

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 29<sup>th</sup> May, 2024

### Afternoon sitting

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

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

### PRAYER

#### DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

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

*(The Quorum Bell was rung)*

Order, Senators. You may now proceed to take your seats. We do have quorum now, so we will proceed with today's business.

Clerk, kindly call the first Order.

### COMMUNICATONS FROM THE CHAIR

#### INVITATION TO THE 21<sup>ST</sup> EDITION OF THE NATIONAL PRAYER BREAKFAST

**The Speaker** (Hon. Kingi): Hon. Senators, as you are aware, the National Prayer Breakfast is an annual event in the Calendar of Parliament. It is an interdenominational prayer meeting sponsored by Members from both Houses of Parliament.

The event is being coordinated by an organizing committee, which has been working closely with the Kenya National Prayer Breakfast Coordination Team. The Organizing Committee is co-chaired by Sen. Daniel Maanzo, MP, and Hon. Samuel Chepkonga, MP, of the National Assembly.

The National Prayer Breakfast has been instrumental in fostering national healing, reconciliation and undertaking on the challenges that face our country. The event will undoubtedly continue to be a uniting forum for our national ethos.

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This year's National Prayer Breakfast is scheduled to be held tomorrow, Thursday, 30<sup>th</sup> May, 2024, at Safari Park Hotel in Nairobi, from 7.00 a.m. You are expected to be seated by 6.30 a.m. The theme for the event is "Hope".

I, therefore, take this opportunity to invite all hon. Senators to the 21<sup>st</sup> Edition of the National Prayer Breakfast. Further details relating to the event will be given through the Office of the Clerk.

I thank you.

CONSIDERATION OF PETITION RESTRICTING COUNTY  
GOVERNMENTS FROM HIRING EXTERNAL LAW FIRMS  
FOR LEGAL REPRESENTATION IN COURT CASES

**The Speaker** (Hon. Kingi): Hon. Senators, as you may recall, at the sitting of the Senate held on Tuesday, 30<sup>th</sup> April, 2024, I reported a Petition to the Senate by Mr. Laban Omusundi regarding restricting county governments from hiring external law firms for legal representation in court cases. Pursuant to Standing Order No.238 (1), I committed the Petition to the Standing Committee on Devolution and Intergovernmental Relations for consideration.

Subsequent to my committal of the Petition to the Standing Committee on Devolution and Intergovernmental Relations, vide letter Ref. JLHARC/SSN/2024(8), dated 21<sup>st</sup> May, 2024, I received a request from the Chairperson of the Standing Committee on Justice, Legal Affairs and Human Rights for the said committee to consider the Petition alongside the Standing Committee on Devolution and Intergovernmental Relations. The Chairperson argued that management and operations of legal professionals is a matter that falls under the purview of the Standing Committee on Justice, Legal Affairs and Human Rights.

Hon. Senators, from the foregoing, I reviewed the prayers contained in the Petition and established that indeed the prayers relate to governance and management of county governments in relation to the establishment of the Office of the County Attorney as envisaged under Section 4 of the Office of the County Attorney Act, and the resources used to engage external counsels.

This is a matter under the purview of the Standing Committee on Devolution and Intergovernmental Relations. On the other hand, the prayers also relate to the operations and management of the legal profession in the country, in particular, the cardinal principle for a client to access legal representation of their choice. This matter broadly falls under the organisation and administration of law and justice, which pursuant to the Fourth Schedule of the Standing Orders, is a responsibility of the Standing Committee on Justice, Legal Affairs and Human Rights.

Hon. Senators, having considered the matter as indicated above, I hereby direct that the Petition submitted to the Senate by Mr. Laban Omusundi be considered jointly by the Standing Committee on Devolution and Intergovernmental Relations and the Standing Committee on Justice, Legal Affairs and Human Rights.

For the avoidance of doubt, this communication does not affect the timelines provided for, pursuant to Standing Order No.238 (2). The committees will, therefore, be required to table a report on the Petition on or before 29<sup>th</sup> June, 2024.

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I thank you.  
Let us go to the next Order.

### PAPERS LAID

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

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate, today, Wednesday, 29<sup>th</sup> May, 2024-

Report of the Auditor-General on the Financial Statements of the Municipality of Kimilili – County Government of Bungoma for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on the Financial Statements of Kyeni Water and Sewerage Company Limited for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on the Financial Statements of Nyeri Water and Sanitation Company Limited for the year ended 30<sup>th</sup> June, 2023.

Report of the Auditor-General on the Financial Statements of Tavevo Water and Sewerage Company Limited for the year ended 30<sup>th</sup> June, 2023.

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

*(Sen. Cheruiyot laid the documents on the Table)*

**The Speaker** (Hon. Kingi): The next one is by the Chairperson of the County Public Investments and Special Funds Committee.

#### REPORT ON CONSIDERATION OF AUDIT REPORTS OF VARIOUS WATER SERVICE PROVIDERS

**Sen. Cheptumo:** Mr. Speaker, Sir, on behalf of the Chairperson of the County Public Investments and Special Funds Committee, I beg to lay the following Paper on the Table of the Senate, today, 29<sup>th</sup> May, 2024-

Reports of the Select Committee on County Public Investments and Special Funds on its consideration of the Audit Reports for the Financial Years 2018/2019 (Volume IV), 2019/2020 (Volume V) and 2020/2021 (Volume VI) of the following Water Service Providers; Busia Water and Sewerage Services Company Limited, Iten- Tambach Water and Sewerage Company Limited, Kirinyaga Water and Sanitation Company Limited, Malindi Water and Sewerage Company Limited, Mandera Water and Sewerage Company Limited, Migori Water and Sanitation Company Limited, Mombasa Water and Sanitation Company Limited, Nanyuki Water and Sanitation Company Limited; and, Nithi Water and Sanitation Company Limited.

*(Sen. Cheptumo laid the document on the Table)*

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**The Speaker** (Hon. Kingi): The next one is by the Chairperson of the Committee on Trade, Industrialization and Tourism.

REPORT ON NATIONAL ASSEMBLY AMENDMENTS TO THE  
COUNTY LICENSING (UNIFORM PROCEDURES) BILL, 2022

**Sen. Okenyuri:** Mr. Speaker, Sir, on behalf of the Chairperson of the Committee on Trade, Industrialization and Tourism, I beg to lay the following Paper on the Table of the Senate, today, 29<sup>th</sup> May, 2024-

Report of the Standing Committee on Trade, Industrialization and Tourism on its consideration of the proposed amendments by the National Assembly to the County Licensing (Uniform Procedures) Bill (Senate Bills No.9 of 2022).

*(Sen. Okenyuri laid the document on the Table)*

REPORT ON THE COUNTY PUBLIC FINANCE LAWS  
(AMENDMENT) BILL, 2023

**The Speaker** (Hon. Kingi): Let us have the Chairperson of the 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, 29<sup>th</sup> May, 2024-

Report of the Standing Committee on Finance and Budget on its consideration of the County Public Finance Laws (Amendment) Bill (National Assembly Bills No.39 of 2023).

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

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

### NOTICE OF MOTION

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

**The Speaker** (Hon. Kingi): The Chairperson, County Public Investments and Special Funds Committee.

**Sen. Kisang:** Thank you, Mr. Speaker, Sir. On behalf of the Chairperson of the County Public Investments and Special Funds Committee, I beg to give notice of the following Motion.

THAT the Senate adopts the report of the Select Committee on County Public Investments and Special Funds (CPIC) on its consideration of the audit reports for the following years; 2018/2019 (Volume IV), 2019/2020 (Volume V) and 2020/2021 (Volume VI) for the following water service companies-

(i) Busia Water and Sewerage Services Company Limited.

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- (ii) Iten Tambach Water and Sewerage Company Limited.
- (iii) Kirinyaga Water and Sanitation Company Limited.
- (iv) Malindi Water and Sewerage Company Limited.
- (v) Manderu Water and Sewerage Company Limited.
- (vi) Migori Water and Sanitation Company Limited.
- (vii) Mombasa Water and Sanitation Company Limited.
- (viii) Nanyuki Water and Sanitation Company Limited.
- (ix) Nithi Water and Sanitation Company Limited.

**The Speaker** (Hon. Kingi): Next Order.

## QUESTIONS AND STATEMENTS

### STATEMENTS

Statements pursuant to Standing Order No. 53(1)  
Hon. Sen. Hamida Kibwana.

#### EVICCTIONS AND DEMOLITIONS IN MATHARE AND MUKURU KWA REUBEN

That Statement is dropped.

*(Statement dropped)*

Proceed, Senator for Machakos.

#### IRREGULAR PAYMENT OF LAND RATES IN NAIROBI LAND REGISTRY FOR PARCELS IN MACHAKOS COUNTY

**Sen. Kavindu Muthama:** Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Land, Environment and Natural Resources concerning certain properties in Machakos County paying land rates to the Nairobi Land Registry instead of Machakos Land Registry.

In the Statement, the Committee should-

(1) Explain the circumstances under which the land rates for certain properties in Machakos County are currently being paid to the Nairobi Land Registry instead of the Machakos Land Registry and evaluate the legal and procedural reasons for this, including the implications of the financial administration of Machakos County.

(2) Determine the scope of this matter by identifying the properties, particularly those along the Machakos-Nairobi border and report on how this has been happening and the financial impact on Machakos County's revenue.

(3) Detail the actions that the Ministry of Lands, Public Works, Housing and Urban Development is undertaking to address this issue, including the steps taken to ensure proper allocation of land rates payments to the correct land registry and

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recommend measures to improve the efficiency of land rates collection and prevent such challenges from reoccurring in the future.

**The Speaker** (Hon. Kingi): Sen. Muhammad Chute.

#### ALLEGED DELAY OF SALARIES IN MARSABIT COUNTY GOVERNMENT

**Sen. Chute:** Thank you, Mr. Speaker, Sir. Speaker. I rise pursuant to Standing Order No. 53(1) to seek a Statement from the Standing Committee on Labor and Social Welfare regarding the delay in salary payments to the employees and interns serving the County Government of Marsabit.

In the Statement, the Committee should-

(1) State reasons for the non-payment of salaries to the employees of the County Government of Marsabit for November 2023.

(2) Explain the reasons for the long-standing delay in the disbursement of stipends to interns across all the departments within the county government and establish the period they have not been paid as well as the total amount owed to them.

(3) Provide timelines for settling the arrears due to the employees and the interns and state the measures being taken by the County Government of Marsabit to address these delays and ensure timely payment in the near future.

**The Speaker** (Hon. Kingi): Sen. Kisang?

#### SHORTAGE OF WHEAT SEEDS IN THE COUNTRY

**Sen. Kisang:** Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.53 (1) to seek a Statement from the Standing Committee on Agriculture, Livestock and Fisheries regarding the shortage of wheat seeds in the country.

In the Statement, the Committee should-

(1) Explain the current shortage of wheat seeds in most retail and wholesale stores in the country.

(2) State any Government interventions aimed at addressing the shortage immediately to ensure farmers can plant according to their schedules.

(3) Outline measures put in place to prevent a recurrence of such shortages in the future and to guarantee a consistent and reliable supply of seeds in the country. This is because there has been a shortage of wheat and maize seeds in the past.

**The Speaker** (Hon. Kingi): Sen. David Wakoli?

#### ALLEGED UNFAIRNESS IN RECRUITMENT AND PAYMENT OF CASUAL WORKERS IN BUNGOMA COUNTY GOVERNMENT

**Sen. Wafula:** 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 claims of unfairness in the recruitment and payment of casual workers by the Bungoma County Government.

In the Statement, the Committee should-

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(1) Explain the status of casual workers employed by the County Government of Bungoma from 2013 to date and furnish the Senate with a comprehensive report on the departments they have been serving in, stating their wages and whether the payments made to them, as casual employees, are up to date.

(2) Outline the guidelines, specific conditions and requirements applied during the recent recruitment and absorption of some of the casual workers in permanent and pensionable terms, stating the criteria used to retain or dismiss some of the casuals who have served for long.

(3) State whether the proper procedure was followed in absorbing the casual workers and provide evidence of when interviews were conducted, if any, and a list of the individuals who were eventually appointed to the various positions.

(4) Table evidence of payments made to casuals by the County Government from Financial Year 2022/2023 to date, outlining any measures in place to ensure that all casuals are paid their dues on time, including any arrears of wages.

Mr. Speaker, Sir, I will proceed to my second Statement.

#### CROP INSURANCE SCHEME BY THE COUNTY GOVERNMENT OF BUNGOMA

I rise, pursuant to Standing Order No.53(1), to seek a Statement from the Standing Committee on Agriculture, Livestock and Fisheries regarding the crop insurance scheme offered to farmers in Bungoma County for the Financial Years 2022/2023 and 2023/2024.

In the Statement, the Committee should –

(1) Provide a list of all insured farmers, including their locations, the respective insurance companies providing crop insurance under the scheme, signed contracts between farmers and the insurance companies, and the terms of the insurance cover including the benefits and the variety of crops covered.

(2) Present evidence detailing the tendering process through which this insurance was awarded and ascertain whether due process was followed.

(3) State how much money the Bungoma County Government has set aside for crop insurance, how much has been utilized for the said function, and provide evidence of remittance of payments to companies providing crop insurance services to farmers.

#### PROCUREMENT OF MEDICAL INSURANCE FOR EMPLOYEES OF BUNGOMA COUNTY GOVERNMENT

I rise, pursuant to Standing Order No. 53 (1), to seek a Statement from the Standing Committee on Health regarding the procurement of medical insurance for Bungoma County Government employees for the Financial Years 2022/2023 and 2023/2024.

In the Statement, the Committee should-

(1) Provide information on the procurement process leading to the award of the tender for the provision of medical insurance for Bungoma County Government employees to Britam Insurance Company.

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(2) State whether the views of the employees or any form of participation involving employees of the country was conducted before Britam Insurance was awarded the tender.

(3) Find out whether the tender was competitively sourced and provide a list of all other bidders who expressed interest and the reasons why their bids failed.

(4) Furnish the Senate with the medical insurance policy documents and the contract agreement between Britam and Bungoma County Government for the provision of medical insurance, highlighting the contract sum, the number of staff and their beneficiaries covered, and the scope of benefits, stating whether Britam has honored the agreement.

(5) State the number of employees who benefitted and those currently benefitting from the medical insurance scheme in the Financial Years 2022/2023 and 2023/2024, further stating the amount of money remitted annually to Britam for the service.

Thank you.

