PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 25th April, 2024

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

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

PRAYER

DETERMINATION OF QUORUM AT
COMMENCEMENT OF SITTING

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

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

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

(The Quorum Bell was rung)

The Speaker (Hon. Kingi): Hon. Senators, kindly take your seats.

(Sen. Kinyua consulted with Sen. Cheruiyot
and Sen. Cherarkey)

Commissioner Kinyua, you can hold your meeting after this session. Senate Majority Leader, kindly take your seat.

(Several Senators entered the Chamber)

Now, that we have a quorum, we will start our business. Clerk, proceed to call out the first Order.

PAPERS LAID

SESSIONAL PAPER ON THE KENYA POLICY ON
PUBLIC PARTICIPATION TO PARLIAMENT

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Thursday, 25th April, 2024-

Sessional Paper No.3 of 2023 on the Kenya Policy on Public Participation.

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, Thursday, 25th April, 2024-

Report of the Auditor-General on Financial Statements of Tana River County Climate Change Fund for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Lamu Water and Sewerage Company Limited for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Kwale Water and Sewerage Company Limited for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Fort Beverage Industries Company Limited – County of Murang'a for the year ended 30th June, 2023.

(Sen. Cheruiyot laid the documents on the Table)

The Speaker (Hon. Kingi): The next one is by the Chairperson of the Committee on Finance and Budget. Sen. (Dr.) Khalwale, you may proceed to lay the Paper.

REPORT ON THE DIVISION OF REVENUE BILL, 2024

Sen. (Dr.) Khalwale: Sorry, Mr. Speaker, Sir. I was consulting when you mentioned my name. It was not being disrespectful.

I beg to lay the following Paper on the Table of the Senate, today, Thursday, 25th April, 2024-

Report of the Standing Committee on Finance and Budget on its consideration of the Division of Revenue Bill (National Assembly Bills No.14 of 2024).

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

The Speaker (Hon. Kingi): Let us go to the next Order. Statement pursuant to Standing Order No.53(1), Sen. Abdul Haji, proceed.

QUESTIONS AND STATEMENTS

STATEMENTS

STATE OF HEALTHCARE SERVICES AT GARISSA COUNTY REFERRAL HOSPITAL

Sen. Abdul Haji: Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Health regarding the state of healthcare services at the Garissa County Referral Hospital.

In the statement, the committee should-

(1) State the number of staff currently employed at the Garissa County Referral Hospital, including their terms and conditions of service, with specific details on their enrolment under the Universal Health Coverage (UHC) scheme, stating benefits or considerations for the staff under the UHC.

(2) Elucidate the reasons behind the inadequate drug supplies at the hospital, providing the current stocking levels of drugs delivered by the Kenya Medical Supply Agency (KEMSA) to the hospital, stating impediments, if any, in the facility in receiving a full complement of drugs from KEMSA.

(3) Provide the status of the Managed Medical Equipment Scheme (MMES) following the conclusion of the project, specifically detailing the condition and operational status of key medical equipment such as dialysis machines, MRI, and CT-SCAN units and shed light on claims that these critical machines are currently not being serviced, stating plans to service these machines to prevent further malfunctions or a complete shutdown.

(4) Detail how the County Health Department is utilising its revenue generated from the hospital.

(5) State reasons for the reported high cases of maternal mortality in medical facilities in the county.

(6) Elucidate the reasons for significant delays in blood screening, including the necessity of transporting blood to Nairobi for screening, and outline plans, if any, by the Ministry of Health to establish a Regional Blood Screening Centre in Garissa County.

(7) State measures taken by the Ministry of Health and the National Cancer Institute of Kenya to support the Garissa Regional Cancer Centre, especially noting the lack of drug supplies from the Ministry over the past six months.

Mr. Speaker, Sir, I have a second statement. Can I proceed?

The Speaker (Hon. Kingi): Yes, Senator, proceed.

STATE OF OPERATIONS IN THE OFFICE OF COUNTY CHIEF OFFICERS, GARISSA COUNTY

Sen. Abdul Haji: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Devolution and

Intergovernmental Relations regarding the state of operations in the office of the County Chief Officers in Garissa County.

In the statement, the committee should-

(1) Elucidate the reasons why Garissa County has not appointed any County Chief Officers since August 2022, giving reasons for the delay in the appointment of these officers.

(2) State how funds disbursed from the National Treasury are being accounted for in the absence of County Chief Officers.

(3) Disclose individuals liaising with the County Executive Committee Members in the administration of county departments, undertaking the duties and responsibilities of the Chief Officers in Garissa County from August 2022 to date.

(4) Apprise the Senate on how the County Government of Garissa is functioning without an appointed Accounting Officer.

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

STATE OF MOMBASA ROAD AND NAIROBI EXPRESSWAY

Sen. Cherarkey: Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Roads, Transportation and Housing regarding the state of Mombasa Road and the Nairobi Expressway.

In the statement, the committee should-

(1) Provide reasons for the lack of proper markings and adequate signage on several major roads and highways in Kenya, which has been linked to several reported accidents.

(2) Explain why the contractor did not redraw the necessary road markings on Mombasa Road after carpeting the road.

(3) Explain why the drainage system on the Nairobi Expressway failed during the heavy rains experienced in March, 2024, resulting in flooding of the expressway and subsequent overflow onto Mombasa Road.

(4) Outline any steps taken by the Ministry of Roads and Transport to address the aforementioned road safety concerns, stating when all restoration works on Mombasa Road, including the redrawing of markings, are expected to be completed.

(5) Evaluate the state of preparedness of the relevant Government agencies under the Ministry of Roads and Transport in responding to heavy rains and mitigate the risk of road flooding.

Thank you.

The Speaker (Hon. Kingi): We will proceed to the Statement pursuant to Standing Order No.57(1). Senate Majority Leader, you have the Floor.

BUSINESS OF THE WEEK COMMENCING
TUESDAY, 30TH APRIL, 2024

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, pursuant to Standing Order No.57(1), I hereby present the business of the Senate for the week commencing Tuesday, 30th April, 2024.

By the close of business last week, 34 Bills were pending conclusion in the Senate. On Tuesday, 23rd April, 2024, five Bills underwent Division at the Second Reading stage. Two of the Bills are scheduled in the Order Paper for the Committee of the Whole stage at Orders Nos. 8 and 9. I urge Hon. Senators to remain in the House for Divisions.

That being said, however, the number of Bills before the Senate is still high. I urge that committees expeditiously consider the Bills and table reports within the 30-day timeline as provided for under Standing Order No.148(1). This will in turn facilitate the Senate to consider the Bills at the Second Reading stage with the benefit of the input from the committees.

With respect to other business before the Senate, 16 Motions are pending conclusion while 24 Petitions are pending consideration by the respective Standing Committees, of which 18 are due for reporting.

Additionally, 317 Statements are pending before the Standing Committees. It is imperative that Committee Chairpersons take the lead in ensuring business pending before their Committees is concluded within the timelines specified in the Standing Orders.

The Senate Business Committee (SBC) will meet on Tuesday, 30th April, 2024 to consider the business for the week. The tentative business for Tuesday as indicated in the notice paper include–

(a) Bills at the Second Reading stage-

(i) The Heritage and Museums Bill (Senate Bills No. 8 of 2023).

(ii) The Agriculture and Food (Amendment) Authority Bill (Senate Bills No. 13 of 2023).

(iii) The County Hall of Fame Bill (Senate Bills No. 18 of 2023).

(iv) The Rice Bill (Senate Bills No. 19 of 2023).

(v) The Public Holidays (Amendment) Bill (Senate Bills No. 31 of 2023).

(vi) The County Assembly Services (Amendment) Bill (Senate Bills No. 34 of 2023).

(vii) The Public Transport (Motorcycle Regulation) Bill (Senate Bills No. 38 of 2023).

(viii) The County Governments (Revenue Raising Process) Bill (Senate Bills No. 22 of 2023).

(ix) The Public Finance Management (Amendment) Bill (Senate Bills No. 40 of 2023).

(b) Motions scheduled for debate-

(i) Report of the Select Committee on County Public Investments and Special Funds (CPISF) on its consideration of the audit reports of the Water Service Providers for the year ended 30th June, 2019, 30th June, 2020 and 30th June, 2021.

(ii) Report of the Select Committee on County Public Accounts on its consideration of the reports of the Auditor General on the Financial Statements of Tharaka Nithi, Homa Bay, Kakamega, Kirinyaga, Makueni, Meru, Bomet, Murang'a, Nandi, Nyamira, Nyeri, Siaya, Vihiga, Wajir and Samburu County Executives for the Financial Year 2019/2020.

(Loud consultations)

The Speaker (Hon. Kingi): Hon. Senators, may the Majority Leader be heard in silence.

The Senate Majority Leader (Sen. Cheruiyot): As hon. Senators are aware, Wednesday, 1st May, 2024 is a public holiday namely, Labour Day - a day to celebrate workers. Consequently, the SBC will not schedule any business for that day.

As such, the tentative business for Thursday, 2nd May, 2024, will include The Conflict of Interest Bill (National Assembly Bills No. 12 of 2023) at the Committee of the Whole stage. In addition, eight Bills will be scheduled at the Second Reading stage as listed below-

(i) The County Public Finance Laws (Amendment) Bill (Senate Bills No. 39 of 2023).

(ii) The Street Vendors (Protection of Livelihood) Bill (Senate Bills No. 41 of 2023).

(iii) The Energy (Amendment) Bill (Senate Bills No. 42 of 2023)

(iv) The National Construction Authority (Amendment) Bill (National Assembly Bills No. 59 of 2022).

(v) The Meteorology Bill (Senate Bills No. 45 of 2023).

(vi) The Statutory Instruments (Amendment) Bill (National Assembly Bills No. 2 of 2023).

(viii) The Wildlife Conservation and Management (Amendment) Bill (Senate Bills No. 46 of 2023).

(ix) The Nuts and Oil Crops Development Bill (Senate Bills No.47 of 2023).

With regard to Question Time, at its meeting held on Tuesday, 23rd April, 2024, the SBC approved the next set of Questions to be scheduled in the Order Paper for Wednesday, 8th May, 2024. This also includes the summary of the Questions addressed to the Cabinet Secretary for Interior and National Administration and any other business that will be scheduled prior to that.

I thank you and do hereby lay the Statement on the Table.

(Sen. Cheruiyot laid the document on the Table)

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

STATUS OF SENATORS STATUTORY
DEDUCTIONS AND REMITTANCES

Sen. Olekina: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Finance and Budget, on the status of all Senators, statutory deductions and remittances.

In the statement, the committee should-

(1) Provide a status report of all Senators Pay as You Earn (PAYE) remittances to the Kenya Revenue Authority (KRA), for the calendar year 2022 /2023.

(2) Explain the status of Senators, other statutory deductions and remittances, including National Health Insurance Fund (NHIF), National Social Security Fund (NSSF), National Industrial Training Authority (NITA), and Housing Levy for the calendar year 2022 /2023.

I thank you.

The Speaker (Hon. Kingi): Hon. Senators, the Statements pursuant to Standing Order No 56 (1) (b) are deferred.

ACTIVITIES OF THE COMMITTEE ON ROADS,
TRANSPORTATION AND HOUSING

(Statement deferred)

ACTIVITIES OF THE COUNTY PUBLIC ACCOUNTS COMMITTEE

(Statement deferred)

ACTIVITIES OF THE COUNTY PUBLIC INVESTMENTS
AND SPECIAL FUNDS COMMITTEE

(Statement deferred)

ACTIVITIES OF THE COMMITTEE ON DELEGATED LEGISLATION

(Statement deferred)

Hon. Senators, we will proceed with Order Nos. 8 and 9. Thereafter, we will come back to those Statements by Chairpersons of Standing Committees.

(Interruption of Debate on Statements)

However, before those two Orders are called, I have the following Communication to pass.

(Sen. Abass walked into the Chamber)

Sen. Abass, kindly take your seat.

COMMUNICATION FROM THE CHAIR

SESSIONAL PAPER No. 3 of 2023 ON THE
KENYA POLICY ON PUBLIC PARTICIPATION

The Speaker (Hon. Kingi): Hon. Senators, as you may have noted, the Senate Majority Leader has laid on the Table of the Senate, Sessional Paper No.3 of 2023, on the Kenya Policy on Public Participation.

The document, if adopted, will be the anchor framework for public participation in Kenya. This is the first time in the 13^{th} Parliament that the Senate will consider a Sessional Paper.

Further, noting the constitutional principle on public participation, proposed legislative interventions that have been made on this matter in the 11^{th} and 12^{th} Parliaments, and the central role of public participation in public affairs, I direct that the Sessional Paper No. 3 of 2023, on the Kenya Policy on Public Participation be committed to the Standing Committee on Justice, Legal Affairs and Human Rights (JLAC), for consideration.

The Committee will be required to scrutinize the Paper, undertake public participation on the Sessional Paper, and submit a report to the Senate within 30^{th} days. The Senate is accordingly guided.

(The Sessional Paper was committed to Standing Committee on Justice, Legal Affairs and Human Rights for consideration)

Clerk, you may proceed to call those two orders.

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE SUGAR BILL (NATIONAL ASSEMBLY BILLS NO.34 OF 2022)

(Several Senators stood up in their places)

The Temporary Chairperson (Sen. Veronica Maina): Hon. Members, if you may resume your seats we will proceed with the Committee of the Whole.

We are scheduled to do Division. I will begin with the Sugar Bill (National Assembly Bills No. 34 of 2022).

There was a clause that was not finalised yesterday, that is New Clause 19A. I am going to give Sen. Wamatinga an opportunity.

