

PARLIAMENT OF KENYA**THE SENATE****THE HANSARD****Thursday, 27th July, 2023**

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

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

PRAYER**DETERMINATION OF QUORUM
AT COMMENCEMENT OF SITTING**

The Speaker (Hon. Kingi): Clerk, do we have quorum?

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

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

(The Quorum Bell was rung)

Serjeant-at-Arms, I am informed that we now have the quorum. So, kindly stop the Bell.

Clerk, proceed to call the first Order.

(Several Senators walked into the Chamber)

Hon. Senators, kindly hasten. I need to make some communications.

(Loud consultations)

Order, Hon. Senators. Kindly take your seats, so that we start prosecuting the business of the day.

COMMUNICATIONS FROM THE CHAIR**BIENNIAL DEVOLUTION CONFERENCE**

The Speaker (Hon. Kingi): Hon. Senators, I do have the following Communication to make. Over the last nine years, the Council of Governors, in

conjunction with the Senate, the National Government and the County Governments, have hosted an annual Devolution Conference in various parts of the country.

The Conferences have generated conversations around certain thematic areas of concern to the counties, nationally and globally. Key among them being the devolved governance structure established under Chapter 11 of the Constitution following its promulgation in 2010.

The Conferences were geared towards assessing the progress of devolution, identified challenges faced by the county governments, share best practices and provide a platform for stakeholders to exchange ideas and solutions.

The Senate continues to be a critical stakeholder in this discourse, and its participation in the Devolution Conference cannot be gainsaid. During the Sixth Annual and final Annual Devolution Conference held in Wote, Makueni County in 2021, it was agreed that the subsequent conferences be held after every two years. This marked the end of the annual Conferences.

Hon. Senators, the first Biennial Devolution Conference is scheduled to take place at the Eldoret Sports Club in Eldoret, Uasin Gishu County from Tuesday, 15th August to Saturday, 19th August. The theme of the event is, “Ten years of Devolution; the present and the future.” The subtheme is, “Driving transformation from the local level county governments at the centre of economic development.”

This theme would not have come at a better time as more focus is shifting to county Governments as the centres of economic development, inclusivity and sustainable growth.

As the Co-Chairperson of the Steering Committee, which coordinates the hosting of the event, I appointed senators to the Steering Committee to assist in guiding and advising on the participation of the Senate in the Conference.

The representatives of the Senate at the Steering Committee include the following Senators;

- (1) Sen. Jackson Mandago, MP - Senator for Uasin Gishu County and Chairperson, Standing Committee on Health.
- (2) Sen. (Prof.) Margaret Kamar EGH, MP.
- (3) Sen. Moses Kajwang, MP, Chairperson, Select Committee on County Public Accounts.
- (4) Sen. Mohamed Abass Sheikh, MP, Chairperson of Standing Committee on Devolution and Intergovernmental Relations.

Activities of the Steering Committee are supported by an Organizing Committee comprising various offices from the Senate. A number of Senators have been identified to represent the Senate in the Conference programme as panelists.

I urge the identified Senators to cooperate with the Steering Committee and to closely work with the Secretariat to ensure the effective participation of the Senate.

Hon. Senators, in conclusion, I urge all hon. Senators to save these dates and plan to attend and participate at this important event in our Devolution Calendar. Senators may give their confirmation by signing a register to be circulated in the Chamber from today until Wednesday, 10th August, 2023.

The Speaker (Hon. Kingi): I have also the following Communication to make.

ADHERENCE TO THE REQUIREMENTS OF THE STANDING
ORDERS ON LOCAL AND INTERNATIONAL TRAVEL

As you may be aware, Standing Order 256(1) of the Senate Standing Orders provides the requirements for a Senator who intends to travel outside Kenya and State as follows -

“A Senator intending to travel outside Kenya, whether in an official or private capacity, shall give the Speaker a written notice to that effect, indicating the following one;

- (1) The destination intended to be visited.
- (2) The date of the intended travel and the period of absence from Kenya.
- (3) The email, telephone contact, postal or physical address of the Senator during the period of absence from Kenya.

In the past, Senators have been writing just a brief paragraph to the Speaker, for instance, “I intend to travel to Norway and, therefore, seek the Speaker's approval.” Those letters do not contain the details demanded of us pursuant to Standing Order 256(1). Therefore, the Secretariat has formulated a template or a form.

So, if you intend to travel, just get hold of that form and fill in the blank spaces that have been designed. You may talk to your Personal Assistants (PAs), so that they can get hold of that form, make as many copies as you wish and store them in your office for your use going forward.

This is to emphasize to each and every one of you to adhere to these requirements of the Senate Standing Orders.

Further, this is to draw your attention to the provisions of Article 103(1) (b) of the Constitution, which states as follows -

“If during any session of Parliament, the Member is absent from eight sitting days, eight sittings of the relevant House without permission in writing from the Speaker and is unable to offer satisfactory explanation for the absence to the relevant Committee, it should be noted that Article 103(1) is applicable when the absence is occasioned by a Senator travelling out of the country, but applies equally when a Senator is within the country but does not attend a sitting of the Senate.”

Hon. Senators, please, stand guided accordingly.

Next Order!

The Speaker (Hon. Kingi): Sen. Methu, kindly, take your seat. I have a Petition to present. What is your point of order, Sen. Oketch Gicheru?

Sen. Oketch Gicheru: Mr. Speaker, Sir, it is not a point of order, but just a point of clarification on the Communication about travel. Does this apply even during recess when the sitting of the House is not affected?

The Speaker (Hon. Kingi): Yes, it applies for the term of your office.

PETITION**ALLEGED DISCRIMINATION TO TEACHERS
IN KILIFI COUNTY BY TSC**

The Speaker (Hon. Kingi): Hon. Senators, I hereby report to the Senate that a Petition has been submitted to the Senate by teachers who are members of the Kenya Union of Post Primary Education Teachers (KUPPET) and residents of Kilifi County concerning alleged discrimination by the Teachers Service Commission on payment of hardship allowance and enhanced housing allowance to teachers in Kilifi County.

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

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

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

THAT, on 13th July 2021, the Teachers Service Commission signed a collective bargaining agreement with the Kenya National Union of Teachers, the Kenya Union of Post-Primary Education Teachers and Kenya Union of Special Needs Education Teachers, where the Commission promised to promote teachers serving in arid and semi-arid lands and hard-to-staff areas by issuing hardship allowances until they reach grades that are commensurate to the respective positions;

THAT, in Kilifi County, the Teachers Service Commission listed only Magarini and Ganze Subcounties in Kilifi County as hardship areas, allowing teachers to benefit from the hardship allowance, leaving out Chonyi, Rabai, Kaloleni Sub-Counties, Uyombo area and Marafiki Islands;

THAT, despite Malindi Subcounty being classified as a major municipality for teachers to receive enhanced house allowance under Category 2, teachers working in some schools within Malindi, including Sabaki Primary School, Sabaki Secondary School, Majivuni Primary School and Kibokoni Primary School, get a house allowance for other reserve areas under Category 4 as per the Salaries and Remuneration Commission clusters of teachers’ workstations;

THAT, Mtwapa and Mariakani towns are categorized under reserve areas for teachers to draw enhanced house allowance under Category 4 as per the Salaries Renumeration Commission (SRC) cluster of teachers’ workstations, while the teachers pay high rates of rent occasioned by the towns being major tourist sites;

THAT, the petitioners have made efforts to have the matter addressed by the relevant authorities, all of which failed to have the matter resolved.

THAT, the petitioner, therefore, prays that the Senate to investigate this matter to do the following-

- (i) effect inclusion of Chonyi-Rabai-Kaloleni sub-counties, Uyombo area, and Marafiki Island in Kilifi County as hardship areas to enable teachers working in these areas to benefit from hardship allowance;
- (ii) initiate inclusion of all schools in Malindi Municipality, including Sabaki Primary School, Sabaki Secondary School, Majivuni Primary School, and Kibokoni Primary School, for teachers to receive enhanced house allowance under category two as per the SRC clusters of teacher’s workstations; and, finally,

- (iii) initiate the inclusion of Mtwapa and Mariakani Towns as major municipalities to allow teachers working there to draw and enhance house allowance of category two under major municipalities.

Hon. Senators, pursuant to Standing Order No. 237, I will allow comments, observation, or clarification in relation to this Petition for not more than 30 minutes.

Sen. Cheruiyot, you may proceed.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, thank you for giving me this chance. I am a very big fan of Petitions. I find them to be effective and one of the quickest ways in which this House dispenses justice to the people that are represented through the representatives here.

I have listened keenly to this Petition. It raises something that is both legal and extra-legal in the sense that it is a policy decision. The Committee which you will give the opportunity to listen to this Petition will guide us.

You are aware that the Commission on Revenue Allocation (CRA), conducted an extensive study after being moved by this House. This is because, for a long time, this country was used to a description of hardship areas as certain parts of the country. It began with a very erratic and wholesale definition of what a hardship area is.

If you read the reports of this House, you will realize that there were certain regions that used to be referred to, back in the days, in the previous Constitutional dispensation, as provinces that were considered to be hardship areas. Eventually, with the guidance of the Committee on Finance and Budget of this House, the CRA updated its reading and appreciation of this particular matter.

It noted that while in a county as rich as Kiambu, there are certain parts of that county that qualify as marginalized areas. This is because of their placing, agricultural dispensation and so many other factors that will involve the poverty index and all those things that go into consideration of what an arid and semi-arid area is.

Therefore, listening to the petitioners, first, it is clear that the Teachers Service Commission (TSC) is still living in the old dispensation of classifying hardship areas as constituencies, yet we have moved from constituencies and we now have wards. Out of the 1,500 wards in the country, a good number of them have been classified as hardship areas or arid and semi-arid areas.

Therefore, I expect that the Committee that you will give this Petition will guide us, so that as a country we can have a unified policy that applies to teachers, police, for purposes of the Equalization Fund and all these considerations.

It is the same people, country, and geographical location. We cannot have different classifications for different forms of services. Therefore, that will be the biggest achievement over and above what these residents and the teachers of Kilifi are looking up to, so that the TSC, just like many other organizations that are yet to update their record, are guided by the constitutionally mandated organ for distribution of resources in this country.

(Sen. Cherarkey stood in his place)

Mr. Speaker, Sir, salary qualifies as a resource. It can guide the process so that we do not have different classifications for police officers and teachers---

The Speaker (Hon. Kingi): Sen. Cherarkey, what is the problem?

(Sen. Cherarkey resumed his seat)

(Laughter)

Sen. Cheruiyot, please, proceed.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I am done. That is the point that I wish that---

(Sen. Cheruiyot's microphone went off)

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

The Senate Minority Leader (Sen. Madzayo): Asante Bw. Spika. Kwanza, ninawapa kongole walimu walioleta Taarifa hii. Tunaelewa ya kwamba sisi zote ni watu waliohitimu kutoka kwa akili na mafunzo ya walimu.

Taarifa hii ni muhimu sana ndani ya Bunge hili la Seneti. Ya kwamba tuweze kuangalia matatizo yanayowakumba walimu katika sehemu zao zote wanazofanya kazi katika inchi nzima ya Kenya.

Taarifa hii imeletwa na watu wa Kilifi. Mimi kama Seneta wa Kaunti ya Kilifi, ninajua matatizo yanayowakumba waalimu katika maeneo waliyoyataja hapa.

Ninaona *Petition* hii ni ya haki na ukweli. Kuna sehemu zingine ndani ya Kaunti ya Kilifi ambazo zimefika katika kiwango ambacho mapato yao hayalingani na zile sehemu ambazo wanaketi. Ni sehemu ambazo hivi sasa ziko ghali na maisha pia iko ghali. Ndio sababu mimi *ninasupport* hii *Petition*.

Ndugu zangu Maseneta, hili ni jambo muhimu ambalo linahusika na walimu. Sisi zote lazima tuungane pamoja ili tuunge mkono *Petition* hii.

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

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. Having worked in Kilifi as a doctor, I would be failing if I do not stand in this House---

*(Sen. Madzayo, Sen. Tabitha Mutinda
and Sen. Methu consulted loudly)*

The Speaker (Hon. Kingi): Sen. Madzayo, Sen. Tabitha Mutinda and Sen. Methu, I call you to order.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. As a public servant who has worked in Kilifi as a doctor for many years, I would be failing if I did not stand in this House strongly and supported those teachers in that request.

I know that the Committee is going to be up to the task and will quickly bring the report. However, we need to be careful, colleagues. This thing is bigger.

You have heard the thoughts of the Senate Majority Leader. It is not an area where we can have uniformity and, therefore, concurrence across the Floor.

We need to call the Council of Governors (CoGs). We need to have a conversation with governors who are starting abstract projects and not committing the devolved funds for the provision of water, fixing of roads, and with the support of the national Government, electricity.

The so-called hardship areas are in hardship because workers and the inhabitants have no access to water and they find it difficult to travel, which are things that can be fixed by governors. So, we need to put a high standard that in the so-called marginalized areas, governors must be persuaded not to pursue abstract projects, but instead, invest in these basic services.

It is 60 years in Independence. Will we continue to separate civil servants so that one gets more and the other one less because of where they are working?

Senate Majority Leader, this is debate. I hope you will not feel that we are challenging you. I want us to think collectively. What was the spirit of the Equalization Fund?

Once upon a time, in this House, the Equalization Fund meant what the Constitution wanted it to be; to quickly bring up the known marginalized areas up to speed to be as close as possible to the rest of the country. What happened later on? The definition of marginalized areas has been changed. They have been equated to areas with high levels of poverty. If you make that mistake, it means the same way a marginalized area in a far-end area in Kilifi County or North Horr deserves to draw funds from this Fund, then even Kibera and Mukuru kwa Njenga in Nairobi County, Malaba slums in Kakamega County and other slums in urban centers will be entitled to this money.

This Senate must have this conversation. Otherwise, we shall be here for 10 years. Others will go while others come back, but the issue of inequality will remain. This is a House of equality. We must bring the country together. *Wale watu wa---* Pardon me. I wanted to use Kiswahili so that the people from North Eastern can hear me properly.

(Sen. (Dr.) Khalwale microphone went off)

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

Sen. Wambua: Thank you, Mr. Speaker, Sir for saving us from Sen. (Dr.) Khalwale. The matter raised by teachers from Kilifi County is important and weighty. I have listened carefully to what the Senate Majority Leader had to say about the payment of hardship allowances to teachers. I would like to implore that when the matter finally gets to the Committee to look at the matter beyond the teachers or Kilifi County.

The national Government posts staff to different parts of the country. Different institutions of government apply different levels of criteria in determining which members of staff to earn hardship allowances while serving in the same area. We have a very funny and disturbing situation in Kitui County. There are members of staff from government ministries serving in some wards, which are classified, as hardship, but they do not earn hardship allowance. However, we have teachers in those wards that earn that allowance.

Mr. Speaker, Sir, we must be guided by the same formula that we use. We must also be careful that we do not leave this issue to one institution of government. We must ensure that the same formula we used to identify marginalized areas as opposed to marginalized counties is used to determine the payment of hardship allowances. If an area is classified as marginalized, then every member of staff irrespective of which department of government should earn hardship allowance.

Finally, when I came to the Senate in 2017, I was told the Kitui County cannot benefit from the Equalization Fund because it did not meet certain thresholds. At the

time I was getting in, if you asked any random person walking in streets of Nairobi City County to tell you the marginalized areas, Kitui County would be mentioned in the top three. I urge that we come up with a formula and policy direction. A decision made at a level that it devolves then to all other departments of government to ensure equity and uniformity in the payment of hardship allowances.

Mr. Speaker, Sir, with those remarks, I thank the teachers from Kilifi County for raising this issue.

I thank you.

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

Sen. Methu: Thank you, Mr. Speaker, Sir for giving me the opportunity to comment on this Petition. I would be betraying the teachers from Kilifi County if I choose to keep quiet. I have been a resident of the county so I know the areas that have been mentioned in that Petition.

My colleagues have spoken about the injustices that are meted on different civil servants on issues of hardship allowance. Sen. (Dr.) Khalwale and Sen. Cheruiyot have spoken on issues to do with marginalization and equalization; there is something that has come out clearly and needs to be addressed. I wish and pray that the committee will increase the scope of duty so that it tries and addresses most of the issues being raised by Members here.

I know in a short while the teachers from Nyandarua County shall also bring a Petition asking very legitimate questions. A Senator has given an example of two schools in the same ward where one teacher is receiving hardship allowance while the other was not. There is a secondary school in Ndaragua, which was established from a primary school. They share the same land, title deed and fence. However, the teachers from the secondary school qualify for hardship allowance while the primary school teachers do not. If that is not the kind of injustice we want to cure with this Petition, I do not understand how it shall be addressed.

On classification of schools, some schools find themselves geographically in one area, while the Ministry of Education zoning shows they are in a different area. For example, everybody knows that Nyahururu Boys high school is in Nyahururu. However, it is geographically in Laikipia County. However, the school is in Nyandarua County according to the classification by Teachers Service Commission (TSC). Nyandarua Boarding high school is geographically at Nyahururu, but it is classified as a school in Nyandarua County.

