PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 8th August, 2023

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

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

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

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

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

The Speaker (Hon. Kingi): Serjeant-at-Arms, kindly ring the Quorum Bell for 10 minutes.

(The Quorum Bell was rung)

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

Clerk, proceed to call the first Order.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM KATUTU GIRLS SECONDARY SCHOOL, KITUI COUNTY

The Speaker (Hon. Kingi): Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting teachers and students from Katutu Girls Secondary School, Kitui County. The group comprises three teachers and 48 students who are in the Senate for a one-day academic exposition.

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

This school is situated in Kitui County. I will, therefore, allow the Senator for Kitui County, under one minute, to welcome the delegation.

Sen. Wambua: I thank you, Mr. Speaker, Sir, for allowing me this opportunity to join you and my colleagues in welcoming visiting students and teachers from Katutu Secondary School. Indeed, it is true that, Katutu Girls Secondary School is in Kitui County, Kauwi Ward, which is my ward. I am happy to have the students and the teachers visiting the Senate today to apprise themselves of the work that their Senator does in conjunction with the other Senators.

Mr. Speaker, Sir, I take this opportunity to welcome the visiting delegation and urge them to pay keen interest in what happens in this Chamber as we defend devolution and the calls of democracy in this country.

The Speaker (Hon. Kingi): Next Order.

MESSAGE FROM NYANDARUA COUNTY ASSEMBLY

CONSULTATION WITH GOVERNMENT AGENCIES ON THE GAZETTEMENT OF LAKE OL'BOLOSSAT AS A NATIONAL RESERVE

The Speaker (Hon. Kingi): Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.8(3) and (4), I have received a Message from the Speaker of Nyandarua County Assembly.

The effect of which is to petition the Senate to consult with the Kenya Wildlife Service (KWS), the National Environmental Management Authority (NEMA), the Kenya Forest Service (KFS) and other Government agencies, and speed up the gazettement of Lake Ol'Bolossat as a national reserve under the County Government of Nyandarua, in order to enhance its conservation, address issues of human wildlife conflict, create job opportunities, enhance own source revenue and provide an alternative source of livelihood to the residents.

The Message was received in the Senate by way of a letter communicating a resolution passed by the County Assembly on 8th March, 2023, which, *inter alia*, provided-

THAT, aware that Lake Ol'Bolossat is the only highland lake in Central Kenya and that it is a significant fresh water source, lies at an altitude of 7600 ft and is an essential part of the local ecosystem and economy.

The lake feeds into the Ewaso Nyiro River, which supplies water to the Thompson Falls, which was declared a protected wetland under the Environmental Conservation and Management Act, 1999, in 2018, and spans approximately 4800 km².

FURTHER, AWARE THAT the lake is a vital habitat for over 300 big bird species, migrating between Europe and Asia, and houses over 1,000 hippopotamuses, supports the livelihoods of people, livestock and wildlife downstream in several counties and supports a variety of activities, including commercial, agricultural and tourism. The lake area also encompasses two major conservancies; Lewa and Ol Pejeta.

FURTHER, COGNIZANT THAT the Nyandarua County Government has been in consultation with the national Government, Ministry of Tourism, Wildlife and

Heritage on the gazettement of Lake Ol'Bolossat as a national reserve under the Kenya Wildlife Conservation and Management Act, 2013, to facilitate more effective conservation measures and boost eco tourism.

CONCERNED THAT despite these efforts, the lake's ecosystem has significantly dwindled due to human activities and that its area has shrunk from around 10,000 hectares to about 2,000 leading to a decrease in water levels and a drop-in bird and hippopotamus populations.

THAT, invasion of local communities with large herds of cattle and encroachment of riparian land has exasperated the situation. Interventions to save the lake and its ecosystem has been limited, causing concern among the public and stakeholders.

The Assembly thereupon resolved, *inter alia*,

(1) THAT, the Assembly petition the Senate of Kenya to consult the KWS, the NEMA, the KFR and other Government agencies to expedite the gazettement of Lake Ol' Bolossat as a national reserve under the County Government of Nyandarua to augment conservation efforts, resolve human wildlife conflict, generate job opportunities, enhance own source revenue, and provide an alternative livelihood source for locals.

(2) THAT, the Nyandarua County Government initiates consultations with the KWS for a potential partnership to enable the county government to fully protect the lake and generate revenue from it.

(3) THAT, the county government confers with the national Government on exploiting the lake's resources and establishes a phased plan for bio deposit exploration in the lake.

Hon. Senators, pursuant to Standing Order No.48(7)(c), I direct that the matter, together with the set of correspondence received from the County Assembly of Nyandarua, be referred to the Standing Committee on Land, Environment and Natural Resources for consideration.

I thank you.

(The Message was referred to the Standing Committee on Land, Environment and Natural Resources)

Next Order.

QUESTIONS AND STATEMENTS

STATEMENTS

Proceed with Statements pursuant to Standing Order No.52 (1).

Proceed, Sen. Lomenen.

ARREST AND CONTINUED DETENTION OF THE TURKANA PASTORALISTS IN UGANDA

Sen. Lomenen: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.52(1) to make a Statement on a matter of international and general topical concern, namely the release of Turkana pastoralists arrested and jailed in Uganda.

Pastoralists in Turkana County have been facing recurring droughts that severely impact on the availability of pasture and water for their livestock. Due to this, many pastoralists in the county are often compelled to cross over into the neighbouring country of Uganda in search of greener pasture and water sources to secure the survival of their livestock, which is their main and often only source of livelihood.

(Loud Consultations)

Mr. Speaker, Sir, I seek your protection.

The Speaker (Hon. Kingi): Senate Majority Leader and your counterpart on the other side, kindly allow the Senator to be heard in silence.

Sen. Lomenen: Historically, pastoralist communities on both sides of the border have maintained cultural and social ties and have followed migratory grazing patterns, moving their livestock seasonally to areas of greener pasture. This, however, has come under threat in the recent past with the constant harassment of Kenyan pastoralists by Ugandan authorities.

More recently, in April 2023, 32 Kenyan pastoralists from Urum and Lokiriama villages in Turkana County were arrested by the Uganda People's Defence Force and the police, in the guise of disarmament operation. They were tried in a court martial and sentenced to 20 years in jail. Six others suffered gunshot wounds in the same alleged disarmament operation.

It has been approximately four months since the arrest, yet we have not been made aware of any efforts by the Ministry of Foreign and Diaspora Affairs to secure the release of the arrested pastoralists. It is imperative that the pastoralists are released as the Kenyans who have equal rights and deserve a fair legal process in their trial.

I am apprehensive of the legal process and evidence presented during their trial and believe there could be a miscarriage of justice. I filed a Question on this matter to the respective Cabinet Secretary, whose appearance in this House has been scheduled twice. However, he has not honoured the summons by the Senate.

Mr. Speaker, sir, it is from the foregoing that I urge the Standing Committee on National Security, Defence and Foreign Relations to inquire into this matter and initiate engagement with the Ministry of Foreign and Diaspora Affairs to secure the release of the arrested pastoralists.

I thank you, Mr. Speaker, Sir.

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

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): What is it about? Certainly, you cannot rise on a point of order, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale, let me help you out. Do you want to make an intervention so that you get some clarification?

