

Second Reading

THE COUNTY PUBLIC FINANCE LAWS (AMENDMENT) BILL (SENATE BILLS NO. 39 OF 2023)

Sen. Kathuri Murungi is not in the House. That Order is deferred.

(Bill deferred)

Let us go to the next Order.

Sen. Edwin Sifuna, proceed.

BILL

Second Reading

THE ENERGY (AMENDMENT) BILL (SENATE BILLS NO. 42 OF 2023)

Sen. Sifuna: Thank you, Mr. Speaker, Sir. As you may know, I am a Member of the Senate Standing Committee on Energy.

I rise to move this Amendment Bill as a proud Member of that Committee that is chaired by the Senator for Nyeri County, the Sen. Wamatinga.

Mr. Speaker, Sir, in March 2023, at a sitting of the Standing Committee on Energy, there was a resolution by the Committee to conduct an Inquiry into the high cost of electricity.

This is an issue that many of us in this House have interacted with and at that particular moment in time, it had occupied many discussions around the country. At the

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point at which this inquiry was initiated, Kshs100 would get you only three units of electricity.

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

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

Mr. Temporary Speaker, Sir, in fact, out of Kshs100, Kshs51 were going to taxes, other charges and levies.

The Committee conducted a proper inquiry, including, meetings with various stakeholders. I remember the then Cabinet Secretary for Energy and Petroleum, Hon. Chirchir; stakeholders from Kenya Power and Lighting Company (KPLC); Kenya Electricity Transmission Company Limited (KETRACO); Independent Power Producers (IPPs) and others appeared before the Committee.

Mr. Temporary Speaker, Sir, there is a report of the Committee that was prepared in September, 2023. I do not recall the exact date when it was tabled in this House, but it is a matter of record that, in fact, it has been tabled before this House.

If you allow me, I will go through some of the observations and recommendations of the Committee. I will do this because the observations and recommendations out of that inquiry are the ones that informed the proposed amendments to the Energy Act in order to seal some of the gaps that we found as a committee.

Allow me to just read Page 7 of the Report that has the Chairperson's forward. One of the things that the Committee noted is that-

There is a general opaqueness in the disclosure of beneficial owners of power producing companies with the majority of them listing foreign companies as shareholders.

There was another observation at paragraph number 12, that-

The dispatch of power currently done by KPLC is not based on least cost merit order. Therefore, preference is not given to the cheaper power producers.

Another important observation that informed the amendments is at paragraph 20 where you will see the Committee say that-

Some power purchase agreements provide for mechanisms of discounts once a certain threshold is met. For example, Lake Turkana Wind Power Limited offers 50 per cent of the energy charge rate once they attain the discount energy threshold.

Lake Turkana Wind Power appeared before the Committee, in fact, in a meeting that was held in this very Chamber and attested to this. They were, in fact, protesting that Kenyans were being denied this benefit yet, it is actually woven into the power purchase agreement.

Mr. Temporary Speaker, Sir, if you go to the recommendations on page 8 flowing all the way to page 9 and 10, there is a recommendation that KPLC should dispatch power based on merit order, giving preference to the cheaper power producers.

This Amendment Bill is not complicated and long. There are only three proposals. As I have read to you the recommendations and observations of the Standing Committee on Energy, they all flow from those recommendations and observations of the Committee.

If you look at Clause 2 of the Amendment Bill, I have proposed that an amendment be inserted in the Energy Act immediately after Section 134.

This will be new Section 134A that requires a generating entity to enter into an energy purchase agreement to sell electrical energy to a licensed entity specified in the Third Schedule. Then we move to what the generating entity must consider when entering into such an agreement.

Mr. Temporary Speaker, Sir, we have introduced the principles of public finance enshrined under Article 201 of the Constitution into the decision to enter into an energy purchase agreement. These principles are openness and accountability, public participation in financial matters, good governance to ensure public funds are used prudently and responsibly, and sustainability. This is as a direct result of the feedback that we got during the sittings of the Committee to inquire why these electricity bills are high and Kenyans are complaining that something needs to be done.

As you saw, there was a clear manifestation of opaqueness in how people determine whether we need to enter into fresh Power Purchase Agreements (PPAs). Therefore, we have introduced a requirement that prior to procurement of electrical power, there has to be a feasibility study conducted to identify whether there is enough demand for electricity purchase that cannot be met by the existing production. We were told that if you look at your power bill, there is something called a capacity charge.

The capacity charge is charged on every consumer of electricity for all the capacity that has been contracted by Kenya Power and Lightning Company (KPLC) to supply power. That capacity means that every time you issue a license to a power producer, as long as that capacity to supply is there, we pay for it whether electricity is dispatched from their generating units or not.

Mr. Temporary Speaker, Sir, this is what the Committee felt and it is what informed my amendment: Before you give any other person a contract on purchase of power so to set up any new plants, a feasibility study must be conducted to tell Kenyans that the existing capacity cannot meet the requirements at the particular moment.

If you look at Section 134(A)(3)(B), there is also a requirement to ensure the process of procurement of electrical energy complies with the procedures set out in the Public Procurement and Disposals (PPD) Act.

What we have seen in the past is that there is no openness in how these people who hold these power purchase agreements ended up as suppliers to KPLC. The public is seldom informed and there is no information at all on when they are being procured and on what terms. It requires an inquiry of the House such as the one that we conducted for us to even know the terms that they have been given.

Mr. Temporary Speaker, Sir, we have introduced that amendment to ensure greater transparency. Then, as was noted by the Committee, it does not make any sense that you have cheaper available power yet the person responsible for dispatching electricity at KPLC decides to go for more expensive sources of electricity, such as those thermal generators. Evidence was given here.

I have alluded to it by Lake Turkana Wind Power themselves. We got to see their PPA ourselves. If a certain threshold of uptake is reached, we could enjoy a high discount of 50 per cent but as of the time when they were appearing before us, that threshold had

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never been met for some reason. KPLC will explain to the public why that is the case. They are never given that priority to be able to pass that benefit to Kenyans.

There is also a proposal to tie the hands of KPLC so that priority is given to those who generate electricity through renewable technology. This morning, the team from Tullow Kenya appeared before the Senate Committee of Energy to discuss the field development plan for the Lokichar Basin.

From the evidence given by the management of Tullow Oil Company (TOC), there is a recognition across the world that people are now moving away from fossil fuel energy and that we are struggling. The reason why the field development plan and the exploration in Lokichar Basin has delayed is that funding and credit for the development of oil fields have dried up because of the increasing awareness on the need to cut down on fossil fuels. Many people are now moving towards investment in green technology and green energy. So, they are struggling.