**The Speaker** (Hon. Kingi): Next Order.

## BILL

### *First Reading*

#### THE CONSTITUTION OF KENYA (AMENDMENT) BILL (SENATE BILLS NO.17 OF 2024)

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

**The Speaker** (Hon. Kingi): Next Order.

## MOTION

#### ADOPTION OF REPORT OF THE MEDIATION COMMITTEE ON THE DIVISION OF REVENUE BILL, 2024

**The Speaker** (Hon. Kingi): The Co-Chairperson, Mediation Committee, proceed.

**Sen. Kathuri:** Thank you, Mr. Speaker, Sir. I beg to Move the following Motion-

THAT, the Senate adopts the Report of the Mediation Committee on the Division of Revenue Bill (National Assembly Bills No.14 of 2024), laid on the table of the Senate on Wednesday, 29<sup>th</sup> May, 2024, and that pursuant to Article 113(2) of the Constitution and Standing Order No.167(3) of the Senate, approves the mediated version of the Bill.

Mr. Speaker, Sir, Article 218(1) provides that at least two months before the end of each financial year, there shall be introduced in Parliament a Division of Revenue Bill, which shall divide revenue raised by the national Government between the national and county levels of Government.



Pursuant to this constitutional provision, the Division of Revenue Bill, 2024 (National Assembly Bills No.14 of 2024) was published vide a Kenya Gazette Supplement No.57 of 8<sup>th</sup> March, 2024.

This Bill was introduced in the National Assembly, debated and passed without amendments. Consequently, in accordance with Article 110(4) of the Constitution, the Bill was referred to the Senate for consideration.

The Bill provided for the projected sharable revenue for FY 2024/25 at Kshs2.948 trillion. This revenue was proposed to be shared as follows; National Government Kshs2.540 trillion, county governments, Kshs391.116 billion; and, Equalization Fund, Kshs7.852 billion.

Mr. Speaker, Sir, the Bill was read for the First Time in the Senate on Wednesday, 27<sup>th</sup> March, 2024. Consequently, debated and approved with an amendment on Thursday, 2<sup>nd</sup> May, 2024.

The amendment provided that the National government should be allocated, Kshs2.524 trillion, while the county government should be allocated Kshs415.952 billion.

The amended version of the Bill was transmitted to the National Assembly for consideration. The National Assembly considered and rejected the Senate amendments on Monday, 13<sup>th</sup> May, 2024. Consequently, pursuant to Article 112(2)(b) of the Constitution, the Bill was referred to a Mediation Committee

Pursuant to Article 113(1) of the Constitution, the Speakers of both Houses constituted the Mediation Committee comprising of nine members from each House.

Mr. Speaker, Sir, the Committee was mandated to –

- (i) consider the Division of the Revenue Bill; and,
- (ii) attempt to develop a version of the Bill that both Houses will pass.

The Committee sat and considered our mandate accordingly. I wish to report that the Committee held a total of three meetings. These sessions were lengthy since each party was focused on convincing the other and justifying that their proposed allocations were the best for consideration.

The Committee made a number of observations as indicated in the Report, among them –

(a) Devolution has played a critical role in the development of various regions in the country, and that devolution was working. The proposed allocation to county governments is insufficient and requires an increase.

(b) In the effort to ensure expenditure matches the projected revenue collection, the national Government through the National Treasury and Economic Planning had rationalized the projected budget for the Financial Year 2024/2025. The projected total expenditure had been revised from Kshs4.1 trillion (as contained in the 2024 Budget Policy Statement (BPS) to Kshs3.9 trillion.

(c) The trend in revenue performance in the current FY 2023/24 was not quite positive, there is increased debt service expenditure, and the national governments had the commitment to implement a fiscal consolidation plan targeting to reduce the fiscal deficit to an estimated 3.9 per cent of GDP in Financial Year 2024/2025.

Members of the Committee; nine from the Senate and nine from the National Assembly, besides what they had arranged when they dropped the Bill, agreed that more resources needed to go to the counties. When we started negotiating, they had started

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increasing exponentially the figures from Kshs391 billion. This shows that both sides of the Committee were respecting devolution.

Mr. Speaker, Sir, considering all the counter offers made in the negotiation, and the strict fiscal consolidation path the Government had committed to, the Mediation Committee resolved that the allocation for Financial Year 2024/ 2025 to both levels of government be as follows –

- (a) the National Government Equitable share, Kshs2,540,153,902,710; and,
- (b) the County Governments Equitable share, Kshs400,116,788,147.

I am surprised the Senators are unhappy that we have hit the Kshs400 billion mark this Financial Year.

*(Applause)*

Mr. Speaker, Sir, the mediated version of the Bill is attached to the Report of the Committee indicating the allocations as per the aforementioned recommendation.

Mr. Speaker, Sir, I appeal to all the Senators of this distinguished House, to support the recommendation of the Committee. This will ensure that the county governments get an additional Kshs9 billion from what the National Assembly had earlier proposed in the Bill at Kshs391.1 billion.

We agreed that moving forward, in the next three years, we are going to the Kshs500 billion mark. We agreed with the National Assembly Committee that there is so much money left at the National level and next time they will unbundle all the devolved functions in water, agriculture and health, so that more money can go to the counties.

In conclusion, because this is a straightforward matter, I appreciate the Members of the Committee for their dedication to ensure the assigned task was completed in a timely manner. I thank the following Members who were in the Mediation Committee -

- (1) Sen. (Dr.) Boni Khalwale, CBS, MP
- (2) Sen. Fatuma Dullo, CBS, MP
- (3) Sen. Moses Kajwang', MP
- (4) Sen. Agnes Muthama, MP
- (5) Sen. Jackson Mandago, EGH, MP
- (6) Sen. Mohamed Chute, MP
- (7) Sen. Eddy Gicheru Oketch, MP
- (8) Sen. Mohamed Mwinyihaji Faki, CBS, MP

Further, I commend the secretariat assigned to the Mediation Committee for the facilitation provided to the Committee in discharging its mandate.

Mr. Speaker, Sir, the National Honors Advisory Committee decides on who to be decorated with a title and four Members out of the nine Members were decorated with the title of Chief of the Order of the Burning Spear (CBS). Sen. Jackson Mandago was awarded the title of the Elder of the Golden Heart (EGH) and yours truly, Sen. Kathuri Murungi, with Moran of the Order of the Golden Heart (MGH).

One of the Senators who sat in that Committee was here, and I do not know where he has gone. I recommend that Sen. M. Kajwang' be given a medal for this wonderful job. Sen. Kavindu Muthama and Sen. Mohammed Chute, from Marsabit, also deserve a medal.

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Sen. Oketch Gicheru, you also need that medal. I thought you deserved that medal, but I saw you still have some time to do the mediation. Nonetheless, I pray that you also get that medal.

Mr. Speaker, Sir, I also thank you for giving us this opportunity because the Kenyans are happy with this Committee as we have increased money to the counties. I will only ask the Governors to do the honourable thing by taking care of the Kshs400 billion.

Our two Committees of County Public Investment and Special Funds Committee (CPIC) and County Public Accounts Committee (CPAC), make sure you are up to date from the next financial year, so that you can oversight the governors who are in office. Come up with a formula that will make you audit the 2023/2024 Financial Year, and by next year when the Auditor-General brings the report, you also audit this Kshs400 billion. We want to see how this money will be spent.

Since we are the defenders of devolution as the Senate, I am not sure whether we have the Oversight Fund or what we will use to make sure that we have this Kshs400 billion. Unfortunately, we can give Kshs400 billion to the counties and we do not have much money to oversight this Kshs400 billion.

We can give them as much money as they want, but then, we also need money for oversight so that this money can go to the right course. I am not campaigning for the Oversight Fund, but these people need to be oversighted.

This afternoon we met as the Liaison Committee. The Committees of the Senate are starved of resources to do oversight. We are trying to look for funds. Where do we get the money? Perhaps, in Contingency which is meant for *Ad Hoc* Committees and Mediation Committees.

The other thing that I will ask from the leadership of this House; both the Majority and Minority side, make sure that in this Budget we have resources for the Committees. Committee work is almost stalling because of lack of resources.

With these many remarks, I ask my brother, Sen. (Dr.) Khalwale, to second this Bill.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Speaker, Sir. Allow me to congratulate the Mover of the Motion and remind him that because he has taken this chance to recommend various accolades for distinguished Members in this House, he should also remember that I deserve a bigger medal than CBS. I cannot be at the same level as my sister, Sen. Kavindu Muthama, for obvious reasons.

*(Laughter)*

**Sen. Kavindu Muthama:** Mr. Speaker, Sir, on point of order.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I, therefore, rise to second this very important Motion on a day when the whole country is happy. Kenya is happy because if there is one area where all Kenyans agree, is that the real measure and indicator of the Constitution was the principle of devolution.

According to our National Anthem, we are supposed to build this country together. As we build the country together, our National Anthem envisages shared glory.

I have seen 20 budgets in my life as a Parliamentarian in this country. In all these 20 budgets, there is a skewed allocation of development funds. The country never moves together. It is only through devolution that we see an attempt for the country to move together.

I am happy that the National Assembly for the first time, led by the Leader of Minority, Hon. Opiyo Wandayi, stood with this Senate when the figure of Kshs415 billion went to that House.

Mr. Speaker, Sir, further, during our mediation, several Members of the National Assembly stood with this Senate. The country is now coming of age. People are starting to appreciate the role of devolution.

Mr. Speaker, Sir, in 2013 when we were debating from the garage at the Kenyatta International Convention Centre (KICC) and at that time, you were a young lawyer and you had just won your seat as the Governor of Kilifi---

**The Speaker** (Hon. Kingi): What is your point of order, Sen. Kavindu Muthama, before I address the Senator?

**Sen. Kavindu Muthama:** Mr. Speaker, Sir, is it in order for Sen. (Dr.) Boni Khalwale to bargain for whatever he is asking for, and at the same time, say that we are not on the same level? He has also quoted you and me yet, we are in the same level here in the Senate working together.

**The Speaker** (Hon. Kingi): Sen. (Dr.) Boni, just stick to seconding this Motion.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, there is something called stagecraft.

**The Speaker** (Hon. Kingi): Just proceed to second the Motion.

**Sen. (Dr.) Khalwale:** That is exactly what I am doing.

**The Speaker** (Hon. Kingi): Please, take my advice because you may need it in the next few minutes.

*(Laughter)*

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, this is a very unique Motion. If the Speaker was to be offended and throw me out, he would create a serious crisis in the country because this Motion would collapse.

*(Laughter)*

So, today, I am going to enjoy my space.

I was saying that in 2013, the shareable revenue was only Kshs210 billion. Five years later, it came to Kshs302 billion and five years subsequently later on, it came to Kshs370 billion. Last year, it grew up to Kshs385.4 billion.

Mr. Speaker, Sir, I would like to report Sen. Osotsi and Sen. Sifuna to this House. They have never missed a chance in Luhyaland to go at my throat and say that I do not want more money to be taken there. I would have wanted more money to be brought last year, but last year was unique.

We are all men and women of this country. We were coming out of the post-Covid-19 recession. We had the problem of war and conflict in Ukraine and the so-called “handshake” Government had mismanaged the National Treasury. However, right now,

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things have come back to normal. You can see not only the two sides of this House, but even the two Houses of Parliament are united in the need for us to take more money to counties.

I, therefore, use this opportunity to congratulate you and the Speaker of the National Assembly, hon. Wetangula, and the Member of your Houses for this great industry. Which brings me to my third point.

My third point is that the Bible teaches that to those whom more is given, more is expected. We have given the governors more money and in the same Bill of Division, we have given the President more money. We would like the 47 governors to humble themselves and know that this is not their money, open themselves up and submit themselves to oversight.

Similarly, I appeal to the National Assembly to also step up their game because we also left a fortune for the national Government. They should not be seen, even in one day, to be an appendage of the Executive. The National Assembly must oversight the national Executive. For this to be possible, there has been a bit of talk, tussle, and confusion over the Oversight Fund.

Mr. Speaker, Sir, this is the time for us to make sure that we not only operationalize the Oversight Fund, but we also address the concerns by the nominated MPs and what is due to them be unlocked. It should be unlocked so that our Nominated Members of this House can also play their constitutional role of oversight.

I would like nominated Members of this House to also be innovative. They should go and think on the structure of oversight that they want to conduct. When you ask the Senator for Nandi or Meru what they want to do in their oversight, it is easy for them.

*(Sen. Methu spoke off record)*

Order, learn how to debate.

**The Speaker** (Hon. Kingi): Sen. (Dr.) Boni, if you need any protection, seek it from the Chair.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I beg you to protect me from the young Senator for Nyandarua.

**The Speaker** (Hon. Kingi): Senator for Nyandarua, you do not shout at a Member who is contributing.

Proceed.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Speaker, Sir. I was saying there is need for this confusion over the Oversight Fund to end. As we support the fact that this money should be given to Nominated Senators, I would like them to be innovative.

The elected Senators know---

*(Sen. Orwoba spoke off record)*

**The Speaker** (Hon. Kingi): Sen. Orwoba, if you need to catch the Speaker's eye, you do not shout. I do not have your name indicated here for intervention. Continue pressing until I see you on my dashboard.

Proceed Sen. (Dr.) Khalwale.

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**Sen. (Dr.) Khalwale:** Thank you, Mr. Speaker, Sir, I am emphasizing the fact that the elected Senators know where they are going to focus during oversight. It is important for Nominated Senators to tell us how they will tailor their oversight. Probably, they will want to tailor their oversight on issues of the disabled, women---

**The Speaker** (Hon. Kingi): Sen. (Dr.) Boni, there is a point of information from Sen. Gloria. Would you wish to be informed by the hon. Senator?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, because she is very knowledgeable, I plead with you that she be given a chance to speak after me, so that she informs me during her time.

*(Laughter)*

**The Speaker** (Hon. Kingi): What is your point or order, Sen. Eddie Oketch?

**Sen. Oketch Gicheru:** Mr. Speaker, Sir, I am rising on a point of order on restricting debate, unless I did not hear the Motion that was moved here by the wonderful Senator for Meru and a serious Member of the Njuri Ncheke Council. He got up here and gave a wonderful Report on the mediation that was done yesterday, and which we have worked hard for. The Senator for Kakamega was also a Member of that Committee.

He has been asked to second that Motion. Where is the issue of the Oversight Fund coming from in this Motion? We have a lot of things to discuss here in order to enhance the functional element of vertical sharing of revenue, and I thought the Government's Chief Whip in the Senate understood how important this airtime is, so as to dispense on that issue.

Mr. Speaker, Sir, please, restrict him so that he can focus on the Motion at hand and not put things that are not in this Motion. They are not relevant to us at all. We can discuss them because they are important, but at another time. This Motion is equally important, and we should not buy time from it, so that we discuss the other things he has with the women Senators in the House.

We can discuss those other things later.

I thank you.

**The Speaker** (Hon. Kingi): Sen. Oketch Gicheru, I waited to hear what Standing Order you are raising your point of order on. Having failed to cite the particular Standing Order, your point of order stands as a nullity. However, the Senator for Kakamega County, you are very much aware of the rule of relevance. Therefore, as you second this Motion, abide by that rule. Proceed and conclude.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Speaker, Sir. If the people of Migori County will hear and record that the Senator of Migori does not know the role of oversight on the money that we are taking to Migori, he will be lucky if after five years they will still be having confidence in him.

