PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday 30th April, 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)

Clerk, proceed to call the first Order, please.

PETITION

RESTRICTING COUNTY GOVERNMENTS FROM HIRING
LAW FIRMS FOR LEGAL REPRESENTATION

The Speaker (Hon. Kingi): Hon. Senators, I hereby report to the Senate that a Petition has been submitted through the Clerk by Mr. Laban Omusundi on restricting county governments from hiring law firms for legal representation in court cases when the office of the county attorney is established.

As you are aware, under Article 119(1) of the Constitution and I quote-

"Every person has the right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation."

Hon. Senators, the salient issues raised in this Petition are as follows-

(1) As per the Controller of Budget (CoB) annual reports on county government expenditures, huge sums are allocated for external law firms for representing county

government in courts on various matters, despite the establishment of the office of the County Attorney, pursuant to the Office of the County Attorney Act.

(2) That, a significant number of the court cases are influenced by deliberate administrative decisions, with full awareness that there will be no personal accountability, potentially leading to lucrative arrangements for certain individuals in the public sector to receive kickbacks from the law firms.

(3) That, the aforementioned issues defeat the objectives of devolution, aimed at bringing services nearer to ordinary citizens. Further, that the substantial amounts of public funds paid to external legal firms could be channelled to address healthcare services in the counties, which are currently in dire state.

(4) That, the petitioner made several attempts to resolve the concerns presented in the Petition with the Controller of Budget (CoB) and the office of the Attorney-General all of which have been unsuccessful.

Consequently, the petitioner prays that the Senate investigates this matter with a view to-

(1) Establish a legal framework designed to restrict engagement of external legal firms with a view to safeguarding public funds and preventing excessive expenditure on external legal fees.

(2) Implement measures to deter intentional and incorrect administrative decisions, ensuring that responsible officers or individuals are held accountable for their actions that could lead to legal proceedings.

Hon. Senators, pursuant to Standing Order No.238(1), the Petition is hereby committed to the Standing Committee on Devolution and Intergovernmental Relations for consideration. In terms of Standing Order No.238(2), the Committee is required, in not more than 60 calendar days from the time of reading this prayer, to respond to the petitioner by way of a report addressed to the petitioner and lay it on the Table of the Senate.

(The Petition was committed to the Standing Committee on Devolution and Intergovernmental Relations)

There is another Petition by Sen. Okiya Omtatah.

ALLEGED CORRUPTION THROUGH SGR PROJECT

That Petition is dropped.

Clerk, proceed to the next Order.

(Sen. Okiya Omtatah approached the Dispatch Box)

Sen. Okiya Omtatah, you were not present when I called you out.

(Sen. Okiya Omtatah spoke off record)

Proceed to present your Petition.

ALLEGED CORRUPTION THROUGH SGR PROJECT

Sen. Okiya Omtatah: Mr. Speaker, Sir, I hereby present a Petition that has been submitted to the Senate by Mr. Bernard Muchere, CFE, concerning public money stolen to fund the Standard Gauge Railway (SGR) Project.

As you are aware, under Article 119(1) of the Constitution; "Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation."

Hon. Senators, the salient issues raised in this Petition are-

(a) THAT, the petitioner, as a fraud risk management consultant, upon undertaking a fraud examination of the SGR Project, alleges that the project did not meet the criteria for a public project neither did the contract and related quality qualify as a public contractual public debt.

(b) THAT, the conceptualization of the SGR Project was not captured in the Vision 2030, First Medium Term Plan (2008-2012) and the Kenya Railways Corporation (KRC) Strategic Plan as required under Section 68(g) of the Public Finance Management (PFM) Act, 2012.

(c) THAT, there is no evidence showing if the KRC, as the procuring entity, invited the SGR tenders as provided under Section 51 of the Public Procurement and Asset Disposal Act, 2005, carried out the tendering process, culminating in a contract agreement as provided under Sections 52 to 69 of the Public Procurement and Asset Disposal Act, 2005, and whether the Public Procurement Oversight Authority (PPOA), now the Public Procurement Regulatory Authority (PPRA) published a notice of---

(Sen. Cherarkey spoke off record)

The Speaker (Hon. Kingi): Senator for Nandi, you are out of order. Kindly take your seat. Let Sen. Okiya Omtatah be heard in silence.

Proceed Senator**.**

(Sen. Cherarkey sat at his place)

Sen. Okiya Omtatah: Thank you, Mr. Speaker, Sir. I will repeat that.

(c) THAT, there is no evidence showing if the KRC, as the procuring entity, invited the SGR tenders as provided under Section 51 of the Public Procurement and Assets Disposal Act, 2005, carried out the tendering process, culminating in a contract agreement as provided under Sections 52 to 69 of the Public Procurement and Asset Disposal Act, 2005, and whether the Public Procurement Oversight Authority (PPOA), now the Public Procurement Regulatory Authority (PPRA) published a notice of award of the Engineering Partnerships Convention (EPC) Treaty and EPC/Turnkey Commercial

Contract as provided under Section 46 of the Public Procurement and Asset Disposal Act of 2015.

(d) THAT, the EPC/Turnkey Commercial Contract purported to China Road and Bridge Corporation (CRBC) did not meet the criteria for a Kenya public contract, therefore the preferential buyer credit entered between the KRC and CRBC to finance the supply and installation of facilities, locomotives and rolling stock for the Mombasa-Nairobi SGR in July and October, 2012 for a total contract sum of USD3,894,192,784.72 was a private contract, hence the loan cannot be termed as public debt.

(e) THAT, the Government of Kenya signed as a State borrower for the preferential buyer credit to an agreement, contrary to Sections 47(1) and 51(1) and (2) of the PFM Act, 2012, which provides that loans maybe raised on behalf of the national Government entities which are organs under the Government of Kenya (GoK).

(f) THAT, the only written preferential buyer credit loan agreement published was loan No.2014006 of US$1,600,000,000 dated 11th March, 2014. The loan agreements for these two other loans No.2014008 and No.2015023 of US$2,000,584,028.87 and US$1,482,775,029.43 dated 11th May, 2014 and 3rd December, 2015, respectively were not published.

(g) THAT, Section 55(1) of the PFM Act, 2012, and Section 25 of the Kenya Railways Corporation Act, Cap.387 empowers the KRC as a national Government entity to borrow independently. However, the Kenya Revenue Authority (KRA) statement of financial position as of 30th June, 2015 (2014/2015) financial statement recorded accumulated losses of Kshs18,514,313,370, and therefore was not credit worthy to have been granted any loan.

(h) THAT, the alleged loan of USD5,086,329,058 from the Exim Bank of China to fund the Standard Gauge Railway (SGR) was not paid into the Consolidated Fund contrary to Article 206(1) of the Constitution 2010. Instead, forms of irrevocable notice of drawdowns substituted for payment of loan into the Consolidated Fund.

(i) THAT, the credit facility of USD5,086,329,058 extended by the Bank of China in USD1,282,136,273 above the contract sum of USD3,804,192,785.

According to Articles 2 (4) (5) of the Preferential Buyer Credit Loan Agreement, all proceeds from the credit facility will be paid to the contractor and suppliers of the SGR project in China and goods, technologies and services shall be purchased from China using the credit facility proceeds.

This means, the excessive loan will not be injected into the Kenyan economy as it will be retained and help the Chinese economic growth which appears to be the incentives for granting excessive loans.

(j) THAT, the SGR grants from the Government of Kenya aggregated to Kshs644,796,686,819 while the SGR Escrow Grants aggregated to Kshs50,838,624,096 for the 2014/2015 to 2019/2010 financial years.

With this, an addition of Kshs644,796,686,819, Government of Kenya grants which makes the total tax payers' money spent on the SGR project is approximately Kshs695,635,310,915 with over expenditure of Kshs237,748,058,854 from the contract sum of Kshs---

Mr. Speaker, Sir, I need help to read this, I am not able to read it. The print out is too small for me. I ask Sen. Lemaletian to come and help. Is it allowed?

The Speaker (Hon. Kingi): You could have done that before you started reading it.

Sen. Okiya Omtatah: I had asked her earlier but then she was not in.

The Speaker (Hon. Kingi): Just struggle and finish. You are doing well.

Sen. Okiya Omtatah: May I pick my glasses?

The Speaker (Hon. Kingi): Please pick your glasses and conclude.

(Sen. Okiya Omtatah went to his seat to pick his glasses)

Clerk, proceed to call the next Order. That petition will be finalised on Thursday.

Sen. Omtatah, take your petition and have a seat. I will direct you otherwise.

(Petition deferred)

NOTICE OF MOTION

PLANTING AND PROTECTION OF INDIGENOUS TREES BY COUNTY GOVERNMENTS

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

THAT, AWARE of the crucial role played by indigenous trees in the purification of air and combating of climate change, protection against floods and water pollution, in the field of medicine, nutrition and timber production, among other roles.

APPRECIATING that the national Government, through the National Landscape and Ecosystem Restoration Programme, plans to increase the national forest cover to 30 per cent by planting 15 billion trees and, in furtherance of the Programme, gazetted 13th November, 2023 as a public holiday to allow Kenyans to plant trees.

CONCERNED that the Government is yet to establish elaborate measures for the growing and protecting of indigenous trees and to involve such crucial players as the county Governments, hence impeding the sustainability of the programme.

NOW, THEREFORE, the Senate urges the 47 county Governments to set aside land and resources to be used in the planting and protection of indigenous trees, in support of the initiatives by the national Government.

Thank you.

The Speaker (Hon. Kingi): Next Order.

QUESTIONS AND STATEMENTS

STATEMENTS

Statement pursuant to Standing Order No.53(1), the hon. Senator for Nandi County.

MISMANAGEMENT OF THE KENYA NATIONAL WALKING RACE TEAM

Sen. Cherarkey: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Labor and Social Welfare regarding the mismanagement and poor coordination of participants of the Kenya National Walking Race Team at the World Athletics Race Walking Championships.

In the Statement, the Committee should-

(1) Explain to the Senate the circumstances that led the National Walking Race Team to miss the World Athletics Race Walking Championships that were held on 21st April, 2024 in Antalya Turkey.

(2) Disclose the reasons why Team Kenya Members were detained and forced to sleep at Ercan International Airport in Northern Cyprus for two days and later forced to travel back to Kenya.

(3) State the level of preparedness of Team Kenya for the Paris Olympics considering that the Walking Race team did not manage to participate in the Championships in Turkey that also served as Olympics qualifier.

(4) Outline any actions by the Ministry of Sports and Athletics Kenya (AK) have taken against the persons responsible for the poor coordination that led to non-participation of the Walking Race Team Championship.

Mr. Speaker, Sir, I have another Statement on Betika that you have approved but it is not in the Order Paper.

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

OPERATIONS OF BETIKA IN KENYA

Sen. Cherarkey: Mr. Speaker, Sir, this is a request for Statement on the operations of Shop & Deliver Limited, trading as Betika.

I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Labour and Social Welfare, regarding the failure of Shop & Deliver Limited, trading as Betika to pay our winnings in breach of the betting rules.

In the Statement, the Committee should-

(1) Explain any regulatory oversight exercise by relevant Government agencies over the operations of betting companies, especially in preventing under-age gambling as well as upholding fair play and consumer protection.

(2) Clarify whether Shop & Deliver Company Limited trading as Betika meets all the requisite conditions for registration of betting companies and is duly licenced to operate in Kenya.

(3) State reasons for the prolonged delay for up to two years in some cases and failure by the betting company, Betika to pay out winnings to several bettors.

(4) Outline any corporate social responsibility programmes undertaken by Shop & Deliver Company Limited known as Betika in Kenya.

(5) State whether the Shop & Deliver Company Limited is tax compliant, having paid all the relevant taxes to the Kenya Revenue Authority (KRA), providing the details on the Company's tax contribution from the financial year 2017/2018, 2018/2019, 2019/2020, 2020/2021, 2021/2022, 2022/2023 and 2023/2024 to date.

I submit.

The Speaker (Hon. Kingi): Sen. Gloria Orwoba.

FLOODING SITUATION IN NAIROBI CITY COUNTY

Sen. Orwoba: Thank you, Mr. Speaker, Sir. This is a request for Statement on the ongoing floods situation in Nairobi City County.

I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Devolution and Intergovernmental Relations on the ongoing flooding situation in Nairobi City County.

In the Statement, the Committee should-

(1) Furnish the Senate with a detailed evaluation of the existing drainage infrastructure within Nairobi City County, encompassing its capabilities and identified areas susceptible to vulnerabilities.

(2) Provide a breakdown of ongoing projects aimed at maintaining or enhancing drainage systems, including any partnerships or cooperative efforts with pertinent stakeholders to mitigate flooding risks.

(3) State strategies and timelines in place to promptly tackle the perennial flooding experienced in various parts of the City and its environs and establish sustainable resilient measures to mitigate the recurrence of such deluge.

(4) Delineate any initiatives undertaken by Nairobi City County to foster public awareness and active participation regarding floods mitigation measures.

I thank you.

STATUS OF THE COUNTY PENSION FUND

Sen. (Dr.) Khalwale: Thank you, 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 on the status of County Pensions Fund for employees of the Kakamega County Government.

In the Statement, the Committee should respond to the following-

(1) Establish the total number of employees employed by the County Government of Kakamega.

(2) State the amount of money the County Government of Kakamega pays into the Staff Pension Fund and the National Social Security Fund (NSSF) for these employees per month and table the remittances made towards these funds from September, 2022 to date.

(3) Explain any instances of non-remittance of pensions deductions made on salaries of staff, stating when the pending remittances will be paid.

I thank you.

UTILISATION OF CONDITIONAL GRANTS FOR THE FINANCIAL YEAR 2020/2021

Sen. Omogeni: Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Finance and Budget concerning the utilization of conditional grants for the Financial Year 2020/2021 in the County of Nyamira.

In the Statement, the Committee should-

(1) Provide a detailed report on how the following funds from the conditional grants for the Financial Year 2020/2021 were utilized-

(a) Kshs278,847,760 for Universal Healthcare Project.

(b) Kshs60,409,894 for development of youth polytechnics.

(c) Kshs146,215,617 for the Fuel Levy Maintenance Fund.

(d) Kshs114,705,300 for the Kenya Urban Support Programme (KUSP).

(e) Kshs198,509,110 for the World Bank loan for the National Agricultural and Rural Inclusive Growth Project.

(2) Explain the procurement methods employed, disclose the companies that bid and won the awards, disclosing the names of directors of the awarded companies.

(3) Give details of the names of the implementors of the aforementioned projects, the names and location of beneficiaries of the projects and hospitals that benefited from the grants.

I thank you.

The Speaker (Hon. Kingi): Hon. Senators, at this juncture, allow me to invoke Standing Order No.45(2) and rearrange the sequence of today's Order Paper for the convenience of the House, which is the Division of Revenue Bill (National Assembly Bills No.14 of 2024). As you are aware, this Bill has timelines.

Clerk, I know there are certain Statements that are not in the Order Paper. How many are they? This is so that we can dispense with them if they are not many before we proceed to Order No. 11.

Okay, there is only one Statement by the hon. Senator for Garissa. Proceed and thereafter, we will proceed to Order No.11.

MANAGEMENT OF ONGOING COUNTRYWIDE
FLOODS AND DISASTER MEASURES

Sen. Abdul Haji: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations regarding the management of the ongoing countrywide floods and disaster measures and particularly, in Garissa and Tana River Counties.

In the Statement, the Committee should-

(1) State reasons for the late response of schools re-opening postponement countrywide by the Ministry of Education owing to the tragic loss of lives of teachers and students in Garissa and Tana River counties and other parts of the country during these floods.

(2) State proactive measures taken by the Ministry of Roads and Transport to address the ongoing floods and their impact on the road network, stating measures to regulate the use of boat operations and pricing along flooded highways like in Madogo, Garissa and other affected areas.

(3) Disclose safety assessment and regulations for boats operating in flood prone areas, including emergency response mechanisms and measures to prevent future tragedies.

(4) State actions taken by the Ministry of Roads and Transport to expedite repairs following road closures during recent floods.

(5) Provide reasons for the lack of monitoring the water levels of lakes and rivers. For example, Lake Victoria, to the point it broke its banks flooding Sindo Town in Homa Bay County and state response measures in place, noting lack of preventative mechanism on protecting river or lake banks countrywide.