The management of Tullow themselves told us today the money has simply dried up. There are very few investors who are now willing to put money into oil exploration. In places such as the European Union (EU), there has been a moratorium that has been put that beyond 2030, vehicles that operate using diesel or oil-based fuel will be phased out. Therefore, there is a move towards greener sources of energy.

Mr. Temporary Speaker, Sir, we want KPLC to give priority to entities that generate through renewable technology. We gave the example of Lake Turkana Wind Power, Kipeto Wind Power and solar generators. They should be given priority as opposed to those that generate using heavy fuel oil, which is very expensive. On the disclosures, the Committee noted that many of the Independent Power Producers (IPPs) that have---

Mr. Temporary Speaker, Sir, can I get some---

As was noted by the Committee, many of the IPPs that hold PPAs as we speak today have not fully disclosed their ownership. It was a struggle for us, as the Energy Committee, to even know the beneficial owners of some of these companies.

There is a great suspicion amongst Members of the Committee and the larger public. Wherever there is secrecy to the ownership of a company, we will not be surprised to find that true owners are people here in the ministries and in Government. As a lawyer, you know that people hide behind shell companies, claiming that the company is operating out of India, for instance.

One of the recommendations we have made is that KPLC or whoever will be running our grid can only award a PPA to an entity that has fully disclosed its beneficial owners. It should be standard practice. If you have something to hide, we should not be doing business with you. You should be able to tell us outright who the owners of the company are.

Mr. Temporary Speaker, Sir, would you believe that as a committee, we were very shocked to find out that we do not know as a country how many of these PPA exist. Nobody tells us, even as Parliament. People are sitting on PPAs quietly as we pay for capacity charge on things that we are not even aware they exist or are generating from.

The Committee felt that it is important to have a register of all the PPAs that it has entered into. This must be published on its website and in the annual audit reports of the purchasing entity.

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The register in that subsection is to be prepared within 90 days from the date of operation of this section and be open to inspection by members of the public in accordance with Section 5 of the Access to Information Act. Lastly, we have provided that the authority shall not approve an energy purchase agreement that fails to comply with all these provisions that we are introducing.

With those many remarks, I beg to move. I request Sen. Madzayo to second.

The Senate Minority Leader (Sen. Madzayo): Mr. Temporary Speaker, Sir, I second.

(Question proposed)

The Temporary Speaker (Sen. Wakili Sigei): I will now invite Members to contribute to this Bill. On my dashboard, I have Sen. Gloria Magoma Orwoba.

Sen. Orwoba: Mr. Temporary Speaker, Sir, before I add my voice to this, it is very hot in the Chamber. I think you have seen Sen. Sifuna sweating. I do not know whether the Air Conditioner (AC) is working, yet we have been seeing a lot of renovations happening. Who approves money for renovations? They should ask us so that we tell them that we want ACs and other items. There are many funny things happening out here. We have a new red carpet, new lights and other items.

As a House that does oversight, it is imperative that we also learn to oversight ourselves. We need to know the budget that is being spent on funny things in this Building.

Mr. Temporary Speaker, Sir, I am sure you sit on the Liaison Committee. We began the financial year with pending bills which none of our committee Chairpersons can address. We are sitting here sweating, yet they have replaced the red carpet which nobody asked for. Nobody asked for a new red carpet but they have replaced it.

We need to understand that oversight should begin in this House. We will appreciate if they put the AC on.

The Temporary Speaker (Sen. Wakili Sigei): Serjeant-at-Arms, kindly put the AC on.

Sen. Orwoba: Of all the things that we did not need, one thing we needed was the AC.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Orwoba, your comments are noted. I expected you to appreciate the fact that there is a refurbished Chamber for you to utilise.

Sen. Orwoba: We are talking about austerity measures. When we see a new red carpet, we wonder who is doing these things and whether it is necessary. Who are the tenderpreneurs?

Mr. Temporary Speaker, Sir, I would like to add my voice to this Bill that is being fronted by our Senators as a result of the broad-based Government. We have to start appreciating that this is the kind of robust engagement we need to have in this House. Probably for the first time in the history of debate in this House, you can see that Sen. Sifuna, Sen. Eddie, Sen. Madzayo, and myself are speaking the same language.

On the issue of Independent Power Producers (IPPs), I think we have had a conversation about the fact that it is not transparent. We do not know who these entities

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are, what they produce and where they supply. It is time we made sure that Kenyans understand what is happening.

In the proposed amendments, they are saying that a generating entity may enter into an energy purchase agreement to sell electrical energy to a licensed entity specified in the Third Schedule. What we are trying to address is that we should get value for our money. We should understand why there are numerous blackouts and hold people accountable.

First of all, I congratulate the Mover of this Bill because it is timely. This is the time we should make a very unpopular decision of kicking out cartels.

Many people do not understand what we do in the Senate. It is not just about Bills and oversight but also ensuring that we hold people accountable even at the grassroots.

When we bring Bills here, it is not that we like debating but because we want to address issues to do with lack of transparency in provision of Government services and in some procurements that we have, particularly with regard to IPPs. That is the reason I am supporting this Bill by Sen. Sifuna.

I hope we will have other engagements and robust discussions as a result of what we now call broad-based Government.

Mr. Temporary Speaker, Sir, I support this Bill.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. Orwoba. Next is Sen. Osotsi.

Sen. Osotsi: Thank you, Mr. Temporary Speaker, Sir, for this opportunity to also contribute to the Energy (Amendment) Bill, 2023, which has been moved by the Senator for Nairobi City County, Sen. Edwin Sifuna. This is very important. This Bill is long overdue.

I worked in the energy sector before I joined politics. I used to work for the then Electricity Regulatory Board (ERB), which transformed to the Energy Regulatory Commission (ERC) and now it is called the Energy and Petroleum Regulatory Authority (EPRA) and this problem has been there.

We have always had the issue of the cost of power in this country. One of the factors that contribute to the high cost of power in this country is very expensive, secretive and satanic energy purchase agreements between the Kenyan Government and some IPPs.

This Bill will help us unlock the problem that has existed in this country for many years. It will ensure that the so-called IPPs who engage in power purchase agreements are known.

Sen. Sifuna is seeking to resolve the problem of disclosure. We must know who these companies are, the faces behind them, their interests and contents of the agreements. It is not right for a Government institution to enter into agreements with individuals or private institutions without the knowledge of the people of Kenya.

This problem highlights the main problem we have in this country. The main problem is lack of disclosure of material facts in agreements of this nature. Maybe we need to amend this to ensure that all such agreements are subjected to parliamentary approval.

