

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 26th April, 2023

Afternoon Sitting

*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)

Kindly, proceed to read the First Order.

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION FROM MANDERA
COUNTY ASSEMBLY

The Speaker (Hon. Kingi): Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of a visiting delegation from the County Assembly of Mandera. The delegation is led by the Deputy Clerk and comprises 19 Clerk Assistants of the County Assembly of Mandera, who will be observing the proceedings of the Senate, on Wednesday, 26th April, 2023.

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

(Applause)

VISITING DELEGATION FROM
PARLIAMENT OF MALAWI

The Speaker (Hon. Kingi): Hon. Senators, again, I would like to acknowledge, the presence in the Speaker's Gallery this afternoon, of a visiting delegation from the Parliament of Malawi, comprising of parliamentary officers who are on a benchmarking visit, with their counterparts in the Senate.

I request each member of the delegation to stand when called out, so that they may be acknowledged in the Senate tradition.

Rt. Major. Sikaloka Kaliati	-	Principal Serjeant-at-Arms
Rt. Captain Isaac Banda	-	Senior Serjeant-at-Arms
Mr. Gerald Mserembo	-	Principal Audio-visual Production Officer
Mr. Kabogodo Gondwe	-	Television /Radio Producer

(Applause)

On behalf of the Senate and my own behalf, I extend a warm welcome to them and wish them a fruitful visit.

I will allow Sen. Abass, to welcome, very briefly, the delegation from the County Assembly of Mandera. I will also allow the Deputy Minority Leader, Sen. Wambua, to welcome the delegation from the Parliament of Malawi.

Sen. Abass, proceed.

Sen. Abass: Thank you, Mr. Speaker, Sir. I take this opportunity, on behalf of the Senate, the Senator for Mandera County, and my own behalf, to welcome the delegation from the County Assembly of Mandera.

This is a rare opportunity that the people of Mandera found their way to this Senate. We have seen many people coming from different parts of the country. However, since I came to the Senate, this is the first time people from Northern Kenya have come to the Senate.

Therefore, they have the right opportunity. I am sure they will learn a lot of things. I take this opportunity to welcome them on behalf my colleague, Sen. Ali Roba, who is not here now, but was here in the morning.

I know that Mandera County has many issues. There are floods going on. I also know that the country has many issues to attend to.

I appreciate the time you have taken to come here. I was worried that the County Assemblies of Wajir, Mandera and Garissa, have not had an opportunity to come to the Senate to learn.

With those few remarks, I welcome you once again. Thank you, for coming.

Sen. Wambua: Thank you, Mr. Speaker, Sir, for giving me this opportunity to welcome the visiting delegation from the Parliament of Malawi.

On behalf of my colleague Senators from both sides of the House, I take this opportunity to ask the visiting delegation to feel most welcome and thank them for choosing to visit the Senate of the Republic of Kenya.

They would have chosen to visit other Senates in other jurisdictions, but they choose to visit the Senate of the Republic of Kenya for a reason. This is the 'upper House' in a bicameral Parliament. We have the National Assembly and the Senate.

Mr. Speaker, Sir, I hope and pray that their visit to the Parliament will be fruitful and successful.

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

PAPERS LAID

REPORTS ON THE FINANCIAL STATEMENTS OF VARIOUS ENTITIES

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. I beg to lay the following Papers on the Table of this Senate, today, 26th April, 2023-

The Report of the Auditor-General on the Financial Statements of Laikipia County Business Stimulus Fund for the year ended 30th June, 2021.

Submission of the Judicial Service Commission Annual Report for the Financial Year 2021/2022.

Report of the Auditor-General on the Financial Statement of Isiolo Water and Sewerage Company Limited for the year ended 30th June, 2022.

Report of the Auditor-General on the Financial Statement of Kirinyaga Water and Sanitation Company Limited for the year ended 30th June, 2022.

Report of the Auditor General on the Financial Statement of Rukanga Water and Sanitation Company Ltd for the year ended 30th June, 2022.

Report of the Auditor General on the Financial Statement on Receiver of Revenue – County Government of Nyandarua for the year ended 30th June, 2022.

Report of the Auditor General on the Financial Statement of Nyandarua Water and Sanitation Company Ltd for the year ended 30th June, 2022.

Report of the Auditor General on the Financial Statement of Laikipia County Leasing Fund for the year ended 30th June, 2022.

Report of the Auditor General on the Financial Statement on Receiver of Revenue County Government of Laikipia for the year ended 30th June, 2022.

Report of the Auditor General on the Financial Statement of Laikipia County Business Stimulus Fund for the year ended 30th June, 2022.

Report of the Auditor General on the Financial Statement of Nyahururu Water and Sanitation Company Ltd for the year ended 30th June, 2022.

Report of the Auditor General on the Financial Statement of Samburu County Youth and Women Enterprise Development Fund for the year ended 30th June, 2022.

Report of the Auditor General on the Financial Statement on Receiver of Revenue – Revenue Statenents – County Government of Samburu for the year ended 30th June, 2022.

Report of the Auditor General on the Financial Statement of Samburu County Bursary Fund for the year ended 30th June, 2022.

I do lay the papers.

(Sen. (Dr.) Khalwale laid the documents on the Table)

COMMUNICATION FROM THE CHAIR**VISITING DELEGATION FROM TITUS NGOYONI
MEMORIAL PRIMARY SCHOOL, MARSABIT COUNTY**

The Speaker (Hon. Kingi): Hon. Senators, before we move to Statements, allow me to make the following Communication.

I would like to acknowledge the presence in the Public Gallery this afternoon, of a visiting delegation from Titus Ngoyoni Memorial Primary School, Marsabit County. The delegation comprises 7 teachers and 60 students, who are in the Senate for a one-day study visit.

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

I call upon Sen. Chimera to say very brief welcoming remarks.

Sen. Chimera: Asante sana Bw. Spika kwa fursa hii. Nitachukua dakika chache kuwakaribisha wanafunzi wa shule ya Titus Ngoyoni Primary School kutoka Kaunti ya Marsabit. Ningependa kuwaambia ya kwamba wamekuja hapa Bungeni kushuhudia kazi ya wabunge wao. Wengine wetu tumesoma katika shule kama hiyo yao. Tumepitia miundo msingi kama hiyo yao. Walimu wao na wetu ni sawa na mtaala ni ule ule. Hivyo basi, wanaweza timiza ndoto zao kupitia masomo.

Vile vile, nataka kutambua kuwa Titus Ngoyoni alikuwa *District Commissioner* eneo la Kwale County nikiwa mdogo. Alifanya kazi na baba yangu na jina yake imetambulika Kenya nzima. Kwa hivyo, hao kama wanafunzi wa shule hili, hawana budi ila kuiga mtindo wa Mhe. Titus Ngoyoni.

Ninawakaribisha sana Seneti. Ni matumaini yangu kwamba watajifunza mengi siku ya leo. Wakirudi Marsabit, watie bidii katika masomo yao ili tuweze kuona wengine wao wakiwa hapa kama mawakili na wabunge siku zijazo.

Mungu awabariki. Shukrani.

STATEMENTS**THE KENYA-SAUDI ARABIA DEAL
ON IMPORTATION OF CHEAPER FUEL**

The Speaker (Hon. Kingi): Next is a Statement pursuant to Standing Order No. 53(1). Sen. Osotsi, that Statement is deferred.

(Statement deferred)

Sen. Chimera, proceed.

**STATE OF MEDICAL INSURANCE COVERAGE
FOR THE KENYA POLICE**

Sen. Chimera: 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 regarding the state of operationalization of the Medical Insurance cover for officers in the Kenya Police Service.

In the Statement, the Committee should -

(1) State whether officers of the KPS have access to medical insurance cover, providing details of the service provider, who was awarded the tender, and the sum assured and benefits offered under the cover.

(2) Probe allegations of authorization of the said medical scheme for the officers, tabling evidence of payments made for the scheme, for the Financial Year (FY) 2021/2022 and 2022/2023.

Mr. Speaker, Sir, I have a second Statement. With your permission, allow me to read the same.

The Speaker (Hon. Kingi): Go on.

BOUNDARY DISPUTE BETWEEN KWALE AND
TAITA-TAVETA COUNTIES

Sen. Chimera: Mr. Speaker, Sir, I also rise pursuant to Standing Order No.52(1) to seek a Statement from the Standing Committee on Devolution and Intergovernmental Relations on the ongoing boundary dispute between Kwale County and Taita Taveta County.

In the Statement the Committee should -

(1) Disclose the Status of the resolution of the boundary dispute between Kwale County and Taita-Taveta County.

(2) Provide a report on the courses of the ongoing boundary disputes between Kwale County and Taita-Taveta County.

(3) Outline targeted interventions required at both levels of the Government and different Government agencies towards effective resolution of the boundary disputes between the two counties.

(4) Recommend long-term redress mechanisms to resolve the boundary disputes, addressing claims of double taxation of traders in the disputed boundary areas.

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

Sen. Maanzo: Thank you, Mr. Speaker, Sir. Recently, the Senator for Taita-Taveta presented a similar Petition that affected three counties, including Makueni. I believe we are going to tender evidence in the matter of border disputes.

More importantly, there is a law proposed by the former Senator of Makueni, Sen. Mutula Kilonzo Jnr., on the issue of boundaries of all counties, which comes under Independent Electoral and Boundaries Commission (IEBC). I believe we will be proceeding in all these matters, so that we can sort the border disputes for once and for all.

On the matter of police officers and insurance cover, we are all served by police officers. They are on duty and the nature of their duty is mainly to protect lives and bring order. Unfortunately, some of these officers die in line of duty. Those officers come from our counties. Their death leads to very difficult moments for the family. The question is: What follows thereafter in terms of compensation, insurance or even treatment if one of them is injured or suffers permanent injury?

I had a recent case from Machakos where a particular officer got short in the line of duty. The story later on changed that he was not on duty on that particular day but on leave. The truth of a matter is that he had gone back to the service and was saving other officers who had been attacked. Unfortunately, he lost his life. The story changed about his insurance. His hospital bill was close to Kshs12 million. The story got worse. He left children behind.

Mr. Speaker, Sir, we must get to the bottom of this matter for us to protect people who die while in the line of duty or people who suffer for the nation. Their family should not be impoverished simply because we do not have proper systems.

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

Sen. Chute: Thank you, Mr. Speaker, Sir. Sorry, I am a bit late. I join you in welcoming students from Ngoyoni Primary School in Loiyangalani.

The Speaker (Hon. Kingi): Sen. Chute, I hope that in so doing, you are contributing.

Sen. Chute: Thank you, Mr. Speaker, Sir. I would like to contribute to Hon. Chimera's Statement on the boundary dispute between Kwale and Taita-Taveta Counties. By extension, I would also like to welcome students and Teachers from Loiyangalani Secondary School.

In Marsabit County, we have issues that relate to boundaries. I have such a boundary issue with a friend of mine, Sen. Abbas. We are seated here as neighbours, but he has encroached on Marsabit County from parts of Wajir County. As we speak, we have people from Wajir County who are in Marsabit County. They have chiefs, villages, and county administrators in Marsabit County. Those boundaries are ours. They have been there since the 1960s.

Therefore, in support of Sen. Chimera's Statement, I would like the Committee to look into Marsabit issues, so that I do not have to end up fighting with my close friend, Sen. Abbas.

Thank you, Mr. Speaker Sir.

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

Sen. Sifuna: Thank you, Mr. Speaker, Sir. I would like to laud my brother, Sen. Chimera, for bringing this Statement that might highlight the plight of our brothers in the police service.

Many might be surprised to learn that although I am a regular consumer of the services of the police through their teargas, beatings and arrests, these people are actually not our enemies. We consider them our friends, brothers and sisters in service. We know that they have to do what they have to do. However, they must understand that as a legislator, somebody who has been elected here to defend the rights of people, I will defend the right of even those who beat and tear gas me because I know it is the right thing to do.

In fact, we have a date with them next week. I would like that, by the time we are meeting on the streets, they know that Sen. Sifuna is fighting for their rights here at the Senate.

Mr. Speaker, Sir, I am aware that, ever since the transition from National Health Insurance Fund (NHIF), which was providing cover for the Police Service for the past eight years, to this new consortium of insurance companies led by CIC, Old Mutual and

Britam, there have been complaints from members of the Service that, in fact, there has not been proper sensitization among members of the force.

Many of them are not even aware of this change. They do not know which hospitals, especially the private hospitals, are covered by this team because every insurer has their own set of hospitals that they work with. They do not know the outpatient, inpatient and maternity limits of the covers that they have and that it is very difficult to get these services under the new scheme.

We have heard senior officers in the police service saying that they are working on this and that, and they are going to sensitise their officers more. However, we believe that this is something that should have been done at inception. Immediately the change over from NHIF happened in December, they should have been sensitised, so that the officers do not face a single gap in service delivery when it comes to their healthcare.

I would like to request that the Committee makes this clear. In fact, they should summon the relevant organisation and the Cabinet Secretary (CS) in charge, to shed light on this particular shift from NHIF.

Mr. Speaker, Sir, this is quite worrying. We know that NHIF is our public insurer. Why is NHIF losing business to private companies like these in the provision of services to Government agencies? If there was ever an argument for a government-to-government deal, the ones we hear these days in the whole sector, this one would have been one of them.

In fact, NHIF being a public insurer should be supported in terms of offering services to public servants and institutions such as the National Police Service, so that the revenue is kept within Government agencies and it does not benefit these private insurance companies like CIC, Old Mutual and Britam.

Thank you, Mr. Speaker, Sir.

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

Sen. Cherarkey: Thank you, Mr. Speaker, Sir. I would like to comment on Sen. Chimera's Statement. I think he is growing in both stature and wisdom in learning the ropes of this House.

At this point, I would like to say a few things. What I need to be told is why the Police Service insurance was moved from NHIF to a private company led by CIC. What were the reasons? We need to build our NHIF. We need to build trust in our institutions. It is very unfortunate that we are telling the National Police Service that they need to move from a public insurer to a private one.

Secondly, there should be a proper engagement to know the hospitals that the insurance companies cover. There was a sad case where a police officer had taken his child for specialised treatment in India. At some point, the insurance expired and the family was stranded in India. How far do these insurance companies go? There is also another aspect where these insurance companies should provide risk insurance to our police officers. We especially need to protect them at - - -

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

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

Sen. Wambua: Thank you, Mr. Speaker, Sir. Is the Senator for Nandi County in order to create the wrong impression that, yes, we need to develop our national institutions like NHIF - - -

The Speaker (Hon. Kingi): Under what Standing Order?

Sen. Wambua: Responsibility of Facts used on the Floor in Standing Order No.105. Sen. Cherarkey is a consumer of insurance services of a private insurance firm. Why is it okay for him to consume that service and it is not okay for the police officers to move from NHIF and consume the services of a private insurance?

Sen. Cherarkey: Mr. Speaker, Sir, I find that out of place because the people who choose my private insurer are the Parliamentary Service Commission (PSC). I do not have power over it. There is no day that the PSC has given me the power to choose my insurer. I would have chosen NHIF. In my wallet, I have an NHIF card, which I pay for. I believe in the provision of NHIF cover. I do not have power over how my insurance is given.

The Speaker (Hon. Kingi): Sen. Cherarkey, Sen. Kinyua wishes to inform you.

Sen. Cherarkey: No, Mr. Speaker, Sir. I am sufficiently aware of my position.

(Laughter)

It is not in good faith that Sen. Wambua makes such a statement. I am a believer in public institutions. Even Parliament is a public institution. The Senator for Nyamira County and the Senator for Kitui County should note that my employer is a voter in Nandi County. I do not have any other employer.

The point I am trying to make is that our police officers must be well protected. Do you remember the issue of uniforms? We should protect our police service and provide insurance coverage. Sen. Sifuna has said that next week they might be on the streets. We might be forced to introduce another insurance cover.

Finally, we need to stop this hypocrisy led by Sen. Sifuna. In all honesty and fairness, you cannot claim to champion the rights of the police officers on the Floor of the House, yet ---

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

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

Sen. Omogeni: Mr. Speaker, Sir, you know Sen. Cherarkey is my good friend and a distinguished member of the legal profession, courtesy of me when I served as his Chairman. I nurtured him through and ensured that he was admitted as an advocate of the High Court of Kenya, after a long struggle.

Mr. Speaker, Sir, part of the course that we took him through was professional ethics. Is he in order to call a distinguished colleague and Senator for Nairobi City County a hypocrite? That is un-Parliamentary language, which we do not expect to come from a member of the noble legal profession. Is he in order to refer to another Senator as a hypocrite?

The Speaker (Hon. Kingi): Sen. Cherarkey, indeed, the use of hypocrisy referring to a Senator is un-Parliamentary. Your facial expression speaks to the fact that you may not be aware that you spoke that word. Indeed, you spoke it. Kindly, proceed to withdraw and apologize to Hon. Sifuna.