(Sen. Wamatinga crossed to the Minority side)

Sen. Wamatinga, you should be at your seat, not distracting Sen. Sifuna. I will now give you a chance to proceed and clarify the concerns that were raised yesterday by Members on New Clause 19A.

Sen. Wamatinga: Thank you very much, Madam Temporary Chairperson.

The Temporary Chairperson (Sen. Veronica Maina): Just hold on, Sen. Wamatinga. The Clerk will call out the clause.

New Clause 19A

The Temporary Chairperson (Sen. Veronica Maina): You may now proceed, Sen. Wamatinga.

Sen. Wamatinga: Thank you very much, Madam Temporary Chairperson. Indeed, I was trying to explain to Sen. Sifuna the importance of becoming a sugar cane farmer.

I beg to move-

THAT, the Bill be amended by inserting the following new clauses immediatelyafter Clause 19— Exemption from canesupply restriction.

19A. (1) The Board may exempt a commercial cane grower from the restriction on supply of cane within a sugarcane zone, provided that—

(a) the grower demonstrates that there is pre-existing agreement with the miller outside the sugarcane zone;

(b) the grower is not indebted to any miller or out grower institution within the sugarcane zone; and

(c) no supply agreement exists between the grower and any miller within the sugarcane zone.

(2) A commercial cane grower who intends to supply cane outside their sugarcane zone shall submit to the Board, an application for exemption in the prescribed form.

(3) The Cabinet Secretary shall prescribe regulations for the consideration of an application for exemption under this section.

The rationale behind what we had discussed in the Committee, was debated in the House, and we agreed that we do not want to put a lot of restrictions on the farmer. We said subclause 2 be amended to read as that, “A commercial cane grower who intends to supply cane outside their sugarcane zone shall submit to the Board, an application for exemption in the prescribed form.”

The rationale behind this is that we wanted to take the responsibility from the farmer to the board, which shall be composed, as has been prescribed elsewhere.

I submit.

(Loud consultations)

The Temporary Chairperson (Sen. Veronica Maina): Can the Senator be heard in silence? Sen. Cherarkey, you are out of order now. Can you resume your seat? We did not even hear what the Chairperson was addressing the House on.

Proceed, Sen. Wamatinga.

Sen. Wamatinga: Thank you very much, Madam Temporary Chairperson. Following the discussion that we had in the House, the proposals by the Committee of the New Clause 19A was amended to read in the subsection 2, and I read-

"The grower who fulfills the provisions of subsection 1 shall notify the board of the intention to supply cane outside a sugar cane zone."

The rationale behind this is that the wisdom of the House saw it fit to pass the responsibility to the board as opposed to the farmer because some farmers could be small-scale farmers and they may not have the resources to move around looking for the board.

This is informed by the fact that a farmer who has, for one or the other reason, a pre-existing contract or agreement with a miller, can go ahead and sell to the miller because that will give the farmer some responsibility. The mandate or responsibility of proving that such a legal bondage exists is now passed to the board as opposed to remaining with the farmer.

This will give the farmer some freedom while at the same time ensuring that cane pushing and cane hooking does not take place.

Madam Temporary Chairperson, I submit.

The Temporary Chairperson (Sen. Veronica Maina): Can you now move that the New Clause 19A, be now read a second time?

Sen. Wamatinga: Madam Temporary Chairperson, I beg to move that the New Clause 19A be read for a Second Time.

(Question, that New Clause 19A be read a Second Time, proposed)

The Temporary Chairperson (Sen. Veronica Maina): Division will be at the end.

We are now proceeding to Division and we will begin with the Sugar Bill (National Assembly Bill No. 34 of 2022).

There is a chair who is in charge of the session.

Serjeant-at-Arms, can you ring the Division Bell for three minutes?

(Loud consultations)

Hon. Senators, let us settle down, so that we can continue with the session. Serjeant-at-Arms, draw the Bars.

(The Bars were drawn and doors closed)

Hon. Senators, please be settled now so that we proceed with the Division. We are going to vote electronically, so prepare yourselves. You can log out of the system and please log back in.

Serjeant-at-Arms, please confirm and collect all the cards that are not attended.

We will go for Division for both Bills, and then I will announce the results after the two Divisions. We are going to begin with the Sugar Bill, (National Assembly Bill No. 34 of 2022). Please log back in.

Kindly log out and log in again.

We will start with clauses to be deleted. I will put the Question, which is that Clause 59 be deleted. You can start voting.

Sen. Crystal Asige will vote on behalf of Mombasa County Delegation. Secretariat, kindly allow her to vote. Sen. Crystal Asige, your card will be activated so that you vote in the next one. Going to the next vote, Sen. Crystal Asige's card has been activated to enable her vote electronically. She will be given the support she requires.

Next is New Clauses 19A, 19B and the New Schedule. I will put the question, which is that New Clauses 19A, 19B and the New Schedule be now read a Second Time.

Hon. Senators, you can proceed to vote.

(Electronic voting in progress)

Sen. (Dr.) Lelegwe Ltumbesi, please come over.

(Sen. (Dr.) Lelegwe Ltumbesi consulted with the Temporary Speaker)

We are now on clauses with amendments. I will put the question, which is that Clauses 6, 17, 19, 29, 38 (as amended by the Chairperson, Committee on Agriculture, Livestock and Fisheries and Sen. Sifuna), Clauses 43, 59, 60 and 2 be amended as proposed.

Hon. Senators, you may now proceed to vote.

(Electronic voting in progress)

The Temporary Chairperson (Sen. Veronica Maina): Sen. (Dr.) Lelegwe, did you vote? Just approach the Chair.

(Sen. (Dr.) Lelegwe Ltumbesi approached the Chair)

We are on the last question on all clauses.

(Question put)

You may proceed to vote.

(Electronic voting in progress)

DIVISION

ELECTRONIC VOTING

(Question, that Clause 59 be deleted, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abass, Wajir County; Sen. Abdul Haji, Garissa County; Sen. Ali Roba, Mandera County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Chute, Marsabit County; Sen. Crystal Asige, Mombasa County; Sen. Dullo, Isiolo County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murang'a 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. Methu, Nyandarua County; Sen. Mungatana, MGH, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. Mwaruma, Taita Taveta County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi City County; Sen. Wafula, Bungoma County; Sen. Wamatinga, Nyeri County and Sen. Wambua, Kitui County.

NOES: Nil

The Temporary Chairperson (Veronica Maina): Hon. Senators, the results of the Division are as follows:

AYES: 30

NOES: 0

ABSENTION: Nil

The "Ayes" have it.

(Question carried by 30 votes to Nil)

(Clause 59 was deleted)

DIVISION

ELECTRONIC VOTING

(Question, that New Clauses 19A, 19B and New Schedule be now read a Second Time, put and the Senate proceeded to vote

by County Delegations)

AYES: Sen. Abass, Wajir County; Sen. Abdul Haji, Garissa County; Sen. Ali Roba, Mandera County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Chute, Marsabit County; Sen. Crystal Asige, Mombasa County; Sen. Dullo, Isiolo County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murang'a 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. Methu, Nyandarua County; Sen. Mungatana, MGH, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. Mwaruma, Taita Taveta County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi City County; Sen. Wafula, Bungoma County; Sen. Wamatinga, Nyeri County and Sen. Wambua, Kitui County.

NOES: Nil

The Temporary Chairperson (Veronica Maina): Hon. Senators, the results of the Division are as follows-

AYES: 30

NOES: 0

ABSENTION: Nil

The "Ayes" have it.

(Question carried by 30 votes to Nil)

DIVISION

ELECTRONIC VOTING

(Question, that Clauses 6, 17, 19, 29, 38 (Chair Agriculture), 38 (Sen. Sifuna), 43, 59, 60 and 2 be amended as proposed, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abass, Wajir County; Sen. Abdul Haji, Garissa County; Sen. Ali Roba, Mandera County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Chute, Marsabit County; Sen. Crystal Asige, Mombasa County; Sen. Dullo, Isiolo County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murang'a 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. Methu, Nyandarua County; Sen. Mungatana, MGH, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. Mwaruma, Taita Taveta County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira

County; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi City County; Sen. Wafula, Bungoma County; Sen. Wamatinga, Nyeri County and Sen. Wambua, Kitui County.

NOES: Nil

The Temporary Chairperson (Veronica Maina): Hon. Senators, the results of the Division are as follows-

AYES: 30

NOES: 0

ABSENTION: Nil

The "Ayes" have it.

(Question carried by 30 votes to Nil)

DIVISION

ELECTRONIC VOTING

(Question, that Clauses 3, 4, 5, 6 as amended, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 as amended, 18 and 19 as amended, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 as amended, 30, 31, 32, 33, 34, 35, 36, 37, 38 as amended, 39, 40, 41, 42, 43 as amended, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 60 as amended, 61, 62, 63, 64, 65, New Clause 19A, New Clause 19B, the First Schedule as amended, The second Schedule, the Third Schedule, New Schedule, Clause 2 as amended, the Title and Clause 1 be part of the Bill, put and Senate proceeded to vote by County delegations)

AYES: Sen. Abass, Wajir County; Sen. Abdul Haji, Garissa County; Sen. Ali Roba, Mandera County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Chute, Marsabit County; Sen. Crystal Asige, Mombasa County; Sen. Dullo, Isiolo County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murang'a 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. Methu, Nyandarua County; Sen. Mungatana, MGH, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. Mwaruma, Taita Taveta County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi City County; Sen. Wafula, Bungoma County; Sen. Wamatinga, Nyeri County and Sen. Wambua, Kitui County.

NOES: Nil

The Temporary Chairperson (Veronica Maina): Hon. Senators, the results of the Division are as follows:

AYES: 30

NOES: 0

ABSENTION: Nil

The "Ayes" have it.

(Question carried by 30 votes to Nil)

Hon. Senators, I now invite the Mover of this Bill, Sen. Wafula, to come and report.

Sen. Wafula: Thank you, Madam Temporary Chairperson. I beg to move that the Committee of the Whole do report to the Senate its consideration of the Sugar Bill, (National Assembly Bills No. 34 of 2023), and its approval thereof with amendments.

Thank you.

(Question proposed)

(Question put and agreed to)

The Temporary Chairperson (Sen. Veronica Maina): Hon. Senators, we are now going to the County Boundaries Bill (Senate Bills No. 6 of 2023). The Senate had navigated through all the clauses yesterday. We are now proceeding to Division and they are only three questions. Therefore, we will proceed to vote for the three.

I will now put the Question, which is that New Clause 13A be now read a Second Time.

Hon. Senators, you may proceed to vote.

(Electronic voting in progress)

Sen. Cherarkey and Sen. (Dr.) Khalwale, you look very engrossed in some interesting debate. Have you voted? You clearly have not voted. You are too engrossed in a different assignment.

Proceed and vote.

COMMITTEE OF THE WHOLE

THE COUNTY BOUNDARIES BILL
(SENATE BILLS NO.6 OF 2023)

DIVISION

ELECTRONIC VOTING

(Question, that Clause 13A be now read a Second Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abass, Wajir County; Sen. Abdul Haji, Garissa County; Sen. Ali Roba, Mandera County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County;

Sen. Chute, Marsabit County; Sen. Crystal Asige, Mombasa County; Sen. Dullo, Isiolo County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murang'a 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. Methu, Nyandarua County; Sen. Mungatana, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. Mwaruma, Taita Taveta County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi County; Sen. Wafula, Bungoma County; Sen. Wamatinga, Nyeri County; Sen. Wambua, Kitui County.
NOES: Nil

The Temporary Chairperson (Sen. Veronica Maina): These are the results of the Division, the County Boundaries Bill (Senate Bills No. 6 of 2023). There were no clauses for deletion. For the new clauses:

AYES: 30
NOES: 0
ABSENTIONS: Nil
The "Ayes" have it.

(Question carried by 30 votes to Nil)

DIVISION

ELECTRONIC VOTING

(Question that, Clauses 4, 5, 7, 10, 23, 24, 25, 41, 42, 45 and Clause 2 be amended as proposed, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abass, Wajir County; Sen. Abdul Haji, Garissa County; Sen. Ali Roba, Mandera County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Chute, Marsabit County; Sen. Crystal Asige, Mombasa County; Sen. Dullo, Isiolo County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murang'a 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. Methu, Nyandarua County; Sen. Mungatana, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. Mwaruma, Taita Taveta County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi County; Sen. Wafula, Bungoma County; Sen. Wamatinga, Nyeri County; Sen. Wambua, Kitui County.
NOES: Nil

The Temporary Chairperson (Sen. Veronica Maina): Clauses with amendments:

AYES: 30
NOES: 0
ABSENTIONS: Nil
The "Ayes" have it.

(Question carried by 30 votes to Nil)

DIVISION

ELECTRONIC VOTING

(Question, that Clause 3, Clause 4(as amended), Clause 5(as amended), Clause 6, Clause 7(as amended), Clause 8, Clause 9, Clause 10(as amended), Clause 11, Clause 12, Clause 13, Clause 14, Clause 15, Clause 16, Clause 17, Clause 18, Clause 19, Clause 20, Clause 21, Clause 22, Clause 23(as amended), Clause 24(as amended), Clause 25(as amended), Clause 26, Clause 27, Clause 28, Clause 29, Clause 30, Clause 31, Clause 32, Clause 33, Clause 34, Clause 35, Clause 36, Clause 37, Clause 38, Clause 39, Clause 40, Clause 41(as amended), Clause 42(as amended), Clause 43, Clause 44, Clause 45(as amended), Clause 46, Clause 47, Clause 48, Clause 49, Clause 50, Clause 51, Clause 52, First Schedule, Second Schedule, Third Schedule, Fourth Schedule, Fifth Schedule, New Clause 13A, Clause 2(as amended), The Title and Clause 1 be part of the Bill, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abass, Wajir County; Sen. Abdul Haji, Garissa County; Sen. Ali Roba, Mandera County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Chute, Marsabit County; Sen. Crystal Asige, Mombasa County; Sen. Dullo, Isiolo County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murangá 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. Methu, Nyandarua County; Sen. Mungatana, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. Mwaruma, Taita Taveta County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi County; Sen. Wafula, Bungoma County; Sen. Wamatinga, Nyeri County; Sen. Wambua, Kitui County.
NOES: Nil

The Temporary Chairperson (Sen. Veronica Maina): For all clauses:
AYES: 30
NOES: 0
ABSENTIONS: Nil
The "Ayes" have it.