(Sen. (Dr.) Khalwale spoke off the microphone)

If that is the case, you can go ahead and seek clarification.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, thank you for being accommodative. If Members have listened keenly, they have heard that 32 Kenyans have been jailed for 20 years each in a foreign country. This is the first time that the matter is coming before the Parliament of Kenya.

Kenya and Uganda are both signatories to the East African Treaty. The President of Uganda and his Government cannot be paying lip service to the protocols of the East African Community, which allows for the free movement of people, goods and labour. However, when they find Kenyan people grazing their cattle on ancestral land; the land in Kenya belonging to Turkana is the same ancestral land that belongs to Turkana on the other side---

The Speaker (Hon. Kingi): Sen. (Dr.) Khalwale, I allowed you to seek clarification not to debate the Statement.

Sen. (Dr.) Khalwale: Mr. Speaker Sir, the clarification that I am seeking is that can you not find under Standing Order No.1, a small way we can convert this matter into an Adjournment Motion so that we call this friendly nation to order? If we cannot succeed, we should proceed to the East African Court of Justice where these people would have been tried and received fair service.

The Speaker (Hon. Kingi): Now, Sen. (Dr.) Khalwale, if that is your feeling, you know exactly what to do. You need not get permission from the Chair. You are a seasoned Member of this House. If that is your feeling, you know exactly what to do, kindly proceed that way.

Sen. Okenyuri, you may proceed.

INTERNATIONAL YOUTH DAY

Sen. Okenyuri: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.52 (1) to make a Statement on a matter of general topical concern, namely International Youth Day.

Mr. Speaker, Sir, the International Youth Day is an annual event observed globally on the 12thAugust by the United Nations General Assembly Resolution 54 out of 120 of 1999.

With the first International Youth Day being observed in 2000, the day aims to bring youth issues to the attention of the international community, as well as to celebrate the potential of youth as partners in today's global society.

For over two decades, the International Youth Day has been used as an opportunity for governments and organizations to create awareness about issues affecting youth, such as education, healthcare, employment, opportunities and equal rights. The day, therefore, calls upon everyone to join the efforts of the United Nations and help it achieve its sustainable development goals.

In Kenya, the commemoration of International Youth Day will take the form of a celebration of youth week, whereby a flurry of youth events and activities have been planned to run for a full week, beginning Monday, that was yesterday and envisioned to culminate in the International Youth Day on Saturday 12th August, 2023.

The theme of this year's International Youth Day is 'Green Skills for Youth towards a Sustainable World'. The youth are an asset and are our collective future who are also most affected by the vagaries of climate change. The majority of these youth are not only students, but also teachers, upcoming industry captains and emerging leaders.

In a world faced with a first evolving climate change challenge and unsustainable economic systems, our focus on equipping the youth with green skills is quite strategic.

Mr. Speaker, Sir, the United Nations has expanded this year's theme of green skills into five major areas of concern and focus as follows-

1. The certain knowledge, abilities, values, and attitudes needed to live in, develop and support a sustainable and resource-efficient society;
2. That the youth will endure severe climate events longer;
3. That the youth will experience significant changes in economic opportunities;
4. That skills demand is exceeding supply, and this means that 60 per cent of young people will lack the skills necessary to thrive in the green economy in the year 2030;
5. That there are disparities that must be addressed, including the technology divide. We have 67 per cent of youth who do not have digital skills due to a lack of basic resources.
6. The other issue is the education gap; those with university education obtain green skills quicker than the youth with no university education; and finally,
7. The current occupational gender stereotypes are likely to persist as it is claimed that the green transition will favour male-dominant sectors, 19 million jobs will be created for men as compared to six million for women.

Mr. Speaker, Sir, the situation in our country is dire. The extent to which our youth have acquired green skills has not been measured and as we all know, what is not measured can never be managed. The Government must therefore accelerate the formulation of a policy framework under which we can coordinate and consolidate our interventions.

The youth need to be made aware of the unique challenges that their generation has to grapple with and be helped to be ready to turn these challenges into opportunities.

It is encouraging to note that our President, H.E. (Dr.) William Samoei Ruto, is cutting a powerful global voice on matters of climate change mitigation. The relevant Ministry must translate this strategic positioning by the President into tangible benefits for our young people. An example of such a benefit is registering the youth in community groups, which participate in activities such as tree planting, which affects reducing carbon emissions and earning from carbon credits.

Efforts to impart green skills to the youth at the community level must be highlighted, lauded and supported. Such examples include community groups such as the Kisii-Magenje Welfare Group in Bomachoge-Borabu Constituency, which engages in tree planting and the Chebloch Gorge Divers Rescue Team, which is a youth group that has been responding to cases of drowning in the North Rift counties.

Mr. Speaker, during this youth week, let us recommend ourselves to empower the youth with green skills as well as access to resources and opportunities. We must collaborate on policies that promote sustainable development, encourage eco-friendly practices and support initiatives that mitigate the impact of climate change.

I am delighted to inform this esteemed House that the Kenya Young Parliamentarians Association (KYPA) under the leadership of its Chairperson, Hon. John Mukunji, MP. and the Chief Executive Officer, Mr. Anthony Buluma, has taken a momentous step towards the empowerment of the youth during the commencement of this week's celebration.

The KYPA in collaboration with the relevant stakeholders hosted an inspiring event yesterday at the County Hall, Mini Chamber within Parliament Buildings to launch the weeklong celebrations. This gathering provided a unique platform for young leaders from across the country to come together, exchange ideas and voice their vision for a sustainable world.

During the event, we witnessed the enthusiasm and passion of the youth as they engaged in thoughtful discussions on pressing environmental issues and the key role they play in shaping our sustainable future. Their commitment to promoting green skills, echo consciousness and community involvement was truly commendable.

Furthermore, the occasion served as a bridge between the youth and policymakers by fostering a dialogue that enabled the young parliamentarians and their more experienced counterparts to exchange perspectives and collaborate on actionable solutions for a sustainable world.

Mr. Speaker, Sir, as we navigate the challenges of this rapidly changing world, we must recognize that the solutions lie in the hands of our youth. By empowering them with green skills and nurturing their ideas, we lay the foundation for a sustainable, inclusive and prosperous future for Kenya and the global community.

I call upon the Senate to engage with county governments to explore avenues to fast track imparting our youth with green skills for a sustainable world.

I thank you for the opportunity to make this Statement.

The Speaker (Hon. Kingi): We are now on Statements pursuant to Standing Order No. 53(1).

Hon. Sen. Omogeni proceed.

LEARNER CAPITATION FOR NATIONAL SECONDARY SCHOOLS

Sen. Omogeni: Mr. Speaker, Sir, I rise, pursuant to Standing Order No.53(1), to seek a Statement from the Standing Committee on Education regarding the learner infrastructure support for national schools in Kenya. In the Statement, the Committee should-

(1) Explain the criteria applied by the Government to determine the learner infrastructure allocation for national secondary schools; and,

(2) Provide a breakdown of learner infrastructure amounts allocated and disbursed to various national secondary schools in the country in the academic calendar years 2021, 2022 and 2023 indicating the respective learner enrolment in the schools.

I thank you.

The Speaker (Hon. Kingi): Sen. Munyi Mundigis' Statement is deferred. The Senator has informed me that he will not be in the House today.