Sen. Cherarkey: Mr. Speaker, Sir, I said we should stop the hypocrisy not that he is a hypocrite.

The Speaker (Hon. Kingi): Sen. Cherarkey, you used that word in reference to Sen. Sifuna.

Sen. Cherarkey: Mr. Speaker, Sir, I withdraw, apologize and substitute with the following words.

(Laughter)

Mr. Speaker, Sir, what Sen. Omogeni is not telling the House is that I was the Chair of the Standing Committee on Justice and Legal Affairs (JLAC) before him. I am the one who mentored him to be who he is now. In fact, it is out of my blessing that he was appointed as a Commissioner in the Parliamentary Service Commission (PSC). We should stop misleading the public as leaders.

When I hear, my brother, *omwami*, Sen. Sifuna, saying that they are championing for police rights, they are misleading the public. They are taking police to the International Criminal Court (ICC). The office of the ICC prosecutor has received the names, yet Sen. Sifuna is claiming before the House that he is fighting for police rights. Let us merge our actions and words as the Bible says. The Bible says that words without action are barren.

Even as we handle the insurance issues, I appeal that we look deeply into the insurance provider. The police should be given the opportunity to choose whichever insurance provider they want. Therefore, I am willing to sit and listen to the Committee. This has been referred to the Standing Committee on Labour and Social Welfare. I thought this was a crosscutting issue between them and the Committee on Health, so that we can raise more issues.

I thank you.

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

Sen. Mumma: Thank you, Mr. Speaker, Sir, for the opportunity to contribute to the Statement by Sen. Chimera. First, on the issue of boundaries, I wish to inform the House that the Standing Committee on Devolution and Intergovernmental Relations has put a Bill on boundaries before the House. I request that everybody takes an interest because the issue of dispute on boundaries is not just in Taita-Taveta or Kwale County. It is in many locations in this country and we need to collectively look at it and see how we guide it as a House.

I wish to repeat on the issue of National Insurance Hospital Fund (NHIF) for the police. The Houses of Parliament in Kenya need to seriously consider how we can come up with policies that can support the health and education system in this country, in order to support all of us. Hon. Members here are beneficiaries of a very good insurance policy, but NHIF supports many of the public servants in private facilities. I have once said here that if we were all to go to public hospitals, then we would be able to channel the funds that treat senior civil servants.

Mr. Speaker, Sir, Sen. Chimera is not even listening. He is heckling with somebody. I wonder why he even came up with the Statement. As I was saying, it is something we need to seriously think about. If the President of Kenya, Hon. Samoei Ruto, ---

The Speaker (Hon. Kingi): What is your point of order, Sen. Cherarkey? Mind you, raising unnecessary points of order is disorderly.

Proceed.

Sen. Cherarkey: On a point of order, Mr. Speaker, Sir, under Standing Order Nos.105 and 98. I thought we agreed that there should not be any use of un-Parliamentary words on the Floor of the House. 'Heckling' is un-Parliamentary. The good Senator should apologize and withdraw because we cannot be using such words, as you directed.

The Speaker (Hon. Kingi): Sen. Mumma

Sen. Mumma: Mr. Speaker, Sir, I will save us the shenanigans and withdraw the word 'heckling,' but it would help if you would listen, especially the Mover of the Statement.

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

Sen. Mumma: Thank you, Mr. Speaker, Sir. If the President of Kenya and his family, the Senators, National Assembly Members, senior civil servants and Cabinet Secretaries (CS) were treated in Kenyatta National Hospital (KNH), the hospital would have enough funds to look good and carry along it the people in the lower cadres of public service.

We need to get serious as a House and design our national insurance policies in a way to support in a genuine manner, instead of living in a bubble where we know we can be treated in the best facility and do not care about people like the policemen.

It is a matter of human rights. Policemen are equal Kenyans and their children have equal rights to ours. We need to take this issue seriously. I have raised it before and it should be a matter addressed both by the Standing Committee on Labour and Social Welfare and the Committee on Health. We need to find a way in which NHIF and its board can run in a sustainable manner. We need to be bold enough to come up with a policy that says if a Senator or the Speaker of the Senate needs to go to hospital and its being paid for by the taxpayer, then he should go to a public facility.

We need to be brave enough to say that more money will be going to public facilities, which should be designed in a better manner to carry all of us. None of us knows if we shall collapse in a village in Tana-River or Busia County and the next facility that will take care of you will be the one within the vicinity. If we pretend that we shall always go to Aga Khan or Nairobi Hospital, we should all know that sickness hits you anywhere.

If we had put the monies in the public facilities, it would have helped to save you the day that you collapse in a rural area and the facility is able to take care of you. I would ask on a serious note. We, as leaders, should start pushing for investment of public funds into public facilities. The best way to show it is to ensure that all of us resolve to have the first stop as the public facilities.

I support.

The Speaker (Hon. Kingi): Hon. Senator, we have utilized more than 30 minutes allowable under Standing Order No.53 (3) for those two Statements by Sen. Chimera. Therefore, we shall move to the next Statement by Sen. Murango. He has three Statements. However, the Statements have been deferred.

ESTABLISHMENT OF PUBLIC TEACHER TRAINING
COLLEGE IN KIRINYAGA COUNTY

(Statement deferred)

CIRCUMSTANCES SURROUNDING THE AMPUTATION
OF BABY NOOR'S FINGERS

(Statement deferred)

DELAYED CONSTRUCTION OF KEMRI,
WAMUMU STATION

(Statement deferred)

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

(Sen. Cherarkey spoke off record)

Sen. Madzayo: There is a? ---

The Speaker (Hon. Kingi): Senator, kindly proceed. Engage the Chair not your colleagues.

(Laughter)

MASS KILLINGS IN SHAKAHOLA, KILIFI COUNTY

The Senate Minority Leader (Sen. Madzayo): Unfortunately, my brother is speaking faintly I cannot hear him. Asante Bwana Spika. Nimesimama kuambatana na Kipengele cha 53 cha Kanuni za Kudumu za Seneti kuzungumzia swala la dharura ambalo ni mauaji ndani ya msitu wa Shakahola katika Kaunti ya Kilifi.

Bw. Spika, hivi majuzi, kiongozi wa dhehebu la Good News International, Paul Makenzie, amegonga vichwa vya habari hapa nchini na dunia nzima, kwa kueleza wafuasi wake wafunge hadi kufa. Hiyo ni ishara ya imani potovu. Kufikia sasa, Idara ya polisi imefukua zaidi ya miili 100 iliyokuwa imezikwa katika msitu wa Shakahola. Idadi ya waliokufa inazidi kuongezeka kila uchao.

Msitu huu wa Shakahola una vijiji vitatu; Jerusalem anapoishi mchungaji Paul Makenzie, Bethlehem na Sedon. Vijiji hivi vyote vinafaa kuchunguzwa kwa undani.

Mauwaji haya yanaendelea kinyume na Katiba. Katiba inampa kila mwananchi uhuru wa kuabudu. Pastor Makenzie amechanganya hisia za waumini na wafuasi katika kanisa lake kwa kuisitiza itikadi kali za maadili zinazoenda kinyume na utamaduni wetu na jinsi kanisa inavyostahili kuendeshwa.

Hili ni jambo la kushangaza. Vitengo vyetu vya usalama, kuanzia idara ya ujasusi na mkuu wake, kamati ya ulizi ya Kaunti inayoongozwa na *County Commissioner*, mkuu wa polisi wa jimbo la Kilifi na naibu wake, machifu na manaibu wa chifu na wakubwa wa nyumba 10; wameshidwa kuthibiti ushawishi huu wake. Umma haukuwa na ufahamu wowote wa yaliyokuwa yakiendelea ama yakijiri katika eneo la Shakahola.

Ni lazima uzembe huu kazini ukemewe vilivyo na hatua kali kuchukuliwa na Rais. Kusema tu Paul Makenzie ni gaidi, hakutoshi. Linalopasa kufuatia ni kuwafuta kazi wahusika, kuanzia wakubwa wote wa Serikali ya Kaunti ya Kilifi. Vile vile, uchunguzi uimarishwe kutumia ndege zisizo na rubani, yaani *drones*, ili kusaidia katika uchunguzi wa angani. Eneo hilo ni kubwa, takriban ekari 800.

Hili ni swala la dharura. Ninaomba Taarifa kuambatana na Kifungu cha 53(1) cha Kanuni za Kudumu za Bunge la Seneti, kutoka kwa Kamati ya Usalama wa Taifa, Ulinzi na Uhusiano wa Kimataifa, kuhusu mauaji ndani ya msitu wa Shakahola, Kaunti ya Kilifi.

Katika Taarifa hiyo, Kamati hii iangazie bayana yafuatayo -

(1) Je, idara ya Ujasusi ilikuwa na ufahamu wowote wa kanisa hili la Paul Makenzie na vitendo vilivyokuwa vinafanyika katika msitu huu wa Shakahola? Ikiwa jibu ni ndio, hii ripoti ya ujasusi waliwasilisha kwa nani?

(2) Utafiti rasmi ufanyike, tujue bayana iwapo Pastor Paul Makenzie ana hati miliki ya ardhi ya ekari 800 ya msitu wa Shakahola. Iwapo yeye sio mwenye shamba, ni nani anayemiliki lile shamba la Shakahola?

(3) Serikali yetu, kuanzia kwa mzee wa mtaa na nyumba kumi, walikuwa wapi wakati mauaji haya yalipokuwa yanatendeka? Ni kwa nini hakuna ripoti yoyote imeandikishwa katika vituo vyetu vya polisi kuhusiana na mauwaji haya?

(4) Je, kulikuwa na njama yoyote ya kunyamazisha visa hivi vya mauwaji ya Shakahola? Iwapo jawabu ni ndio, ni nani huyu aliyepanga hiyo njama?

(5) Idadi ya watu waliokufa ikizidi kuongezeka kila uchao, ni nini kilichowaua waliofukuliwa kutoka kwa msitu wa Shakahola? Kumekuwa na madai kuwa chanzo cha vifo vya waliofukuliwa ni kunyongwa. Je, kuna ukweli wowote kwa haya madai?

Ya Mwisho---

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

The Speaker (Hon. Kingi): Sen. Madzayo, just yield. What is your point of order, Sen. Cherarkey? I thought this is a normal request for a Statement.

Sen. Cherarkey: Mr. Speaker, Sir, I rise pursuant to Standing Order No.53. I agree that this matter is weighty. Under Standing Order No.98, a point of order is a substantive right for any Senator.

The Senate Minority Leader has requested his Statement to a named Committee. It is not in our traditions as a House, neither is it under Standing Order No.53. Standing Order No.53 (3)(a) says:

“Where a statement has been requested from a Committee pursuant to paragraph (1) –

(a) the Speaker may allow comments in relation to the Statement for not more than fifteen minutes.”

My concern is that under this Standing Order, which I have read through, it does not become mandatory to commit to any Committee. When the Senate Minority Leader makes a request to an unspecified Committee, where does it go, since there is no provision in the Standing Orders?

I thought he should have sought the Statement Under Standing Order No.52, so that it becomes more direct. You have not committed the Statement to any Committee and yet he is making prayers.

Mr. Speaker, Sir, I need guidance on the same.

The Speaker (Hon. Kingi): Sen. Cherarkey, I am afraid to say that your point of order is frivolous and vexatious, to say the least.

(Laughter)

Immediately the Senator is done making the request, I will commit this Statement to the relevant Committee. It may be one Committee or more than one. He can make his prayers, but the final ruling rests with the Speaker.

Sen. Madzayo, kindly proceed to conclude.

The Senate Minority Leader (Sen. Madzayo): Asante, Bw. Spika. Kwa heshima na taadhima, ninaomba ikiwezekana, Kamati hii ishirikiane na Kamati ya Haki, Maswala ya Kisheria na Haki za Kibinadamu ili ziweze kwenda kwa haraka inavyowezezekana. Pengine hata isipite wiki hii ama wiki ijayo, ili Kamati hizi zikienda kule, zirejee hapa na ripoti yao kulingana na yale watakayoona kule.

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

Sen. Kinyua: Asante, Bw. Spika kwa kunipa fursa hii kuchangia kwenye kauli iliyoletwa na Kiongozi wa Wachache. Ni jambo la kuvunja moyo sana. Hata sasa tunaendelea kumuita yule gaidi "*Pastor*"; mtu ambaye ametenda kitendo kama hicho. Zaidi ya watu 100 wamekufa na ni jambo ambalo linavunja moyo sana.

Maswali ambayo nimekuwa nikijiuliza ni kwamba, chifu wa sehemu ile alikuwa wapi? Wazee wa mtaani walikuwa wapi? Idara ya ujasusi, ambayo kila wakati wanasema kuwa wanapata ripoti mwafaka, walikuwa wapi?

Nilimskiza Waziri wa Wizara ya Mambo ya Ndani na Utawala wa Kitaifa alipozuru sehemu ile. Alipeana pole zake na kukiri kwamba kulikuwa na ulegevu kidogo. Zaidi ya watu 100 wanatembelea kanisa hilo. Sijui ni mafunzo ya aina gani yanafunzwa katika kanisa kama zile.

Ningependa Kamati itakayochukua jukumu hilo iangalie sehemu zingine. Hii ni kwa sababu tumeambiwa kuwa kuna sehemu kama vile Jerusalem na Macedonia ambazo zinatajwa katika Bibilia. Waangalie mambo hayo kwa kindani na kanisa ambazo zinafunza misimamo mikali ambayo inadhuru watu wetu.

Wambua ataniunga mkono kwamba kwa sababu ya umaarufu wa mapasta na maaskofu kisiasa, wengi wanafanya mambo yasiyoyakisheria. Lakini, kwa sababu ya umaarufu wao, watu hawataki kuongea.

Hatua kali inapaswa ichukuliwe dhidi ya gaidi anayelitwa Paul Mackenzi. Nimesikiliza Bw. Mutua aliyekuwa kiongozi wa *Kenya Film and Classification Board (KFCB)*, akisema ya kwamba walikuwa wamemkataza kueneza filamu aliyokuwa akieneza pamoja na kumshika---

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

Sen. Methu: Thank you, Mr. Speaker. I do not wish to stop my neighbour midway. I stand in regard to Standing Order No.101 (6), which states that-

“A Senator shall refer to another senator by the title ‘Senator’”.

I have heard him refer to somebody as ‘Wambua.’ I feel that he is completely out of order. If he cannot respect leadership, I imagine he would call us worse names.

The Speaker (Hon. Kingi): Sen. Kinyua, to that extent, you are out of order.

(Laughter)

Sen Kinyua: Ni Kweli Bw. Spika. Ninaomba msamaha. Ni Seneta, Mheshimiwa, Mstahiki, Wambua.

(Applause)

Kamati ambayo itapewa jukumu hilo, isiangelie kanisa la Good News International pekee. Iangelie kanisa zingine ambazo ziko na mienendo kama hiyo.

Ni vizuri Kiongozi wa Walio Wachache, ikiwezekana waandamane na Kamati hadi Shakahola. Ninasikia ni msitu mkubwa. Wasipotelee huko. Wanaweza kuhubiriwa na huyo mungwana halafu wajipate katika hali hatari, alafu waje Nairobi wakose kula.

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

Sen. Sifuna: Thank you, Mr. Speaker, Sir, for the opportunity to contribute to this. Indeed, when the Adjournment Motion was moved yesterday, some colleagues had the opportunity to speak to the matter, but I did not.

Let me start by taking a different route from those who were asking where the police and the security agencies were. In my view, there are very serious acts of commission and omission that we must investigate as a country to find the answer to the problem in Shakahola.

It has been said that this so-called pastor had been arrested four times prior to this current arrest. This current arrest would not have happened and unearthed what has happened in Shakahola were it not for a gentleman going to report his missing wife.

In the year 2017, this man was arrested with 35 students, who were not in school. Again, in 2017 the police rescued 93 children from that church and arrested him. In 2019, he was also arrested for incitement against the Huduma Number programme that was going on at that particular time. In March 2023, he was arrested after two boys died in his church and was released on a cash bail of Kshs10,000.

This chronology of events shows you that, in fact, the authorities were aware of this gentleman and his activities. There must be sins of omission and commission. He was enabled by some people in the security forces and we need to find out who these persons were.

We were told that this so-called cult had attracted people from as far away as Nigeria, Tanzania and Western Kenya. If these people can get to know about this church, it is impossible, in my view, that the security apparatus in this country did not know about this so-called cult.

Also, it is my very strong belief, and this is my own personal opinion, that these characters have been enabled and encouraged by the rise of cultism and religious fundamentalism in very high offices.