I want to encourage Sen. Sifuna to look at the amendments and improve them further to require that these agreements, since they largely affect our economy, they must be looked at by Parliament so that the public interest is protected.

As I said, the amendments are going to give us disclosure of ownership information. We should know who the owners of these entities are, how much they draw from the people of Kenya for their personal interests, and the cost at which they sell electricity to companies such as Kenya Electricity Generating Company PLC (KenGen).

I think this Bill is timely. I encourage Members to support it particularly on the aspect of disclosure. Without disclosure, as it has been stated in the memorandum of the Bill, we are not sure what the money does. We do not know whether the money is used for money laundering, whether it is part of tax evasion schemes, or corruption. This will help us deal with all the social issues around non-disclosure of these agreements.

I do not know why it is so difficult for the Government to provide information on some of these issues.

We struggled with the Standard Gauge Railway (SGR) and up to now, we do not have clear information on some of the contracts of SGR. We have also struggled with these Independent Power Producers (IPPs). Currently, the biggest debate in this country is about Adani matter, which I can see the Chairman of the Committee on Roads, Transportation and Housing is smiling. He has done a good job and he is also my Member of the County Public Investments and Special Funds Committee (CPIC) to try and deal with the problem.

Mr. Temporary Speaker, Sir, it is high time that we demand that all such major agreements, particularly between the Government and private investors or individuals, must be disclosed to Parliament and processed in this House since they affect our people. We exist in this Parliament because we represent the people under Article 1 of the Constitution.

The other important issue I want to agree with the Mover of this Bill, is the matter of ensuring that these agreements are aligned or comply to the principles of public finance management under Article 201 of the Constitution on matters of openness, accountability, public participation and good governance in prudent and responsible management of public resources, on matters of sustainability, whether the agreement is sustainable or not.

We want a situation whereby such agreements, the value for money must be assessed. Therefore, the proposal to ensure that the Public Finance Management (PFM) Act is complied with is a laudable proposal in terms of ensuring, for example, public participation.

Public participation aligns to what I have said earlier, the involvement of Parliament in this process. The involvement of stakeholders in the energy sector in this process is very key. Consequently, I thank the Mover for also including that.

The other aspect is compliance with the best practices in procurement, particularly aligning this process to the Public Procurement and Asset Disposal Act (PPADA), that we already have. How do we identify these IPPs? Do we just wake up and say so-and-so will be an IPP and he becomes an IPP or there must be a competitive process?

Mr. Temporary Speaker, Sir, these are the same questions we were asking on the Airport deal also. Do you just wake up and say so-and-so, bring a proposal or you open the tender to competition, so that you have as many people bringing proposals on how they can manage some of these utilities? This is a very commendable amendment which I support.

The other very important requirement is that these companies or IPPs agreements are to be made public on their website and in their annual audit reports, so that Kenyans can look at them and make their concerns known, so that the value for money can be assessed and that Kenyans can now get a good deal from it.

We have to state very clearly that the energy purchase agreement is a rip-off. The people of this country have been ripped off for years. Some of the people who own these IPPs, we are told are either former Government officials or people who worked for these public utilities like Kenya Power and Lighting Corporation (KPLC) and Kenya Electricity Generating Company (KenGen).

Mr. Temporary Speaker, Sir, even as we discuss this Bill, we need also to find a way of how we can deal with those who have stolen from us through expensive Power Purchase Agreements (PPAs).

As we support this Bill, we should also look for the thieves who have stolen from us for years. I call them the 'thieves' because this is stealing. They must be brought to book. We must know the faces behind the PPAs and they must account for all the money they have stolen from Kenyans through these satanic and expensive agreements which they have signed with the people of Kenya.

Additionally, the provisions to ensure that Section 5 of the Access to Information Act (ATI), is an important amendment. Access to information is a constitutional right in this country. However, this right has been curtailed in many of these public offices. This is a piece of information that should be easily available.

I was surprised that even the Committee had difficulties in accessing these contracts. It should not be a problem to access a contract between investors and the Kenyan public through some of these public utilities. These amendments will make it easy for the public to access some of this critical information and process it to ensure that it is aligned to the interests of the people, good practices and it has value for money.

These amendments will ensure that the long-standing problem of expensive PPAs between the Kenyan Government through its key utilities, energy utilities and the IPPs are handled. As I said, even as we pass this Bill, I encourage the Committee not to tire. They should continue investigating this matter, so that we get to know who are these dark forces behind the IPPs. Why is it impossible to bring to book these people? Are they living on this earth or are they living elsewhere?

If there are people who are living on this earth and in this country, why is it so difficult to get them? If you start calculating how much this country has lost through these IPPs, some of them were started during President Moi's time, to date. Many years back. You will probably find that this is the money we need to build another airport and we do not need to bring Adani here. We can get money from these criminals to build an airport and other utilities.

I commend Sen. Sifuna for this very important and bold amendment. I know the owners of IPPs will be out to fight these amendments, but I ask the Senate to stand firm.

Mr. Temporary Speaker, Sir, this House has in the recent days has been in the eyes of the people as a House that is serving Kenyans. Last week, what the Committee on Roads and Transportation did really gave Kenyans another fresh sense that we have an institution that is working for us. This is the second one and I encourage our committees to deal with

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issues that are impactful to the people of Kenya, so that this Senate is seen to be working for the people of Kenya.

Mr. Temporary Speaker, Sir, if you allow me to digress a bit, one of the things we know is that we will have the Division of Revenue Act (DORA) coming back to us.

There is a recommendation that we should reduce shareable revenue from Kshs400 to Kshs380 billion. This is the day that the Senate needs to rise up and say no. We cannot be told that every time we have a drop in the national revenue, it is devolution that suffers. We need to stand firm and protect our counties. Let us demonstrate that the Senate does not exist because of politics alone, but to support and protect our counties.

Mr. Temporary Speaker, Sir, with those few remarks, I support this Bill. I encourage other Members who will contribute to also support it so that we can unlock one of the major problems we have been having in the energy sector. That is expensive power purchase agreements, which lead to high cost of power. I thank you.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. Osotsi. Sen. Cherarkey, proceed.

Sen. Cherarkey: Thank you very much, Mr. Temporary Speaker, Sir. I rise to support the Energy (Amendment) Bill (Senate Bills No.42 of 2023).

I congratulate Sen. Sifuna, the Senator of the great people of Nairobi City County. He is one of the longest serving Secretary Generals of the Orange Democratic Movement (ODM) party because others have been moved out of the office. I hope he survives longer although nowadays he is treading on some interesting grounds. I am happy that in as much as it is his first time in this House, he continues to prove that he is a man of the moment.