WELLBEING OF TEACHERS POST-RETIREMENT

(Statement deferred)

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

BARABARA ZINAZOMILIKIWA NA MAMLAKA YA KURA
KATIKA KAUNTI YA MOMBASA

Sen. Faki: Asante, Mhe. Spika. Nimesimama kwa mujibu wa Kanuni ya Kudumu 53(1) za Seneti kuomba taarifa kutoka kwa Kamati ya Kudumu ya Barabara, Uchukuzi na Makao, kuhusu barabara zinazomilikiwa na mamlaka ya *Kenya Urban Roads Authority (KURA)* katika Kaunti ya Mombasa.

Katika taarifa hiyo, Kamati iangazie yafuatayo-

(1) Iarifu Seneti ni barabara ngapi shirika la KURA limeweza kurekebisha kutoka mwaka wa 2018 hadi 2023 katika Kaunti ya Mombasa, ikiorodhesha majina ya barabara hizo kikamilifu;

(2) Ichunguze matumizi ya fedha zilizotengwa kwa urekebishaji wa barabara hizo, ikizingatiwa kwamba baadhi ya barabara zilizo chini ya mamlaka ya KURA hazija rekebishwa kikamilifu; na,

(3) Ieleze sababu zinazopelekea KURA kutumia wanakandarasi kutoka Kaunti ya Nairobi kukarabati barabara za Mombasa, ilhali wapo wanakandarasi wenye ujuzi na tajriba ya kutosha katika Kaunti ya Mombasa ambao wanaweza kufanya kazi hizo.

Asante, mhe. Spika.

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

HIGH RATE OF TEENAGE PREGNANCIES
IN HOMA BAY COUNTY

Sen. Ogola: Thank you, Mr. Speaker, Sir. I rise, pursuant to Standing Order No.53(1), to seek a statement from the Standing Committee on Education concerning the high rate of teenage pregnancies in Homa Bay County. In the Statement, the Committee should-

(1) Provide detailed data on the number of school-going children impregnated in Homa Bay County, categorised by their respective schools, and sub-counties;

(2) State the specific interventions and measures the Ministry of Education is implementing to deter the alarming rise in teenage pregnancies within the county's schools; and,

(3) Document follow-up activities the Ministry of Education is conducting to ensure that pregnant students complete their studies successfully, if any, sharing relevant data and information about the effectiveness of these follow-up efforts.

I thank you.

The Speaker (Hon. Kingi): Sen. Chimera proceed.

STATUS OF RECRUITMENT OF THE DIRECTOR-GENERAL OF CAK

Sen. Chimera: Thank you, Mr. Speaker, Sir. I rise, pursuant to Standing Order No.53(1), to seek a Statement from the Standing Committee on Labor and Social Welfare, regarding the status of recruitment of the Director-General of the Competition Authority of Kenya (CAK). In the Statement, the Committee should-

(1) Explain the progress made in the recruitment of the Director-General of the Competition Authority of Kenya, whether the Public Service Commission has been involved in the recruitment process or not;

(2) State the actions that have been taken to ensure adherence to the stipulated timeframes for acting appointments as stipulated in Section 34(3) of the Public Service Commission (PSC) Act (No. 10 of 2017);

(3) State how long the position has been vacant, detailing who has been serving in an acting capacity during this period and whether the provisions of the said section of the PSC Act have been complied with; and,

(4) Outline any measures taken by the relevant authorities to expedite the recruitment process and ensure the appointment of a substantive Director-General within the limits set by the Act in order to uphold the principles of transparency, accountability, and fairness in the recruitment and appointment of public officers.

I thank you.

The Speaker (Hon. Kingi): Sen. Kibwana proceed.

ALLEGED DISCRIMINATORY EMPLOYMENT OF
HEALTHCARE WORKERS IN COUNTIES

Sen. Kibwana: Mr. Speaker, Sir, I rise, pursuant to Standing Order No. 53(1), to seek a Statement from the Standing Committee on Labour and Social Welfare on alleged discriminatory employment of doctors and medical staff in some counties in Kenya. In the Statement, the Committee should-

(1) Report on claims of unequal pay for work of equal value, particularly in Nakuru, Busia, Kirinyaga and Garissa counties under the Kenyatta National Hospital (KNH), stating the rationale, if any, behind the decision;

(2) Address claims on the use of restrictive contracts in Kirinyaga County, which hinder career progression, stating measures put in place by the Government to ensure compliance with labor laws and industry standards;

(3) Evaluate the Human Resource Management practices in county healthcare facilities, particularly in Kirinyaga County, to address the high rate of attrition and turnover among healthcare workers; and,

(4) Recommend appropriate sanctions and measures against county governments found violating the labor laws and practicing discrimination in the employment of healthcare workers.

I thank you.

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

ALLEGED MALPRACTICES AND EXPLOITATION BY WATU CREDIT

Sen. Cherarkey: Mr. Speaker, Sir**,** I rise, pursuant to Standing Order No.53(1), to seek a Statement from the Standing Committee on Trade, Industrialisation and Tourism regarding alleged malpractices and exploitation of Kenyans by Watu Credit. In the Statement, the Committee should -

(1) State the criteria, requirements and standards that motor credit service providers and Fintech companies must meet before they are fully registered and permitted to operate by the Central Bank of Kenya;

(2) Clarify whether Watu Credit is a duly registered motor creditor and if it falls under the regulatory purview of the Central Bank of Kenya, giving reasons for the high interest rates charged by Watu Credit to its customers, leading clients to pay more than triple the market price for a motorbike;

(3) Explain the numerous cases reported concerning theft of motorbikes, specifically those whose owners have cleared their loans with Watu Credit; and,

(4) Cause Watu Credit to disclose its financial status, furnishing the details of all their customers currently servicing loans and those who have completed their repayments since the company began its operations in Kenya.

I thank you.

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

STATUS OF PENDING BILLS IN VIHIGA COUNTY

Sen. Osotsi: Mr. Speaker, Sir, I rise, pursuant to Standing Order No.53(1), to seek a Statement from the Standing Committee on Finance and Budget, regarding the status of pending bills in Vihiga County. In the Statement, the Committee should-

(1) Give a breakdown of pending bills in Vihiga County Government for the financial years 2014/2015 up to 2021/2022, stating the nature of the pending bills, financial year when the pending bills were accrued, total amount of the pending bills, respective suppliers owed by the County Government and reasons for delay in paying suppliers;

(2) Provide a list of all processed and paid pending bills for the financial years 2014/2015 up to 2022/2023, stating the nature of the pending bills, financial year the pending bills were paid and suppliers of goods and services paid;

(3) Provide a list of all pending payments on the Internet Banking (IB) platform for the current financial year giving reasons for the inordinate delay in finalizing such payments;

(4) Inform the Senate of how Vihiga County Government has addressed audit queries relating to pending bills raised in the past Auditor-General's and the Senate reports; and,

(5) State the measures put in place to ensure timely payment of suppliers of goods and services in order to reduce or eliminate pending bills.

The Speaker (Hon. Kingi): Hon. Senators, kindly put your phones on silent mode so that you do not disrupt debate.

I will allow limited comments on these Statements for not more than 18 minutes meaning, we will have three Members from the Minority side and three from the Majority side each speaking for three minutes.