Mr. Speaker, Sir, I beseech the Committee to not only look at issues to do with Kilifi County, but to expand the scope of this investigation. Let them understand how and why very dry areas of Nyandarua County such as Ndaragua have teachers who operate in adverse conditions. There are some places in Nyandarua, Laikipia, Kakamega and other counties, which have teachers that do not qualify for hardship while their next-door neighbours qualify for the allowance.

Hardship allowance is not supposed to be determined by the geographical location. There are people in Kitui and Marsabit Counties who live in better conditions than another who lives in a very dry place in Nyandarua County. Just because Nyandarua County is the biggest producer of potatoes it does not necessarily mean that every place is agricultural. There are places in Nyandarua County, which are so dry. Therefore, this injustice must be looked into.

I thank you.

The Speaker (Hon. Kingi): Hon. Senators, I am afraid we have expended the 30 minutes allowable under Standing Order No. 237. Therefore, pursuant to Standing Order No. 238(1) the Petition should be committed to the relevant standing Committee for its consideration.

In this case, I direct that the same be committed to the Standing Committee on Education. In terms of Standing Order No. 238 (2), the committee is required in not more than 60 calendar days, from the time of reading this prayer, to respond to the petitioner by way of a report addressed to the petitioner and laid on the table of the Senate.

Next order.

PAPER LAID

REPORT ON THE COUNTY GOVERNMENTS EQUITABLE SHARE CASH DISBURSEMENT SCHEDULE

The Speaker (Hon. Kingi): The Chairperson Standing Committee on Finance and Budget.

Sen. Ali Roba: Mr. Speaker, Sir, I beg to lay the following paper on the table of the Senate today 27th July, 2023 -

Report of the Standing Committee on Finance and Budget on the county governments equitable share cash disbursement schedule for Financial Year 2023/2024.

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

The Speaker (Hon. Kingi): Next order.

NOTICES OF MOTIONS

EXTENSION OF MANDATE OF THE *AD HOC* COMMITTEE ON PROLIFERATION OF RELIGIOUS ORGANISATIONS

Sen. Oketch Gicheru: Mr. Speaker, Sir, I have a Notice of Motion to the House on the extension of the mandate of the Ad Hoc Committee to investigate the proliferation of religious organisations and the circumstances leading to the deaths of more than 95 people in Shakahola, Kilifi County.

THAT, aware that the sitting of the Senate held on Thursday 27th April, 2023, the Senate by resolution established an Ad Hoc Committee to investigate the proliferation of religious organisations and the circumstances leading to the deaths of more than 95 people in Shakahola, Kilifi County.

ACKNOWLEDGING that the committee has undertaken a tremendous amount of work in the execution of its mandate including meetings with the Cabinet Secretary for Interior and National Administration, the Attorney-General, religious leaders, and visiting

families of victims throughout the country, appreciating that the mandate of the select committee is due to lapse on Wednesday 26th July, 2023.

NOTING that the event surrounding the Shakahola massacre in the county continues to evolve with the discovery of more bodies in the Shakahola mass graves with the death toll being upwards of 400 people and the need for the committee to visit the new grave sites and engage more stakeholders.

NOW THEREFORE, the Senate resolves to renew the mandate of the Ad Hoc Committee by a further period not exceeding 21 days from 26th July, 2023 and to table its final report in the Senate on or before 16th August 2023.

Thank you.

The Speaker (Hon. Kingi): Sen. Ali Roba, please proceed.

APPROVAL OF THE COUNTY GOVERNMENTS EQUITABLE
SHARE CASH DISBURSEMENT SCHEDULE FOR FY 2023/2024

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

THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the county government cash disbursement schedule for the Financial Year 2023/2024 laid on the table of the Senate on Thursday 27th July, 2023; and, pursuant to Section 17 (7) of the Public Finance Management Act and Standing Order No. 189 (3), the Senate approves the county government's equitable share cash disbursement schedule for Financial Year 2023/2024.

The Speaker (Hon. Kingi): Next order.

QUESTIONS AND STATEMENTS

STATEMENTS

MINING IN KISHUSHE AREA, TAITA TAVETA COUNTY

Statements pursuant to Standing Order No. 53 (1). Sen. Mwaruma, please proceed.

Sen. Mwaruma: Thank you, Mr. Speaker, Sir, for this opportunity to request for a Statement on the sharing of revenue generated from the Tsavo National Park.

Mr. Speaker, Sir, I rise pursuant to Standing Order No. 53 (1) to seek a Statement from the Standing Committee on Land, Environment and Natural Resources regarding the status of revenue sharing generated from the Tsavo National Park between the national Government and the County Government of Taita Taveta.

In the Statement, the Committee should: -

(1) State the total amount of revenue collected from the Tsavo National Park on an annual basis from 2018 to date, highlighting the contributions from various income streams including Value Added Tax, gate fees, land rates and other significant sources of income;

(2) State the amount due to the County of Taita Taveta on a 50/50 sharing basis with the national Government in line with the presidential directive of 23rd July, 2023 that was made at Mwatunge Grounds, Mwatate sub-county providing a comprehensive breakdown of funds that have been remitted to the county since 2018; and

(3) Clarify when artisanal miners will commence mining within the Tsavo National Park as stated in the said presidential directive, tabling the policy and framework, if any, that will guide the mining works.

I thank you.

The Speaker (Hon. Kingi): Sen. Ogola, please proceed.

GENDER-BASED VIOLENCE IN HOMA BAY COUNTY

Sen. Ogola: 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 Gender-Based Violence (GBV) in Homa Bay County.

In the Statement, the Committee should -

(1) State the number of GBV cases reported to police across the County of Homa Bay in the last five years, providing an update on the status of the respective court cases; and

(2) Indicate measures put in place by the national and county Governments to promote gender equality, protect GBV victims, and bring perpetrators of GBV to book.

The Speaker (Hon. Kingi): Sen. Methu, please proceed to read the Statement on behalf of Sen. Kinyua. Next time be alert.

STATE OF LEARNING AT NGIRORITI PRIMARY SCHOOL

Sen. Methu: Thank you, Mr. Speaker, Sir. You called Sen. Kinyua and I could not remember that I am standing in for him.

Mr. Speaker, Sir, I rise, pursuant to Standing Order No. 53 (1), to seek a Statement from the Standing Committee on Education on the state of learning at Ngiroriti Primary School in Laikipia County.

In the Statement, the Committee should: -

(1) State the number of qualified teachers deployed to the school and the current deficit;

(2) Indicate the state of availability of suitable facilities for use by the teachers and learners in the school;

(3) Appraise the Senate on the frequency of supply of teaching and learning materials by the Government to the school; and

(4) Outline measures put in place by the Ministry of Education to mitigate the harsh working and learning conditions for teachers and learners at the school.

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

WITHDRAWAL OF SECURITY DETAIL ATTACHED
TO AZIMIO-ONE KENYA ALLIANCE LEADERS

Sen. Wambua: Mr. Speaker, Sir, with your permission I will read the Statement of behalf of Sen. Madzayo.

I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations on the withdrawal of security detail attached to the Azimio-One Kenya Alliance Leaders. In the Statement the Committee should –

(1) Explain the motive behind the withdrawal of the security detail attached to all the Azimio One Kenya Alliance leaders after the peaceful countrywide demonstrations that took place on 12th and 19th July, 2023. The leaders were exercising their constitutional right to demonstrate as captured in Article 37 of the Constitution.

(2) Explain whether the security detail attached to the leaders and Members of Parliament (MPs) is a right or favour bestowed upon them.

(3) Explain why the security officers attached to the leaders and Members of Parliament are being recalled without official communication or appropriate signals to Parliament and or the Clerk or Speaker of Senate.

(4) State whether this discriminatory practice of withdrawing security detail against a section of Senators will be continuous. In which case, these signals are a worrying trend.

(5) Spell out measures that the Ministry of Interior and National Administration has put in place to ensure that the Azimio One Kenya Alliance leaders and Members of Parliament whose security detail have been withdrawn are accorded adequate security.

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

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

Sen. Mandago: Mr. Speaker, Sir, my point of order is in reference to statement of facts. Sen. Wambua has said that they held peaceful demonstrations. What we witnessed were not peaceful demonstrations. We witnessed looting, stoning, punching people's cars and destruction of motorbikes. That is not peaceful demonstration by any means.

The Speaker (Hon. Kingi): Sen. Mandago, that is not a point of order. This is a Statement. It will be up to the Committee to come to that conclusion on whether, indeed, that Statement is factual or in error. Let the Committee investigate and return a verdict. They might go by your conclusion or not. Allow the Senator to read the Statement.

Sen. Wambua: Thank you, Mr. Speaker, Sir. Let me complete.

5. Spell out any measures the Ministry of Interior and National Administration has put in place, to ensure that the Azimio-One Kenya Alliance Leaders and MPs whose security detail have been withdrawn are accorded adequate security.

6. Recommend immediate measures to further prevent security detail attached to leaders and MPs from being withdrawn.

Mr. Speaker, Sir, this was a Statement that was being sought by the Senate Minority Leader, Sen. Madzayo. With your permission I will add a sentence. It is important for all of us to accord ourselves---

The Speaker (Hon. Kingi): Sen. Wambua, you have read the Statement.

Sen. Wambua: Mr. Speaker, Sir, I sought permission to say a word.

The Speaker (Hon. Kingi): Sen. Wambua, the permission has been denied. Thank you. You are a seasoned Member of this House. Kindly take your seat. You cannot debate your own Statement.

(Sen. Omogeni spoke off record)

Sen. Omogeni, I will allow limited comments on all these Statements for 18 minutes; nine minutes to the Opposition and nine minutes to the Government side.

Sen. Sifuna, proceed.

Sen. Sifuna: Mr. Speaker, Sir, we get a bit concerned with the references of ‘Opposition’ and ‘Government.’ As a leader of this House, you are aware that I drive in a Government of Kenya (GK) vehicle.

(Applause)

It is true. It is my entitlement as a leader in the Senate. I propose that we maintain the ‘Minority’ and ‘Majority’ references because we are in a Presidential System where there is no Government or Opposition in this House.

(Laughter)

The Speaker (Hon. Kingi): Order, Senators! I did not know that Sen. Sifuna is in Government. That is good. Therefore, from today henceforth the left side of the Chair shall be referred as Minority Side and the right side of the Chair will be referred as the Majority Side.

In order to allow as many of you to speak within the nine minutes, I will allow two minutes per speaker.

I will start with Sen. Cherarkey.

Sen. Cherarkey: Thank you, Mr. Speaker, Sir. I wish to react to the Statement by the Senate Minority Leader. I agree with the Government that sometimes it is necessary to withdraw the police, especially from people who are doing illegal demonstrations. How can you send a police officer to fight another?

This is why we have had allegations where bullets have been used by the same bodyguards guarding leaders in the Minority to shoot ordinary Kenyans. This is why one police officer has been killed and over 300 police officers are recuperating in hospital. Chiefs’ houses have been burned in Siaya and Nyamira counties. How can you allow people to use their bodyguards to fight their colleagues?

They are alleging police brutality and it is shocking that when our security detail was being withdrawn by Uhuru Kenyatta and Raila Odinga then, they used to celebrate. There is nothing unusual for Government to get signal and remove your bodyguards. I remember we went to court to challenge, but they told us that the Inspector General ---

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

Sen. Oketch Gicheru: Mr. Speaker, Sir, I rise pursuant to Standing Order No.105. I wanted to know whether my good friend, Sen. Cherarkey – although sometimes emotive – is in order to point at me and say that during the time of President Uhuru Kenyatta or whoever was in the Government denied some people security, I was happy. I was not in this House. Is he in order to point at me and impute improper motive on me?

The Speaker (Hon. Kingi): Sen. Cherarkey, you are out of order. The Senator certainly did not contribute to whatever you went through.

Do not refer to the statement that Sen. Oketch Gicheru referred to regarding withdrawal of security then. I believe that was in the Third Senate. Sen. Cherarkey, is that what you are referring to?

Sen. Cherarkey: Yes.

The Speaker (Hon. Kingi): Sen. Oketch Gicheru was not in the House. He was not even a political leader then. So, there is no way he could have had influence to warrant that. Kindly do not drag Sen. Oketch Gicheru into that.

Sen. Cherarkey: Mr. Speaker, Sir, I am aware Sen. Oketch Gicheru was thrashed at that time by the current Governor of Migori then, Sen. (Dr.) Ochillo-Ayacko. Sen. Oketch Gicheru did not make it at that time. However, I have not mentioned names. The HANSARD can bear me witness.

Finally, you cannot say that the Government of the day is illegitimate when you want the same Government to provide security for you. We will not allow that. You cannot talk about police brutality and fail to recognize that the police have been killed and injured.

Therefore, Mr. Speaker, Sir, I oppose this Statement.

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

Sen. Sifuna: Mr. Speaker, Sir, from my perspective of the doctrine of separation of powers, we have a Constitution that created three Arms of Government.

In my understanding of this particular doctrine, there is no Arm of Government that is superior to the other. In fact, all of us in this House are Members of the Government of Kenya because of the fact that we are Members of an Arm of Government.

You must always make the distinction in your head between the Government and the political parties in power. There is a big difference between the Orange Democratic Movement (ODM) as a political party and the minority leadership or the minority in Parliament.

I have always asked myself: how did it start that people elected to an Arm of Government such as Parliament required to be provided with the state security? In fact, if you pursue that line of reasoning and tie it with what I have said about the Arms of Government being separate, but interdependent, I would propose that just the way Parliament has its own assets, like the vehicle I have been provided for as a leader in this House, we need to have our own police force that does not take direction from anybody other than the leadership of Parliament.

(Loud consultations)

Mr. Speaker, Sir, this is my view.

The Speaker (Hon. Kingi): Order, Members. May the Senator be heard in silence?

Sen. Sifuna: Mr. Speaker, Sir, the heckling that I experience from the Majority side is what boils my blood sometimes, then I find myself in hot soup from where you sit.

The Speaker (Hon. Kingi): Calm down, Sen. Sifuna.

(Laughter)

Sen. Sifuna: Mr. Speaker, Sir, I will do my best. I have a group of Catholic bishops who are praying for me to ignore people who try to provoke me on this side.

The point I was making is that just the way Parliament has its own assets and budget, when it comes to the security of Members, the same should apply.

I thank you.

The Speaker (Hon. Kingi): Proceed, Sen. Tabitha Keroche.

Sen. Tabitha Keroche: Thank you, Mr. Speaker, Sir, for giving me this opportunity. I support what Senators of the Minority side are saying. I can imagine how they are feeling without their security. However, they know the solution.

We have a Cabinet Secretary for Interior and National Administration, who is understanding. They just need to go and apologise for the hard and unnecessary work they have made him to do for the past one month.

The business community is also complaining about what they have gone through because they have incurred losses. I am sure you have seen press conferences they have been calling. They are losing Kshs2.8 billion every day because of unpeaceful demonstrations. Some of them are lawyers.

The Senate Minority Leader (Sen. Madzayo): On a point of order!

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

The Senate Minority Leader (Sen. Madzayo): Bw. Spika, singependa kumwingilia dadangu katikati---

An hon. Senator: Kumwingilia katikati?

(Laughter)

The Senate Minority Leader (Sen. Madzayo): Bw. Spika, wale ambao hawajui Kiswahili---

The Speaker (Hon. Kingi): Order, Senators. May the Senator for Kilifi be heard in silence, please? I do not see anything funny about that statement.

The Senate Minority Leader (Sen. Madzayo): Bw. Spika, je, ni sawa kusema kwamba kwa sababu ya yale yaliyojiri nje ya Bunge wala si hapa kwa sababu kazi ya Bunge ni tofauti--- Tukiwa hapa, tunafanya kazi ya Bunge.

Je, ni sawa mtu kuambiwa---

The Speaker (Hon. Kingi): Sen. Madzayo, I have been attentive. Just---

The Senate Minority Leader (Sen. Madzayo): Amesema twende tuombe msamaha.

The Speaker (Hon. Kingi): Under what Standing Order is your point of order premised?

The Senate Minority Leader (Sen. Madzayo): Bw. Spika, natumia Kipengele cha 1 katika Kanuni za Kudumu za Seneti.

The Speaker (Hon. Kingi): Hon. Senator, just gather yourself. Please, take your seat. You know that Standing Order is not available to you.

The Senate Minority Leader (Sen. Madzayo): Najua. Naomba unipe nafasi niweze ku---

The Speaker (Hon. Kingi): Sen. Madzayo, I asked you to state the Standing Order upon which you are raising your point of order and you have said Standing Order No.1. Standing Order No.1 is not available to you.

Sen. Tabitha Keroche, proceed, to conclude your statement.

Senator for Kilifi, please take your seat.

(Sen. Madzayo resumed his seat)

What is your point of order, Sen. Oketch Gicheru?

Sen. Oketch Gicheru: Mr. Speaker, Sir, I rise under Standing Order No.105 on responsibility for statement of fact and specifically Standing Order No.105(1) on accuracy of facts. In fact, read together with Standing Order No.101 in terms of some of things that a Senator might find offensive.

Mr. Speaker, Sir, is it in order for the Senator for Nakuru to imply in this House that my security is a function of right because of the Cabinet Secretary for Interior and National Administration or it is my constitutional right?

I ask this seriously because I have been in hospital. While I was in the hospital, my security was withdrawn in the middle of the night. Up to date---

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

Sen. Oketch Gicheru: My point of order is that the Senator has argued that for us to get our security back, I want to talk about myself because my security was withdrawn as a Member of Azimio la Umoja-One Kenya Coalition Party, I must go and apologize to the Cabinet Secretary for Interior and National Administration in order to get my security back.