*(Laughter)*

Mr. Speaker, Sir, as we go to oversight these billions of Shillings that we are taking to counties, let us be serious. This is because, in a number of counties, governors

have created an unlawful, unconstitutional office for their wives, which they call the Office of the First Lady.

I challenge Members of this House and encourage them to go and read the advisory opinion by the respected former Attorney General, Prof. Githu Muigai, when he was asked to give his opinion on the relevance of the Office of the First Lady of the President. If you read it, then you will understand why this Senate should never allow a budget for these offices of the First Lady.

As we speak today, there is so much wastage going on across our 47 counties. I end by referring our 47 governors to a 'young' boy known as Captain Ibrahim Traore, who does not have university education. He joined the army in Burkina Faso. I do not support the unconstitutional means he used to change the Government, but he has taken the presidency of Burkina Faso, and instead of changing his cars, he has used that budget to buy tractors, so that he can open up the agricultural sector of Burkina Faso.

This aggrandizement that we are seeing governors involved in, if you see the kind of vehicles that fly around our counties, if only they could be patriotic like His Excellency Captain Ibrahim Traore, our counties would truly open up their agricultural potential.

Mr. Speaker, Sir, I second. Thank you very much.

*(Question proposed)*

*(Interruption of debate on Motion)*

Proceed, Sen. Cheruiyot.

## PROCEDURAL MOTION

### LIMITATION OF DEBATE ON MOTION

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Speaker, Sir, I beg to move the following Motion-

THAT, pursuant to Standing Order No.111, the debate on the question of Consideration of the Report of the Mediation Committee on the Division of Revenue Bill (National Assembly Bills No.14 of 2024) be limited to three minutes and a maximum of ten Senators, five from each side.

**The Speaker** (Hon. Kingi): Hon. Senators, there are two options we can use to arrive to a consensus. We may debate this Motion, because it has to go through the normal procedure of a motion before Plenary, or we can strike a consensus and avoid the kind of time wasted on debating it. Should we, therefore, adopt the three minutes as proposed by the Senate Majority Leader?

**Hon. Senators:** Yes.

*(Loud consultations)*

**The Speaker** (Hon. Kingi): Hon. Senator, it is a matter we should agree. I do not need to take half an hour. Let me seek some wisdom from one or two of our seniors.

Proceed, Sen. Wambua.

**Sen. Wambua:** Thank you, Mr. Speaker, Sir. Through you, I appeal to Members-

--

**The Speaker** (Hon. Kingi): Just note that we are not debating. We are finding a consensus.

**Sen. Wambua:** That is true. Members should remember that this is not a debate on the Division of Revenue Bill. We already debated and passed it. We are just approving the mediated version of the Bill. There will be no need to debate this Bill again. Three minutes should be enough. Thank you.

**The Speaker** (Hon. Kingi): Could I seek the wisdom of Sen. Ali Roba on this matter?

**Sen. Ali Roba:** Thank you very much, Mr. Speaker, Sir. Since we had debated the Division of Revenue at length, and members---

*(Sen. Cheruiyot spoke off record)*

Sen. Ali Roba just give me a minute. What is your issue, Sen. Cheruiyot?

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Speaker, Sir, my Motion was in two parts. It was three minutes and a maximum of ten Senators.

**The Speaker** (Hon. Kingi): We are dealing with the first limit.

**The Senate Majority Leader** (Sen. Cheruiyot): Okay.

**Sen. Ali Roba:** Mr. Speaker, Sir, since we debated the Division of Revenue Bill, and every Member had enough time to contribute, I agree with you that three minutes should be more than enough for us. Thank you.

**The Speaker** (Hon. Kingi): Hon. Members, do we then go with three minutes?

**Hon. Members:** Yes.

**The Speaker** (Hon. Kingi): Thank you. We are now moving to the second limit of 10 Senators, five drawn from each side. Is it approved?

**Hon. Members:** Yes.

**The Speaker** (Hon. Kingi): That is wonderful. I will ask the Senate Majority Leader and the Senate Minority Leader to forward the list because I cannot go by this dashboard.

Sen. Wambua, you can go first as the Minority Leader forwards the list to me.

**Sen. Wambua:** Thank you, Mr. Speaker, Sir.

*(Several Senators stood up in their places)*

Is this the way that this list is going to be drawn? I thank the team that arrived at a figure that is---

*(Loud consultations)*



Order, hon. Senators. May Sen. Wambua be heard in silence, please. Proceed, Senator.

*(Resumption of debate on Motion)*

**Sen. Wambua:** Thank you, Mr. Speaker, Sir. I congratulate the team for doing a good job. However, I also challenge Members that going forward, so that we avoid these mediations on this Bill, one of the things that we should do immediately we come back from recess, is to push forward the agenda of unbundling devolved functions.

Once these functions are costed, and we know how much it is going to cost to roll out these devolved functions in our counties, it will become much easier to use an empirical formula to arrive at division of revenue.

I also take this opportunity to sound a warning to our 47 governors wherever they are, that it takes time, resources and intellect to push these amounts of money to the counties. When we come to do oversight on these funds, we do not want to hear governors crying that there is witch-hunting, or they are being targeted for whatever reason. As the House that has approved this amount of money to go to the counties, we should have the space to carry out proper and objective oversight on these funds.

Mr. Speaker, Sir, with those remarks, I support.

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

**Sen. Munyi Mundigi:** Asante Bw. Spika. Naunga mkono ile timu tuliyoichagua iende ikatutete. Walifanya kazi nzuri ingawaje hizo pesa hazitatoshia. Naomba magavana wa kaunti zote 47 wafanye kazi inavyofaa. Kazi watakayofanya itatusaidia.

Pia nakosoa *Members of Parliament* (MPs). Kazi ya kuangalia magavana wanavyofanya kazi ni ya maseneta wala sio ya wabunge wa Bunge la Kitaifa. Naunga mkono Serikali iweze kutupa pesa ambazo zitatuwezesha kuangalia vile ugatuzi unafanya kazi mashinani. Kwa hiyo, naunga mkono kwamba tunafaa kuongezewa pesa nyingi wakati mwingine ili ugatuzi uonekane mashinani.

Tunajua masuala ya maji, afya, elimu na kilimo hayafai kuwa yalivyo kwa sababu ya pesa hizi. Tunafaa tuajiri watu watakaoangalia mambo ya kilimo. Nawapongeza waliotutetea.

Naunga mkono.

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

**Sen. Osotsi:** Thank you, Mr. Speaker, Sir, for this opportunity to also give my views on the mediated version of the Division of Revenue Bill. I congratulate the team that was in the Mediation Committee with the National Assembly for the good work they have done. To argue for Kshs400 billion---

**The Speaker** (Hon. Kingi): Sen. Osotsi, would you wish to be informed by Sen. Abass?

**Sen. Osotsi:** Yes, Mr. Speaker, Sir. He is my neighbour; he can inform me.

**Sen. Abass:** I am not informing you. I am informing the Speaker. Mr. Speaker, Sir---

**The Speaker** (Hon. Kingi): Just take your seat, Senator; you are totally out of order. Proceed, Sen. Osotsi. If you want to inform the Speaker, you may approach him.

**Sen. Abass:** Pardon me. I want to inform the House.

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**The Speaker** (Hon. Kingi): Well, we do not have those rules. Proceed Sen. Osotsi.

Sen. Abass, if you have anything to share you may approach the Chair. The Chair is very friendly, you know that.

*(Sen. Abass approached the Chair)*

**Sen. Osotsi:** Thank you, Mr. Speaker, Sir. I started by congratulating the team on agreeing on Kshs400 billion, which really translates to an extra Kshs15 billion. Last year, we passed Kshs385 billion, and now we can say that since this Senate, we have passed an additional Kshs30 billion to our counties.

That is a huge amount of money. If you did simple arithmetic, it would mean that each of the 47 counties has got Kshs638 million since we came here.

Mr. Speaker, Sir, I also agree with the Committee resolution that we shall now push this to Kshs500 billion. I hope that happens because when we get in there, we shall have this tussle. Again, if you do simple arithmetic on the Kshs3.9 trillion that the national Government wants to put in the budget it sums up to Kshs585 billion, which is Kshs185 billion more than we are approving today. We look forward to the money going to our counties and being used well to provide services and development to our people.

However, as we pass this, we must also deal with the problem of late disbursement of funds to counties. This is chocking our counties. If we have a three or four-month delay, it affects the planning and exposes the money to corruption and other challenges in our counties.

I would wish that the committees involved such as the one led by my neighbour Sen. Abass together with the Standing Committee on Finance and Budget can look into this issue of delayed fund disbursement.

It would be a nice thing to pass this and give 50 per cent of the money to the counties immediately while the remaining balance is disbursed monthly. That would make sense in most counties. However, the situation is that if we have delayed disbursement of money to counties then you have created more problems. Money is misappropriated because of the challenges that come with the delay.

I support the Report and---

**The Speaker** (Hon. Kingi): Your time is up. Proceed Sen. Abass.

**Sen. Abass:** Thank you, Mr. Speaker, Sir. I thank you for your consideration being the chair of the Standing Committee on Devolution and Inter-Governmental relations. I support and commend the Mediation Committee. Even our counterparts in the National Assembly have seen that we can stand on our own and move things along.

Even as we increase the money to Kshs400 billion, what is going on in the counties is very unfortunate. Yesterday we were with the Controller of Budget (CoB) considering some of the accounts in Garissa County. We were shocked to hear that one county has 300 commercial bank accounts.

You wonder what kind of money is being used to open all these accounts. It is the onus of this House and our responsibility to fight for counties. We must also fight to oversee them, so that this money can be used appropriately.

As it is, there is a lot of seepage, misuse, and low priorities. I request my colleagues that this time around we must be serious. Another thing is that there are so many pending bills. They come because of the changing and new assumptions of offices.

The County Treasury persons and former governors, have no accountability. Money is stolen left and right. They do not care whether the money is paid or not because they are leaving office. We need to also come up with a Bill to safeguard the resources of the counties at the time of assumption of office.

I thank you.

**The Speaker** (Hon. Kingi): Proceed, Sen. Oketch Gicheru.

**Sen. Oketch Gicheru:** Mr. Speaker, Sir, within these three minutes, I want to thank the House for sending us to this Mediation Committee. We had a very bad experience yesterday. I am never in the habit of disrespecting the Speaker or Chair, but we had a situation where one Member got up and disparaged the Committee, that worked very hard for this. He even indicated to the public that as Senators we had failed to fight for what he thought was okay for the counties. That was Sen. Cherarkey.

Mr. Speaker, Sir, I emphasize that the Committee worked very hard. It is on HANSARD. I will bring that complaint officially to you. It put me in a very bad situation with Sen. Wakili Sigei, the Temporary Speaker at that time. I am sorry if he felt that I disrespected him. I really honour your chair.

When we send Members to the Mediation Committees, they usually do a lot of work, and they need to be appreciated. The Council of Governors (CoG) had given up at Kshs391 billion.

For these Members to go and push until we got to Kshs400 billion, they did an excellent job. I wanted to clarify this. We worked hard and we got to the Kshs400 billion mark that added the counties more than Kshs15 billion.

I advise those who go for this mediation in the future, that the law advises and supports you. If we could not get to a point where we could have agreed, then this country would have shut down. Advisory opinion of the Supreme Court of Kenya No.3 of 2019 says that there is no way the National Assembly can proceed to go to appropriation or even the Finance Bill without us passing this Division of Revenue Bill.

Whenever you go for mediation feel armed. The law supports you and they cannot force our hands to what the law does not support. Next time anyone goes for mediation on the Division of Revenue Bill, they should be armed with the instruments of the law. We did very well.

I support members that those functions that need to be enhanced to make sure money is going to counties is what we need to fight for going forward. This is because counties do not have opportunity to borrow money like the national Government should they get stuck with budgeting that we did. We must support all monies to go to counties.

*(The Red light was switched on)*

Mr. Speaker, Sir, kindly allow me one minute to finish the last thing I wanted to say.

**The Speaker** (Hon. Kingi): You have a minute.

**Sen. Oketch Gicheru:** The next fight we must have about the National Assembly being very slow in auditing financial reports---

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

Proceed Sen. Veronica Maina.

**Sen. Veronica Maina:** Thank you, Mr. Speaker, Sir. First is to commend the mediation team that has done this mediation. One of the things that we can now clearly state to the National Assembly and the Senate is that Bills that require mediation can be mediated in very few days and solutions can be found. It is just the goodwill that is required between the two entities of Parliament to ensure that all mediations are not failing.

When we look at the Division of Revenue Bill, this is one Bill that I would call technical, but it is also very procedural because it is a Bill that needs to be discussed now and again during every financial year.

Mr. Speaker, Sir, the trend that has been set now by this mediation team speaks to the fact that we should not be having hiccups or we should not be having any roadblocks towards mediation and settlement of issues that are just obvious and issues that should be resolved.

The Senate was pushing for Kshs415 billion and we have seen that at least we have an additional 15 billion to the projected estimate of Kshs391 billion that the National Assembly had projected in the Division of Revenue Bill.

Mr. Speaker, Sir, the revised version shows that more resources can be committed to the counties. It also shows that the Senate is very dedicated and committed to ensuring that devolution succeeds and that counties have more resources. We have seen the exposure counties have gone through during emergencies, including the flooding that has occurred in the nation.

More resources should now be sent to the counties, an affirmation of devolution and transformation of the lives of the people so that Kenyans can come to a point of appreciating that devolution was intended to improve their lives. It is a very good thing that the mediation team has done. They should share their notes with any other mediation teams.

Mr. Speaker, Sir, there are many Bills on your desk; between your Office and the National Assembly which will require this mediation. The delay and the clogging that has happened, especially when Senate Bills are sent to the National Assembly, means now that should be unclogged. So, put in more mediation teams for those Bills that have not been agreed upon, let us confidently put mediation teams and give them timelines.

**The Speaker** (Hon. Kingi): Sen. Ogola.

**Sen. Ogola:** Thank you, Mr. Speaker, Sir. I rise to support the mediation committee's report and to congratulate them from the word go. The committee has made the Senate proud because that is a major function of the Senate.

There are two levels of Government as spelled out in the Constitution and there is no reason why the counties would not be granted the required amount of monies to perform their duties.

I was not initially very happy with the figure of Kshs401 billion as agreed by the mediation team. I intended to go with what the Senate initially had proposed of Kshs415 billion of the functions that the counties performed.

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In deciding which functions the counties were going to perform, Kenyans were very clear that they wanted key functions like health, water, lands and agriculture devolved. However, to perform some of these functions to the expectations of our people requires resources.

The other day this country had serious issues with health sector. All Kenyans asking what governors were doing to mitigate the situation. So, I support the negotiated amount and plead that more funds be channelled to counties in the future.