Sen. Sifuna, please, proceed.

Sen. Sifuna: Mr. Speaker, Sir, allow me to briefly support the Statement that has been brought by Sen. Osotsi, regarding the status of pending bills in his county.

As you are aware, out of the over Kshs350 billion pending bills owed by county governments to various suppliers and institutions in this country, more than Kshs100 billion of that amount is owed by Nairobi City County alone.

As I was submitting to the House last week, I had been very encouraged as the Senator of Nairobi City County, that we have had certain discussions regarding some of those pending bills, especially those that were incurred by the Nairobi Metropolitan Services (NMS). We were able to construct a concession from NMS. When the State House Comptroller appeared before the Committee on County Public Accounts, he assured us that money will not appear in the books of Nairobi City County any more. This is a problem. We have had certain submissions in public that now, we are going to see timely disbursement of resources to counties in line with the Disbursement Schedule that this House will pass. I hope that will be the solution to this question of pending bills in the country.

I support this Statement. I wish that the Committee does a comprehensive job and if possible, extend it to the other counties.

(Sen. Cheruiyot spoke off record)

The Speaker (Hon. Kingi)**:** Majority Leader, you should lead by example.

(Laughter)

Sen. Mungatana, please, proceed.

Sen. Mungatana, MGH: Mr. Speaker, Sir, I wish to quickly comment on the Statement sought by Sen. Chimera on the status of recruitment of the Director-General of the Competition Authority of Kenya (CAK).

I have served and continue to serve in the Common Market for Eastern and Southern Africa (COMESA) Competition Authority. Kenya is a highly respected member of Competition Authorities within the COMESA group of 21 countries.

It is very sad that since the end of the term of Mr. Francis Kariuki, the immediate former Director-General, we have not had a quick succession or confirmation of the Ag. Director-General on that position. This has left CAK in abeyance and it is not functioning as it should. This is because the person who is seated there acting as the Director-General is not able to focus and do the work that he is supposed to do. This means mergers, acquisitions and all things to do with competition law in and outside Kenya, are suffering because of this.

Mr. Speaker, Sir, I fully support this Statement by Sen. Chimera. Action must be taken very quickly by the Public Service Commission (PSC) so that this matter can be put to rest and so that Kenya can continue to shine at the continental level as it should.

I also wish to make a quick comment on the repossession of motorbikes by our *boda boda* communities. Just this weekend, we saw a number of these repossessors. This Statement by Sen. Cherarkey is a very important one. The repossesors time the *boda boda* operators. When you have Kshs20,000 or Kshs25,000 remaining, they come for you, even if you have just missed one repayment.

In Tana River County, they come since they have those trackers. If you hide it in the bushes, they will still come for it. I wonder what kind of people these are. Looking at the price at which they purchase these motorcycles, it is shameful the way these credit companies are operating. I urge the Senate Committee responsible to deal with this matter so that we can save our young *boda boda* people from this harassment.

The Speaker (Hon. Kingi): Clerk, keep the timing at three minutes, please.

Sen. Olekina, please proceed.

Sen. Olekina: Mr. Speaker, Sir, I rise to support the Statement, particularly on the issue of pending bills. There is absolutely no reason as to why each county should have a pending bill. In the Financial Year 2022/2023, county governments budgeted to spend money 30 per cent of their money on development. Before the financial year ends, they carry out several supplementary budgets, which then affects the budgeted amount for projects that have already been expensed.

In the Statement, I would like the Committee to follow up to ensure how much of these pending bills have reached to internet banking. Currently, the accounting officers, those who approved the expenditure, are the ones who divert the money. It is important that the Controller of Budget (CoB) understands her role clearly; that she only releases money which she is convinced is going to pay a particular expense. In that Statement, I request the Committee to further examine the amount of the money which is diverted in all the 47 counties, which ends up resulting in pending bills.

As a vendor, you will be told that your pending bills are in IFMIS. The Controller of Budget releases the money, but when the money reaches the Internet Banking (IB) level for money to be sent to the vendors, approver one and approver two in the county government divert that money and use it to pay for other expenditures which had not been budgeted for or approved by the Controller of Budget.

We must take this matter seriously because there are so many pending bills. In this financial year, not just in Vihiga County, but in every county, whatever money was budgeted for and whatever money they collected on the ground from own source revenue; if you put all that together and look at the pending bills, with a fiducial responsibility, all the bills should have been paid. However, they divert the money so that they can get kickbacks. I support the Statement and hope we can get to the end of the cancer of pending bills.

I thank you.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Speaker, Sir. I have two comments. One is on the Statement by the Senator for Turkana, the one which Sen. (Dr.) Khalwale tried to seek your indulgence. I believe he has further been guided because he knows the procedure if we were to proceed the way he wanted the House to. Nonetheless, this is a very important issue, which, as a Senate of the Republic of Kenya, we cannot keep quiet.

For a long time, since inception of the East Africa Community (EAC) as a regional bloc, Kenya has continued to play the big brother role. We have suffered tremendously because of that tag of being the superpower of the region.

Each time, I see negotiations that happens at the EAC level the final straw that breaks the proverbial camel’s back is this tug of war: “You are the bigger brother, please, bear with us.”

On that account, Kenya has suffered great injustice on many occasions. You know about the issue of Migingo Island, the chicken in Narok County along their border with Tanzania and this particular issue that involves human beings.

It may reflect as a situation as when they first went for the fish, we kept quiet, subsequently they burnt our chicken---

The Speaker (Hon. Kingi): Majority Leader, let me guide you. The comments you are supposed to make should be attributable to the Statement made pursuant to Standing Order No.53(1) not the Statement made pursuant to Standing Order No.52(1). This is why when Sen. (Dr.) Khalwale veered off to make his comments on that particular Statement. I had to stop him. I believe he was guided on what to do in the event that he wants the Senate to contribute to that Motion. So, restrict yourself to the Statements under Standing Order No. 53(1).

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I am properly guided. I therefore, abandon that conversation. I will proceed to comment on the Statement by Sen. Cherarkey, which I believe we are at liberty to debate.

The number of companies that are doing this kind of business are predominantly many. We know for a fact that 99.9 per cent of these companies are not locally owned. They are owned by foreigners. Therefore, this is neocolonialism but a very difficult one because young people are breaking their backs working in either extreme cold or a lot of sunshine. Eventually, all the money they have made, for example, if you made Kshs2,000 a day, Kshs1,800 is taken and to be offset out of the country. This is not a small matter.

I hope the Cabinet Secretary responsible will come. These businesses are of great national interest such that Parliament should have legislation to keep them within the confines of the country; that if you want to do this kind of business, you must have significant shareholding locally. Therefore, I hope we will get to the bottom of this matter and ensure that people stop taking advantage of our young boys and girls engaging in the *boda boda* business.

I thank you.

Sen. Maanzo: Thank you, Mr. Speaker, Sir. I would like to make a comment on the Statement requested by Sen. Okenyuri on the youth week. The issue of youth, which is being celebrated all over the world, is very critical.

The Speaker (Hon. Kingi): Sen. Maanzo, restrict your comments to the Statement made pursuant to Standing Order No.53. The Statement by Sen. Okenyuri was made pursuant to Standing Order No.52.