If you have ever promised rain without the backing of science, you are an enabler of Shakahola. If you have ever promised prosperity without work, you are one of the people who have encouraged the growth of people like Shakahola massacre.

I want to quickly propose solutions.

The Speaker (Hon. Kingi) What is your point of order Sen. Osotsi?

Sen. Osotsi: Thank you, Mr. Speaker, Sir. I did not want to interrupt my good friend, Sen. Sifuna, but he mentioned rain. Where I come from, there are people who make rain.

(Laughter)

So, I just want to inform.

Sen. Sifuna: Mr. Speaker, Sir, let me explain. I said, 'if you have ever promised rain without the backing of science'. What he is referring to is traditional science, which I am aware of.

(Laughter)

Mr. Speaker, Sir, allow me to speak to some of the solutions that we can propose as a House. Yesterday, the Senator for Nandi County, Sen. Cherarkey, called for an audit of all the registered religious entities. I ascribe to that, so that we can weed out this early indoctrination. We do not have to arrest these things at the stage of Shakahola.

Secondly, I am aware that there is information in the public domain that some of the bodies that have been unearthed in Shakahola are not necessarily victims of starvation. There is also a danger that other crimes might be hidden within this particular criminal cult and then all these bodies are loaded and blamed on this gentleman called Mackenzie. It was possible that other people might take advantage of this situation because we are aware of the problem of extrajudicial killings in this country.

Finally, this calls for a legislative framework for basic background checks. In the United States of America (USA), there is a big debate about basic background checks before somebody is able to purchase a firearm. I believe that the time has come. We do not need to politicize this thing because it has happened in the past. When people call for basic background checks for people establishing religious institutions, some people say that you are attacking the church.

I want to find refuge and hide in scripture. In 1 Timothy 3:2-13, there is a criterion that is set by the New Testament, on leadership, even in church. It says that you must be somebody with one wife, which knocks out a majority of the Members, especially on the Majority side.

(Laughter)

You must be respectable; not to drink excessively, which is a problem as again, in this House, or love money.

Therefore, there are people on Television (TV) stations, who claim to be preachers, but all they do is shout their M-Pesa or Pay Bill numbers throughout the service. That is a red flag. The book of Timothy also says that, you must not be a recent convert. So, Sen. (Dr.) Khalwale, if you are doubting---

Finally, 1 Timothy 3:10 says you must be first tested. We must test these people so that we do not allow the public to fall into the hands of such cults.

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

Sen. Mungatana MGH: Thank you, Mr. Speaker, Sir. On this question of the cult, like Sen. Sifuna, I did not get an opportunity yesterday. It is a very serious matter. It is not the first time it has happened in this country and in this world.

To put it in context, in 1978, in Guyana, 909 people committed mass suicide and murders.

They were followers of a cult that was led by one person known as Jim Jones. Jim Jones convinced people that if they die, they will go to Heaven. There is no difference between him and Mr. Mackenzie.

There was a Congressman called Leo Ryan from the United States of America (USA) who tried to investigate. He was killed together with his delegation by the followers of Jim Jones who established what was then called the People's Temple. That was the biggest killing that happened in the USA before the 9/11 killings that happened in one day.

What happened there is something that we can also follow as a precedent. The heavy hand of Government descended on that cult. The leadership was arrested, the people were dealt with. That is what we want to see happening. Mr. Mackenzie is not alone. He had pastoral leadership. We want to see the strong hand of the Government crushing on this leadership of people who are out to finish the population in that area.

We have debated this thing. The former Attorney General under the leadership of President Mwai Kibaki gave some suggestions in terms of legislation and rules. However, it was politicized, as my learned colleague Senator for Nairobi City County, Sen. Sifuna, has said. It became so bad that those strong suggestions were then withdrawn by former Attorney General, Amos Wako.

We are not speaking about something that is new. The Government has a point to start with. They can go back and look at the suggestions by the then Attorney General. They were very good suggestions. If they were implemented, cults like this would not be part of Kenya's society. We would not be talking of deaths that we have seen in Shakahola. We need to start from there. Legislative action must be taken.

We want a strong response and it should not only be on this one person. This is because we are also over-glorifying him. There were people he trained and the pastoral leadership that should also feel the arm of the law. We also need to have an honest bipartisan debate about Article 32 of the Constitution on the freedom of religion. How do we balance this freedom of religion *vis-à-vis* what has gone wrong in this community?

We must set the standards. The time has come for us to even have a registrar for religious communities. Any person will be free to open his church, start his religion, a sect of Hinduism or Islam and even a sect of whatever other religion including African tradition religion but there will be a registrar of religious communities who will ensure that the standards are maintained.

The leaders should undergo tests so that we can say that this person is mentally fit to lead this section of worship; the intended worship or community that he wants to set up. The religious communities' registrar should be a department managed by the Government so that Christians, Muslims, Hindus and African traditional religious people may not say we are targeting any particular religion. This should be a department of the Government that deals with all religions.

All the established religions, churches, and whatever, can then undergo this test so that we can save our people. Right now, the people are asking where the Government is. Where was the Government when this was happening? When they are asking that, they are basically saying; where was the Directorate of Criminal Investigations (DCI)? These people were all there. I agree with every one of us who has contributed saying that these people were conniving with the church.

(Applause)

There are obvious connivers and there was a benefit.

(Applause)

We know that criminal activities thrive where people are gaining something. So, all those people who were there including the County Commissioner (CC) must be

investigated. They should not be investigated by local authorities but by different authorities from, say, Nairobi or other parts of Kenya. They are the ones who will investigate and give a true account of what happened.

These officers must be punished. Something criminal like that cannot be happening and someone is not pocketing some money somewhere. I urge the Committee, as they visit that place, to look at all possible angles both administrative, policy, and even in terms of laws. We urge the Government to take a very firm stance on this matter.

I, thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Now, Hon. Senators, we have already expended the 15 minutes meant for this Statement. However, because of its nationwide concern and the interest it has generated in the Senate, I will interrogate this Statement until 4:00 p.m.

(Applause)

However, if we proceed in the manner that Sen. Mungatana, MGH has proceeded, because he has taken eight minutes, we will have very few of you speaking to this Statement. I, therefore, ask for a concurrence that each Senator should not speak for more than three minutes.

Sen. Ogola, you may proceed. Three minutes it is.

Sen. Ogola: Mr. Speaker, Sir, I must be a very unfortunate person because I was cut short yesterday when I began---

The Speaker (Hon. Kingi): You are eating into your time.

Sen. Ogola: Mr. Speaker, Sir, it is important that, as a Senator in the House, I say that.

Thank you, for allowing me to contribute to the Statement on this massacre and say that we have seen a lot of bad things in recent times. The only good thing in this country is the rains but it is also causing havoc.

I, however, support this Statement. I am in pain thinking about the suffering these people went through. We talked about human dignity just the other week. I am wondering of the kind of frustrations and pains these people went through even as they died. I think some of them may have even been buried alive. How do you explain five or six members of a family--- is it a coincidence that they died at the same time even if we want to say that they were fasting?

I am pained because, a number of them are women, and children. We have pictures going around of pastors having women being beaten all over with logs. We have seen some pastors being carried on the backs of people. You wonder which country we are living in. Kenyans must remember that last year in January, Dr. Iddah Betty Odinga spoke against the regularization of some of these churches. What did we do? We politicized it and everybody made noise. I am, however, happy today that even the Head of State and the CS for Interior and Coordination of National Government is calling for the same.

Mr. Speaker, Sir, when you look at that large parcel of land, you will see a small part that has been combed and many bodies have been retrieved from it. We do not know what awaits Kenyans going forward. For one to even acquire that large chunk of land, our security must look into what those people want to do with the land. Why would somebody get 800 acres, then go inside the forest to do nasty things like this?

Mr. Speaker, Sir, as I wind up, let us look at the other Shakaholas that we may have

(Sen. Ogola's microphone was switched off)

The Speaker (Hon. Kingi): Your time is up Senator. Sen. Tabitha Mutinda.

Sen. Tabitha Mutinda: Thank you, Mr. Speaker, Sir. I rise to support the Statement by the Senate Minority Leader on the massacre that we have witnessed in this country.

I categorically urge us, Kenyans, to stop with immediate effect addressing this man called Mackenzie as a pastor. We have been referring to him as Pastor Mackenzie. We should refer to him as a Kenyan man named Paul Mackenzie. He does not deserve the name pastor because of what we have seen. The degree and level of his radicalisation is too high for this country. Therefore, as we discuss this issue, he is Paul Mackenzie.

Secondly, from where I sit, I have observed through social media that the female gender is, first, to be manipulated by these churches. Women are in the frontline in most of these situations of manipulation and deaths that we are witnessing in these churches. They then bring in their children and families. I discourage and urge them to choose the right religion for their families because they have really been manipulated.

I also urge the Communication Authority of Kenya (CAK), on the issue of authorising funny television (TV) stations that are being licensed to broadcast these kinds of preaching by these churches that are against our religion. It is through this that this information has been passed.

We have seen very learned people too being manipulated. At this point, it is not about illiterate people. I have heard people say that illiterate people are the ones being pulled into these churches. No! We have seen a very hardworking lady, working with the airlines, being subjected to dispose of all her property in order to get into this church. She then takes her own kid into this. It is not because the people are illiterate. Therefore, stations that are broadcasting these things should actually be scrutinized.

Mr. Speaker, Sir, as the Statement clearly indicated, the question begs, why have the *Nyumba Kumi*, chiefs and police around there not made any comments up to now?

I would urge the Committee that you will allocate to deal with this matter, to be given priority---

(Sen. Tabitha Mutinda's microphone was switched off)

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

Sen. Omogeni: Bw. Spika, naomba ruhusa ili leo nizugumze Kiswahili.

(There was a technical hitch)

Asante sana Bw. Spika. Kwanza, nachukua nafasi hii, nikiwa na huzuni na majonzi, nikizungumza na wakaazi wa Jimbo la Kilifi. Natoa pole zangu kwa familia za wale ambao wapendwa wao wamekufa kutokana na kitendo cha huyu mhubiri bandia.

Bw. Spika, ni huzuni sana kwamba mimi kama mkaazi wa taifa la Kenya, kujua kuwa tuna Serikali ambayo inamruhusu mhubiri kama huyu, Paul Mackenzie, kuchukua maisha ya Wakenya takriban 100, bila kujua kwamba mambo haya yote yanatendeka. Ni huzuni kubwa sana.

Bw. Spika, naomba Serikali iweze kuweka mikakati ya kuangalia vitendo vya huyu mhubiri bandia na wengine ambao wanahusika katika vitendo hivi. Hatutaki tuzungumze mambo haya leo halafu kesho, tusikie tena mambo haya yametendeka katika Jimbo la Nandi, Nyamira ama hata Kakamega.

Bw. Spika, ukifuatilia kwa undani, huyu mhubiri amefanya vitendo ambavyo ni vya kinyama. Ninazungumza hapa kama Mkristo. Lakini, huyu mhubiri bandia ameharibu kabisa jina letu kama Wakristo.

Ninapozungumza, nilikuwa naomba Jumamosi iliyopita katika kanisa langu la *Seventh Day Adventist (SDA)*. Nilienda pia Jumapili kwa Kanisa la Katoliki. Kwa hivyo, najivunia dini yangu ya Kikristo. Lakini, dini yangu haikubali kuwe na wahubiri kama hawa wenye itikadi za kupotosha Wakenya.

Ni jambo la huzuni sana---

(Sen. Omogeni's microphone was switched off)

The Speaker (Hon. Kingi): Your time is up. Senators, learn to speak within three minutes. That is what we have.

Proceed, Sen. (Dr.) Oburu.

Sen. (Dr.) Oburu: Thank you, Mr. Speaker, Sir. This is not a laughing matter. It is a very serious matter. This is not something that started yesterday. It is something that has been going on for years and years, within the Christian fraternity.

Mr. Speaker, Sir, I recall in my own village, there used to be a cult which was perverting people's minds; the thing of hypnotizing people to believe and do things that are unbelievable. You would find them hypnotizing people, telling people that men and women can sleep on the same mat and that nothing will happen between them. However, women come out of that place pregnant!

Mr. Speaker, Sir, I also know of a cult that hypnotizes people to believe that they should sell all their properties and give the proceeds to their pastors; that once you give property to your pastor, you are going to be very rich; much richer than you were. You end up in misery. This is happening in our country, even today.

The question is just not about this man being punished, we need to think seriously about how we are going to regulate the registration of religions. In Rwanda, I understand that you need to have a degree in theology before you register a religion so that they know that you know what you are doing.

Mr. Speaker, Sir, I hope that in our country, the Government is going to take this matter seriously because there is no way this man could have acquired 800 acres of land, if he was not actually stealing from people. He was actually hypnotizing them and they surrender---

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

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

Sen. (Dr.) Oburu has 47 seconds remaining.

Sen. (Dr.) Oburu: Is it 47 seconds that is remaining? Madam, do you want to eat all of it?

(Laughter)

Sen. Ogola: Mr. Speaker, Sir, I just have a point of ‘may I know?’ Sen. (Dr.) Oburu has talked about men and women, once they slept on some mat ---

The Speaker (Hon. Kingi): What is the Standing Order upon which you are raising that point of order?

Sen. Ogola: He has said that women would become pregnant. What would men come out with? That is what I am ---

(Laughter)

The Speaker (Hon. Kingi): Sen. Ogola, that point of order is frivolous and therefore, I overrule it.

Proceed and finish your 47 seconds.

(Laughter)

Sen. (Dr.) Oburu: Mr. Speaker, Sir, as I was saying, this is something that continues to happen in our country. We must take it very seriously and make sure that the Government acts to regulate these churches. It should not only deal with Pastor Mackenzie but all the others who also hypnotise people and make them do untoward things which are anti-Christian and yet they believe that they are prophesizing Christianity.

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

Sen. (Dr.) Oburu: Thank you.

The Speaker (Hon. Kingi): Sen. (Dr.) Khalwale, kindly proceed.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. My condolences to the families in Kilifi County. If the country may know, this is not a Kilifi County problem. Back home in Kakamega, Ms. Maureen Millicent Ajayi, the wife of Mr. John Mukholo of Shihaka Village in Kakamega County, went to this pilgrimage. She was killed and the children cannot be seen. She went with three children aged three to 12 years.

Therefore, the story is bigger than what we are seeing. I beg this House that we move away from this Statement and the urge to say that the matter has been referred to a Committee or several committees. It does not work.

In the practise of Parliament in the United Kingdom (UK) and in this country, an issue like this is normally solved by a Parliamentary Select Committee. When Josiah Mwangi Kariuki was killed, this Committee was formed in this House. When Robert Ouko, was killed, a Committee was formed in this House. We need to form a Select Committee because without one, it is like asking the police to investigate itself.

What has happened in Kilifi County is an indictment of the entire security system.

(Applause)

They will use the opportunity as a cover up. We need a Committee that will unlock the mystery in Kilifi County but go further and recommend how we should deal with the church.

Having been at the Bomas of Kenya when we were making the current Constitution, there were too many concessions. For example, the concession on Article

32 of the Constitution was mainly because of the fear that if we tightened it, the clergy would fight the Constitution and it would not go through.

Now, we have that fear behind us. Let this Select Committee come with recommendations that will completely make it impossible for criminals like the ones in Kilifi County to have an opportunity of ever setting up a church.

(Applause)

The common trend in it is as follows; a person goes to a market in Rabai, starts preaching to three or four people, who then give him *sadaka*. He buys a public address system and he continues until he comes to Nairobi City to register some church. Once he registers it, he collects money from people. When he finishes, he---

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

(Sen. (Dr.) Khalwale spoke off record)

Your time is up, Sen. (Dr.) Khalwale.

(Sen. Cherarkey consulted loudly)

Sen. Cherarkey, we are not in some crusade.

(Loud consultations)

Order, Senators!

Sen. (Dr.) Khalwale, if you are convinced that the best way to approach this matter is through a Parliamentary Select Committee, then you need to move a Motion. Once you do that, then, of course, it will be debated. If found fit, once adopted, then we can have a Parliamentary Select Committee to carry out an inquiry. Kindly, you know what to do. Proceed, in that manner.

Let us now listen to Sen. Oketch Gicheru.

Sen. Oketch Gicheru: Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute on this matter. There is an African Proverb that says that if a doctor invokes a storm upon his own people, then he cannot protect his own house from being destroyed.

Mr. Speaker, Sir, I was just imagining that if today, somebody was to just faint in a church without us here knowing, it would be known by the British Broadcasting Corporation (BBC) and anybody in this world. How come then, that this kind of massacre happened in this country under the watch of all our leaders and all security and intelligence that we have in this country without anybody ever knowing about this?

I know passionate Senators have talked about not politicising this issue. However, not politicising this issue does not equal to not holding leaders of this country accountable.