There is a lot of duplication of functions, for example, health. It is primarily a function of county government, but a lot of its resources are controlled by the Ministry of Health. If they can release funds that they are holding for primary health care activities, then more money will go to counties.

Agriculture is another devolved function, but its activities are controlled from the Ministry's headquarters. Every day we struggle with the lack of extension officers in our counties. If we had these officers in counties, there would be more food production in this country.

I support the mediation committee and the figures that they have achieved.

**The Speaker** (Hon. Kingi): Sen. Wafula Wakoli, you have the Floor.

**Sen. Wafula:** Asante, Bw. Spika. Ningependa nichukue muda mfupi sana kama dakika mbili na moja itakayosalia nimzawadi Sen. Mandago ili aweze kutaja jambo moja au mawili.

Kwa kifupi, shilingi 400 bilioni sio pesa kidogo. Mara nyingi tunapouliza maswali magavana, wengine hupandwa na hasira na jazba na kupinga maseneta kufuatilia jinsi fedha hizi zinavyofanya kazi. Ni lazima wajue sasa hivi wanatusikiliza pamoja na watu katika kaunti ambazo tunatoka, Biblia inasema kwamba iwapo umepewa vingi, ni lazima uwajibikaji uwe wa hali juu.

Tunajitolea mhanga tokea sasa kuhakikisha ya kwamba wanawajibika kwa fedha tunazowapa. Ni lazima mabilioni haya yawape vijana wetu kazi. Pia walemavu na wamawake wapewe kazi na iweze kuonekana katika vitabu vya hesabu.

Pesa tunazileta mashinani. Kwa hivyo, ni lazima wanakandarasi na wanabiashara walipwe pesa zao kwa wakati unaositahili. Madeni ambayo tunayaona kila uchao, ni lazima yalipwe ili kaunti zetu ziweze kuonekana zinafanya kazi kwa mujibu wa Katiba.

Juzi, tumeona katika uchambuzi wa Mdhibiti wa Bajeti akisema kuwa baadhi ya magavana wako na akaunti nyingi katika benki zisizoeleweka na hazijulikani zinafanya nini. Ni lazima wawajibike.

Asante, Bw. Spika, na ninamkaribisha Sen. Mandago kwa dakika moja aweze kutaja mambo mawili kwa wananchi wa Kenya.

**The Speaker** (Hon. Kingi): That one minute is almost gone.

**Sen. Mandago:** Asante, Bw. Spika. Mr. Speaker, Sir, I agree with what Sen. Oketch Gicheru has said. As Members of the mediation team, it is not that we, as Senators, would not want to have as much resources going to the counties, but we must be reasonable to the performance of the economy and the current state.

Let me also say to the Speaker that because of the current situation where we have governors in particular counties who have refused to even honour summons to the Senate. For instance, the governor of Isiolo County. There is no single mortuary in the entire

county. People of Isiolo County are suffering going to Meru and other neighbouring counties for medical care and morgue services.

Even we, as the Senate, fight to have resources increased to go to counties, in future, we may consider channelling those funds through Conditional Allocation, so that it can benefit specific programmes, which will be felt by the public and boost economies of our counties.

Finally, it is imperative for governors to ensure that they pay verified pending bills that are in their counties. Governments are perpetual and they cannot purport that since they were not there during that period, they cannot pay.

**The Speaker** (Hon. Kingi): Sen. Mandago, your minute is over.

Sen. Ledama Olekina, you have the Floor.

**Sen. Olekina:** Thank you, Mr. Speaker. Sir. Let me begin by appreciating the work done by our colleagues. Although I do not support the report, I appreciate the work that they did.

I do not support this mediation report for the following reasons. Giving excuses that county governors are not using the money appropriately is not enough for the role that we play.

Mr. Speaker, Sir, the Kshs9 billion that we fought for, which is what these county governments are eventually going to get, is peanuts. The national Government is notorious for coming up with projects that they want county governments to fund. The projects are such as the industrial parks and the Community Health Promoters (CHPs) where the President says they will fund it at 50 per cent and governors also fund it at 50 per cent.

I completely disagree with the Committee for having settled for an extra Kshs9 billion. It is very misleading when you give reasons and say that the amount going to county governments is about 24 per cent. The current accounts that we are looking at are accounts for the financial year 2020/2021. So, there is absolutely no way we can argue that more money is going to counties.

If you look at all these Integrated Personnel and Payroll Database Systems (IPPDS); these payment systems, automatically adjust to inflation. Why is it that the money that we send to county governments does not automatically adjust to inflation?

Mr. Speaker, Sir, I think we need to be firmer. We need to do what brought us here; to fight for more monies to go to county governments. We should not be in a rush to pass this because of the Appropriations Act. It is about time that we studied the decision by the Supreme Court and defined different Appropriation Acts.

If you go to the United States of America (USA), there are 12 Appropriation Acts. There are those that are mandatory. When Congress is unable to agree, they must pass for certain services to proceed.

Mr. Speaker, Sir, finally because of time, I thank Sen. Eddy for having developed a formula for what is discretionary and non-discretionary. For example, the Housing Levy and the National Social Security Fund (NSSF) are non-discretionary.

The only discretionary funds which are being denied to 29 counties are the county aggregation industrial park. What are we going to tell those counties? You come out and say that the policy is to develop industrial parks across the country and then you deny 29 counties that money? Come on!

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**The Speaker** (Hon. Kingi): Your time is up, hon. Senator.  
Sen. Chute, proceed.

**Sen. Chute:** Asante sana, Bw. Spika. Nachukua fursa hii kushukuru kamati ambayo pia mimi ni mwanakamati kwa kufanya kazi nzuri sana. Tulitumia masaa mengi kukubaliana na upande huo mwingine wa National Assembly kuhakikisha kwamba kaunti zinapata pesa zinazohitajika.

Tulikuwa na Kshs385 bilioni miaka iliyopita. Kama kamati, tulikaa masaa mengi na baadaye, tukakubaliana pesa ambazo pia Serikali inaweza kusaidia kaunti, ni Kshs400.1 bilioni. Ni vizuri kaunti zijue kwamba Seneti inaunga mkono ugatuzi. Tunataka kaunti zipate pesa zinazohitajika ili maendeleo yafanyike.

Shida tuko nayo ni kwamba kaunti zingine zina shida ya kutumia pesa inavyotakikana. Maendeleo iko katika asilimia sita na 10. Kulingana na vile ambavyo Seneti inatafuta hizo pesa, tungependa sana kaunti zichunge pesa na maendeleo isikuwe chini ya asilimia 30.

Bw. Spika, kwa mfano, kaunti kama Marsabit, tuko na shida kubwa. Pesa inafujwa na Seneta akiuliza, gavana anatuma watu kwa redio kwenda kusema kwamba kabila lake linakuwa *targeted*. Nilikuwa nasema kaunti za Waisilamu lakini Sen. Abass akanikataza--- Wanaharibu pesa na kuumiza raia ambao wanastahili kupata huduma katika kaunti hizo.

Ningetaka Mhe. Kindiki achunguze mambo ambayo yanaendelea katika Kaunti ya Marsabit. Gavana wa Marsabit anatuma wazee kwa redio waseme kwamba kabila fulani inakuwa *targeted*. Hadi unashangaa vile sisi hukaa kwa masaa mengi kutafuta pesa ili kaunti zipate pesa na ikifika huko, wanagawa katikati ya familia na marafiki.

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

*(Loud consultations)*

Well, Sen. Lomenen has no power to help you in this regard.  
May the Mover proceed to reply?

*(Sen. Kavindu Muthama spoke off record)*

Yes, the Senate Minority Leader cancelled it later.

*(Sen. Kavindu Muthama spoke off record)*

I know, but your name was struck out.

Proceed, Sen. Kathuri.

**Sen. Kathuri:** Thank you, Mr. Speaker, Sir. I thank the Senators who have contributed to this Motion.

Since we have some business to transact, I beg to reply.

Thank you.

*(Loud consultations)*

Mr. Speaker, Sir, they are asking me to continue talking, is it possible?  
**The Speaker** (Hon. Kingi): You have already seconded, kindly take your seat, we are moving forward.

Now, Serjeant-at-Arms, kindly ring the Division Bell for five minutes.

*(The Division Bell was rung)*

Sen. Kavindu, can you approach the Chair?

*(Sen. Kavindu Muthama approached the Chair)*

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

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

**The Temporary Speaker** (Sen. Veronica Maina): Hon. Senators, let us settle down. Serjeant-at-Arms, let the Doors be closed and the Bar drawn.

*(The Doors were closed and the Bar drawn)*

*(Loud consultations)*

Hon. Senators, let us settle down so that we proceed to Division. Sen. Cherarkey, Deputy Speaker, Sen. Chute and Sen. Abass, please resume your seats.

*(Several Senators sat at their places)*

I will now proceed to put the question. The question was put, and Senate proceeded to vote electronically.

Serjeant-at-Arms, check for any unattended card. Hon. Senators, please log out and log in again and proceed to vote.

*(Electronic voting in progress)*

Sen. Asige, I am advised that you are voting for Mombasa delegation. They will bring to you a manual vote.

Homa Bay is voting by delegation. Sen. Mariam, have you voted? Please approach the Clerk's Table. Sen. Asige, the Clerk will assist you. Just be patient.

## DIVISION

### ELECTRONIC VOTING

*(Question, that the Senate adopts the Report of the Mediation Committee on the Division of Revenue Bill (National Assembly Bills No.14 of 2024) laid on the Table of the Senate on Wednesday, May 29, 2024, and pursuant to Article 113(2) of the Constitution and*

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*Standing Orders No. 167(3) of the Senate, approves the mediated version of the Bill put, and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Abass, Wajir County; Sen. Cheptumo; Baringo County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Chute, Marsabit County; Sen. Dullo, Isiolo County; Sen. Gataya Mo Fire; Tharaka Nithi County; Sen. Kathuri, Meru County; Sen. Kavindu Muthama, Machakos County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kisang, Elgeyo Marakwet County; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Lomenen, Turkana County; Sen. Madzayo, Kilifi County; Sen. Mandago, Uasin Gishu County; Sen. Mariam Omar, Mandera County; Sen. Methu, Nyandarua County; Sen. Mungatana, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. (Dr.) Murango, Kirinyaga County; Sen. (Dr.) Oburu, Siaya County; Sen. Ogola, Homa Bay County; Sen. Oketch Gicheru, Migori County; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Tabitha Keroche, Nakuru County; Sen. Wafula, Bungoma County; Sen. Wakili Sigei, Bomet County; Sen. Wamatinga, Nyeri County; and, Sen. Wambua, Kitui County.

**NOES:** Nil

**ABSTENTION:** Sen. Asige; Mombasa County.

**The Temporary Speaker** (Sen. Veronica Maina): Hon. Senators, resume your seats.

The results of the Division are out---

*(Loud consultations)*

Sen. Lomenen, you are out of order. Can you resume your seat?

Hon. Senators, these are the results of the Division.

**AYES:** 31

**NOES:** Nil

**ABSTENTIONS:** 1

The "Ayes" have it.

*(Question carried by 31 votes to Nil)*

Hon. Senators, for the convenience of the House, I will reorganize the Order Paper and request the Clerk to call Order No.15.

Serjeant-at-Arms, can you draw the Bar and open the Doors, please?

*(The Bars were drawn and the Doors opened)*

**BILL***Second Reading*

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION  
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 10 OF 2024)

*(Sen. Cheruiyot on 29.5.2024A)*

*(Resumption of debate interrupted on 29.5.2024 – Morning Sitting)*

**The Temporary Speaker** (Sen. Veronica Maina): Sen. Onyonka was to resume the debate. He had a balance of seven minutes, but he is not here.

So, I will call Sen. Cherarkey.

**Sen. Cherarkey:** Thank you, Madam Temporary Speaker, for this opportunity. From the onset, I will only support this Bill on condition that we will do amendments.

This Bill is part of the larger proposed Bills by the NADCO. It is unfortunate that it did not come out as some of us expected. Had they allowed me to present my Solomonic wisdom in the NADCO process, we would have had a better version. Now that it lacks some wisdom, I want to briefly inject it with the Koitalel wisdom by saying a few things.

One, we should not be reactive to issues of elections and electoral laws. We have amended electoral laws until we have lost. When we were growing up, some of us who were at the bottom, we would wear a pair of short until we get two things that looked like torches on our buttocks. Our parents would do something on it by patching it up.

Some of us who grew up in village primary schools, the pair of shorts would be patched up until you could not know its initial colour. This is what we have done to the electoral laws in this country. We always do it with the convenience of what we believe should be right.

We have held this country at ransom. For example, the people of Banisa in Wajir County have not had an elected Member of Parliament (MP) after the death of their MP up to today. Also, in Tana River and Kakamega, we have lost Members of the County Assembly (MCAs). So, we have several wards and constituencies that do not have elected leaders. Under the Constitution, this is denying them the right to representation.

*(Sen. Tabitha Keroche and Sen. (Dr.) Khalwale consulted loudly)*

Madam Temporary Speaker, can you protect me from the Senator for Nakuru who is giggling?

**The Temporary Speaker** (Sen. Veronica Maina): Sen. Tabitha, can you just slow down the pace of that excitement?

*(Sen. Tabitha Keroche spoke off record)*

Sen. Boni Khalwale, it is in the interest of the Senate proceedings that you resume your seat. Go back to your official seat.

**Sen. Cherarkey:** Madam Temporary Speaker, if you listened to how the Senator for Nakuru was giggling and the history of Sen. Boni Khalwale, you can imagine. He has a track record of finding a special heart in women.

Audit, as captured under introduction of Clause 24 (a). I agree with this clause because we have been doing this. Let us audit an election after it is done. The audit should aim to improve. The report must be published and submitted to Parliament through the Justice Legal Affairs and Human Rights Committees (JLAHRC) we have.

There have been arguments about opening the election servers and *tufungue* server. We were told that some of the servers were in France. We were also told that there is Jose Carmago. So that we put those stories and others of *abunuasi* to an end, we must audit an election. When Parliament has considered the report, let it be made public.

This is also in the spirit of the 1997 Inter-Parties Parliamentary Group (IPPG) reforms. All election participants would congregate in the same place.

Number two is the delimitation of electoral units. There are over 40 constituencies that are called 'protected.' Over these 40 constituencies, my colleague mentioned a number of them. One is the Hamisi Constituency, and the others are in Vihiga County. We also have Bura and Galole constituencies. We have over 40 protected constituencies across the country, from the populous to non-populous regions.

According to the population quarter, a constituency defined as protected did not meet the threshold of 164,015 population as per the 2019 census. Many people do not agree with the 2019 census. At the end of the day, I agree with my brother, who said in the morning that the population determines a lot of issues. Apart from voting, it determines the allocation of resources.