My security is not a function of the Cabinet Secretary for Interior and National Administration. It is a right in the Constitution.

The Speaker (Hon. Kingi): Sen. Oketch Gicheru, that is her opinion. As you are aware, this matter is going to be committed to a committee. I therefore overrule that order.

Sen. Tabitha Keroche, proceed to conclude your statement.

Sen. Tabitha Keroche: Mr. Speaker, Sir, I will take less than a minute to respond to the Senator for Migori, Sen. Oketch Gicheru. He knows well that we have one elected President and his helpers are Cabinet Secretaries. So, the Cabinet Secretary for Interior and National Administration acts on behalf of the Government of Kenya.

(Applause)

We have many lawyers on the other side and they know what Article 37 of the Constitution says--

(Sen. Tabitha Keroche's microphone went off)

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

Sen. Omogeni: Mr. Speaker, Sir, this is an extremely serious matter. When you tell us to give a contribution of this nature for two minutes, then you are not doing justice to this House.

I remind you of the Gazette Notice of 27th July, 2022. The privileges of security that attaches to the Offices of the Speaker, the Senate Majority Leader, the Senate Majority Whip and the leadership of the Minority side is all worded in the same paragraph. They are all together.

Mr. Speaker, Sir, if you read the HANSARD of 28th April, 2021, then you may benefit from the contributions of the Senate Majority Leader. I hope you are listening, Senator.

In his contribution at that time, Sen. Cheruiyot moved this House to adjourn and discuss violations of the rights of three Senators, who were arrested to be stopped from participating effectively in the deliberations and works of this Parliament.

Mr. Speaker, Sir, I sit here at times and listen to us, as we take business of this House as a rollercoaster, where we give it twists and turns. There are issues that touch on the welfare of Members that should be separated from the politics of the day.

As you sit there, I remind you that your predecessor, Speaker Marende, had his security withdrawn. He used to sit as a Speaker of this House. We have ---

(Sen. Omogeni's microphone went off)

The Speaker (Hon. Kingi): Proceed, Sen. Munyi Mundigi.

(Applause)

Order, Senators.

Sen. Munyi Mundigi: Bw. Spika, si vizuri kunyang'anywa mlinzi lakini ningependa kukumbusha Seneti hii kwamba kulikwa na maandamano Tarehe 7, Julai, 2023. Hakuna mtu aliye na macho ambaye hakuona vile *Nairobi Expressway* ilivyoharibiwa. Watu walipigana na wengine hata wakauawa kwa sababu hakukuwa na ulinzi wa kutosha.

Baadaye, Azimio la Umoja ilitangaza siku tatu za maandamano. Naunga mkono kunyang'anywa kwao bunduki na walinzi kwa sababu ikiwa maandamano hicho kitu kingefanyika siku hiyo, basi hatungekuwa na nchi hii leo. Wale walionyong'aywa walinzi wangukuwa wamekaa katika mlima huu na wengine ule, Kenya ingechomeka.

La pili ni kwamba, tulikuwa na Bi. Spika wa Muda Tarehe 6 Kikao cha jioni. Yale yaliofanyika katika Kikao hiki baina yake na Seneta wa Nairobi kingefanyika pale nje, basi watu wanguana. Kwa hivyo, nauga mkono yale yaliyofanyika.

Mwishowe, nawaona hapa leo kwa sababu hawana bunduki. Wangukuwa na bunduki, basi ungewaona hapo nje. Nakumbuka tulikuwa tunapitisha mambo mengi na haungewaona kwa sababu walikuwa na walinzi. Kwa hivyo, wangeenda hapo nje kurusha mawe, lakini wametulia hii leo. Hiyo ilikuwa ni funzo.

Kwa hivyo, njooni tukae chini na tusemezane kidogo sisi kama Serikali ya Kenya Kwanza na Azimio la Umoja.

Asante Bw. Spika.

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

Sen. M. Kajwang': Mr. Speaker, Sir, I want to join those who believe in the institution of the Senate and the Constitution. Today, we could be celebrating the withdrawal of security of those in the Senate Minority side. However, you never know what is going to happen.

Many of us have sat in this House with a sense of self-entitlement, that we had Government. However, it came to a time that those who were celebrating the Government and its injustices were the first to be thrown out of the window.

Mr. Speaker, Sir, some of us sitting on the Minority side found ourselves chairing Committees that were reserved for those on the Majority side. Those who lost those positions, not too far back, had been celebrating how that Government was *alpha* and *omega* and as white as cotton.

Mr. Speaker, Sir, let us draw the line between the rights and privileges that are extended to Members of this House by the Constitution and the Parliamentary Powers and Privileges Act, and separate them from the political shenanigans.

I would not want to see Sen. Cherarkey in a boot of a Subaru, whether I agree with him or not. I would also not want to see Sen. (Dr.) Lelegwe Ltumbesi again in the boot of a Subaru. Let us not celebrate injustice and actions that kill the institution of the Senate or fly in the face of the Constitution.

That is my appeal to Members as we debate this. Let us think of the Senate, constitutionalism and the sacrosanct role of Parliament in a democracy. We cannot allow the Executive to be extending and withdrawing our security at its own will. I urge the House that we think about the Institution.

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

Sen. Miraj: Bw. Spika, asante kwa kunipa fursa hii ili niweze kutoa kauli yangu. Kile ambacho nataka kusema ni kwamba, hao walinzi hawakuondolewa kwenu kinyume na sheria kwa sababu maandamano yalikuwa tayari yameharamishwa na taasisi husika la Taifa la Kenya.

Hakuna Mkenya pahali popote ambaye hakupata ilani ya kuwa, maandamano yalikuwa yameharamishwa. Ni jukumu la Serikali kulinda wananchi pamaoja na mali ya raia wa Kenya. Ni jukumu la *Inspector General (IG)* wa Taifa la Kenya, kuhakikisha usalama.

Hata ikiwa hao walinzi wenu wanawachunga nyinyi, wao pia wako na haki za Kikatiba ambazo zinastahili kulindwa. Mlinzi wao ndiye aliyewaambia wao wasije kuwalinda.

Kwa hivyo, ningependa kusema kitu kimoja kama Mkenya. Tusiombe tupewe haki ambazo hatutaki kuchukulia majukumu. *Our rights come with responsibilities.*

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

Sen. Miraj: Haki zetu zinakuja na majukumu. Tuwe tayari kujukumika katika kila haki ambayo tumeitisha katika hii Taifa.

Nimesikia kwa muda mrefu, upande wa Walio Wachache wakililia haki. Tutambue ya kwamba, pale ambapo haki yako inakoma ndipo haki ya mwingine inaanzia. Kuna Wakenya watulivu ambao hawakutaka kuhusishwa na maandamano. Hata huyu mlinzi ambaye unasema umenyimwa na ni haki yako, pia ana haki ya kuchungwa katika Taifa la Kenya.

Asante Bw. Spika.

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

Sen. Mumma: Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute. It is sad that we can have hon. Senators cheering and giggling about the violation of the Constitution.

It is absolutely important that the relevant Committee and the Parliamentary Service Commission (PSC) informs Senators whether the privilege of having security at state offices is a privilege that is political. The National Police Service (NPS) is supposed to be neutral and provided to state officers, whether they belong to this or the other political divide. Its weaponization is going to put us in a very bad place.

Mr. Speaker, Sir, I call on all of us to observe what is happening in other countries. Today in Sudan, the police are not in charge. Therefore, do not weaponize and politicize the National Police Service. The police must be reminded to do what they are supposed to do.

It is deplorable to have hon. Members seriously misrepresent what the Constitution provides as though we have ousted the Constitution.

Mr. Speaker, Sir, I call upon all of us to be the adults we are supposed to be. We have students in the Gallery. We cannot have a deliberate misinterpretation of the law to suit yourselves. We need to decide whether the police are withdrawn for all politicians or retained for all of them.

(Sen. Mumma's microphone went off)

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

Sen. Cheptumo: Thank you, Mr. Speaker, Sir, for giving me a chance to add my voice.

The Constitution should not be applied selectively. Article 37 that is being quoted by the Minority side talks about the freedom to demonstrate. However, that particular provision does not take away the rights of other Kenyans to also be protected. We are not celebrating the removal of bodyguards for our colleagues but there must be a reason behind this. There must have been an intelligent report as to why the Government took that decision.

The same principle my colleague was saying of separation of powers, is the function of the State to guarantee security to every Kenyan. The decision to withdraw the security from our colleague was done based on what the Executive thought was improper because security for other people was also at stake.

Mr. Speaker, Sir, I agree that this country belongs to all of us. It is not fair for the Minority side to accuse the Government side, yet what they term as peaceful demonstrations is the complete opposite. It is killing, maiming and destroying. Let us all be fair to ourselves.

If leaders from the Minority side were to speak of peaceful demonstrations---

The Speaker (Hon. Kingi): Sen. (Dr.) Oburu, you may have the Floor.

Sen. (Dr.) Oburu: Thank you, Mr. Speaker, Sir. I am surprised and shocked at my brothers speaking about use of guns. It is very clear how the police should use the gun. The gun for the police is to protect the property and life of *mwananchi*. It can only be used against *mwananchi* if they are a threat to the police.

This is a situation where people who have no arms and are demonstrating with their hands and exercising their democratic rights are shot by the police.

My brothers across the Floor---

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

Sen. Cherargei: Mr. Speaker, Sir, I rise under Standing Order No. 98, 105 and 101 of the Senate Standing Orders.

Is it in order for my big brother and senior youth, Sen. (Dr.) Oburu to allege that the police have been shooting people who are not armed yet we have seen even in media and other outlets that people are throwing stones and rocks and even shooting at the police? That is why one police is dead and 370 police officers are admitted in hospitals as we speak.

Is it in order to state something that is not true? I wish he would have even used the word 'allegedly' instead of using it with finality.

Sen. (Dr.) Oburu: Mr. Speaker, Sir, those are the issues that will be investigated by the Committee. I am sure it will come to the same conclusion as I have.

Hon. Cherargei, when your security was withdrawn, you cried. Two wrongs do not make a right. The fact that yours was withdrawn does not make it right to now withdraw the security of others.

(Loud consultations)

The Speaker (Hon. Kingi): Order, Sen. Cherargei. May the good Senator be heard in silence, please.

Sen. (Dr.) Oburu: Mr. Speaker, Sir, it is a privilege for all senators to have their security. It is very sad that our Members who are representatives of the people, some of them elected, can stand on the Floor of the House and celebrate when their leaders are saying that the police did a good job by killing people.

It is very sad.

(Loud consultations)

(Interruption of debate on Statements)

The Speaker (Hon. Kingi): Order, hon. Senators. Sen. Cherargei, can the hon. Senator be allowed to conclude his comments please.

Hon Senators, before we move to the Statements pursuant to Standing Order No. 56(1), I have the following Communication to make.

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION FROM OLKIRAMATIAN PRIMARY SCHOOL, KAJIADO COUNTY

In the Public Gallery we have 41 pupils accompanied by six teachers from Olkiramatian Primary School, Kajiado County who are in the Senate on an education tour.

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

VISITING DELEGATION FROM MESWONDO
SECONDARY SCHOOL, BOMET COUNTY

In the Public Gallery, we also have 86 students, accompanied by eight teachers from Meswondo Secondary School, Bomet County who are in the Senate on an education tour.

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

I will call upon the Senator for Kajiado County to welcome both delegations in under one minute.

Sen. Seki: Thank you, Mr. Speaker, Sir. I take this opportunity to recognize the presence of pupils from Olkiramatian Primary School, which is in Magadi Ward, Kajiado West Sub County.

I congratulate and welcome them to the Senate. Your Senator is Lenku Kanar Seki for those who are not aware. This is the Senate Chamber. I have two of our colleagues in the Senate, Sen. Montet and Sen. Tobiko. I wish you well and a fruitful journey back. I am sure you will learn quite a lot as you continue to follow the proceedings of this Senate.

God bless you as you go back home. Thank you, teachers.

The Speaker (Hon. Kingi): In keeping with the tradition that we have always set, I will allow Sen. Wakili Sigei to welcome the delegation from Bomet.

Sen. Wakili Sigei: Thank you, very much, Mr. Speaker, Sir. I was already concerned when you directed that Sen. Seki was to welcome the team from Kajiado County.

I take the opportunity to welcome the students of Meswondo Secondary School, which is in the tea growing zone of Bomet County, a sub-county by the name Konoin Constituency.

I would like to encourage them to take back home lessons that they will have picked from this House, particularly with regard to what goes on here. This is a House where Senators debate matters affecting our counties and, in this case, the 47 counties in the Republic of Kenya.

I am very sure that at the end of your visit, you will have learnt, not only what goes on in the Senate, and how debate is done, but you will also be inspired so that you go back, work hard and come back to this House as Senators, clerks, the Speaker or as any other person that works within this particular House.

I welcome and encourage you to learn from what is going on here. After the small session, we will have to shake hands out there and share *a tête-à-tête* before you go back home.

I thank you.

The Speaker (Hon. Kingi): We have Statements pursuant to Standing Order No. 56(1)(b). We will start with the Chairperson, Standing Committee on Information, Communication and Technology (ICT).

Sen. Miraj, are you reading that Statement?

(Sen. Miraj consulted the Speaker)

(Resumption of debate on Statements)

Let us move to the second statement by the Chairperson Standing Committee on Justice, Legal Affairs and Human Rights.

ACTIVITIES OF THE STANDING COMMITTEE ON JUSTICE,
LEGAL AFFAIRS AND HUMAN RIGHTS

Sen. Wakili Sigei: Mr. Speaker, Sir, I rise pursuant to Standing Order No. 56(1)(b) of the Senate Standing Orders to make a Statement relating to the activities of the Standing Committee on Justice, Legal Affairs and Human Rights for the months of April to June, 2023.

During the period under reference, the Committee had 25 Sittings, at which it considered various legislative Proposals, Bills, Statements and held stakeholder engagements as set out below.

Mr. Speaker, Sir, the Committee conducted pre-publication scrutiny of four legislative proposals which were referred to the Committee pursuant to Standing Order No. 130(3)(a) of the Senate Standing Orders.

- (i) Draft Parliamentary Powers and Privileges Amendment Bills, 2023, sponsored by Sen. Osotsi.
- (ii) The draft Constitution of Kenya Amendment Bill, 2023, sponsored by Sen. Crystal Asige.
- (iii) The draft County Government Amendment Bills, 2023, sponsored by Sen. Crystal Asige.
- (iv) The draft Election Amendment Bills, 2023, sponsored by Sen. Kinyua.

In considering the Legislative Proposals, the Committee held discussions with the respective sponsors and considered the legislation and practice in comparative jurisdictions. Subsequently, the comments and recommendations of the Committee were submitted to the Hon. Speaker of the Senate, pursuant to Standing Order No.133 (a) This is a process of work in progress where the Bills will be placed before the House upon publication for further processing.

Mr. Speaker, Sir, the Committee commenced consideration of one Bill, namely, the Constitution of Kenya Amendment Bills, (Senate Bills No. 15 of 2023), following its introduction in the Senate on 4th May, 2023. Being a Bill to amend the Constitution, the Committee has a timeframe of 90 days within which to conduct public participation and table its report in the Senate.

In considering the Bill, the Committee observed that there have been 12 attempts previously made during the previous terms of Parliament towards enacting legislation on the two-thirds gender principal. Seven of these attempts were through constitutional amendment bills, all of which failed to garner the required thresholds to pass the Second Reading stage. The current Bill is therefore the 13th legislative attempt towards realizing the two-thirds gender principle in Parliament.

That being the case, and noting the need to secure broad-based support across the Floor in both Houses, the Committee resolved to nominate Sen. Veronica Maina to the Multi-Agency Working Group on the two-thirds gender rule, and to further request for

the inclusion of Sen. Beth Syengo, the sponsor of the Bill, as a Member of the working group.

Mr. Speaker, Sir, I am happy to inform this House that the working group has held several meetings with the objective of building consensus on a framework and Bill to implement the two-thirds principle. As a Committee, we await the outcome of this process, which will then inform the recommendations that we will be presenting to the House regarding the Bill for further processing.

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

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

Madam Temporary Speaker, on Statements, the Committee considered three Statements during the reporting period.

These are -

- (i) Statement sought by Sen. Okenyuri, regarding the lack of a national design and framework for civic education in Kenya;
- (ii) Statement sought by Sen. Kibwana, on the early release of inmates convicted of minor offences; and
- (iii) Statement sought by Sen. Wafula, regarding pending bills occasioned by the Senatorial by-election in Bungoma County.

The Committee met with the respective Senators who sought the Statements as well as the relevant stakeholders, wherefore the Statements were responded to. The Committee also identified areas for further engagement arising from the said meetings and deliberations.

Madam Temporary Speaker, yesterday the Committee met the Independent Electoral and Boundaries Commission (IEBC) secretariat who tabled before us a report on the Statement by Sen. Wafula. The report confirmed that there has already been compliance on the part of the IEBC in the payment of the outstanding bills to the service providers who had been contracted during the by-election in the relevant county.