(Applause)

There is no way such a massacre can happen to great people of this Republic when there are leaders right from the grassroots to the national level. This is an issue of accountability and transparency on religion in this country.

We are becoming a country that does not hold religious leaders responsible and accountable. It is because those religious leaders sell to the political class, a congregate to talk to all the time. It is this political class that is sitting in this Senate, the National Assembly, county assemblies, State House and in the Cabinet of this country, that is building these churches. They excuse and groom these churches to have this kind of atrocities.

It is high time we called a spade a spade. You cannot have a tree whose root is rotten and then you expect that it will not spread death to its branches. We have seen people in State House supporting these churches. Pastor Ezekiel, who trained this pastor--

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

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

Sen. Cherarkey: Mr. Speaker, Sir, under Standing Order No.105 on Statement of fact, I know Sen. Oketch Gicheru wants to capture the imagination of the nation by attacking the President or State House.

Mr. Speaker, Sir, is it in order for Sen. Oketch Gicheru to allude that State House is funding cult-like following like that of Pastor Mackenzie? The picture which is doing rounds has been photo-shopped by Azimio One Kenya Alliance? Is it in order? He should withdraw and apologise.

The Speaker (Hon. Kingi): Sen. Oketch Gicheru---

(Loud consultations)

Sen. Cherarkey, you have raised a point of order and I am here to rule on that particular point of order.

(Sen. Oketch Gicheru stood on his place)

Sen. Oketch Gicheru, just hold your horses. Indeed, if you give any Statement, you should be able to take responsibility of that Statement and be able to substantiate some of these allegations.

(Applause)

Failure to which, you know what to do – withdraw and proceed to conclude your Statement. You have 26 seconds, that is what you had. Kindly, proceed.

Sen. Oketch Gicheru: Thank you, Mr. Speaker, Sir. The same way we have an alleged advocate Sen. Cherarkey, is the same way that I have said that these are alleged issues. Given time, I can bring to this House a number of politicians here, State House and other places, that have been in these churches. That is why I am saying, we must hold them to account.

(Loud consultations)

The Speaker (Hon. Kingi): Order, Senators!

(Sen. Cherarkey consulted loudly)

Sen. Cherarkey, can the Chair do his work?

(Applause)

Sen. Oketch Gicheru, if you do not have the answers now, then, you have to withdraw.

An Hon. Senator: Yes! Withdraw. *Simama!*

(Loud consultations)

The Speaker (Hon. Kingi): Next time, carry those facts with you, so that as you state the issue, you can substantiate. Therefore, proceed to withdraw. When you are ready with those statements, you can present them.

Sen. Oketch Gicheru: Mr. Speaker, Sir---

(Sen. Methu and Sen. Cheptumo consulted loudly)

The Speaker (Hon. Kingi): Sen. Methu and Sen. Cheptumo, you are out of order.

Sen. Oketch Gicheru: They are eating into my time.

The Speaker (Hon. Kingi): Sen. Oketch Gicheru, now that you do not have the facts, kindly proceed to withdraw---

Sen. Oketch Gicheru: Mr. Speaker, Sir, in this House, I am allowed that---

The Speaker (Hon. Kingi): Order! Sen. Oketch Gicheru, kindly proceed to withdraw that particular statement.

Sen. Oketch Gicheru: Mr. Speaker, Sir, in this House, I am allowed and I have a right. If you want me to bring evidence of politicians and leaders who have been in these churches, I can bring it. That is what our Standing Orders allow. We have been in a place where Members have been allowed to bring---

The Speaker (Hon. Kingi): Order! Order Senators.

Sen. Oketch Gicheru, when I am talking, you keep quite.

(Several Senators raised points of order)

Order Senators!

Sen. Oketch Gicheru, I have made a ruling on this particular matter.

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

The Speaker (Hon. Kingi): You cannot state a fact and then seek to come and substantiate it.

(Sen. Sifuna Spoke off record)

Not on this particular matter. Kindly, proceed to withdraw that particular statement.

Sen. Oketch Gicheru: Mr. Speaker, Sir, may I indulge you.

The Speaker (Hon. Kingi): Before you make any statement, proceed to withdraw that particular statement.

Sen. Oketch Gicheru: Mr. Speaker, Sir, I respect your ruling.

(Loud consultations)

Mr. Speaker, Sir, they are making noise.

The Speaker (Hon. Kingi): Sen. Oketch Gicheru, can you proceed to withdraw that statement, please?

Sen. Oketch Gicheru: Mr. Speaker, Sir, you know how much I respect the Chair. On the same Standing Order 105 that Sen. Cherarkey has talked about, they are our own rules in the House. It says;

“If a Senator has sufficient reason to convince the Speaker that the Senator is unable to substantiate the allegations instantly, the Speaker shall require that such Senator substantiates the allegations not later than the next sitting day, failure to which the Senator shall be deemed to be disorderly within the meaning of Standing Order 121---”

Mr. Speaker, Sir, I am begging your indulgence that I can be able to substantiate these things.

The Speaker (Hon. Kingi): Sen. Oketch Gicheru, I believe you understand English, that is why you have read that in English.

Sen. Oketch Gicheru: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): You see, I need to be convinced.

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

The Speaker (Hon. Kingi): Just read that particular Standing Order again.

Sen. Oketch Gicheru: “If a Senator has sufficient reason to convince the Speaker that the Senator is unable to substantiate the allegations instantly, the Speaker shall require that such Senator substantiates the allegations not later than the next sitting day”

The Speaker (Hon. Kingi): Sen. Oketch Gicheru, I have made a ruling on this particular matter. You are unable to substantiate, kindly proceed to withdraw, conclude your remarks and take your seat.

Sen. Oketch Gicheru: Mr. Speaker, Sir, I respect your ruling. Even as I withdraw because I respect you, I feel like you are gagging me. You are saying that I am unable to substantiate when actually, I am requesting for time to substantiate what I am talking about.

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

Sen. Oketch Gicheru: This is a democratic country and we need to be fair.

The Speaker (Hon. Kingi): Now that you have withdrawn, proceed to conclude your remarks. You have 20 seconds.

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

Senator, I am informed your time is up. Kindly, proceed to take your seat.

(Applause)

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

The Speaker (Hon. Kingi): Sen. Omogeni, you may have the Floor, and I hope you are not taking us back to that matter.

Sen. Omogeni: Mr. Speaker, Sir, you know we defer to you a lot. We are here because we have been elected from our respective counties to come and discuss issues that are of national importance without fear or favor. This Standing Orders carry the force of the Constitution. They flow from the Constitution---

Mr. Speaker, Sir---

The Speaker (Hon. Kingi): Sen. Omogeni, if I get you correctly, you are standing on a point of order, is it not?

Sen. Omogeni: Yes.

The Speaker (Hon. Kingi): If you look at Standing Order no. 98, this is what it provides.

“Any Senator may raise a point of order at any time during the speech of another Senator---

There is no Senator making a speech.

(Sen. Sifuna spoke off record)

Yes, but there is no Senator making a speech, and therefore, I am afraid, Sen. Omogeni, I may not allow you to proceed with that point of order.

Sen. Chimera, you may have the Floor.

Sen. Chimera: Asante sana Bw. Spika kwa fursa hii ambayo umenipa nizungumzie jambo hili la Shakahola. Vile vile, naungana na Maseneta wenzangu kumkashifu na kumshutumumu vikali sana Pastor Paul Mackenzie kwa itikadi yake.

(Loud consultations)

Kunradhi. Bw. Paul Mackenzie kwa kueneza itikadi hii. Vile vile, kwa niaba yangu na ile ya wananchi wa Kaunti tukufu ya Kwale, natoa rambi rambi zangu kwa familia ambazo zimepoteza wapendwa wao katika swala hili la Shakahola.

Bw. Spika, nimemskiliza kwa makini sana Kiongozi wa Wachache Bungeni, Sen. Madzayo, jana na leo kuhusu swala hili. Alielezea kwa kina kwamba lazima wale afisa wa serikali, wakiongozwa na Kamishna wa Kaunti na Kamanda wa Kaunti wachukuliwe hatua kali sana.

Ningependa kumwambia rafiki na kaka yangu kwamba, mgala muue na haki pia umpe. Kamishna wa Kaunti ya Kilifi, rafiki yangu Josphat Biwot alipewa kazi hivi majuzi tu. Nafikiri mwezi moja au miwili iliyopita. Kamanda wa Kaunti na Mkuu wa *National Intelligence Service (NIS)* vile vile. Hawa maafisa wa serikali waliokuwa Kaunti ya Kilifi hapo awali walitolewa.

Nawaomba marafiki zangu Maseneta katika upande wa Azimio la Umoja *One Kenya Alliance*, tusifanye siasa na maisha ya Mkenya. Tumepoteza Wakenya wengi pale. Kama hauna imani wewe kama Seneta au kiongozi, basi hufai kuwa katika Bunge hili. Yale ni maisha ya Mkenya. Nawaomba jamani viongozi wenzangu tuache kufanya siasa na Maisha ya Mkenya. Wamepoteza maisha yao.

Katika Bunge hili, kuna kamati ya Sheria, Haki na Usawa. Walilivalie njuga swala hili, wakafanye uchunguzi wao kule, watuletee ripoti hapa. Lakini kuja hapa kila siku mbele ya Bunge hili ambalo ni la heshima na taadhima kuu kurushiana maneno ya kisiasa, kuweka kejeli upande huu na ule mwingine sio sawa. Wakenya wanatuangalia. Nawaomba kwa heshimu kuu, kama Seneta mchanga zaidi hapa, mtupe fursa kama viongozi tufanye hii kazi. Tuwache siasa, turuhusu Serikali ifanye kazi yake.

Nikimalizia, nimeona katika mtandao, na hii ni kejeli, kwamba mawakili wa yule Paul Mackenzie---

The Minority Leader (Sen. Madzayo): On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Sen. Chimera, kindly, yield.

Sen. Madzayo, what is your point of order?

The Minority Leader (Sen. Madzayo): Bw. Spika, singependa kumwingilia ndungu yangu, lakini amesema swala la siasa. Swala ambalo lipo katika Bunge letu hivi sasa linalojadiliwa si swala la siasa bali swala la mauaji na ndio limeletwa mbele ya hili Bunge hili liweze ---

The Speaker (Hon. Kingi): Sen. Madzayo, under what Standing Order are you bringing your point of order?

The Minority Leader (Sen. Madzayo): Clarity. Standing Order No. 105.

The Speaker (Hon. Kingi): Are you aware of the contents of Standing Order No. 105? Responsibility for statement of fact. Is that where your point of order springs from?

The Minority Leader (Sen. Madzayo): Yes.

The Speaker (Hon. Kingi): All right, proceed.

The Minority Leader (Sen. Madzayo): Kwa hivyo, hakuna mtu ambaye anaongea mambo ya siasa hapa. Saa hizi, tunaongea juu ya vifo na ni hatua gani, na kamati gani itakayohusika. Kama ndugu yangu mdogo ameona kwamba hilo ni swala la siasa, kusema kwamba kama watu wamezembea kazi wafutwe kazi, basi, hilo sio swala la siasa. Hilo ni swala liko ndani ya Bunge na linajadiliwa na wenzake, na asilichikulia kama---

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

The Minority Leader (Sen. Madzayo): Yeye kusema kwamba hili ni swala la siasa. Swala la vifo vya watu vilivyotokea visivyopungua mia ni swala la siasa hilo?

The Speaker (Hon. Kingi): Sen. Chimera, conclude your remarks.

Sen. Chimera: Asante, Bw. Spika. Shukrani pia kwa ndugu yangu, Sen. Madzayo, lakini nafikiri hukunielewa. Unaninukuu kimakosa.

Nimesema, kama viongozi tuache kufanya siasa na maisha ya Wakenya. Sijasema kwamba swala hili katika Bunge hili ni la kisiasa. Hapo naona haujanielewa.

Mhe. Spika nikimalizia---

(Sen. Chimera microphone switched off)

The Speaker (Hon. Kingi): Your time is up. Hon. Senators, we had agreed that we shall terminate the debate at 4.00 p.m. It is now 10 minutes past. We shall rest this particular matter there and proceed to do the final Statement by Sen. Osotsi.

Now that Sen. Osotsi is not ready to proceed.

All right, proceed.

THE KENYA-SAUDI ARABIA DEAL ON
IMPORTATION OF CHEAP FUEL

Sen. Osotsi: I am very ready, Mr. Speaker, Sir. First, I apologize for coming in late.

I wish to make a Statement on the deal between the Governments of Kenya and Saudi Arabia on the importation of cheaper fuel.

Mr. Speaker, Sir, I rise, pursuant to Standing Order 53(1) to seek a Statement from the Standing Committee on Energy regarding the status of the deal made between the Governments of Kenya and Saudi Arabia on importation of cheaper fuel into the country.

In the Statement, the Committee should:

(1) Apprise the Senate on the terms of the deal between Kenya and Saudi Arabia, clearly stating which oil companies have been nominated to import fuel for local and transit markets;

(2) Give details, in full disclosure of the bilateral agreement, of the cost benefit analysis and how this will be applied to reduce the cost of fuel in the country, taking into account the taxes and levies that will be applied;

(3) State whether this deal was a loan arrangement and, in the case that it was, provide details on why Parliament was excluded in the approval process of the deal; and

(4) Spell out measures, if any, to ensure that this oil deal will not be used to benefit actors in the Government.

Thank you, Mr. Speaker.

The Speaker (Hon. Kingi): Next Order

BILL

Second Reading

THE EQUALIZATION FUND APPROPRIATION BILL
(SENATE BILLS NO. 3 OF 2023)

(Sen. Tabitha Mutinda on 19.4.2020)

(Resumption of debate interrupted on 25.4.2023)

The Speaker (Hon. Kingi): Hon. Senators, we will proceed with debate interrupted yesterday, Tuesday, 25th April 2023.

I can see my dashboard is jammed. Hopefully, it is for purposes of contributing to this Bill. I will therefore proceed to call Sen. Maanzo.

(Loud Consultations)

(Sen. Maanzo spoke off record)

If you spoke on this particular Motion, you cannot contribute twice on the same Motion.

Sen. Maanzo: I did not. I actually queued.

The Speaker (Hon. Kingi): Proceed. I am informed you did not.

Sen. Maanzo: Yes, I have not. Mr. Speaker, Sir, the Constitution talks of things which should be in the Equalization Fund.

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

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

Sen. Cheptumo: Mr. Speaker, Sir, in view of the remaining time, will I be in order to request that we reduce the time allocated for a Member? I believe most Members would want to speak to this Motion.

That is my submission.

The Speaker (Hon. Kingi): Hon. Senators, according to our Standing Orders, each Senator is allowed not more than 20 minutes to speak. However, we can limit debate.

Sen. Cheptumo rose on a point of order, whether correctly or otherwise, seeking that we limit debate to less than the allowed time of not more than 20 minutes. Hon. Senators, do we proceed to allow each Senator to speak as per the time allocated to each Senator in the Standing Order?

(Loud Consultations)

All right, we shall proceed. Each Senator will speak for the allowable time as given in the Standing Orders.

Sen. Maanzo, kindly proceed.

Sen. Maanzo: Thank you, Mr. Speaker, Sir. The Senator for Baringo who was with me in the National Assembly knows that this matter of Equalization Fund is a very heavy matter in this country.

Since the new Constitution came into being, the Equalization Fund has never been disbursed to any of the counties it was meant to serve. What has happened over the years and is more absurd in the current Bill, to deal with Equalization Fund and even though we are dealing with devolution units, there is very little participation of the Senate or the counties in the apportionment of this money.

What is even more absurd is that the Commission on Revenue Allocation (CRA) is supposed to have done the apportionment in consultation with the Senate and a number of interested parties. Unfortunately, that did not happen despite serious presentations that Makueni County gets Equalization Fund, Machakos and Kitui did. The reason given as to why Makueni did not get the fund was that the railway passes through it, especially the new railway.

The truth of the matter is that, the railway and the highway which goes through Makueni, for almost 200 kilometres, does not benefit the locals at all. If anything, upon the coming of the new railway gauge, most towns in Makueni on Mombasa Road were shut down and business went down. The locals suffered a lot more than it would have benefited them. It is only recently that trucks came back that some of the towns started coming back to life. Therefore, that cannot be a reason advanced by CRA to deny Makueni County the funds.

The other reason advanced by CRA to deny Makueni any little apportionment of this money was that, in Makueni, we have many educated people; that many people have gone through education, are graduates and therefore, must be working and taking moneys back home. Far from it, though we have very many young people who are educated, most of them are jobless. They have not had an opportunity to work in an organization or even start their own businesses. The number of the many educated young people of Makueni County who are graduates does not equate into any money coming into the county.