(6) Inform on the coordination efforts with relevant authorities to address flooding along the Tana River and its impacts on environs and particularly on transportation routes.

Thank you.

The Speaker (Hon. Kingi): Clerk, proceed to call Order No. 11.

BILL

Second Reading

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

(Sen. Cheruiyot on 25.4.2024)

(*Resumption of debate interrupted on 25.4.2024)*

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I beg your indulgence and that of the House. As you have said, this is a Bill that has statutory timelines. Unfortunately, it took quite some time, but I must still commend our Committee for doing an impressive job.

Given the very strict timelines, ideally, if we had known that we will go beyond Thursday last week when we moved the Bill, perhaps that was the juncture at which we would have limited debate on the matter. Unfortunately, we allowed and many of our colleagues spoke to the Bill.

There are still others who may want to speak, given the importance of this Bill. However, we need guidance and to agree as a House. Given that tomorrow is a holiday, we only have two working days which is today and Thursday.

On Thursday, the National Assembly proceeds on a one-month recess, a period during which they will be considering the budget estimates and taking on stakeholder inputs.

Mr. Speaker, Sir, it would be quite unfortunate if we do not conclude on Third Reading by Thursday and the budget estimates are considered without the input of the Senate on an important Bill such as this on account of the fact that we could not conclude this Bill.

Therefore, I request that you guide us into a consensus on whether Members be allowed to speak extremely freely, but have the guarantee that people will not leave the Chamber and will conclude the Second Reading today or we limit time. Either way, Members must stay in because we have strict timelines. We must vote today for the Second Reading and conclude the Third Reading on Thursday.

Mr. Speaker, Sir, we can agree on the time that our colleagues take so that we conclude on it. However, I still insist and request Members not to leave the House until we conclude this Order Paper today. I do not know if five minutes is too little of a request. Some are saying 10. I do not know what the Leaders on the other side of the aisle think.

The Speaker (Hon. Kingi): Let me hear from the Minority Side before I guide on this matter.

The Senate Minority Leader (Sen. Madzayo): Mr. Speaker, Sir, we were discussing and agreed that 10 minutes would be okay.

The Speaker (Hon. Kingi): Hon. Senators, limiting debate normally happens before any of the Senators stands to contribute or speak on a Bill. However, we are faced with a very peculiar situation where we may allow Senators to speak for the 20 minutes as given to them by the Standing Orders. However, if we go that route and conclude beyond Thursday, then whatever product will come up with may not inform the debate on the other side.

As the Senate Majority Leader has said, they are proceeding to engage on the budget and the decision here must be carried by the National Assembly as they do the budget. Alternatively, we limit the time of debate, through consensus, so that we allow as many as of those who would wish to speak to this Bill speak, so that we move time. If we have to be late, then we conclude this debate by Thursday. That is the very latest.

Hon. Senators, can I first seek your concurrence to limit debate? To what extent can we limit the debate going forward? There are five minutes and 10 minutes.

(Loud consultations)

The Minority and Majority Leaders, you had agreed that you would speak for your respective sides. Whatever you say shall bind your side.

The Senate Majority Leader (Sen. Cheruiyot): I know Members of this House. Unfortunately, if it gets beyond 4.30 p.m. to 5.00 p.m. while Members are still speaking, we may struggle to get the mandatory 24 delegations because I know people will start hurrying out. Therefore, I humbly plead with our colleagues that we take five minutes so that we vote by around 5.00 p.m.

The Speaker (Hon. Kingi): Sen. Madzayo, whatever you say shall be deemed to be the position of your side.

The Senate Minority Leader (Sen. Madzayo): I have said it earlier that 10 minutes should be quite okay.

The Speaker (Hon. Kingi): Hon. Senators, we have two sides in this House. We have the Majority and Minority sides. The Minority side is proposing 10 and the Majority side is proposing five. If you add the two, it will give you 15. Divide by two, we come to the neutral position seven and a half minutes. So, seven and a half minutes it is.

Sen. Omtatah, you spoke for two minutes. You have five and a half.

Sen. Okiya Omtatah: Mr. Speaker, Sir, I kindly request that you do not count the two minutes because if I go that direction, I will have to speak for 18 minutes.

The Speaker (Hon. Kingi): Proceed, then with seven and a half.

(Laughter)

Sen. Okiya Omtatah: My comment was to be on Clause 2 of the Bill, which lifts the definition of revenue from the Commission on Revenue Act, whereby the revenue in that section is defined to exclude some revenue that is raised nationally.

Articles 201, 202 and 203 of the Constitution are very clear about what kind of revenue should be shared. That is the revenue raised nationally but when you go to Section 2 of the Commission on Revenue Act, it defines a revenue that is not in the Constitution. It reduces the amount that is available to the counties. Going forward, this House should consider reviewing Clause 2 of the Bill to ensure that the revenue shared is raised nationally and not the revenue that whoever was behind that Act thought would be shared by the parties.

The Commission on Revenue Act excludes money that is retained as Appropriations-in-Aid, yet this money is factored into the national budget. We should look at that fact and make sure that we review the definition of revenue. Otherwise, we are doing injustice to counties because we are not sharing the revenue raised nationally. We are sharing the revenue raised nationally minus certain revenue that is not allowed.

In my submission, I also add that the Senate should adopt the higher figure of Kshs415 billion and not the lower one proposed by the National Assembly, which is Kshs391 billion. I request that the Senate approves the higher margin and sticks to it.

I pray that the side that broke the ranks last time does not do so this time around, so that we ensure that our counties get money to enable devolution to go ahead, especially in the context that already the amount of money is reduced. The definition of revenue which we are relying on is unconstitutional because it is not revenue raised nationally.

Mr. Speaker, Sir, with those few remarks, I return the microphone to you.

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

Sen. Methu: Thank you, much Mr. Speaker, Sir, for giving me an opportunity to make my comments on this Bill. In reference to Article 96, I find this as one of the most important Bills that we process, not that the other Bills that we process here are not important. This Bill that will denote money that will be send to the counties for the next financial year is important.

When most of us get an opportunity to go to the villages, we talk to our people and remind them that our work here is to defend devolution. Every time we speak, we say that functions must be taken to the counties. However, there cannot be functions without resources. So, we have to always speak strongly about pushing resources to county governments.

Looking at the Bill that we are dealing with and the money we are talking about, I do not want to say that the National Assembly was not fair in terms of distribution of the national revenue *vis-à-vis* money that we will send to county governments. However, we have to look at different things. We have a very good committee of the Senate that has always been prudent. That is the Committee on Finance and Budget.

This is where I want to stress my contribution. The proposal to send Kshs415 billion to counties as proposed by the Sen. Ali Roba's committee is what we, as the Senate, should canvass. It will be a big win especially to devolved units.

There is a Statement that was requested by the Senator for Garissa. We have been grappling with the question of floods that have hit our country. We know that disaster management is a reserve of county governments. If we cannot send money to county governments, but we ask for services, we are being unfair to them.

Mr. Speaker, Sir, I do not want to say more. I support that we should send more money to the counties. That is my submission.

I thank you.

The Speaker (Hon. Kingi): Sen. Abdul Haji, you have the Floor.

Sen. Abdul Haji: Mr. Speaker, Sir, I also rise to make a contribution to the Bill. I came prepared to speak for 20 minutes. I am a bit saddened that we have reduced the time to seven minutes. I do not want to claim that I am an athlete. However, I came prepared like a long-distance runner.

Sen. Cherarkey and Sen. Wakili Sigei might know that long-distance runners usually suffer from something known as runner's diarrhoea. By the time you approach 20 kilometres, you have a problem holding your bowels. At this point, I am experiencing the exact opposite. I do not know what to talk about and what to leave. However, I will get to the point straight away.

I support the position of the Committee on Finance and Budget. Last week, I had an opportunity to sit in during the contribution and submissions by the Chairperson of the Committee on Finance and Budget and I was convinced that the committee did a good job in coming up with a fair share of the counties.

The Chairperson talked about reasons why and the formula they came up with the figure that they had suggested in their report. He touched on issues such as lapsing of Managed Equipment Services (MES), national Government priority projects, Community Health Promoters (CHPs) programmes, the new National Social Security Fund (NSSF), the new Social Health Insurance Fund (SHIF) contributions, and annual salary increments. These are all reasons we, as Senators, should support the position of the committee.

As the Senator who spoke before me mentioned, that is Sen. Methu, we are meant to protect and fight for devolution. I do not want to see a situation where we go to the same position that we were last financial year, where we agreed to a lesser amount for the counties.

As per the Bill by the National Assembly, it is a bit sad that obvious mistakes were made in the Bill. In the Division of Revenue Bill (National Assembly Bills No.14 of 2024), there is a table where the National Assembly was trying to explain how they arrived to the adjusted equitable share base of Kshs374 billion.

That was a mistake, to start with, because the amount of the equitable share base was Kshs385 billion that we passed last year. Based on this table, they attributed to the increment of Kshs16.6 billion in the budget for the counties which is not the truth. If we go by the base of the last financial year, they are only increasing a mere Kshs6.5 billion. We cannot support that.

There is also another obvious lie that the NationalTreasury is trying to make. There is one thing that we have to make clear to the National Treasury that they are not meant to only fight for the national Government. They are there for both the national and county governments and they need to be fair in their representation. When they mislead Members of Parliament and the President, it is unfair.

What our country Kenya has raised as revenue this year compared to the share that the Government is taking and the share they want to give county governments--- We have raised revenue of about Kshs387.4 billion in excess. Out of this Kshs387.4 billion in excess of revenue that was raised, a mere Kshs6.1 billion is what they want to share with county governments.

I urge Senators that this time around, we need to have a bipartisan position. We should support the position of the committee and refuse any other persuasion from anybody so that we can say that we stood with county governments.

The Senators that spoke before me and even last Thursday acknowledge that we have problems in the counties. There are problems in the counties, but that does not mean because of those problems we should not give them more money. We are going to sort those problems, and we are working as the Senate to do that.

Mr. Speaker, Sir, as the Senate, we need to start giving proper feedback to the county governments. It is time we stop letting pollsters out there start ranking counties, governors and county assemblies. That should be the work of the Senate. We need to rank these governors so that they know *nani alikuwa nambari moja* and who became last, so that we can inspire other governors, other county governments, and other assemblies to improve. I would like to suggest to this House that from time to time, we need to bring good governors to this House and give them positive feedback so that the bad governors can look up to those and also feel ashamed.

Also, when we do the rankings, we will be giving proper feedback to the citizens of those counties, and they will know how to vote next time.

I submit.

The Speaker (Hon. Kingi): Sen. Thang'wa, you have the Floor.

Sen. Thang'wa: Thank you, very much, Mr. Speaker, Sir, for the opportunity to also support the report by the Committee on the Division of Revenue Bill.

I am, however, tied in between giving more money to the counties, just to give governors more money to misappropriate. I am tied in between sending more money to expect better hospitals, roads, and ECDEs, only for the governors to divert those funds, and to have things that look like handout kinds of projects.

I am tied in between giving more money to the counties, just like all the other Senators would want to give more money to the counties, to have more money in the emergency funds for the county governments, while our people are suffering floods, and landslides, fires, accidents, and all that where the money for emergency funds is diverted right, left and center. I am tied in between sending more money to the counties to pay the pending bills, only for some governors to refuse to pay.

Finally, I am still tied in between sending these monies to the counties, while the same governors refused to appear before the committees to account for how they have used these monies.

With that, as much as we want to vote for more money to the counties, we should call upon two committees, that is the County Public Investments and Special Funds Committee (CPIC) and the County Public Accounts Committee (CPAC), to as well assist the Senators who pass this kind of legislation, or who support this kind of Revenue Bill, to do their oversight. They should not at any time become an impediment when it comes to oversight of these funds.

Mr. Speaker, Sir, as much as I am saying that I am tied in between, I know sending monies to the counties is one thing and oversight of the same amount is another.

I will support this report by this Committee to make sure that we send more money to the counties, that is Kshs415 billion, that is about Kshs24 billion more than what the National Assembly had suggested which I call a suggestion.

The Members of Parliament in their NG-CDF, have increased their monies that go to CDF. We should also increase more monies to go to the counties. As do so we ask those county assemblies that are mandated to keep check of these governors, that they at least help this Senate to oversight those monies.

If I give you an example, the other day as I send my condolences to the families of Mai Mahiu residents, those who lost so many of their loved ones through the flooding. The two counties, that is Kiambu and Nakuru have emergency funds, but when we ask the governors, they only make noise about the national Government, saying that it has not sent disaster money. As an example, Kiambu County Emergency Fund Act-

"The County Assembly of Kiambu should appropriate 0.5 per cent of the whole budget of Kiambu County."

The current budget of Kiambu County is Kshs21.5 billion. 0.5 per cent of that amount is Kshs107 million. That is enough money to help those people of Mai Mahiu and to help other people in Kiambu County who are moving from their homes, running away from landslides and the dams that are already filling up and these floods. I urge this House, as much as we want, to send more monies to the counties. Let us join hands to hold the governors to account.

I agree with the Senate Standing Committee on Finance and Budget when they say that they are increasing these monies because you are giving more functions to the county governments. County governments have been given the task of matching up 1.5 per cent of the employees' deductions when it comes to Aaffordable housing.

When the Affordable Housing Bill came to my Committee, as a Committee we noted that and said that 0.5 per cent of all the monies of the Affordable Housing Fund should also be subdivided to the county governments. We also have the Social Health Insurance Fund (SHIF) and the County Aggregation and Industrial Park, where the national Government gives Kshs250 million, and the county should match up with another Kshs250 million. That is why we are increasing this. However, we challenge the county governments, and especially my County of Kiambu, where we have simple-mind kind of projects, of handing out fish and chicken, manure and napier grass. We should use this amount to give major projects such as the Level 4 and 5 hospitals where there is no medicine. The Githunguri Level 4 hospital is complete, but it is a shell of a new hospital. No doctors, no staff. It is not equipped and has nothing.

That is why we say, as we send more monies to the counties, let us make sure governors are held to account. When a Senator stands as I do here and mentions those issues that I have mentioned about my county, may it be counted that I am doing oversight, but not politics. This is because I know how much money I send to my county, and I must ask the governor how he spends that amount.

So, I support.

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

Sen. Maanzo: Thank you, Mr. Speaker, Sir, for allowing me to contribute to this very important Bill. The Division of Revenue Bill divides the monies to be budgeted and used for the national Government functions and also for devolved functions. The Senate is there to protect devolution and to make sure it works.

There have been challenges. The Constitution devolves certain functions, such as agriculture and health. Especially in Health, there has been a lot of confusion. There are many projects that are done by the national government for devolved units, especially in the health sector. There have been issues with scanning machines, which were sent to all the counties. These machines were sent there, but they are not functioning. It was like buying a car without an engine and expect to use it.

So, this very expensive equipment has been left lying in every single county, and yet that money was used by the national Government instead of it having devolved in the Division of Revenue Bill.

Similarly, with agriculture, there are many things, even the big problem of fake fertilizers. If this agriculture function was devolved, probably we would not be having the sort of scandal that we have in the nation with many people calling for the resignation of the Cabinet Secretary in charge of agriculture. If Agriculture was devolved, then the farmers would be questioning their governor as to what has happened.

Therefore, while this Division of Revenue Bill is already set and has already been passed by the National Assembly, as we look forward, we need to see units that have been devolved in the Constitution, devolved to the counties.

Mr. Speaker, Sir, a similar problem happens with disaster management. There is the National Disaster Management Unit (NDMU) in the Ministry of Interior and Coordination of National Government. Counties are supposed to have funds slated and slotted for disaster management.

When the tragedy happened in Makueni County, the governor had to use his funds to rescue people in Sultan Hamud while we have a budget for disaster management. The NDMU stays put and seems to be doing nothing across the country while the counties suffer and seek help from the national Government, yet they are supposed to have sufficient devolved funds for when disaster strikes.

This is a matter that needs to be relooked so that monies are available in the counties in the event of disaster. For example, you know what is happening in Tana River County, which is why Sen. Mungatana MGH is not here. You know what has happened in the counties of Makueni, Nakuru, and many other places.