Sen. Maanzo: Apologies, Mr. Speaker, Sir. I will comment on the Statement made by Sen. Ogola on teen pregnancies. This is a sensitive issue in the country. Cases of teen pregnancies have risen in counties and families are attempting to resolve the matter other than letting it go to court or leaving it to the police to handle such cases. In many situations, these cases amount to abuse of the people under the age of 18. The law is very serious about protecting them. The Statement also outlines policies for this House to strengthen the current law to make sure there is sufficient protection of our children's future so that they may go to school and prepare for their future. This has been abandoned to counties. The role of police---

(Loud consultations)

The Speaker (Hon. Kingi): Hon. Senators, let us have order. Proceed, Sen. Maanzo.

Sen. Maanzo: Thank you, Mr. Speaker, Sir. The role of the police and children's officers has been diluted and the community has a responsibility to protect young children. In the event teenage pregnancies happen, then these children should be rehabilitated and go back to school so that they may have a chance in life.

Thank you, Mr. Speaker, Sir.

(Sen. (Dr.) Khalwale walked into the Chamber without bowing to the Chair)

The Speaker (Hon. Kingi): Sen. (Dr.) Khalwale, proceed to the bar, bow and take your seat and proceed to comment on these Statements.

Sen. (Dr.) Khalwale walked to the Bar, bowed to the Chair and walked into the Chamber)

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. I want to limit my comment to the Statement on pending bills by the Senator for Vihiga County. Let the country be reminded that the Government has cleared all the arrears owed to county governments. Furthermore, the money due for the new financial year 2023/2024 for July has been paid. The only reason why a governor would fail to pay a creditor through a pending bill is because they had no money. This Committee should make it simple. You should write a letter to all the 47 governors so that they bring you a return that they have paid all the pending bills in the county because they are not owed any money by the national Government.

I want to laud the Governor of Bungoma County. Sen. Lusaka is the only Governor who has decided to clear all the bills. There is no noise in Bungoma.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): We have expended the 18 minutes that we had allocated to this.

Next Order.

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

There is a Statement pursuant to Standing Order No.56(1). However, hon. Senators, we have a Division in the form of Order No.11. I am informed that we have the requisite delegations to conduct a Division. I would, therefore, wish to rearrange the sequence of the Order Paper before Senators walk out to attend to other businesses. We will pend the Statement pursuant to Standing Order No.56 and rearrange the Order Paper in the following manner.

(Interruption of Statements)

We will go to Division and thereafter go back to the items on the Order Paper as presented to us today. Clerk, kindly proceed to call that particular Order.

MOTION

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

THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the County Governments (Equitable Share) Cash Disbursement Schedule for Financial Year 2023/2024, laid on the Table of the Senate on Thursday, 27th July, 2023 and that pursuant to Section 17(7) of the Public Finance Management Act and Standing Order 189(3), the Senate approves the County Governments (Equitable Share) Cash Disbursement Schedule for Financial Year 2023/2024.

(Sen. Tabitha Mutinda on 1.8.2023)

(Resumption of debate interrupted on 3.8.2023)

The Speaker (Hon. Kingi): Serjeant-at-Arms, kindly proceed to ring the Division Bell for five minutes.

(The Division Bell was rung)

Serjeant-at-Arms, kindly proceed to close the doors and draw the Bar

(The doors were closed and the Bar drawn)

Sen. Chute and Sen. Wakili Sigei, kindly take your seats so that we get down to this business.

(Sen. Chute and Sen. Wakili Sigei sat at their places)

Hon. Senators, I will proceed to put the question which is that the Senate adopts the Report of the Standing Committee on Finance and Budget on the County Governments (Equitable Share) Cash Disbursement Schedule for Financial Year 2023/2024, laid on the Table of the Senate on Thursday, 27th July, 2023 and that pursuant to Section 17(7) of the Public Finance Management Act and Standing Order 189(3), the Senate approves the County Governments (Equitable Share) Cash Disbursement Schedule for Financial Year 2023/2024.

Voting will be done electronically. Therefore, at this juncture, I ask all Senators to log out.

Serjeant-at-Arms, kindly proceed to pick the cards that are still remaining in the delegates units. Once you are done with that, kindly signal me.

Hon. Senators, you can log back into your delegates units. Sen. Madzayo, you are always in a wrong spot whenever we are doing--- You may proceed to---

(Sen. Madzayo spoke off record)

Once you log into your delegates units, you may proceed to vote by pressing “Yes”, “No” or “Abstain”.

(Voting in progress)

(Sen. Cherarkey stood in his place)

Sen. Cherarkey, just reminding you that we are still in session.

DIVISION

ELECTRONIC VOTING

(Question, that the Senate adopts the Report of the Standing Committee on Finance and Budget on the County Governments (Equitable Share) Cash Disbursement Schedule for Financial Year 2023/2024, laid on the Table of the Senate on Thursday, 27th July, 2023 and that pursuant to Section 17 (7) of the Public Finance Management Act

and Standing Order 189 (3), the Senate approves the County Governments (Equitable Share) Cash Disbursement Schedule for Financial Year 2023/2024 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. Dullo, Isiolo County; Sen. Faki, Mombasa 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. Ogola, Homa Bay County; Sen. Maanzo, Makueni County; Sen. Madzayo, Kilifi County; Sen. Mungatana, Tana River County; Sen. Mwaruma, Taita Taveta County; Sen. (Dr.) Oburu, Siaya County; Sen. Oketch Gicheru, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Osotsi, Vihiga County; Seki, Kajiado County; Sen. Sifuna, Nairobi City County; Sen. (Prof.) Tom Odhiambo Ojienda, SC, Kisumu County; Sen. Wafula, Bungoma County and Sen. Wakili Sigei, Bomet County.

NOES: Nil

The Speaker (Hon. Kingi): Hon. Senators, the results of the Division are as follows-

AYES: 28

NOES: Nil

ABSTENTIONS: Nil

Therefore, the 'AYES' have it.

(Question carried by 28 votes to Nil)

The Speaker (Hon. Kingi): Serjeant-at-Arms, you many now open the doors and withdraw the bars.

(The doors were opened and bars undrawn)

Hon. Senators, we will pick it up from where we were before we re-arranged the sequence of the Order Paper – that is Statement pursuant to Standing Order No. 56(1) (b).

(Resumption of Statements)

Proceed, the Chairperson of the Committee on County Public Investments and Special Funds.

ACTIVITIES OF THE SESSIONAL COMMITTEE ON COUNTY PUBLIC INVESTMENTS AND SPECIAL FUNDS

Sen. Osotsi: Mr. Speaker, Sir, I wish to make a Statement relating to the activities of the Committee on County Public Investments and Special Funds (CPISFC), made pursuant to Standing Order No.56(1)(b) for the period between 15th April, 2023 to 30th June, 2023.

Mr. Speaker, Sir, during the period under review, the Committee held a total of 34 meetings in which it considered the reports of the Auditor-General on the financial statements of county owned water companies and the matter of non-remittance of pension deduction by entities in counties.

Mr. Speaker, Sir, during the period under review, the Committee continued to pay close attention to water companies in counties as they formed a significant part of their public investments. They were also noted to have numerous financial and governance issues, among other issues.