This argument has been used by CRA to deny us the allocation for the counties, not only the Equalization Fund. Under the Constitution, this was to deal with water, electricity, roads and health. As far as roads are concerned, our biggest problems are bridges. Some of the roads maintained by the Kenya Rural Roads Authority (KERRA) or the Kenya National Highways Authority (KENHA) in Makueni County have very poor bridges.

We suffered this weekend. Quite a number of people were being swept away by rivers when it rained heavily. I was almost a victim of one of those low bridges where the water had blocked people. When you are travelling, you are unable to go back or forward. A number of lorries transporting food, against the misconception that when a vehicle is heavy, it will go through a river, far from it. So long as the water of a river or a bridge is above half of the tire, the vehicle has every chance of being swept away by that river. It becomes light since the tires are pressured. The rivers, bridges and the roads have been a very big problem in Makueni.

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

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

Madam Temporary Speaker, electricity has also not gone into every place in Makueni County. Similarly, though we were made to do with Thwake Dam which has delayed. There have been delays in payment of the contractors and its implementation.

The dam which should be serving the people of Makueni, Kitui, Machakos and Kajiado Counties together with Konza City has not been implemented. It has slowed. Eventually, it will be completed. I am working very hard as Senator. I started this when I was the Member of Parliament (MP) of Makueni County to make sure that Thwake Dam is actualized. However, that is still not enough reason to deny the people of Makueni the Equalization Fund.

In terms of health, we still have a lot of dispensaries which have not been brought to a level where mothers can deliver. That is the biggest need. There are little emergencies from children. For example, when a mother needs to rush to the nearest dispensary because the child cannot breathe, a lot of times they are congested. There is some technology used to aid. Although the Makueni County Government is making every effort to aid health facilities, the funds have not been devolved from Nairobi by the national Government. The same goes for the agricultural funds.

When the Commission of Revenue Allocation (CRA) goes on to deny Makueni County money from the Equalization Fund simply because the Standard Gauge Railway (SGR) passes through the county; honestly, it is a big problem. Despite the many presentations the leadership of Makueni County including myself have made to CRA and

them having visited the county which has just emerged from a drought; our people are suffering a great deal by not being equalized. The Fund has become something that does not depict the meaning of equalization.

The whole idea of equalization under the Constitution was to make sure that counties, regions or constituencies which had been disadvantaged over the years since independence and have not had some services would have been able to develop through the funds that would ensure that equalization had taken place. Services such as electricity, water health and roads would have benefitted a lot. Therefore, that particular case has not been accepted by the CRA. Since the Equalization Fund started, it has not been taken to any county nor been implemented.

For the first time, we have come up with a Bill which is planning to implement this but unfortunately, and I state it clearly as a lawyer with many years of experience that this Bill is discriminative and therefore unconstitutional as it stands. We are debating an illegal Bill. We are dealing with a Bill which has a ridiculous allocation of funds to some of the counties. You are giving a whole county Kshs43 million. Even the national Government-Constituencies Development Fund (NG-CDF) gives better amounts.

You are claiming that you have equalized accounts by just giving Kshs43 million. It is ridiculous. If it was Kshs43 billion being given to a disadvantaged county, then it would make sense. However, will the Kshs43 million construct a health center? If so, how many? How about electricity connections? If so, how many villages will it connect? How about a bridge across a river that keeps sweeping people away? I do not think so. An average bridge construction on a river costs close to Kshs400 million if you want to save lives or get serious as a country.

I do not think CRA or the Government is serious at all. We are bringing this Bill which is for the 2022/2023 Financial Year Budget. This is how ridiculous it is. This is how counties have suffered under the Government since devolution started. If you bring money to a county in the last month of a financial year, what development can this Bill bring? We have a ridiculous Bill which the Government is not serious about; one which is not implementable and mocking some of the counties, a Bill which has discriminated Makueni County. To CRA, this is not the end of the Makueni people represented by myself on this Floor.

I am proceeding to the High Court to make sure this Bill is declared unconstitutional, and therefore, fails and cannot be implemented in this nation. The people of Makueni are suffering most as far as water electricity, roads and health in this country is concerned. It probably only favours the arid counties. Makueni is a seriously arid county. We have seen non-arid counties included here.

We should rethink the whole idea of the Equalization Fund. The proper equalization should take place in every county but should be proportioned according to the problems of that county. If you come to Nairobi City County, there are people living in the slums. They have no health or water services and they need to be equalized to those who live with such services. If you go to any other county which has been denied these monies, you will still find disadvantaged people.

The whole idea of the Constitution on Equalization Fund has not been met. I am going to fight this Bill in this House because it is an illegal Bill even if you use your number to pass it. I am still going to challenge that decision in court. Recently, we

created precedence that whichever court order comes to this House, it must be obeyed. I believe I must do this now. I shall go to court and stop this Bill. I am instructing my lawyers this afternoon. I am giving them a copy of this Bill so that we fail it and CRA can learn to do its job properly and consult Senators.

Which Senator, if any, was ever consulted when this Bill was being implemented? None. The team on the ground, which sits to deal with this, has no Senators. They have representatives of the NG-CDF, an officer from the provincial administration; a county commissioner or assistant. Which representative of the Senate sat there? How can you bring the Bill to the Senate to pass yet there was no consultation done? That fails on the part of public participation. I can assure you there was no public participation or legal public participation on the Bill.

What happened was some people pretending to consult. They did not consult sufficiently through the National Treasury, Senators or the relevant Committee and the Attorney General who should be giving a proper interpretation of what this means. If you look at the total amount of money for equalization to help counties which are disadvantaged, you realize they did not follow the law at all. Even the budget is small. It does not fall under the category of Equalization Fund. Although it was supposed to be increased with time.

The Senator of Turkana County contributed yesterday and said that he has to cross rivers physically and abandon his car. Moreover, mothers and children are expected to cross such rivers to go to dispensaries because there are no bridges. You then allocate him money that is not enough to construct one bridge. There is something wrong with the way we administer this Fund, and the understanding of its meaning in the Constitution together with how it is supposed to be dealt with.

There are many disadvantaged wards. This Fund was supposed to go directly to the wards. There is the loss of the original idea from the framework of the Constitution. What they wanted and meant to do with the Equalization Fund has been lost in this Bill. We talk of other basic needs such as education although it is not included in the Constitution. It is talking about whether basic needs have been covered. Would it not have been better if during this time of drought, we had the Equalization Fund to make sure the people who have no food or need to go through school are taken care of?

Has the Bill dealt with the budgetary timelines? Why is it being brought to us to pass and when it goes to the President for assent, the National Treasury does not have the Fund? The financial year will have closed, and no money can be dispensed.

Also, counties have not identified projects or procurement done. We have two months to the end of the financial year. Is this not ridiculous? This mistake has been repeated over the years. Is this not what the counties have gone through? Up to now, the counties have not received their normal allocation.

I do not know what Sen. Ali Roba thinks of this. This is because he has gone through this experience as a governor, together with my good friend, Sen. Mandago.

The Temporary Speaker (Sen. Veronicah Maina): Sen. Maanzo, do you wish to be informed? He has a point of information.

Sen. Maanzo: Yes, Madam Temporary Speaker. If he informs me, I will appreciate it. He has been through this.

What happens when monies arrive on the last day of the financial year? I wish to be informed.

Sen. Ali Roba: Thank you, Madam Temporary Speaker, I wish to inform my colleague, Sen. Maanzo, that once this Fund is appropriated, it will not lapse at the end of the financial year; it will remain in the Equalization Fund kitty. As such, counties that are beneficiaries of this Fund do not stand to lose at the end of the financial year.

Sen. Maanzo: Mr. Speaker, Sir, unfortunately, that has been the story since 2010. None of these monies can be traced. It is a good story told. However, where is it saved, when and for what counties?

I oppose it and will go to court to stop this process. This Bill, as presented here, is unconstitutional and discriminative against the people of Makueni among other counties. Therefore, it cannot stand.

Thank you. I oppose.

The Temporary Speaker (Sen. Veronicah Maina): Sen. Kisang, proceed.

Sen. Kisang: Thank you, Madam Temporary Speaker. Sen. Maanzo called you Mr. Speaker, I think he forgot.

I rise to support this Bill reluctantly. When this Fund was set up, it was supposed to help counties that are marginalized to achieve basic services. It is unfortunate that Elgeyo-Marakwet County is one of the counties benefiting from the Fund, but the allocation is low.

As Sen. Maanzo has said, Makueni County is getting Kshs43 million while Elgeyo-Marakwet County which is marginalized is only getting Kshs87 million out of the Kshs13 billion.

The biggest problem with the Commission on Revenue Allocation (CRA) is when they visit our counties, they only go to county headquarters. Elgeyo-Marakwet County has a long stretch of Kerio Valley, which stretches from Soi North up to Endo Ward where we have suffered because of insecurity for over 50 years.

We want the CRA to tell us where they got data to allocate these resources. There are counties neighboring Elgeyo-Marakwet getting close to Kshs1 billion while Elgeyo-Marakwet County is getting Kshs87 million.

This is unfortunate and we will petition. However, instead of stopping the resources from going to counties, we plan for the next Financial Year 2023/2024 so that they can do affirmative action. Those counties that are disadvantaged in this Bill are compensated during the 2023/2024 Financial Year.

For several years, Elgeyo-Marakwet County, with more than six wards has suffered because of insecurity. We thought that the Equalisation Fund will be allocated to the county so that we can get basics like health centers, dispensaries, and boreholes because water and health are basic needs.

On education, there are some schools that have closed because of insecurity. This Fund would have assisted Elgeyo-Marakwet County to come up.

The CRA formula to allocate shareable revenue puts Elgeyo-Marakwet County as one of the bottom three counties in terms of allocation. I believe when the formula comes for review next year, we will lobby for marginalization to be stopped.

I have checked the allocation of Tiaty Constituency and the North Rift region where bandits have been terrorizing people across the region. However, Tiaty Constituency has gotten Kshs481million. I hope leaders in the Constituency will use the resources to put up schools so that the children of Tiaty Constituency will go to school. Then people can have peace.

The Ministry of Interior and National Administration and the Ministry of Education need to liaise so that those children who are 15 years and below are forced to go to school. This area has been marginalized since Independence.

Tiaty Constituency is one and half the size of Elgeyo-Marakwet County with only 60 primary schools when Elgeyo-Marakwet has close to 600 primary schools. The secondary schools there are less than 10. The banditry will not end because children are not going to school. If they do not go, they know what to do best and ensure they terrorise everyone.

We should allocate Tiaty Constituency more than Kshs400 million, maybe Kshs2 billion as we give Elgeyo-Marakwet County close to another billion.

I know people are not happy with the allocation, but we should not kill the Bill because of that. We should look forward to the next financial year, sit down with CRA, they give us the formula they used to arrive to these figures which are not equitable.

I will 'fight' so that Elgeyo-Marakwet County gets additional resources so that we can have good hospitals, water and better roads. Kerio Valley is marginalized. When people go to Iten and Kapsowar, they think Elgeyo-Marakwet is not arid, yet it is an arid county. We are pushing to ensure that Elgeyo-Marakwet County is recognized as an Arid and Semi-Arid Land (ASAL) county.

With those few remarks. I support the Bill and ask Sen. Maanzo, to not go to court. The Kshs43 million allocated to Makueni County will help. Let us start lobbying so that we do not let somebody in Tiaty suffer. A child will delay going to school if you go to court.

I support.

The Temporary Speaker (Sen. Veronicah Maina): Sen. Sifuna, you have the Floor.

Sen. Sifuna: Madam Temporary Speaker, yesterday, I had a copy of the Equalization Fund Appropriation Bill as published by the Kenya Gazette and today I have a copy.

The reason I bring that up is because, when we were being oriented as new Senators, we were told that one of the ways to distinguish a Senate Bill from the National Assembly Bill is the colour.

The one I had yesterday was colour blue. The one we were debating on Division of Revenue was colour green. I want to make a point is because there were some people who were alleging that they have added Kshs15 billion to the counties.

The Kshs15 billion additional money from Kshs370 billion to Kshs385 billion was given by the National Assembly. We in this House have our own opportunity in this Equalization Fund Appropriation Bill to add some money under the Equalisation Fund. This is the only money we can tell counties we have given them.

Let me proceed to the provision of Article 204 of the Constitution. This Fund is ringfenced in what it is supposed to be used for.

Article 204 of the Constitution states that:

“The equalization Fund, only to provide basic services including water, roads, health facilities, and electricity to marginalized areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation as far as possible”.

I stand here to support this Bill knowing that Nairobi City County, my county, is not in the schedule because it is not eligible to receive these monies. That is contrary to some of the submissions that were made yesterday by some of my colleagues, especially my brother, Sen. M. Kajwang from Homa Bay County. He admitted that he was supporting the Bill for selfish reasons because his County is among the ones that are benefiting.

I stand here knowing fully well that Nairobi City County is not on this Schedule. However, I know for a fact that I took an oath on the first day in this Senate to protect devolution, and that is exactly why I am standing to support this Bill.

In Nairobi, we say that what your brother has eaten, is not lost. I stand to support this knowing fully well that we are not on this Schedule as Nairobi City County. However, that does not mean that Nairobi City County does not have areas where basic services like water, roads, health facilities, and electricity are missing.

I know that many of you live in this city because we host the Senate. You are invited to visit some of these areas. A large proportion of the residents of Nairobi City County are actually what you can describe as the urban poor and they go every day without the services.

Examples were given here of Kuwinda in Karen, which is an informal settlement. We have Githogoro in Westlands, and we also have Mukuru kwa Njenga and Mukuru kwa Rueben. In all the areas I have mentioned basic services like water, roads, health facilities, and electricity are missing. In fact, I am happy that you and I were in the Committee on Energy when the people of Mukuru petitioned us that they are unable to access affordable, regular, and stable electricity.

It would have been nice for us to argue that Nairobi City County should fit into this Schedule. That is why, as their Senator, I was fighting so hard just when it came to the Division of Revenue Bill. That is because it is the only opportunity that we have, as residents of Nairobi City County, to increase our share of the resources. We need those resources for us to provide services to our people.

I do not want this to appear like it is an attack on any colleague or on the Senate itself, but my heart was broken last week and I have to speak to it every time that I get an opportunity. Of the 34 counties that are listed as beneficiaries of this Equalization Fund, 23 out of those 34 Senators in this House voted to defeat the Report of the Committee on Finance and Budget that had proposed that we increase the resources by Kshs22 billion. In fact, I have said that each of those 22 Senators cost us, as devolution, Kshs1 billion each. It leaves me in a very difficult position when I sit here.

I have listened to my brother from Elgeyo-Marakwet, who has just spoken now. In Nairobi, we believe that money is money! You should never leave money on the table when there is an opportunity for you to grab money for yourself and your people. There is no difference between money allocated through the Division of Revenue and that which is allocated through the Bill that we are currently debating. If I want to build a health centre in Mukuru kwa Njenga and I get to the point of paying the contractor, he will not ask me if that money is from the Division of Revenue or from the Equalization Fund. No, money is money.

Looking at my colleagues, I am amazed. I am baffled, because my brother from Nandi County was arguing for Kshs157 million from the Equalization Fund yet he actually gave away Kshs1 billion, as a Senator. The Senator for Turkana County is

arguing about Kshs1.5 billion. I am sure he would have gotten more because Turkana County is always second to Nairobi in terms of the quantity of money that is allocated under the Division of Revenue every single year.

To understand the issues that my brother, the Senator for Turkana County, was speaking to yesterday, one must always go back to the beginning of this journey of devolution and how we ended up in the place that we are. If you read the final report of the Constitution of Kenya Review Commission (CKRC) of 2005, you will realise the things that Sen. Lomenen was saying yesterday were said by the citizens of Kenya in 2004 and 2005 during the Bomas process.

They said that they wanted to see division of resources and benefits between the national Government and communities where those resources are found. This is what we are talking about. There was wide support for local government; devolution, what we were sworn to protect. There was widespread feeling amongst Kenyans of alienation from the central Government and power. There was a feeling of marginalization, neglect, and victimization for political affiliation.

These are the problems that were identified and they are the reason why Kenyans decided that we needed to have these two levels of government and they needed to be funded equally. They wanted the local governments and the local authorities to deal with local infrastructure such as roads, hospitals, and schools. These are the direct views of Kenyans that ended up under Article 204(2) and they are also the reason why we have devolved units.

I am looking at these figures here and all I can say is that we had the opportunity to increase our lot, but we gave up that opportunity. If you look at the allocations of the Equalization Fund, you will realise that it is specific to certain wards. That means that the entire county will not benefit from the Equalization Fund even if your County is here. Specific wards within specific constituencies have been highlighted as those that require this support the most.

I will cry and cry and cry again because I believe we lost a very big opportunity as the Senate to push for greater allocation for all our counties. This allocation only deals with specific wards. Let me leave it there so that my colleagues can contribute as well.