Disaster management involves surveillance to ensure that all dams likely to break down are reinforced in good time and houses that have been built on the river beds do not submerge as it has happened in Machakos County around Athi River in Athi River.

In the future, we have to relook this to make sure devolution gets its fair share and devolved functions are handled at the counties. At the same time, money has to be accounted for properly. When there are audit queries, we summon governors here, and they should show up.

On the 22nd, the Committee on Public Investment and Special Funds summoned the Governor of Makueni County. He came to give an account, and he has more questions to answer about different budgets. This should serve as an example to any other governor. When called by the Senate, show up to answer the questions.

Finally, when this money is being accounted for by the governors, there are reports we give from the Senate Committees. There is a perpetual succession of Government and so we need to see the past governors being held accountable. If anybody has misappropriated county monies that we allocate, they must return the money, face jail, and all the consequences of misappropriation of funds devolved to counties to serve the people.

I thank you, Mr. Speaker, Sir and support the Bill.

The Speaker (Hon. Kingi): Senator for Nandi, proceed.

Sen. Cherarkey: Thank you, Mr. Speaker, Sir. This is one of the Bills that every Senator must speak to. As per Article 96 of the Constitution on protection, deepening and widening devolution, this Bill is the reason why the Senate exists.

For the first time, I am proud of the Committee on Finance and Budget for making their voice heard. They are doing a good job. In the last session, we had a push and pull. The sad reality for Sen. Sifuna, my good brother, is that he will not have a field day of blasting and lambasting us at baby showers and funerals. This is because as a

Senate, we have taken a position that we are going to demand Kshs415 billion from counties.

We were stuck at Kshs385 billion in the last session, which we agreed with the National Assembly. I support the position of our Committee that led us to stick with Kshs415.9 billion for counties.

Mr. Speaker, Sir, we are having challenges. Some of our governors are becoming aviators. My governor cannot account for Kshs1 billion for stalled projects like the newborn mother unit in Kapsabet and Creameries Kabiyet.

As governors become aviators, as the young people on the streets refer to them, we must ensure that every coin is accounted for. For the first time in this session, the Senate is speaking with one voice.

County governors want Kshs450 billion. I saw the chairperson of Council of Governors (CoGs) speaking to the press instead of the Senate to explain why they need Kshs450 billion. With the reality on the ground, as they say, '*Vitu kwa* ground ni different'. We agree that Kshs415 billion would be enough.

I heard one of us say that we cannot call out the National Assembly. However, we must call them out for their laziness, larceny, ineffectiveness, and being moribund. How can we consider the latest audited accounts as the Financial Year 2019/2020 when the budget was not more than Kshs1 trillion?

The National Assembly must be called out because it is becoming dangerous and cancerous against the growth of devolution. The national Government is getting an allocation of Kshs2.5 trillion, while counties are getting partly Kshs391 billion. This is like the budget for one Ministry. The National Assembly must be called out. They must ensure that the last audited account is the Financial Year 2022/2023. I hope they are taking notes even if they are proceeding to recess.

The second point I wanted to make is on the proposed shareable allocation of Kshs415 billion. I would like to advise the governors; I know the chairperson and the Committee on Finance and Budget is aware of this. The governor should be careful about merging.

We have seen it on Community Health Promoters (CHPs) and industrial parks. It will always affect their governments. Even as we discuss this elusive cake that cannot satisfy everybody, as the County Public Accounts Committee has observed, most of the county government's Own Source Revenue (OSR) is falling back. For example, Nandi County has a potential of Kshs630 million. However, they are collecting Kshs300 million. A county like Nairobi should be collecting up to Kshs50 billion but is collecting way below because it is not doing justice to its people.

There is another elephant in the room. I know the Cabinet Secretary, Hon. Moses Kuria, has said that civil servants should be given contracts. The wage bill in counties is eating the development money. In the development expenditures of the Controller of Budget, I saw Kisii County being down the list. Nandi County is also struggling in terms of development expenditures.

The biggest threat to development in counties is the wage bill. In Nandi County 50 per cent of the budgetary allocation is to the wage bill. The only county with 34.5 per cent is Isiolo County, which we were informed yesterday.

The wage bill issue among counties must be a national crisis I have heard that civil servants want to go on strike because of what the Cabinet Secretary said about giving people contracts and young unemployed people are preparing their Curriculum Vitaes (CVs). The biggest danger to counties is the wage bill.

Mr. Speaker, Sir, you have experience as a governor. I am told in some counties somewhere in Western Kenya, some people were hired to carry the governor's seat, like Asantehene in the Bulawayo, history of Zimbabwe. It was in Kakamega County or wherever it is. Also, people are employed to carry a VIP toilet.

How many times does the governor visit the washrooms when he needs a toilet for a three-hour function? We must be serious on how we spend our money unless the governor is eating not very good food. We are budgeting for housing and hospitality for governors. However, you will find non-essential staff; three people doing a job that one person should do. Having a secretary, tea boy, and cleaners who are non-essential staff should be eliminated.

In conclusion, our doctors are demonstrating and when you inform governors of this, they want to blame the national Government. I am ready for mediation to ensure counties get more money but with accountability.

I submit and support the Bill with amendments.

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

Sen. Faki: Asante, Bw. Spika kwa kunipa fursa hii pia kutoa kauli yangu kwa Mswada wa ugawaji wa fedha kati ya serikali za kaunti na Serikali Kuu. Suala hili ni muhimu sana kwa sababu fedha hizi ndizo zinapeleka huduma katika kaunti zetu.

Kwanza kabisa ni kuwa, wakati wa Kongamano la Ugatuzi mwaka jana kule Uasin-Gishu, Serikali ilitoa kauli kuwa itatoa zile huduma zote ambazo hazija gatuliwa. Lakini mpaka sasa hatujaona chochote kwa suala hilo. Hata hivyo, tukiangalia bajeti ya mwaka huu ambayo tunaizungumzia, inamaana kwamba suala la ugatuzi wa zile huduma zilizobakia litachukua muda zaidi kuliko vile ilivyo zungumziwa na Rais mwaka uliopita.

Kwa sababu ya hiyo, ndio maana tunaona kwamba fedha zimebaki vile vile Kshs385 bilioni. Mwaka jana tulipitisha Kshs385 bilioni na wamependekeza kuongeza Ksh5 bilioni pekee ili zifike Kshs391 bilioni.

Kila kaunti imeongeza gharama. Kuna miradi ambayo imekamilika na watu wakaajiriwa kazi. Huduma za kuendesha miradi kama zile zote zimoengezeka na hata bei za bidhaa pia zimeongezeka kwa sababu kumekuwa na ongezeko mara kwa mara la bei ya mafuta katika nchi yetu. Kwa hivyo, kuongeza Kshs4 bilioni ama Ksh5 bilioni kwa zile pesa ambazo zimetengwa kuja kwa kaunti ilikuwa ni makosa makubwa kwa Bunge la Kitaifa.

Tulitoa mwongozo wakati tulipo jadiliana kuhusiana na kauli ama taarifa ya bajeti '*Budget Policy Statement'.* Tulisema kwamba pesa ambazo zinatakikana kuja kwa kaunti ziongezwe ziwe Kshs415 bilioni. Nafikiri Bunge la Kitaifa lilipuuza kauli hiyo kwa sababu wangekuwa wameizingatia hawangeleta ile hesabu ya Kshs385 bilioni.

Bw. Spika, kuna masuala mapya ambayo yameibuka. Kwa mfano, kodi ya nyumba ambayo imeletwa hivi juzi, ambapo kaunti na wafanyikazi wao wote wanastahili kulipa. Vile vile, kuna malipo mapya ya bima ya afya ambayo imeongezeka. Haya yote yameongeza gharama katika bajeti za kaunti zetu kuhusiana na malipo. Kwa hivyo, pendekezo la kuongeza fedha hizi mpaka Kshs415 bilioni ni sawa kabisa. Tumeona pia kutoka ugatuzi uanze, zile pesa ambazo zinapelekwa katika kaunti zetu zinapungua kiasilimia. Mwaka jana ilikuwa asilimia 18 na mwaka huu imefika 15. Kila mwaka zina shuka. Hiyo haioneshi taswira nzuri ya ugatuzi katika nchi yetu.

Bw. Spika, tungependa kuunga mkono pendekezo la kuongeza mpaka Kshs415 bilioni. Vile vile pia, tungependa kuona kwamba sheria ya ukaguzi ama sheria ya uhasibu wa fedha inabadilishwa, ili kuwe na uwezo wakati wameshindwa kupitisha zile hesabu za mwaka uliopita, iwe ni moja kwa moja fedha zinapita ili ziwe sambamba na zile pesa ambazo zinakusanywa katika nchi ya Kenya. Hatuwezi kutumia hesabu ya mwaka wa 2020, miaka minne iliyopita, kuamua pesa zitakazo kwenda kwenye kaunti zetu mwaka ujao. Ikiwa hesabu zetu za serikali za kaunti zimefika 2022/2023 ndizo zinazoangaliwa sasa, itakuwaje Serikali Kuu hesabu zake hazija angaliwa sawa sawa mpaka zikafikia mwako ambao tunaufuata.

Kwa hivyo, hili suala la kucheleweshwa kwa kukaguliwa kwa hesabu za Serikali linachangia pakubwa pesa kidogo kuja katika kaunti zetu. Katiba inasema hatuwezi kuangalia kitu chochote isipokuwa hesabu za mwaka uliotangulia ama mwaka wa karibu kabisa ambazo zimeweza kuidhinishwa na Bunge la Kitaifa.

Bw. Spika, hili ni suala la Kikatiba na nilazima tulivalie njuga kwa sababu tutaendelea kulalamika kila mwaka kuwa pesa zinazo kuja ni kidogo. Lakini tukiangalia kwa undani ni kwamba, tatizo liko katika Bunge la Kitaifa ambapo hawaangalii kwa haraka uhasibu wa fedha ambazo zimetumika katika serikali.

Mwisho ni kwamba, mapato ya Serikali inaongezeka. Juzi wameanzisha malipo ya kila kitu kwa akaunti moja na ukilipa huwa kuna ile inayoitwa *facilitation fee ya* Ksh50.

Kwa hivyo ikiwa kuna shughuli milioni moja kwa siku, inamaana wamekusanya Kshs50 milioni. Ikiwa watakusanya Kshs50 milioni kila siku kwa mwezi ni karibu Kshs1.5 bilioni. Pesa hii haiingii katika hesabu ya kaunti zetu.

Ninafikiri pesa hii inatumika kwa Serikali pekee kwa sababu, fedha zile hazijawekwa katika orodha ya fedha ambazo tunastahili kupata kama kaunti.

Bw. Spika, haya ni masuala ibuka ambayo ni lazima tuyaangalie kwa sababu haiwezekani fedha ziamuliwe na Hazina Kuu. Tulikuwa na pendekezo ya kuifanya hii Hazina Kuu kuwa huru kabisa, ili tuone kwamba wakiwa wanaangalia mahitaji ya kaunti wanaangalia lakini sio kwa sura ya Serikali kuu. Waangalie mahitaji ya kaunti kama taasisi huru. Hii itahakikisha kwamba kuna usawa katika kugawa raslimali katika nchi yetu ya Kenya.

Asante kwa kunipa fursa hii.

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

Sen. Abass: Thank you, Mr. Speaker, Sir. I support the Division of Revenue Bill. As you are aware, the budget that is available to this nation is about Kshs2.5 trillion, of which what we are asking for the counties is Kshs415 billion only.

I know that the national Government has many obligations, for instance, paying debts and all these things. However, most of the productive activities have been devolved, for instance, the agricultural sector, water and health. These are some of the most critical institutions in this country. Nonetheless, the budget given to the Ministry of

Health is almost Kshs100 billion and the counties are getting less than Kshs1 billion or Kshs2 billion for the health sector.

Besides, today the Collective Bargaining Agreement (CBA) signed by the national Government will affect the counties so much since the salaries and other emoluments for the doctors have increased. Therefore, that has to be factored in the new budget of the counties. Secondly, about Kshs700 million or Kshs800 million has already been transferred to their accounts again. That is the medicinal packs, medical equipment facilities and universal health care business, National Social Security Fund (NSSF) and pensions will be increased. Additionally, there will be an annual increment of salaries. The current increase by the Salaries and Remuneration Commission (SRC) and the national Government is less than six per cent. It is actually Kshs5.6 billion, while all of these services that are devolved still require the Governors to pay.

We have institutions that are duplicating the work of the counties. We have agencies, for instance, the water agencies with almost over 20 agencies that are doing the same work that the counties are doing. This also applies to the roads. As they have rightly said, we have stringent measures to make and little money to spend. However, when a county is scooping money by making a water pan and another agency is making a water pan in the same county, then it beats the purpose of us coming to deal with this.

It is high time, as the Senate, that we came up with a Bill that will now make all the functions of regional agencies to be devolved. We do not even need them because as it is, the county is almost doing all the work for these agencies.

Mr. Speaker, Sir, one other factor which is overlooked is pending bills. I do not know how we are going to handle it as a House, but we now have a Bill on pending bills. It seems everybody is avoiding to talk about it. The governors do not want to pay it, probably because most of it has come from the previous regimes. However, a government is a government. Yesterday's Government and today's is the same. It takes responsibility for all commitments that have been made by the same government, whether it is the county government or national Government. Almost Kshs1.2 trillion are pending bills. We talked the other day that many Kenyans have been rendered poor. They are not able to afford the bills or go for health services. It is high time these pending bills should be paid ones and for all.

I repeat that we must follow the Public Finance Management (PFM) Act. That, the first charge of every financial year must clear the pending bills. It seems governors do not even care about the pending bills. They tend to increase more and more, thinking that the next governor will pay for them. That means we are going to continue adding the pending bills.

That must be stopped. I request the County Public Accounts Committee (CPAC) and the County Public Investments Committee (CPIC) to take very serious action against these things. It is not sustainable to be increasing pending bills every day. As much as we appreciate---

I know some of my colleagues are talking about the county issues. The governor is not the county, but only someone elected. We shall not be challenging the money that is going to the counties. We must deal with the governor as an individual. We shall not control money going to the county simply because a governor is not friendly to a senator or anybody else.

There is a way to take measures. This House has all the constitutional measures that can be put into place to deal with the governors. When you say that there is no need of taking money to the county, then next time many of us are going to be governors tomorrow, and we will cry the same way they are crying now. So, we need to separate the two; that county money is not owned by the governor. Therefore, whatever belongs to the counties must go to the counties. If the governor is misappropriating it, then we deal with him or her as an individual.

With those few remarks, I beg to support.

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

Sen. Sifuna: Mr. Speaker, Sir, different from the Senator for Nandi County, I have always been proud of our Committee on Finance and Budget that is chaired by Sen. Ali Roba. In fact, last year, I was trying to plead with my colleagues that we adopt the report of the Committee on Finance and Budget, which had proposed that we give Kshs407 billion to counties, as opposed to the Kshs385 billion that had been passed by the National Assembly.

Needless to say, my position then put me at odds with many of my colleagues in this House. They were very unhappy every time I stood to speak and remind them of the options that were placed before this House and the choice they exercised. They tried to paint me like a bad person.

As I said, once bitten, twice shy. I will not be taken in by some of the good sentiments that we are hearing coming from the Senators here. I will wait for the actual vote. Last time, I heard very good things being said about how we need to support our counties, but on the day of the vote, I saw colleagues taking a totally different position.

(Applause)

I am looking forward to seeing Sen. Abdul Haji's vote. He has spoken very passionately. I want to see how Sen. Cherarkey will vote because that is where it counts.

Secondly, reading the Report of our Committee on Finance and Budget, I am a bit surprised by one thing. If you see the submissions by the Commission on Revenue Allocation (CRA), which is the body mandated under Article 203, among other things, to use the criteria set in Article 203(1) to determine the shareable revenue for county governments. I am asking myself, how is it possible that last year the CRA was proposing Kshs407 billion to go to counties, and this particular year, they are proposing a lower amount of Kshs391 billion? I do not understand, and I would want a conversation with the CRA, so that they explain to me.

Under the criteria set out under Article 203(1), if you look at (d), one of the criteria is the need to ensure that county governments are able to perform the functions allocated to them. If you go to Article 203(1)(k), another criterion is the need for flexibility in responding to emergencies and other temporary needs.