(Question carried by 30 votes to Nil)

The Temporary Chairperson (Sen. Veronica Maina): That is the end of that Division.

So, I request Sen. Wambua to stand in for Sen. M. Kajwang' and give a report.

Mover, please proceed.

Sen. Wambua: Madam Temporary Chairperson, I beg to move that the Committee reports to the Senate its consideration of the County Boundaries, Bill (Senate Bills No.6 of 2023) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Speaker (Sen. Abdul Haji) in the Chair]

The Temporary Speaker (Sen. Abdul Haji): Sergeant at arms, you can open the Doors and draw the Bars.

(The Doors were opened and Bars drawn)

Temporary Chairperson, please proceed and report.

REPORT AND CONSIDERATION OF REPORT

THE COUNTY BOUNDARIES BILL (SENATE BILLS NO.6 OF 2023)

Sen. Veronica Maina: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered the County Boundaries Bill (Senate Bills No.6 of 2023) and its approval thereof with amendments.

The Temporary Speaker (Sen. Abdul Haji): Mover?

Sen. Wambua: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said report.

(Question proposed)

(Question put and agreed to)

The Temporary Speaker (Sen. Abdul Haji): Mover of the County Boundaries Bill (Senate Bills No.6 of 2023)?

Sen. Wambua: Mr. Temporary Speaker, Sir, I beg to move that the County Boundaries Bill (Senate Bills No.6 of 2023) be now read a Third time.

The Temporary Speaker (Sen. Abdul Haji): Seconder?

Sen. Wambua: I request Sen. Cheruiyot to second

The Senate Majority Leader (Sen. Cheruiyot): Mr. Temporary Speaker, Sir, I second.

(Question Proposed)

The Temporary Speaker (Sen. Abdul Haji): Division will be at the end.

THE SUGAR BILL (NATIONAL ASSEMBLY BILLS NO. 34 OF 2022)

The Temporary Speaker (Sen. Abdul Haji): Chairperson?

Sen. Veronica Maina: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered the Sugar Bill (National Assembly Bills No. 34 of 2022 and its approval thereof with amendments.

The Temporary Speaker (Sen. Abdul Haji): Mover?

Sen. Wafula: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee in the said report. I request Sen. Beth Syengo to second.

Sen. Beth Syengo: Mr. Temporary, Speaker, Sir, I second.

(Question proposed)

(Question put and agreed to)

The Temporary Speaker (Sen. Abdul Haji): Mover?

Sen. Wafula: Mr. Temporary Speaker, Sir, I beg to move that the Sugar Bill (National Assembly Bills No. 34 of 2022) be now read a Third time.

I request, Sen. Munyi Mundigi, to second.

Sen. Munyi Mundigi: Mr. Temporary Speaker, Sir, I second.

(*Question proposed)*

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I see the hot consultations. I do not have much to say, but to emphasize this stage in law-making.

(Sen. Sifuna spoke off record)

Yes, especially for the benefit of young Edwin Sifuna, my brother's son. I want to laud Members of the National Assembly and of this House. The removal in the structure of governance of agriculture of the Sugar Board---

The Temporary Speaker (Sen. Abdul Haji): Sen. (Dr.) Khalwale, can I guide you as you proceed? At this point, we cannot go into the merits or demerits of the Bill.

Sen. (Dr.) Khalwale: I am just thanking Members. It has caused farmers a lot of pain. To return the Sugar Board, you have helped farmers in a manner that I can only be allowed to come here with a cockerel from an old woman in Kakamega so that we can partake of the soup.

Thank you, hon. Senators.

(Question proposed)

The Temporary Speaker (Sen. Abdul Haji): Division will be at the end. Serjeant-at-Arms, ring the Division Bell for two minutes.

(The Division Bell was rung)

[The Temporary Speaker (Sen. Abdul Haji) left the Chair]

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

The Temporary Speaker (Sen. Veronica Maina): Serjeant-at-Arms, close the Doors and draw the Bars.

(The Bars were drawn and doors closed)

Hon. Senators, we will do electronic voting. We will start with the County Boundaries Bill (Senate Bills No. 6 of 2023).

The Temporary Speaker (Sen. Veronica Maina): Senators, you can log back in and proceed to vote.

(Electronic voting in progress)

(A video was played on a phone)

Senator, you know you cannot play a video of your county politics in the course of a Division.

(Electronic voting in progress)

Hon. Senators, we will proceed to the Sugar Bill. I will announce the results of the Division later.

You may proceed to vote.

(Electronic voting in progress)

THIRD READINGS

DIVISION

ELECTRONIC VOTING

(Question, that the County Boundaries Bill (Senate Bills No.6 of 2023) be now read a Third Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abass, Wajir County; Sen. Ali Roba, Mandera County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Chute, Marsabit County; Sen. Crystal Asige, Mombasa County; Sen. Dullo, Isiolo County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murang'a County; Sen. Kavindu Muthama, Machakos County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kisang, Elgeyo-Marakwet County; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Madzayo, Kilifi County; Sen. Mandago, Uasin Gishu County; Sen. Methu, Nyandarua County; Sen. Mungatana, MGH, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. Mwaruma, Taita-Taveta County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Onyonka, Kisii County; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi County; Sen. Tabitha Keroche, Nakuru County; Sen. Thang'wa, Kiambu County; Sen. Wafula, Bungoma County; Sen. Wamatinga, Nyeri County and Sen. Wambua, Kitui County.

NOES: Nil

The Temporary Speaker (Sen. Abdul Haji): Hon. Senators, the results of the Division are as follows-

AYES: 32
NOES: Nil
ABSTENTIONS: Nil
The "Ayes" have it.

(Question carried by 32 votes to 0)

(The Bill was accordingly read a Third Time and passed)

DIVISION

ELECTRONIC VOTING

(Question, the Sugar Bill (National Assembly Bills No.34 of 2023) be now read a Third Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abass, Wajir County; Sen. Ali Roba, Mandera County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Chute, Marsabit County; Sen. Crystal Asige, Mombasa County; Sen. Dullo, Isiolo County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murang'a County; Sen. Kavindu Muthama, Machakos County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kisang, Elgeyo-Markwet; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Mandago, Uasin Gishu County; Sen. Methu, Nyandarua County; Sen. Mungatana, MGH, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. Mwaruma, Taita-Taveta County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Onyonka, Kisii County; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi County; Sen. Tabitha Keroche, Nakuru County; Sen. Thang'wa, Kiambu County; Sen. Wafula, Bungoma County; Sen. Wamatinga, Nyeri County; Sen. Wambua, Kitui County

NOES: Nil

The Temporary Speaker (Sen. Abdul Haji): Hon. Senators, the results of the Division are as follows-

AYES: 31

NOES: Nil

ABSTENTIONS: Nil

The "Ayes" have it.

(Question carried by 31 votes to 0)

(The Bill was accordingly read a Third Time and passed)

Hon. Senators, that brings us to the end of Divisions. Serjeant-at-Arms, you may withdraw the Bar and open the Doors.

(The Bar was withdrawn and the Doors opened)

Hon. Senators, you will allow me to rearrange the order of today. We will straight away go to the Division of Revenue Bill (National Assembly Bills No.14 of 2024). Before that, I will allow Senators to contribute to the Statements that were raised.

(Resumption of Debate on Statements)

Proceed, Sen. Cherarkey.

Sen. Cherarkey: Mr. Temporary Speaker, Sir, I support your Statement on appointment of Chief Officers (COs) in Garissa County since August, 2022. Under the Constitution, a county government is complete after appointment of County Executive Committee Members (CECMs) and COs.

It is unfortunate because under Section 148 of the Public Finance Management (PFM) Act, a CO is designated as an accounting officer. What is happening in Garissa County is tragic. They are in office illegally and unconstitutionally. A county executive is only complete with CECMs, COs and directors in place. There are consequences of violation of Section 148 of the PFM Act.

This is a serious Statement; it is not just an ordinary Statement. I would have expected the Committee on Justice, Legal Affairs and Human Rights and the Committee on Devolution and Intergovernmental Relations to immediately invite or summon the Governor of Garissa to explain to this House why COs have not been vetted and appointed.

The process of appointment of county public service officers is very clear. When you appoint officers, they must be vetted by the county assembly.

Finally, we have so much power. Under Article 225 of the Constitution, this House has power to stop disbursement of funds to Garissa County Government. I want to challenge the Controller of Budget (CoB)---

(Loud consultations)

The Temporary Speaker (Sen. Abdul Haji): Hon. Senators, let us listen to Sen. Cherarkey in silence.

Sen. Cherarkey: Mr. Temporary Speaker, Sir, I would like every Senator to listen to this with a lot of respect. I am speaking with a lot of authority as the Vice-Chairperson of County Public Accounts Committee (CPAC).

Under Article 225 of the Constitution, this House has power to even stop funds because who is the accounting officer of Garissa County Government as at now? There is no CO as provided in Section 148 of the PFM Act. What the County Executive of Garissa is doing is illegal, unconstitutional and violates the law. That is why I want to talk about the third limb.

When you look at Article 228(5) of the Constitution, it states that the CoB shall not approve any withdrawal from public funds unless satisfied that the withdrawal is authorized by law. Who is withdrawing the money for Garissa County Government if they do not have an accounting officer since August 2022? The County Government of Garissa must be called to order and held accountable.

Mr. Temporary Speaker, Sir, I support you as the Senator for Garissa for bringing this to the attention of this House. It appears that what is happening in Garissa is a crime scene. Do you know why? The hospitals are not functional and there is no water. Can you believe that is the state? There is no water in Garissa Town, yet Tana River flows through that county?

Secondly, you have a dysfunctional county government. Garissa County Government must be held accountable and must appear before this House, unless the governor is presiding over a criminal enterprise in Garissa County Government, which we shall not allow.

Mr. Temporary Speaker, Sir, with those many remarks, I thank you and support your Statement.

The Temporary Speaker (Sen. Abdul Haji): Sen. Olekina, you have the Floor.

Sen. Olekina: Mr. Temporary Speaker, Sir, I rise to make some comments and support the Statement that you made in your capacity as the Senator for Garissa County.

The issue of accountability is important. Article 179 of the Constitution defines the executive authority of the county, which is vested in the county executive committee consisting of the Governor, the Deputy Governor and the County Executive Committee Members (CECMs). Article 179(4) says that the governor is the Chief Executive Officer (CEO), and the deputy governor is the deputy CEO. Then you have the 10 CECMs, which have the Chief Officers, who are the accounting officers. The Chief Officers have the authority to incur expenditures.

When the Senator presents a Statement indicating that Garissa County does not have Chief Officers, it begs the question of whether the county exists. We sit in this House and devolve funds to counties.

If you read the two Articles my brother Sen. Cherarkey has read, one is Article 225, which defines the process by which funds can be stopped from being sent to counties. The Constitution states clearly that Parliament shall enact legislation to ensure a fiduciary responsibility.

One of my biggest pet peeves is when we have counties - we sit here, and some of us, by the time we leave this Parliament, have broken backs. We sit here to defend these counties. Is there any logical explanation as to why the good county of Garissa does not have chief officers? What is so difficult? Is it an issue of clannism or incompetence?

Many young Kenyans can work as chief officers. This is a serious omission that begs the question my brother, Sen. Cherarkey, deluded me on the issue of the Controller of Budget (CoB). How does the CoB release funds to the County? Who authorises those releases?

I am looking at my brother, the captain, party leader and Chairperson of the Budget and Finance Committee. Maybe he could clarify this. I have read the Public Finance Management Act and know it like the back of my hand.

The chief officer is the one who requisition funds. If you look at the daily cash requisitions sent to the CoB, we have the signature of a gentleman called Ole Naingesa, the Chief Officer for Narok County. What is the name of the Chief Officer for Garissa County? Ole Fulani? Who is it? I am curious.

These are some of the things we need to take seriously. I thank the Senator for Garissa for bringing that matter to the attention of the Senate. These are issues that must be looked at if we are to have a country.

As I conclude, there was a Statement that was brought by my brother Sen. Cherarkey. What I would like the Committee to do when they are investigating the issue of floods in the Expressway is to inform this House of the terms and conditions of the Public Private Partnership of the Government and the management of the Expressway.

Are we, as a country, supposed to use public funds to repair and maintain the Expressway? We know the terms of the agreement regarding Public Private Partnerships (PPPs) are Build, Operate and Transfer (BOT). If the company that built the Expressway operates it, are we supposed to incur expenditures? Are we supposed to be inconvenienced by the poor workmanship of the Expressway, where you find that it is flooded?

When you come to the lower road, building a road on top will affect the road people are using. Were there terms and conditions set out for the maintenance of that road? These are things we need to understand so that when we ask questions, we can understand how to respond to our people.

The floods are affecting many countries. Today, as I was sitting here, I was watching a clip of a gentleman from Tanzania who was arguing that there were no floods, yet you could see the floods next to him.

He was saying in Swahili that in the case of *mafuriko*, if the water levels are not up to your windows and entering your house, flooding it, you need to go out. If you are marooned in your home and cannot leave, it does not mean it is *mafuriko*.