What also transpired yesterday in the meeting that the Committee held with IEBC was that there were certain legislative proposals and electoral reforms, which would be relevant to the House and the entire electoral system of this country, as well as additional pending bills. It is worth noting that we discovered that there is a huge pending bill, amounting to over Kshs3.9 billion, which is yet to be cleared by IEBC to various service providers who were contracted during the 2022 General Elections, and some dating back to the 2017 General Elections.

Madam Temporary Speaker, these are the issues that the Committee has an obligation to engage on the way forward and to advise the relevant agency as well as the House in the manner it is supposed to handle the matter because they are stakeholders.

Madam Temporary Speaker, during the three months under reference, the Committee considered four Petitions –

- (i) Petition by Mr. Paulo Mosbei concerning historical injustices suffered by the Torobeek Community.
- (ii) Petition by the Kipsigis Community Clans Organization members concerning historical land injustices suffered by the Kipsigis Community.

(iii) Petition by Ms. Zipporah C. K. Seroney regarding mistreatment, harassment, property loss and human rights violation meted on the family of the late Hon. Jean Marie Seroney.

(iv) Petition by Mr. Nayan Savla regarding the delay in launching the victims' rights charter under the Victims Protection Act (No. 17 of 2014).

In considering the Petitions, the Committee held deliberations with various stakeholders, and undertook site visits as follows –

(i) On 14th April, 2023, the Committee visited Molo Sub-County in Nakuru County, where it received submissions on the Petition concerning historical injustices suffered by the Torobeek community.

(ii) On 15th April, 2023, the Committee visited Kericho County where it received submissions on the Petition concerning land injustices suffered by the Kipsigis community.

(iii) On 21st July, 2023, the Committee visited Kabsabet and Tinderet in Nandi County, where it received submissions on the Petition regarding mistreatment, harassment, property loss and human rights violation meted on the family of the late Hon. Jean Marie Seroney.

Madam Temporary Speaker, the first-hand accounts by the Petitioners and other stakeholders were very insightful to the Committee, and enabled it to gain a deep understanding of the respective matters beyond what it would have done by simply reviewing documents or preparing reports on the basis of documents reviewed on the table.

The Committee has also concluded its consideration and tabled reports of two of the said Petitions. This is the Petition by Mr. Paulo Mosbei concerning historical injustices suffered by the Torobeek Community and has made certain recommendations including the recommendation that this particular community must be granted a unique identifier for purposes of their recognition as well as granting them opportunities in the 26 counties where they reside. They should also get to be recognized as Kenyans in order for them to attain the status of Kenyans who are entitled to services beyond what they put before the Committee.

Secondly, the Committee considered a Petition by Mr. Nayan Savla on delay of launching the Victims' Rights Charter under the Victims Protection Act (No. 17 of 2014) which has also been tabled in this House. Among the recommendations that were made is a timeline within which the Victims Protection Board is to be established as well as the Rights Charter.

The Committee in this case made recommendations that within a period of three months, the relevant Government agency reports back to this House in order to follow-up on whether such recommendations have been complied with.

Madam Temporary Speaker, the Committee has also concluded consideration of the Petition regarding historical land injustices suffered by the Kipsigis Community and, once the observations and recommendations of the Committee are incorporated in the report, we will adopt it and table it in the coming week.

The same will be adopted and tabled before this House for adoption and further action. This will be done in the coming week. That will leave one Petition pending before the Committee, namely; the Petition regarding Mistreatment, Harassment, Property Loss and Human Rights Violation meted on the family of the late Hon. Jean Marie Seroney.

Following the Committees' visit to Nandi County last week, we have scheduled further meetings to seek clarification and responses on many matters that arose. Therefore, the committee shall be in a position to table a report to this House in the subsequent week.

Under the stakeholder engagements, we report that when we last made the previous Statement, I made on 30th of March 2023, I informed the House that the committee was scheduled to hold its stakeholder engagements retreat from 3rd to 5th of April 2023 in Naivasha, Nakuru County.

I wish to inform the House and the Hon. Senators that the retreat took place. We met and held extensive deliberations with 17 key stakeholders who attended the retreat.

The Committee drew many lessons and action points from the retreat, which continued to inform the meetings that we have held as well as the upcoming sessions.

On county visits, over the past three months, the Committee made visits to the counties of Nakuru, Kericho, and Nandi during the consideration of the Petitions that I have afore stated. In this case, we have already submitted what became of those visits. The Committee further held deliberations with the county assembly delegations on benchmarking visits to the Senate including the County Assembly of Kakamega and the County Assembly of Kilifi. It is noteworthy to report to the House that these two particular county assemblies had stakeholder engagements with the committee and reported that they did not appreciate and understand the role of Justice and Legal Affairs Committees in the Assemblies; hence, they have never had sessions.

It was an eye opener for the committees in their respective counties to seek to establish the committees so that they do perform the role that they are expected to in supporting the processing of Bills and participate in that which the Committee is expected to.

Under the court matters affecting the Senate and the devolved system of government, the Committee on Justice, Legal Affairs and Human Rights has a standing agenda every month where it receives status reports, deliberates on and gives directions on cases pending in court relating to the Senate and devolved system of government. Where appropriate, we bring this to the attention of the Senate in *Kamukunjis* or both, for information and to enable the Senate to adopt a common position.

Since this is a substantive matter, I will separately issue a Statement updating the House on the status of the key matters that are very relevant and important for this House to be informed for serious and informed decisions to be made. On priorities for the next quarter, during the current quarter, three of the second session, which is also the first quarter of the Financial Year 2023/24, the Committee will continue to expeditiously process the business referred to it for consideration, including legislative proposals, Bills, Statements and Petitions.

Additionally, the Committee intends to hold targeted high level meetings on thematic areas falling within its mandates including the policy and legislative framework on elections and electoral laws reforms. This is what I had earlier on alluded to, that we had an engagement with the Independent Electoral and Boundaries Commission (IEBC) as well as receiving proposals on the areas which they have identified and earmarked. For instance, we have the issue of the upcoming boundary review, which as per the Constitution is supposed to be done within the next 12 months or so.

Secondly, in partnership with the Committee on Devolution and Inter-Governmental Relations intends to do civic education, public participation, the promotion, protection and enforcement of human rights, legal education, training and alignment of laws to the devolved structure of government.

As I conclude, I wish to thank your office for the support accorded to the committee in undertaking its work. I also wish to acknowledge the secretariat's support that the committee has received from the office of the Clerk.

Lastly, I wish to commend the Members of the Committee who have been very diligent in exercising their responsibilities and the work of the Committee. In particular, I wish to mention and commend the following Senators who have been very consistent in attending the Committee meetings, which are held at 8:00 a.m. every Tuesday, Wednesday and Thursday. They are, Sen. Dullo, Sen. Kibwana, Sen. Mumma, Sen. Veronica Maina, and Sen. Okiya Omtatah.

I thank you and appreciate the team and their commitment to the work that they do. I submit.

The Temporary Speaker (Sen. Veronica Maina): Thank you, Hon. Senator, for that Report.

(Interruption of debate on Statements)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM ALSUHAIM GIRLS' HIGH SCHOOL IN KAJIADO COUNTY

The Temporary Speaker (Sen. Veronica Maina): Hon. Senators, I have a Communication to make.

Hon. Senators, in the Public Gallery, we have 105 students accompanied by three teachers, from Alsuhaime Girls' High School –Kajiado County who are in the Senate on an educational tour.

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

I will ask Sen. Mumma and Sen. Tabitha Mutinda to welcome them.

Sen. Mumma: Thank you, Madam Temporary Speaker. You may not be able to see them. They look so beautiful.

*(The students in the Public Gallery were
projected on the screens)*

Yes! You can now see them. I wish to welcome the students from Kajiado to this House. I wish to encourage you as girls that this is a House where women participate on an equal basis. Women form nearly 30 per cent of the Senate. I wish to encourage our students from Kajiado---

I know Kajiado is one of the counties that is still considered marginalised but one of the fastest-growing counties. Therefore, consider yourselves privileged and know that

you have a good Senator, Sen Seki. You also have Sen. Tobiko who is here taking good care of the issues of Kajiado County. As you listen, have your dreams as high as you can. I know some of you will one day come and serve in this House. I want to encourage you to aim high, dream big and do your very best to get what you want, including the Senate.

Thank you. *Karibuni sana.*

The Temporary Speaker (Sen. Veronica Maina): Proceed, Sen. Tabitha Mutinda

Sen. Tabitha Mutinda: Thank you, Madam Temporary Speaker. I take this opportunity to gladly welcome the princesses from Kajiado County. I am privileged to always sit with your Senator, Sen. Seki. He has stepped out for a very urgent meeting. He is very proud of you. We as Senators are also very proud of you.

I always say that education is what your parents can give and nobody can take it away from you. Always dream big, focus, aspire and enjoy your education because this is a stage that you are in. Tomorrow you are not going to be there. You will be on another level. In every step that you take ensure that you put *Allah* first and continue focusing, and dreaming big. You look very beautiful. Continue with the neatness that I see. As the saying goes, cleanliness is next to godliness. Keep shining, Kajiado County.

I thank you.

The Temporary Speaker (Sen. Veronica Maina): Sen. Shakila Abdalla, would you like to say a word to the students?

(Sen. Shakila Abdalla's microphone was off)

Sen. Shakila Abdalla: Imekataa.

The Temporary Deputy Speaker (Sen. Veronica Maina): Clerk, can you assist?

Sen. Shakila Abdalla: Madam Temporary Speaker, I also wish to join my two colleagues to welcome Kajiado girls. My advice to you is that discipline is 50 per cent of success. Please, girls, stay disciplined in order to achieve 50 per cent of your success. The rest is your effort to your education and respect to your parents and teachers. Be disciplined, respectful and hardworking for you to achieve your goals.

Nothing comes on a silver platter; you have to work for everything. Everything has a price to pay and it all depends on the foundation you build for your life. If you build a good foundation, you will have a good life. If you build a bad foundation, it will be too bad. From the way you are dressed and the way you look, I believe you must be having a good foundation and you will succeed.

Karibuni sana. Thank you.

(Resumption of debate on Statements)

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

Sen. Cherargei: Madam Temporary Speaker, I want to comment on the Statement by your Committee on Standing Order No.56.

I thank Sen. Wakili Sigei. Yesterday the Senate Majority Leader raised a serious issue; that of tabling of statements by committees as being not just for the sake of it. You remember, whether you ruled or I was not there, the President had written to you and the National Assembly Speaker about creation of the Official Opposition office. I did not hear the Committee on Justice, Legal Affairs and Human Rights saying something about

that. I thought that was a very critical and important issue that we should be dispensing of.

This comes at the hindsight of many issues being raised considering constitutional matters and the place of Opposition in this country. We want to move the Opposition from streets to come and do their job.

The second and final observation is on the issue of review of election laws. You are aware the Selection Panel of the Independent Electoral and Boundaries Commission (IEBC) is ongoing. Your Committee met the IEBC and you and the Chair were prominently there. I did not hear the update on the review and ensuring that the election laws can be discussed.

I am happy Sen. Wafula noted the payment of service providers. I wish the Committee went further because I still have some *matatu* owners and other people who ferried election materials and they are yet to be paid. I wish the Committee would table the pending bills by IEBC, including legal fees. As we speak, Senior Counsel (SC) and Commissioner, Sen. Omogeni - I am happy he is around today – there are still challenges of pending bills such as legal fees and many Kenyans who used *matatus* to travel.

Second is on the aspect of the future of election laws. Third is on the Selection Panel of IEBC. What is their fate? This clamour that we are seeing, the exchange and difference in ideas, is on the ongoing selection panel of IEBC. The Chair of the Committee could note those concerns and maybe in the next quarter include those aspects.

Finally, I welcome the beautiful girls and wish them well as they go back. Kindly, you have noted the Senators who have welcomed you. Take a picture with them and they will ensure you get *mkate* as you go back home.

Thank you.

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

We were on Statements. Let us have the Chairperson of the Committee on Labour and Social Welfare, Sen. Murgor.

ACTIVITIES OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

Sen. Murgor: Thank you, Madam Temporary Speaker. Standing Order No.56 (1) (a) provides that a chairperson of a Committee may make a Statement relating to a matter of which the Committee is responsible.

I wish to make a Statement on the status of legislative business that is currently under consideration by the Standing Committee on Labour and Social Welfare.

Madam Temporary Speaker, the Committee has considered and tabled reports on two Bills, namely; the Persons with Disability Bill, 2023 (Senate Bills No.7 of 2023) and the Heritage and Museum Bill, 2023 (Senate Bills No.8 of 2023).

The Committee has also done a pre-publication scrutiny on the following two proposals and approved their publication into Bills, namely; the Draft Labour Migration Management Bill, 2023 and the National Employment Authority Amendment Bill, 2023.

The Committee has also written a report on the Petition regarding Linda Soka, tapping into Kshs302 billion company. The Committee is considering five petitions. On

the Petition concerning illegal fraud by the First-Choice Recruitment and Consultancy Agency Limited, the Committee has engaged all the shareholders involved.

On the Petition concerning unfair terms and conditions of universal health care coverage, staff and delay in the internship posting, the Committee met the Chairperson of labour, Council of Governors (COG) today and will be meeting the Cabinet Secretary for Health on Thursday, 3rd August, 2023.

The Petition concerning the unlawful deductions of salaries by the Kenya Women Teachers Association (KEWOTA), the Committee met the petitioners and all the shareholders on 18th July, 2023. The Committee is scheduled to meet the shareholders on 1st August, 2023 on the Petition by the County Football Association (CFA) concerning the mismanagement of football in the country by the Football Kenya Federation (FKF).

The Committee will be briefed on the Petition concerning discrimination against other health workers in the Ministry of Health on Thursday, 3rd August, 2023, after which it will meet with the petitioners on 8th August.

Madam Temporary Speaker, the Committee has so far received 45 Statements. We have concluded on 15 statements, after we received responses from the various agencies and shared with the relevant Senators. The statements are as listed below:

Regarding the Statement sought by Sen. Wambua concerning the plight of Kenyan migrant workers in the Kingdom of Saudi Arabia and other countries in the Middle East, the Committee held a meeting with the Ministry of Labour and Social Protection and the Ministry of Foreign and Diaspora Affairs to apprise itself on the implementation status.

The Committee has written to the National Treasury and Economic Planning seeking for a progress report on the Statement sought by Sen. Wambua on the status of payment of the one-off honorarium to former councillors.

Madam Temporary Speaker, the Committee has not received responses on the following Statement from the Ministry of Youth Affairs, Sports and Arts, despite writing to them several times:

(a) Statement by Sen. Cherargei on the recognition of exemplary performance by Kenyan athletes.

(b) Statement by Sen. Cherargei on management of athletics in the country following poor performance at the 2021 Tokyo Olympics.

(c) Statement by Sen. (Dr.) Murango to launch bottom-up football tournaments in all 47 counties.

The Committee resolved to schedule a date and invite the Cabinet Secretary to respond to all the pending Statements. Similarly, the Committee also resolved to schedule a date to invite the Cabinet Secretary for Education to respond to the Statement raised by Sen. Wakili Sigei concerning discrimination of locals in the recent employment at Bomet University College. The Ministry has not responded despite being issued with reminder letters.

The Committee is awaiting responses for 26 Statements listed below and will report them accordingly.

The Statements are as follows:

(a) Statement by Sen. Crystal Asige on management and collection of music royalties in Kenya.

(b) Statement by Sen. Chute regarding the staffing policy by the Marsabit County Government.

(c) Statement by Sen. Chimera on the state of medical insurance coverage for officers in the Kenya Police.

(d) Statement by Sen. (Prof.) Tom Odhiambo Ojienda, SC, on claims of irregular and unprocedural recruitments by the Kisumu County Public Service Board.

(e) Statement by Sen. Mbugua on the legal structure and operations of the National Fund for the Disabled of Kenya (NFDK).

(f) Statement by Sen. Crystal Asige on claims of inaccurate data of Persons with Disabilities (PWDs) as reflected in the National Census of 2019.

(g) Statement by James Murango, MP on the state of labour export from Kenya.

(h) Statement by Sen. Mwaruma on delayed payment of pension to retired employees of the Kenya Railways Corporation (KRC).

(i) Statement by Sen. Munyi Mundigi on the status of Older Persons Cash Transfer Programme (OPCT) in Embu County.

(j) Statement by Sen. Okenyuri on rampant sexual abuse in plantations owned by James Finlay (Kenya) Limited in Kericho and Bomet counties.

(k) Statement by Sen. Cherargei on the ratification and use of appropriate scheme of service for clinical officers.

(l) Statement by Sen. Chute on non-remittance of statutory deductions by the County Government of Marsabit.

(m) Statement by Sen. Kibwana on the state of welfare of street families and children.

(n) Statement by Sen. (Dr.) Murango on the state of labour export from Kenya.

(o) Statement by Sen. Sifuna on the status of employment of inspectorate officers recruited during the tenure of Nairobi Metropolitan Service (NMS).

(p) Statement by Sen. Chimera on state of medical insurance coverage for officers in the Kenya Police.

(q) Statement by Sen. Mwaruma on the state of public service workforce of the County Government of Taita-Taveta.

(r) Statement by Sen. Crystal Asige on the enforcement of five per cent employment quota for PWDs in the public sector recruitment.

(s) Statement by Sen. Thang'wa on public institutions, stadia, roads, and parks bearing names of former presidents and leaders.