Mr. Speaker, Sir, as you are well aware, many of our counties right now are inundated with flooding. Yesterday, the governor of Nairobi City County called the

Members of Parliament from Nairobi for a meeting. People were extremely upset to see me in the same room with the governor. It is as if people expect that every time I see my governor, I should go on his neck or punch him in the face.

When we do oversight, that is not the expectation. At a time of disaster response, it is very possible for Sen. Sifuna to be reasonable and sit across the table to undertake a very detailed conversation on the emergency disaster response that is going towards assuaging the situation of the people of Nairobi. However, I have seen very interesting comments that Sen. Sifuna has been 'pocketed' because of a picture of a meeting in a public place in the presence of other leaders and the media.

The point that I am making is, if I am going to be 'pocketed,' I will not be 'pocketed' in a public place. The Speaker knows that it is impossible to 'pocket' Sen. Sifuna, at least not publicly. It cannot happen.

(Laughter)

I want the people of Nairobi to relax. I will continue to do the job that they gave me. However, the reason I bring up---

The Speaker (Hon. Kingi): Sena. Sifuna, just leave the Chair out of that line.

Proceed.

(Laughter)

Sen. Sifuna: I withdraw, Mr. Speaker, Sir. The point that I was making on the question of disaster is that many of our counties are overwhelmed. We have about Kshs900 million for disaster response in Nairobi. What most people do not understand is that disasters in Nairobi is a daily occurrence. We need to enhance the capacity of county governments to be able to undertake this function. That is why this year, I beg our colleagues to vote for the higher amount as proposed of Kshs415 billion by our own Ccommittee.

Counties are also facing very difficult times because of high cost of living and, of course, the introduction of new taxation, which is something that if you look at the Central Bank of Kenya (CBK) survey of market perceptions of January, 2024, I have that document here with me, it is very grim that because of the high cost of living, especially the inflationary trends, increased taxation and increased cost of goods, many of these counties are struggling. It needs to be factored in in the final amount that goes to our counties.

Of course, there is the question of pending bills. As this House knows, out of the Kshs160 billion plus of pending bills owed by all the 47 counties, Nairobi City County alone owes Kshs107 billion in pending bills, which is 66 per cent of all the pending bills owed by county governments.

Our own Parliamentary Budget Office (PBO), in their 15th edition report of February, 2024, one of the proposals that have been made here is that we need to provide and ring-fence money for payment of pending bills. I want to thank Dr. Masinde for making some of his recommendations because many of the suppliers in these counties are absolutely devastated. People have not been paid for years. Their businesses have been closed, people have been auctioned, and yet we continue to talk about pending bills.

That is why I supported the Motion that was brought to this Floor by the Senator for Narok County, that we need to ring-fence money, and once money is sent to the counties, the county governments must make sure that they pay all those pending bills.

Mr. Speaker, Sir, finally, I want to speak on the question of overlap of functions. Again, I refer you to this report of our own Parliamentary Budget Office. If you go to page 58 of that report, the budget office has highlighted areas where there are overlaps. We will continue to tell the national Government to, please, get out of the business of county governments.

I was very happy when for the first time, the Cabinet Secretary for Gender, Culture, Arts and Heritage came here and told us that, "this is not the business of national Government. We have no business staying in it."

Mr. Speaker, Sir, one of the areas that have been identified is library services. If you read the report of the committee, the National Treasury is deducting library services money from county government's shareable revenue. The Cabinet Secretary herself confirmed here that the national library at Milimani in Nairobi is still in the hands of the national Government. They insist on sticking with the functions, yet they deduct money that is meant for library services from the shareable revenue of county governments and national Government.

Mr. Speaker, Sir, this overlap has also been seen in places such as the energy sector where power transmission---

The Speaker (Hon. Kingi): Your time is up, Sen. Sifuna.

Sen. Wakili Sigei, proceed.

Sen. Wakili Sigei: Mr. Speaker, Sir, I also rise to support the Report by the Committee on Finance and Budget on this particular Bill. The Report in itself signifies the importance of this House in ensuring that we protect devolution. As we do so, there is the headache that cuts across everyone's mind in terms of additional resources, which we are pushing to our county governments, their utilisation and implementation of projects within county governments for the benefit of the people in the counties.

This division of nationally raised revenue is aimed at ensuring that there is a possible utilisation of those resources to ensure that inequalities, which are normally expressed by various county governments at various levels are achieved. The Committee has gone out of its way to encourage Members and also seek support to ensure that this revenue is added to county governments, so as to ensure that services are provided to the people at all levels.

As we propose additional revenue to county governments, we also expect that abuse of these resources is going to be minimised. Over time, we have been talking about governors who are reluctant to appear before various committees of this House in order to justify utilisation of resources. We hope that even as this House gives county governments additional resources, when they are called upon to come and account for, they are going to honour, in order to make sure that resources are used for the purpose that is expected.

In terms of services and functions, which have been devolved, the national Government has devised means and ways within which such resources and services are followed with funds. This is the basis upon which these resources are enhanced to go to counties. As it has been said, we also appreciate the work of the committee that is seeking to ensure that this House supports devolution and enhances the mandate that the Constitution expects it to do.

The Speaker (Hon. Kingi): Proceed, Sen. M. Kajwang'.

Sen. M. Kajwang': Mr. Speaker, Sir, I rise to support the Bill, but with amendments as proposed by the Senate Standing Committee on Finance and Budget. One of the most important duties of any Senator is to divide revenue, allocate it and follow up its implementation or utilisation.

At this point, allow me to join hundreds and thousands of Kenyans who have been affected by the raging floods, particularly in my home county of Homa Bay. The residents of Sindo Township, one of the most beautiful locations in this country, where the rolling hills of Gwasi and Kak-Sikri come down to meet the lake.

We have lost lives. Tens or hundreds of people have been displaced, but that is not the biggest tragedy because we have seen greater tragedy in places like Mai Mahiu. On behalf of the people of Homa Bay County, allow me to extend my condolences to all those who have been affected.

There is a relationship with what we are doing today because whatever shall be allocated to counties, at least two per cent should be set aside for an Emergency Fund that will offer the first line of response in situations like the ones we find ourselves in today.

Mr. Speaker, Sir, today, we are talking about revenue. Of course, many of us in various committees spend a lot of time looking at the utilization and accountability of that revenue. I support the Committee on Finance and Budget for proposing that we allocate to counties Kshs415 billion.

I would have welcomed even a higher allocation to county governments because some of the non-discretionary financial obligations that have been cited as a reason for the increased allocation are things that have been introduced by Parliament. They include new payroll deductions in the forms of housing levy, NSSF, SHIF, and the general increase in inflation that has put pressure on wages of employees.

Mr. Speaker, Sir, the national Government should have no problem with this position of the Committee on Finance and Budget because some of the other reasons that have been attributed to the demand on counties are projects that have been initiated by the Executive. We brought the County Industrial Aggregation Parks (CAIPs), which if implemented, will require county governments to put in place close to Kshs11 billion, over and above their initial plans.

With some of these initiatives, you can never have a one-size-fits-all approach to development in a country like Kenya. We need to go back to history and learn from failed industrial policies. For example, in Ghana, Kwame Nkrumah, driven by the then Pan-African dream of import substitution, decided that he was going to do one factory per district and he tried that.

Perhaps, out of the many districts, there are few factories that thrived. However, many of those factories became white elephants. That is what is going to happen with our

CAIPs because we have used one model and set one common budget for the 47 counties without differentiation. We must differentiate because our counties have got different comparative advantages. However, counties are still required to make matching contributions for the establishment of those aggregation parks.

Mr. Speaker, Sir, beside Kshs415 billion that we are dealing with today, let us be alive that the revenues of counties do not necessarily come from the Consolidated Fund. Counties have got revenue raising ability. The law allows them to impose certain taxes that do not conflict with the national Government.

The Commission on Revenue Allocation (CRA) has estimated the own source revenue potential of counties to be at Kshs260 billion. If counties were to optimize their revenue collection systems, procedures and processes, then counties would have at least an additional Kshs200 billion available to them to carry out development. That would bring the money available to counties to close to Kshs600 billion. That is not a bad amount.

Sometimes, we might need to get to the point where we are saying we should not be throwing more money at the problem. We should be throwing more quality, more professionalism, more integrity and more transparency in counties. There are counties where money is not a problem.

I can cite a few counties where when some governors left office, they did so with a wage bill, which was less than 20 per cent. Three or four years later, when these governors are succeeded, you find the wage bills have climbed to 35 per cent overnight. Many a time, it is not a problem of money. It is just a problem of diligence, professionalism and integrity.

Mr. Speaker, Sir, this Bill also addresses the Equalization Fund. I wish Sen. Faki was present. I have seen him around. I want to remind him and the House that when we endorsed the Regulations of the Equalization Fund, there was a commitment by the National Treasury that they would revise the Regulations, bring them back here and ensure they were fit for purpose.

The Regulations were brought in a rush to respond to political pressure. If you go back and look at the Regulations on the Equalization Fund, you will find that it is controlled by County Commissioners. It has representatives Members of the National Assembly and other elected cadres, yet the Senate, which is a critical part, has been left out.

Mr. Speaker, Sir, when we come to look at the conditional grants, which is also another financing line for county Governments, we need to tighten the accountability mechanisms on that. Just this afternoon, I know there is a Member who sought a statement on the National Agricultural and Rural Inclusive Growth Project (NAGRIP), a conditional grant that was utterly mismanaged in counties. We have raised that with the Office of the Auditor General (OAG), who has committed to carry out value for money audit.

Just the other day, the Senate Finance and Budget Committee, led by Sen. Ali Roba and the Senate Climate Caucus, retreated to review the Financing Locally-Led Climate Action (FLLOCA) conditional grants. All this is money available to counties but ring-fenced to specific purposes.

I have noted that the national Government seeks to again ring-fence the Road Maintenance Level Fund (RMLF). We need a Government that is genuine and honest to its citizens. When we comingled RMLF with equitable share, we were fooling the country. We were fooling counties that we were giving them more money. Now---

The Speaker (Hon. Kingi): Your time is up.

Sen. Orwoba, you may have the Floor.

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

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

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

As I rise to support this Bill, I have really thought through some of the sentiments presented by my colleagues. Is devolution really working? I ask this because we are a House that ensures that the funds sent to counties are benefiting the people there. If devolution is working, then why can we not see the two per cent disaster management funds allocated to counties, money that is currently in their bank accounts working?

Even as I rise to support this Bill, I have to be alive to the fact that we need to ask ourselves very difficult and pertinent questions. Devoid of this, we will continue sitting here and passing these revenue allocations to the county governments, while nobody is holding any of these accounting officers accountable.

I just want to reference some of the reasons that informed the Kshs300 billion. Due to certain political and geographical reasons, our economy was unable to meet the targets in terms of revenue collection. There is also a reference of how we are affected by the Dollar exchange rate and the issues that come with that.

In Section 9(e), some of the reasons that influenced this are low ordinary revenue collections attributed to the ongoing geopolitical shocks. They include the Russia-Ukraine War and the United States Federal Reserve’s interest rate. Also indicated is that we have financing constraints due to limited access to finance in the domestic and international financial markets.

Mr. Temporary Speaker, Sir, I do not think our governors out there are alive to this fact. Every day, we talk about own source revenue; how our counties are supposed to ensure that they are generating revenue and their projections are going higher, yet none of these governors are interested in that.

Yesterday, I was having conversations with my peers and some governors. I was questioning the whereabouts of the disaster management money. Where is the two per cent allocation? In fact, this morning, the Governor of Nairobi City County has been quoted saying that Sen. Gloria Orwoba does not know anything about governance or oversight, yet today, in the House, I heard Sen. Sifuna confirm that indeed, Nairobi City County has about Kshs900 million allocated for disaster management.

We are unable to see what this money has done. What we saw is the Governor of Nairobi City County, hon. Sakaja, go out and pay transport for children stranded in Nairobi to go back home. That is not Kshs900 million.

As we are allocating these funds, let us also be alive to the fact that these accounting officers are actually not doing what they are supposed to do with them. Therefore, when I hear people saying that we have to push for more funds so that they get Kshs400 billion, the Nairobi City County Governor should first of all tell us how he used the Kshs840 million for disaster management.

The same goes for Susan Kihika in Nakuru County and all these counties that have been highly affected. They have 2 per cent that is a lot of money. At least Gov. Kang'ata of Murang'a County gave proper feedback that, indeed, he just got Kshs10 million.

We will continue to ask the hard questions, until these people tell us what they are doing with the money. I believe that this money allocated in this Bill is enough. Going forward, if disaster management is a function that county Governments cannot deal with, let it be brought back to national Government.

As a defender of devolved functions, it is time that our governors are transparent with the funds that they have been allocated. For example, the 2 per cent disaster management funds allocated to all the 47 counties. Let them stop coming back and asking the national Government to allocate them more money for disaster management when for instance, they cannot even account for Kshs800 million in Nairobi City County.

Gov. Sakaja owes us an explanation of what he is doing with the money for disaster management. I think, and I have a feeling that Gov. Sakaja is unable to manage this county. We, as a House that is here to protect devolution, can give him other options. We have seen what has happened in the past.

Otherwise, I support this Bill and devolution to the extent that we should be accountable for the monies being given to the counties.

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

Sen. Onyonka: Mr. Temporary Speaker, Sir, it is a great pleasure to have this opportunity to contribute to this very special Bill. I first thank the man sitting at the corner, Sen. Ali Roba, the former Governor. As my Chairman, he has been guiding, discussing and engaging us. I give him total credit and salute him with all the accolades.

Mr. Temporary Speaker, Sir, I also give credit to the Controller of Budget (CoB), the OAG and my Committee Members because I sit in this Committee that was drafting this Report. There is a lot that we have learnt in the process. I also believe that there is also that we are suggesting that can ensure we improve in revenue allocation, expenditure and what the governors need to do.

In the process of discussing this year's allocations, a few disturbing issues came up. I believe that it is the responsibility of this House to come up with the legal frameworks for us to cover the gaps and ensure that when this money is given to the county governments, it does what it is meant to.

I am proud that we have increased the money to Kshs415 billion. I believe this is a raw deal. However, what is most critical and important is the fact that at least from last year, we have increased to quite a substantial amount of money. That was our wish, as a Committee and a House, because we have constantly been demanding that county governments need to be given more money.

The contradiction of this wish is that we have also come across amazing things that are happening within our counties. For example, in Kisii county, the budget analysis report from the CoB states that it has just been able to spend 3.2 per cent of all the total revenue.

It still has about Kshs4.4 billion in the County Revenue Fund (CRF) account, yet we have pending bills to the tune of Kshs1.2 billion and pension deductions for the workers of Kisii County Council, county government and the County Assembly.

Mr. Temporary Speaker, Sir, right now, the amount of money meant to be paid for pensions is about Kshs3 billion. That is what Kisii County owes its citizens. My conviction and belief is that this Committee, other Committees, the Controller of Budget (COB) and the County Public Investment Committee (CPIC) must sit down and engage themselves on what needs to be done with the outstanding bills. These bills include debt pending bills, the National Social Security Fund (NSSF) and deductions that go to the Government. This is so that we streamline the functions of our county governments in order for them to effectively work.

An analysis of the challenges that we face with our Chairman is that the Governors have always raised the issue of late exchequer releases. I would like to say that even the Senate does not receive its exchequer releases on time, but the Kisii County Government right now is not complaining that salaries have not been paid.

We have had cases where governors have mutilated budgets after county assemblies pass their budgets. The governors change them because they want to transfer money to the areas they want to spend money on. Members of the County Assemblies (MCAs) are challenged, and they are saying that what they get paid is not enough, and yet in reality, we talk of how they are compromised, how they are not doing their oversight role and that we should make sure that we control the MCAs.

Mr. Temporary Speaker, Sir, my position is that we should try and elevate what the MCAs are earning, the Kshs98,000. We should also provide them with autonomy from the money controlled by Governors even if the Assembly is supposed to be independent and oversighting the governors.