On a serious note, we should think seriously about this issue. We must consider our infrastructure and see how best to improve it annually when we carry out our budgets.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Abdul Haji): Thank you, Senator. Sen. Ali Roba, you have the Floor.

Sen. Ali Roba: Thank you, Mr. Temporary Speaker, Sir. I rise to support this Statement by the hon Senator for Garissa County. I wish I were rising to say something in defense of my former colleague, Governor Nathif Jama Adam. It is a sad situation and a serious embarrassment for our region to be told that the governor has not appointed chief officers and has acted in complete disregard of Section 45 of the County Government Act, which says –

"(1) The governor shall—

(a) nominate qualified and experienced county chief officers from among persons competitively sourced and recommended by the County Public Service Board and

(b) with the approval of the county assembly, appoint county chief officers.

(2) The office of a county chief officer shall be an office in the county public service."

What this section means is that these are accounting officers of departments. An accounting officer of a department that has not been vetted and found qualified and fit to hold office cannot purport to be holding an office in the name of acting.

Chief officers not appointed by the County Public Service Board, vetted by the County Assembly, are becoming accounting officers of departments in Garissa County, which is a grave violation of the law that governs what is required. How do you justify this as a governor? It is embarrassing because Governor Nathif Jama is a very close friend of mine.

Now to be informed that since August 2022, and now the month of April 2024, the governor has not put in place chief officers and has illegally assigned directors to act in the position of chief officers as accounting officers is illegal.

I do not understand, honestly whether the CoB will approve the release of funds to persons who are not properly authorised to be accounting officers because the law is clear. Section 45 of the County Government Act stipulates how county chief officers are appointed to be office holders.

You cannot delegate or appoint anybody who is not vetted in an acting capacity. The last time Governor Kawira was impeached, she was let off the hook because of the foul language used against her. This is because as a governor, you cannot appoint anybody in an acting capacity or give double roles to persons, for example, a chief officer who could hold another office.

This is unless that person has been competitively recruited, vetted by the county assembly and appointed by the governor to hold the office.

This situation is a blatant violation of the law that must be dealt with. We have to do this in the interest of the public of Garissa County. The illegal office bearers cannot purport to be accounting officers of departments, illegally outside the law.

I support.

The Temporary Speaker (Sen. Abdul Haji): Proceed, Sen. Wambua.

Sen. Wambua: Thank you, Mr. Temporary Speaker, Sir. I have known the Senator for Garissa to be a very patient leader. I did not know that the patience would be as much as has been demonstrated today. The Senator for Garissa has persevered with the shame and the rot in the administration of the executive offices of the County Government of Garissa.

Mr. Temporary Speaker, Sir, there is very little that anyone can say about the situation obtaining in the county executive of Garissa. I always fall back on the Committee on Devolution and Intergovernmental Relations.

Sen. Abass and your team, if I were you, I would be making arrangements on how we are leaving for Garissa maybe this evening, to just witness and be sure that what the Senator for Garissa is saying is actually the truth.

If it is true, then I would suggest that two things happen. One, that, the Committee first orders and directs the CoB, to forthwith stop disbursements to the County Government of Garissa.

(Applause)

What is happening is that public money is being released to strangers in office. Those people who are now exercising the authority to incur expenditure in the County Government of Garissa have no *locus standi* and they are not recognized by law. Therefore, whatever expenditure is taking place in the County Government of Garissa, is illegal.

Mr. Temporary Speaker, Sir, you know the County Governments Act does not suggest or provide guidelines to county governors on how to constitute governments.

The County Governments Act prescribes a method of how legitimate county governments and county executives are constituted. Without spending too much time, I would suggest that after the visit by the Committee on Devolution and Intergovernmental Relations, I hope they will take up this challenge, we to call the COB to explain to this House how money has been released to the County Government of Garissa, since 2022 August to date, when there are no chief officers in that county government.

Lastly, I have confirmed with you and I feel a bit ashamed that this Governor of Garissa is an Azimio Governor. It is a big shame that a governor had initially been rejected by the people between 2017 and 2022 and had to be returned to office by the people of Garissa. He is now behaving as though Garissa County is a personal kiosk.

Mr. Temporary Speaker, Sir, it is a big shame to that governor. Let us see action taken against him.

I thank you.

Sen. Mandago: Thank you very much, Mr. Temporary Speaker, Sir. I rise to comment on the two Statements by the Senator for Garissa who is now the Chair.

On the matter of appointment of chief officers, I not only take it that the governor is lax in his duties, but also the County Assembly of Garissa should be called out for allowing such blatant defiance of the law by the governor. This is by approving the budget consistently for all those years knowing very well that there are no substantive chief officers who have been appointed to those positions.

I am even wondering, how the county development plans are being approved. How are the annual development programmes being approved if the officers are not substantive in office?

Mr. Temporary Speaker, Sir, this is a matter that this House and the Committee must take seriously. We request the Committee for Devolution and Intergovernmental Relations, to write to the CoB immediately, to hold releases to the County Government of Garissa pending the visit and investigation on how these funds that have been sent without the proper officers in office have been utilized.

It is not possible to have all the chief officers acting. In county governments, unless for some reason a chief officer has resigned immediately and somebody else is needed, a chief officer will then be appointed to act on the other docket.

The Governor for Garissa is a let-down to the devolution family. He should be called off being an experienced governor who has served for one term. He should know better to ensure that the officers are vetted by the County Assembly. However, the County Assembly can never go scot-free.

The county assembly is probably in bed with the governor and that is the reason why they have allowed this to go on for all those years.

Mr. Temporary Speaker, Sir, I wish to support the Statement sought on health. Of particular concern is the high reported cases of maternal mortality. Maternal mortality is a matter of national interest. This is because it serves to show the indicators of the country in terms of determining how many children can live beyond five years.

Whenever we see a county that has high cases of maternal mortality, it could be of interest to know whether they have a sufficient workforce and whether their maternities are working.

We would also want to find out whether they have gotten their reimbursements for the National Health Insurance Fund (NHIF) to ascertain why we have that kind of high mortality rate.

This is an area where the Kenya Medical Practitioners Pharmacists and Dentists Union (KMPDU), and the Ministry of Health should take keen interest because this affects the national performance.

Mr. Temporary Speaker, Sir, on equipment; this is a matter that has been discussed and debated in this House. Therefore, the national Government through the Ministry of Health must have a good discussion and plan on all the programmes that they intend to support the counties with to ensure success.

Mr. Temporary Speaker, Sir, I wish to submit and support the two statements.

I thank you.

The Temporary Speaker (Sen. Abdul Haji): Thank you very much, Senators.

Hon. Senators, we have exceeded the time for contribution to the Statements. I will have to stop it there and call the next Order.

Proceed, the Senate Majority Leader.

BILL

Second Reading

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

The Senate Majority Leader (Sen. Cheruiyot): Mr. Temporary Speaker, Sir, I beg to move:

THAT, the Division of Revenue Bill (National Assembly Bill No.14 of 2024), be now read a Second Time.

Mr. Temporary Speaker, Sir, this is an extremely important Bill. One of the cardinal responsibilities of this House of Parliament is to participate very strongly in the division of revenue raised nationally, between the county and the national Government.

Over the years, the role of the Senate in this particular exercise has been affirmed to many doubting foes and friends alike by courts of law and the established practices around the globe on the need for the Senate of the Republic of Kenya to make its voice heard on behalf of the county governments. It is a journey that has been fairly interesting.

In my days as a Member of that Committee, we tried to always conclude this legislation long before the statutory deadline for budget estimates in the National Assembly, which is 30th of April. Unfortunately, over time, there has been occasions such as what will happen and I will be delving into this later. The Budget and Finance Committee will have to tell us why this is so.

Mr. Temporary Speaker, Sir, where we hold views contrary to what our colleagues in the National Assembly do on how much revenue should be disbursed to the counties, it neccesitate a mediation exercise. You know very well that mediation is never easy, especially mediation on Division of Revenue Bill. I do not want to anticipate a debate, but it is what I foresee in this Bill as proposed.

This Bill was published on the 8th, March, 2024. It was passed by the National Assembly on the 20th March, 2024, and referred to the Senate for consideration as required by Article 218 of the Constitution of Kenya. The purpose is the vertical sharing of revenue between the two levels of Government.

This Bill was read a first time on the 27th March, 2024, which is a few weeks ago. Pursuant to Standing Order No.145, it was committed to our very hard-working Committee on Finance and Budget, which facilitated public participation and all these things that we need to do.

The Division of Revenue Bill, in accordance to Article 203 of the Constitution, demands that we have at least 15 per cent of the most recently audited accounts approved by the National Assembly. There has been conversations around how to increase this, the latest one being in the National Dialogue Committee (NADCO) exercise that yours truly participated in, which raised this to 20 per cent. That Bill is still before our Justice, Legal Affairs and Human Rights Committee. I do not see the Chairperson of that Committee. They would have updated us how far they are with that clause.

The projected revenue for the Financial Year 2024/2025, which is the next financial year, is Kshs2.948 trillion. I do not need to repeat my comments on budgeting in the pie, which is a budgeting practice of having a pie in the sky and projecting a revenue that you know very well the chances of hitting it, are very remote. Nonetheless, that being the case, we will still have that conversation.

One of the challenges that we have out of these projections is that the National Treasury continues to struggle even on the figure that they devote to the counties. This is because disbursement of these resources is a challenge since we have projected figures that are over and above that which we can raise. Therefore, throughout the financial year, you are delayed in your disbursements and that affects the operations in our various county governments.

In the Bill, it is proposed at Kshs391.7 billion, which represents 13.3 per cent of the total revenue. The proposed county government's equitable share is 24.9 per cent of the most recent audited accounts, which is 2020/2021. I must congratulate the National Assembly. Previously, it used to take a bit longer. There were times when we would do division of revenue with audited statements of about five or six years behind. However, as it is today, there are only two financial years away. That is very good industry on the side of the National Assembly. We must celebrate them for that.

The county equitable share being proposed is to increase by 1.5 per cent from the baseline of Kshs385 billion. Remember the conversation about Kshs385 billion and what has been said about that.

I wish colleagues will take time to listen and follow through this debate, because this is a conversation that you have throughout the financial year. Your citizens will be asking how we arrived at this figure, what was your voice was and whether you agreed with the figure that was proposed or what your thoughts about it were.

Mr. Temporary Speaker, Sir, if there is a Bill that Members need to take time to listen, understand and appreciate, it is the Annual Division of Revenue Bill. Further, this Bill provides for an allocation to the Equalization Fund for Financial Year 2024/2025 of Kshs7.8 billion, which is 0.5 per cent of the constitutional set threshold in the Financial Year 2020/2021 as per Article 204 of our Constitution.

It is worth noting that during the consideration of 2024 Budget Policy Statement (BPS) approved by this House, the Senate made some key financial recommendations with regard to the Division of Revenue.

Notably, the Senate recommended an allocation of Kshs415.9 billion as equitable share to the county governments for Financial Year 2024/2025 based on the following-

(1) An adjustment by 6.4 per cent of annual growth factor.

(2) An adjustment of repurposing the scrapped Managed Equipment Scheme (MES) programme allocation, which amounted to about Kshs5.86 billion.

These adjustments take into account the non-discretionary financial obligations resulting out of-

(1) Housing levy.

(2) Increased contribution to the National Social Security Fund (NSSF).

(3) Contribution to the Social Health Insurance Fund's wage drift.

(4) The need for counties to provide matching allocation for the County Aggregation Industrial Parks (CAIPs).

Remember, there has been commitments by the community health promoters' programme, where the county and national Government meet their stipend on a 50-50 basis. Therefore, there is need to first take into account that counties will be expected to additionally shoulder that burden, before even having a conversation on the projected growth. The same way the national Government makes provisions in its funding needs, there is this proposal.

Pursuant to Article 118 of the Constitution as read together with 145 (5) of the Senate Standing Orders, the Ccommittee facilitated public participation and took into account the views and recommendations of the public in its report. There was an advertisement inviting the public to submit memorandum. The chairperson of the committee will inform the House on who participated and made their contribution during these stakeholder conferences.

A consideration of the stakeholder submission proposed that the Bill should allocate as much as whatever amount that people are proposing and the justification thereon. The committee has tabled their report and Members will find time to read through and see what has been established.

The Bill has Kshs391 billion as a proposal, but the Standing Committee on Budget and Finance has taken time to read their report. As much as I will read the Bill as proposed, I must also make my comments on what the committee found and what I agree with them. That, the national Government share be Kshs2.5 trillion and the county equitable share be Kshs415.9 billion as what they had already observed during the annual BPS.

We have said times without number, that BPS is not just a rosy suggestion to the National Treasury. It is well founded on good reason and logic. There are actuarial studies to it that are undertaken by Members of Budget and Finance Committee and even our colleagues from the Parliamentary Budget Office (PBO) on how you arrive at that figure.

I have explained, that there are additional resource needs to our counties on account of laws that have been passed by the Houses of Parliament, which if we pass directly to our county governments, we will be unfair. This is because we know for a fact, that there will be more revenue raised or collected than was the previous financial year.

Mr. Temporary Speaker, Sir, we know the actual and projected growth that has been relayed here is 6.4 per cent. If we expect the same to be seen in our county governments, then we must begin by having a baseline that takes into consideration the need to first contain or pay statutory deductions that arise out of laws that we have passed in this House together with agreements that county governments have entered into partnership with the national Government.

There is no harm about counties agreeing with the national Government to have the Kenya Youth Professionals (KYP). This is a good and well thought-out programme which I expect each county government to think through and establish what their own people can produce in order to accelerate access to markets for farmers in that region.