(t) Statement by Sen. (Dr.) Murango on the unprocedural reduction of salaries of Early Childhood Development Education (ECDE) teachers in Kirinyaga County.

(u) Statement by Sen. Omogeni on the delayed payment of monies to the elderly under the OPCT Programme.

(v) Statement by Sen. Miraj regarding the welfare of seafarers in Kenya.

(w) Statement by Sen. Crystal Asige on the unfair labour practices facing long distances drivers and conductors.

(x) Statement by Sen. Sifuna on the neglect of families of the five freedom fighters who were imprisoned at Kapenguria during the fight for the country's independence.

(y) Statement by Sen. (Dr.) Murango on the management of talent in the counties.

(z) Statement by Sen. Okenyuri on the neglect of the role of the Abagusii Community in the fight for Kenya's Independence.

Madam Temporary Speaker, most labour and welfare issues are matters of concern and the committee is committed to follow up and monitor the progress of implementation of various programmes under its mandate.

Thank you so much, I beg to table.

(Sen. Murgor laid the document on the Table)

The Temporary Speaker (Sen. Veronica Maina): Sen. Orwoba, do you have a Statement?

**PERSONAL STATEMENT UNDER
STANDING ORDER NO. 58**

ALLEGED CHALLENGES EXPERIENCED BY SEN. ORWOBA
IN THE PERFORMANCE OF HER ROLE AS A LEGISLATOR

Sen. Orwoba: Madam Temporary Speaker, I rise pursuant to Standing Order No.58 to make a Personal Statement on my participation in the United Nations 53rd Human Rights Council Session on Menstrual Health and Gender Discrimination. If you allow me, I think I have 15 minutes.

On 14th May, 2023, I was invited to participate in the United Nations 53rd Human Rights Council Session in Geneva. This was based on all the work I have been doing in terms of period poverty campaign.

As our protocol in Parliament, I submitted my documentation such as the passport. I wrote a letter asking for facilitation of the same by the Parliament. However, I was informed that it was impossible to be facilitated due to certain reasons.

I went back to the people who had invited me and told them that Parliament could not facilitate certain logistical issues. They agreed to pay for the trip and facilitate everything because they wanted me as a panellist in that particular event.

I submitted my passport and after three and half months, that was in May - the Conference was supposed to start on 6th July - I started following up on my visa with the relevant offices and I was informed that the issue was being handled by the Embassy and everything was ongoing. Since I had confidence in the systems put in place, I became patient.

On the day before I travelled, I was still following up on my visa issue. I was informed that the visa had not been given. It was unfortunate to find out the night before I travelled that my passport had not been submitted to the Embassy. This is on record from both parties and it got me thinking.

Following up with the relevant offices, I found out that my passport had not been submitted and no application had been made. Because of that, I was unable to travel to go and carry out my legislative and advocacy agenda.

Madam Temporary Speaker, that made me to start reflecting on many incidences that have been happening to me in Parliament. As new legislators, sometimes we do not understand how things work. I have been letting go many challenges, acknowledging the fact that I am a new legislator and perhaps sometimes I do not understand how things work.

After that particular event, I had a self-reflecting moment and took an account of all the incidences where I have faced serious challenges in terms of my work as a legislator and representative of the people.

Madam Temporary Speaker, as you are aware, I have five Bills, one of them being the Konza Technopolis Bill. I experienced serious challenges with relevant departments processing the Bill so that it comes to fruition.

I started reflecting on what it meant. Is it an issue of me not understanding how things work or are there clear deliberations of subverting my legislative agenda and other things?

This is in the public domain. Recently there were issues to do with my office. I had been allocated an office without my consent and the same premises was being run. I followed proper channels to report the incident. I followed all the advice I had been given but it took serious interventions for something to be done. They said that someone was running an office and impersonating me, claiming that is my office.

The Temporary Speaker (Sen. Veronica Maina): Hon. Senator, I do not want to interject while you are making your Personal Statement but it seems its nature is on administrative matters.

Sen. Orwoba: No, Madam Temporary Speaker. The nature of this Personal Statement is on the challenges I am experiencing as a legislator and I have been guided to steer clear of mentioning names, but just give my challenges and explain the story, which is what I am doing. It is permitted under Standing Order No.58.

The Temporary Speaker (Sen. Veronica Maina): I was only inquiring so that we see whether---

Have you ventilated in other platforms?

Sen. Orwoba: Madam Temporary Speaker, I have followed all processes in expressing my challenges or dissatisfaction on each and every matter that I have mentioned here to the extent that I have decided to now stand under Standing Order No.58 to give a Personal Statement.

Concerning impersonation in my office, I have taken proper steps. I have reported to the police and it is now a matter under investigation. I went through certain offices to get the intervention of even bringing down the board that had my name.

After I had written an official letter saying it was not my office, it still appeared to be a challenge for the relevant offices to act and bring down the board that had my name on it. I wanted to take charge of the situation and that is why I went to the police station.

Madam Temporary Speaker, I would also like to speak about two other incidents very quickly. Aside from the passport issue, where the relevant office did not submit my passport and facilitate me for the trip where I had been invited as a legislator, there is the issue of Bills and impersonation of my office.

I have also raised several Statements on the Floor of the House where I am playing oversight, which is my role as a legislator. At one time, a Committee came and said that they have dealt with it but it was established to be false information.

I am giving an account of certain things that are happening with my legislative agenda and my work here. I have concluded that the challenges I am facing are not unique.

Madam Temporary Speaker, because of your interjection, I ask if you can add me three minutes. I can see the amber light is on.

After doing my research, I found out that the challenges that I am facing are serious emissaries and agents who are against this House. When they observe that there is a certain legislator who is pushing for certain things, they make sure they divert the course.

I have suffered because of representing women. In certain instances, you have seen it on the Floor of the House. Even if you look and check through the HANSARD, you will see that during the impeachment case of Gov. Mwangaza, I raised certain issues.

I have suffered and been punished because of defending the girl child and the woman. As I speak, I have been blacklisted - this is a fact - from any trips to represent the Senate of this country.

Without being emotional and because I know that I am guided under Standing Order No.58 not to mention names, certain things are so obvious. Certain offices here in the Senate, are directly targeting me as a legislator and ensuring that I am unable to prosecute my work as a legislator in the Senate of Kenya.

This being my Personal Statement, I would like to say that all the issues that I am raising here might not be unique to me. I know other legislators who might not have the courage *per se*, to come and give Personal Statements and personal accounts that are dealing directly with individuals or offices who are operating as cartels in the Senate.

This is a serious issue and I do not know what Standing Order No.58 says but this is my last attempt at getting justice and being allowed to prosecute my duties as a legislator. This is because there is an office in the Senate that has targeted me as a legislator; as Sen. Orwoba. The office holder is aware and---

The Temporary Speaker (Sen. Veronica Maina): Sen. Orwoba, I believe that your Personal Statement is now on HANSARD and will be acted upon by the relevant offices in the Senate, the Speaker's Office, and the Clerk's Office.

I see there is one request on that, but under the Standing Order No.58, it cannot be debated.

I will call upon the Next Order.

The Senate Majority Leader to come and give his Statement

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 1ST AUGUST, 2023

The Senate Majority Leader (Sen. Cheruiyot): Thank you Madam Temporary Speaker. I rise pursuant to Standing Order No.57 (1) to present the business of the Senate for the week that commences Tuesday, 1st August, 2023.

The legislative business before the Senate includes a total of 22 Senate Bills and two National Assembly Bills. Out of these Bills, 17 are at the Second Reading stage while seven are at the Committee of the Whole stage. A further three Senate Bills are pending conclusion in the National Assembly.

As indicated in today's Order Paper, six Bills are scheduled for Division at the Second Reading and at the Committee of the Whole stage. They are listed at Order Nos.8, 9, 10, 11, 12, and 13.

I take this opportunity to urge all Senators to remain in the Chambers, for the Divisions to be undertaken; a cry that is coming albeit late, when the many of the Senators have stepped out or are in the lounge, but nonetheless, I will mention it.

I would like to inform the Senate that the leadership is engaging with the National Assembly's Leadership on the critical matter of concurrence on Bills, as there are a number of outstanding issues to be resolved. Once a consensus is reached the process of concurrence will be streamlined.

It is also envisaged that discussions will give rise to fast tracking of Senate Bills pending at the National Assembly.

Twenty-three Motions are pending conclusion before the Senate and accordingly scheduled by the Senate Business Committee (SBC), in the program of the Senate business for each week.

I urge the respective Movers of the Motions to be available in the Senate when the Motions are listed in the Order Paper.

The Senate has so far received 31 Petitions. Of these, only three have been reported upon by the respective Standing Committees. Of the 28 Petitions that are pending conclusion, 16 are due for reporting pursuant to Standing Order No.238 (2). That is simply to say they are already out of time and those committees need to have reported on that business.

I take this opportunity to commend the Senate Standing Committee on Labor and Social Welfare and the Standing Committee on Justice and Legal Affairs and Human Rights for considering and submitting reports on the three Petitions reference above.

I see Sen. Wakili Sigei, the Chairperson of the Senate Standing Committee on Justice, Legal Affairs and Human Rights in the House. Sen. Murgor was in just a few minutes ago. I celebrate their dedication and diligence in concluding, together with the committees that they lead and the Members of their committees.

The committees that are here to report on the Petitions and are due include first, the Senate Standing Committee on Agriculture; Sen. (Dr.) Murango and your team.

Second is the Senate Standing Committee on Devolution; Senator Abass, with your colleagues, you have two pending petitions that are due and already out of time.

Third is the Senate Standing Committee on Education, Sen. Joe Nyutu. With Members of the Standing Committee on Education, you have two Petitions that are due for reporting.

I see Senator, 'Captain' Sen. Ali Roba in the House. I will be glad to inform him that your Committee has one Petition that is due for reporting. It is already out of time. So please, do that which is required.

Though we have commended you, Sen. Wakili Sigei, you have two Petitions that are due for reporting before the House. We hope that you can conclude on them because you are already out of time. The same can be said of Sen. Rachel Murgor and Members of the Senate Standing Committee on Labor and Social Welfare.

Sen. Methu with Members of the Senate Standing Committee on Land, Environment and Natural Resources have two petitions that are before them that are already time bound.

Last but not least - I did not see him today - is Sen. Thang'wa and all the Members of the Senate Standing Committee on Transport, Roads and Housing. They have four Petitions that are already out of time and they need to report.

I hope the Senators that I have listed and the Members of those committees expedite on reporting of these Petitions so that Kenyans can continue to believe in the power and the place of the Senate in resolving many of these issues.

As I said earlier while speaking to one of the Petitions that was presented to this House, Petitions are increasingly becoming popular as a way of seeking resolutions of matters of public interest. People are filing many petitions with this House. I hope that our committees can work diligently to ensure that we do not disappoint Kenyans or dash their hopes as a look up to us for resolution of matters.

On matters of Statements, there are 142 Statements that are pending conclusion by the various Standing Committee. I urge these committees to expeditiously consider the Statements before them and to table the reports pursuant to the various Standing Orders.

Madam Temporary Speaker, at a meeting of the SBC held on Tuesday, the 26th July, 2023, the Committee approved the next set of Questions to appear in the Order Paper for Wednesday, 2nd August, 2023 - morning Sitting. That is for various Cabinet Secretaries (CSs) to come and respond to. I have seen subsequently further Questions that have been filed by various Members.

There is a Question by Sen. (Dr.) Murango to the CS for Water, Sanitation and another one to the CS for Environmental Change and Forestry. A Question by Sen. (Dr.) Murango to the CS for Gender and Affirmative Action. Lastly, a Question to the CS for Water. So, these three Cabinet Secretaries are expected to appear before the House.

At the morning sitting of the Senate scheduled on the 19th July, 2023, the Cabinet Secretary for Education was scheduled to respond to eight questions from a number of Senators. However, due to quorum hitches the Senate sitting was adjourned prematurely.

The Cabinet Secretary had submitted written responses to the Questions. I take this opportunity to express concern about the lack of quorum at the commencement of sittings of the House. I urge the Party Whips to ensure that quorum is achieved for business to be transacted.

I must acknowledge the challenge we have for non-appearance of a number of Cabinet Secretaries. I pointed out yesterday that the House was terribly disappointed by the two Cabinet Secretaries for Health and Foreign and Diaspora Affairs for their late request for permission not to appear before the Senate.

We commended the Cabinet Secretary for Ministry of Labour and Social Protection; hon. Florence Bore for filing in proper time, her inability to appear before the House. We did not have a problem with her.

Madam Temporary Speaker, that confirms that as a House we are not malicious. We are just saying that they need to be diligent, file their response to this House and take its work seriously.

I hope that the Secretariat organized a letter to them in equal wording to the fury that was expressed by colleague Senators here.

The Senate Business Committee (SBC) on the other hand will deliberate on this matter in the next meeting and determine a way forward with these Cabinet Secretaries.

Finally, on 7th July, 2023, the Senate received the proposed County Government Equitable Share Disbursement Schedule from the National Treasury for the Financial Year 2023/2024.

This document was referred to the Standing Committee on Finance and Budget for consideration. We are expecting the Committee to shortly table its report on the matter after which the Senate, by way of Motion, debate and make a determination on the report of the Standing Committee pursuant to Standing Order No. 189(3).

Madam Temporary Speaker, that is a very important exercise. I will also mention that today, the President made an announcement to the entire country. I wish my good friend Sen. Oketch Gicheru to hear this. We told them that we were proposing Kshs385 billion because we felt the need to be truthful and sincere to ourselves in order for us to move from how things were done in the past where astronomical figures were set and were not able to be managed prudently.

For the very first time, since devolution happened in this country, county governments have received their Equitable Share that is due for the month of July, today. That has never happened.

Sen. Ali Roba who has been a governor for 10 years knows that, for a fact. Many times, county governments have to wait until September. However, to show our commitment to devolution and that we want our counties to be better managed, by this afternoon, all 47 county governments have received their Equitable Share for the month of July. We have been in this House for long and that has never happened. That is how to prudently show commitment to devolution. I wish that the governors will be prudent in the management of those resources.

I am happy that we have just crossed and concluded on the first financial year. In the next few days, we shall be waiting for the audit reports for all our 47 county governments for the just concluded financial year. Many times governors appear before us and tell us that some issues were done by previous administrations. There is no more room for excuses.

Sen. Oketch Gicheru, you will be able to ask our good friend, Gov. Ochillo-Ayacko, to give an account of the resources we devolved to Migori County in the last financial year.

We shall take good time to study his use of resources and whether they have been prudent; how much money went to development and recurrent expenditures. Did it benefit the people that you represent in this House? That audit report shall be in this House by next month or early September at the very least.

I hope Members can take time to read and put governors to task so that devolution can succeed in this country.

With those very many remarks, I support and lay the Statement on the Table of the Senate.

I thank you.

(Sen. Cheruiyot laid the document on the Table)

The Temporary Speaker (Sen. Veronica Maina): Thank you, Sen. Cheruiyot for the well-stated Statement.

We now proceed to the next Order. I want to reorganize the Order Paper under Standing Order No. 45. I request the Clerk to call out Order No. 15.

I did not see any Senators interested in reacting to the Statement. That is why we are moving to Order No. 15

BILL*Second Reading*THE EQUALIZATION FUND (ADMINISTRATION) BILL
(SENATE BILLS NO.14 OF 2023)

Sen. Ali Roba: Thank you, Madam Temporary Speaker. The Equalization Fund (Administration) Bill (Senate Bill No. 14 of 2023) was published on 12th April, 2023, and read for the First Time in the Senate in the sitting held on Thursday 14th May, 2023.

Thereafter, pursuant to Standing Order No. 145 of the Senate Standing Orders, the Bill was committed to the Standing Committee of Finance and Budget for consideration. The Bill proposes to establish administrative structures for the management of the Equalization Fund to ensure effective and efficient implementation and utilization of the Fund.

Equalization Fund is established under Article 204 of the Constitution. It provides that the Fund may be used to provide services---

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

The Temporary Speaker (Sen. Veronica Maina): Hon. Senator, have you moved the Bill yet? You better proceed and move.

Sen. Ali Roba: Pardon. Madam Temporary Speaker, I beg to move that the Equalization Fund (Administration) Bill (Senate Bill No. 14 of 2023) be now read a Second Time.

The Temporary Speaker (Sen. Veronica Maina): Proceed.

Sen. Ali Roba: Madam Temporary Speaker, the Equalization Fund (Administration) Bill (Senate Bill No. 14 of 2023) was published on the 12th April 2023, and read for the First Time in the Senate in the sitting held on Thursday 14th May, 2023.

Thereafter, pursuant to Standing Order No. 145 of the Senate Standing Orders, the Bill was committed to the Standing Committee of Finance and Budget for consideration. The Bill proposes to establish administrative structures for the efficient management and utilization of the fund.

Equalization Fund is established under Article 204 of the Constitution of Kenya. It provides for improvement of basic services such as water, roads, electricity and health services to counties that were considered marginalized.

I have heard quite a bit of discussions in the House where marginalization was equated to poverty and *vice versa*. It is worthwhile to create an understanding that marginalization is not equal to poverty and *vice versa*. Marginalization is a state of under-development and poverty arising from deliberate resource denial by successive Governments starting from the colonial administration to date.