During the financial years of interest, the Committee invited respective Governors to appear before it, to respond to issues raised by the Auditor-General. The counties were-

(1) Nandi in relation to Kapsabet Nandi Water and Sanitation Company Limited.

(2) Migori in relation to Migori County Water and Sanitation Company Limited.

(3) Kilifi in relation to two water companies. The first one is Malindi Water and Sewerage Company Limited. Second is Kilifi Mariakani Water and Sewerage Company Limited.

(4) Machakos in relation to two water companies. They are Matungulu-Kangundo Water and Sewerage Company Limited and Machakos Water and Sewerage Company Limited.

(5) Kirinyaga in relation to Kirinyaga Water and Sanitation Company Limited.

(6) Taita/Taveta in relation to Tavevo Water and Sewerage Company Limited.

(7) Wajir in relation to Wajir Water and Sewerage Company Limited.

(8) Nairobi in relation to Nairobi City Water and Sewerage Company Limited.

(9) Garissa in relation to Garissa Water and Sewerage Company Limited.

(10) Murang'a in relation to four water companies. They are Murang'a Water and Sanitation Company Limited, Murang'a South Water and Sanitation Company Limited, Gatanga Community Water Scheme and Kahuti Water and Sanitation Company Limited.

(11) Trans Nzoia in relation to Nzoia Water Service Company Limited.

(12) Mombasa in relation to Mombasa Water Supply and Sanitation Company Limited.

(13) Turkana in relation to Lodwar Water and Sanitation Company Limited.

(14) Kitui in relation to Kitui Water and Sanitation Company Limited.

Mr. Speaker, Sir, other than the meetings with the water companies, the Committee also held meetings with the Water and Sanitation Providers Association (WASPA), the Water Services Regulatory Board (WASREB), the National Treasury, among others, to deliberate on various matters under the Committee's purview.

In the process of considering the above-mentioned county entities, the Committee observed the following key cross-cutting issues that adversely affected the operation of water entities-

(1) Management Challenges - Some water companies operated for several years without Boards of Directors, a situation that the Committee thought adversely affected the decision-making processes. For instance, the Lodwar Water and Sanitation Company

Limited had not established a substantive Board of Directors since the inception of devolution.

(2) Financial Challenges - Most water companies reported negative working capital during the periods under review hence they were not able to meet their short-term and long-term financial obligations as they fell due. They relied on financial support from the county governments or development agencies, raising concerns on their sustainability and commercial viability. For instance, Mombasa Water Supply and Sanitation Company Limited had a negative working capital of Kshs1,464,597,678 as at 30th June, 2021. The negative liquidity meant that the water company was in an undesirable precarious financial position.

(3) Non-Revenue Water (NRW) - All water companies that we interrogated within that period had non-revenue water that exceeded the sector benchmark of 25 per cent as prescribed by WASREB and international best practices. This was attributed to losses resulting from dilapidated infrastructure - physical losses - and inaccurate meter reading and billing -commercial losses. For instance, Wajir Water and Sewerage Company Limited had non-revenue water of 82 per cent for the Financial Year 2020/2021, the highest over the period under review.

(4) Non-transfer of Assets and Liabilities - Most water companies had not fully transferred all assets and liabilities from the defunct councils and Regional Water Works Development Agencies as is required by the Water Act, 2016. In this regard, such water companies did not reflect their correct financial position within their books of account.

(5) Ownership Challenges -The Committee noted that numerous county governments were yet to take full ownership of water companies within their counties in line with the Water Act, 2016. For example, Murang'a County had five licensed water service providers, but only one was fully owned by the County Government. Lodwar Water and Sanitation Company Limited in Turkana County had not been transferred from the defunct local authorities to the County Government of Turkana. Further, 40 per cent of the water company was owned by a private entity.

Mr. Speaker Sir, to mitigate the aforementioned issues, the Committee made the following interim recommendations specific to each county for immediate implementation. This touched on-

(i) Restructuring of the Boards of Directors and constitution of new ones. I commend the Committee for ensuring that companies that did not have boards of directors now have boards of directors. Most counties are in the process of having a proper board of directors as per the law.

(ii) Governors to take keen interest in the management and operations of the water companies within their counties in line with Article 179 of the Constitution;

(iii) Water companies to put in place comprehensive measures to tackle non-revenue water, that is, both the physical and commercial losses.

(iv) Governors, in collaboration with the Intergovernmental Relations Technical Committee (IGRTC), to ensure all assets are transferred in favour of the water companies.

(v) County governments to take full ownership of the water companies within their counties in line with the Water Act, 2016.

Mr. Speaker, Sir, I am happy to report that the Committee has made numerous achievements while executing its oversight mandate. For instance, following the Committee's intervention, the County Government of Murang'a was able to take full ownership of all its five water companies, a matter that had remained unresolved for over 10 years.

On consideration of the matter of non-remittance of pension deductions by entities in counties; while interrogating audit reports of water companies, the Committee noted non-remittance of pension deductions by county entities remained rampant.

Consequently, the Committee resolved to conduct an inquiry into the matter and has so far engaged various stakeholders, including the National Treasury, Controller of Budget (CoB), Local Authorities Trust Fund (LAPTrust), Local Authorities Provident Fund (LAPFund), and the Council of Governors (CoGs), among others. All county pensioners have in the range of Kshs80 billion that has not been paid to pension schemes. We are following this matter closely.

This week on Friday, we have a joint retreat between the Committee and the National Treasury. We have called all the stakeholders to address this matter of pension funds owed to LAPFund and LAPTrust.

Mr. Speaker, Sir, the Committee encountered the following challenges while executing its mandate-

(i) Numerous requests for rescheduling of meetings by invited witnesses hence adversely affecting the Committee's work plan.

(ii) Failure to honour invitations by invited guests without valid reasons.

(iii) Late submission or failure to submit required documents by invited guests.

(iv) Numerous changes in the Committee meetings venue.

Mr. Speaker, Sir, in dealing with the above listed challenges, the Committee declined more than two consecutive requests for rescheduling.

The Committee also reminds invited guests the provisions of the Parliamentary Powers and Privileges Act, 2017, on failure to honour invitations without a reasonable cause as well on failure to submit documents. In this case, we have issued summons to two governors. That is the Governor of Nakuru County, Hon. Kihika and yesterday, Governor of Kiambu County, former Senator, Hon. Wamatangi.

On the matter of the inquiry into non-remittance of pension deductions by county entities, the Committee is scheduled to hold a final multi-stakeholder forum this Friday with the relevant stakeholders, led by the National Treasury with the aim of resolving the matter.

The Committee is scheduled to have a consultative meeting with the Ministry of Water, Sanitation and Irrigation together with the nine regional water works development agencies and the Water Sector Trust Fund to deliberate on transfer of assets and liabilities to county governments. Also, look at the various provisions in the Water Act, which impends devolution.

Mr. Speaker, Sir, the Committee plans to conduct field visits to various counties. Priority will be given to investments that are facing huge fiduciary risks. The Committee is also in the process of preparing its reports for tabling in the House. So far, we have done more that 10 reports which are going to be tabled in due course.

The Committee is also scheduled to commence its interrogations on the Auditor-General's reports on the financial statements of funds within counties in September, 2023.