The matching condition allocations of county governments on their aggregation industrial park is Kshs11.75 billion. There is a matching allocation on the Community Health Promoters (CHPs) of Kshs3.23 billion and housing levy deductions. Remember county government staff are deducted and the employers' contribution is Kshs4.5 billion.

Enhanced contribution to the National Social Security Fund (NSSF) due to the yearly growth is an extra Kshs3 billion and a wage drift on account of yearly growth of about Kshs3 million. I appeal to the distinguished Senators of this House to support the report of this Committee and their proposals, so that we conclude this exercise.

We made a final observation. Perhaps this is my last comment on this issue. We have not concluded the conversation on funding of our counties until we have a conversation about own source revenue. Many counties continue to underperform in terms of own source revenue collection. They fail intentionally due to pilferage.

Many counties have refused to adopt modern practices for own source revenue collection, as is the case of what we are observing with the national Government. This is something that will help us at least keep tabs and know the true and actual potential of a particular county. To have a conversation on Division of Revenue without putting an equal demand for counties to find ways in which they can collect the intended revenue---

We have recently passed the National Rating Bill, so that we standardize payment of land rates, which is the leading source of own source revenue for nearly all our counties. We have equally passed the County Licensing (Uniform Procedures) Bill, so that we ensure that our counties have a standardized way of collecting revenue.

If it becomes impossible, then I shall challenge my colleagues to think of a way of developing a standard system that is applicable to all the 47 counties, instead of having governors or county governments with different methods of raising revenue. That is our duty because we can legislate. We are the only body that can make national law that is applicable to all our 47 counties.

Mr. Temporary Speaker, Sir, I agree with the comments of my colleagues. I know many Senators want to contribute to this Bill. Therefore, I do not intend to be long with my comments, so that I also get a chance to listen to the wisdom of the committee and colleague Senators on what they have to say on this Division of Revenue Bill.

A final request. If possible, I request colleagues that we debate and conclude this exercise on Second Reading today. However, if there will be many colleagues who want to speak on it, then we will have to carry on until Tuesday, next week, because it is an important Bill. I do not see how you can be a Senator and not have a say on the annual Division of Revenue Bill. Kindly say as much as you can.

Mr. Temporary Speaker, Sir, with those many remarks, I beg to move and request the Chairperson of the Standing Committee on Budget and Finance, the Senator from Mandera, Senator, Captain, Dr. Ali Roba, His Excellency, to second this Bill.

I thank you.

Sen. Ali Roba: Mr. Temporary Speaker, Sir, I rise to second the Division of Revenue Bill as moved by the Senate Majority Leader. I would like to take this opportunity to inform the House that the committee had taken diligent steps in terms of subjecting the Bill to public participation, where a number of stakeholders have participated; including the National Treasury, the Commission on Revenue Allocation (CRA), the Council of Governors (CoG), the Institute of Certified Public Accountants of Kenya (ICPAK), the International Budget Partnership (IBP), Institute of Economic Affairs (IEA), the County Assemblies Forum (CAF), Katiba Institute, the Rift Valley Budget Hub, the Lake Region Budget Hub, and the Youth Senate of Kenya (YSK), in terms of trying to pick the opinions that they had in coming up with recommendations to this House.

Mr. Temporary Speaker, Sir, the most important issue that we picked as a committee is the fact that the Bill had an error in terms of anchoring of its base. The Bill considered the base for allocation both by the CRA and our colleagues in the National Assembly as Kshs374 billion as opposed to Kshs385.425 billion. This is anchored in the Division of Revenue Act (DORA) which is a law. Hence, that error cascaded into an erroneous indication of consideration that stated that the Bill had considered an increase of allocation to county governments of Kshs16.6 billion, whereas the actual allocation as considered was only Kshs5.6 billion or thereabout.

Mr. Temporary Speaker, Sir, we have also thoroughly interrogated the Bill and we realized a major error. Whereas the CoG appeared before the Standing Committee on Finance and Budget, they have been making a feel-good political statement whereby they end up making pronouncement such as we will share 50/50 without looking at the implication it would have on their budgets. For example, the issue of aggregation of markets and the Community Health Promoters (CHPs) which they said they will have 50/50, without looking at budget implications.

Mr. Temporary Speaker, Sir, as we interrogated, we also looked at issues that the Senate Majority Leader has shared. There are legislations that have financial implications to county governments, which is the agenda for the national Government to pass. For example, the housing levy and the NSSF and the implication it will have on the payroll of county governments is an issue that we looked at.

Looking at these issues, we determined that there is non-discretionary expenditure, which county governments will not avoid. For example, issues to do with the current strike of doctors. The national Government, through the Ministry of Health, has already committed that they are going to pay the arrears amounting to over Kshs3 billion in terms of when the Collective Bargaining Agreement (CBA) was signed up to 2024.

Mr. Temporary Speaker, Sir, from when the arears are settled, county governments are required to inherit that expenditure directly. That also amounted to an average expenditure of about Kshs5.8 billion, which is not discretionary. There is no way county governments will reduce this expenditure. Once they inherit, the doctors must be paid because that is an expenditure and the payroll numbers are going to increase. Hence, it is non-discretionary expenditure to county governments because they have to foot that bill of Kshs5.8 billion.

We also looked at the payroll impact the housing levy will have to county governments. It came to about Kshs4 billion in terms of the upwards growth of the payroll.

We also looked at the enhanced contribution to NSSF which amounted to about Kshs3 billion. This is going to really adversely impact the overall payroll of the county governments.

These are legislations that are passed nationally and we are all subject them. The impact in terms of the cost needs to be rationally looked at when allocating vertical share of revenue between national and county governments.

Mr. Temporary Speaker, Sir, we also looked at county aggregation and industrial parks that I have just shared. The county governors have made some political statements and commitments that have very serious financial implications of Kshs11.75 billion.

The national Government was going to contribute Kshs250 million while the county governments have committed to match it up by contributing another Kshs250 billion. The cumulative effect of Kshs250 million times 47 counties is Kshs11.75 billion. Most of them have advertised that they did not have any money in the budget for that construction.

Where will that bill go if Kshs11.7 billion from county aggregation and industrial parks is an impact on the budget, yet the proposal in the current Bill is moving it from Kshs385.425 billion to Kshs391 billion? Already, Kshs11.75 billion is increased on only one item.

We looked at the issue of matching allocation commitment; another feel-good political commitment by governors without looking at its impact. When they appear before the Committee, they start saying that these numbers impact the payroll negatively when paying the CHPs. Why then commit if you are not able to meet? The impact also comes to Kshs3.23 billion on the payroll.

I was a governor for 10 years and I will keep on saying this because experienced is not sometimes replaceable by other issues. Mandera County did not have a dialysis machine, a CT scan and advanced x-ray machines. Today, they do have, thanks to the Medical Equipment Services (MES).

That structure of MES has ceased to be. County governments have obsolete equipment that require replacement or servicing. The machines have also not been built anywhere in the wisdom of the community. We looked at the importance of enhancing service delivery for county governments at the county level. It is an issue that the national Government came up with in its wisdom.

Many people that used to seek dialysis by travelling to Nairobi and paying so much were able to access it in their respective counties. Thanks to this MES that was put in place through a national Government policy and supported by county governments. However, it has since been discontinued.

The question that then puzzled the committee is; what happens now and these services had already been introduced? Are we going to subject our public to a situation where they will have to seek such services from Level 5 hospitals or, do we need to support to make sure that the bare minimum services that had been put in place do not fall back?

Even if we cannot improve, then we should be able to sustain. As such, we have looked at allocation of Kshs5.64 billion for that purpose.

There is also the issue of the Integrated Payroll and Personnel Database (IPPD) automatic wage bill adjustment that happens without any consultation. For that factor, we said that it is only realistic for a factor of about Kshs2.857 billion be allocated for that purpose.

Temporary Speaker, Sir, I appeal to the Senators to understand that it is the determination and commitment of this Kenya Kwanza Government to make sure devolution is protected and services are improved at those levels.

From the start, we are working on a situation where, the Constitution has capped the sharable revenue to be from the last audited and approved account, which is for financial year 2020/2021. We are already behind because the figures we are looking at are from financial year 2020/2021 when the current financial year is 2023/2024.

We looked at it from the wisdom of the fact that all items that I have listed are non-discretionary expenditure to county governments. That is not something that you can say, "we have solved the doctors strike. The county governments should now inherit the bill." Yet, there is no corresponding allocation of Kshs5.8 billion to pay the doctors.

Where will they get the money to pay the doctors when they are already struggling? Also, the marginal growth of the revenues allocated to county government has been extremely marginal, not even enough to cater for the normal inflationary expenditures.

Mr. Temporary Speaker, Sir, as I appeal to my colleagues, I shared with them this critical information. This committee has recommended the vertical share of revenue between the national Governments to be at Ksh2,524,318,490,857 and for the county governments equitable share the Committee has recommend Kshs415,952,200,000. This is arrived at by making those adjustments said.

The Commission on Revenue Allocation (CRA) has recommended Kshs398 billion. However, the Bill as approved by the National Assembly, has recommended Kshs391 billion. The base, which is the Division of the Revenue Act (DORA) of the previous financial year, has recommended Kshs385.425.

I appeal to this House that since we represent the interest of the nation by making sure that devolution works. That reduces pressure on the national Government if health care, provision of water services, roads and personnel being paid commensurate to their work, works. We came up with that bare minimum using that wisdom.

As I support, I appeal to the House to concur with the committee.

Thank you.

(Question proposed)

The Temporary Speaker (Sen. Abdul Haji): Hon. Senators, at this point, we will allow contributions.

Sen. Osotsi, you may have the floor.

Sen. Osotsi: Thank you, Mr. Temporary Speaker, Sir, for this opportunity to make my valid contributions on the Division of Revenue Bill, 2024. From the onset, I support it, but with amendments that the committee is proposing that the shareable revenue to the counties be Kshs415.9 billion.

We cannot be seen to be going against our word. In this House, we passed the BPS and said we would like the share of the counties to be Kshs415.9 billion.

Mr. Temporary Speaker, Sir, it is a surprise that the National Assembly has said Kshs391 billion. We are in this House to represent our counties. We are in this House because of Article 96 of the Constitution - to protect county governments and their interests. We cannot go for a lower figure of Kshs391 billion.

I have heard the Senate Majority Leader say that if we disagree with the National Assembly, it will go to the Mediation Committee. That is well and good. This is because we are here to look after the counties and protect their interests and not the interest of the national Government.

In any case, it is not right at all that this Bill has to originate from the National Assembly. This is a very crucial piece of legislation that touches on our counties and it is important that such a Bill originates from the National Assembly so that we do not go through murky games like what the Chairperson of the Committee on Finance and Budget has alluded to, like having deliberate errors in this Bill.

Mr. Temporary Speaker, Sir, the equitable share base is indicated to be Kshs374 billion, whereas it is supposed to be Kshs385 billion. Then they are saying that it is going to increase with Kshs6.6 billion. That is not true. We passed Kshs385 billion last year and, therefore, that is the base. I request colleagues in this House to stand firm and approve the recommendations by the committee that the shareable revenue for our counties be Kshs415.9 billion.

I will comment on the programmes that the national Government is running with county governments and I will give the example of the programme on CHPs. Primary health care is a devolved function. Why would the national Government want to get involved in programmes which are devolved and pretend to want to fund them halfway, when they should just send all the money to counties?

Mr. Temporary Speaker, Sir, I am told that some CHPs have not been paid. In my county, they have gone for three months without being paid their stipend because of delays in releasing the counterpart share from the national Government.

We also have the programme of county industrial parks. This is another white elephant in the making. The arrangement was that counties give 50 per cent and the national Government, 50 per cent as well. The then Cabinet Secretary for Industry, Trade and Enterprise Development was busy running up and down, launching the industrial parks. They even launched in my county even though the national Government had not budgeted for the money. The County Assembly had not even approved any money to that programme. That also affected many other counties.

If the national Government wants to finance programmes in our counties, particularly for devolved functions, they should send that money to the counties and not pretend that they are funding 50 per cent and the counties fund 50 per cent. That is a deliberate way of gradually taking over some of the devolved functions from our counties to the national Government. We have even seen suggestions on the Early Childhood Development Education (ECDE); that the national Government will run the ECDE better and they should help counties in running it.

Mr. Temporary Speaker, Sir, in future, even this Division of Revenue should also include amounts of key devolved functions which are being held in the national Government. This also includes health. There are many functions within the health sector that are still held at the national level. Over 80 per cent of the national budget on health is domiciled in the national Government.

We would like to know the devolved programmes they are running. This is so that when we approve the money, we will know clearly that the national Government has these devolved programmes and they are retaining money for them. That also includes ECDE because to some extent, a number of programmes are run by the national Government.

Mr. Temporary Speaker, Sir, I know the national Government keeps on saying that counties should seek to improve their own-source revenue and we agree on them on that. However, that should not be used to deny our counties money. Let us deal with governance issues in our counties. That is why the Senate is there and we deal with that. Let not that be used to deny our counties money. We would like our counties to get a fair share of the nationally generated revenue and apart from that, put pressure on them to maximize on avenues for raising money through own-source revenue.

Mr. Temporary Speaker, Sir, I know that some of our colleagues are going to be intimidated to go for the Kshs391 billion that the national Government has approved. I ask our colleagues, especially the ones on the other side to please stand firm for the devolution of this country. They should stand firm.

We do not want a scenario like the one for last time, when we were given two choices and we went for the lower amount – Kshs385 billion. This is an opportunity to redeem yourself. We are going to redeem ourselves by pushing for Kshs415.9 billion for our counties, whatever happens.