However, in a country such as ours, we cannot continue to live the way we are living. If indeed we are all equal under the law, there is no reason as to why I should enjoy paved roads, flowing water every day, stable electricity and access to medical cover when I am unwell yet some of my countrymen are unable to access those facilities at the very basic level. They could be from any particular corner, whether in this city or the entire country.

The Senator for Turkana County reminded us that it was not until five years ago that they saw a tarmac road. It cannot make sense. We should exchange between counties. I would like Sen. Methu to visit Homa Bay County to see how the people are living there. He should go there then compare if the roads there as good or as bad as those in Nyandarua County. He should also compare if the people of Homa Bay are able to access health facilities as easily or as hard as the people of Nyandarua County.

That is critical. When we see those things, we will be guided by the greater picture. We will see how the nation looks like and we will act in concert to help save devolution and to help our people. I, thank you.

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

Sen. Methu, you may proceed.

Sen. Methu: Thank you, Madam Temporary Speaker. For the last two days, I have tried to get an opportunity to speak but I have not had it; I have not been lucky.

I rise to support this Bill but just like the County of my colleague, Sen. Sifuna, who has spoken before me, my County, Nyandarua County, also does not appear in the Schedule. I share in the thoughts and wisdom that when my brother has eaten, the next plate of food shall obviously be mine because they cannot be in the line twice.

Any money that is going to our counties will be supported regardless of the county where the money will be going to. That is why last week I voted amongst other 23 or 24 or 25 Senators to add Kshs15 billion to our counties which is a positive step towards strengthening devolution.

I support this Bill but there is something that should be looked into. It is the classification of the wards that deserve this money. Devolving the money to the ward level should be devolved further to the villages because misconceptions are there.

Even as we say that a comparative study has been done, misconceptions are there. As I represent the county of Nyandarua, anybody who has never visited the county of Nyandarua will always imagine that the whole of that county is agricultural.

The fact that we are the leading producer of potatoes in the whole Republic may make anybody imagine that potatoes are grown in the entire county. As it is, last year, Nyandarua County produced 0.5 million metric tonnes of potatoes which was the highest in the country. We did a 33 percent international contribution which is the highest in the whole Republic.

The statistics availed by the Ministry of Agriculture and Livestock Development show that Nyandarua County is the second leading producer of milk in the whole Republic. Nyandarua County is also the leading producer of French beans, cabbages and carrots in the whole Republic. However, not every part of Nyandarua is productive. That is why I feel that taking this money to the Ward would sort out some of the problems that we face.

To a great extent, a sub-county in Nyandarua called Ndaragwa shares the climate of Laikipia. For Laikipia, Wards that are adjacent to Nyandarua Laikipia qualify for relief food. Whenever we get relief food it is for Ndaragwa and Laikipia. As we go on, this injustice should and must be sorted out against the people of Nyandarua.

The Senator for Nairobi spoke here. Just the other day, we were looking at a Petition in a Committee that I sit in. Some of the historical injustices that must be addressed include what is contained in this Bill. The facts are as follows. Nairobi City County which is represented by my colleague; the Senator who spoke before me, takes Kshs.15.6 million litres of water from Nyandarua every day. Every day we supply 12 percent of all the water that is used in Nairobi.

That water comes from a dam that is called Sasumua Dam. It is located in a Ward called Njabini/Kiburu. It was dug and built in 1959 long before Sen. Sifuna and I were born. In the agreements that were signed by the colonial government at that time, an intake cannot be built above the Sasumua Dam. As it is now, there is no framework as to how the county government of Nyandarua can provide water to the residents of Njabini/Kiburu, Githabai and Nyakio wards.

Those good creatures who give 12.6 million liters of water to Nairobi do not have access to clean drinking water, whereas the Senator for Nairobi City County and his

people are using the same water for drinking, washing their clothes and cleaning their vehicles. How much of an injustice can that be? We are the people that take care of that resource. Now that that matter will come separately, it was just a demonstration of how we as the people of Nyandarua and many other counties which are not on this schedule feel. As we go on, some of these issues must be sorted out.

In the former Central Kenya, which is popularly referred to as the Mt. Kenya region, Nyandarua County which I represent is the biggest in terms of land size. In terms of electricity connectivity, it is the lowest. In all the 10 Mt. Kenya counties, we are barely at 40 percent in terms of electricity connectivity. It will be sad to note that in this era and time, a Ward in Nyandarua is not even 20 percent connected to electricity.

We are speaking about money that is supposed to sort out some of these issues. If those injustices cannot be addressed as we go on, even as we support that other people get this money, we will slowly wear out and will get tired. These are issues that should and must be addressed.

The second issue is that Sasumua Dam was just one instance. Aberdares which borders Nyandarua is one of the five major water towers in the Republic. A dam in Nyandarua called Konoike Dam serves all its water to Nakuru. Another dam that is being done now by the current administration is called Malewa Dam. Its water will be used by the residents of Naivasha. We do not have a problem in giving our brothers including the people of Nairobi, Nakuru, and many other places water. However, are we then children of a lesser God? In the communities that I come from, they always say that the work of a pot is only to cook and not to eat.

We want to distinguish ourselves. We shall no longer be pots. We shall serve food after tasting it. Every time there are wildfires in the Aberdares, the people of Nairobi who are the majority in this Republic never bother. They only read it in the news, see it on Twitter and they never bother. The fires are never close to them. There is no way they can even be able to even access the Aberdares. However, our young men from Nyandarua, every time there is a wildfire, sleep out until they can put out that fire. If we are putting out those fires so that we protect the catchment, then how wrong are we then to ask that we get something small? Not everything.

It is ridiculous that when we carpeted the Managing Director (MD), he said that they got revenue of Kshs.4.7 billion in the Financial Year 2020. How much did they give back to the catchment? The MD said in the five years that he has been around, the only thing that they have done to the people of Nyandarua is give them fifteen 10,000 liters tanks. Just 15. Barely a million bob having taken a resource from our county worth twenty-something billion. Are we then children of a lesser God? That is a matter I will pursue some other time because it shall come.

Sen. Sifuna: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Veronica Maina): What is your point of order Sen. Sifuna? Pause Sen. Methu's minutes.

Sen. Sifuna: Madam Temporary Speaker, I do not want to interfere with the presentation. However, my brother the Senator for Nyandarua County should not create the impression that we get the water from Nyandarua for free. The people of Nairobi pay for that water.

Additionally, when there was a recent fire, it was a national effort to put out that fire including agencies such as Kenya Wildlife Service (KWS). It is not just the young people of Nyandarua who did it.

I know that we have a dispute and it is before a Committee. However, let him not mislead the House as to the nature of the relationship between the people of Nyandarua and Nairobi.

Finally, there are many residents of Nairobi including the Senator who come from Nyandarua. They enjoy that same water that they take care of upstream.

Sen. Methu: Madam Temporary Speaker, that point of order was very necessary. It builds onto the case that they are charged, and they pay for the water. However, the people of Nyandarua get nothing out of it. It is a very good admission from the Senator that when we are giving them water, they tell us that it is a natural resource from God. However, when they are giving it to the people of Nairobi, they sell and get the revenue out of it.

That is the bone of contention. However, it is before a committee that will be dealt with. Just to remind him, the wildfire that he says was a concerted effort---while I agree, a story is told of an elephant that carried a fly on its back. When they were crossing a river, the bridge was squeaking.

When they got to the other side, the fly told the elephant; “You saw we almost broke the bridge?”

Madam Temporary Speaker, it is the same thing. The five people from Kenya Wildlife Service (KWS) said that they helped put out the fire, but we were 2,000 of us. We shall be happy to take care of that resource. We love the people of Nairobi City County.

Part of the functions and services that the Equalisation Fund is supposed to undertake and offer are health services. Nyandarua County is one of the counties that is not in this Schedule, yet it is one County whose health status must be addressed aptly. More resources must be sent to our County. Nyandarua County, unlike other counties, does not have a referral hospital. Again, we depend on the goodwill of the people of Nairobi City, Kiambu and Nakuru counties.

Even if we do not get a referral health facility out of this Bill, then, we should get sufficient personnel and medicines in our local health centres and dispensaries, so that we reduce the pressure. Statistics of the National Hospital Insurance Fund (NHIF) show that facilities in Nakuru and Nairobi City counties benefit more from the people of Nyandarua County compared to our own facilities. This only means our people go to Nairobi and Nakuru counties for referral services.

Madam Temporary Speaker, we should cascade health issues downwards. Wards in Nyandarua County do not have dispensaries. Those with dispensaries are in very deplorable conditions.

Where I come from, the dispensary is curved from a settler’s house. You can imagine how old this building is, having been built way back during the era of settlers. We are talking about hazardous effects of asbestos. A hospital in my village still has asbestos that were used by colonialists.

Madam Temporary Speaker, let me speak about the road networks. Nyandarua County is the food basket of our country. If we talk of food security and we do not mention Nyandarua County, then the country can never be food secure. We are the

leading producers of all those produces I talked about. However, this has not impacted the infrastructure of our county.

Today, I read a journal that says farmers in Nyandarua County suffer 40 per cent post-harvest losses in production of potatoes. It is because it is very difficult for farmers in Nyandarua County to access markets since road network is very poor. You will be very surprised that Ndaragwa Constituency got its first tarmac less than two years ago.

All our pending projects are stalled. We have been petitioning the current administration, through the local leadership including Members of Parliament (MPs). We have put a caveat that no new projects should be started until the stalled ones are completed. If this does not happen, then Nyandarua County stands to lose so much because in the last administration, not much was done in terms of road network. The matter of road networks must be addressed.

Finally, just before I finish to allow my colleagues to also contribute, Nyandarua County, which I represent in the Senate, has only one *gazetted* Municipality. Initially, we had two and Nyahururu Town was our major source of local revenue. However, it was curved and went to Laikipia County during delimitation of boundaries.

We do not intend to keep fighting with Laikipia County because we want to grow and build our own county. We have local centers that have the potential to grow into big towns. These centres include Njabini, Engineer, Mairo-Inya, Ndaragwa and Boiman. However, if we do not take services to those shopping centers, so that they grow, how then do we intend to get new municipalities in Nyandarua County? We are not deliberate in providing and giving resources to the effect of providing closer services in the said centres?

In this era and time, it is a sad situation that children in Wangui in Ndaragwa Central Ward still use a log as a bridge to cross to school. In Thurasha, for a child to go to school, they have to use a log to cross Gachuha Bridge. You can see the kind of risk especially with the heavy rains. We have lost countless number of pupils. How much more should our people suffer? If we do not address these matters now, when will they be addressed? Pupils are still crossing rivers using logs 60 years after Independence. They do not have any other way to access schools.

(The amber light on the timer was switched on)

Madam Temporary Speaker, my flow of thought was interrupted by the light. I thought I have spoken for three minutes.

Imagine 60 years after Independence, the people of Kaimbaga, Huruko, Sumbego, Surugoi and Wangui cannot get modern infrastructure. If we cannot address it now, when will it be addressed?

Madam Temporary Speaker, I should have commented on my final point during the earlier Statement. I speak here as an elder of the church. I was born and raised in a very strong Christian family. I was baptised in the African Inland Church (AIC), where I am a staunch member. We have to agree and get a standard on how we shall address matters of religion and spirituality.

How is it that as we speak about this Bill, we make reference to the Constitution and we are able to speak with the same flow of thought? However, another set of people, reading the same Bible, are getting different teachings from the same Bible?

(The red light on the timer was switched on)

Madam Temporary Speaker, I do not know how many more minutes I have. Maybe two? My time is running out.

The Temporary Speaker (Sen. Veronica Maina): It is about to go off.

(An hon. Senator spoke off record)

Sen. Methu: It is not over. As I sign off, I am persuaded by the sentiments of Sen. Sifuna, that we must get a standard of how to interpret religion and spirituality. If we do that, we will not get into the problems we have found ourselves in, such as in the case of Shakahola and the bandit called Mackenzie.

I submit.

The Temporary Speaker (Sen. Veronica Maina): Proceed, Sen. (Dr.) Oburu.

Sen. (Dr.) Oburu: Thank you, Madam Temporary Speaker, for this opportunity. It is important to discuss the origins of the Equalization Fund which were a result of a very protracted marginalization of certain regions of this country. I recall that at Independence in 1965, the Sessional Paper No. 10 of 1965 was introduced in this Parliament.

In that Paper, which was read to this Parliament by the late Tom Mboya, it stated that economic growth was stressed as the main economic policy for the country. Investments were to be directed to those parts of the country which could produce efficiently and effectively in the investment. That is, if you invested a shilling, the return would be high.

Madam Temporary Speaker, that is what informed the investments in this country. All the investments were directed towards high-yielding or high-productivity areas of the country and this excluded more than three-quarters of the country which is described as Arid and Semi-Arid Lands (ASALs).

These regions were marginalized. It was deliberate in the economic policies of the Government of those days. In the first, second and third Governments, marginalization continued.

During the drafting of the new Constitution, it was thought and wisely so, that there should be an Equalization Fund which was an affirmative fund was not to last forever. This Equalization Fund is not supposed to be permanent. It is supposed to effect equalization of those areas which were marginalized over a long period of time.

Since the promulgation of this new Constitution in 2010, we have now covered about 13 years. This Fund was supposed to last for 20 years on a renewable basis if Parliament so wished. Nonetheless, only seven years remain of this period of 20 years.

There is almost nothing that has been done to effect this equalization which was meant to be an affirmative action to bring up those regions which were marginalized to the same level with the other areas of the country where hitherto development investments were directed.

Madam Temporary Speaker, it is a shame that we are, in my own view, overstretching. This is because this was directed towards certain constituencies which were mainly in the ASALs.

(Applause)

However, you now talk of 34 counties, of course, mine is also included. We are not being effective; we are being political. This Fund has become more political than being directed towards the equalization of those regions which were marginalized.

Madam Temporary Speaker, we do not have money. So, if you overspread the little money, what it will ---

The Temporary Speaker (Sen. Veronica Maina): Sen. (Dr.) Oburu, would you wish to be informed by Sen. (Dr.) Khalwale?

Sen. (Dr.) Oburu: Okay, he is my colleague. He can inform me.

Sen. (Dr.) Khalwale: Thank you, Madam Temporary Speaker. The issue raised by the Senator of Siaya invites me to inform you and maybe the House that, that may be the reason why Americans said that the Senate in America must be for senior citizens.

What the Senator of Siaya is saying is correct according to the Constitution. However, this Bill is a conspiracy against Article 204 of the Constitution and the people from the ASALs. I want to inform you, colleague, that in this Bill, Bungoma, Kericho, Kisumu, Machakos, Meru, Murang'a, Nakuru, Nandi and Siaya do not deserve. It is because the Commission for Revenue Allocation (CRA) was held captive by the last Senate who forced them to include counties of Members of the then Committee on Finance and Budget.

If the Senator of Machakos, who is crying about Machakos goes to Turkana, you cannot believe that anybody in Machakos here in Athi River can fight for water with Turkana. We should rise to nationalism. We just want 20 years so that we can bring up these areas as the Senator of Siaya is saying. I hereby inform.

The Temporary Speaker (Sen. Veronica Maina): Sen. (Dr.) Khalwale, are you debating the Bill, or you were informing?

Sen. (Dr.) Khalwale: I was informing the Senator. I am so proud because Siaya is one of them and he has refused. He is a great man.

The Temporary Speaker (Sen. Veronica Maina): Proceed, Sen. (Dr.) Oburu.

Sen. (Dr.) Oburu: Sen. (Dr.) Khalwale, I have not refused my county to get money. I cannot refuse money which will go to my people.

I am speaking the truth. If we want to use this Fund for equalization of development, overspreading it, for instance, Siaya is getting Kshs48 million. What are we going to do with Kshs48 million? A county or constituency getting Kshs48 million, I do not know what will happen to it. I used to get that money when I was a Member of Bondo Constituency. It is a small amount of money.

This is overspreading and it will not make any difference in these constituencies where the Fund is being given. This Bill is giving money to 34 out of the 47 counties, which is quite big. I must say that it is not answering the original purpose for which Equalization Fund was set.

Madam Temporary Speaker, there are only seven years which are remaining. If it has not been disbursed---

We are just playing politics by passing this Bill. Although, I support it because my constituency is getting something small.

The other issue concerns my area. It could be right that this Equalization Fund is not being directed properly. However, these ASALs regions get a lot of rain for a very short time in the year.

When they get this rain, the only economically viable activity which should happen is water harvesting. They should be having huge dams to store this water for use.

It was a very pathetic situation where you saw cattle, camels and goats dying and people who were almost dying because of lack of water. They are also killing each other because of these resources.