I can see the Senate Minority Leader is excited because he is a ranking Member. He is also one of the senior lawyers in this country, but not a ranking Member like you.

Mr. Temporary Speaker, Sir, allow me to support this amendment. In 2021, the former President, His Excellency Uhuru Kenyatta formed a task force to review Power Purchasing Agreements (PPAs).

One of the biggest challenges in the cost of electricity in this country has been the buy-in by the Independent Power Producers (IPPs) that sell electricity expensively to Kenya Power (KP). There are many challenges with KP in my village in Kapkeben, in Mosoriot Township, in Nandi County. Out of 24 hours, Kenya Power (KP) decides to switch off electricity for almost 20 hours in a day. In fact, it becomes worse when it rains because KP switched off electricity because it is raining.

I use domestic power. I am not talking about the access of power within Nandi County and across the country, which continues to be a big challenge. I know Sen. Sifuna might have a privilege that most of the city is covered by electricity. However, he will tell you that the biggest elephant in the room is that out of 24 hours, three quarters of them are blackouts. That affects businesses, including the small businesses within Nairobi City County. I have noticed that the demand and supply is a thinning of 4 per cent.

I thank the National Assembly for declining to give a nod for opening of PPAs through IPPs because it was not clear. It is still opaque. While we agree we need a constant supply of electricity, that is not a justification to buy electricity expensively and in an opaque manner.

That is what the former President initiated through the task force that was appointed to review power purchasing agreements and they submitted their report on 28th September, 2021. In that report, they had recommended the cost of electricity be reduced by 33 per cent.

If that was implemented, the cost of buying tokens by customers across the country, be it prepaid or postpaid, domestic or industrial customers, including the street lighting and the heavy users of electricity in this country, with that leverage that KP is trying to provide, the cost should have come down by 33 per cent after that report.

It was resolved that within four months of the submission of that report, there should have been renegotiations of PPAs in renegotiating of IPPs because it was very expensive and opaque.

I request the Energy Committee, where Sen. Sifuna sits, to tell us that the recommendation of that report. Unfortunately, I cannot see the chairperson of the Energy Committee. As I support the amendment by Sen. Sifuna, I request the Energy Committee to tell us the outcome of renegotiating by KP and the outcome of the issue of PPAs through the IPPs.

Mr. Temporary Speaker, Sir, are you aware that there are many PPAs that remain unsigned? They should have been cancelled. I encourage the Energy Committee to look at this issue because this is how money is being stolen. It is violating Article 201 of the Constitution on openness, transparency and accountability in financial matters in the Republic. If up to date, there are PPAs through IPPs suppliers who sell to KP, which then transmits to domestic and industrial use, then we have a problem as a country.

As we support this amendment of the Energy Act by Sen. Sifuna, the Energy Committee should tell us whether these PPA agreements that were unsigned have been cancelled. That is corruption. If a quack looks like a duck, then it is a duck or an ugly swan as somebody would say it.

In that report, there was supposed to be reforms within KP. We have not yet been told what happened with the investigations into the faulty transformers that were being left here in Nairobi, in Industrial Area. No one has told us to date what happened to faulty transformers and who were held accountable.

There are many primary schools in Bomet, Nairobi City, Nandi, Migori and Kilifi counties that have perpetual faulty transformers. No one has told us the audit on those faulty transformers and what became of it.

Sen. Madzayo, do you remember we raised a cry over faulty transformers in the last session? However, up to now, no one has been arrested or charged in court or the fate of those faulty transformers in relying in industrial area in Nairobi City County. I shudder when I think faulty transformers might be supplying to you or Kenyans. We need to know the outcome.

The problems of PPA and IPP agreement is the lethargy and the opaque nature that KP has. There was a proposal in the task force report of 2021 that we must restructure and clean up KP management because they are perpetuating systemic corruption.

On token purchase, there are people who are on postpaid and others prepaid. There are people who do not have electricity. What can you say on that? Is it not corruption when

an old school or old village goes without electricity for months, yet KPLC finds it normal? It is shocking.

I saw the Cabinet Secretary in charge of Energy, the good brother to Sen. Sifuna, hon. Opiyo Wandayi, saying that Adani is now doing a purchase agreement on that issue. The chairperson of the Standing Committee on Roads, Transportation and Housing is familiar with what we are talking about. They were arguing that the reason they want to improve the transmission lines is because it has become old.

I agree with Sen. Sifuna on communicate and clarity of information. The Government policy should always be crystal clear such that when hon. Opiyo Wandayi today says that there is an engagement or privately initiated plan by Adani to provide support or even purchase transmission line from Bomet all the way to Awasi in Kisumu and improve power lines, Kenyans will understand.

Mr. Temporary Speaker, Sir, if you do these things in secret, it violates Articles 34, 35 and 201 of the Constitution. Sen. Sifuna and my colleagues in the House, we should not be too prescriptive.

Mr. Temporary Speaker, Sir, you are a learned senior in this country having been classmates with Sen. Sifuna. Why do we have to be prescriptive in this country? We have to tell you do not do this because of our bad manners as a country.

(Applause)

What was there is already in Article 201. Why is it hard to make public a power purchasing agreement through IPPs until Sen. Sifuna tells KP that no, there is an amendment? Those are the bad manners we have in this country of impunity and corruption.

The report of 2021 demanded that we do a forensic audit. I ask the Committee on Energy through the Office of the Speaker to tell us about these powers purchasing agreement through IPPs. I remember in the last session, there was a statement and an investigation done by this House that showed that there was a local IPP company, locally registered that was selling power per kilowatt to KP in dollars and yet, it was a Kenyan company.

Mr. Temporary Speaker, Sir, can you believe the impunity roaming around in this country? This company is registered here in Kenya. The directors are in Kenya and trade is domiciled here in Kenya. However, they sell power to KP for distribution and transmission in dollars or pounds. Those are the people that the forensic audit should have been done on and be charged in court because that was a rip off of the public's hard-earned money.

On this issue of openness on the power purchasing agreements, especially on the IPPs, I do not have a problem with that. We are not saying that IPPs or the people giving power independently should not do this business. However, we want them to do clean business and abide by the rules and the law of the Republic of Kenya. If I establish a solar or wind power generating company in Kilifi and I intend to sell it to KP, why not do so in Kenya shillings? That is openness, accountability and transparency, I am talking about.

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Mr. Temporary Speaker, Sir, I am happy you attended that session of open governance, one of the issues was legislative openness. We must be open in terms of legislation and implementation by the Executive, going into the future. I would like to say that the Cabinet and Parliament should not allow the opening of PPAs until we agree on some ground rules because I can register my company in Bomet and decide to sell power to KP in dollars or pounds. It will be a public rip off.