You have heard the conversation on the revenue formula. We have just concluded passing the mediated version of the Division of Revenue Bill. The Senate and the National Assembly have agreed to allocate counties Kshs400.1 billion as opposed to Kshs415 billion. I do not know who permitted the committee to do this because we had agreed to allocate Kshs415 billion to counties. This is a story we will write in our books.

On a lighter note, I saw the Council of Governors (CoG) say they negotiated. I do not know where governors are in the negotiations and appropriation of the budget. We do not see the same energy and machismo the governors use to say that they have negotiated for Kshs400 billion on the ground. We do not see where the money we send to counties is going. We must see development.

Electoral units are about population, which are, in turn, votes that lead to resource allocation. It is always a big problem---

**The Temporary Speaker** (Sen. Veronica Maina): Sen. Cherarkey, would you wish to be informed by Sen. Methu, Nyandarua County?

**Sen. Cherarkey:** On the revenue formula?

**The Temporary Speaker** (Sen. Veronica Maina): Whatever it is that he wants you to inform you on.

**Sen. Cherarkey:** If it concerns the revenue formula, I would be cautiously seeking his information. However, he can inform me.

**The Temporary Speaker** (Sen. Veronica Maina): Sen. Methu, proceed.

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**Sen. Methu:** Thank you, Madam Temporary Speaker, for the benefit of my Vice-Chairperson and a respected legislator in this House, he has spoken about what governors have been saying. The CoG said that they negotiated. We even saw some of them thank the National Assembly for being magnanimous in ensuring that they get more money.

They should be alive to the fact that the National Assembly had proposed and passed that they only get Kshs391 billion. The Senate is the only people who have proven that they are supporting and pushing more money for devolution. It is not the Intergovernmental Budget and Economic Council (IBEC), the National Assembly or the National Treasury.

It is only the Senate that sought, fought and passed that more money be challenged to counties.

**The Temporary Speaker** (Sen. Veronica Maina): Thank you, Sen. Methu. Sen. Cherarkey, proceed.

**Sen. Cherarkey:** Madam Temporary Speaker, as the Bible says, as Jesus Christ grew in stature and wisdom, I am impressed and surprised with the wisdom of the young Senator as he grows in this House. I am happy that the information he has given is up to the point. I would not add anything because I find it useful and Solomonic.

We are discussing population. When we go to Murang'a County, we want to see the value of the money we have given to the governor and county government. This applies to Nandi and Kitui counties. I know the Senator for Kitui has been struggling to ensure the people of Kathonzweni and Kitui get value for money. We wish him well in his quest to become the governor. I am happy he is in good books with his party leader.

Another challenge with this Bill is that the National Assembly has become selfish. Everything in this Bill is indicated as 'the National Assembly.' Wards and constituencies are in counties. It is unfortunate that they want to exclude the Senate when doing these processes.

In the new Clause 24(b) they have said –

"The National Assembly shall, within fourteen days of the tabling of the revised preliminary report, consider the report and forward its recommendations to the Commission."

Where is the role of the Senate? Under Article 93 of the Constitution, 2010, Parliament has been defined as the Senate and the National Assembly.

I agree with Sen. Methu that the National Assembly is the biggest threat to the progress of Parliament and the Republic of Kenya. If they are not undermining devolution, they want to de-legislate the Senate.

Governors must get this right. The National Assembly proposed allocating Kshs391 billion to counties, and the Senate proposed Kshs415 billion. We pushed the National Assembly and the mediated teams to Kshs400 billion.

When it comes to legislation, the National Assembly wants to legislate the Senate out. Nonetheless, we are telling them that we are going nowhere. There was a guy called Steadman who did opinion polls and would put the party leader of Sen. Wambua at the top. I do not know where that gentleman went. If you were to do an opinion poll today on whether to scrap the National Assembly or the Senate, Kenyans would scrap the National Assembly because they have continued to embarrass all of us in Parliament.

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We cannot allow them to legislate us out of the work we are elected under the Constitution to do.

On the issue of protected constituencies, I expected the NADCO--- I thank Sen. Wambua because he appeared before NADCO. I was denied the chance to appear before NADCO. I wanted to tell them to ensure the 40 constituencies, including wards in Vihiga County, are protected. What happens when we pass the law? Where will the 40 constituencies go?

Sen. Mungatana has a protected constituency in his county. In North Eastern, we have protected constituencies. I wanted to talk to NADCO members in this House. Unfortunately, I cannot see some of them.

*(Sen. Methu spoke off record)*

No, he was in the other one, before the real boys went in!

If we pass this Bill, what happens to the 40 protected constituencies that have a right to be represented? This is why we must amend this Bill. People are crumbling for more counties. Like in Migori County, Kuria want a county. In Bungoma County, they want another county. In Kitui County, they also want to be subdivided into two counties.

If we scrap the 40 protected constituencies, it will be unfair. We would like to inform the people who did this report that they did a disservice to this country.

I do not fear to contradict myself. You know me well and saw me over the weekend. Proposal number five is to increase the number of the selection panel from seven to nine members.

I agree with what Sen. Osotsi said in the morning about the Parliamentary Service Commission (PSC). We are being selfish because the PSC itself cannot even run Parliament. How can they be part of funding the selection panel? They could not even defend our budget and the committees are almost collapsing. You heard the Chair of the Liaison Committee lamenting. How can Parliament be the House of lamentations?

The only lamentation we know is in the Bible, for us, who are Christians. In the Bible, we have the Book of Lamentation, *yani Kitabu cha Maombolezi*. The PSC itself cannot run Parliament; how can it have the wisdom to give a selection panel? We should allow politicians to do their job.

Madam Temporary Speaker, for example, when you go to Bunge Tower, you have to wait for about 30 minutes to board a lift up to the 25<sup>th</sup> floor. There is no network to use even on your phone. Additionally, the integrated security system is porous. If they cannot manage our security system within Parliament and a lift from the ground floor to the 25<sup>th</sup> floor where there is no network, what can you tell us?

I will bring an amendment to stop these Minority and Majority parties, including the briefcase parties, because we have sat in the decision-making of a ruling political party.

We have over 80 political parties and people are walking around with briefcases. When it comes to such serious matters you see parties that you have never known coming up such as the *Sisi kwa Sisi*, *Wao kwa Wao*, *Yule kwa Yule Party* and they want to give names to the selection panel. We must stop this.

On the issue of one person nominated by the Institute of Certified Public Accountants of Kenya (ICPAK) and by the Inter-religious Council of Kenya, it is very important. It should have the face of Kenya and gender parity. I agree that the current selection panel should be given a chance because they have not violated the law. The work that they have done must be re-looked at because they are using the taxpayers' money.

On the issue of the commission, I have seen that five people will form a quorum. I have heard people saying Mr. Wafula Chebukati in the previous election was the only one making decisions. I do not believe this because some of us were in Bomas. Mr. Wafula Chebukati consulted with the other commissioners.

The Cherera four behaved in bad faith. You cannot leave the work station and go somewhere else and issue a press conference as the chair. We have also chaired the committee. I am happy there is the Chair of the County Public Investment and Special Funds Committee (CPICSF) seated here. When the decisions of a committee are made, it is the chair who communicates. I do not want to see people blaming Mr. Wafula Chebukati.

In this Bill, it has stated that if the Chairperson of the IEBC is missing, then it does not stop the business of the commission. If somebody had kidnapped Wafula Chebukati and this law was not in place, what would have happened?

**The Temporary Speaker** (Sen. Veronica Maina): Sen. Cherarkey, Sen. Osotsi would want to give you some information.

**Sen. Cherarkey:** I do not need any information, please. My time is spent.

**The Temporary Speaker** (Sen. Veronica Maina): It has been declined, Sen. Osotsi. Continue Sen. Cherarkey.

**Sen. Cherarkey:** If Wafula Chebukati had been kidnapped, where would Kenya be now? We cannot allow this amendment from Azimio La Umoja, One Coalition Party. It cannot fly through our faces, and we must amend this. If the chair is not there, the commission should not function.

Finally, on technology, we must take it up to the level that we have confidence in it.

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

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

**Sen. Osotsi:** Madam Temporary Speaker, I rise on Standing Order No. 105 on Statement of fact.

Sen. Cherarkey has stated that this is the "Azimio amendment" when we know that this Bill before us is a product of the NADCO and Azimio was just one of the parties. Is he in order?

**The Temporary Speaker** (Sen. Veronica Maina): Sen. Cherarkey, the point of order is in respect to how that Bill has been presented and who originated the Bill. It originates from the work of the NADCO. Do you want to respond to your assertion of the Azimio amendments?

**Sen. Cherarkey:** Madam Temporary Speaker, I can respond to Sen. Osotsi at a funeral somewhere in Western this coming weekend.

**The Temporary Speaker** (Sen. Veronica Maina): Sen. Cherarkey, we are not in a funeral or that place that you are imagining. Respond on the Floor of this House.

**Sen. Cherarkey:** Madam Temporary Speaker, I am well guided. What I am saying is that Azimio was part of it, so it is still part of the NADCO report. Sen. Onyonka said in the morning it was a Kenya Kwanza's report. I am just saying a fact that already exists in Standing Order No.105. I can still replace that with the NADCO/Azimio proposal because Kenyans are aware of the proposals that came from the other factors.

In conclusion of the aspect of technology, let us not overrate technology. We should only be worried about hacking. Also, how many places have network in this country, for instance, Lokitaung', Namanga, El Wak in Mandera and Marsabit, are there network? Let us be realistic that it cannot be possible to use technology across the nation in terms of elections.

We should say let us use hybrid; both manual and electronic so that we are fair. Every Kenyan has a right to vote as it is a universal suffrage. If you introduce obstacles like technology, we will disenfranchise many Kenyans not to vote. Therefore, on the use of technology, I am proposing we use a hybrid system, where technology or the manual applies, so be it, so that we protect the integrity of elections.

I hope this will be the last amendment on election laws. We have amended these election laws until it has lost value. We do not even know the origin of the first law in 2011 after the promulgation of the 2010 Constitution.

I will only support this amendment with an amendment, but as it is, I reject it. I thank you.

**The Temporary Speaker** (Sen. Veronica Maina): Thank you, Sen. Cherarkey. Hon. Senators, before we proceed on to the next Senator to contribute to this debate, I have a communication to make.

*(Interruption of debate on Bill)*

## COMMUNICATION FROM THE CHAIR

### REVIEW OF RESULTS OF DIVISION ON REPORT OF THE MEDIATION COMMITTEE ON DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILLS NO.14 OF 2024

Hon. Senators, having reviewed the results of the Division under Order No.9 on the Report of the Mediation Committee in the Division of Revenue Bill (National Assembly Bills No.14 of 2024) and due to a technical system error, the results of the Division were as follows –

**AYES:** 31 not 32.

**NOES:** Nil.

**ABSTENTION:** Nil.

We have checked this error and it is being corrected under Standing Order No.90 on Errors corrected

“If, after an electronic or a Roll Call vote has been made, it is discovered that the number has been inaccurately reported or that an error has occurred in the names on the

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division lists, that fact shall be reported to the Senate and the Speaker shall direct that the necessary correction be made.”

That was brought to my attention by the clerk's desk, and I have directed that the necessary correction be made so that we have the accurate report.  
Proceed, Sen. (Dr.) Oburu.

*(Resumption of debate on Bill)*

**Sen. (Dr.) Oburu:** Thank you, Madam Temporary Speaker. I do not want to take long on this. First, I would like to thank you for giving me this opportunity. I would like to make a few general statements on elections.

The electoral process has gone through a very long history in our country. We used to have a system in this country where the President was everything. The President was the one who was budgeting for the Electoral Commission, holding funds for them and choosing the Chair of the Electoral Commission.

It was also the same President who was determining the calendar of elections. Those were very dark days. We used to have a one-party system. This one-party system was torturous to MPs.

I recall one time when I was a councillor during that one-party system in the Kisumu Municipality and there was a Kenya African National Union (KANU) disciplinary committee. This disciplinary committee was very ruthless. If you were charged with any offence of having offended the Government or having done any mistake or disagreeing with the leader, you would be called to appear before that committee in the morning.

If you appeared before that committee in the morning and they found you guilty, they would declare a verdict of guilty on you and take that matter to Parliament the same afternoon. If it came to Parliament, the Speaker would declare your seat vacant because the verdict of that committee meant that that you had been expelled from KANU.

Once you were expelled from KANU which was the only party, you did not have any other chance to go to another party to contest and that would become your end. People used to go before that disciplinary committee and kneel before them pleading with them in order to be exonerated.

Madam Temporary Speaker, if you ever got declared guilty, that was almost the end of your life. It was the end of everything that you had planned for in your life. I recall one very powerful Minister from Western Kenya who appeared before that committee, and he was almost crying. This is because if anything happened, his seat would have been declared vacant. The electoral commission would have declared that seat vacant and announced the date for election.

The date for elections would have been in a month's time and I can tell you, Madam Temporary Speaker, that within that one month, there would have been another MP here. This is because KANU usually nominated one candidate for those seats and yet it had the discretion of nominating more than one candidate for one seat. However, if they decided to nominate only one candidate, that one candidate would present his papers on the appointed date to the returning officer.



Madam Temporary Speaker, the returning officer was usually the District Commissioner (DC) and he or she would declare that the seat was won unopposed. Once that was declared, there would be a new MP before the one month expired. That would be the end of you because there was no other party.

Since those days, this country has gone through a revolution through a lot of struggle. People have even shed blood in order to get to where we are. There have been many changes. The new Constitution was godsent because elections dates are no longer managed by the President

I was in this Parliament when the President used to tell us that the date for elections would be announced by him. It used to be his secret weapon to deal with the opposition or whoever was trying to bring issues. Those days are long gone, and we are now discussing a Bill which gives the details of a select committee to select a chairman of the electoral commission.

This is a big revolution. I am happy that we are at this stage where we are even talking of auditing elections or going a process of auditing elections. This was unheard of and I am pleased about it even though we do not have a perfect Bill. The NADCO team sat and went through the whole electoral process, they identified those weaknesses, and they tried their best to do improvement on them.

Madam Temporary Speaker, I can see that some of us still have ideas on the improvements they want to do on amendments and that is their right. As per our Constitution, they have a right to do amendments. However, I hope that the amendments which will be made at the Committee stage will not dilute this Bill and take us back again to some dictatorial regimes or to some powers deciding who will be our chairman and commissioners of the electoral commission.

Right now, there are details on how a selection committee will be selected. I also hope that these improvements suggested here will be for the good and we shall never have a situation where we go back again to the situation of 2007 of fighting again.

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

**Sen. (Dr.) Oburu:** Yes, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Veronica Maina): Sen. Mungatana?

**Sen. Mungatana, MGH:** Madam Temporary Speaker, I am one of those people who want to always listen to the hon. Sen. (Dr.) Oburu because he oozes a lot of history and wisdom.