Madam Temporary Speaker, this is a very serious situation in our country. Sometimes, it annoys me when I go back home and find some people distributing maize in my own area, playing politics with food when there are areas which really deserve that food and people are almost dying because of lack of food.

One of the issues which you brought here and I really respect you for it, you talked of certain activities which should be done to spur economic activities in marginalised areas. For instance, instead of letting those animals die, people should be educated on how to dispose them off by making hides and skin.

There was a time when I was a Chairperson of the Finance Committee of this Parliament, I went with the Minister of Trade to Turkey. While there, we went to see the leather industry. We saw the way they are well organised. It is employing thousands of people. This thing called the leather industry can employ thousands of Kenyans. It can create employment for our people.

When we asked them why they are not buying hides and skin from Kenya, they informed us that they cannot do it because of the way we slaughter our animals. The way we slaughter our animals is so primitive. We just use knives that spoil the skins. Our skins are not quality and cannot be used for making shoes.

It was a big shame that in our own regions we let these animals die. We cannot establish abattoirs, the big slaughter houses, where this hides and skin can be properly slaughtered and treated so that we can access international market.

We went to India and it was the same story. They cannot buy our skin, and therefore, we cannot access their market. This is just because we are not investing in areas which can create employment for our people. Investment can help raise the marginalised counties to be equal to the areas where investments has been concentrated before.

Madam Temporary Speaker, when you speak about where I come from, I inform the House that our area is endowed with a huge water resource, that is, the Lake Victoria. Lake Victoria is a natural dam given by God. It was not built by any human being. We just found it there.

For many years, the locals were not allowed to use that water for irrigation and production of food. However, that agreement that was signed by the colonial regime in 1929 was abrogated during the Kibaki regime. However, since we are a water shadow, the water is evaporating. It goes to the Nandi Hills and the other hills. It then rains in the hills with very little of it raining around the lake.

We should invest. If we want to do proper investment, it is not Kshs48 million. The Government should be serious and invest in big dams which we should use to irrigate our area and the area can become a food basket for our country Kenya.

Madam Temporary Speaker, I hope that whoever is in charge of this will listen and take it seriously so that our country can stop giving tokens. These tokens are political. I do not support tokenism to please my people and tell them that they are going to get money, which is Kshs48 million for the remainder of the year.

I am a seasoned civil servant and I know very well that within the short remaining period of two months, there is no way the national Government is going to use that money for any project in our country. Even the designing of the project itself, the process of tendering up to the time of award and starting implementation, is impossible. Whatever we are passing here is just making a political statement.

The Government should be serious in implementing this equalization project. It is an affirmative action. This is so that the people of Kenya who were marginalised for all those years can start benefitting and catch up with the rest of the country.

Madam Temporary Speaker, I do not want to exhaust all my time. I thank you for the opportunity and everybody for listening.

Thank you.

The Temporary Speaker (Sen. Veronica Maina): Thank you, Sen. (Dr.) Oburu. Sen. Mungatana, you may have the Floor.

Sen. Mungatana, MGH: I take this opportunity to thank you and the Chair today for giving a chance to Senators to debate their full 20 minutes. I have benefited a lot from the wisdom of previous Speakers and Senators who have spent 20 minutes giving a lot of wisdom. I agree with a lot of what they have said.

Madam Temporary Speaker, I start by saying that the basis of this Equalization Fund is the Session Paper No. 10 of 1965 that was moved by Thomas Joseph Mboya. It deliberately created a policy of marginalization of areas such as Tana River County. It created unequal development in an independent country.

We were practicing apartheid by black Africans who had taken over this country. There was no change. The *Mzungu* went and the black man came to practice apartheid against counties such as Tana River.

I stand here to say that 20 years that were given under the Constitution in Article 204, there is a provision under Sub Article 7 that says this term of 20 years can be extended. It is my prayer that before these seven years are over, we will move a Bill that will have bipartisan support that will enable us to move the 20 years to be increased.

Why? This is because this 'apartheid' against the areas that were considered unproductive has gone on since Independence. We are now 54 years since Independence. We cannot say 20 years will bring the marginalised areas into the same level as those areas that had gone before us into a lot of development.

Madam Temporary Speaker, although I support this Bill, we must have hindsight within these remaining seven years to make sure that we make changes in this Bill. This Bill and the Constitution talks of areas such as water and roads.

In fact, let me start by saying that Hola, which is the county headquarters, only saw a tarmac road after the first governor of devolution. Before that, there was no tarmac road. There is only one national Government tarmac road that passes across the county. It connects our county with other counties. Beyond that, there is no other tarmac road.

Different administrations have lied to us because they are still carrying inside them the policy of apartheid against Tana River County and the Northern Area. Administration after administration when you go and tell them to put a tarmac road, you

do not get it. You get empty promises yet you see neighbouring counties have roads to their toilets, bedroom and everywhere. For us, you do not see those roads. It is a shame that this country has continued like this for so many years.

In our county, the Tana River passes right across the county yet we do not have piped water even after the establishment of these water bodies. They do not have because they do not have the money to support the infrastructure for setting up water as is required under this law. We are speaking of real marginalization.

When the Senator from Turkana County was speaking, I was touched. Then I hear another Senator, whom I do not agree with because I pass through Makueni County. It is not the same like Tana River. It is sad that my colleague is saying that even after we pass this law, he will go to court. I want to tell him that this country will not agree to selfishness of that nature.

He is my Chairman in the Christian Union of this Parliament, but I am surprised that he would talk like that. He has not visited these counties to see what apartheid in black Africa after Independence has done to the rest of us. This now forms basis of my submissions on the technical aspects of this Bill. Most of us have dwelt only on the political aspects of this Bill. I bring to the attention of this House that some of the technical aspects of this Bill are not helping the cause at all.

Madam Temporary Speaker, there is an advisory board that has been set up under this Bill. We need to amend this advisory board and its membership. The Chairperson is to be appointed by the Cabinet Secretary (CS). We take that as a national Government position. Another member of this advisory board is the Principal Secretary (PS) responsible for matters relating to finance. That is a national Government position. The PS responsible for matters of devolution. That is a national Government position. You come down, the Chairperson of the Commission on Revenue Allocation (CRA) is represented. That is a national Government position. Controller of Budget (CoB) also. It is heavily laden by the national Government.

If you look at this advisory board, it is the same Government that is talking to itself. Who are we inside here? We have one person from a pastoralist community nominated by the National Assembly. One person nominated by the Senate. One person nominated by the Council of Governors (CoG). Only those two member. The rest are all heavy national Government decision makers. This is about the Equalization Fund. This is about bringing the marginalized areas up. If you are bringing the same person with the same attitudes from National Treasury, from Controller of Budget and from CRA to come and dominate this board, we are not going to have good results.

Why is the Senate being given one position only? We are the defenders of these counties according to the Constitution. That is our prime job. I am proposing that we must have at least three nominees who are coming from the Senate. We cannot be equal with the other bodies represented in this Bill.

They have said that the people going to be appointed by the CoG, the Senate and the pastoralists by the National Assembly are to serve a period of six years. They have not clearly set up the term limit of the others.

What I ask myself is, what was the reason to segregate? First of all, the national office holders are more than those who are from the counties, and then, they have given only a specific timeline for these ones. What was the reason? Why are they creating unequal people within the same board?

Madam Temporary Speaker, if this board is going to serve for six years uninterrupted, let it be six years for every person. If it is three years, it should be three years. We need to look at this law again. These technical aspects have not been looked into properly. We might pass a Bill here thinking we are giving money to the counties, but it will be controlled by people who have no feeling about what we will be saying here and no feeling about the apartheid that has been happening in this country for those years.

Madam Temporary Speaker, look at the powers of the advisory board. The advisory board under the proposed Section 10 of the Bill is supposed to make recommendations to the CS on the distribution of resources that have been provided under Article 204 for water, roads and so on. Now, we have already attached a schedule. Like one of my colleagues here has said, the schedule has gone down all the way to not only constituencies, it has captured, even wards.

I am looking at the schedule, for example, from Tana River, and I know that this ward has this number of millions that they should expect. Then, we have voted. I have gone to my county and I have told them, we have given you this amount of money and it will come to you when Exchequer releases become reality. There is another group that sits to advise the CS how to distribute the money.

Why are they taking the power from this Senate? This Senate has already passed a Bill. In that Bill, there is a schedule. Let us be careful. These people are going to take away the very power that we have allocated ourselves. We have already said how much money is going to the wards. They are coming to say they are going to make recommendations on distributions. Why? These people want to frustrate what the Senate is doing today and we must reject these powers.

Madam Temporary Speaker, they also say they want to oversee, in consultation with the county governments, the implementation of the projects to ensure compliance with the Constitution. Senators or the Office of the Senator is not mentioned here. Why? Why do we want to legislate ourselves out of looking at monies that are going to counties? We are not flower girls. We want to be participants. The office of the Senator should be part and parcel of these consultations. When the advisory board is looking for information, the offices of Senators must be part and parcel of this consultation.

They also say they want to put in place measures for transparency and accountability in the implementation of projects by county governments.

The office of the Senator must also be deliberately included. How can you talk of transparency when you talking only about county governments? How can the police police? It is only in the office of the Senator within the structure of the counties that can be honest enough to point out what the problems are.

Again, we have to look at the technical aspects of this board. The proposed Section 12 of this Equalization Fund Bill says what the board may do. They even say that the board can invite persons who are knowledgeable in Section 12(b) of the Bill. They can invite persons who have knowledge and skills for the effective performance of the board. They have not provided for Senators to come before the board.

If we need to address the board we do it in writing. We are not allowed, but they are allowed to bring other people who are outsiders to talk to them. Why should we not be given opportunities as Senators to talk to this board? This board is a way of passing money which will be given to people who will shut us out. We shall be left looking at the

ongoing show yet we are the ones who gave birth to this Equalization Fund Administration Bill of 2023.

The proposed Section 13 of this Bill talks of the board incurring expenses which are supposed to be funded by the Equalization Fund. I have a problem with it. This schedule has not provided for any monies for these people which means the fund is supposed to go directly to what we have agreed on. If it is Kshs20 million for ward 'x' then it should go that specific ward.

If we make provisions like these that state that the people who are administering this board can incur expenses, then out of this Kshs10 billion, Kshs2, Kshs3 or Kshs 5 billion will go to the expenses. They shall create trips to Dubai to go study how administration is done. They will move from there to London to study how equalization is done in Britain. Next, they will go to China to check on how all the administrative sections are working and before you know it the Kshs5 out of the Kshs10 billion will have been spent on these people.

We shall not allow these sections to go this way. I urge fellow Senators to look at the technical provisions of this Bill. Let us not just support it. Let us move amendments to the Bill.

Madam Temporary Speaker, I bring to your attention the Chief Executive Officer (CEOs) qualifications that they have stated here. They need to mention that it must be a person from a marginalized area. They cannot just leave it open. He is also the secretary to this advisory board. This must change. We must have a CEO who comes from a marginalized area apart from the other things.

They have also established the County Technical Committees which have been put under the County Commissioners. Why is it so? It means that the Bill has planned from the top to be dominated by the national Government and to avoid the county governments. They want the County Commissioners who will be taking instructions from the national Government in order to control the technical aspects of these projects.

They have even brought the National Government-Constituencies Development Fund (NG-CDF) Managers. The Senator's office is not represented in any of these committees that are supposed to come out with development projects. We must not legislate ourselves into irrelevance. Let us not spend our time here creating jobs for other people and leaving ourselves out. We are not going to accept this kind of law. The principles behind this are good. I advise the Committee, that when they are formulating these laws, to not come here and tell us that County Commissioners will stand for us. Why the County Commissioners?

This is a devolved fund. It is based on counties. Why are we giving them these jobs?

You can imagine a practical situation where the technical committees being chaired by a person from the national Government who does not come from that area, but a different area. He could probably be coming from an area that is not marginalized and does not care what those people are going through. That same person is then supposed to chair a Committee that is meant to give advice and propose the technical aspects of development projects in that area.

I want to ask my colleagues in this House to read this Bill carefully. Let us bring amendments at the Committee of the Whole Stage. Let us relook at the Bill and support

each other. However, we want to pass this Bill, let us not pass a Bill that will create a problem for ourselves.

Our people are listening and are hearing that the four constituencies in Tana River got certain amount of money and the wards in the county got a certain amount of money just for them not to see money on the ground. As a result, there will be no reason to pass this Bill.

I support the Bill with amendments.

The Temporary Speaker (Sen. Veronicah Maina): Thank you, Sen. Mungatana. Sen. Oketch Gicheru, you have the Floor. Kindly donate some of your minutes to your colleagues.

Sen. Oketch Gicheru: Madam Temporary Speaker, I have been kind in the course of this Session. Nonetheless, thank you, for giving me the chance to contribute on this Bill. I will try my best to see what I can do with my Chairperson in Committee on County Public Investment and Special Funds (CPISFC), Sen. Osotsi, with regards to time.

We are talking about equalization today and the Equalization Fund Appropriation Bill (Senate Bills No. 3 of 2023). I like to start today by quoting one of my favourite philosophers called Frantz Omar Fanon, who was one of the best francophone psychiatrists and an afro optimist who was also a Marxist in his philosophies. He said that each generation must out of relative obscurity discover its mission and thereafter choose whether they are going to fulfil it or betray it.

Today, we, as a Senate, are confronted with the task of identifying our mission that we must either betray or fulfil. This Bill gives us the opportunity to do an internal assessment of what we stand for as a Senate. In my view, this Bill gives us an opportunity to examine the level in which we allow the executive overreach as we try to empower the counties that we do have.

The reason I bring in executive overreach as the issue we must look into as Senators and choose whether we want to betray this mission or fulfil it is because fellow Senators have quoted time without number.

There is the issue of Sessional Paper No. 10 of 1965 that brought about marginalization of 14 counties in this country. At that time, they were seen as regions that cannot contribute to any economic development of this country. To the extent that today – as my brother Sen. Mungatana has indicated – a child in Tana River consumes 50 times less of electricity than a child in Kiambu. Today, a child born in Mandera County is 10 times likely to die out of water borne diseases than a child born in Nyeri.

Today, a woman who is struggling to give birth in Samburu County is 17 times likely to die before giving birth than a woman in Nyeri County because they will be trying to figure out a road to get them to hospital.

Why is this so? This is so because of an Executive decision that was made within that Sessional Paper No.10 of 1965.

Today, we have an opportunity as a Senate, we are the fourth of Kenya. We are existing under Article 96 of the Constitution of Kenya fundamentally, to protect these regions against Executive overage.

This protection is present to us in two ways. First, if you read Article 96(2) of the Constitution of Kenya, it indicates that our role as Senators is to fight for vertical resources.

Meaning resources that come from the national Government that then we divide with the county government so that the county government, first of all, secures their resources and thereafter we can talk about what we have had in the pot.

That is why Article 96(2) of the Constitution of Kenya tells us that we are mandated to actually protect counties by ensuring that everything that is under Schedule Four of the Constitution is right from Article No.110 to Article 113, which is something that we must fight for.

The Constitution under Article 96(2), then gives us the power for what I would call a horizontal share of resources, which is the Senate should now be the primary function of this country that then helps all counties to get resources that we have secured from the national Government equitably and equally.

Now, why is it that as a Senator of Kenya today, I am concerned about Executive overage? People have quoted here, time without a number that Equalisation Fund is something that they are willing to fight and die for.

However, under Article 204 of the Constitution, this particular provision was brought to respond to the idea that the Executive can make autonomous decisions on what regions get. If a county like where Sen. Mungatana MGH, Sen. Thang'wa or Sen. (Dr.) Lelegwe comes from and was denied resources over time, we are going to make sure that within the shortest time possible, 20 years to be specific under the consideration of Kenya, catch up so that we can develop as a people in an equal measure. Today everybody has equal opportunity as a people to move to the next level.

Then what happens? Two to three years after this Constitution was adopted, there was no focus on the 14 counties that were supposed to get these monies. Five years later, without money going to these counties, the CRA mandated under Article 216 of the Constitution, decided to look at other marginalisation that came into place with this kind of Executive overreach that denied some counties resources.

That is why we heard about 34 counties that were then included with some small pocket of marginalisation. Now, that does not mean that those small power of marginalization has the same suffering as the other 14 counties that were originally affected by Sessional Paper No.10.

Now, why must Senate come out strongly against Executive overreach? The Senate has come against Executive overreach because if you have the Constitution that gives you 20 years to solve and correct a problem that was caused by the Executive.

The provision of the Constitution then gives these counties an average up-to-date of four Kshs 54 billion. Today, the counties that are affected by this, within this provision have only received Kshs12 billion.

Of the Kshs12 billion, nothing even went to them and it was supposed to be implemented by the national Government. However, many projects, including hospitals, have stalled. These counties are not getting this money.