I would like to tell the Secretary General of the ODM that Cabinet Secretary, hon. Opiyo Wandayi, is his immediate former member of ODM. He should advise him that the only way he can redeem KP is to ensure that the IPPs that were signed in the last 10 years are laid bare to the public because the truth shall set us all free.

On the issue of Adani, I am happy that he has come out quickly. He did not wait like on the issue of the Jomo Kenya International Airport (JKIA) where we could not access documentation. We had to use the power of oath, intimidation and coercion for production of documents on the Adani – JKIA deal.

That is why we heard that young man during the Gen Zs protests say that *uwanja wa ndege umeuziwa mhindi*--- I am happy that this young man got a sponsor. He was being asked, *umeuziwa nani?* We thought it was a joke until this issue came up before the Chairperson of the Committee on Roads and Transportation.

I would like to ask Sen. Karungo Thang'wa because of the way he is standing on issues of *murima* strongly, he should also stand strong on this investigation of Adani.

(Applause)

He should fear no one. The Bible says you should not fear who kills the body, but cannot kill the soul. Be afraid of the one who can kill the body and the soul. I challenge Sen. Karungo Thang'wa on the way he is standing strong on matters of *murima*, to also stand strong on the issues of Adani.

We want to know what really happened to our airports, including the Kerenga Airstrip in Kericho. Has it been sold? That is the question many Kenyans are asking and what the issue is on the private partnerships in this country under the Act, Sections 4, 2 and 40.

I am still challenging Sen. Karungo Thang'wa, the way he spoke with authority on Sunday in Kirinyaga to also speak on these matters with the same vigour and as an authority. He should also behave like a miracle Senator because that is who he is.

Mr. Temporary Speaker, Sir, on point five on moratorium, we should not lift it on the issue of PPAs through IPPs. That is the point. Before we lift the moratorium that was imposed in 2021 by the report and the task force that investigated the issue of PPAs under IPPs, we must agree that there are ground rules that need to be set.

For example, KP buys from KenGen at Kshs5.30 per kilowatt. My brother, Sen. Eddy, they buy from IPPs at Kshs195. As I said, KenGen sells to them Kshs5.30. These are *mikora* and corrupt individuals who are being protected. They buy at Kshs105 per kilowatt. That is more than Kshs190 from KenGen and this is a rip off. Sen. Sifuna, we need to know who these companies belong to and the contracts we will be getting into, going into the future.

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I agree that there should be a register open to the public. Let us know who the IPPs are and the engagement of their agreements so that Kenyans can access affordable electricity.

We cannot be talking about climate change and green energy if the person in Nyatike, Migori County, cannot access electricity. They will buy *koroboi* and pollute the environment or they will fell trees in a forest somewhere in Chepalungu, Bomet County, and light fire. However, we can produce power to be accessible and affordable to everyone; even in Tinderet or Nandi where some of us come from.

Mr. Temporary Speaker, Sir, even as I speak about cottage industries, my people are dairy farmers and we would like to process our milk. There are many people doing poultry farming and they need electricity. There are people processing farm inputs and they need electricity. I believe this amendment is long overdue and I thank the Deputy Minority Whip. It is an important piece of legislation.

I have noted that there have been serious renovations. I do not know whether it is the cost of the Gen Zs protests and that is why we are doing renovations. The other day we were asked to be magnanimous in terms of spending, but we are seeing opulence even in Parliament. The other day, the Gen Zs ran us out of town because of opulence and now Parliament is being renovated.

We did not need a new carpet. I wish the money that was being used to do renovations on paint and carpets should have been given to committees to visit Naivasha and see the Geothermal Development Company (GDC) there. We could have visited *wananchi* in Kisumu and Bomet counties to know the challenges they are facing with electricity. We should be visiting projects in Bomet, Nandi, Migori and Kiambu counties.

Mr. Temporary Speaker, Sir, can you believe that the Senate Public Accounts Committee (CPAC) does not have funds to visit the Dandora Stadium here in Nairobi or Toy Market. However, we have money to buy new carpets and paint. As Parliament, we must have our priorities right.

I had written through the Office of the Speaker to Mr. Nyandiere of the Joint Services to provide evidence because we cannot be saying that we are overlooking others and yet we cannot perform oversight ourselves. Is the House aware that the Senate pending bills is around Kshs500 million? You sit in the Liaison Committee and you cannot hold even a public hearing on this matter and do public participation.

Mr. Temporary Speaker, Sir, with these remarks, I thank Sen. Sifuna for bringing this amendment. I hope that we will fast-track it in the spirit of the broad-based Government and the President will sign it into the law. We need to discuss the issue of PPAs going into the future. We must ensure that this issue has been resolved.

On PPPs, I want to propose to Sen. Sifuna and all of us that we need to reexamine private-initiated investments in the country. We can see Adani's debacle in the energy and aviation sectors.

Let us review the law, even the regulations. When you are doing Privately Initiated Projects (PIPs), there should be a law that governs and ensures accountability. Let us be open as a country.

If Parliament today wants to do a PPP, let the parliamentarians or the public know why, how, who they are and what the financing model shall be to reduce this chaotic

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manner of responding to Adani issues. We have been told that the model is now in the health, aviation and energy sectors.

Mr. Temporary Speaker, Sir, in conclusion, I would like to send Sen. Sifuna to kindly tell Cabinet Secretary, hon. Opiyo Wandayi, to be careful on this issue of Adani because he is a former member of the ODM party.

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

Sen. Oketch Gicheru: Mr. Temporary Speaker, Sir, thank you for giving me this opportunity to support this amazing Bill by the great Senator of Nairobi and still my Secretary General (SG) in the ODM party. The mischief that the Senator of Nandi is trying to bring is that my SG now is the SG of the broad-based Government.

That one is now akin to interfering with my certificate in 2027. So, I want to guarantee you that this is the SG of ODM who is still the custodian of my ticket.

On a more serious note, this is a serious amendment. Energy and Petroleum Regulatory Authority (EPRA) in the year 2022, just after the COVID-19 pandemic, I remember it was May. When they released its daily systems operations and dispatch analysis report, it indicated that at that time, the Kenyan demand for electricity had just hit 2,051 megawatts. I think that was the highest the country had had by that time. Remember that was when we were coming from the post-COVID era, immediately after the economic meltdown that pandemic brought.