The information I want to pass to him is that the proposed amendments do not go towards diluting the NADCO Report. The proposed amendments go towards making sure that any moves or reports, will come to both the National Assembly and the Senate.

This is because if you read the Bill as it is, we are legislating ourselves out of work and we cannot allow that. It is just the definitional aspects and the improvements on how we handle issues that arise out of those issues.

For example, on the question of limiting the boundaries delimitation, that law has excluded the Senate. They will be reporting to the National Assembly and not us. Therefore, JLAC has picked up some of those things. I also wanted to persuade my senior to support those amendments. They are good for the Senate.

I thank you.

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**The Temporary Speaker** (Sen. Veronica Maina): Sen. (Dr.) Oburu, you can resume.

**Sen. (Dr.) Oburu:** Madam Temporary Speaker, I appreciate the information given to me by my colleague and we have been friends for a long time in this Parliament. I appreciate the amendments and I will not oppose them.

Sen. Mungatana has mentioned the delimitation of the boundaries will be taken to the National Assembly and I am concerned about that. It says then it will be taken back to the commission without coming to the Senate.

I do not support that provision in the NADCO Bill. I hope that expanding it to include the Senate will enrich it, rather than dilute it. I appreciate that quite a number of amendments being proposed are good.

Madam Temporary Speaker, I did not like some of them that were being proposed by Sen. Cherarkey, which are retrospective. They are taking us back. I did not stand here to criticize any Senator. I support the NADCO report. I also support my colleagues who have contributed before me and suggested amendments to it.

I support. Thank you.

*(Applause)*

**The Temporary Speaker** (Sen. Veronica Maina): Thank you, Senator. Sen. Munyi Mundigi, proceed.

**Sen. Munyi Mundigi:** Asante, Bi. Spika wa Muda. Naunga mkono Mswada unaozungumzia mambo ya IEBC. Ningeomba haya mambo yaangaliwe kwa njia inayofaa. Wale makamishna tisa tutakaowakubali waangalie mipaka ya maeneo Bunge inavyofaa.

Nakumbuka wakati tulichaguliwa, kulikuwa na shida ya malipo kwa wale waliopatiwa kandarasi ya magari ya kubeba watu waliokuwa wanasimamia kura. Mpaka wa leo, watu wa kaunti nyingi hawakupata zile pesa. Nakumbuka tulikaa kama mwaka mmoja hadi wakati niliposoma taarifa hapa, ndipo watu wengine wakalipwa.

Haya mambo yanafaa yaangaliwe na njia inayofaa. Tuliletwa hapa na wananchi na tumekubaliana kwamba mambo mengi yaende hadi mashinani. Serikali ya Kenya Kwanza inasema mambo ya kilimo na afya, yaende mashinani kwa mwananchi. Ndio maana siku hizi tunazungumzia mambo ya ugatuzi.

Mambo mengi yanaangaliwa na Wabunge wa Bunge la Kitaifa lakini watu wanaojua mambo ya kaunti ni magavana na maseneta. Hii ni kwa sababu baadhi ya mambo kama mashamba yamegatuliwa kwa kaunti zetu.

Bi. Spika wa Muda, ningeomba mambo ya mipaka yaaangaliwe, Kaunti ya Embu tuko na constituency nne. Hakuna hata moja inafaa kuguswa. Zibaki hizo constituency nne na Wabunge wanne na Seneta mmoja, women representative na gavana mmoja. Hii ni kwa sababu tukichukua mkondo mwengine tutaanzisha vita na haitakuwa vizuri.

Ningeomba wadi ziongezwe kwa sababu tuko na wadi chache. Kwa mfano, Mbeere North Ward iko na wadi tatu. Kuna moja inaitwa Evurore Ward ambayo ni kubwa. Inatoshana na wadi mbili kwa pamoja. Kama itawezekana, hiyo wadi igawanywe ziwe wadi mbili.

Upande wa Mbeere South, tuko na wadi tano lakini ukiangalia Mavuria Wadi, Mbeti South na Mwea pia nazo ni kubwa. Naomba wale watu watakaongalia haya mambo, wasipunguze wadi. Wanafaa waongeze wadi ziwe nyingi ili mwananchi afaidike.

Upande wa Embu North tuko na wadi nyingi. Kuna Nginda, Kirimari na Kithimu wards ambazo ni kubwa na ziko na watu wengi. Ningeomba wadi zingine ziongezwe. Mambo ya kusema watu waunganishwe na wengine haifai. Kuna wadi kama Runyenjes na Gaturi North ambazo ni kubwa sana. Kwa hiyo, ningeomba wadi za Embu zisipunguzwe hata moja.

Mambo ya mipaka pia yaangaliwe. Ukiangalia vijiji vya Mbeere North, utakuta kuna watu wako upande wa Kaunti ya Tharaka Nithi. Wakati wa kura wanapiga kura vizuri lakini kuna mgawanyiko kati ya watu wa Kaunti ya Embu na Tharaka Nithi. Utakuta wanapigania watu kila mmoja akisema watu fulani ni wetu na wale ni wetu. Kwa hiyo, wale watu tutakaochagua waangalie vile mwananchi atafanyiwa kazi inavyofaa.

Bi. Spika wa Muda, ningeomba zile *constituency* nne za Kaunti ya Embu zibaki hivyo. Mbeere South ni kubwa sana. Ningeomba iongezwe ziwe mbili ili tuwe na Wabunge wawili. Katika Embu North, wadi kama Gaturi, Kithimu na Mbeti North, ziunganishwe pamoja ndio tuongezewe *constituency* nyengine. Naomba ile kamati itakayoshughulikia haya mambo iongeze *constituency* zingine mbili katika Embu County. Moja itoke Mbeere na nyengine upande wa Embu. Naomba haya mambo yaangaliwe vizuri ili yule mwananchi aliyetuchagua tuje Seneti afurahie.

Wakati hayo mambo yatafanyika, itakuwa vizuri kwa sababu mwananchi ataweza kuhudumiwa kwa njia inayofaa. Ndio maana mara nyingi tumepigania ugatuzi ili magavana wapatiwe pesa inayofaa kuenda mashinani. Wakati tutakapongezewa wadi na *constituencies*, najua itasaidia national Government kupeleka pesa kule mashinani ndio mwananchi aliyetuleta hapa ahudumiwe inavyofaa kwa upande wa kilimo, afya, elimu na mambo mengine.

Bi. Spika wa Muda, naunga mkono lakini mambo mengine yanafaa yaangaliwe. Kama Seneta wa Kaunti ya Embu, katika zile *constituencies* zetu nne, hakuna hata moja inafaa iguswe. Naunga mkono kuwa tuongezewe zengine mbili na pia wadi ziongezwe, ili tuwe na wadi nyingi ili mwananchi afayiwe kazi vizuri.

Kama Seneta wa Kaunti ya Embu, naunga mkono lakini kunafaa kuwe na marekebisho. Ni mimi Seneta wa Kaunti ya Embu, Sen. Munyi Mundigi, ambaye ni daktari na Deputy Party Leader wa chama cha Democratic Party (DP).

Asante.

(Applause)

**The Temporary Speaker** (Sen. Veronica Maina): Sen. Munyi Mundigi, thank you. Your titles are dully noted by the House.

Proceed, Sen. Wakili Sigei.

**Sen. Wakili Sigei:** Thank you, Madam Temporary Speaker. I support this very important Bill. The reason why this House exists is because of an election that was conducted through a process. That process is what this Bill seeks to streamline.

The Bill is a bipartisan Bill that is co-sponsored by the Senate Majority Leader and Senate Minority Leader of this House. It, therefore, means that the issues that have been put in this Bill, both parties of the House have had a position to ensure that they support and enhance the transparency and process of undertaking the election from one cycle to the other.

Madam Temporary Speaker, in the process of undertaking public participation and engaging players in the election sector and cycle, several proposals have come out. Members have spoken to those many proposals, including the proposals on certain amendments that the Members are seeking to introduce, in order to make sure that the ultimate document that we will pass as a House, will have spoken to all the issues.

This include the fact that the reports that come out of audit process, arising from an election cycle that the IEBC conducted be also brought before this House. This is because both the Senate and the National Assembly are both critical players in an election cycle.

Madam Temporary Speaker, in as much as this is a co-sponsored Bill, I believe that the objective of these proposals especially on the aspect of the expansion of qualifications for those who will be nominated as members of the Independent Electoral and Boundaries Commission (IEBC) is to facilitate the diversity of knowledge.

Election is a combination of both manual and technological aspects. There is a requirement that one or some of the members who will be appointed to be commissioners have extensive knowledge in Information Communication and Technology (ICT), Finance or related expertise. It is aimed at ensuring that if we should go fully automated in our elections, we have people in the secretariat and commission that will be able to speak within the certain aspects of understanding how technology is involved in elections and what we need to improve on in our current election processes.

Madam Temporary Speaker, that is a very important inclusion in the amendment to the law so that as we go to next election cycle, we have sort of a streamlined process. Should we need technology, we have a commission which has knowledge in that field.

Part of the issues which were raised in the proposals were from parties who went to court. Remember we have had a lot of litigation in the provisions of the Elections Act, the IEBC Act, and related matters.

The proposal to include certain aspects in the selection panel such as the number of commissioners required to form quorum for purposes of transacting the business of the commission, is to align the law as is with the pronouncements that have come from the highest courts in the land. Also, it is to accommodate the comments that came from members of the now known National Dialogue Committee (NADCO).

In the course of the public participation process so many comments came where the public and the players in the election sector had their issues incorporated. That is why this document has proposed those amendments with regards to the quorum of the members of the commission.

This is to avoid a similar situation in the last election where at any given time, everyone was suspicious of the decisions which were being made by the commission as to whether or not a membership of three or five out of the seven could form quorum.

Madam Temporary Speaker, remember the Constitution provides that a commission comprises of three or nine. Can three commissioners be appointed at any

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given time and form quorum? This is why this amendment to the Act has been introduced to make sure we cure that anomaly of members being uncomfortable with quorum of the commission.

The expansion of the selection panel from seven to nine members was an amendment that was done by this House barely a year ago. The Schedule of the Act was amended to provide for a membership of seven to the selection panel.

The current proposal to amend the selection panel by increasing the membership from seven to nine is to accommodate many election players to be in the selection panel so that we also have representative from all political parties. We have the Political Parties Liaison Committee (PPLC) giving us membership, the Parliamentary Service Commission (PSC) and the inter religious groups too.

The diversity of the membership that will be given to the selection panel will enhance the required expertise knowledge and experience in the team that will be given mandate to conduct the coming elections through the IEBC together with other subsequent elections that will follow. We have been out of commission for a couple of years since the time we concluded the 2022 elections.

There are some by-elections which have not been conducted. There are some constituencies that do not have representation. It is a Constitutional edict that every part of Kenya should have representation. The absence of the commission has led to these constituencies and wards going without representation which is something that is against the Constitution of Kenya.

Passing this Bill will allow the by-elections to be conducted so that they have their representation because it is their constitutional right. Without the commission, they definitely cannot have their representation.

The proposed amendment further provides for the current membership of the selection panel to be protected in that they are entitled to apply and be considered as members of the selection panel. You are aware that immediately the current selection panel was appointed and sworn in, they embarked on advertising for the position of commissioners to the IEBC.

They have done certain processes which were technically frozen by the developments that came when the NADCO was set up, starting with the bipartisan team and thereafter the NADCO. This group has also been given an equal opportunity to participate in the application to be members and if they are successful participate in the selection panel for the next team of commissioners to the IEBC.

Madam Temporary Speaker, as we debate this Bill, we should be alive to the fact that we need the IEBC. Therefore, we need the selection panel so that this commission is put in place. Without IEBC so many issues will arise including those that I have made reference to. Since the elections cannot be conducted, citizens from the un-represented constituencies are being denied of their rights.

Submission of the audit report of an election to Parliament by the IEBC is one of the important roles that the commission will be expected to conduct. The 18 months' timeline given is very critical because in the process of undertaking audit, the commission will identify mistakes that could have been committed in the course of the election process.

They will know what corrections need to be done. Submitting the report within 18 months of a general election will give room to Parliament to process relevant legislative changes or amendments to the present law. As we approach the next election cycle if there were mistakes which were committed or missing links within the law, Parliament will do the right thing by correcting or amending the law.

More importantly, the reason behind the proposed amendment that the committee made to make sure that the audit report comes to Parliament and not the National Assembly as it earlier had been proposed by the Bill was because the Senate is part and parcel of an election department. Members of this House have been brought here by an election process. Excluding them would have been an injustice to the Senate and derogating from the Constitution provision of the recognition of the House of Senate.

Similarly, if we are delimiting boundaries including wards at the lowest level, the Senate must be involved. That is the wisdom the Committee felt was appropriate. Each reference to the National Assembly be replaced by reference to Parliament meaning, both Houses at any given time and on matters election are involved.

I support this Bill and urge members of this House to fully support the amendments which have been proposed. As we pass this Bill, we can facilitate the creation of the IEBC and therefore entitle Kenyans to have representation across the board.

I thank you.

**The Temporary Speaker** (Sen. Veronica Maina): Thank you, Sen. Wakili Sigei. Sen. Beatrice Akinyi Ogola, you have the Floor.

**Sen. Ogola:** Madam Temporary Speaker, I support this Bill from the word go, largely because, this was a great initiative of the National Dialogue Committee (NADCO) report.

The NADCO itself was a demonstration of leadership in this country when great leadership came together and decided that it was time that we sat down as Kenyans, and the two groups were formed to deliberate on several issues. NADCO demonstrated leadership.

As we all know, negotiations are give and take. Each team came up with its issues that were put on the table for deliberations. We appreciate that they were able to deliberate on the issues at hand, as was presented by the two teams and at the end of the day, they came up with what is referred to as the NADCO Report.

It also demonstrates that elections come and go. It does not stop each of the teams from sitting down to iron out contentious issues. It was a great demonstration of goodwill by the governing coalition and the Azimio la Umoja Coalition. Thus, we have the amendment Bill we are debating on today.

I support this, that IEBC if well constituted, will run elections that stand the test of time. Elections are so important, and it is a priority in this country because IEBC through the running of elections gives us what we refer to as the representatives of the people.

The products that IEBC gives are seated and are legislating in county assemblies as members elected as heads of wards in this country. They are seated in the National Assembly as Members of Parliament representing different constituencies and a number are in the Senate here, representing counties.

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So, the mandate of IEBC is such a priority to Kenyans in general. It talks about boundaries and boundaries in this country are also a top priority. With those boundaries, be they wards, constituencies, or counties, they are so dear to the people of Kenya.

Boundaries not only define leaders that our people will have, but they are also determinants of resources at either the ward levels, the constituency levels, or the county level.

These boundaries mean so much to Kenyans to the extent that with the boundaries, Kenyans know that they determined some employment quotas. At some point in this country, employment was brought back to boundaries.