I congratulate my Committee Members for the commitment and teamwork in ensuring that this Committee remains very active. This Committee has done a wonderful job in positioning the role of Senate in as far as issues of accountability and transparency in water companies in the county are concerned.

Mr. Speaker, Sir, with those few remarks, I submit.

The Speaker (Hon. Kingi): The Chairperson, Sessional Committee of Delegated legislation, you may have the Floor.

ACTIVITIES OF THE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION

Is the Chairperson present?

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

This will be dealt with tomorrow because the Secretariat is yet to receive that report.

(Statement deferred)

Hon. Senators, I am aware that pursuant to Standing Order No.56(3), I may allow Senators to comment on this Statements for not more that 20 minutes. Therefore, I am going to pick two Members from each side to speak for three minutes each so that we move to the next agenda.

Sen. Oketch Gicheru, you may have the Floor.

(Sen. Mwaruma stood in his place)

Yes, Sen. Mwaruma.

Sen. Mwaruma: Thank you, Mr. Speaker, Sir. I do not want to vary your guidance, but County Public Accounts and Public Investments Committees do the bulk of the work in oversighting our counties.

Since some of our counties were involved and appeared before the Committee, I really wish we can do slightly more. This is because, there are many germane issues that we need to address from the feedback of the report given.

I wish that you give slightly more Members time, I included.

The Speaker (Hon. Kingi): Let us see how it goes.

Proceed, Sen. Oketch Gicheru. You have three minutes.

Sen. Oketch Gicheru: Mr. Speaker, Sir, thank you for giving me this opportunity. I missed this dispatch for the last three months that I have been sick. I thank you, for the great support you have offered me during the last three months. I also thank colleagues, including my Captain Sen. Chreruiyot, who has been supportive to me. Whenever I get to the House, he comes to check on me this other side.

Above all, I thank colleagues from this other side who have also found time to check on me even in the House. That said, I congratulate and commend Sen. Osotsi for being a great leader.

I am a Member of the Committee on CPISFC. I appreciate the functionality of Standing Order No.194 that initiated this Committee. The first thing that I have realized, up and above the substantive issues that the Chairperson of this Committee has presented, is that we have serious backlog in terms of considering the reports on investments in our counties. This has contributed to why service provision is very difficult in our counties.

Alongside that, one thing that the examination of water companies has exposed to us is the idea of integrated development. I would like to give feedback on the issue of non- revenue water. When we were examining the issue of non-revenue water in this Committee, we realized and were able to articulate that non-revenue water emerges from donation of water, physical losses and commercial losses.

We have realized that the physical losses, which comprised the highest number of non-revenue water in the counties, was due to dilapidated pipes affected by construction that is going on in the counties. In the counties, one department is dealing with rectifying water pipes while another is dealing with roads destroys the same pipes. This becomes an endemic problem in provision of water and sanitation in this country. I wanted to comment on that aspect. Can we have a way for feedback to national bodies as well as local bodies, especially in the counties so that we have an integrated development plan that looks into these issues and help these counties grow?

Mr. Speaker, Sir, I thank you. I hope that this Committee will continue to---

(Sen. Oketch Gicheru's microphone was switched off)

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

Sen. Cherarkey, you may proceed.

Sen. Cherarkey: Thank you, Mr. Speaker, Sir. I commend our counterpart Committee on CPISFC. This Session is the first time that we have separated the CPISFC and the County Public Accounts and Investments Committee (CPAIC).

I have two observations on the running of the water companies, most of which are underperforming. The major reason they are not performing is on non-revenue water. They need to improve in collecting water. Pursuant to Article 43 of the Constitution, water is life. There should be access to water.

I am that happy that the Government of President William Ruto has intention of developing dams, including Kepen Dam in Nandi County, Posta Dam, Itare Dam, Karmenu, Thipa, Thwake, among other areas, including in the northern parts of the country where Sen. Chute comes from. There will be many dams, which will ensure water is available to Kenyans. The presence of aquiver water in Turkana also needs to be exploited.

The second observation we made in the Eldoret Water and Sanitation Company (ELDOWAS) and Kapsabet Water and Sanitation Company, is non-revenue water because they are yet to automate the collection of water tariffs and levies across Nandi. We still have a big challenge in Nandi. We believe that by construction of Kepen Dam, it will allow us to get a lot of funds and money.

Thirdly, I request the Committee in the future to assist us in developing these water works. Where I come from, we are under Lake Victoria water known services. However, the headquarters and assets are all based in Kakamega. Is it possible to create counties that have some particular cultural and thinking to be in one water works? Our assets are controlled from Kakamega. Sometimes they take vehicle metres and even our money under Corporate Social Responsibility (CSR) that is given in Lake Victoria South Water Works Development Agency. When you go to Lake Victoria South Water Works Development Agency, you will discover that they have employed one ethnic group from where Sen. Osotsi and Sen. (Dr.) Khalwale come from yet the huge chunk of their money come from Nandi County and some parts of Uasin Gishu.

Is it possible for the Lake Victoria South Water Works Development Agency to ensure that the Lake Victoria South Water Works Development Agency controls at the peculium? The biggest challenge is in the Nairobi Water and Sanitation Company (NWSC). Can you believe that these water companies do not have substantive Chief Executive Officers and Chairpersons because of conflict of interest of running billion of shillings? The water companies that are run without substantive heads and functioning boards should be looked into. The CPISFC should step in and stabilize most of the boards to ensure that we have substantive chairpersons and others.

Finally, on the special funds, I did not get anything apart from the funds of Local Authorities Pension Trust (LAPTrust) and Local Authorities Pension Fund (LAPFund). Nothing was mentioned on the bursary funds and emergency funds. Can you believe that counties expend emergency funds before even an emergency happens? The emergency funds are spent on chai and mandazi.

Mr. Speaker, Sir---

(Sen. Cherarkey's microphone was switched off)

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

Sen. Mwaruma, you may proceed.

Sen. Mwaruma: Thank you, Mr. Speaker, Sir, for this opportunity to comment about the report by the Chairperson of CPISFC. I thank the Senate for dividing the former County Public Accounts and Investments Committee. For the last many years, we have not had the Senate oversight the public investments, including the water companies, special funds such as the car and mortgage funds and so on. The formation of this Committee is something that we need to laud ourselves.

I would like to comment on the issue of debts. My county is among the counties that have very big debts of Kshs450 million. During the meeting between the CPISFC and our water company called TAVEVO Water and Sewerage Company Limited, we found that the debt has gone up to Kshs451 million. In that debt, there is some money lost as a result of non-collected revenue and through pilferage. However, most of the money is lost through non-revenue water.

It is within our knowledge that because of non-revenue water due to dilapidated infrastructure, the county government is implementing a new pipeline called Mzima Two Pipeline. I have been wondering why we have to owe this money to counties yet that water is non-revenue lost due to dilapidated infrastructure?

When the Cabinet Secretary appeared before this House some two weeks ago, she said that Mzima One Pipeline was meant to supply 40,000 cubic metres of water per day. However, right now, it is supplying 32,000 cubic metres. I, therefore, urge the Chairperson of CPISFC that we need to look for a way of writing off the historical debts because the debts are not due to the making of the county governments. Sometimes, water supply is disconnected due to those debts.