The drafters of the Constitution envisaged the Equalization Fund to address this and bring these areas that are gravely underdeveloped to enjoy a level of services enjoyed by the rest of the country.

Initially, to operationalise the Equalisation Fund, in 2015, the National Treasury had developed guidelines for management and administration of equalisation fund. It is

worth noting that the High Court in the case Petition No. 272 of 2016 declared these guidelines on administration of equalisation fund unconstitutional hence null and void. This was on the basis that the 2015 guidelines negated the responsibility of the county government to have a role in management of the equalisation fund.

Madam Temporary Speaker, thereafter, this House passed a new Equalisation Fund Administration Regulation in 2021. The current Bill seeks to give effect to those regulations in order to make sure that the administration of the Equalisation Fund is anchored in substantive law. The Equalisation Fund (Administration Bill 2023) mirrors the existing Public Finance Management (PFM) Equalisation Fund Administration Regulation 2021 and seeks to ensure administration of the Fund is anchored in an Act of Parliament rather than the PFM Regulation.

The Bill proposes establishment of Equalisation Fund Advisory Board comprising of –

(1) The Chairperson to be appointed by the Cabinet Secretary (CS) for National Treasury and Economic Planning.

(2) Principal Secretaries (PSs) for Finance and Devolution.

(3) A representative of pastoralist communities nominated by the National Assembly.

(4) A representative of pastoralist communities nominated by the Senate.

(5) One person nominated by the Council of Governors (CoGs) drawn from marginalised areas.

(6) The Controller of Budget.

(7) A Representative of Commission of Revenue Allocation.

(8) Chief Executive Officer (CEO) who is going to be secretary to the Board.

Madam Temporary Speaker, the Bill proposes that each county shall establish a County Technical Committee, which shall be responsible for approving all project finance by this Fund.

Further, the Bill creates another structure under that which is Sub-County Technical Committee that is tasked with identification of projects within each sub county. The Project Identification and Implementation Committee will identify and prioritise projects and beneficiaries of those projects in line with marginalised areas priorities as identified by the second policy. We are now hoping to get a third policy in place.

The Bill obligates the Board to *inter alia* –

(1) Appraise and evaluate projects proposed under the work plans as proposed through the committee structure.

(2) Make recommendations on priority areas requiring financing and implementation in accordance with the work plans.

(3) Oversee in consultation with the county government the implementation of the projects to ensure compliance with the Constitution.

(4) Monitor and evaluate projects implemented by the beneficiary county governments.

Taking into consideration the delays that we have had in setting up the Equalisation Fund, the challenges that the fund suffered in these formative years up to now where only seven years are left from the sunset clause lapsing which was initially 20 years.

The Bill proposes to extend the sunset Clause by a further 10 years, to make sure that the funds that are unreleased amounting to Kshs54 billion, are released in time based on government performance to make sure that these marginalised counties do not suffer disadvantage.

Madam Temporary Speaker, during consideration of the Bill, the committee invited members of the public to submit their views on the Bill.

Further, the Committee held consultative meetings with the following critical stakeholders –

- (1) The National Treasury and Economic Planning.
- (2) The Council of Governors (CoG).
- (3) Commission of Revenue Allocation (CRA).
- (4) The National Gender and Equality Commission (NGEC) among many others.

Having considered the Bill and submissions from stakeholders, the Committee made several observations including –

(1) Given that the project implementation will take place in marginalised areas identified to be within the Counties, the representation of the county governments on the Equalization Fund Advisory Board and Technical Committees was inadequate compared with the national Government representation. As such, the committee from the public participation that we presided over, recommends that the membership to the board by the CoG be increased by a further one board member.

(2) Further, the Committee noted the County Commissioners should constitute the County Technical Committee in line with the previous regulation. This Bill recommends that co-chairing be done and the advisory board at the national level do the appointment of this Technical Committee.

(3) The Commission on Revenue Allocation should provide a clear description of the term ‘marginalised areas’. The misunderstanding where poverty is equated to marginalisation and marginalisation equated to poverty where urban poor and pockets of poverty have been identified as marginalised areas, need to be corrected.

A clear term of what marginalisation entails which is resulting from a state of deliberate resource denial by successive governments starting from the colonial government followed by all other governments before the advent of devolution that created a situation of grave under development in selected counties. That was initially the constitutional term of marginalised areas. However, this has been subjected to quite a bit of definition from many participants to a level that has been diluted so much that equalisation is supposed to mean poverty and arguments follow that line.

(4) To ensure efficient utilisation and seamless implementation of the Fund. The Equalisation Fund should only be utilised indirectly as conditional grants to counties as per the ruling of the court in line with the case I have just mentioned.

(5) The representative of the office of Controller of Budget in the Board was found unnecessary since the main role of the office is mainly oversight of implementation of the Fund.

Therefore, the Committee having considered all these inputs, the Bill to be approved by the Senate as amended and recommended by the committee.

I beg to move and request Sen. Tabitha Mutinda to second.

The Temporary Speaker (Sen. Veronica Maina): Sen. Tabitha Mutinda, please proceed.

Sen. Tabitha Mutinda: Madam Temporary Speaker, I rise to second the Equalisation Fund (Administration) Bill (Senate Bills No. 14 of 2023). This is a very important Bill to this House because we have the Equalisation Fund. It is one thing to have the Fund and another to have structures for administration of the Fund.

As we know, the key mandate of the Equalisation Fund was on the four areas that have been mentioned; roads, water, electricity and health. Since I tabled the Equalisation Fund Bill last time, funds have already been rolled on the ground in the over 1,400 marginalised areas in the different 34 counties.

This Bill is going to give an opportunity for the different counties that are receiving the Equalisation Fund to have better structures. One of the key things coming out is the technical committees ranging from the county and sub-county technical committees as well as the Project Identification and Implementation Committee. It is important to note that these committees will play a key role in ensuring that projects are completed and not duplicated.

We have situations where some projects are still half way, not commenced or are pending. Some projects have been completed but have not been handed over because of a few challenges. This Bill proposes the formation of a committee. The committees will play a key role in strategising to ensure the four devolved functions are achieved.

The members proposed to be nominated to sit in the Equalization Fund Advisory Board include the Chairperson who shall be appointed from the National Treasury, the office of the Principal Secretary in the National Treasury and the Principal Secretary in Devolution and Planning Ministry. This will bring synergy between the Office of the Principal Secretary in charge of Finance and Devolution because it touches on the four devolved functions that the fund takes care of.

The Bill has also given a representation of the pastoralist communities. This is a key and important area. The over 1400 marginalised areas are within the rural areas, hence people will have an opportunity to identify their own key and needful projects. The representation of the pastoralist communities on the board is a big plus.

The Equalization Fund Advisory Board shall also have a person nominated by the Senate. One person nominated by the Council of Governors (CoG) was drawn from areas identified as marginalised by the Commission on Revenue Allocation (CRA). This combination means that projects can first be identified and then implemented. The board will ensure that services required by the people are given.

The Bill has also talked about the duration of the fund and capped it at 10 years. Depending on the happenings, it has room for extensions. However, 10 years are enough to see change. The County Technical Committees are also a creation of job opportunities for our people in the marginalised areas. The members of the committee will earn sitting allowances and other allowances when playing their roles. Also, when the infrastructures are built, like facilities, we will have more job opportunities in these institutions. Also, when there is access to water in the agricultural areas, then most marginalised regions will be food secure.

The Equalization Fund Administration Bill is key at this particular time. We are happy as the 13th Parliament to table this Bill. We are sure that this Bill will reduce the

number of years for implementation of projects. With the County Technical Committees proposed in the Bill in place, the pending projects will be completed.

With those remarks, I second the Bill.

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

(Question proposed)

Sen. (Dr.) Khalwale: Thank you, Madam Temporary Speaker. Let me declare that I am a Member of this Committee and therefore, I am fully behind the moving statement by the chairperson of our committee as seconded by the Vice Chairperson.

There is nothing I did not say in the Committee that I could say here. However, if it was not because of the *Sub Judice* principle, which makes it impossible for me to debate a matter in this House which is before the courts. I wanted to use this opportunity this afternoon to crash Sen. Okiya Omtatah, the Senator for Busia County.

From the year 2013 when I first spoke in this Senate up to the end of 2021 Parliamentary period, Sen. Okiya Omtatah was not in this House. Since I am not speaking of him in a derogatory manner, I do not have to move a Motion, I am acknowledging his good work. He was doing his good work outside Parliament. He waited until he came here and brought a lot of confusion. He has created a matter to be *Sub Judice*, to the extent that Government cannot collect taxes.

This is a matter which is clearly taken care of in Article 114. When the judges will read his complaints and then apply Article 114, his case will collapse. It is not an issue. Nonetheless, he is holding the whole country and making members of the public who are not suspecting, to go to the streets thinking there is a Bill before the courts that will help them to get what they want. Since this is *Sub Judice*, I will not go there.

The Temporary Speaker (Sen. Veronica Maina): What is your point of order Sen. Oketch Gicheru?

Sen. Oketch Gicheru: Madam Temporary Speaker, I rise under Standing Order No.105 read together with Standing Order No.101. I sit in the same Committee with my brother Sen. (Dr.) Khalwale also known as “the bullfighter”. I do not know why his bullfighting tendencies are being brought here. The way he has opened his contribution on this matter is basically accusing and seeking to discuss the character and the motivation of a Member of this House without a substantive Motion, notwithstanding the fact that what he is raising about Sen. Okiya Omtatah is not relevant to this Bill.

This Bill is on ensuring that there is effective administrative structures ---

Sen. Cherarkey: Point of order.

Sen. Oketch Gicheru: Madam Temporary Speaker, I am on a point of order. Can you help my brother Sen. Cherarkey to learn the orders of this House? Relax, you will have your time. Protect me. Can I be heard in silence?

The Temporary Speaker (Sen. Veronica Maina): Sen. Cherarkey, allow him to prosecute his case.

Sen. Oketch Gicheru: Madam Temporary Speaker, is my brother Sen. (Dr.) Khalwale, in order to prosecute a colleague Senator, a man who stands on high stature in this Nation? We are a House---

(Sen. Cherarkey spoke off record)

Sen. Oketch Gicheru: What is wrong with Sen. Cherarkey today?

The Temporary Speaker (Sen. Veronica Maina): Sen. Cherarkey, let him finish.

Sen. Oketch Gicheru: He is a man who stands in the highest regard of almost all Kenyans in this nation and has given you the priority of being in this House. Is the Senator in order?

The Temporary Speaker (Sen. Veronica Maina): Sen. (Dr.) Khalwale, you began well by cautioning yourself about the *Sub Judice* rule but you veered off. I would like to read for you Standing Order No.101(4) –

“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 in question the conduct of that Senator or Member of the Assembly.”

Keep to the debate on the Bill before the House and contribute your views or opinions on that Bill.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, I stand guided. I would like to guide the young Senator although they somehow get irritated when you tell them that they are new. You could still do it during your debate and then counter me. You do not have to come up on a point of order. You just take notes and when it is your time to speak, you counter me and shoot my ideas down.

However, as far as the guidance from the Chair is concerned, I agree and I find it very wrong for me to veer into the persona of another Senator. If the HANSARD is showing that, may I withdraw and apologise.

Having said that, it leaves me with only two points. I am supporting this Bill because the Bill wants to ensure that the administration of that fund is not abused. It should be done within the framework of law. However, as I do so, I am worried because in the memorandum of objects and reasons, we are told that these are services to be rendered in marginalized areas.

Under the Constitution of Kenya, marginalised are identified in this Constitution. In this Bill – and there is nothing the Chairman can do – the fund is being administered to areas with the perceived highest levels of poverty. The intention was for the marginalised areas. So, the criteria for which we cannot blame ourselves which was allowed by our predecessors, they veered from marginalised areas and admitted a criterion that expands the number of counties that are beneficiaries purely because pockets of poverty have been found in those areas.

A hardworking Kenya who is a stickler to the law can go to court and actually find that this Bill is unconstitutional. This because it is attempting to administer money to areas of highest poverty instead of money going to marginalised areas. Nevertheless, that is debate for another day when the Commission on Revenue Allocation (CRA) brings the formula that they are working on. I support it nevertheless but now I am on record.

Secondly, we are extending the dependency of the period for affirmative action. This is because we have not used the money in the beginning. We must support this. I suspect that even after we have extended the period we have given, at the end of it there might still be need to extent it even more. Why? It is because I feel bitter that children in the former frontier districts drink dirty water. This is the same water where livestock such as camels and even wildlife pee. The children of Kenya, purely because of being in marginalised areas, are forced to use that kind of unhygienic water. I am against it.

Therefore, my dream is that this House will one day humble itself and allow all Equalization Funds to concentrate only in those 14 counties that we had identified in 2013.

Madam Temporary Speaker, I ask you and I am not challenging you; I am just provoking your mind as a good mother. Can you imagine Murang'a County – I know you know where it is – with its geographical and climatic advantage relative to Marsabit County? Now, Muranga is competing with Marsabit and Turkana counties in sharing this little Fund. This is why I say, let us rise above these things and just let the money go to pull up those Kenyans.

I came from Britain the other day and a thought stuck me. When I was landing in the morning, I looked at London and wondered what they see when they are landing here? It is going to take us probably 200 years to remove our manyattas and renew our slums. So, if there is something that we can do affirmatively so that the correction can be done, let us do it.

Madam Temporary Speaker, with those many remarks, I support very strongly that this money be administered well.

I thank you.

(Interruption of debate on the Bill)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM CARDINAL OTUNGA
HIGH SCHOOL, KISII COUNTY

The Temporary Speaker (Sen. Veronica Maina): Hon. Senators, in the Public Gallery, we have 100 students, accompanied by eight teachers, from Cardinal Otunga High School Mosocho – Kisii County. They are in the Senate on an education tour.

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 thank you.

(Applause)

I will now invite Sen. Omogeni from the neighbouring county and Sen. Okenyuri to welcome the visiting delegation.

Sen. Omogeni: Thank you, Madam Temporary Speaker, for giving me the opportunity to welcome our students. You should mention the prestigious Cardinal Otunga High School in Kisii County.

On behalf my neighbour Sen. Onyonka who is not here, I extend a warm welcome to students from Cardinal Otunga High School. That is one of the schools that we are most proud of as a region. Most leaders from Gusii, including those from our neighbouring counties even the current Member of Parliament for Kilgoris, went to Cardinal Otunga. It is a school that has moulded many leaders not just from Kisii region but from the country.

I am happy that these future leaders are here to come and see what we do as their leaders. I encourage them as some of us, like Sen. (Dr.) Khalwale, went to schools we never got the benefit or opportunity to visit then National Assembly of the Republic. However, you are so privileged to get a chance to come here with your teachers to see the proceedings of the Senate.

I am going to convince Sen. (Dr.) Khalwale - which is a name that you have heard many times - and Sen. Cherarkey to come out there and shake the hands of these young boys and encourage them to be the future leaders.

Madam Temporary Speaker, during the times of Father Anthony, this school used to produce serious athletes. I remember when we used to meet them in sports events, we used to fear their 4 by 100 metres team. So, it is a school that has also made contribution in the field of sports.

We are proud to have you, our future leaders. We want you to go back encouraged and inspired. I hope in the future when Sen. Onyonka has retired, we will have a Senator from this team. Thank you for coming and have a safe trip back to Gusii.

I thank you.

The Temporary Speaker (Sen. Veronica Maina): What is your point of order, Senator?

Sen. (Dr.) Khalwale: Thank you for giving me this opportunity. I am standing under Standing Order No.105. Is the Senator for Nyamira County in order to conclude his appreciation of these great children from Cardinal Otunga, without giving due recognition to George Moseki Anyona, the greatest leader from this family who used to sit on this side? Is it a case that you are against George Moseki Anyona to appreciate Sen. Onyonka at his expense?

Is he in order?

Madam Temporary Speaker, allow me to remind the children that this was the House of the late Hon. George Anyona. Hon. Anyona was like no one else in the history of this country.

The Temporary Speaker (Sen. Veronica Maina): Sen. Omogeni, you have been called to order.

Sen. Omogeni: Madam Temporary Speaker, this is one of the points of order that I fully agree with.

I agree with Sen. (Dr.) Khalwale that I am completely out of order, not to have recognized the late Hon. George Moseki Anyona. He was a great leader from my County of Nyamira. He was a former Member of Parliament (MP) for Kitutu, a man that all of us, sons and daughters of Nyamira, are proud of.

I want to go on record that if there was a man who was a pacesetter for students who went to Cardinal Otunga those days, then it was George Moseki Anyona. If you know the history of the late Hon. George Moseki Anyona, as it was the tradition, from Cardinal Otunga High School, he proceeded to Alliance High School for his Form 5 and Form 6.

Most people from Gusiiland remember the late Hon. George Anyona as an ex-Alliance more than Cardinal Otunga student. Nonetheless, you are completely right that he did his Form 1 to Form 4 at Cardinal Otunga High School. Therefore, he is an alumnus of Cardinal Otunga.

Madam Temporary Speaker, I only mentioned Sen. Onyonka as the current Senator for Kisii. I am not in any way trying to downplay the role that the late Hon. George Moseki Anyona played in ensuring that this country is democratic. I accept that point of order from my friend Sen. (Dr.) Khalwale.

I thank you.