Even the Public Service Commission while making adverts, sometimes the numbers are calculated based on constituencies and counties. I support this because if the IEBC is formed in a way that is acceptable to all of us, then the output will also be of benefit to all Kenyans.

As the boundaries are created, they must take into consideration equity. All Kenyans would like to compete in a way that they would like to see if it is a ward, they want to see what is in that ward should also be entitled to other wards.

On these boundaries, you see the issue of constituencies. Right now, once the IEBC is constituted, we are looking forward to certain constituencies getting even more constituencies.

In Ndhiwa Constituency in Homa Bay County, where I come from, it is a constituency that has seven wards, and it is so populated. We are praying that this IEBC will be formed like yesterday and all we are looking for as the Ndhiwa constituents is that our rights will be looked into as other constituencies deliberated on as other constituencies.

Ndhiwa is a constituency that, given all the parameters, it can be split into three constituencies. The ward where I come from has over 30,000 voters. In this country, there are constituencies alone that have 30,000 voters. So, if you are looking at equity, resources that a constituency is entitled to, and in terms of even personnel at employment, we feel as a constituency that we do not get what is rightful to us because the constituency is so large.

When you look at the selection panel, I find it an inclusive selection panel. We are here as a country talking about carrying everybody into our decisions and our actions. If you look at the proposed composition of the selection panel of the commission as spelled out in the Bill, we find very good representation, including spelling out the issue of gender in the selection panel. I therefore support the proposed selection panel as brought out in the Bill.

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

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

Mr. Temporary Speaker, Sir, on the selection panel forming the commission, the issue of the chairman has been mentioned. Here, we are talking about a chairman who will be a spokesperson for a number of commissioners.

We are moving away from a chairman who is a know-it-all chairman, who will be deciding, making decisions on their own as we saw in the last commission where we had a lot of disgruntlements. I am supporting this amendment because, to me, it will cure some of those challenges that we have.

The only missing link that was left out in the NADCO Report was about the two-thirds gender rule that has been contentious in this Republic. The two-thirds gender rule is a constitutional right.

When we talk about the two-thirds gender rule, we are not talking about women. A number of us, including a very senior Senator seated next to me, Sen. (Prof.) Ojienda, a man I hold in very high esteem, talks about gender rule, as though it is about women.

Everybody who thinks that way should know that the two-thirds gender rule is an affirmative action that may give women the opportunity to represent the women's agenda at this point in time. In the years to come, it may be the men who will need affirmative action.

The NADCO Report left out the two-thirds gender rule. As I support the IEBC (Amendment) Bill, I am looking forward to a composed IEBC that will look at the needs of Kenyans and help us implement that constitutional requirement.

Mr. Temporary Speaker, Sir, this is possible by the nominating parties at the nomination level. That, their party list presented to the IEBC must meet the threshold of the Constitution. I talk about this because it is the same parties that helped to constitute the NADCO Committee that has given forth to the Bill that we are talking about its amendment today.

I believe, the two-thirds gender rule can be resolved at the IEBC level once it is composed, and at nominations when the parties are presenting their lists. The parties must present lists that will meet the Constitutional threshold.

Mr. Temporary Speaker, Sir, I support this amendment because it is progressive. It moves us from one point to another. I believe, with this Bill we will be able to cure a number of issues.

Just recently, His Excellency the President had a delegation to the USA. A trip that was highly publicised. I saw a number of goodies that the President was able to bag from that official historic trip to the USA listed. Since we are discussing the issue of IEBC, I must mention that one of those goodies is Kshs198 million for IEBC reforms. That was good enough.

Whatever you get from elsewhere is a plus, however, as a nation, we must invest more in IEBC if we want to get the desired results as a country. As IEBC is reformed in the many ways that we would like it to be reformed, all of us must take note that IEBC is some skeleton commission running elections everywhere.

We must not only look at the reforms of IEBC at the national level, it also has sleeping structures at the counties. I call them sleeping structures because those are offices that only run when elections are about. We must see active offices overseeing electoral activities that are not only limited to elections but because our people need to be served in those offices.

We must have vibrant IEBC offices in the constituencies. There is nothing that stops the IEBC from devolving their offices even to the ward level.



Mr. Temporary Speaker, Sir, I support the Bill. As a country, we must invest in full and progressive reforms of the IEBC in order to get results that are desirable to Kenyans.

**The Temporary Speaker** (Sen. Wakili Sigei): Thank you, Sen. Beatrice. Proceed, Sen. Cheptumo.

**Sen. Cheptumo:** Mr. Temporary Speaker, Sir, as we all know, the IEBC is an important institution in the management of our elections. In every election, there have been issues about commissioners of the IEBC, management of elections and so on and so forth. Any attempt to reform and improve the efficiency of the IEBC is welcome. I think that is the reason the NADCO picked up this issue.

It is our moment as a country and as a House to do the right thing, so that going forward, we will not be lamenting every election year that we lost elections because of the composition of the commissioners or election laws and blame everything that is happening. These proposed amendments to the Act are important because they will strengthen operations of the IEBC and ensure that we have efficient elections because of better laws.

Mr. Temporary Speaker, Sir, the objectives of this Bill are important. Allow me to refer to that part on objects of the Bill. This Bill seeks to enhance transparency which is important because it will remove doubts about governance of our institutions and elections.

The Bill also seeks to enhance efficiency and accountability in electoral process. It also seeks to make the commission's appointment process more inclusive and transparent, while ensuring continuity and stability within its administrative structure. This law will address not only the issue of commissioners but also the administrative structure of the commission.

In my submission, I want to address only two areas of this Bill. The first one is the issue of the Selection Panel. I participated in this law when I was the chairman of the Committee on Justice Legal and Human Rights Committee (JLARC) in the National Assembly.

If you read the First Schedule of the current Independent Electoral and Boundaries Commission (IEBC) Act, the membership of the selection panel according to the law that we passed that time in the National Assembly, the membership is, four persons being two men and two women nominated by the Parliamentary Service Commission (PSC).

Those are four. Then, one person nominated by the Kenya Conference of Catholic Bishops (KCCB). One person nominated by the National Council of Judges of Kenya (NCCJ). One person nominated by the Supreme Council of Kenya Muslims (SUPKEM). One person nominated by the Evangelical Alliance (EA) and finally, one person nominated by the Hindu Council (HC).

If you look at the composition of that panel, it is almost 90 per cent of religious groups. The current change is of the institutions to nominate the selection panel.

We see in Clause 9 of the Bill, that I want to deal with now, that the membership of the selection panel, shall be appointed by a number of institutions, which is a complete departure from the previous religious organizations.

We now have two persons nominated by the Public Service Commission (PSC). Three persons nominated by the political party liaison, and so on. It is only two members nominated by the Inter-religious Council of Kenya. So, we have reduced the number of members to be nominated by the religious organizations to only two from the previous five.

Then we now have the Law Society of Kenya (LSK) which is an important institution. I support the fact that now at least it can give us one person in the selection panel.

Members have already submitted here that there is a need to relook at the PSC giving us two people, and even for the political parties liaison. Issues have been raised about whether they are credible enough to be able to do that. I think this conversation is important.

Having been the Chairperson of JLARC and passed a law that is in the current Act of the IEBC, and now being in this House, again seeing the departure, I think, it is a good move so that we do not have many members of the selection panel from religious organizations because they were five out of the seven.

I have also seen an increase in the number from seven to nine. Again, I think it is also a plus because it is widening the scope of the institutions that are going to appoint these members of the selection panel.

Mr. Speaker, Sir, the other progressive issue about this is, if you look at part three of that particular Clause, the Bill says the respective nominating bodies shall select nominees for appointment through a competitive and transparent process. It is okay to have members of the selection panel.

I support this proposed amendment on the process of identifying the members of the selection panel. In terms of their capacity, expertise, exposure, and knowledge we have a selection panel of members who are not just picked from anywhere. This is not in the current law, which we passed when I was in the National Assembly.

We must have a process. I believe there will be some advertisements; members will apply and be given the required qualifications. This is a progressive proposal. I am saying this because, as the chairperson of the Justice Legal Affairs and Human Rights Committee (JLARC), you took us through these matters, and we discussed them.

First Schedule-

"(2C) In nominating, the persons under subparagraph (2)(a), (b) and (e), the respective nominating bodies shall ensure that not more than two-thirds of the nominees are of the same gender."

This proposal ensures that we are progressive and that the membership does not have a gender problem. Gender parity has been a big problem in the country. The Constitution is clear. However, we have failed to achieve the threshold. These provisions will help us achieve the two-thirds gender rule in our institutions of governance as we work on the bigger dimension of the issue.

I support the proposals regarding the selection panel. This is progressive. I hope that the institutions that will nominate members to the selection panel follow the law so that we have good members to serve on the selection panel. A good selection panel will give us good commissioners of the IEBC.

The second point, so that I give the chance to my colleagues, is on the delimitation of the electoral boundaries. This is under Clause seven. This is an important amendment because, for the first time, we can guide the IEBC on what to consider. The Constitution has given the general framework of what IEBC should consider in doing the delimitation of boundaries. However, this law is guiding it further.

This should be done because we were told by the Mover of this Bill that we have 15 wards without Members of the County Assembly (MCAs). This means that the Kenyans in this ward have been denied their Constitutional right of representation. We have one constituency without a Member of Parliament and 40 protected constituencies.

In Baringo County, we have one protected constituency, Mogotio Constituency. We are not prepared to cede and lose that constituency at any moment. This is something that is missing in this law. The law should have provided a framework for how the constituencies will be protected. I agree with the proposals in the Bill.

As I conclude, I will read Clause 6) –

"The Parliamentary Committee shall, within fourteen days of receipt of the revised preliminary report, table the report in the National Assembly together with its recommendations."

Clause (7) states-

"the National Assembly shall, within 14 days of the tabling of the revised preliminary report, consider the report and forward its recommendations to the Commission."

Clause (8) states-

"Within fourteen days of the expiry of the period provided for in subsection (7), the Commission shall upon receipt and considerations of the National Assembly and representations from the public, prepare the final report for publication in the Gazette."

Mr. Temporary Speaker, Sir, our report as the Justice and Legal Affairs Committee (JLAC), raises issues. Subclauses (7) and (8) is deliberately removing the Senate in the entire process and yet those electoral units for the wards and constituencies fall under counties.

I agree with the proposal by our Committee that wherever there is the National Assembly in that particular subclause, we replace it with 'Parliament' because Parliament is both the National Assembly and the Senate.

I conclude by saying we are glad as a House, that this is our moment. We need to take up these issues and for the delimitation of boundaries, that is an area in which I am very keen.

Mr. Temporary Speaker, Sir, in my county we have six constituencies and they are growing very fast in terms of population. Tiaty is more than a half of the Baringo County. Mogotio at that time had a low population. I am very sure by now it has been able to attain the requisite population. Those of us from counties where we have protected Constituencies like Mogotio in Baringo, that is an area we will ensure that we amend this law so that we have our constituencies protected.

I support.

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

Hon. Members, you will note that I gave preference to Sen. Cheptumo to give his submissions because he was indisposed. I will then allow Sen. (Prof.) Tom Odhiambo Ojienda to continue with his.

**Sen. (Prof.) Tom Odhiambo Ojienda, SC:** Mr. Temporary Speaker, Sir, I will be very brief in supporting the Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bills No.10 of 2024) for some reasons.

The question of delimitation of boundaries under Article 89 (5) of the Constitution, is governed by timeframes. There is no doubt that it is time that a boundary review be undertaken in this country so that the 290 Constituencies and the Wards we have in the country can be reviewed for new boundaries to be set.

All boundaries at the focal point of devolution define matters of employment for the population and allocation of monies for purposes of budget. Therefore, it is a crucial function that must be undertaken.

Secondly, wards are important for the functioning of counties. In my own Kisumu County, we have 35 Wards and many of those wards should be up for review.

Mr. Temporary Speaker, Sir, I want to address another question of the 35 Wards, some Wards are like constituencies. For instance, the North Nyakach Ward should be a constituency. I believe the boundaries review process that will invite views, will find that some of these wards need to be divided so that we have more wards.

Mr. Temporary Speaker, Sir, I would like to address my County, Kisumu. We have constituencies that need to be split into further constituencies. Kanyagwal Constituency has not been formally made into a constituency because of the need for this process. That is why I am supporting this process.

Kisumu East Constituency has a population that can be split into two constituencies. Kisumu Central Constituency has over 200,000 voters and it also needs to be split into a second constituency.

The framework under Article 89(5), (6) and (7) of the Constitution is timeous and should be exercised as the Constitution defines. On the question of the inclusive panel proposed by the increment of the panel from seven to nine, I support the finding of the increment as set out in the NADCO report.

Mr. Temporary Speaker, Sir, the representation of the Law Society of Kenya (LSK) is key in this panel because I know as the Chair of JLAC, you have spoken to it. We need the LSK to be incorporated in this panel so that they represent the legal question beyond the political, in the selection process of the commission.

I am sure that the IEBC should be able to deliver so that in every five-year cycle, we do not review or amend the IEBC Act. All amendments to the IEBC Act should be amendments that have longevity and that go beyond the momentary interests of politicians serving in a parliamentary cycle in five years. That is why I support some of these amendments because they give life to the democratization of IEBC.

The choice of a secretary for a renewable term of four years speaks to an IEBC that can deliver and one that does not hold elections. After holding elections, we have a month or two of *maandamano*. We do not want to see that happening again in this country.

Mr. Temporary Speaker, Sir, as the Senate supports these amendments and seconds what the National Assembly has done, they should be undertaken without a

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political framework. I am alive to the fact that there are wards that need by-elections to be undertaken and that the IEBC has not had quorum. That is the reason that a quorum of five as proposed by a clear Act because in the last elections cycle, we had interpretation questions.

I speak for the IEBC because it is my client. Therefore, I am alive to the fact to the several legal questions that we have had to litigate. When a law comes to straighten out or to clear these questions that have been the subject of litigation, then I can only support it, as a Member of this House and an advocate.

I thank you.

**The Temporary Speaker** (Sen. Wakili Sigei): Thank you, Prof. Tom Ojienda. Sen. Mariam Omar.

**Sen. Mariam Omar:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity. I rise to support the Bill. This is one of the NADCO report's recommendation. It recommends amendments to nine legislations and one of them is on the IEBC. If these amendments go through, there will be many improvements on the operation of the IEBC. This will also enhance the transparency and efficiency of their work.

The Bill has eight amendments. One of them is on the composition of the Commission. The amendment is about the number of commissioners, their qualification and their terms in the office.

Mr. Temporary Speaker, Sir, when we lost a Member of Parliament from Banisa constituency, we lacked constitutional rights because of the gap of this Bill. It is almost a year, and they are still lacking constitutional right. When we amend this one, they might get that constitutional right.

The other amendment is about selection process. It is touching on the process of vetting commissioners and the role of the President and Parliament in the selection procedures. There is also the framework of the IEBC. It touches on the role and responsibility of the IEBC. We are in the 21<sup>st</sup> century and we are supposed to use a digital system. We have to change the technology we use in conducting our elections.