If you look at the demand against the national electricity capacity, we had overshoot our capacity then. Even by 2018, the capacity in the national grid was 2,351 megawatts. There is something that that number showed us. This is important because the country is gearing towards trying to get to a 2030 national grid of about 15,000 megawatts. You find that it is only in Kenya that the electricity production cost by IPPs is low. Yet when it hits the national grid, we get the highest electricity tariffs that affect our people.

Number two, some utilities that we have in our country, especially at a national level, are most well-resourced that cover their entire variable cost. Yet they remain loss-making utilities. To add salt to injury, the Kenyan taxpayer who goes to the market to get energy, for whichever reason, whether commercial or domestic, still faces the issue of low-quality service, even when it comes to that.

We sometimes get people with serious problems with the specs of different meters that are not working. Different meters also do not reflect their payments. There are a lot of low-quality services that we still see in power consumption in this country.

I cannot stress enough the importance of power in our country in terms of making sure that our national total productivity factor is in terms of the output that we get from every single citizen in this country.

To give you perspective, a French child consumes 50 times more electricity today than a Kenyan child. A child born in the United States of America (USA) consumes 70 times more electricity than a child born in Kenya. Yet, competitively, across the globe, Kenya has placed itself at the age of using proper clean energy to the extent that almost 80 per cent of our energy is from renewable and clean sources.

What is the problem? This is where I come back and laud my friend and my good SG, Senator for Nairobi, for dissecting the root cause of this problem. The root cause is a lack of public accountability and governance in terms of the production and consumption

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of power and energy in our country. Specifically, transparency throughout the procurement process of power has been wanting.

This amendment seeks to address this core issue of transparency and accountability, not only in the governance structure, but also in the entire procurement process.

I come from Migori County where I was lucky to be born around Gogo Falls. Gogo Falls is one of those KenGen facilities that produces a lot of power. However, I can tell you that up to today, 95 per cent of my village mates where Gogo Power is based have no electricity in their homes.

If you go to the other stretch that is in Uriri and Nyatike constituencies, the penetration of power is less than 23 per cent. Yet Gogo Falls is found within the borders of these two amazing and very productive constituencies.

The pathetic nature of the lack of power consumption in my county spams to places like Kuria West and Kuria East. If you go to Masangora today, where people are very industrious and on the border of Kenya and Tanzania, tourism could be cultivated properly based on energy use and the entire security infrastructure of that county. Despite their industriousness, the amazing people of Kuria still wallow in the miasma of having less than 25 per cent of power penetration.

I can narrate that this goes all the way to places like Rongo sub-county and Awendo where you find that an amazing industry called Awendo-Soni, or the Southern Nyanza sugarcane industry. Yet the sugarcane growers and cutters in those areas still sometimes depend on using firewood to light their homes at night. The question here is not of capacity, but of governance and transparency that can ensure the abundance that we have in this commodity called electricity can percolate through every single home and all the industries we have.

So, what does Sen. Sifuna seek to do with this amazing Bill? I want to urge the entire House to support it. The first thing we find is that today, KP has signed over 45 power purchase agreements. Yet if you look through the internet and all government bodies, the information the public has regarding the details of those agreements is completely scanty. You cannot find them.

Why are these information pieces important to the public? They are important because you cannot have power purchase agreements without detailing the cost structure and the resulting power price, as they should be. This is at the core of what this Bill seeks to address.

When you allow the public to interact with the core structure in those agreements, then they can further interrogate and give input on what kind of prizes these contracts should result in the course of power in our country.

When these contracts and their details are hidden from the public, they lack something called cost competitiveness. We cannot have serious cost competitiveness in the entire power market in this country. Why? Every contract is individualized and hidden from the proper market value. Consequently, anybody can choose to make the cost of power the way they want. Therefore, this amendment is at the core of making sure that we are going to have a proper price reduction in the power sector.

Alongside the cost of power is an issue of power stability and quality within our borders. We have even seen it several times, including in Nairobi recently and across the

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country. We hear from the social media that you will face power blackouts; it is announced by whichever body that will experience those blackouts.

Mr. Temporary Speaker, Sir, you do not have the power to control when you will get that power back or to control how you can get your alternatives. You do not have the power to control how this will affect the payment that you already made to the national power grid. To the extent that we can figure out the impact of this lack of transparency on power stability and power quality, this is the Bill that we need.

The Bill will guarantee us power stability. There is something close to my heart and I have seen it in this Bill; the lenses of the presentation by Sen. Sifuna. It will help us procure and also cure the issue of safeguarding our environment and our social priorities.

We, as a country, are priding ourselves that we are leading on clean energy, but interacting with that with our environmental and social safety. However, that cannot be guaranteed if we do not interrogate the procurement processes.

What do I mean by this? We have seen several times when KP looks at metering processes. Out of lack of transparency, you will find that the procurement officers will keenly and carefully choose to ignore the specifications that are required by the standard of law. In many cases, people end up bringing defective specifications, which are of low quality that cannot guarantee our people their safety.

In several places, you hear about KP not meeting its targets in neighbourhoods such as slum areas. The reason is that they are using defective metering systems that people can bypass, sometimes connect and then before we realise it, we see a lot of fire hazards in different places.

In Nairobi City County, we constantly see several fire hazards. If you were to go down and interrogate where those fire hazards are coming from, you would find that it is because of defective metering and specifications that have been put in several access points of electricity.

This is putting our people in hazardous environments and very serious social problems. The Toi Market where Sen. Sifuna comes from recently lost property worth billions. I think two days ago, there was also a serious fire in Mukuru kwa Njenga.

These places are facing fires and nobody ever explains the sources. Defective connections in our neighbourhood are occasioned by a serious lack of transparency in the specifications of meter systems and any other systems of connectivity that we need in our neighbourhood. One can cry over this country. Therefore, the entire process must be completely unlocked. This Bill enables the country to get to the bottom line of this problem.

Along with this is the structure of taxation that is given to IPPs. This one is a very serious part of transparency and governance. How does the national Government choose to tell us which part of the money they collect from KP and any other national grid providers comprises the taxation element and which one comprises the competitive revenue or competitive profit for these companies?

We have seen several times when KP complains saying they are overtaxed and, therefore, they want to increase tariffs to respond to that taxation. How is that taxation connected to the core structure of their power-purchasing agreements with other IPPs?

You cannot tell me that out of one Kenya Shilling, the Government chooses to arbitrarily take 57 cents as taxes from KP and KP must throw that taxation back to the

consumer and does not connect it to the cost of purchase or cost of production if we may use that language from the IPPs.

The only reason KP can use that impunity on Kenyans is if there is no proper transparency of the agreements that it has had with every single private developer and private producer who is adding to its national grid. That is the only explanation. That is also tied squarely to disclosing the number of loans that KP and all the national grid suppliers can argue in the pricing of electricity.