The Temporary Speaker (Sen. Veronica Maina): Sen. Omogeni, you have made history in this House for obliging to a Standing Order and complying with it. It is important to honour fallen heroes who have gone before us as distinguished leaders in Kenya.

Proceed, Sen. Okenyuri.

Sen. Okenyuri: Madam Temporary Speaker, I thank you for granting me this opportunity to recognize the presence of students and teachers from Cardinal Otunga High School, under the stewardship of one strong man, the Chief Principal, Mr. Albert Ombiro, who hails from my Constituency of Bomachoge Borabu.

The school is on the border between Luos and Kisiis at a place called Mosochi. It is near the home of the former Minister, Hon. Zachary Onyonka, the father of the current Senator for Kisii, Sen. Onyonka, who is not here.

I welcome the rugby powerhouse and academic giants. For your information, they were among the top nationally in the 2022 Kenya Certificate of Secondary Education (KCSE) examinations. I would equate Cardinal Otunga to Kenya High School where I went. I therefore welcome the boys to this House.

We have inter-generational shift. As you can see, we also have young legislators here like myself, who are learning from seasoned politicians like the Senator for Kakamega, Sen. (Dr.) Khalwale.

I urge you to put emphasis on your academics and obey your parents. Your future lies on yourselves. You are privileged to be in such a school because there are people who do not have that privilege.

Opportunity comes once. Please make use of it. You do not have to be a Senator like myself. You can become a doctor, pilot or many other professions.

Madam Temporary Speaker, this is the same school that the former MP, Hon. Simon Ogari, went to. He was the MP for Bomachoge Chache Constituency. Therefore, it is a home of giants and I am proud to have you here this afternoon.

To the teachers, this Government is working hard to ensure that you are comfortable as you teach our students, so that they can solve the challenges we face as a country.

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

Sen. Cherarkey: Madam Temporary Speaker, I equally welcome the great students from Cardinal Otunga to the Senate. I think my colleagues have said it all.

I went to one of the best schools that has produced two presidents. That is the late President Daniel Toroitich Arap Moi and also the Fifth President, Hon. (Dr.) William Samoei Kipchirchir Arap Ruto. Maybe yours truly will become one because we do not know about the future. My alma mater is Kapsabet Boys High School. I know it is in an equal league with Cardinal Otunga whose students and teachers are before us. Therefore, I wish them well.

As you have been told, work hard, be steadfast and remain focused. The future depends on how you make it. Cardinal Otunga is one of the best schools. Therefore, there is nothing much we can tell you. You are the people we will depend on in the future.

Socrates said that we are sojourners on this earth. When our time comes to an end, they will take over the reins and offices and become Senators, leaders, presidents, lawyers and doctors.

I am happy a medical doctor, Sen. (Dr.) Khalwale, and our senior counsel have welcomed them. At the moment, we have only two senior counsels; Sen. Omogeni from Nyamira and my former lecturer Sen. (Prof.) Tom Odhiambo Ojienda, SC, the Senator for Kisumu.

Previously we used to have two senior counsels; Hon. Wetangula, the current Speaker of the National Assembly and Hon. Orenge, who is now the Governor of Siaya. We also have a medical doctor in the House who is the Senate Majority Whip.

Madam Temporary Speaker, for your information, Sen. (Dr.) Khalwale is the Whip of the majority side and---

Sen. (Dr.) Khalwale: On a point of order, Madam Temporary Speaker. I am sorry to interrupt Sen. Cherarkey. However, since this is a House of record, I rise under Standing Order No.105. Will I be in order to request him to withdraw his statement that the Speaker of the National Assembly, Rt. Hon. Moses Wetangula, is a senior counsel?

The Temporary Speaker (Sen. Veronica Maina): Sen. Cherarkey, I believe you are a counsel yourself. Therefore, you should have the roll of senior counsels of the Republic of Kenya. Can you respond to that?

Sen. Cherarkey: My apologies. I meant Hon. Amos Wako. How can a medical doctor know who a senior counsel is and who is not? It escaped my mind.

Sen. Omogeni is the one who introduced the rules for senior counsels when he was the Chairman of the Law Society of Kenya (LSK). He said that if you serve as the Chair of the LSK, you must be a senior counsel. How did he become a senior counsel? I am not doubting him because he has defended me before and he did well but I stand guided.

Sen. Omogeni: On a point of information, Madam Temporary Speaker.

The Temporary Speaker (Sen. Veronica Maina): Sen. Cherarkey, do you wish to be informed?

Sen. Cherarkey: Yes. I can be informed by Sen. Omogeni.

Sen. Omogeni: Madam Temporary Speaker, I am embarrassed on behalf of lawyers in this country that it takes a medical doctor to correct a lawyer on who is not a senior counsel. These are things that Sen. Cherarkey, whom I worked hard on to ensure he is admitted to the bar the other day and who is also my good friend, should know. He should know the list of senior counsels! I do not want him to mislead the whole country and more so lawyers.

Madam Temporary Speaker, you are a lawyer. You know that to be conferred as a senior counsel, there is a committee chaired by a judge with status not less than that of a judge of the Court of Appeal. You have to undergo a rigorous process through that committee before that title is conferred on you. Being a former Chair of the LSK adds to the other requirements that you have to meet.

I think I did a mistake when I was the Chair of the LSK by exempting lawyers from Continuing Legal Education (CLE) because we had seasoned lawyers like Hon.

Paul Muite. However, looking at the performance of Sen. Cherarkey this afternoon, I am going to make a recommendation that we bring back CLE for some cadre of lawyers serving in the Senate.

Madam Temporary Speaker, I wanted to inform the Member here, so that he does not mislead the nation.

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

Sen. Cherarkey: Madam Temporary Speaker, if you have heard, the Senior Counsel title was an addition because he was the Chairperson of Law Society of Kenya (LSK). I inform him that I have been attending CLE seminars.

I do not know what he means because all lawyers attend CLE seminars, unless there are exemptions. One of the conditions for him to become a senior counsel was because he was the LSK Chairperson.

The Temporary Speaker (Sen. Veronica Maina): Sen. Oketch Gicheru, what is your point of order?

Sen. Oketch Gicheru: Just sit.

Sen. Cherarkey: Sen. Oketch Gicheru is not a lawyer, why would he be interested in this matter?

Sen. Oketch Gicheru: Madam Temporary Speaker, I rise on Standing Order No. 105 and 101. Sen. Cherarkey has got very bad manners of degenerating and wiggling around and disobeying the point of orders of this House. If you are not careful he ends up doing an injustice to this House. For instance, right now, he is actually directly discussing the Senior Counsel and Commissioner, Sen. Omogeni without a substantive Motion.

I have a problem with this because he is a lawyer who does not even read the Standing Orders of this House. Is he in order that, instead of answering, he is discussing a Senator of this House without a substantive Motion and imputing improper motive. This is not correct.

The Temporary Speaker (Sen. Veronica Maina): Sen. Omogeni is in the House fortunately. Sen. Cherarkey, respond to that concern.

Sen. Cherarkey: Madam Temporary Speaker, I do not know what is wrong with Sen. Oketch Gicheru since he came back. I have been excusing him because he is recovering. We do not know whether it is because of the illegal demonstrations.

However, you heard Sen. Omogeni discussing me and I did not have a problem. Why is Sen. Oketch Gicheru interested? Does he want to please the Commissioner to get some perks.

(Resumption of debate on Bill)

Madam Temporary Speaker, let me proceed to state that I support this Equalization Fund. I am happy that Nandi County will be the biggest beneficiary. Nandi and Tinderet Constituencies, parts of Kapchorwa ward and Songo-Soba among others. Nandi County will get Kshs157,016,515 that will go to improvement of schools, roads and hospitals among others. I think this is important.

I remember, hon. Gladys Boss Shollei's Committee in the previous session tried to come up with regulations for this Equalization Fund. I am happy we are putting in place the law. I have always insisted that this House, as the protector of devolution under Article 96, continues to enrich devolution by ensuring that we give life to Article 204.

Looking at the architecture and design of the Constitution, we now import Article 204 which creates the Equalization Fund by giving it life through such Equalization Fund Administration Bill, 2023.

Madam Temporary Speaker, in Clause 6, I note that one person has been nominated by Senate which I think is important. I have a problem with the Advisory Board though which will in consultation oversee, monitor and evaluate. I have heard conversations about marginalization and affirmative action regarding the traditional marginalised and hardship areas.

Can you believe, 60 per cent of Gross Domestic Product (GDP) is in Nairobi? Some areas like Mukuru kwa Njenga, Kibra and Mathare among other slums can be regarded as hard ship areas. Today we are giving Kilifi part of the Fund.

I will be looking forward to Terik Ward in Nandi County being given a hardship allowance. I have been looking forward to most parts in Nandi Hills and Tinderet Constituencies being given full hardship allowances. Even other slum areas such as Nyalenda in Kisumu because we have what we call urban poverty.

The danger in this country is no longer the traditional marginalised areas. If you look at Commission of Revenue Allocation (CARA) report on poverty index, in fact, the traditional areas of the Norther Frontier are wealthier.

This is because, when you look at the statistics that was done by CARA before, the poverty index in for example Busia is very high. We must agree that the issue of marginalisation and affirmative decisions must be made. This Board is very critical.

Since I wanted to use a few minutes so that I can allow Sen. Oketch Gicheru to give his input. Clause 16 is very important. I am happy that in these marginalised areas such as water and sanitation, roads, health facilities, electricity and other basics as shall be identified CARA has been noted very well. It is just an import of Article 204 of the Constitution 2010.

I have a problem with Clause 17 that says;

“Each County Commissioner of an eligible county shall establish and convene a County Technical Committee comprising of-

- (a) chairperson who shall be the County Commissioner;
- (b) the relevant county executive committee member for Finance;

Where is the Senate? How can a county commissioner chair this money that we are disbursing? The issue of provincial administration is unconstitutional, first of all. The Constitution of Kenya did away with traditional provincial administration.

I think the Committee should amend this. We must have a representative of the Senator at the County Technical Committee. We cannot be appropriating money and give other people to implement. The Chairperson of Finance and Budget should take note because we have the County Commissioner and CECM of Finance. Why can a Senator not give a representative?

We are not saying this is the committee that will manage money but so that as a Senator, you are aware of where money is going. This is about oversight so that you do not just allocate money and dispense. Somebody can argue that, it will be a conflict of interest. How can it be?

The Member of National Assembly is doing legislation, oversight and representation but they are patrons of County Development Fund (CDF). They do not directly run the CDF but they are patrons. That is the role we should import.

The Women Representative is a patron of the Women Affirmative Fund. She does not directly handle but there is a board and a Fund manager.

As a Senate, that is how we become relevant. Sen. Omogeni, SC, you remember, in the last session, we fought over the establishment of County Roads Board. The National Assembly selfishly ensured that they have a representative from the constituency level but they did not put a Senator. Yet, they wanted us to pass it.

That is why we become relevant. That is why you get people like Sen. Omogeni and Sen. Okiya Omtatah going to court to try and create space for us where we are running away. We are edging ourselves out of the space. That is why, even Ministers do not appear in the Senate because they have a condescending attitude because they imagine we do not bite. We must stop this. The Senate must occupy its rightful place.

Madam Temporary Speaker, Clause 20 must be amended. That, a Senator of a county should be given power to give a representative to sit in that Technical Committee. Personally, I would want to know about the Kshs157 million plus that is going to Nandi but I am in Senate.

The law should allow me to elect my representative, maybe a county manager to go and sit in that Technical Committee and be aware. I do not have a problem with Clause No. 21. It is also about appointing the Project Identification and Implementation Committee. The County Commissioner can appoint your opponent. We need to be careful. What we are creating is very dangerous. We could be feeding a dangerous animal.

Sen. (Dr.) Khalwale: On a point of order, Madam Temporary Speaker.

Sen. Cherarkey: On the faith-based groups, village administrators and Assistant County Commissioner, I agree---

The Temporary Speaker (Sen. Veronica Maina): Sen. Cherarkey, we have a point of order from Sen. (Dr.) Khalwale.

Sen. Cherarkey: From who?

The Temporary Speaker (Sen. Veronica Maina): from Sen. (Dr.) Khalwale.

Sen. Cherarkey: Sorry.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, since this is debate, it is good for us to listen and get the clarity of the thinking of a Member so that he can carry us with him.

The Temporary Speaker (Sen. Veronica Maina): Under what Standing Order?

Sen. (Dr.) Khalwale: Madam Temporary Speaker, Standing Order No. 105 on responsibility for statement of fact.

Could the Senator for Nandi help me here? When you ask me to go and sit in this board that is playing the executive role of administering funds, how will I oversight myself when I come to Nairobi? For example, I have been part of a mess in Kakamega County and when I come to Nairobi, I am expected to oversight that. Can he tell me how a Senator can have that dual function?

The Temporary Speaker (Sen. Veronica Maina): It does not sound like a point of order. You should have stood under a different Standing Order.

Please, allow Sen. Cherarkey to continue. Consult your Standing Orders.

Sen. Cherarkey: Madam Temporary Speaker, Sen. (Dr.) Khalwale has helped us identify senior counsels. I will also help him to understand what I am saying which is simple.

I have even used an example of a National Government-Constituency Development Fund (NG-CDF) model. Let him allow me to finish.

A Member of the National Assembly is a patron of a CDF and does not directly manage the funds. That is what I am proposing.

I am not saying that this technical committee will be in charge but it will just oversee. For example, the project identification implementation committee will just appraise. I am not saying that they will deal with procurement or give tenders. The technical committee will be an advisor of what should be done with the Fund.

The Temporary Speaker (Sen. Veronica Maina): There is a point of information. Do you wish to be informed by Sen. Ali Roba?

Sen. Cherarkey: No, Madam Temporary Speaker. I have sufficient information.

(Laughter)

The Temporary Speaker (Sen. Veronica Maina): Proceed.

Sen. Cherarkey: Sen. Ali Roba is my friend. I respect him as my elder brother. I know he will buy me tea after this to give me more information.

Madam Temporary Speaker, the functions of the project identification and implementation committee shall be to undertake public participation.

We need to agree that all the things that we are doing will be important.

Clause 22(c) states that-

The functions of the Project Identification and Implementation Committee shall be to-

(c) prepare and submit project funding proposals to sub-county technical committee;

I am answering Sen. (Dr.) Khalwale, the bullfighter. I hope he is not noting that.

Clause 21 states that-

The county commissioner of the eligible county shall establish a project identification and implementation committee.

I am proposing that there be a representative to sit with the county commissioner so that when they are coming with the project identification and implementation committee, it will become easier to do their job.

I am not okay that a Senator or a representative of the Senator should manage the procurement plans of water or roads. They should be part of the technical and overseeing factor.

I am happy that Sen. Ali Roba has not put any Senator in this committee. However, I am proposing, at the level of the county commissioner, who shall comprise the committee.

Madam Temporary Speaker, I hope Sen. (Dr.) Khalwale is getting the notes bullet by bullet. The only problem I have here is the involvement of counties which are bastions of corruption.

Today, I saw Sen. (Dr.) Khalwale attending a programme on the state of the Nation.

We are also going to hold the Devolution Conference in Uasin Gishu. The biggest clogging system, threat and cancer of the functionality of devolved units in this country, is corruption.

Madam Temporary Speaker, yesterday, there was a complaint that it looks like we have gone back to the default settings of 2013 where money was just being released to counties and there were no accountability measures.

As the Vice Chairperson of the County Public Accounts Committee (CPAC), if you look at the heart, body, blood and system of counties, it is infected by corruption and lethargy.

Corruption continues to eat our counties. I do not find any wisdom where a governor runs around to look for scholarships for children outside the country while the roads in the village are not passable or water cannot be accessed.

Where do they get this energy of running to look for scholarships and not fixing feeder roads, water, or drugs in hospitals? Nowadays, I see them busy lobbying for national Government projects. That is not their business.

When we budget in Parliament, it should guide them. Governors have now left their jobs of fixing feeder roads, water, Early Childhood Education Development (ECDE) and drugs in hospitals. They are now busy doing other things; coming to the Council of Governors (CoGs) and perpetuating many issues that do not tally with the Fourth Schedule.

Madam Temporary Speaker, I want to ask that during the Devolution Conference, Sen. Omogeni Senior Council (SC) be given an opportunity to school governors about their role as per the Fourth Schedule because we are going back.

Someone would ask why we are coming up with Sen. Ali Roba's Equalization Fund (Administration) Bill and the Conditional Grants Bill. We are ring-fencing the law because governors cannot use the money well. We have to guide them and tell them where to put money. Devolution should work.

I hope people like Sen. Ali Roba will be given an opportunity to speak to governors on how devolution can change the lives of people, the way it has changed in Mandera County.

I know Kakamega is in a sorry state. I do not want to say much of that because I am their neighbour.

Madam Temporary Speaker, that is one of the biggest challenges that we are still undergoing. I say this with tremendous respect.

I ask the Committee of Finance and Budget to give us the opportunity to amend this Bill when it reaches the Committee of the Whole Stage.

Let the Senate not remove itself from the role that it should be participating. Before we know it, this Senate will have to be closed. This is because slowly by slowly, we are relieving ourselves from the role that we should be doing.

One of the roles is to protect the interest of counties, which does not only involve sending money but also oversighting it and representing the people.