The Bill also touches on voter registration on how to improve registration of voters and provisions of updating the voter materials and register. The amendment also touches on how we conduct our election. When we pass this amendment, it will ensure that there are free, fair and credible results on elections.

Concerning the composition of commissioners, there is a nominee from Institution of Certified Public Accounts of Kenya (ICPAK), who will be auditing and the reviewing of the activities of IEBC. That automatically shows that there will be accountability.

With those few remarks, I support the amendment. Thank you.

**The Temporary Speaker** (Sen. Wakili Sigei): Thank you, Sen. Miriam Omar. Sen. Abass, proceed.

**Sen. Abass:** Thank you, Mr. Temporary Speaker, Sir. I stand to support the Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bills No.10 of 2024). As you are aware, Kenya has experienced a lot of problems during election times.

In every election cycle, this country experiences a lot of problem, especially the time of announcing the results. There is a lot of discontent and many Kenyans have lost their lives as a result of wrong judgment and information.

At the same time, we have had boundary issues. Therefore, this amendment is timely. One thing you should know is that, as Sen. Mariam Omar said, there is still lacuna in these places. That, by the time the previous commissioners' term was over, there were a lot of gaps that was created.

Today, we have constituencies and wards which have no Members of Parliament or Members of the County Assembly (MCAs) to represent them. The Bill is still silent on those kinds of things. In the absence of the commissioners, the right thing to do is allow either the Chief Executive Officer (CEO) and the team to conduct the elections or form an ad hoc committee to represent the commission. We also need to think and see how best we can include those things.

The other thing is boundary delineation. As you are aware the boundaries issue in this country is so emotive. At times during elections there is a lot of disorder. You will see a lot of mix-up in the polling stations where election takes place. You will find a polling station in one constituency, and it has a mobile extension in another constituency.

This has also been a big problem and it causes confusion. One station having two polling places. When one is called you have a polling station for one constituency and at the same time you have another in the same neighbourhood. These are anomalies.

Mr. Temporary Speaker, Sir, I am not in agreement with the reduction of the terms of office from five to four years. Institutional knowledge is very important. This is one institution that needs to have a lot of knowledge and recourse. If we reduce the terms office, it shall create a gap.

Mr. Temporary Speaker, Sir, you are aware that in this country, the 2010 Constitution was formed to unite Kenyans so that the minority and majority would all have rights. However, up to now the minorities have been forgotten.

There are people who do not even know who a Member of Parliament is. Maybe they just hear about it. They do not vote, nor do they have any knowledge of what their rights are. There are no wards and therefore this business of protected constituencies will ensure they lose their population. We should reduce the threshold for the constituencies so that we can remove any protected constituencies.

I would suggest that at least the minority communities such the El Molo and Ogiek need to have registration in this country. They are so disadvantaged and forgotten. Some of them do not even know what the government is.

Therefore, some of these protected constituencies should be given to these minorities such as El Molo that have never had representation in the national Parliament. Every time we give nomination to the minorities and gender, the same minorities come from the majority communities. You see an MP, Senator, nominated person or Ward Representative come from the larger communities but in the name of minority. We need to have a regulation that safeguards the minorities.

Mr. Temporary Speaker, Sir, in times of dispute we need to have proper dispute resolutions committees in places so that it can be minimised. As much as we appreciate the courts which are doing very well, there is also a lot of manipulation in their

procedures. We need to strengthen the court processes so that we can have a fair and free hearing.

On election timelines, in the past we used to have elections in December. The most appropriate time for elections is when Kenyans are relaxed, free and the schools closed. In August, at times the people of Northern Kenya are disadvantaged because it comes during the dry period. The people move out of their areas because of the dry spells. They even cross the border to Somalia, Ethiopia and any other part of the world where they can get pasture.

Mr. Temporary Speaker, Sir, during the elections the voter turnout is very poor. Most of the times people actually say that Northern Kenya has no population but that is not the case. It is because most of them are pastoralists; they go out of the country and they are disadvantaged because they cannot even present their votes.

Therefore, I support that we also look into the time of elections and then we revert to the old days, like during the second Tuesday of December so that, at least everybody can have time to vote, time for the schools and whatever it takes.

The business of saying that the constituencies will be based on population, while that is a good thing - however, there should be a consideration of the few. We need to have a united country. We need to have inclusivity. Therefore, everything should not be about saying that population is the basis.

In the elections of 2017, the population is featured so much. It was too biased and some of us still feel that those are areas of a case in the court where the figures given were not the right figures for the population of the same area like Northern Kenya. Therefore, that should not be the basis for all elections.

Finally, the issue of “one man, one shilling, one vote”. The proponents of “one man, one shilling, one vote”, those who constituted the Constitution of Kenya in 2010 and all those who participated knew that we have majorities and minorities. Therefore, everybody was taken care of.

The one thing that our friends in the Mt. Kenya Region should know is that “one Man, one shilling, one vote” will not work for this country. We need a cohesive country. We need all of us to have a right to be elected.

In terms of taxation, every Kenyan pays taxes. Those who are multi-millionaires are paying tax. Even the *mama mboga* pays tax. In that, when she buys a litre of kerosene, she pays tax; when she buys food or rice from the shop, she pays tax.

Therefore, no clique does not pay tax, whether it is directly or indirectly. Therefore, for those arrogantly proposing the idea of saying, “one man, one shilling, one vote”, I will tell you that you require 24 counties for you to qualify as a president; you need 50 plus 1 vote. Therefore, if you think that you can gain 50 plus 1 from one region; this is exactly what you have lost.

Therefore, we need inclusivity. We need to work together to see this country move forward instead of taking us back to where we came from.

With those few remarks, I beg to support the amendment.

**The Temporary Speaker** (Sen. Wakili Sigei): Proceed, Sen. Okiiti Omtatah.

**Sen. Okiya Omtatah:** Mr. Temporary Speaker, Sir, I rise to conditionally support the Motion because we need an IEBC in place whether it comes through the window or the front door. We need an IEBC in place so that we can discharge the constitutional

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timelines, some of which have been infringed as Sen. Omar has observed, in terms of by-elections for MPs and for Members of the County Assemblies (MCAs).

That being as it may, I support the Bill only because we should have the IEBC in place. However, when I do a proper analysis of this Bill, I see that we are again going to fail. The IEBC we will have will be a failure but they are not alone. We have seen all our independent commissions fail in their mandate because we appointed them through Ad Hoc committees.

There is no way an *Ad Hoc* committee can produce an independent committee. I have never seen it anywhere. I have tried to research across the world and it is only in Kenya that we are trying to achieve the impossible by thinking that we can get an independent organ produced through an Ad Hoc committee.

On the issue of commissioners, we need to look at the best practices elsewhere. We cannot assume that we are going to reinvent the wheel in Kenya. When you look at old democracies across the world, electoral officials are chosen by political parties; the people with a fight; the people who are contesting for power to sit there, to represent their interests and checkmate the contestants.

It is impossible for an *Ad Hoc* committee, religious leaders and the civil society on the Selection Panel to do that. What dog do they have in the fight for electoral seats? I am seeing this thing primed for failure. We should think of the Inter-Parties Parliamentary Group (IPPG) that succeeded in this country. It gave us a successful referendum and elections in 2002.

Mr. Temporary Speaker, Sir, the question of the National Assembly trying to assume that it is Parliament, and the Senate does not exist is a very serious issue. I agree with your submissions when you were on this side that, wherever the word National Assembly appears, it should be replaced with the word Parliament. Better still, it could be replaced with the expression National Assembly and the Senate.

There is no way an election can be handled through a law made only by the National Assembly. The wards and the Senate itself are affected because we are elected through this law. It cannot be done by the National Assembly alone; they are not our Lords. The Senate must be included.

I would rather it be more definitive than what was proposed to use the word Parliament. We should have the words “National Assembly” and “the Senate”. That is what makes Parliament. Parliament is not made of the National Assembly alone. In fact, it is a misnomer to refer to Members of the National Assembly as MPs, Senators are also MPs.

With regards to the concerns that Sen. Cherarkey raised; about what would have happened if the Chairman, Mr. Chebukati, had been kidnapped? Is that a loophole? I think the question of bringing the Presidential Election to Bomas is unconstitutional. There is no provision in the Constitution for having a tallying centre at Bomas.

Article 138 (2) of the Constitution is very clear. The election for president takes place in each constituency. We should have results in each of the 290 constituencies and know who has won and then, we just get an aggregation. The people to announce the winners in each constituency are the returning officers. Article 89 is very clear on how to conduct elections.

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The idea that you have a Chief Returning officer for the Presidential Election is anathema to the provisions of Article 138 (2) and Article 89 of the Constitution. I hope that we shall have fidelity to Chapter 7 of the Constitution and begin implementing elections as prescribed in the chapter.

I have seen people and even the judges of the Supreme Court trying to say that the timeline given to settle presidential election disputes is very short. Where, under Article 140 of the Constitution, a petition is given 7 days and the court is given 14 days. The problem is that they are stuck in brick and mortar, they are thinking of manual elections. If you are doing digital elections, 14 days is just too long.

I would also like to point out that in Raila One - the first petition that Raila filed - a question came up on whether spoiled ballots count or not. Show me where we have spoilt ballots in the Constitution. You only have spoilt ballots when you have a manual election. Since the Constitution anticipated a fully digitized election, there should not be spoilt ballots anywhere.

Spoilt ballots are a creation of the Supreme Court. That is how courts have been mutilating the Constitution through interpretations not anchored in law or fact.

People are talking about two-thirds gender rule. I have read the Constitution of Kenya over and over, but I have never come across an expression “two-thirds gender rule”. We have two-thirds gender principle in Articles 27(8) and 81 of the Constitution.

Again, it is the Supreme Court that invented the words, “gender rule” in the advisory that the Attorney-General sought on whether what he referred to as gender rule would apply in 2013 or later. There is nothing like gender rule. A rule must be observed.

What is in the Constitution is gender principle; something that we must work towards. There is no obligation that we must implement a principle in this time and space.

My friends asked me to make my submissions short. The Senator for Kiambu would also like to contribute to the Bill. I will be magnanimous and stop my submissions, though I had a long list of issues to address.

**The Temporary Speaker** (Sen. Wakili Sigei): Sen. Omtatah, Sen. Karungo Thang’wa has not made any request to speak.

**Sen. Okiya Omtatah:** I think he wants to reply. I will terminate my submissions at this stage so that I allow him to reply because I can see it is almost time.

Mr. Temporary Speaker, Sir, as I support the Bill, I know it is going to be another disaster when implemented. However, it will enable us to overcome a constitutional conundrum cascading towards us in form of constitutional timelines that require the IEBC to do certain things, including reviewing boundaries.

With those few remarks, I support.

**The Temporary Speaker** (Sen. Wakili Sigei): Hon. Senators, there seems to be no other Senator interested in contributing. I therefore call upon the Mover to reply.

**Sen. Thang’wa:** Mr. Temporary Speaker, Sir, as I rise to reply---

**The Temporary Speaker** (Sen. Wakili Sigei): Hon. Members, Sen. Thang’wa is replying on behalf of the Senate Majority Leader who moved this Bill.

Proceed.

**Sen. Thang’wa:** Mr. Temporary Speaker, Sir, as you have rightly put it, as the Senator for Kiambu, I rise to reply, on behalf of the Senate Majority Leader, Sen.

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Cheruiyot, on the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024.

I want to start by thanking every Senator who has contributed in support of this amendment Bill. We all support that we need to have the IEBC in place. For that to happen, we need a Selection Panel to select the nine commissioners, so that they can start their work.

The most measurable public participation is a general election. That is when everybody is given an opportunity to participate in their democratic right to select leaders to represent them in Parliament or county assemblies or serve them in different executive offices. By saying so, we needed to put the IEBC in place like yesterday.

Mr. Temporary Speaker, Sir, there are some pending by-elections, but they cannot happen because there is no IEBC. If you read this Bill, it has looked into all the chaos that happened in the last concluded election of 2022.

Clause 2 of the amendment Bill defines who a chairperson is. It says that the chairperson is elected as per the Constitution. However, if you look at what we are amending, or what it is today, it says that the chairperson is the chairperson, or vice chairperson, or any other commissioner who will be acting as a chairperson.

That one is going to cure the Cherera disorder. If this Clause was there, we would not have experienced a situation where any commissioner could just stand, pretend to be the chairperson and announce the election.

Clause 4, that is amending Section 7A, it says very clearly, that we are deleting subsections 4 and 5. The reason we are deleting that is that when there is a vacancy for a chairperson, any commissioner can be the chairperson or the vice chairperson can immediately become the chairperson. By deleting those Sections, we are protecting the office of the chairperson, so that we do not have the gameplay like we had last time.

I have heard the Sen. for Wajir, Sen. Abass, talk about what Mt. Kenya is doing when it comes to one man, one vote, one shilling. Before I say whether I agree with that or not, it is also good to let him know that the population of Wajir is bigger than that of Nyeri. So, probably, if that was the case, he could benefit more than those counties in Mt. Kenya that he is talking about.

The selection panel has 90 days to recruit and forward the names to the President. Immediately after that they do that, they self-destruct. That is an indication that we do not want to use public finance to have a panel that can work without timelines. However, I am happy to hear that Parliament can extend their work if there is a need.

As I conclude, because of time, when it comes to the delimitation of electoral units, people should be consulted. There must be public participation. In every corner of this country, people must be consulted.

People have started speaking, anyhow and trying to suggest some things. I do not think they are in their right mind. For example, NCIC is suggesting that Parliament changes the names of about 10 counties and that they should not go by the names of ethnic groups. Although we know IEBC cannot change the names of the counties.

NCIC is okay with somebody going to Kenyatta Primary School, Kenyatta High School, being taken to Kenyatta National Hospital (KNH) and using Kenyatta Highway to go to Jomo Kenyatta International Airport (JKIA), but they have a problem with a whole county called Embu.

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They have no problem with one single person, Moi High, Moi Primary, Moi International, Moi Road and Moi Avenue. They have no problem with that, but they have a problem when the people of Embu, who are hosting Moi Stadium call their county Embu. Those are some of the things that we need to discuss.

Looking at the time, pursuant to Standing Order No.66(3), I beg to request that the putting of the question be deferred to a later date.

I beg to reply.

**The Temporary Speaker** (Sen. Wakili Sigei): Thank you, Sen. Thangw'a. The request for deferment of putting of the question is allowed pursuant to the provisions of Standing Order No. 66.

*(Putting of the Question on the Bill deferred)*

Hon. Senators, rise, please

### ADJOURNMENT

Hon. Senators, it is now 6.30 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until tomorrow, Thursday, 30<sup>th</sup> May 2024, at 2.30 p.m.

The Senate rose at 6:30 p.m.