Mr. Temporary Speaker, Sir, KP will just tell you they took several loans here and there which helped X, Y and Z developments. They say they were developing utility at X cost, which is also not given proper detail, but just basic. Then before you realize, the cost keeps on skyrocketing.

Mr. Temporary Speaker, Sir, in conclusion, I laud and appreciate this Bill that Sen. Sifuna has brought to this House. I hope that the Senators will see how important it is for us to build a functional element of the law that can ensure that procurement processes of all power capacity are done through a very transparent process. That in the end will allow competitive market-based scientific production and consumption of power.

Additionally, this is the first Bill in my humble view that will ensure that there is always public notice and public engagement on the intention to sign contracts by IPPs. I am talking about the intention for power purchase agreements.

Without the public knowing about this intention that is how we end up in a situation where the public is being invited to a conversation around a deal that has been done.

In the case of Adani Energy Solutions Limited, the Cabinet Secretary for Energy has told us the capacity that it has on the power production and consumption in this country at the edge of Adani having been given the contract.

Why is the public being invited to even give its views, in the first place, if at the intentional moment, there was no deliberateness in terms of engaging the public?

This Bill will ensure that when there is an intention to sign any power purchase agreement or any power deal with any kind of institutions within or without Government in the corporate sector, then the public is notified of that intention. Therefore, the public can then go ahead and contribute before an action is taken to give the deal to any of those private developers.

Lastly, it is always important that when the public comes to engage in public participation, they have the proper details in terms of information that informs robust contribution in that process. This Bill gives the key and access to the public to have details of contracts so that when the public is engaging and making comments at any given period of intentionality; it is based on data, science, facts and figures on those power purchase agreements that are within their understanding---

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Senator. Lastly, Sen. Thang'wa.

Sen. Thang'wa: Thank you, Mr. Temporary Speaker, Sir. I am happy to be back in Session. I rise to support this amendment to the Energy Act which is not only about energy, but also about safeguarding the future of Kenya's economy, environment and citizens.

Mr. Temporary Speaker, Sir, we use thermal energy in this country. Our major source of energy is thermal. This Bill is trying to bring about supporting renewable energy and technology. We are a country that recently passed a Climate Action Act because we want to be on the front line when it comes to matters of climate change. However, we can only achieve that by coming up with renewable energy like wind and solar.

I remember the first Presidential address at the National Assembly of the joint Houses of Parliament, the President said that he would allow societies or groups of people to generate power and sell it to the Government. I believe this amendment will assist in achieving exactly that. County governments can come up with power-generating activities so that they can also earn revenue. County governments like Nairobi City and Kiambu, which have a lot of garbage and waste, can use it to generate power and sell it to the national grid.

Mr. Temporary Speaker, Sir, whenever they use the power for their hospitals, car parks and schools, they can also be paying less than what they are paying today. The money that they get from there, can as well be used to construct roads and other entities. When Sen. Cherarkey was contributing, he challenged me to talk about it passionately and without fear. I want to tell him I am not easily coerced; I am uncompromisable. I am intrepid.

Mr. Temporary Speaker, Sir, I might be small in stature, but I am intrepid at heart. I cannot back down. I come from an era where people are referring to problems and other people as snakes. Let us talk about black and white mambas. We should not even deal with the vipers, which are small snakes. Let us talk about cobras and black mambas. These are the issues that we are raising whenever we appear in our committees. For example, the issue of Adani is a king cobra issue that we need to deal with when it comes to PPPs and Privately Initiated Projects (PIPs).

Mr. Temporary Speaker, Sir, this Amendment Bill is talking about public participation. I want to make it clear that there is a difference between public participation and stakeholders' consultation. Public means, you consult everyone; whether they are in that field, they use electricity or not and whether they are interested or not. They must have a say.

Public participation, as it is in the Constitution, talks about the people of Kenya must be informed, given details and listened to. As you know, whenever we have public participation, we ask for written memoranda and oral submissions. We must involve the public in decisions that affect their daily lives. It empowers Kenyans to have a say in how energy is procured and ensuring that their voices are heard.

Mr. Temporary Speaker, Sir, the reason why we pay high electricity bills is because KP gets into contracts even when they do not need that power. Therefore, there must be a feasibility study before any contract is entered into to know whether we need that power or not. If we do so, we will be able to prevent the people of Kenya from paying high bills or having exaggerated power connection fees.

When you talk about transparency and accountability, we do not know the directors or names of these companies that generate power. Some people, even within the Government, hide behind these people so as to generate power and sell it to the Government. That is Government officials selling power to Government.

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By making this information public, we will know who owns what and we will be able to watch them because we know them. If your name appears somewhere as the owner of this company and from the way you live, you do not appear as if you own something like that, we will know that you are a proxy to someone. So, I believe this Energy Amendment Bill brings about transparency and accountability.

Mr. Temporary Speaker, Sir, whenever you have this kind of engagement where the Government is contracting someone to provide energy, this Bill as it is drafted, will bring about investor confidence and people will be able to invest in such ventures.

It has been mentioned here not once or twice, that I am the Chairperson of the Standing Committee on Roads, Transport and Housing. Currently, my committee is looking into the issue of the PIP by Adani Group and Jomo Kenyatta International Airport (JKIA).

The way we will handle this issue will bring confidence and trust to those investors who would want to invest in this country because there is a trust deficit in the Government. I would like to assure Kenyans we are here for them. We will stand for them and do exactly what we must do for them.

If we do not carry our people along with us, we lose them along the way. As I said the other day, we will find them at the finish line. When we find them there, they will not be happy with us. We have to do exactly what we are mandated to do as Senators. We have to protect the interests of our counties and the consumer when it comes to power bills whenever they are using KPLC.

Mr. Temporary Speaker, Sir, without further ado, I support this Bill. I thank the Senator of Nairobi because we needed this Bill like yesterday so that we can encourage counties to generate power and use it for their utilities and agencies. I support.

The Temporary Speaker (Sen. Wakili Sigei): Hon. Senators, there being no other Member interested to contribute, I call upon Sen. Sifuna to reply to this Bill.

Sen. Sifuna: Thank you, Mr. Temporary Speaker, Sir. I rise to reply and start by thanking all my colleagues who have made contributions to the amendment Bill, including my sister Gloria who started by petitioning on my behalf that the air conditioner be put on. I was sweating here profusely and I did not know what was going on.

Mr. Temporary Speaker, Sir, in closing, this amendment intends to enforce transparency and public accountability of the electricity sector. KP came up with a slogan; *Mulika Mwizi*.