I see Sen. Cherarkey is nodding and I hope he is with us on this. We are here because of our counties and we are not here to push for the interests of the national Government. The national Government interests can be pushed in that "Lower" House called the National Assembly. However, in this "Upper" House, we are here to push for the interests of our counties, even though we have problems in those counties.

We have corruption and pilferage of our funds, but the Senate should be seen to be doing our work. Our main function is to take money to the counties. After taking the money to the counties, we oversight them.

Mr. Temporary Speaker, Sir, let me do my first part of the work – take enough money to the counties. Then I will follow this money to oversight it. However, we cannot say that we want to give our counties less money and behave like those guys in the "Lower" House. Those fellows in the "Lower" House get allocated a lot of money. They get money for roads, National Government Constituency Development Fund (NG-CDF) and many other allocations. The work of Senators is to basically push for more money for our counties.

I, therefore, fully support the report by the Committee on Finance and Budget which is chaired by Sen. Ali Roba and other strong Members, like my neighbour, Sen. (Dr.) Khalwale. It also has my Member in the County Public Investments Committee and Special Funds (CPICSF), Sen. Tabitha. These are people who have stood firm. They should continue standing firm with the rest of us.

Mr. Temporary Speaker, Sir, this time round, we want to see a Senate that will speak with one voice. Whether you are in the Minority or the Majority side, I request that we speak in one voice on this matter.

Mr. Temporary Speaker, Sir, I support.

The Temporary Speaker (Sen. Abdul Haji): Sen. Danson Mungatana.

Sen. Mungatana, MGH: Asante, Bw. Spika wa Muda, kwa kunipa nafasi niongee kidogo kuhusu Mswada huu ulioko mbele yetu.

Mwaka wa 1963, Kenya ilipopata Uhuru, kulichaguliwa Maseneta 41. Maseneta hawa walikuwa wanasimamia majimbo yao. Katiba ya kwanza ilikuwa imepeana nguvu kwa majimbo. Siasa hii ya majimbo iliendelezwa na wakubwa wetu waliotutangulia kama Ronald Gideon Ngala, Masinde Muliro na Daniel Moi waliokuwa kwa Chama cha Kenya African Democratic Union (KADU). Hayati Mzee Jomo Kenyatta na Jaramogi Oginga Odinga walikuwa kwa Chama cha Kenya African National Union (KANU). Walitaka Serikali moja. Hawakutaka hata Seneti iwepo.

Mpango uliotumika hasa ni kuyanyima majimbo pesa ili yafe kifo cha kawaida. Walitumia pia njama ya kuvunja KADU nguvu kwa kuwaringisha mikono wale viongozi ili Maseneta wahame. Walihama na kuingia upande wa Serikali na hatimaye wakateuliwa kama Wabunge wa kawaida.

Kuua gatuzi zetu ambazo tuko nazo wakati huu, njia inayotumika ni kuzinyima pesa. Sisi hapa kamati yetu imekaa na kuangalia sababu nyingi. Mwenyekiti wetu Ali Roba amezielezea kwa undani, singetaka kurudia tena. Kisha akasema kwamba sisi kama kamati ya Seneti, tumekaa na kusema pesa ambazo zingefaa ziende kwa gatuzi zetu ni shiling billioni mia nne kumi na tano nukta tisa. Hawa wengine wameleta Mswada huu na kusema pesa zinayofaa ziende haswa kutumia maelezo ya Hazina ya Kitaifa ni shilingi bilioni mia tatu tisaini na moja.

Nakubaliana kabisa na wenzangu ambao wamesema hapo awali ya kwamba wakati huu ni lazima tusimame kidete. Sisi sote tuseme ripoti hii ya Kamati yetu ya Fedha na Bajeti, tunaiunga mkono. Tusiangalie tuko mrengo gani wa kisiasa katika Seneti.

Na sababu ni kwamba, ukiangalia sheria hii, Kipengele cha tisa kinaelezea sababu tisa ambazo Hazina ya Kitaifa wametoa tupeleke kwa gatuzi ni shilingi bilioni mia tatu tisaini na moja (Kshs391 bilioni). Lakini moja ya hizo sababu ukiangalia Kipengele cha 9(b) (c) wamesema umaarufu wa sarafu ya Kenya inashuka kwa sababu ya hali ya biashara ulimwenguni.

Ninaomba wenzangu msome, Kipengele cha 9(e). Wanasema sarafu ya Kenya inashuka eti kwa sababu kuna vita Ukraine na Urusi. Imeandikwa kwa Mswada huu tunaouzungumzia leo. Kama waliziandika sababu hizo kwa sheria na kusema hizo ni kati ya sababu ambazo wanazitumia kugandamiza gatuzi. Hivyo basi, mgao unaofaa ni Shilingi 391 bilioni. Tunataka kuambia Hazina ya Kitaifa kwamba sababu hizo hazina maana tena wakati huu. Sarafu ya Kenya imepata nguvu na sababu walizotoa zimepitwa na wakati.

Ni kweli sheria tunayoizungumzia sasa hivi na wakati walipopendekeza kiwango cha mgao huu, sarafu ya Kenya kweli ilikuwa hafifu. Lakini, sasa hivi, sarafu ya Kenya imeimarika. Kwa hivyo, zile sababu za kimsingi ambazo Hazina ya Kitaifa ilitumia ili kugandamiza mgao wa pesa za kutosha, mbali na yale makosa walifanya wakati wanafanya mahesabu ya *base,* walisema ya kwamba sarafu ya Kenya imezorota. Lakini sasa hayo mawazo hayapo tena.

Kwa hivyo, tunawaomba wale wanaosema kupitia sheria hii ya kwamba pesa iwe ni Shilingi 391 bilioni, hatutaki hivyo. Wakubaliane na hali iliopo saa hii. Kamati ya Seneti imesema hali iliopo sasa, mgao wa gatuzi zetu 47 ni Shilingi 415.9 bilioni.

Mimi nataka kusema jambo moja. Ni kweli kuna shida katika kaunti zetu. Kwa mfano, Tana River na nyinginezo ziko na shida. Lakini hata kama tuko na shida kwa boma zetu kuhusu matumizi ya pesa, hiyo sio kusema baba ambaye anaenda kuchukua mshahara, basi mshahara wake upunguzwe. Ule mshahara lazima uje wote jinsi inavyotakikana.

Zile shida za kule nyumbani, tutazifuatilia na kuzitatua. Kama baba wa nyumba ni mlevi na anapeleka pesa kwa watu wasiohusika na hiyo familia, anaharibu pesa za familia, hayo ni mambo ya kule nyumbani. Tutayatatua. Tutamuitia wazee na tutamfunga. Lazima tumrekebishe. Hata hivyo, hatuwezi kwenda kwa ofisi yake tuseme mshahara wake upunguzwe.

Kuna mazungumzo ambayo watu wengine wanasema serikali za kaunti zinatumia pesa zao vibaya. Hivyo basi, tupunguze ili haki inayotakikana ifanyike kwao. Mimi nasema hizo shida tutaziangalia kama Seneti na tutajaribu kuzitatua. Lakini, ule mgao wetu wa sawa kwa kaunti zetu hatutaki ukatwe.

Tunawaomba wale walioleta Mswada huu wakitumia mwongozo wa Hazina ya Kitaifa waambie Hazina ya Kitaifa ilikosea. Yale mapendekezo na maelezo waliweka katika sheria hii imepitwa na wakati. Wakati huu, sarafu ya Kenya imeimarika.

Tunataka sasa yale mapendekezo ambayo yametoka kwa kamati yetu yafanyike. Sisi kama Seneti, tushikane na tusimame pamoja na tuseme pesa zetu za kaunti ni Shilingi 415.9 bilioni.

Asante sana, Bw. Spika wa Muda.

The Temporary Speaker (Sen. Abdul Haji): Thank you, very much. Sen. Olekina.

Sen. Olekina: Thank you very much, Mr. Temporary Speaker, Sir. I support this Division of Revenue Bill (National Assembly Bills No.14 of 2024) between the two levels of government; that is the national Government and the county governments.

From the onset, let me begin by appreciating, once again, the distinguished Senator for Mandera; the Chairperson of the Standing Committee on Finance and Budget and his entire team for being extremely diligent in making sure that the youth are tooth-comb to go through what is presented in their committee.

Mr. Temporary Speaker, Sir, I want to be very candid that what had been indicated in the Bill falls short of nothing, but deceitful. It is very shocking that the House of Parliament can introduce a Bill and completely deceive not just this House, but also Kenyans in terms of the content of the Bill.

To be told that the baseline indicated in the Bill was a figure of their imagination, so that they can demonstrate to Kenyans that we are increasing money for counties, is very wrong. It is completely uncouth and uncivilised. Whoever did that should be ashamed of himself. We are in this House because of Article 96 of the Constitution of Kenya, which is to defend the interests of our counties and their governments.

The Committee on Finance and Budget has shown diligence, fiduciary to the rule of law and has demonstrated to this country that Senate is here to defend devolution.

There is a word that my brother, Sen. Ali Roba, used. He said that governors are quick to accept goodies from the national Government. They would go out there to make feel-good political statements that we are doing this and that. It is about time that Kenyans realise that those statements are causing projects to stall. This is when you prioritise someone else's projects at the expense of your own.

Mr. Temporary Speaker, Sir, the national Government and the county government have their own share of resources. We keep on talking about the challenges that we face in our counties, including the limited resources that we send to our counties.

Instead of these 47 executives realizing that they have little money to carry out all the functions which have not even been costed, they rush to say, “national Government, we are happy, come in and help us build industrial parks, we will contribute a huge amount.” That is number one.

Number two is that on the issue of the CHP, they would say they will pay 50 per cent. Where is that money coming from? Do these governors understand accounting and financial discipline? They do not understand because, in most cases, all they do is line their own pockets.

When they get into office, those who used to live in apartments now go into those apartments and get an earth moving equipment to crash everything together with the cockroaches and build big mansions overnight.

I challenge all of you distinguished Senators to traverse counties and ask your governors where they lived last year. When did we vote? Where were they living on 9th August, 2022 and where are they living now? Most of them were living in small huts, which were infested by cockroaches and everything, but they are now living in manicured mansions at the expense of taxpayers, yet no one sees a problem in that.

When we come here, we tell Kenyans, ‘wake up, you are being taken for a ride. The Senate is fighting for your rights.’ People then start saying ‘*wacha zako,’* just because their pockets are being lined.

Forgive me for trying to ‘impute improper motive,’ but facts are stubborn. It is quite deceitful for even the National Assembly to delay in approving audited financial statements, so that even the figures which are used to determine the division of revenue from two levels of government is dated back to financial year 2020/2021.

We are in 2023/2024, moving to 2024/2025 within the next few months. We are still going to be relying on finances audited and approved by the National Assembly for us to be able to divide the money.

Mr. Temporary Speaker, Sir, we are now told that the share of revenue of county governments is 24.9 per cent of the approved financials of 2020/2021. In reality, what is being shared to the county government is only 13 per cent, which is against the Constitution. Some of these things must be demystified for Kenyans to understand.

There are a lot of those feel-good statements out there. A member of the National Assembly would go out to say, "no, we have given county governments 25 per cent of all the shareable revenue that we have." In reality, it is only 13.3 per cent. It is not right to even demand that county governments contribute to paying these community health workers, a project of the national Government.

Health is devolved as stated in the Fourth Schedule of the Constitution. My good friend, the Chairperson of the Committee on Energy, guess what? The Ministry of Health budget is equivalent to almost 10 counties shareable revenue. That is why you see the Cabinet Secretary in charge of health is untouchable because she has the money. In reality, Kenyans do not understand the pain we go through in this House trying to demonstrate why Kenyans should be happy.

Now, I am saying that those doctors must go back to the hospitals because a national Government must pay. We must make sure that we try to be our brothers' keepers because we are not. It is imperative that all 47 Senators elected to represent their people are here. They take the Division of Revenue Bill and go through it. What the Committee on Finance and Budget did is commendable.

What shocks me is that a Bill goes through Parliament, where we have staff that we pay money and is then published with the Kenya Gazette, but it is not accurate. What do you call that? We all know the baseline for last year. How do you reduce it by over Kshs10 billion and then you come say, 'guess what, we are increasing the allocation to counties by 'x' amount of money?'

Mr. Temporary Speaker, Sir, national Government projects should be national Government projects. The reason today county governments are not able to pay their own pending bills is because county governments, with the same feel-good political statement, are diverting the money. They appease the national Government by probably building those national Government projects with it.

Why can we not learn to live within our means? If only all those stakeholders who gave their views to the Committee were the first ones to say, 'gentlemen, the amount which you are proposing to allocate to county governments is inadequate.'

These are experts, technocrats and people who understand. They are constitutional bodies that have been set up to ensure that, at least, we maintain fiduciary responsibility and help our counties grow. They can come and tell us that the amount of money we are sending to the counties is not enough. Should we ignore it? National Assembly, come on!

Some things annoy me and people need to know. Sometimes members of the Executive go out there and say they have given county government 'x' amount of money. The Executive does not give county governments money. We, in Parliament, are the ones who divide the money between the Executive and county governments.

In this proposed division of revenue, which I concur with the Committee, they have said that we will give the national Government about Kshs1.570 trillion because the projected revenue is about Kshs2.948 trillion. Out of this, we will give the national Government 86.4 per cent of all the money that we are going to collect. County governments take only 13 per cent.

This goes to the Committee on Finance and Budget. Because of your diligence, your agility and dedication to service, which is helping this country, what we need to do is to find a way to push. It may mean coming up with a piece of legislation to push the National Assembly to fast-track approval of the current financials. We should not be relying on 2020, yet we are in 2025. Seriously, what exactly are we doing?