Many governors are unable to pay money to the Financing Locally Lead Climate Change Action Programme (FLOCA) and the National Agricultural and Rural Inclusive Growth Project (NAGRIB). These conditional grants require reciprocal funds so that county governments like Kisii County can release money for FLOCA, which was done yesterday. It was only Kshs10 million that was needed, yet the amount of money we are getting from the International Development Organization and the World Bank will be Kshs410 million. On NAGRIB, you will see donor funds coming in, but everyone says that they do not see what these funds do.

Mr. Temporary Speaker, Sir, let the House make sure that we conduct our oversight role. Finally, I beg this House to get out of Nairobi and go for Senate *Mashinani* to see the projects the county governments are doing as well as talk to the public. That is how we can build confidence in our country and make sure that the public gets the services they get.

I hope that we will be able to get funds that can build a library like the one in Nairobi. It is a beautiful architecture, designed as an African drum and it has all the books in the world. However, if you look at the libraries we have in our county governments, they are despicable and look pathetic.

How I wish we can figure out how to pay our Early Childhood Development Education (ECDE) teachers because these teachers build the foundation for the future leaders of tomorrow; like Bonny Khalwale. They should become doctors and lawyers like my Secretary General, hon. Sifuna and my sister.

Mr. Temporary Speaker, Sir, I would like the ECDE teachers to also produce children who are going to be as wonderful as Madam Gloria Orwoba and all the ladies I see in this House fighting for change and the development of this country.

With those remarks, I give credit to this Committee and hope that we will move and increase the amount next year, so long as the governors promise that they are going to be responsible and not misuse our money; and that they will be seen as future custodians of our country.

I thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Karen Nyamu.

Sen. Nyamu: Mr. Temporary Speaker, Sir, I support the Division of Revenue Bill.

(There was a technical hitch)

What is wrong with my microphone?

The Temporary Speaker (Sen. Wakili Sigei): You are on, Sen. Karen. You may proceed.

Sen. Nyamu: Mr. Temporary Speaker, Sir, I support this Bill. I also urge the county governments to be contented with the Kshs391.1 billion that we are allocating to them. It translates to about 25 percent of the money that the Government collects.

The Government is already grappling with financial constraints due to lack of financial access in both local and international markets. The President has been in the forefront urging us all to live within our means. Let us avoid over ambitious budgets which lead to corruption and stalled projects.

Mr. Temporary Speaker, Sir, the Controller of Budget (CoB) report indicates that most counties are spending 75 percent of money allocated to them on recurring expenditure like salaries, against the regulations of the Public Finance Management (PFM) Act which indicate that salaries should be about 35 percent.

There is also the question of accountability. Many governors are not able to account for the money that goes to them. County governments should also seek to settle all eligible pending bills and avoid the stalling of projects.

With those few remarks, Mr. Temporary Speaker, Sir, I support.

The Temporary Speaker (Sen. Wakili Sigei): Sen. (Dr.) Oburu Oginga.

Sen. (Dr.) Oburu: Thank you, Mr. Temporary Speaker, Sir, for this opportunity. I also want to add my voice to this Bill as I support the report by our Committee on Finance and Budget. It recommends an increment over and above the one by the Commission on Revenue Allocation (CRA).

I am doing this because I am happy with the way the Senate this time is handling this Bill. Last year, when we discussed this issue, we were divided. We argued on whether to increase or not and whether to increase to the level recommended by CRA or leave it at the level passed by the National Assembly.

Mr. Temporary Speaker, Sir, today we have a substantial increase recommended by our Committee on Finance and Budget. When you increase the allocation from Kshs385 billion to Kshs391 billion, that increase of Kshs6 billion does not even meet the inflation. When you talk of increment, there is increment in nominal terms and increment in real terms.

Increment in real terms takes inflation into consideration. Once you knock out the inflation, then you can consider whether you have actually increased the budget. When you do not take that into consideration and you talk about nominal increment, you are missing the point because you are giving them less than what it is, if it is less than the increment in terms of inflation. This increment as recommended by our Committee on Finance and Budget will go a long way in meeting some of the needs of our counties.

Mr. Temporary Speaker, Sir, having spoken about the need to increase allocation to the counties, I would like to say that our counties need to be tightly controlled. We need to have controlled measures to make sure that they do not pocket monies meant to offer services to our people.

When devolution was introduced in Nigeria, more than 50 per cent of the governors went to jail because they did not know how to run a devolved system. They thought it was devolving corruption and 'eating' of money. After tight measures were introduced, devolution is now functioning very well.

We have not managed in our country. We hear governors are being interrogated here and there, but none of them who steal money from the public ever goes where they should be.

Mr. Temporary Speaker, Sir, there is also the issue of pending bills that are killing businesses. They are making life very difficult for people who are not paid. I have seen the list of pending bills. Instead of reducing pending bills, some counties are increasing them. This is very serious, because counties are supposed to take into consideration the people to whom they are offering services.

It is serious that they are still adding a problem to an already big problem. The Senate needs to take cognition of this and take some measures to deal with such counties who instead of reducing, are increasing the pending bills.

Mr. Speaker, Sir, I do not want to say much more on this issue. When counties make statutory deductions from their employees, such as National Social Security Fund (NSSF), National Health Insurance Fund (NHIF), the Pay As You Earn (PAYE), they retain these revenues and convert them into their own use.

This is a very serious matter because there are people who are supposed to earn pensions, but do not because there are no remittances. Others want to access hospitals but they cannot because counties have not remitted money to pay for the hospital insurance. This is an issue which also needs serious attention because counties are not supposed to use monies that they have deducted from their employees. This is not part of their money.

Mr. Speaker, Sir, the other issue is on OSR. This is an area where counties can get additional money to supplement the equitable share from the national Government. However, some counties leave a lot of loopholes and do not even want to go modern by using electronic means of collecting money, which is more efficient in collection and---

The Temporary Speaker (Sen. Wakili Sigei): Senator, your time is up.

(Loud consultations)

He has not requested for more time. I would have given him additional time.

Proceed, Sen. Lomenen.

Sen. Lomenen: Thank you, Mr. Temporary Speaker, Sir, for this opportunity. I stand to support this Bill from the Committee on Finance and Budget.

Mr. Temporary Speaker, Sir, the Senate is not the problem. We always allocate funds to the counties, but the problem is with the counties. One of the problems in the counties is on the value for money. I was formerly a member of the National Assembly and I was supervising the National Government Constituencies Development Fund (NG-CDF).

We found that building a NG-CDF class was worth Kshs2 million. However, the cost of a class in the county is almost Kshs4 million or Kshs5 million. You wonder whether the funds that comes from the NG-CDF are the same as those from the county governments. So, funds are misused.

I think the Chairpersons for the Public Investment and Special Funds Committee (CPIC) and County Public Accounts Committee (CPAC) are here. You will find that most of the projects in the counties are white elephants. Big projects which are worth millions are not completed. Even now if we get into these areas.

Members of the Senate who went for Senate *Mashinani* saw with their naked eyes how these projects are still not complete, yet the community needs them. For example, if a health center or hospital is not complete, when will these people from this location or sub-county use these services? So, when funds are allocated to the county, the priorities are diverted when they get to the county.

The Governor and the people whom he works with decide to divert the funds to projects that are so comfortable to them. Then the community is left wandering in search of water, food, health services, school fees *et cetera*. We will not tire to do oversight.

Mr. Temporary Speaker, Sir, when Senators oversight and try to exercise their constitutional responsibility to the county, the county feels hurt. We will ensure that we oversight any public fund that is given to the county until the end of our age.

The other one thing that we have also realized is the issue of pending bills. It is becoming a problem. Before pending bills are paid, there are things that are considered; politics comes in. The current governor would say he or she is not paying those bills because he does not know what happened during the procurement process *et cetera*. However, during the handing over, the governor received all the pending bills and the handing-over report. He could have denied and said let audit be done to pending bills and incomplete projects before he or she pay.

The amount on pending bills is so much. So, even when we allocate these funds to the county, with political good will, all these funds will be paid to pending bills and public services will be adequate to the community.

We have to pay because contractors who offer services to counties have families and other needs. There is no excuse but to pay them. They live in the counties and are ready to offer services because they are Kenyans. Therefore, they deserve to be paid.

Another thing we have observed is that the right priorities should be done. If it is water, let the communities get it. If it is the issue of health centres or hospitals, it is not in order for the people of a county like Marsabit or Turkana to travel 150 kilometres just because of referral cases due to lack of drugs or services in a specific hospital, yet we are allocated funds just like other counties that we take our referrals to. We have to make proper use of funds that we are given.

These funds should meet the right priorities for the citizens. We have to carry needs assessment, so that we know problems that communities are facing. They will tell you because they know better than you. However, If you---

The Temporary Speaker (Sen. Wakili Sigei): Sen. Lomenen, your time is up.

Proceed, Sen. Eddie Oketch.

Sen. Oketch Gicheru: Mr. Temporary Speaker, Sir, I also rise to share a few thoughts concerning this Bill as captured in both Articles 203 and 204 of the Constitution. This Bill proposes about Kshs7.8 billion as Equalization Fund to go to the counties.

I just want to speak to two issues because of pressure of time. If I had 20 minutes, I would have talked about other adventurous things. Just to jog our minds, this Bill projects that we will have revenue allocation for FY 2024/2025 estimated at Kshs2.9 trillion. Out of that, based on what the National Treasury had brought, the national Government share of Kshs2.9 trillion should be Kshs2.5 trillion. If you do the maths, that represents 86.47 per cent of the total revenue that we are projecting.

The National Treasury proposed that county governments should get Kshs391 billion. If you do the maths, the share of that is 13.3 per cent of the total revenue that we project. Of course, the dictates of Article 203 require that in this kind of division, we should allocate at least 15 per cent of the last audited financial reports.

The last audited financials of the country were those of FY 2020/ 2021. That means that if you were to go with what the National Treasury proposed, then the equitable share would be about 24 per cent of the last audited financials. When you do the maths, it looks good as if you have given counties so much money. However, in the thickness of things, that would only mean that the increase to county governments, based on what we gave them last year, would only be 1.5 per cent.

I am glad that this committee, after doing some maths and looking at a number of things, proposed Kshs415.9 billion as equitable share that we should give to counties. This is something that the House should rally behind, as well as the National Assembly, because the kind of pressures that counties are facing today are so many. The words "equitable share" must be equitable, both in meaning and in deed.

If you look at the growth factors of our revenue that affect us nationally, there are a number of things we must start fighting for. The first thing that we should care about as a committee, which I also care about personally, is the fact that inflation and the cost of goods and services are not considered when you only use either previous year's baseline or previously audited finances.

That leaves the national Government benefiting from the fact that their revenue growth does cater for their budgets, inflationary issues, as well as the cost of goods and services. I think there is a lacuna in law under Article 203, which this House, because we have got radical conversations that are going on, must actually press to adjust that particular aspect, so that when we do revenue allocation, we should look at adjustment factors in terms of growth factors, including things like high cost of living, cost of goods and services, as well as inflation issues that we have in the country at any given point.

The second thing I want to talk about is that we are passing the budget for FY 2024/2025 when the last audited accounts were done by the National Assembly in FY 2020/2021. It is imperative that we must take an opportunity either to amend the Constitution or adjust the existing laws that can compel the National Assembly to work with the speed, so that we always have audited finances to be the nearest possible to the financial year that we are passing.

For instance, if we base the sharing of revenue on FY 2020/2021 and we are passing for 2024/2025, it will be a raw deal to county governments because it is not equitable and will not help them match the needs of what they are working on.

Lastly, we must also caution our governors from making commitments that are national functions. Sometimes they make those commitments to an extent that it claws back on them. For instance, we have seen things like parks that are being built in the counties. We have seen programmes such as Community Health Promoters (CHPs) being shared between national Government and county governments. Our governors end up committing blindly to this---

The Temporary Speaker (Sen. Wakili Sigei): Sen. Eddie, your time is up.

Let us listen to Sen. Mo Fire Gataya Mwenda.

Sen. Gataya Mo Fire: Mr. Temporary Speaker, Sir, I take this opportunity to support this important Bill, considering the fact that our core business as the Senate is to make sure that we pass relevant Bills to make sure that counties get money.

Mr. Temporary Speaker, Sir, Article 96 of the Constitution dictates that-

(1) The Senate represents the counties and serves to protect the interests of the counties and their governments.

(2) The Senate participates in the law-making function of Parliament by considering, debating, and approving Bills concerning counties, as provided in Articles 109 to 113.

At the same time, the Senate must participate in the oversight of state officers by considering and determining any reallocation to remove whatever so many other things.

By so saying, I am happy with what the Standing Committee on Finance and Budget has just done because we have increased the money that is supposed to go to counties. However, it is worth noting that we have witnessed rampant corruption in counties. We have devolved corruption nepotism; and a lot of things that are not supposed to be done. It is high time that, as a House, we pronounce ourselves.

I admire what the Senator of Garissa County just stated that this House should bestow itself without responsibility or make sure that we try to rate our governors and their performance. We do not want to have some elements of Infrotrack or any other organization for that matter trying to gauge the performance of governors.

It is this House that is charged with the responsibility of making sure that we rank our governors as per performance and those who are putting public money prudently.

It is high time that once we devolve the money, we sometimes become mortacious because money has been squandered, money has been eaten, people have looted a lot of money all the way, and maybe after two or three years, that report will find its way to this House.

It is the right time that we make sure that we are hands-on, to make sure that whatever we devolve to our counties and our governors is used prudently for the interests of those people that it is supposed to serve. I have seen many of us, even in the previous regime, come here and lament about what governors are doing, but once one becomes a governor, either from the Senate or the National Assembly, the trend is just the same.

It is high time we stopped this hypocrisy and make sure that we manage what we normally say, because maybe in the next two, or three years to come, some of us here will be governors down in the respective counties. We expect a shift from the norm, where people are squandering citizens' money and services are not rendered. It is the right time that we must practice what we preach.

I support.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Omogeni, you have the Floor.

Sen. Omogeni: Thank you, Mr. Temporary Speaker, Sir. I also rise to support the Division of Revenue Bill 2024.

First, we cannot, as Senators, say that we are happy with the allocation of Kshs391 billion. Certainly, our counties deserve to get more resources. The national Government continues to remain with a huge chunk of revenue that we collect nationally, and so, we must continue, agitating for county Governments to get more resources. However, the resources will, as we always say here, never be impactful unless they are used well and for the benefit of the people we represent.

I do not know the experience from other counties, but for 12 years into devolution, my Governor has not tarmacked even one kilometer of a road in the county of Nyamira.

(Loud consultations)

You can imagine, not even one kilometer of a road.

For every money that is sent to Nyamira County, all that the governor can do is use marram. That is the only mark that we have for him, and Senator Gloria Orwoba knows that.

Sen. Methu is saying I am lucky, but I do not think so. We can use this money better because tarmacking one kilometer of low-density can take up to Kshs40 million.

So, if you have an allocation of Kshs400 million in one financial year, you can do up to 10 kilometers and that can transform counties.

If you take a county such Nyamira, which is not huge in terms of acreage, you can do a lot. So, our governors need to wake up so that they can join the efforts of the national Government to progressively transform our counties.

I am one of those lucky Senators that fiscal capacity and efficiency are not one of the perimeters we use to share revenue. If we invoked that parameter, I would immediately lose money, because, in my County of Nyamira, our accounts have moved from being qualified to adverse.

I can see there is a proposal that fiscal capacity and efficiency of government be introduced as one of the parameters. We want to advise our governors to spend our money more efficiently, have more accountability and reduce wastage in our counties. They should also know that money that is sent to counties is not meant to reward relatives or friends.

Last week, His Excellency the President was hosting a conference on the ballooning Wage Bill, but at the same time, in the County of Nyamira, we were shooting up our Wage Bill to wallop 71 per cent of the allocation that is given to the County Government of Nyamira.

In just one financial year, we started by employing 300 people and then we added another 200 people. That is 500 people, and we are not picking children of the needy. It is just packing the county with cronies and relatives, which is very unfortunate.

So, I think that there is something that we need to do as Senators. Article 254(2) says that as a Senate, we have powers to summon an independent office holder or any commission to come and give us a report as a House.

It is high time that we called the Ethics and Anti-Corruption Commission (EACC), the five commissioners, and the CEO, to come here and appear before the Committee of the Whole and tell us what they are doing to deal with the corruption in our counties.