As the Senate, our priority should be to make sure that counties get the Kshs54 billion allocation without any excuse. That is before we even talk about the horizontal share among counties.

Over 10 years now, this is the first Bill that attempts to give counties the Kshs54 billion that the national Government owes them. Therefore, it is upon we, as Senators, to make sure that this Kshs10 billion goes to counties before we even look at horizontal

share. As we fight among for counties to get more resources, they have, first, to get this Kshs10 billion.

I am a Member of the Committee on Finance and Budget. We have fought and already have a Bill to ensure that in the next Financial Year, we can unlock another Kshs8 to 10 billion out of the Kshs54 billion that the national Government has not given counties on this Schedule.

We cannot finish two decades of devolution when a child in Turkana County is still struggling to get clean drinking water. That child is drinking the same water as the livestock he is grazing. This can only stop if the Senate is deliberate about stopping Executive overreach on issues of resources.

I urge the Senators from the other side of the aisle, when it comes to matters of devolution, we must remain Senators. We must remain people who know that we only exist because those constitutional provisions make us exist to protect devolution. That is why I was very sad when the Division of Revenue Bill (DORB) was being passed in this House and Senators did not engage with the magnitude of the issue that we were addressing.

Counties such as Tana River; Migori, where I come from; and Bungoma have health facilities. We know that health is a devolved function under Schedule Four. The national Government sends its officers to go and inspect healthcare in all these places. The national Government employees working in Mombasa County are putting stress on medical facilities. On the other hand, the people of Mombasa County do not have money to deal with these issues.

When we talk about equalization, we know there was an attempt to open infrastructure for casinos and gambling in some of these counties, so that they can at least catch up. Today, Mombasa County has six casinos employing about 25 people. The casinos make Kshs100 million which is entirely taken by the national Government.

However, this was an effort to ensure that some pockets of that region can make some money to regulate the kind of inequality in that area. The casinos end up only earning Kshs8 million out of the Kshs100 million. These are the things that we should fight for.

I am finishing up because I want my colleagues to also get some time to contribute to this matter. We should have a process that is verifiable and scientific because when dealing with equality issues, marginalisation manifests in different places differently. In one place, it could manifest as an issue of education while in another, it could be lack of basic needs like food and water.

In Migori, where I come from, the people of Nyatike will get a bigger chunk of about Kshs269 million that is going to Migori, of which I am grateful. The manifestation is the denied opportunity to go to school. That for the first time, in a Sub-County like Nyatike, we are surpassing about 11 kilometres of tarmacked roads. It manifests differently.

Madam Temporary Speaker, the framers of the Constitution saw it best to put up a body to ensure that there is no Executive overreach in dealing with these issues. That is why the Commission on Revenue Allocation (CRA) was formed under Article 215. Among the people who are in that Commission as members is the Principal Secretary (PS) in the Ministry of National Treasury and Economic Planning. That was important

so that after the Ministry has pronounced itself in the Commission, they cannot gag politicians from the other side of the aisle to do something contrary to what CRA thinks.

If you look at Article 216 of the Constitution, we have CRA, which is supposed to help guide us, where the provisions have failed to give us an absolute direction. Then, we can deal with matters of performance.

Madam Temporary Speaker, that is why when we were looking at the Division of Revenue Bill, the CRA helped us to look at how we are performing to the extent that we do not only use the previous last audited finances as a base for giving counties money, but also look the potential of revenue growth of this country.

However, we as Senators, choose to give the national Government benefit of any excess of what has come beyond the last audited finances and choose to deny counties. At what point and with which legal framework does the Executive have to benefit from any excess of the last audited finances, that counties are not allowed to get, without fundamentally violating Article 203 of the Constitution?

Madam Temporary Speaker, as I finish, I plead with my fellow Senators. Our functions in this House are two. Fundamentally, it is to ensure that we get vertical resources to our counties. Secondly, is to ensure that we distribute resources equitably and share fairly among our counties. If we do not do so, we will kill the Senate by having an Executive overreach that will never allow our counties to grow.

Madam Temporary Speaker, with that, I support this Bill.

I urge you to support it because the vertical trickling of resources to the counties begins with this.

It is ten years past the time when Equalization Fund was put in place. We need not wait anymore. We should make sure that this goes and then fight for another chunk. Once we have fought for Kshs54 billion that is owed to counties under this provision of the Constitution, then, we can fight for other issues among counties and make them grow together.

Madam Temporary Speaker, I support.

I hope that we will pass this Bill and make sure that subsequent Bills that deal with Equalization Fund are supported by either House without a bipartisan mindset.

I thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Veronica Maina): Thank you, Senator. Proceed, Sen. Mariam Omar.

Sen. Mariam Omar: Madam Temporary Speaker, thank you for giving me this opportunity. I rise to support this Bill.

Madam Temporary Speaker, in Kenya, we have two types of citizens. We have upper and lower citizens. The Equalization Fund Bill is meant to equalize the two citizens. Those from Mandera to be in the same level with those from Kiambu and any other county.

Madam Temporary Speaker, Article 43 of the Constitution states that citizens must have basic right to services. Those services are health, water, roads, electricity and so on.

The Bill provides services to marginalized areas in order for them to have water. We had droughts in Mandera last month. We were complaining of shortage of water and the animals and people were dying because of lack of water. Additionally, the children

were not go to school because of lack of water. Currently, there is rain and floods everywhere.

If we use these funds properly and make water as our target in the next one year then we have to budget for major dams. With that, we can harvest the rainwater. Water is essential so the harvesting of rainwater must be the first priority.

The infrastructure in Mandera is pathetic when it comes to roads. When it rains, the roads go away with the floods. Last month, there was no electricity because the fuel for the generator is supposed to be transported from Nairobi to Mandera. Do you think we need a generator for electricity in North Eastern? No. This is because there is sunlight and that place is hot. We need the solar system and when we have that, electricity will not be a problem to us. If we use this money properly, we do not need generators.

It is raining and the road infrastructure of Mandera has been washed away by flood, but that does not mean that Mandera should be in black-out. If we engage and transform ourselves from where we are right now by utilising our natural light, which is the sun, we will be at par with the other counties.

Madam Temporary Speaker, regarding health, our people travel long distance from Mandera to Nairobi which is 2,000 kilometres to almost 3,000 kilometres. We travel from Mandera to here by road and it takes us three days. If we transform our health sector to a point where we can get all the health services in Mandera, then there will be no need of ferrying our sick people from Mandera to here.

Madam Temporary Speaker, can we get this Equalization Fund in a ring-fenced way, because our governors might divert the money to other usage.

If we ring-fence the water, health and road sectors, we will transform our Mandera County.

Madam Temporary Speaker, as our Sen. Mungatana, MGH, raised on board of directors and technical services, I agreed with him. Marginalised people must be represented in the board of directors and the technical team. This is because they know what the challenges are in the marginalised area.

For those few remarks, I support the Bill with changes. Thank you.

The Temporary Speaker (Sen. Veronica Maina): Thank you, Sen. Mariam Omar.

Sen. Osotsi, you may have the Floor.

Sen. Osotsi: Thank you, Madam Temporary Speaker. I go on record as having opposed this Bill. I am going to state the reasons as I debate this Bill.

I concur with Sen. Maanzo and Sen. (Dr.) Khalwale. This Bill is discriminatory. The Senate, in our own wisdom, should not support this Bill. I am saying that because my own county, Vihiga County is among the counties not listed to benefit from this Bill. I know for sure, there are some places in my county, which ideally should benefit from this fund.

I have raised concerns with the CRA before on this when they initially brought here the Equalization Fund Bill through the National assembly. They listed about 36 counties with the exclusion of my county. I said there are a number of sub locations in my county which qualify to be marginalised areas.

In my county, there are people who stay on top of the stones. They can barely cultivate anything. There is no water, roads and health centres. It is worrying that a

Commission that is funded by the taxpayers did not do a good job to identify some of those areas. There are places like South Maragoli, Tambua, Jepkoyai and Emabungo.

This past weekend, I visited a village called Ematsi. It is in Emabungo Ward. I could not access the place. I had to walk on foot, climb the hill and stones to get to a school in that village which had been closed by the Ministry of Education because of lack of facilities.

I oppose this Bill because I think the CRA needs to review their policy. The policy review process must be consultative. It must involve the leadership of various counties so that they can explain to them, which areas require to benefit from this Fund.

Madam Temporary Speaker, I have looked at the policy that CRA is relying on. If you look at the criteria of identifying marginalised areas, they are looking at things like legislated discrimination, geographical location, culture and lifestyle, external domination, land legislation and administration, minority recognition groups, ineffective political participation and inequitable Government policy. These are abstract things.

Then they go ahead and say the determination of all that will be done by expert analysis. Which expert analysis?

We do not want a situation where a few professors or experts, will sit somewhere and in a very subjective manner decide that based on all these certain areas are marginalized and others are not marginalized.

Madam Temporary Speaker, we are leaders. We represent our regions and we know which areas have problems. Vihiga County is a small county, but densely populated. There are some areas in my county where people live in abject poverty. Serious poverty that you can never see even in Mandera or even in Wajir.

My neighbour here, Sen. Cherarkey, knows there is a place called *Jepkoyai* where you cannot grow anything. The people who stay there are the Nandi community. A very poor place. When I was looking at the list that was presented here, none of those particular wards are listed here. For that reason, I will oppose this Bill.

The second reason is that we are passing this Bill in the month of April. This Bill will be processed, go for presidential assent and this money will go to the counties. We are simply appropriating corruption in this House because it is too late in the day to appropriate money. We will send this money and it will be eaten. The counties will say that they have done work there using county money and they will eat this money. For that reason, I am not willing to join those who are going to appropriate money for corruption. I will oppose this Bill.

Madam Temporary Speaker, I want also to indicate that Article 43 provides for economic and social rights. I want to congratulate senior Senator, Sen. Mungatana, for coming up with a Bill on the preservation of human dignity and enforcement of economic and social rights. That is the most progressive piece of legislation that I have ever encountered in my parliamentary work. I want to urge the Senators to pass that Bill into law.

As we do that, we will be contradicting the provision of that Bill if we pass this piece of legislation. Whereas I support the efforts to try and implement Article 43 of this Constitution, I am opposed to this Bill because it is not aligned to the provisions of Article 43.

Madam Temporary Speaker, I said that this Bill is discriminatory because all the surrounding counties to my county, except Kakamega County, have all benefited in this

list. Kisumu, Nandi, Siaya and Busia benefited. Vihiga is not there. For that reason, I will oppose this Bill.

The other reason as explained by the senior Sen. Oburu is that this Equalization Fund was meant for Arid and Semi-Arid Lands (ASAL). What has been done in this Bill is political because if you analyse the figures, you realize that they have added other counties and given them very little money.

Counties like Bomet is allocate Kshs25 million, Bungoma, Kshs79 million; Busia, Kshs16 million; Kericho, Kshs 81 million; Kisumu, Kshs 32 million; Lamu, Kshs77 million; Machakos, Kshs17 million; Meru, Kshs40 million; Muranga, Kshs7 million; Nakuru, Kshs8 million; Siaya, Kshs 48 million; Taita-Taveta, Kshs17 million; Tharaka-Nithi, Kshs59 million; and Trans-nzoia, Kshs10 million.

That comes to about Kshs512 or Kshs513 million. This amount is not even half of what Narok is getting.

Why did you not just allocate this money to Arid and Semi-Arid Lands (ASALs) and forget about it instead of sending small amounts to counties outside these areas?

It is political. In fact, I know there is a conversation within the CRA that this Equalization Fund should have a percentage shared among the 47 counties. Maybe they should have done that instead of pretending that they have sent some money to some counties yet it is peanuts. We would rather give this Kshs500 million to the ASAL counties such as Tana-River, Wajir, Garissa, Mandera and the like.

Madam Temporary Speaker, for that reason, I think this Bill is political and does not align with the framers of the Constitution who thought of the Equalization Fund. Therefore, I oppose it.

There is also a requirement under Article 204(6) that gives a Sunset Clause of 20 years. These 20 years are going to end in the next seven. It would be a good thing for the Senate to introduce a Bill that will increase the period for another 20 years.

We only need half the members of the delegation to pass it just as the National Assembly would equally. This is something we could achieve in this Parliament. This Bill also talks about Public Finance Management (PFM) regulations which makes you wonder if this House actually passed them. The regulations are talking of an advisory board where Senate is under-represented with one representative.

At the county level, there is the County Technical Committee, in which we are not also represented. The Members of National Assembly are represented by two nominees. The Chairperson and a member of the National Government-Constituencies Development Fund (NG-CDF). The Senate office is not represented. Surely, how did we pass this regulation in this House? Why are we legislating ourselves out of work?

Even as we process this Bill, I request the relevant Committee to look the regulations and make sure they factor in the Senate. At this rate, I am worried that based on what happened last week, where we decided to go for a lower level of the sharable revenue that very soon, it will be the trend. We are slowly weakening this House and making ourselves irrelevant. I want to give others a chance to say something, and so I join Senator for Makueni and Embu Counties who is signaling me, in opposing this Bill. I am opposing to it is 100 per cent.

It should go back. This is not the right time to introduce an appropriations Bill because we shall be appropriating corruption. There are processes that need to be done after this money has been passed in terms of project planning, reorganizing in counties

and even with the committees. This Bill will only help them to travel to Dubai and the United States of America (USA) for benchmarking.

I oppose the Bill.

(Sen. Oketch Gicheru spoke off record)

Sen. Oketch Gicheru: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Veronica Maina): Sen. Osotsi, there is a point of order from Sen. Oketch Gicheru. What is your point of order?

Sen. Oketch Gicheru: Madam Temporary Speaker, I rise on a point of order under Standing Order No.100(4). It says:

“No Senator shall impute improper motive to any other Senator or to a Member of the National Assembly, except upon a specific substantive Motion of which at least three days’ notice has been given, calling into question the conduct of that Senator or Member of the Assembly.”

Madam Temporary Speaker, is the Senator of Vihiga County in order to impugn that Senators who are involved in Committees that are respectively engaged in any way within this Bill, will use these monies for corrupt proceeds and a number of other things he has stated on the Floor?

Is he in order? I know that he is aggrieved that his county is missing out on the allocation. However, you cannot run and scratch your anus at the same time. If Vihiga County is not in this Bill, this is not an excuse to deny another child in Turkana food because your child has no food. Can he clarify on what he means by ‘corruption on Members of Parliament’?

The Temporary Speaker (Sen. Veronica Maina): Sen. Osotsi, that is a valid concern. It is important you address what you meant by the Statement you have issued. Is it based on a Statement of fact?

Sen. Osotsi: Madam Temporary Speaker, I am so happy with the kind of energy that the Senator for Migori is displaying. Being a first-time Member of Parliament, that is commendable. If the good Senator listened to me, I did not refer to the Parliamentary Committees, but the County Technical Committees. The ones that are in the regulations. The County Technical Committees have a membership that includes members of NG-CDF and the County Commissioners. This is the Committee I was referring to, not the Committee of Parliament.

The Temporary Speaker (Sen. Veronica Maina): Sen. Oketch Gicheru, are you satisfied with the explanation by Sen. Osotsi?

Sen. Oketch Gicheru: Madam Temporary Speaker, I wish he could substantiate how he had detected the corruption of those officers.

The Temporary Speaker (Sen. Veronica Maina): Sen. Osotsi, take it up again.

Sen. Osotsi: Madam Temporary Speaker, Sen. Oketch Gicheru is my good friend. However, I said the money is likely to be misused through corruption. I did not say that those Committees are corrupt.

The Temporary Speaker (Sen. Veronica Maina): I believe that Sen. Oketch Gicheru is now satisfied.

Hon. Senators, we still have seven more requests that are pending to finalise on this debate. I believe the seven requests should come.

What is your point of order, Sen. Munyi Mundigi? Is it a point of order?

Sen. Munyi Mundigi: Yes, Madam Temporary Speaker.

The Temporary Speaker (Sen. Veronicah Maina): What is your point of order? There is no Senator on the Floor.

Sen. Munyi Mundigi: Bi. Spika wa Muda, namuunga mkono Sen. Osotsi. Hii ni kwa sababu ana uchungu katika roho yake kuona kuna kaunti zingine ambazo hazitapata mgao wa pesa hizi. Tuko na majimbo 47. Majimbo mengine hayapati pesa. Ukiangalia Embu Kaunti---

(Loud consultations)

Wacha nimalize.

The Temporary Speaker (Sen. Veronicah Maina): Sen. Munyi Mundigi, are you now debating the Bill? I had not granted you that chance.

ADJOURNMENT

The Temporary Speaker (Sen. Veronicah Maina): Hon. Senators, it is now 6.30 p.m. time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Thursday, 27th April, 2023 at 2.30 p.m.

The Senate rose at 6.30 p.m.