Mr. Temporary, Speaker, Sir, because of time and I know my colleagues would want to comment, the people of Kenya must know that the MES project has now been scrapped. That gives us more money. It is almost Kshs5.8 billion, which has now been repurposed. That money should go back to counties.

That is why no one in their rightful mind should object to the amount albeit little. I mean the money is not too much, but the amount of Kshs415.9 billion proposed by the Committee is peanuts compared to the amount of money that we are giving the national Government. The fact that we have scrapped a service that was consuming about Kshs6 billion, we have that money. Save the counties.

I plead with my colleagues that when you are here, remember your first duty is to the people of Kenya who elected you. Your second duty is to remember the Article of the Constitution that puts you here and what it says. Article 96 of the Constitution is for you to defend the interests of counties and their governments.

Thirdly, as I conclude, I also want to remind county governments about Articles 226(5) and 125 of the Constitution. As long as I am a Member of this House, our oversight committees will take you to task to demonstrate how you have been diligent in using public funds.

We have a Motion, which I hope we will conclude, to try and instill or inculcate the culture of fiscal discipline in our counties. It is only then that we will leave this country a better country than we found it.

County governors should leave feel-good statement, where they want to be seen as if they are supporting the national Government. You should not be kissing asses of other people in the national Government. In fact, what you should do is to go---

The Temporary Speaker (Sen. Abdul Haji): Sen. Olekina, use parliamentary language. Please, withdraw that.

Sen. Olekina: Mr. Temporary Speaker, Sir, I withdraw that statement. Sorry, let me put it in better terms.

I will ask my brother, the Majority Whip, when he is making his contribution - because I know how generous he is with his words - to follow up on where I left it. He should ensure that he sends the message straight to this governor, so that we leave this country a better country than we found it.

I support and congratulate my dear brother for the good work.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Abdul Haji): Thank you, Senator.

Sen. Tabitha Mutinda, proceed.

Sen. Tabitha Mutinda: Thank you, Mr. Temporary Speaker, Sir, for this opportunity. Allow me to start by thanking our Secretariat, the clerk assistants, the Parliamentary Budget Office (PBO) and the legal team that has worked with us in the Committee on Finance and Budget. I thank all Members who assist this great committee. I will not forget to thank my colleagues.

I am a new Member of Parliament (MP) and this is one of the committees that I serve with a lot of pride. When I sit with Members of this House's leadership like Sen. (Dr.) Khalwale, the captain and doctor to be Sen. Ali Roba, Sen. Faki, and youth Senators like Sen. Oketch Gicheru, I take pride because I have learnt a lot.

Our committee deals with matters. We have had the privilege of having stakeholders who are frequent in our deliberations and discussions of the different bills we have. Some of the stakeholders are led by the National Treasury. The Commission on Revenue Allocation (CRA) plays an important part. The Council of Governors (CoG) and Institute of Certified Public Accountants of Kenya (ICPAK) are amongst many other stakeholders that also play an important part.

I have decided to note that because the House needs to know the journey the Committee has walked, keeping in mind where we are coming from. Last year, I had the privilege of tabling the Bill. During voting, I endured the disadvantage of having to amend the figures from what we had tabled as a Committee. Our offer was Kshs407 billion, but it had to be reduced to Kshs385 billion.

I have always raised a concern in the committee in terms of the issue of the last audited reports. Sadly, we have to wait for the National Assembly to approve the audited reports. The Constitution states that we use recent audited reports. The last audited reports approved by Parliament are for the financial year 2020/2021, yet we are in the financial year 2023/2024. We are soon closing the financial year 2024/2025.

When you ask about the cause of the delay while we have a running Parliament - this should be one of the priorities of the National Assembly. We ask them to prioritise the audited reports, so they can be current.

When you look at the 2019/2020, 2020/2021 and 2022/2023 financial years, it is only the COVID-19 period of the financial year 2020/2021, where revenue was low. We all know this is because of the pandemic. From there, when you look at the revenue reports, these amounts have been moderate increments. When you look at that, you wonder why, sadly, the National Treasury and the National Assembly Committee on Budget would sit and propose Kshs391 billion to counties as an increment of Kshs6 billion.

You will note that the rate of inflation has gone high. All our 47 county governments also borrow from our commercial banks. The last message I received on my phone from one of my bankers was that the interest rate of borrowing is about 21 per cent. Therefore, interest rates at the commercial banks have also increased. How then do we add Kshs6 billion according to their proposal?

Previously, we added to Kshs385 billion. We were coming from Kshs370 billion. That is an increment of Kshs15 billion. So, how do we go down and lower more than half, and deny counties money by just giving them an additional of Kshs6 billion only, looking at the issue of the inflation and the interest rate in the commercial banks?

Mr. Temporary Speaker, Sir, the other matter is on the issues of the CHPs, that we have in all the 47 counties. Currently, as we speak, the CHPs are earning Kshs6,000 only, a contribution by the national Government and the county government, yet we know very well that health is devolved. Is Kshs6,000 enough for them? Of course not, but it is something because they started with around Kshs3,000, then there was an increment to Kshs6,000. However, given the cost of living now, more money is needed for them.

That aside, with the current amount that they are supposed to get today, and as my Chairperson had indicated earlier, the total budget for the issue of the CHPs is about Kshs3.2 billion for all the counties. If we do not prioritize, as far this particular amount is concerned, are we going to send our CHPs back home? Will they deliver the services that we expect from them?

I have always said that a healthy nation is a wealthy nation because there is an important role that the CHPs undertake. It is very critical that we, as a committee, justify the Kshs415.9 billion.

These are some of the issues that we have looked at. We had two ways of looking at this. Even before I go into the reasons as to why we have looked into some of these reasons, I will look at the issue of the annual salary increment. You know very well, in the contracts that are given by the counties to their staff, there is always a provision for salary increment every year. So, these monies cannot be constant.

There is the cost of the Social Health Insurance Fund (SHIF), the National Social Security Fund (NSSF). There is also the issue of the housing levy that we are all paying today. Therefore, that is an additional cost to the counties. Where is that money going to come from?

As Senators, we agree to this figure, but our counterparts in the National Treasury and the National Assembly are not understanding why we came to Kshs415.9 billion. That is why we are trying to explain and tell them some of these facts. They are open. When you look at our base, there is nothing that is scientific and extraordinary that you need to understand. It is factual because all of us, as we speak, are paying the housing levy. It is a cost.

Mr. Temporary Speaker, Sir, in our continuous deliberations as a committee, we had just looked at Kshs6.4billion as a percentage of economic growth, multiplied by the Kshs385.4 billion, which was the last amount that we gave to counties. Therefore, on that amount, we added the amount for the medical equipment, which is Kshs5.86 billion. Simple mathematics of addition, if you add that, you get Kshs415.9 billion.

Apart from these other issues that we have tried to input and say that these are the figures, there is Kshs6.4 billion, which is an increment plus the medical equipment because these are monies that we brought to zero. Therefore, the addition of that then justifies the Kshs415.9 billion.

Mr. Temporary Speaker, Sir, there is an animal that we have been debating this week. I call it an animal because it is called the pending bills animal. Our colleague, Sen. Olekina, had brought this Motion and some of the issues that we raised, is the thorny issue of the pending bills.

Under normal circumstances, we have always had a maximum of between three to four governors coming before the committee, when the CoG appeared. However, this time round, they came full force. We had to try and squeeze in our small space, but what was important was to execute our discussions. We had about 10 governors who appeared to deliberate on this agenda. Apparently, their proposal was Kshs450 billion.

Hon. Senators and governors need to understand that we did not just take and calculate figures. Our Kshs415.9 billion figure is a mathematically calculated figure. That is why, as a committee, we justify this calculation because even the Kshs450 billion was not adding up.

Our biggest question to the governors was simple, what are you doing as far as the pending bills is concerned? One common denominator of the answer was that they found these bills in place from the defunct governments and all that. However, there has to be an end to every start. We have emphasised to the governors that it is the high time they also address this issue. The county that I represent, the Nairobi City County, has Kshs107 billion pending bills. It is a shame and we have to call a spade a spade.

I am also privileged to serve in the other Oversight Committee called County Public Investment Committee (CPIC), where we have this stakeholder called the County Public Accounts Committee (CPAC). Where I sit, in the Committee on Finance and Budget, we give the money. I also sit in CPIC and I oversight the money that we have given.

As an oversight committee, we have noted a weakness with some counties as far as their staff are concerned, in regards to the professionalism of the accounting standards that are to be adhered to. Some of the counties are not completely adhering to the accounting standards.

It is so shocking at times that when you ask them for their Certified Public Accountant (CPA) numbers, that they should have as required, like the ones the lawyers have, some of them have not even renewed their numbers, showing lack of seriousness. These are people who are poor when it comes to the financial statements. It becomes a challenge if these are the people who are supposed to give advice to the executive and make policies.

I urge the institution that deals with accountants to be more keen and take action and deregister members who are not serious on ensuring that they are up to date with the accounting standards and how they should be able to respect their certifications that they have been awarded to.

Mr. Temporary Speaker, Sir, Division of Revenue Act (DORA) is a very important issue in this Senate. I wish I would be able to vote, but what is important is that I am here. I pride in the fact that I have been able to champion for more monies for the governors.

I urge my colleague Senators who have the power to vote for this Kshs415.9 billion. This is because some of them will be the future governors. How then do you sort these problems that we have been mentioning, if you do not make the decision now? At times, the decisions we make are not just for the future, but for the current situations that we are in.

I urge that they look at this issue keenly because they are the same leaders tomorrow. I am happy because we have my Chairperson who is a former ten-year governor, who understands these issues because he is now sitting where this decision is made in this Senate platform.

Lastly, the Senate is an independent House. It is also the "Upper" House. It is our baby, our cake and our everything. The Division of Revenue Bill should be ours to always protect. We should not even ask why we should mediate. Why do we anticipate issues? Why is it that we want to allow what the National Assembly has proposed?

What is our work here as Senators? Is it just to impeach and bring Statements and Bills? This is our main baby in this House. It is high time we owned it fully for the sake of devolution. We also have the oversight fund. We need to tell them that as much as more money will be send, we need to have mechanisms as far as oversight of the counties is concerned.

Mr. Temporary Speaker, Sir, with those many remarks, as the Vice Chairperson of the Committee on Finance and Budget, I support and appreciate my team for this journey.

I thank you.

The Temporary Speaker (Sen. Abdul Haji): Proceed, Sen. Wambua.

Sen. Wambua: Thank you, Mr. Temporary Speaker, Sir, for this opportunity to add my voice on the Division of Revenue Bill, 2024.

I want to make a few remarks beginning with a conflict in the Bill itself. I have heard the explanation from the Chairperson of the Committee on Finance and Budget on Clause 4 of the Bill. Where there is reference to a base of Kshs374.5 billion, he referred to it as an error. In Clause 5, that base moves to Kshs385 billion.

Whereas the Chairperson appreciates that as an error, I look at it as a calculated move to justify denying funds to counties. I say this because this is not new to us. We have walked this path before.

I like the contribution by Sen. Mungatana. He said that the best way of killing devolution is to deny counties revenue. This is what is happening with this Bill that has emanated from the National Assembly.

It is the National Assembly that has the responsibility to audit accounts. If you look at the First Schedule, they have put it in black and white that what they are talking about is a percentage of 2020/2021 audited and approved revenue, which was Kshs1.5 trillion.

Mr. Temporary Speaker, Sir, it beats logic that we are being guided by a percentage derived from audited and approved revenues of four financial years down the line to make a determination on how much money we shall be giving to our counties.

Mr. Temporary Speaker, Sir, if we are taking Kshs385 billion for the previous financial year as the base and then giving counties Kshs391 billion this year, in absolute terms, we are only adding Kshs5.6 billion to counties.

That is the backdrop of these three realities; one, county governors in their wisdom, I say that because it is their wisdom, have gone into a deal with the national Government for the establishment of what they are calling the industrial parks. Each county government has committed to match a shilling for a shilling, up to Kshs250 million for the establishment of the industrial parks.

What that means is that, cumulatively, Kshs11.7 billion of this Kshs391 billion proposed equitable share to county governments, will go into the industrial parks. The implication is that this is actually double the amount of increment that we have given to counties.

Secondly, the national Government has, through Parliament, pushed the housing levy, which is not discretionary to counties. So, as the employers, counties will have to pay 1.5 per cent as contribution to match the 1.5 per cent contribution from every member of staff in the counties. There is also the SHIF, which again, is not discretionary to counties. They have to contribute for each member of staff under this cover.

Mr. Temporary Speaker, Sir, that tells you that we are giving counties with the left hand, and with the right hand, taking away what we have given them and more. At the very least, the money that we allocate to counties in this coming financial year must be able to cover and reflect three main factors.

It must cover for inflation; the time value for money, because the value of any currency, apart from the hard currencies, has a tendency of depreciating purely at the passage of time. The value of the shilling four years down the line cannot be said to be its value today. That inflation must be covered in this allocation.

We must also look into the absolute growth in the budget. If we were collecting Kshs1.8 trillion and now we project to collect more than that, at 6.4 per cent, the allocation that goes to counties, calculated on the basis of the baseline for the last financial year, must reflect that growth in revenue. This is because the revenues that are collected nationally are collected from counties.

It cannot be that the national Government benefits from growth in revenue in a manner that is completely disproportionate, compared to the benefit that goes to the counties. We must also base our allocation on the baseline, which is Kshs385 billion.

Mr. Temporary Speaker, Sir, I urge my colleagues on this one. Today, I listened to the President addressing Members of Parliament. He was clear in his message that Members had gotten themselves good and modern offices, and they must recommit and rededicate themselves to serving their people.