You and I cannot move to our respective counties and arrest our governors. The only people who have that power are EACC, DCI, and the DPP, you know. Every day, we are speaking on this Floor saying how corrupt governors are but see no action.

I heard Sen. (Dr.) Oburu give an example of Nigeria, where there is also a devolved system of government though they have states. He says many governors were locked up because of stealing public resources. However, 12 years into devolution in this beautiful country called Kenya, not even one person has gone to jail.

Whereas the national Government is calling for reduction of the Wage Bill, in some counties such as Nyamira, we have ballooned our Wage Bill to take 71 per cent of the resources that we send to our counties. That is not the way to transform our country. Such a governor wants us to remain the way we are, the way the late President Moi used to say, *"Mkae vivyo hivyo."* We do not want *kukaa vivyo hivyo;* we want our country to be transformed. We want our country to change. We want to drive to our homes through tarmac roads, not marram roads. Sixty years after independence, we need a better quality of life for our people.

The vision of the government is to reduce the marram roads in our country. We will never achieve that unless the national Government and county governments share the same vision.

Finally, I hope that the National Assembly will fastrack the auditing and approval of our accounts so that we move closer to dealing with audited accounts of the previous financial year. I think we are now dealing with FY2019/2020, which is a very skewed way of sharing revenue.

We call upon our brothers to also fastrack the approval of the audited accounts, so that we can at least move closer in terms of the accounts that we use as a basis for sharing money.

I support.

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

Sen. Shakila Abdalla: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to support this Bill. We all know that this House is in charge of devolution. Devolution is working. If we continue protecting it jealously, it will even work better for our people.

There are some governors misappropriating funds. However, this should not be a reason for us to punish all governors because of one or two mistakes of individual governors. We are supposed oversight county governments. As we do so, we should identify loopholes, issues, challenges, and problems facing county assemblies. Since inauguration of the current Constitution, the budget of the national Government has been increasing by trillions. However, the budgets of counties are only increasing by a few billion of shillings. We need to ensure that we give more funds to counties so that they grow and develop.

Mr. Temporary Speaker, Sir, there many challenges facing devolution. For example, health and agriculture functions face serious challenges in our counties. These challenges are a creation of the national Government’s failure to work harmoniously with the county governments. If they were to work together, some of these challenges would have be addressed and improved service delivery to our people in counties. When we deny county governments funds, we are killing devolution. There are delays in releasing funds to counties, which causes confusion making devolution not work as envisioned.

Mr. Temporary Speaker, Sir, by allocating more funds to county governments, we will be developing counties and strengthening devolution. The national and county governments should work hand in hand to sort out existing issues in our counties, so that devolution works properly and the results felt at the grassroots level.

The Temporary Speaker (Sen. Wakili Sigei): Hon. Members, since no other Member is interested in contributing to this Bill, I call upon the Mover to reply.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Temporary Speaker, Sir. I appreciate colleagues who have taken time to speak to the annual Division of Revenue Bill. This is perhaps the single most important legislation in terms of fulfilling our core mandate and reason for existence as an institution.

In doing this annual ritual, I must appreciate our colleagues who have shared their thoughts and views. Most importantly, in one concerted effort, all Senators agreed to properly fund counties, notwithstanding the many cases of misuse of resources at the grassroots level. Members have risen above petty and sometimes partisan politics that arise during the passing of the Division of Revenue Bill and disagreeing on things we need not to do so.

Mr. Temporary Speaker, Sir, this House has gone full circle. I said this last year that I see colleagues who want to reduce this debate to be about how you voted for the Bill last year. I would like them to check the records and appreciate that, at one time, the Senate stood firm and was left as a lone bystander. Everybody deserted us from the national Government and MCA. Finally, four months into the financial year, the governors called a press conference and said that the Senate should stop dilly-dallying and pass the Bill as it is.

The history of this House and our fight for better resources to counties is replete with acts of great sacrifice by Senators. The biggest single-year leap we have ever had as a House is from Kshs316 billion to Kshs370 billion. Many people know what happened in that financial year before we achieved that great milestone.

With those many remarks, I agree with colleagues that we need to progress this Bill, conclude on it and resource our counties properly. As they begin the financial year, we are moving together in one accord.

Finally, I heard one colleague mention the need for us to engage deeply with the institutions of oversight. The Senate is one of those organs that oversight county governments. However, there are other organs can help us on oversight role tame wanton corruption in our counties.

Mr. Temporary Speaker, Sir, perhaps it is time to consider a conference that will have an exit. The annual Legislative Summit was supposed to achieve this, but it was reduced to a shouting match. Remember the first conference we attended, it was about car grants and other mundane things by MCAs.

I have heard the Ethics and Anti-Corruption Commission (EACC), the office of the Auditor-General, the office of the Controller of Budget and the Senate. Between the four institutions, we can come up with sound resolutions that will ensure we tame the corruption in our counties.

It is not beyond our budget and organizational skills to retreat. This is food for thought for your office as the Speaker and the leadership of this House. Later, when we have the next monthly recess, we should consider a day or two when we can retreat and raise this issue.

Sen. Omogeni, you are not doing anything new as a Senator in raising these issues on the Floor of the House. There is no difference between you and the villager in Kihumbu at a funeral who is crying that their resources are being pilfered. You are also in the Senate doing the same.

They expect us to do better than that. We need to go beyond the obvious bickering that we have become accustomed to and come up with sound policies between the four institutions of oversight to ensure devolution succeeds.

With those many remarks, I beg to reply.

The Temporary Speaker (Sen. Wakili Sigei): Hon. Members, we will proceed to Division on this Bill. I direct the Clerk to ring the Division Bell for five minutes.

(The Division Bell was rung)

(Loud consultations)

The Temporary Speaker (Sen. Wakili Sigei): Order, Hon. Members.

(Several Senators stood in their places)

Hon. Members, I want you to resume your seats, so that we ascertain the numbers for purposes of voting. I am informed that we have the requisite numbers.

Serjeant-at-Arms, could you please draw the Bars and close the Doors?

(The Bar was drawn and the Doors closed)

Serjeant-at-Arms, you may also proceed to withdraw the cards, which are not attended from the delegate units.

Hon. Members, this will be an electronic vote.

Question put and the Senators proceed to vote.

Hon. Senators, you may now start voting.

(Electronic voting in progress)

BILL

Second Reading

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

(Sen. Cheruiyot on 25.4.2024)

(Resumption of debate interrupted on 25.4.2024)

DIVISION

ELECTRONIC VOTING

(Question, that the Division of Revenue Bill (National Assembly Bills No.14 of 2024) be now read a Second Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abass, Wajir County; Sen. Ali Roba, Mandera County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Faki, Mombasa County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen.

Githuku, Lamu County; Sen. (Dr.) Khalwale, Kakamega County Sen. Lomenen, Turkana County; Sen. M. Kajwang', Homa Bay County; Sen. Maanzo, Makueni County; Sen. Madzayo, Kilifi County; Sen. Methu, Nyandarua County; Sen. Munyi Mundigi, Embu County; Sen. (Dr.) Oburu, Siaya County; Sen. Oketch Gicheru, Migori County; Sen. Okiya Omtatah, Busia County; Sen. Omogeni, Nyamira County; Sen. Osotsi, Vihiga County; Sen. Sifuna, Nairobi City County; Sen. Thang'wa, Kiambu County; Sen. Wafula, Bungoma County; Sen. Wakili Sigei, Bomet County and Sen. Wambua, Kitui County.

NOES: Nil.

The Temporary Speaker (Sen. Wakili Sigei): Hon. Senators, we now have the results of the Division and are as follows -

AYES: 25

NOES: Nil

ABSTENTION: Nil

The "Ayes" have it.

(Question carried by 25 votes to Nil)

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

Serjeant-at-Arms, you may withdraw the Bar and open the doors.

(The Bar was drawn and the Doors opened)

Hon. Senators, earlier on, I had rearranged the Order Paper to facilitate the conclusion of the debate and voting on the Bill, which we have just concluded. We will go back to the Order Paper as I had earlier on stated.

I will allow statements to continue and these are Statements Pursuant to Standing No. 56 (1) (b) of the Standing Orders of this House.

(Resumption of Questions and Statements)

QUESTIONS AND STATEMENTS

STATEMENTS

The Temporary Speaker (Sen. Wakili Sigei): Proceed, Chairperson Standing Committee on Roads, Transportation and Housing, Sen. Thangw'a.

(Sen. Orwoba, Sen. Cherarkey and Sen. Oketch Gicheru consulted the Clerk-at-the Table)

Sen. Orwoba, Sen. Cherarkey and Sen. Oketch Gicheru, resume your seats to allow the Chairperson on Roads, Transportation and Housing to read his Statement.

Proceed, Sen. Thang'wa.

ACTIVITIES OF THE COMMITTEE ON ROADS,
TRANSPORTATION AND HOUSING

Sen. Thang'wa: Thank you very much, Mr. Temporary Speaker, Sir.

I rise pursuant to Standing Order No.56 (1) (b) to make a Statement on the activities of the Standing Committee on Roads, Transportation and Housing, for the period commencing 1st January, 2024 to 31st March 2024.

The Standing Committee on Roads, Transportation and Housing is established under Standing Order No.228(3) of the Senate Standing Orders and is mandated to consider all matters relating to transport, roads, public works, housing, construction and maintenance of roads, rails and buildings, seaports and communication.

During the period under consideration, the Committee held 16 sittings and conducted the following business-

During the period under review, the Committee considered the following Bills-

(i) The Public Transport Motorcycle Regulation Bill, 2023 (Senate Bill No.38 of 2023) that is sponsored by Sen. (Dr.) Khalwale and will consider the Committee stage amendments and table its report on the Bill in the next report period.

(ii) The National Construction Authority Amendment Bill (National Assembly Bill No.59 of 2022). The Committee will consider and adopt the report on the Bill for tabling in the next reporting period.

(iii) The Affordable Housing Bill (National Assembly Bill No.75 of 2023) and tabled its report on the Bill on 7th March, 2024.

The Committee considered the legislative proposal by Sen. Dullo on the Street Naming and Property Addressing System Bill, 2023, and recommended its publication with proposed amendments.

The Committee is considering the legislative proposal by Sen. Crystal Asige on Transport Laws Universal Design (Amendment) Bill, 2024 and is expected to conclude its consideration in the next reporting period.

Mr. Temporary Speaker, Sir, two Petitions are pending before the Committee as follows-

One petition which was presented to the Senate on 18th October, 2022, by Sen. M. Kajwang' and was thereafter committed to the Committee. The Committee met with the petitioners, the Cabinet Secretary, Ministry of Roads and Transportation and the Kenya Ports Authority (KPA). The Committee is scheduled to undertake a visit to Mfangano Island and thereafter draft the report for submission in the House.

Petition two is concerning the title deeds for properties bought at Jamii Bora Estate, Kisaju, Kadiado County. The petition was committed to the committee on 14th March, 2023. The petitioners bought houses and shops on an off-plan housing scheme from Jamii Bora Charitable Trust but were never issued with title deeds to those houses built in Jamii Bora Estate since the year 2008 to date.

The petitioner, therefore, sought the intervention of the Senate to have them issued with title deeds for their properties.

The committee met and received submissions from the petitioners, Kajiado County Government, Business Registration Service (BRS), State Department for Lands and Physical Planning and Kingdom Bank. The committee is to hold a conclusive meeting with all stakeholders and table a report in the next reporting period.

Moving to Statements, Mr. Temporary Speaker, Sir, during the period under review, 16 Statements were referred to the committee for consideration. The following two statements were considered and concluded-

(1) Status of construction of the Lodwar Court Building in Turkana County by Sen. Lomenen, MP.

(2) Barabara zinazomilikiwa na mamlaka ya Kenya Urban Roads Authority (KURA) katika Kaunti ya Mombasa by Sen. Faki, MP.

The following three Statements were considered, but not concluded because the committee sought supplementary information-

(1) Repair of rails vandalized during public demonstrations at the Mlolongo Pay Point on the Nairobi Expressway by Sen. Wambua, MP.

(2) Kuzorota kwa miundombinu na huduma katika jengo la Bima Towers katika Kaunti ya Mombasa by Sen. Faki, MP.

(3) Status of completion of Bunge Tower by Sen. Chute, MP.

The committee adopted a methodology for consideration of Statements where it invites Senators who request for Statements referred to the committee before seeking responses from relevant Government agencies. This is meant to reduce the number of supplementary issues that arise during consideration of responses to the statements.

Mr. Temporary Speaker, Sir, 15 Statements referred to the committee are at different stages of consideration as indicated in the attached annex. It is good to know that the reason we adopted this methodology is because we feel Statements are over-edited before they are read in this House. We invite Senators before that, so that they give us original statements before we send them to the relevant departments.

Regarding inquiries, the committee is undertaking an inquiry into the urban regeneration and renewal programme of the Nairobi City County Government, which intends to demolish 13 estates, majority of which are in Nairobi City and redevelop the estates under the Affordable Housing Programme (AHP).

The committee is concerned with the manner in which the Nairobi City County Government is undertaking the programme without carrying out meaningful public participation by the residents of the targeted estates and the issuance of threats to the officials of the estates residents' associations who have raised issues with the manner in which the programme is being carried out.

The committee met with the governor of Nairobi City County and received submissions on the urban regeneration and renewal programme. The committee and the Nairobi City County government agreed that the project should not commence until adequate and meaningful public participation with the residents of the affected estates is undertaken and a Memorandum of Understanding (MoU) signed.

Moving on to Messages, the committee received a Message for consideration jointly with the Standing Committee on Land, Environment and Natural resources. The Message was from the Nyandarua County Assembly regarding a resolution by the county assembly to petition the Senate to consult with and initiate approval of the National Environment Management Authority (NEMA), the Kenya National Highways Authority (KenHA), the Kenya Forest Service (KFS) and the Kenya Wildlife Service (KWS) on the Ihithe-Aberdare Forest-Kahuruko Ndunyu-Njeru Road construction and tarmacking project.

The Joint Committee awaits the outcome of a report or comments on the Environmental Impact Assessment (EIA) and Environmental Social Impact Assessment (ESIA) study on the proposed construction of the road. It is also good to report that construction is set to start.

The committee experienced the following challenges-

(1) Delayed response by county governments: The committee experienced cases of delayed response to information sought from county governments. This arises from unclear responsibilities in the county governments on who is to act on issues sought by the committee. County governments should be encouraged to establish legislative desks to handle issues emanating from Parliament and county assemblies.

It is also good to note that the committee has fined governors who have not been able to attend the committee.

Mr. Temporary Speaker, Sir, the second challenge is non-attendance of meetings for consideration of responses to statements by Senators who requested the statements. This delays conclusion of the statements.

It is also good to note that the next time I am coming here to give a report like this one, I will mention the names of those Senators who request for statements, but do not appear to either defend or discuss them within the committee.

I, the Chairman of the Standing Committee on Roads, Transport and Housing. I thank you.

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

I call upon the Chairperson, County Public Accounts Committee (CPAC) to make his statement as well.

ACTIVITIES OF THE COUNTY PUBLIC
ACCOUNTS COMMITTEE

Sen. M. Kajwang': Mr. Temporary Speaker, Sir, pursuant to Standing Order No.56(1)(b), I rise to make a statement on the activities of the County Public Accounts Committee for the period commencing 13th February, 2024 to 19th April, 2024.

Mr. Speaker Sir, during the period under review, the committee held a total of 14 meetings in which it interrogated reports of the Auditor General on the financial statements of seven County Executives and eight County Assemblies.

Even though the reporting period is from the 13th February, I must note that with the leave of the Speaker, the committee retreated between the 6th and 11th of February, just a few days before commencement of the Session, to write reports. On the Order

Paper, Members will be pleased to see that we have submitted reports for 10 county assemblies and 15 county executives.

Mr. Temporary Speaker Sir, during the period, the committee has noted with concern the rising trend of witnesses failing to appear before the committee without justifiable reasons amounting to contempt of Parliament. The committee has flagged the governors of Isiolo and Nairobi City County Executives and has subsequently summoned them to appear before the Committee in April and May, respectively.