I am very proud to be a Member of the Energy Committee. We decided to shine a spotlight on the pain points in the electricity cost. I assure Members that every contribution made is important. We learned from the interactions of the committee and our focus, for instance, was on the fuel cost charge. The highest component of our electricity bill is what has resulted in some of these amendments proposed and the recommendations made by the committee.

Mr. Temporary Speaker, Sir, the fuel cost charge accounted for about 25 per cent of all our electricity bills. This was because KP prefer to uptake or dispatch power from expensive thermal sources.

Some people think that these discussions that happen in the Senate or in our committees are idle talk. I am happy to assure Members of this House that I can already see movement in terms of implementation of these recommendations. I must thank all the stakeholders; the Ministry of Energy, the KP and all the other stakeholders for trying to put in place some of our recommendations.

I will give an example of just three of them for the benefit of the House. One of the proposals we have made and is in the amendment Bill, is prioritization during the dispatch of power based on merit order, giving preference to the cheaper power producers.

I saw a report in the newspaper just a few weeks ago that there was an increase of 88 per cent of the uptake of power that we import from Ethiopia. It is one of the cheaper sources of power at Kshs8 per kilowatt hour (KWh), but a bit more expensive than the Kshs5 KenGen charges.

There was an increase of 88 per cent for the six months to June of this year compared to a similar period last year. The recommendation appears on page 56 of the committee report, paragraph No.219.

Secondly, there has been a policy shift that KenGen is now moving to put in place power storage facilities. These are batteries to be used in order to ensure that the intermittent sources of energy from solar and wind farms that may not be available throughout the day and night, can continue to be useful to the grid even when the sun is not shining or the wind not blowing.

Lastly, there is a recommendation at paragraph 210 of the report of the Senate Energy Committee that the Ministry of Energy, in consultation with all thermal power plants, should institute a mechanism for purchase of heavy fuel oil in bulk within 90 days of adoption of this report. I am happy to report that this is being done.

I want to assure Members of this House and members of the public that what we do in our committee is not idle talk. In fact, with the coming into force of this law, there should be a move towards cheaper electricity in the country.

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

The Temporary Speaker (Sen. Wakili Sigei): As requested by Sen. Sifuna, the putting of the question is deferred to the next sitting of the House.

(Putting of the question on the Bill deferred)

Let us go to the next Order.

MOTIONS

ADOPTION OF REPORT ON INSECURITY IN TURKANA COUNTY

THAT, the Senate adopts the Report of the Standing Committee on National Security, Defence and Foreign Relations on a Petition to the Senate by Mr. Samuel Esapar on behalf of residents of Turkana County, concerning

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the state of insecurity in Turkana County, laid on the Table of the Senate on Wednesday, 7th August, 2024.

The Temporary Speaker (Sen. Wakili Sigei): In the absence of the Chairperson of the Standing Committee on National Security, Defence and Foreign Relations, Sen. Cheptumo, that Motion is deferred.

(Motion deferred)

Let us go to the next Order.

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

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

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

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

The Temporary Speaker (Sen. Wakili Sigei): Similarly, in the absence of the Chairperson of the Standing Committee on County Public Investments and Special Funds, Sen. Osotsi, that Motion is deferred to the next sitting.

(Motion deferred)

Let us go to the next Order.

ADOPTION OF REPORT OF THE AUDITOR-GENERAL ON FINANCIAL
STATEMENTS OF VARIOUS COUNTY EXECUTIVES

THAT, the Senate adopts the Report of the Select Committee on County Public Accounts on its consideration of the Reports of the Auditor-General on the Financial Statements of Tharaka Nithi, Homa Bay,

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Kakamega, Kirinyaga, Makueni, Meru, Bomet, Murang'a, Nandi, Nyamira, Nyeri, Siaya, Vihiga, Wajir and Samburu County Executives for the Financial Year 2019/2020 laid on the Table of the Senate on Tuesday, 5th March, 2024.

The Temporary Speaker (Sen. Wakili Sigei): Similarly, the Chairperson of the County Public Accounts Committee (CPAC) is not present in the House. Therefore, the Motion is hereby deferred.

(Motion deferred)

Let us go to the next Order.

ADDRESSING THE CHALLENGE OF PPA RENEWALS
AND ELECTRICITY SUPPLY IN KENYA

THAT, AWARE THAT on 29th March, 2021, a presidential task force was formed to review power purchase agreements between the Government and Independent Power Producers, during which a moratorium was imposed on Kenya Power Company, preventing KP from signing new agreements or renewing existing ones with Independent Power Producers, which moratorium was lifted by the Cabinet in March, 2023;

FURTHER AWARE THAT the National Assembly, vide a Motion adopted on 19th April, 2023 placed a moratorium, restricting KPLC from signing and renewing power purchase agreements (PPAs) with Independent Power Producers (IPPs) pending a report of the inquiry by the Departmental Committee on Energy and the consequent House resolution on the report;

CONCERNED THAT Kenya imports 17 per cent of its electricity from neighbouring countries and faces a challenge as the growing demand for electricity is conflicted with the lengthy process of developing power plants, which usually takes 6-10 years from conception to generation, leading to electricity shortage and load shedding which impedes economic growth;

COGNIZANT of the Senate resolution of 28th February, 2024 on a Motion by the Standing Committee on Energy on inquiry into the high cost of electricity in the country calling upon the Ministry of Energy to, among others, create a one stop IPP office that comprises all the stakeholders required for approval of power plants and that the Ministry, through KP and Independent Power Producers renegotiate the current power purchase agreements within 12 months of adoption of the report;

NOW THEREFORE notwithstanding the resolution of the National Assembly that imposed a moratorium on Kenya Power whose timeline has lapsed, the Senate, in order to cushion Kenyans from the high cost of electricity, resolves:

- i. that the Ministry of Energy and Petroleum and Kenya Power Company be allowed to enter into new power purchase agreements or renew existing power purchase agreements with Independent Power Producers; and,
- ii. that the Energy and Petroleum Regulatory Authority (EPRA) fast-tracks the acquisition of necessary licenses required by Independent Power Producers with valid power purchase agreements for setting up power plants.

The Temporary Speaker (Sen. Wakili Sigei): In the absence of the Chairperson of the Standing Committee on Energy, this Motion is similarly deferred to the next sitting of the House.

(Motion deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Wakili Sigei): Hon. Members, shall we all rise? Hon. Senators, there being no other business on the Order Paper, the Senate stands adjourned until tomorrow, Wednesday, 18th September, 2024, at 9.30 a.m.

The Senate rose at 5.48 p.m.