Madam Temporary Speaker, with those remarks, I support this Bill. When it comes to the Committee of the Whole, I will have a few amendments to put here and there.

I am happy that Sen. Oketch Gicheru is at least doing legislative work. I also want to advise him that meaningful change can only be done on the Floor of the House and not in the streets of Nairobi.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Veronica Maina): Sen. Oketch Gicheru.

Sen. Oketch Gicheru: Thank you, Madam Temporary Speaker. I will avoid commenting on the final remarks of my friend, Sen. Cherarkey, for obvious reasons that he does not perhaps appreciate the power of his boss; who is not in the Senate but is on the streets in the name of the people of Kenya. Those are the people who have employed you. Sometimes, I go to the streets to answer to my boss.

This is an important Bill. The Constitution establishes the Equalization Fund as was well articulated by the Mover of the Motion, the Chairperson of the Committee on Finance and Budget, captain and party leader, Sen. Ali Roba. However, two things have been a challenge since the inception of this Fund with the dispensation of the new Constitution, 2010.

The first one was the issue of how to distribute the Fund. That issue was well defined by the Constitution under Article 216.

It established the Commission on Revenue Allocation (CRA) which is mandated to figure out how that money is distributed. Through that lens, CRA has been able to do two things. One, is to identify policy angles that define the process for identification of 14 counties that have been historically marginalized.

After doing some work, Sen. (Dr.) Khalwale was concerned about identifying other pockets of marginalization that have existed both directly and indirectly because of actions or inactions of previous Governments.

After the identification of those marginalized areas, the Commission on Revenue Allocation (CRA) then goes ahead and looks at how the distribution of the function will be placed in terms of usage that can be in tandem with the County Development Index (CDI) and that has been done very well.

We hit a dead rock as a country because of a lack of administrative requirements, which would do what CRA is unable to do. This includes ensuring that there is good governance across the jurisdictions where these funds go to. This was important. I highlighted why this Bill is important. I do not wish to belabor repeating the reasons why previous administrative structures and regulations failed as that was well articulated by Sen. Ali Roba.

However, the significant element that I invite the Senate to see in this Bill is that, if we can pass this Bill as it is, it will ensure that there is growing regulatory complexity that addresses the fact there is a nexus between this Fund and other Funds that are mandated to the counties.

What do I mean by this? I have seen my brother Sen. Cherarkey struggling with the concept of having even a Senate representative visible in the Budget Implementing Structure that we are proposing in this Bill. The complexity emerges because perhaps the understanding of many people is not that this fund is for counties. If you read Article 204 (1) and (11), you will realize that this is not money for the counties. It is money to the counties from the National Government.

It is a National Government intervention under Article 204 (2). I do not know why Sen. Cherarkey has left the House. This one he should have listened to.

Article 204(2) of the Constitution states –

‘The National Government shall 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 these services to

those areas to the level generally enjoyed by the rest of the nation, so far as possible.’

This means that while the marginalization problems of not having these functions manifest in counties and while also while some of the functions that are indicated here like water, and health have been devolved to the counties, the fact remains that this money is for the National Government to do these interventions. Our work is to ensure that we unlock the growing regulatory complexities of those functions that end up being in the hands of the county. It will be wrong for any Senator to propose that we have a Member of the Senate or any person from the Office of the Senate be in the implementing arm or any other structure of this Fund. That would be problematic.

Secondly, on a light note on that point, Sen. Cherarkey should learn that we keep on insisting that this is the ‘Upper’ House. This is because of the majoritarian responsibility that we have. A county represents a varied number of Constituencies. If the National Assembly chooses to disregard their role under Articles 93 and 94 of the Constitution to the extent that they want to mix legislative, oversight and representative functions with the Executive functions, to the extent of insisting that the National Government- Constituency Development Fund (NG- CDF) is constitutional. The National Assembly wants to have their hands in the NG-CDF and implementing a project. However, we in the Senate believe that it is unconstitutional. Anywhere in the World, you cannot have the same oversights implementing projects and want to oversight itself.

There is no reasoning other than we should do the same misnomer that the National Assembly is doing just to compete with the National Assembly. We are not the National Assembly. We are the Senators of Kenya. We must stamp our feet as the Senate that we will remain loyal to the Constitution of Kenya. Where we are tempted to get some executive powers of going to implement projects on the ground just to get some money and campaign with people on the ground because you have executed some projects that we will not do. It is unconstitutional. We cannot have our hands in the functions that are executive in nature.

Let the people who are implementing the executive programs do so and let us on the other hand oversight them once they have done their job. That is why I agree with Sen. (Dr) Khalwale that we cannot have our hands going to the pot of implementation and defining projects at the grassroots and coming back here to oversight ourselves. It is not possible.

This Bill will ensure that there is ultimate transparency with governance across the jurisdiction of the Equalization Fund. Why do I say this? In the current formation, we have had struggles with the National Treasury to even know the nature of funds that have been released, to whom, which kind of projects have been done by whom, and which ones are stalling. Why? Because of the lack of these administrative functions. There are some places where the National Government did projects in the healthcare space. However, with no clarity of administrative structure, to date, we do not know whether they succeeded or not. This functional unit will ensure ultimate transparency.

Lastly, the Equalization Fund cannot succeed without account accountability and operational efficiency. It should not just be a framework. It should be efficient. If you look at the work that this Committee did, it tried as much as possible to devolve the units to the ground to the best level possible.

As I finish, it should also interest this Senate and keenly so that as a Committee, we have proposed that we acknowledge that the sunset clause of this Bill gives it up to 20 years. However, due to these challenges, it is almost 12 to 13 years now and this Equalization Fund has not taken properly root. We only have about seven years to think about attaining the purpose of this Fund. That is not adequate time. We can never do justice enough to the constituencies of people, particularly the 14 counties that were marginalized by the Sessional Paper No.10 of 1965. We can never do them justice enough alongside other pockets of marginalized areas that have been identified by the CRA if we adhere to the sunset clause.

If you look at this Bill in the context of Clause 204 (7) which provides for the lifetime of the Fund and how it can be reviewed in the context of Clause 204 (8). We need to rethink the idea of what I would call absolute equity. It is the idea of great fairness and impartiality. There was no impartiality when these counties were marginalized.

Madam Temporary Speaker, I would urge my colleagues, the Senators to keenly look at that provision of this Bill and endorse the fact that we can add about 10 more years so that the need principle, the capacity principle, the effort principle, the efficiency principle, the basic minimum principle and the fair process principle can be achieved for the people who have been marginalised over time, so that we can have equity this country in terms of these marginalised areas coming to par with other areas of this country.

Therefore, Madam Temporary Speaker, I absolutely support this Bill and appreciate so much the Chair and the Vice-Chairperson of the Committee on Budget and Finance for their tremendous work, commitment and passion to ensure that at long last, Equalization Fund can work for this country so that we can be a nation, not nations staying in their own enclaves.

Madam Temporary Speaker, I support.

Thank you so much.

The Temporary Speaker (Sen. Veronica Maina): Thank you Sen. Oketch Gicheru.

Sen. Omogeni, you may have the Floor.

Sen. Omogeni: Thank you, Madam Temporary Speaker. I also rise to support but with a rider that I hope the chair who has moved this Bill will agree that we enrich the contents with some ideas which will make it more useful to the people who reside in our counties.

Madam Temporary Speaker, first, I want to agree with the sentiments of Sen. (Dr.) Khalwale this afternoon. Article 204 on Equalization Fund was meant to bring to speed counties that have been lagging behind because of bad government policies. To be very fair, imagine Nandi County being compared with Nyamira or Kericho Counties. How can my neighbours, Kericho, with those huge tea estates and the dairy farming that is being undertaken in Kericho, with the good rivers and the supply of piped water, be called a marginalised county?

If you have gone to Nyamira County, there is an area called Keroka. The population in Keroka is like that of an urban centre. That is how bad it is. We do not have piped water, but there is this argument that Kisiis are hardworking. We are able to build houses that have iron sheets so we are able to tap rainwater and use it. The government

argues that Kisii is blessed with good rainfall, we can harvest water and use it. We do not need piped water.

The truth of the matter is that this was a very good idea. I commend the first Senate. They came up with a good formula and picked the right counties that were meant to benefit, the first 14 counties. We look at the names of the first counties that were to benefit from this fund and you cannot fault it. If you have been to Turkana, you will be out of your mind to doubt that Turkana needs an Equalization Fund. The same case applies to the County of Mandera. We have sat with governors who gave us horrendous stories. The distance that people have to walk in Mandera before they get a health facility. The distance that they have to walk before they can get water.

Sen. Ali Roba, you can correct me if I am wrong, I think the first tarmac road hit the furthest point of northern Kenya during the tenure of President Kibaki. It is about ten years ago. When you hear the stories, you appreciate that there are counties that honestly deserve to benefit from this Equalization Fund. You go to Tana River, you find pastoralists who, God forbid, if they fall sick, do not know where to get a health centre. When you are told about an Equalization Fund, that is what it should be.

This one of putting 34 counties where people are actually living happily, is not right. I hope that when we look at the formula next, we will do justice to the Kenyan people. We only allow counties that are most deserving to be the only ones that are benefiting from this Equalization Fund. We have had a lot of hiccups. You remember in 2015, the first implementation matrix was struck off by the courts because we did not get it right. Money has been stuck in Treasury for a long time.

I was initially opposed to this extension of 10 years, but looking at the time that we have lost, maybe there is wisdom in proposing that in line with Article 204, we can give a non-renewable extension of 10 years, but with a rider that we will have to re-look at the formula and ensure that this money only benefits counties that are most deserving.

Secondly, regarding the proposal that has been made on the Floor by Sen. Cherarkey, I want to persuade Senators, including Sen. (Dr.) Khalwale, to look at that proposal objectively. Let us also borrow from the practices that we have seen from our brothers in the National Assembly. Sen. Cherarkey is not proposing that Sen. (Dr.) Khalwale goes and sit in this Project Identification and Implementation Committee. He is not proposing that Senators should go and sit as members in that committee, but he is making a proposal, which I fully identify and agree with, that your office, as Senator of Kakamega, should get an opportunity to nominate people from your office who will sit in that committee that we should call PIIC.

How does the Constituency Development Fund (CDF) operate? The people at the local constituency identify the Member of Parliament as the person who dishes out bursary, the one who identifies road projects that should get money, and the one who decides which school gets money. I am sure Sen. (Dr.) Khalwale knows this better than I do because he has been an MP. The only entry for an MP is that mandate given to him to nominate people. In fact, nowadays, it is not even to nominate, the law has changed. Nowadays, they pick representatives to sit in the committee that interviews people who will sit in the CDF board. Since he picks people from his office who sit in the interviewing panel, the way it is done here with the Sub-County administrator or the Deputy County Commissioner (DCC), he has representatives whom he picks, which makes him have an entry of having a say on the operations of CDF. The law only says

that when the projects are being launched, the committee will invite the MP to come and witness. Why can we not borrow that legal framework, Sen. (Dr.) Khalwale?

All that we are saying, as Sen. Oketch Gicheru has reminded us, if you read Article 204, this is a national Government Fund. This is not a fund that is managed by a Governor. It is not. In the last Parliament, we had a big fight on this Floor. What was the fight about? We were just trying to expand the presence of elected leaders in determining which roads should get funds from the Rural Roads Board Authority.

The National Assembly had amended the law and decreed that the MP will pick two representatives to sit in that board. We said, so that we have parity, let also the office of the Senator pick two nominees. Just two. It was a big fight. They said we do not want to see the presence of a Senator anywhere. These guys are going to make us share power. We do not want. That is not the way it should be.

Let the country accept that we have now embraced a devolved system of government. We do not sit here like the House of Lords. We are elected directly by the people. I do not know the number of votes Sen. (Dr.) Khalwale got, but I am sure it is not less than 100,000 votes. It could even be 200,000. You can imagine.

How can somebody, who has direct mandate because they queued and voted for you with 300, not have a say at all in picking somebody who will have a say on what roads need to be put some murram? It is a fallacy because we are treated like we are the House of Lords.

Madam Temporary Speaker, the House of Lords in England are never elected by anybody. The best we can compare this House to is the Senate of Australia and the Senate of the United States of America (USA) because those ones also get direct mandate from the people. In those jurisdictions, because of the area you campaign--- Sen. Khalwale campaigns in 12 constituencies and I am lucky mine is four. We then serve a term of five years like a Member of the National Assembly, who campaigns in a smaller area.

Americans recognise that it is so rigorous to campaign in the entire State and so, they give them a tenure of six years. The area for the House of Representative is small, usually a constituency of 700,000. They serve for two years.

Therefore, there is an injustice. I hope that we will get an opportunity during the tenure of the United Democratic Alliance (UDA), to review the Constitution in a manner that is very objective – not in a partisan way but in a very impartial and non-partisan way – so that we correct some of these injustices.

Senators in Australia serve for a period of six years. The House of Representatives serve for four years. It is because it is appreciated that when you campaign in a bigger area, you get a longer period.

I persuade my Chairman to agree with this proposal. We can put our heads together so that we come up with an amendment that will give room for the office of the Senator to pick representatives in this Committee. There will be no conflict. We have stated that there is a good example – the roads. MPs have and County Development Fund (CDF) have representatives.

Otherwise, I identify the vibrance with which you have taken your assignment. As the Chair of the Committee on Finance and Budget, you have done very well. We are proud of you. Initially, some of us did not want to hear Governors coming here to be Senators. Having seen what you are able to do – together with my friend, Sen. Mandago

– I welcome more Governors to bring that experience. You have done very well Senator Captain. We are proud of you. You have done good work in this Committee. I hope you will put the icing on the cake by bringing some amendments that will give Senators some presence in the Equalization Fund.

Finally, I hope we will find a way of ring-fencing this money from this cancer called corruption. At times I wonder how Kenyans are wired. This money is supposed to enhance our health facilities, assist the sick, give access to water to poor people who cannot afford generators in their homes and to build good roads for the people we represent. Again, we want to steal the same money. We pretend to be good Christians and Muslims yet stealing money meant for poor people.

I hope we can find solution to this. I am not trying to cast aspersions but the accountability mechanism on the use of county money has not been up to a level we can all be proud of. I have not seen anybody who has faced consequences. So, the message we are sending to the country is that there is no corruption at the counties.

All Governors who have served for the last 10 years are all free. If they have used money meant for hospitals and roads to amass wealth, they are walking and roaming in the streets. I hope we can find a solution to corruption so that the good ideas that are in the Constitution, 2010 can help our people. I hope I have persuaded Sen. (Dr.) Khalwale on this proposed amendment so that we can move together.

Madam Temporary Speaker, I support with the rider that there will be some amendments.

Thank you.

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

Sen. Mumma: Thank you, Madam Temporary Speaker, for this opportunity to contribute to this very important law that has been delayed for many years.

Mr. Speaker, I know I will not have enough time. I will continue at a later stage.

The Temporary Speaker (Sen. Veronica Maina): What is your point of order, Senator?

Sen. Mumma: Sorry, Madam Temporary Speaker. I have corrected myself. It is Madam Speaker.

Sen. Omogeni: The Hon. Member called you “Mr. Speaker”. Is she in order to refer to you as “Mr. Speaker”, in a time like this when we are celebrating our women? The whole country is proud to see a woman on the Speaker’s seat.

The Temporary Speaker (Sen. Veronica Maina): Sen. Omogeni, she is definitely out of order and she has corrected herself. She is allowed to continue.

Sen. Mumma: Thank you, Madam Temporary Speaker and Sen. Omogeni for correcting me. Chairperson, Sen. Ali Roba, allow me to bring us back. My view is that this law must be aligned with the mandate of the Senate, to protect counties and their governments and it must help us to implement Article 204.

My general comment is that as currently structured, this law undermines county governments. This law has elected to create a mechanism that will work in the county in parallel to the county government. It will sit and require the County Executive Committees (CECs) to make decisions and report to it. It will oversee the implementation and one that will then go to monitor that implementation.

I hope that I can persuade you to change the route and structure this law in a manner that will respect the functional assignment between the National Government and the county government as provided for in this Constitution.

Madam Temporary Speaker, Article 204 contemplates that the Equalization Fund will be deployed towards marginalized areas and it is intended to help provide basic services including water, roads, health facilities and electricity to marginalized areas. Those are county functions.

Article 204(3)(b) contemplates that this money will of course come from monies collected nationally. It would be held by National Government. I am proposing that we make a law that opts to focus forwarding this money as conditional grants to county government to then carry out the functions as provided.

Why do I say so? I do not think county planning contemplates that CIDP will look at the needs of a county; and leave out other things for somebody from outside to come and plan for a different place. Properly speaking, when you are planning for your county, I am planning for county Busia, I need to know I have so many facilities, I still need so many health facilities out of the areas in my county, the most marginalised is that area.

However, maybe the money I have is not adequate for me to deliver in those places. So, when the equalization fund selection area comes, I would then be able to say that this area is the most marginalized in Busia, can it be considered for purposes of this? What the Fund ought to do is then give conditional grants that Busia County---

The Temporary Speaker (Sen. Veronica Maina): Hon. Senator, it is now 6.30 p.m. When we resume, you will have 16 minutes to contribute to this Motion.

ADJOURNMENT

Hon. Senators, it is now 6.30 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until Tuesday, 1st August, 2023 at 2.30 p.m.

The Senate rose at 6.30 p.m.