This report was approved last week, but I am pleased to note that the Governor of Isiolo was compelled to appear before the committee yesterday. The committee also resolved to impose the maximum fine available under the Parliamentary Powers and Privileges Act to purge the contempt of Parliament. If contempt of the Senate committees is not checked, other governors are likely to follow suit if it does not invite any serious consequences. The Senate should thus explore avenues through amendments of the Parliamentary Powers and Privileges Act, 2017, to provide for stricter penalties, fines, imprisonment, or other punitive measures.

Additionally, we have requested the legal directorate to do a paper on the concept of contempt of Parliament and also to share with the committee what other jurisdictions do to ensue enforcement of the directives of Parliament.

Mr. Temporary Speaker Sir, the committee undertook a county visit to Isiolo in March for inspection of projects and interrogation of the Reports of the Auditor General for the financial years 2019/2020 and 2020/2021. However, the Governor failed to appear before the committee. As I said earlier, we issued summons and the governor appeared yesterday to explain himself.

During project inspection, the committee observed that some of the projects, including the County Headquarters, Isiolo Stadium, Isiolo Market, Mwangaza Dispensary and the Isiolo Referral Hospital Mortuary had either stalled or taken longer than the planned period to complete and the some of the contractors were not on site.

The committee directed the Ethics and Anti-Corruption Commission (EACC) to take keen interest on the implementation and projects, and further, the CoB to scrutinize the requisitions relating to the highlighted projects. I also note that when we were in Isiolo, we went to the mortuary and the coolers were not working.

In as much as the county government explained that they were working before our visit, they were not able to demonstrate why they were not working during our visit.

Mr. Temporary Speaker Sir, the committee continues to note with concern the unhealthy size and growth of wage bills in many of the counties, beyond the recommended 35 per cent threshold and processing of employee emoluments outside the Integrated Personnel and Payroll Database (IPPD).

Mr. Temporary Speaker, Sir, payment outside the IPPD poses significant weaknesses for counties, since manual processes are often less transparent and more prone to corruption. Individuals responsible for payroll may manipulate records, create ghost employees, or inflate salaries to siphon county funds.

Manual processing of salaries results in loss of audit trails and accountability mechanisms integral in automated information systems since it is difficult verify transactions or hold individuals accountable for discrepancies in salary payments. This lack of accountability opens the door to fraud and misconduct. This unethical behaviour undermines the integrity of the payroll system and has resulted in massive financial losses in counties.

The committee has since invited the Cabinet Secretary, Ministry of Public Service, Performance and Delivery Management, the Council of Governors (COG); and the County Assemblies Forum (CAF) to deliberate on this issue.

Again, for emphasis, the National Wage Bill Conference was held about two weeks ago. However, the representatives of legislature were left out and yet some of the interventions required to tame the unhealthy wage bill could rise from budgetary allocations, appropriations by Parliament, statutory or regulatory reforms. I hope that can improve in future.

Mr. Temporary Speaker, Sir, during the interrogation of the Auditor-General's Reports for various county entities, the committee also noted with concern the persistent accruing pending bills, including non-remittance of statutory deductions to the relevant state agencies. The committee has directed the entities to take sustainable measures to address this matter and further directed the Office of the Auditor-General (OAG) and the Controller of Budget (CoB) to closely monitor adherence to this directive.

I am glad to note that Sen. Ledama Olekina has brought a Motion to this House on the subject of pending bills. During the interrogation of the various county entities during this period, the committee noted that most entities failed to disclose their contingent liabilities in their financial statements. Some of the contingent liabilities may arise from litigation in progress, guarantees, indemnities, letters of comfort/support, insurance and Public Private Partnerships.

Whereas county governments do not need to recognize a contingent liability in their statements of receipts and payments, they need to disclose details of any contingencies in the notes to the financial statements unless the possibility of an outflow of resources embodying economic benefits or service potential is remote.

Mr. Temporary Speaker, Sir, some of the counties with the highest contingent liabilities, include the Nairobi City County, with a contingent liability of close to Kshs21.7 billion. Kiambu County has Kshs497 million, and Meru County has Kshs601 million. Other counties did not disclose their contingent liabilities, but there was evidence that there was litigation in progress. If these matters went against some of the county governments, they would be technically insolvent.

We saw that with Uasin Gishu where if the issues that are in court were to go against the county government in totality, then the county government would have to pay much more than the revenues they earn locally and from the equitable share revenue This is a matter we have insisted needs to be disclosed.

On issues to deal with presentation, accuracy and completeness of the financial statements, the committee has observed that accountants in various entities have often prepared financial reports, which do not comply with the Public Sector Accounting Standards. This amounts to gross negligence in their conduct of professional duties and constitutes professional misconduct pursuant to Section 8(a) and 30 of the Accountants Act, CAP 531.

Financial statements prepared under the International Public Sector Accounting Standards (IPSAS) and prescribed by the Public Sector Accounting Standards Board (PSASB) are critical in decision making process in counties as well as accountability.

The committee has planned engagements with these professional bodies - the Institute of Certified Public Accountants of Kenya (ICPAK), the Institute of Human Resource Management (IHRM) and the Kenya Institute of Supplies Management (KISM). These are regulated professions and are regulated through Acts of Parliament. We would like to meet them in a bid to come up with a proper framework of collaboration so that professionals perform their duties with the level and care of skill expected in their field and also recommend disciplinary process for their members who fail to adhere to the standards.

Mr. Temporary Speaker, Sir, I am glad to know that, so far, as the Chairperson of the Committee, I had an engagement with the OAG during their annual planning retreat in Mombasa over the weekend, where we shared our concerns on professional responsibility. The Institute of Certified Public Accountants of Kenya (ICPAK) has since responded, even though through a press statement, to some of the issues that have emerged from the Senate deliberation.

Mr. Temporary Speaker, Sir, it is comforting that professional bodies are taking note of what is happening in the Senate. The Auditor-General has also cited in its reports that some county entities seem to be in serious or persistent material breach of their financial management principles. The committee has noted that some entities, for example, Nairobi, Kisumu, Baringo, and Tana River counties have had adverse opinions for more than three consecutive years.

As a result, the committee is considering invoking the provisions of Article 225(3) and Section 96(1) of the Public Finance Management Act on the stoppage of funds.

Stoppage of funds is a serious measure aimed at addressing governance and financial integrity issues. It is part of a broader framework of accountability and oversight to ensure responsible use of public funds and delivery of services to citizens.

Mr. Temporary Speaker, Sir, on the conversation around the stoppage of funds, allow me to emphasize what one of my Members, Sen. Okiya Omtatah had raised. That if you stop the flow of funds to counties because of an errant governor, you are punishing the masses. So, we must find ways of punishing errant persons. Article 225 (3) is a very lengthy process, but we can find a roundabout way of perhaps stopping the privileges and benefits that go to the ruling classes in counties, rather than stopping the flow of funds for medicine and other critical infrastructure to counties.

In conclusion, I wish to thank the Members of the committee and the dedicated secretariat that usually sits for long hours to ensure we reduce the backlog of audit reports.

The committee will continue to use various strategies, including subcommittees and merger of financial years, to shift to a more proactive mandate and to ensure the Senate is current in its interventions.

Mr. Temporary Speaker, Sir, I would wish to report to the House that we are currently dealing with the next round of appearances that will go up to the financial year

2022. It is nothing to be proud of. Considering the backlog that we have had in the past, we pray that by the end of this session, we will be able to bring to the House reports up to the financial year 2023.

I thank you.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. M. Kajwang'.

ACTIVITIES OF THE COMMITTEE ON COUNTY PUBLIC INVESTMENT AND SPECIAL FUNDS

Sen. Osotsi: Thank you, Mr. Temporary Speaker, Sir. On behalf of the CPIC, I rise pursuant to Standing Order No.56(1)(b) to make a Statement on the activities of the committee for the period commencing 1st January to 15th April 2024.

During the period under review, the committee had a total of 25 meetings within and outside the precints of Parliament to consider matters within its mandate.

The meetings that we did include-

(1) The regular meetings to consider the reports of the Auditor-General on the financial statements of special funds in counties for the financial years 2019/2020, 2020/2021 and 2021/2022.

Mr. Temporary Speaker, Sir, this was a very important engagement because since this Senate was established, it had not considered the audited reports for funds. This was noted as one area where we have challenges with governance and accountability issues.

(2) Multi-stakeholder engagement forum which was held in Mombasa County to address numerous cross-cutting issues in the water sector that were identified by the committee during its interrogation of the audit reports for water companies. We are in the process of doing a report which will be brought to this House on status of water investments or water entities in the counties.

(3) We had a report writing retreat in Naivasha, Nakuru County. We went to write our report on the reports of the Auditor-General for water companies in our counties. In consideration of reports of the Auditor-General on funds in counties, we noted several issues.

Upon conclusion of interrogation of the reports of the Auditor-General on the financial statements of public water companies in the counties for the financial years 2018/2019, 2019/2020 and 2020/2021, the committee resolved to embark on interrogation of reports of the Auditor-General on financial statement of funds in the counties for the three years. During the period under review, the committee met 23 county executives, those are governors and interrogated reports of the Auditor-General on 67 funds in the said counties.

Some of these funds, include, among others, bursary funds, and disaster and emergency funds. That is what Members were talking about this afternoon. Others include car loan and mortgage funds and revolving funds. Those are some of the most common Funds in the counties.

During the interaction with county executives on the audited reports on funds, numerous cross-cutting issues affecting the operations were identified. They included-

(1) Most funds were established based on regulations drawn from the Public Finance Management (PFM) Act, 2012, which is a national legislation, raising concerns on the legality and effectiveness of the offices of the county attorneys. You can only generate regulations on national legislation if you are the Cabinet Secretary. Counties have no powers to generate regulations on a national legislation on their own.

We noted that several counties have come up with regulations to manage Funds based on the PFM Act. We have had to give directions to the counties to regularize that and have a correct set of regulations in place.

(2) Low recovery rate of loans advanced by revolving funds to beneficiaries, risking the continuity and sustainability of the funds. For example, Kitui Empowerment Fund had advanced loans amounting to Kshs150 million, but had only managed to recover Kshs3 million, raising concerns over its sustainability. There are many other counties like Trans Nzoia, Tana |River among others.

As a committee, we need to decide on whether counties should continue having the so-called revolving funds. We noted that in some cases, these funds are used to distribute money to politically correct groups, especially during election period. We noted that several counties gave out money between the months of June and September 2022, which was an election period. Those loans have not been recovered to date.

Most car loan and mortgage funds are advanced to county executive staff without securing the interests of the county by charging their assets such as land and vehicles. Most loans were given in an *ad hoc* manner.

No security, no charging of property. This is a major loophole for pilferage of funds in our counties.

Mr. Temporary Speaker, Sir, the fourth major observation, we had instances of multiple allocations of bursaries to a single beneficiary. There was also lack of acknowledgment of receipts by the benefiting institutions and cheques that remained unrepresented leading to stale cheques.

When you look at the bursary fund and the way it is being managed in a county, you wonder why governors are putting money in bursary funds when bursary is a national Government function.

Most of these monies cannot be accounted for. They cannot give a valid list of institutions where they gave bursaries or students who have benefited and there is no acknowledgment. In some of the counties, for example, Bungoma County, we had serious concerns and we have referred that matter to the EACC for further investigation.

The fifth observation is that we have counties utilizing money allocated to emergency funds but failed to seek the necessary approval from the county assemblies as required under Section 114 of the Public Finance Management (PFM) Act 2012. We have a scenario where emergency funds are utilized and the governors do not go back to the County Assembly to regularize the approval funds for emergencies. That is common in most counties.

In some counties we had instances where they have even overshot the threshold, giving out money more than the required threshold of two per cent.

The sixth observation is on irregular inter-fund borrowing where money is moved from one fund to another without following the laid-down procedures. You find a scenario where the County Executive inverts a fund, takes money away, borrows the money or money is borrowed from one fund to another. We saw a lot of that in most counties and this is un-procedural and another way of confirming that budget control and performance in most counties is very weak.

The other observation is a high number of funds established by counties, limiting their oversight and capacity of counties to fund them and consuming a considerable amount of resources on administrative costs. That is money that could have been used for other meaningful purposes. For example, Baringo County has established a record 13 funds whereby some are not resourced. Some are not even operational. Some have inadequate funding from the county government while some are a duplicate of the other.

The other major observation is the continuous resourcing of funds---

The Temporary Speaker (Sen. Wakili Sigei): Sen. Osotsi, I wish to notify you that you have got under one minute to conclude your statement.

Sen. Osotsi: Mr. Temporary Speaker, Sir, just give me two minutes, and I will finish.

The Temporary Speaker (Sen. Wakili Sigei): Please rush through it to conclude.

Sen. Osotsi: Thank you, Mr. Temporary Speaker, Sir. Continuous resourcing of funds has been adversely affected by the delays in Exchequer releases to counties.

To address all these issues, the committee has given specific directions in an interim manner as mitigating measures -

(i) The governors should ensure pieces of legislation that are inadequate are established through the support of the county assembly.

(ii) That the governors, through the CEC for finance, ensure that internal control measures are put in place to address the gaps that we noted.

(iii) Governors must ensure appropriate technologies are deployed to curb incidents of multiple allocations, especially of bursaries.

(iv) Governors to ensure that the County Executive Committee Member (CECMs) for finance seek the necessary approval from the county assembly for expenditure incurred in emergencies.

The committee advised counties with high number of funds to reassess the funds and maintain a lean number of funds that are effective and easy to manage.

As I wind up, the committee has put in place measures to ensure that the recommendations are implemented. The committee has tabled the report on the matter of non-remittance of pension deductions to counties. As I speak now, the committee is in the process of implementing the report that was adopted by this House.

The Committee has adopted 27 reports for water companies, which are being processed for tabling with effect from this week. The committee plans to look at level 4 and 5 hospitals in all our 47 counties. We have noted accountability issues in those hospitals.

In conclusion, the interaction with the different county executives, the Committee ---

The Temporary Speaker (Sen. Wakili Sigei): Give him 30 seconds to conclude.

Sen. Osotsi: Mr. Temporary Speaker, Sir, the committee observed that there is an apparent wastage and misappropriation of public resources in counties. We, therefore, implore the individual Senators to enhance the oversight role through the oversight facilitation.

I wish to implore the House and the committees to hold governors to account for public resources under their control, noting that governors are the Chief Executive Officers (CEOs) of counties as per Article 179 of the Constitution.

With this, I submit this report on behalf of the Committee on Public Investment and Special Funds.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. Osotsi. This brings us to the conclusion on Statements pursuant to----

Sorry for that, we have the last statement pursuant to Standing Order No.56(1) the Chairperson Committee on Delegated Legislation, Sen. Gataya Mo Fire, proceed to table your report.

ACTIVITIES OF THE COMMITTEE ON
DELEGATED LEGISLATION

Sen. Gataya Mo Fire: Thank you, Mr. Temporary Speaker, Sir. I rise pursuant to Standing Order No.56(1)(b) of the Senate Standing Orders to make a Statement on the activities of the Select Committee on Delegated Legislation for the period commencing 29th January to 31st March, 2024.

The Senate Select Committee on Delegated Legislation is established under Standing Order No.195(1) of the Senate Standing Orders and is mandated to scrutinize statutory instruments laid before the Senate.

During the period under review, the committee held a total of 15 sittings.

During the period, the committee gave its comments on the following Legislative Proposals; the County Statutory Instruments Bill, 2024 and, the Statutory Instruments Amendment Bill, 2024.

On Bills, during the period under review, the committee jointly with the Standing Committee on Justice, Legal Affairs and Human Rights considered the Statutory Instruments (Amendment) Bill (National Assembly Bills No. 2 of 2023).

On committee benchmarking and stakeholder engagements, it travelled to Dodoma and visited the Parliament of Tanzania from 5th to 9th February, 2024.

During this visit, the committee, among other activities, met and shared experiences with the counterpart committees of the national Parliament of Tanzania and held meetings with the leadership of the Committees of the House.

The committee considered and acceded to the following Statutory Instruments-

(a) The Lake Ol Bolossat Catchment Protection Area Order, Legal Notice No.116 of 2023.

(b) The Karai Wetland Conservation Area Order, Legal Notice No. 117 of 2023.