I have consistently listened to public pronouncements by the President and I have never heard him say - at least not in public - that a section of the membership of Parliament should serve him or his Government. I listen to him and follow his speeches in public places. He has always held the view that Member of Parliament (MPs) should serve the people.

Mr. Temporary Speaker, Sir, I do not know where we lose it. Maybe, when Sen. (Dr.) Khalwale gets a chance, he will tell us where the rain begins to beat us. This is because we get to a point where, instead of doing that which we are elected to do, or instead of doing what the President is urging us to do in public, we do things that run contrary to the expectations after the instructions of the President.

The President has told the Members of the Senate on the Majority side, the side that forms the Government, to serve their people. The best service for any Senator is to protect and defend devolution. In the words of one of their own, Sen. Mungatana, 'you can never serve to protect and defend devolution, if you do not give counties the revenue to carry out their functions.'

Mr. Temporary Speaker, Sir, I am praying that this time round, the Senate will speak in one voice and determine that we are going to allocate Kshs415.9 billion to our counties. If the skies must fall, let the skies fall.

We all know what happened in the last Division of Revenue Act (DORA) debate and right now, we are bound by that decision because it is a vote that was carried on the Floor. Those of us who wanted more money for the counties and those who wanted less money are all bound by the decision of the Senate; that we gave a raw deal to our people in the counties. We gave our counties less money than was recommended by the Commission on Revenue Authority (CRA).

Our governors made petitions and lobbied a lot of us to push these allocations to at least Kshs390 billion that time, but we were unable to do it. This time around, let us remember that our biggest role is to defend and protect devolution. We have a duty of care to our counties to push for additional revenues.

As I conclude, it is now 6.05 p.m. There are Senators in this House lining up to contribute to this Bill, to push forward the agenda of more funds and more revenue to our counties. Perhaps, our governors are watching because this is important to them.

We are doing a good job so late in the day to push more money to counties, including Kakamega, Busia, Nandi, Marsabit and Elgeyo/Marakwet. Once we are done with this, we begin to oversight the expenditure of this money. We should continue being the darlings of our governors.

It cannot be that we are useful to governors when we are pushing money to counties, and then we become enemies when we ask how the money is being spent. It is ridiculous.

I conclude by saying that maybe I want to pick a cue from what the Senate Majority Leader said. Colleagues, I want to challenge us. This business of county governments deciding whatever system they are going to use to collect their revenue and they keep changing it year in, year out, the time has come that this Senate now must prescribe a revenue collection system that applies to all counties.

This is so that we do not have a situation where some counties are collecting money using receipts and others are collecting money using systems that are developed, I do not know where. Let us have a uniform system of revenue collection for counties for purposes of proper accountability.

With those many remarks, I support the report, but reject the proposal for Kshs391 billion from the National Assembly and stand for Kshs415.9 billion to counties.

I thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Abdul Haji): Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Thank you, Mr. Temporary Speaker, Sir.

In 2013, when Kenyans made decisions either to be governors or Senators, the majority of the victors at the gubernatorial and Senatorial level were former Members of Parliament (MPs). I was one such person.

At that time, we all thought we were doing it because we wanted to be champions of devolution. Alas, 12 years down the line, it has now become very evident that the only place you can find a champion of devolution is in the Senate. However, when you go to the countryside, you look at some of the governors, majority of them do not wish to be champions of devolution.

Instead, they want to be champions of affluence, self-aggrandizement, bling-bling and showbiz. That is why you go to a public function in Busia, and you see your governor arriving in a chopper.

You wonder while we were in this House, did we pass a fund for governors to be drawing from to hire choppers to go to public functions? It is very sad.

I appeal to Members of the National Assembly. Their role in the division of revenue should not just be limited to the increasing NG-CDF and money meant for road maintenance. Their role should also include justification on why they arrive at a particular figure.

Mr. Temporary Speaker, Sir, we have sat in the Committee on Finance and Budget for long hours. Sometimes, we would arrive at 7.30 a.m., rush to normal senatorial work and run late into the night. Sometimes, we would work over the weekends, so that we beat this deadline.

We have had proposals from the National Treasury. It has said that Kshs391 billion - fine, they have tried to justify it. We cannot fault them, they have to hold their ground. The Commission on Revenue Allocation (CRA) has proposed Kshs398 billion, and has justified it.

The CoG has also attempted to justify their request for Kshs439 billion. Amazingly, the National Assembly has not justified anything. They just said we agree with the National Treasury without caring to ask or listen to Senators about the needs of our county governments and the people who live in those counties.

Mr. Temporary Speaker, Sir, I must ask Members of the National Assembly to remember, if they have forgotten, which they should never do for as long as they are still alive, that they come from counties. The constituencies they represent are made of people who are the residents of these counties. Any development accruing to these people is in their interest.

Mr. Temporary Speaker, Sir, I firmly support that we move away from Kshs391.1 billion as proposed by the National Treasury and rubber-stamped by the National Assembly and adopt the well-considered, well-thought-out figure of Kshs415.9522 billion.

Having said this, I now appeal to the National Treasury that; play it fair. It is the Executive where the National Treasury sits, that asked counties to participate in the issue of housing levy, the social health insurance fund, county aggregated industrial parks and in helping to pay the community health promoters.

Therefore, when we ask for more money beyond Kshs391 billion to Kshs415.9522 billion, it is because we want to help the national government to push its national agenda on housing, universal health, aggregated industrial parks and primary health care.

Mr. Temporary Speaker, Sir, this brings me to my third point. That is, where does the money that we are talking about come from? It comes from raising revenue. At this moment, I would like to commend the national Government on the issue of raising revenue. If they had failed on this issue, counties would by now have collapsed.

I appeal to Kenyans who are in court today, who are making it through legal fights in court for the KRA to perform, to take it easy to allow the KRA to employ 6,000 professionals that they wish to employ, so that we improve on revenue collection. The KRA does not collect money outside the provisions of the Finance Act. It is up to us to allow them to have enough staff. If we do not like the provisions in the Finance Act that they use to collect money, we can rectify.

Why am I commending the national Government? In financial year 2013/2014 – I know Mr. Njenga can remember this with nostalgia – we were collecting Kshs0.8 trillion. However, last year, we collected a whopping Kshs2.4 trillion. We will collect more this year. That corresponds to tripling of that amount. Do they not deserve commendation? Are we not proud of the KRA? They are doing a good job.

Fast forward, to collection of revenue by county governments, I would like to talk about what is famously called own source revenue. What is wrong with counties? I do not understand. I bemoan this.

According to my Principal Research Officer, Mr. Samuel Muhati, who prepared for me this report, there are only three counties that are putting an effort in own source revenue, namely, the County of Narok, congratulations Gov. Ntutu. We also have the County of Kirinyaga, congratulations Gov. Anne Waiguru. The third one is, guess which county? It is Wajir County, despite the challenges there.

Gov. Abdullahi found that the county was collecting Kshs46 million. However, last year, he was able to collect Kshs160 million. You know there are limited resources in Wajir. I am so proud of Gov. Abdullahi.

Mr. Temporary Speaker, Sir, we can give some accolades to Gov. Anne Waiguru. She found the County of Kirinyaga collecting Kshs180 million, but now she has grown it to Kshs600 million. That young lady is working. That is the only good thing I can say about own source revenue by our counties.

My question is: what went wrong with Nairobi City County? Given the contribution of Nairobi City County to the Gross Domestic Product (GDP) of this country at 57 per cent, it means the GDP of Nairobi City County is bigger than the GDP of the Republic of Rwanda, Burundi, Gambia, Guinea and many African countries. With that kind of GDP, where does own source revenue disappear to?

Again, according to a research by my Principal Research Officer, Mr. Samuel Muhati, he confirmed to me that it is the position of the CRA and the CoB. If Nairobi City County was to perform, they have the potential to declare a collection of Kshs89 billion per year. However, they do not do so.

Today, we were in a presidential function where the Governor of Nairobi City County told us that he has no money and I was wondering where their own source revenue goes. We give him Kshs20 billion.

Gov. Sakaja, in my other life, I am your maternal uncle. I urge you to make the youth proud. Collect and declare the own source revenue by Nairobi City County.

It is not just Nairobi; what is happening in Mombasa County? Where is the money? Mombasa County sits on one of the biggest ports in Africa. Where is the money for Nakuru, Kiambu, Machakos counties, and the good old Kakamega County?

Mr. Temporary Speaker, Sir, Kakamega is not a small county. When you used to live in Kakamega County, you were a small boy, who did not know where you were living then. Kakamega County is not child’s play. It has Mumias Sugar Company, an economy of Kshs24 billion. West Kenya Sugar Company is close to Kshs14 billion. Butali Sugar Company controls Kshs10 billion. I have not stated returns from other areas like gold mining in Lurambi, Ikolomani and Shinyalu.

Kakamega County should declare a minimum of Kshs2.5 billion as own source revenue. We do not understand what happens. I encourage governors, especially the one of Narok County, where Sen. Olekina has tabled a Motion on pending bills. They should understand that there is no magic and it is common sense.

Dear governors, if you pay pending bills, it means those who delivered services reinvest in that county's economy. It is akin to a businessman who makes a profit in his shop, reploughing the money in the shop. The shop ends up growing faster. If the businessman does not replough the profit from the shop and takes it to do other things, the shop goes down. This is how our counties that have governors’ shops are being treated.

I would like to end my contribution with two small points. Firstly, nobody has spoken about the issue of the equalisation fund in this Bill. This fund will get Kshs10.8 billion. I do not know what happened to the Commission on Revenue Allocation (CRA) when I was away. They convinced this House that the end users of the equalisation fund should not be the 14 counties from the ASAL areas, which we had identified at the Committee on Finance and Budget. They spread the fund thin to 34 counties. Therefore, we have an additional 20 counties competing with counties that deserve this money and they have spread it thin, hence the benefit cannot be seen.

How I wish that after this financial year, this House can agree with me, so that we become nationalists and allow these counties from the ASAL areas to enjoy this fund preferentially. What joy do you get when you see small boys from Wajir or Turkana County stopping you by the road, as we saw when we were there during the conference.I wondered why they were stopping me. I said, I will be stopping and each one of them asked for water.

You give the small boy a bottle of water, his face lights up, he then hides the bottle behind him and brings another hand because he wants one more bottle. These were the things that this fund was supposed to address.

I find Murang’a on the list of counties sharing the equalization fund. Why would people in Murang’a, where President Kenyatta took piped water many years ago, be competing with the people of Turkana, unless you want to change the nationality of Turkanas to go to South Sudan or wherever you want them to go? We have to be nationalists. This is the House of equalization.

Mr. Temporary Speaker, Sir, I appeal to the KRA to rethink, so that nobody in Murang’a thinks I am against them. Even the good old Bungoma is on that list. In Bungoma, we enjoy nine months of rain, 12 months in a year. Why would we fight for money meant for water to go to Wajir, Garissa, Mandera, Turkana, Baringo or Pokot counties?

Finally, I conclude by sounding out governors. Governors, especially the Governor of Kakamega, complained very loudly through some Senators here that we had not given them enough money. It is now one year down the line; show us what you use that money for.

In Kakamega, we allowed them to have a budget of Kshs17 billion, and up to now, salaries are still in arrears and the money has gone there. Why?

Mr. Temporary Speaker, Sir, in Kakamega, the ongoing projects that were started by Gov. Oparanya, have all stalled. Why is that so and the money has gone there? Committees of the County Assembly of Kakamega cannot perform because the Governor is not funding them. Pending bills in Kakamega remain unpaid, and we have sent this money. Why?

The money for Pension Fund, National Social Security Fund (NSSF), and National Health Insurance Fund (NHIF) is not being remitted. If they had this budget of Kshs17 billion and they were not doing these things, why were they shouting that the money was not enough? They should have at least given us a report card saying that these things we have done and yet they have not been done.

With those many remarks, I support this Bill with the main amendment that we amend it to Kshs415.9 billion.

I thank you.

The Temporary Speaker (Sen. Abdul Haji): Proceed, Sen. Okiya Omtatah.

Sen. Okiya Omtatah: Thank you, Mr. Temporary Speaker, Sir. I support the Bill with the amendment that the amount should be raised to Kshs415.9 billion.

What the National Assembly has done is unacceptable and must be resisted. However, we shall only succeed if we stand as a single House. I pray that the Government side does not betray us again this time. They should stand with us.

The National Assembly has undermined devolution in many ways. I invite this House to look at Clause 2 of the Division of Revenue Bill. It states that-

"In this Act unless the context otherwise requires, 'revenue' has the meaning assigned to it under Section 2 of the Commission on Revenue Allocation Act".

When you look at the Commission on Revenue Allocation Act, what it prescribes is not what the Constitution anticipates. Article 202 of the Constitution states-

"That revenue raised nationally shall be shared equitably among the national and county governments".

When you go to that section of the Commission on Revenue Allocation Act, it describes revenue to mean taxes imposed by the national Government under Article 209 of the Constitution and any other revenue, including investment income that might be authorised by an Act of Parliament, but excludes revenues referred to.

Those excluded revenues are supposed to be part of the revenues that constitute the whole, and upon this House, we must fight to make sure that we get those revenues back as part of the unit for computing the revenues that go to the county governments. Otherwise, these people have played us.

I also want to comment on the issue of taking too much time to consider the audited accounts. Article 259 (8) of the Constitution is very clear.

The Temporary Speaker (Sen. Abdul Haji): Sen. Okiya Omtatah, there being no more time, you should have a balance of 18 minutes when this matter resumes on the Order Paper on Tuesday, next week.

ADJOURNMENT

The Temporary Speaker (Sen. Abdul Haji): Hon. Senators, it is now 6.30 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until Tuesday 30th April, 2024, at 2.30 p.m.

The Senate rose at 6.30 p.m.