(c) The Mwangea Hills Catchment Protection Area Order, Legal Notice No. 118 of 2023.

(d) The Lari Swamp Catchment Protection Area Order, Legal Notice No. 119 of 2023.

(e) SACCO Societies (Specified Non-Deposit Taking) (Levy) Order, Legal Notice No. 178 of 2023

The committee considered the Architects and Quantity Surveyors (Amendment) By-Laws, 2023 (Legal Notice No. 188 of 2023).

The committee observed that the Bb-laws were among the 1,764 Statutory Instruments that had expired in January, 2023. The Committee, therefore, recommended that the by-laws be withdrawn and published afresh.

Mr. Temporary Speaker Sir, the committee firmed up its resolutions on the draft Centre for Parliamentary Studies and Training (CPST) Regulations, 2023. The committee communicated its resolutions to the CPST for adoption during publication of the said regulations.

The committee also met the Elgeyo Marakwet County Assembly, Delegated Legislation Committee on its capacity building and experience-sharing meeting on 17th March, 2023.

Mr. Temporary Speaker, Sir, in the current quarter, the committee will be considering 13 Statutory Instruments that have been committed to it. To commence this activity, the committee has scheduled a two-day retreat with the Ministry of Lands, Housing and Urban Development to consider the Urban Areas and Cities (General) Regulations,2023.

In conclusion, I thank your office and that of the Clerk of the Senate for the continuous support accorded to the committee in undertaking its work. Lastly, I also wish to thank the Members of the committee for their commitment and diligence in and contributions during the committee activities.

I thank you.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. Gataya Mo Fire.

Hon. Members, I will allow a maximum of two Members to comment on statements which have just been presented by the respective Chairpersons, pursuant to Standing Order No.56, as well as those which were earlier on read pursuant to Standing Order No.53. The time to whoever is to comment will be limited to two minutes.

I am noticing the Members who have requested to speak. However, before that, the chairpersons who have since read all their reports, you may lay those reports before the Clerk.

Sen. Orwoba, proceed to comment. The time is two minutes.

Sen. Orwoba: Thank you, Mr. Temporary Speaker, Sir. I will quickly support this statement by the Kakamega Senator. He has also been my mentor in debates here.

We need to ensure that the County Government of Kakamega, tells us why they are not remitting the Pension Funds and the National Social Security Funds (NSSF).

Additionally, Sen. (Dr.) Khalwale has asked that the total number of employees at the County Government of Kakamega, also be noted.

Mr. Temporary Speaker, Sir, as I comment on our oversight role to the county governments, it is imperative that we take up the issue of the total number of employees in Bunge Tower. I have noted that we are not sure if we have employees who are seconded to Bunge Tower or are under the Parliamentary Service Commission (PSC).

We currently do not even know who is in charge of that building. I am being told that the security of Bunge Tower has employees who are contracted, and it is a nightmare. I am told that the building is in the precincts of Parliament, but the security that we have there is very wanting. We do not know even if those are Serjeant-at-Arms.

As we are doing the oversight here, I want to compel our commissioners and the PSC to also ensure that the precincts of Bunge Tower are handled as the precincts of Parliament. This is to enable us to understand who is handling the security there because it is a going concern.

Mr. Temporary Speaker, Sir, most of the Members in this House will agree with me that we have stayed away from Bunge Tower since it was launched because of the security issue. Additionally, the personnel who are there are apparently contracted and are not under PSC.

My concern is that there are cartels there who are claiming to be security being led by Mr. Majiba who is the head of that security. I have written a statement on the same and I am waiting to read it in the House. Nonetheless, we are staying away from Bunge Tower until something is done. This is important for us to speak about it here.

The Temporary Speaker (Sen. Wakili Sigei): Hon. Members, as I had directed earlier on, I will allow only two Members to comment, therefore, Sen. M. Kajwang' is the last Senator to comment on the statements. We will then proceed to the next Order.

Sen. M. Kajwang': If it is only two Members, I wish to withdraw for Sen. Munyi Mundigi to comment.

The Temporary Speaker (Sen. Wakili Sigei): Very well. Sen. Munyi Mundigi, take the floor.

Sen. Munyi Mundigi: Asante, Bw. Spika wa Muda. Naunga mkono kamati zilizotuambia vile walivyofanya kazi kwa sababu wamefanya kazi nzuri. Tunajua katika ugatuzi, sisi Maseneta tunafaa tuendelee kufanya kazi ya kusaidia kaunti kupata pesa nyingi ndio kusitokee mambo kama yale yaliyotokea.

Tunajua Kaunti nyingi hazina pesa za kutosha. Ndio maana wakati mwengine tunasema, "ni shilingi moja kwa mtu mmoja." Hii ni kwa sababu kuna kaunti zingine zinazopata pesa lakini tukienda mashinani hakuna kazi imefanywa.

Kuna kaunti zingine ziko na madeni makubwa. Wakati mwengine kunatokea vita kati ya *governor* na *MCA*. Kwa hivyo, naunga mkono ugatuzi uweze kutiliwa maanani.

Unakuta mizigo mingi iko kwa magavana ilhali wako na kazi nyingi. Ndio maana unaona makosa mengine yamefanyika. Tumeona vile magavana waliochaguliwa katika hiki kipindi cha Serikali ya Kenya Kwanza pamoja na Azimio wanavyofanya kazi, hasa akina mama waliochaguliwa.

Naunga Mkono kamati ya Sen. Osotsi. Hata hivyo, ni lazima tuangalie vile kaunti zilizo na madeni zitakavyopunguza madeni, ndio tuangalie vile tutasaidia kujenga zile kaunti zengine.

Kama Seneti, tunahitaji pesa. Tunapaswa tuangalie namna ambayo Wabunge wa Bunge la Kitaifa watatupatia pesa ya kutosha.

Asante. Naunga Mkono.

The Temporary Speaker (Sen. Wakili Sigei): Members, that brings us to the closure of comments on the statements. I ask the Clerk to call the next Order.

BILL

First Reading

THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL
(SENATE BILLS NO OF 2024)

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

The Temporary Speaker (Sen. Wakili Sigei): Next Order.

BILL

First Reading

THE COUNTY CIVIC EDUCATION BILL
(SENATE BILLS NO.4 OF 2024)

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

The Temporary Speaker (Sen. Wakili Sigei): Next Order.

BILL

First Reading

THE COUNTY STATISTICS BILL
(SENATE BILLS NO.5 OF 2024)

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

The Temporary Speaker (Sen. Wakili Sigei): Hon. Members, that was Order No.10. Order No.11 was dealt with earlier on. Order No.12 is the Maternal, Newborn and Child Health Bill, which is on the Second Reading Stage. Since Sen. Ogola is not in, we will defer it to the next reading.

BILL

Second Reading

THE MATERNAL, NEWBORN AND CHILD HEALTH BILL
(SENATE BILLS NO.17 OF 2023)

(Bill deferred)

We are deferring Order Nos.13, 14, 15, 16 and 17 to the next session as well.

MOTION

STATUS OF PENDING BILLS IN COUNTIES

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

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

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

NOW THEREFORE, the Senate-

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

(2) Resolves that-

(i) pursuant to the provisions of Regulation 41(2) & (3) of the Public Finance Management (County Governments) Regulations, 2015, County Governments prioritize payment of pending bills as a first charge on the County Revenue Fund failure to which the subsequent quotas budget releases will not be done.

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

(iii) Supplementary budgets for county governments are prepared in the 3rd Quarter to curb instances of arbitrary re-allocations out of the approved budget estimates.

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

(Motion deferred)

HOJA

KUIDHINISHWA KWA RUZUKU YA MASHARTI KWA UJENZI WA UWANJA WA MANISPAA YA MOMBASA

KUFAHAMU KWAMBA, Sehemu ya 2 ya Ratiba ya Nne ya Katiba ya Kenya inazipa Serikali za Kaunti jukumu la kuendeleza, kuanzisha, kusimamia na kudumisha vifaa vya michezo na kitamaduni ambavyo ni pamoja na viwanja, viwanja vya michezo, vituo vya kitamaduni, na miundombinu mingine inayohusiana;

IKIKUMBUKWA KUWA, ukanda mzima wa Pwani nchini hauna uwanja wa kisasa uliojengwa kwa viwango vya kimataifa, hivyo kuwanyima wananchi manufaa yanayotokana na viwanja na vifaa vya michezo;

WASIWASI, kwamba ujenzi wa uwanja wa michezo wa Manispaa ya Mombasa umekumbwa na ucheleweshaji na vikwazo tangu kuanzishwa kwa mradi huo mwaka wa 2019 kutokana na matatizo ya kifedha, ambayo yameathiri utekelezaji wa mradi na kunyima jamii eneo hilo uwanja unohitajika sana;

KWA HIVYO SASA, Bunge la Seneti linaazimia kwamba Hazina ya Kitaifa na Wizara ya Masuala ya Vijana, Uchumi Ubunifu na Michezo itengee Serikali ya Kaunti ya Mombasa ruzuku ya masharti ya Shilingi bilioni 1.7 kwa ajili ya kukamilisha ujenzi wa Uwanja wa Manispaa ya Mombasa.

(Hoja imeahirishwa)

MOTION

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

THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the status of implementation of projects funded by the Conditional Grant for the construction of County Headquarters laid on the Table of the Senate on Thursday, 28th March, 2024.

(Motion deferred)

MOTION

ADOPTION OF REPORT ON CONSIDERATION OF AUDIT REPORTS OF 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.

(vi) Nyeri Water and Sanitation Company Limited – Nyeri County

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

(Motion deferred)

MOTION

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

(Motion deferred)

Clerk, proceed with Order No. 18.

MOTION

REPORTS OF THE AUDITOR-GENERAL ON FINANCIAL
STATEMENTS OF VARIOUS COUNTY ASSEMBLIES

Sen. M. Kajwang': Mr. Temporary Speaker, Sir, I beg to move-

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

Mr. Temporary Speaker, Sir, for the first eight years of devolution, county assembly financial statements did not get the attention of the Senate. We concentrated mostly on the county executives. It was for a good reason because county executives enjoyed 90 per cent of the budget of county governments. However, this question arose; can the assembly oversight itself? Initially, we thought that county assemblies, through their respective oversight committees, could review and consider reports of the Auditor-General and make recommendations.

We thought the architecture of the law, that is the County Governments Act, and the PFM Act were strong enough to allow Members of County Assembly (MCAs) to summon the Clerk and other responsible accounting officers within the assembly and put them to task on issues of financial malpractice flagged by the OAG.

Mr. Temporary Speaker, Sir, a practical challenge was brought before us. The Clerk is the accounting officer of the county assembly. If the clerk does not respond to invitations by the Public Accounts Committee (PAC), the committee needs to issue summonses, which can only be issued under the hand of the clerk of the county assembly. So, it was impossible for the clerk to summon himself or any of his officers.

So, you would find a situation where there would be collusion amongst those charged with fiduciary responsibility in county assemblies to frustrate the work of PAC. That is how the Senate started inviting the County Assembly Service Boards (CASBs), Speakers and Clerks of the county assemblies to respond to the issues raised by the Auditor-General.

It is not an idle pursuit. Whereas the PFM Act aspires that seven per cent of a county budget should be allocated to the legislative function, over time, the Senate has been generous because we have kept lifting the ceiling. Right now, I would make an approximate average of 12 per cent of county government budgets, which are currently channelled to county assemblies. There are some county assemblies, which are at 13 or 14 per cent while others are at seven or eight per cent.

On average, you will find that out of Kshs400 billion that we voted on today to allocate to counties, at least 10 or 11 per cent of that, which is probably Kshs45 billion, will go to county assemblies. Therefore, there is need for county assemblies to be held to account.

Mr. Temporary Speaker, Sir, this has brought about some feelings that the Senate is overstepping its mandate. I have seen in some cases where some county assemblies have argued that a county assembly and the national Parliament are at the same level in terms of legislative oversight and representation and all the functions that are granted to us in the Constitution. Therefore, the financial matters of county assemblies should never be brought to Parliament.

In as much as we have got our respective powers, there is no institution that is above the law nor beyond oversight. That is why even the financial statements of the national Parliament, particularly the PSC, are audited by the Auditor-General and tabled to the respective committee.

County assemblies have argued that since reports of the PSC go to Parliament, reports of the CASBs should also go to the county assemblies. I look forward to the day when our county assemblies will not have adverse opinions and disclaimers.

It is absurd for a county assembly whose primary duty is to facilitate staff and MCAs to have adverse opinions. We have seen habits that are unthinkable here in the national Parliament, where Members go on trips and get per diems, but there is no accountability nor submission of returns. I look forward to the day that, when it comes to financial management and controls, county assemblies will be run with the level of efficiency as the national Parliament.

Mr. Temporary Speaker, Sir, the report that we tabled on the 7th March, 2024, was quite detailed because it dealt with financial statements for the financial years 2018/2019 all the way to 2019/2020. It is the desire of the committee that I have the privilege to chair, that we can be current.

At the moment, in the hearings that we have scheduled, we have decided to consolidate the financial statements. As I speak, county assemblies are in the last round of appearing for the financial year up to 2022. By the end of this Session, I assure this House that we will be bringing up to date, current and live reports from the county assemblies.

I am also optimistic that of the 47 county assemblies, we will be having more of them with unqualified opinions. To the county assemblies out there, if the accounting officer and the finance team adheres to the requirements of the Public Finance Management (PFM) Act, and the Public Sector Accounting Standards Board (PSASB) and you have an unqualified opinion, I guarantee them that we will have no business calling them to appear before the Senate.

Mr. Temporary Speaker, Sir, if a county assembly has persistent adverse reports or disclaimers like in the case of Nairobi and Migori, respectively, I assure them that we will not tire to teach, interrogate and probe them, so that they can do the right thing.

There are a number of cross cutting issues that apply to most of the county assemblies. Previously, we realised that audit issues tend to rotate around the same things. That is why, we brought to this House the first Fiduciary Risks Report.

At the moment, we are working with the Parliamentary Budget Office (PBO) to come up with the second version of the Fiduciary Risks Report. That report summarises the cross cutting and common themes in the county assemblies and executives. For example, with respect to the county assemblies that we are discussing today, the common challenge is lateness in submission of documents. Most accounting officers do not realise that this is an offence under the Public Audit Act, the PFM Act and the Constitution when you do not provide documents to the Auditor General (AG) for verification within the timelines prescribed therein.

Mr. Temporary Speaker, Sir, my committee is considering giving effect to the Public Audit Act. One day, we will bring a recommendation to this House that those officers who frustrate the work of the OAG should be found guilty of violation of Section 52 of the Public Audit Act that says-

"No public officer or custodian of public records should without justifiable reasons, prevent the AG from accessing those financial records."

Another common theme in most county assemblies is weak record management systems. Thus, it cast doubts on suitability and qualifications of the staff manning those record management systems.

Mr. Temporary Speaker, Sir, the county assemblies have had a challenge in applying proper accounting practices as stipulated by the PSASB. Even though this report that we are laying excludes certain counties, I bring to the attention of the Senate that recently, there was an uproar within professional circles, particularly amongst accountants. When a county assembly came before the Senate and when we probed who had signed the financial statements, it emerged that it was somebody without the professional or functional capacity.

It is not the first time we have seen that. We have seen county governments that have a budget and should know better to hire professionals to render professional services, using quacks and unqualified persons. As such, we have taken issue with the OAG that where financial statements are signed by quacks, they should not be admissible and the OAG should report to the Senate.

The issue of reconciliations is a headache to most of the county assemblies as it is to most of the county executives. We have taken the view that persons have been hired to do reconciliations in these entities. Nowadays, we do not stop by pointing fingers at the Speaker or the Clerk of the County Assembly, we have got to the point of naming the officers ---

The Temporary Speaker (Hon. Wakili Sigei): Sen. M. Kajwang' it is 6.30 p.m. When the House resumes, you will have a balance of 50 minutes to your Motion.

ADJOURNMENT

The Temporary Speaker (Hon. Wakili Sigei): Hon. Members, it is now 6.30 p.m. time to adjourn the Senate. The Senate, therefore, stands adjourned until Thursday 2nd May, 2024 at 2.30 p.m.

The Senate rose at 6.30 p.m.