Number two and very important, is the non-remittance of pensions to schemes. I have a Statement that is coming up tomorrow about the non-remittance of employees' pension funds to their schemes. That is really grievous.

We have been given a figure of Kshs80 billion. We cannot sit pretty as the Senate, knowing that money is not being remitted to the pension funds (LAPTrust and LAPFund) for people who have worked for many years.

I would like to be enjoined on Friday---

(Sen. Mwaruma's microphone was switched off)

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

Proceed Sen. Seki.

Sen. Seki: Thank you, Mr. Speaker, Sir. I also want to add my voice to this Statement under the CPISFC. It is true that we have many problems in the counties, particularly in the water companies.

I take this as a challenge. In part of my county, we have quite a number of problems. I happened to attend this discussion with the Committee and we found that there is quite a number of issues, particularly on issues of boards, assets and debts as indicated by the chairperson of the committee. These are issues that the county can avoid, especially the issues of boards. I found that most of the governors as executives of the counties are unable to appoint a board of management in these water companies. It is a very big issue.

The boards of directors make decisions to water companies, but we have a very big problem. We found that in Kajiado County, we have three water companies, that is Olnoturich, Olkejuado and Oloolaiser water companies. However, the Committee only handled the issue of Olkejuado Water Company. We are still waiting for the two companies to be handled. This issue of assets transfer is something that county governments can do to fast-track the water companies because water is under their obligation.

On issues of debt, that is non-remittance of the pension fund. I do not know why the county governments keep this money. It is money deducted from employees because most companies have transferred staff. We want to support this Statement and give the chairman more support. I request him to do more for those water companies that have not yet been handled by ---

The Speaker (Hon. Kingi): Proceed, Sen. Tom Odhiambo Ojienda.

Sen. (Prof.) Tom Odhiambo Ojienda, SC: Thank you, Mr. Speaker, Sir. Let me contribute to the Statement by the chair of CPISFC, Sen. Osotsi. I confirm that I am the Vice-Chairperson of CPISFC.

A lot of work has been done so far. We are counting three years because we have been doing audit reports from 2018/2019, 2019/2020 and 2020/2021. We have done almost 10 counties, meaning 30 reports. A lot of work has gone into this process.

Mr. Speaker, Sir, let me confirm that most of the challenges as the chair has recorded arise from the fact that some of the counties have been unable to completely own these companies. One of the recommendations that run across the board is the involvement of the IGTRC to ensure most of these companies transition from the previous water boards that we had to the current framework that counties now own.

Mr. Speaker, Sir, we are all aware of the change in the law. We have the waterworks that have taken over the previous works of the boards. My lawyer friend, Sen. Cherarkey, the Senator for Nandi County has raised questions about jurisdictions, for instance, Lake Victoria Water South and North. We previously controlled companies from different counties.

The concern across the board has been that the Water Service Providers (WSP) are now the companies dealing with loans that were taken by the waterworks from the previous boards. So, loans are taken and you do not know for what activities. You end up paying for loans you did not take. That is a concern we have had with most of the waterworks, previously the boards. Loans were taken from ADB and the water service providers have to repay those loans. That is one area that has to be tidied up.

Mr. Speaker, Sir, on the other funds, the Senator for Nandi has raised concerns about other funds. We have just started with the water sector. Most of these counties have now domesticated water. They have their own water statutes under the framework of Water Act, 2016. It is a good move for most of the counties.

The ones where we have a multiplicity of companies, including Kajiado County, are in the process of seeing the possibility of having one effective water company or at least two companies, so that we are able to audit them with ease. We will also be able to audit companies that delivered to the people of those counties.

We will in due course audit the other funds. There are many funds like Special Funds that have previously been unaudited. For instance, Education Fund, Special Loans and Mortgage Funds. These funds will eventually be audited. We are doing audit for three years at a time. The creation of these committees was timeous. It will help the question of accountability in our counties.

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

Sen. Kisang: Thank you, Mr. Speaker, Sir for giving me this opportunity to contribute to the Statement by the Chairman of the CPISFC. I thank the 12th Parliament, the 3rd Senate who in their wisdom split County Public Investment Committee from CPAIC. For the last nine years, CPAIC in the last Senate did not audit special funds and investments in the counties. That is why as a committee, we have a lot of backlog. We have dealt with about three financial years for close to 40 counties. Basically, we will be finishing by the close of this month of August.

Mr. Speaker, Sir, from what we have seen from the water companies, over 90 per cent are insolvent. They are not able to run on their own because of so many things such as inefficiencies, corruption, incompetence and lack of capacity for the staff because most of the water companies run as if they were independent of the county governments.

However, at least now that we have met with the governors, they have known that they are in charge, in control of these water entities. Most of them have even reconstituted the boards because, in the past, some of the boards of directors ran the boards as if they were independent. When the governors wanted to restructure, some of them even went to court to stop the governors from reconstituting the boards of the water companies.

Mr. Speaker, Sir, on non-revenue water, from what my colleagues have said, all of them did not meet the allowable threshold of 25 per cent. Probably just one county met it. Others were as high as 82 per cent. Some of them said they donated a lot of water during COVID-19 time. Others, because of dilapidated pipelines and inefficiencies, do not have meters. Some sell water as bulks charging a flat rate of Kshs1,000 regardless of how much is consumed.

I believe with the measures they have put as advised by the both the Committee and the Ministry of Water, the water companies will turn around and make a surplus instead of relying on county governments. Some of them get grants to run, but most of them are unable to even pay their own salaries.

Finally, Mr. Speaker, Sir, on assets, the Water Services Regulatory Board (WASREB) might not be necessary to have the water works because they have given some water companies odds and assets. However, those assets have not been transferred to the water companies.

(Sen. Kisang's microphone went off)

The Speaker (Hon. Kingi): Sen. Kavindu Muthama.

Sen. Kavindu Muthama: Thank you, Mr. Speaker, Sir, for giving me this opportunity to support this report by the Chairman of the CPISFC. What has been read is true because recently, we appeared with my Governor and some water companies before his Committee. The issue is that most of these companies misuse the funds from water, including the deposits that people pay to get water connection to their homes. They misuse everything to the point where people do not get water. They do not even account for revenue.

In my county, my Governor wants to change those companies and have only one or two companies, which can be accountable and supply water to people effectively.

Mr. Speaker, Sir, I support this Statement.

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

Sen. Abbas: Thank you, Mr. Speaker, Sir. I also support the Committee for the good work they have done. I am impressed that CPISFC is doing a good job and the backlog is being reduced.

There is lack of information in county issues, especially in the water sector. In my county, as mentioned in my report, the Wajir Water Services Company gets a lot of funding from the World Bank. However, the same money is not accounted for and does not go to the County Assembly for oversight. Most of the received grants are audited by the Office of the Auditor-General (OAG) and it takes long to be accounted for. The company has been used to employ many staff while it can only support less than a 100 members of staff. We need to oversight these entities properly.

One other thing is on the statutory deductions – Pay As You Earn (PAYE), National Social Securities Fund (NSSF) and the National Health Insurance Fund (NHIF). These are meant for staff. They are deducted, but the money is not remitted to the respective organisations such as the Kenya Revenue Authority (KRA), NSSF and NHIF. At times, members cannot get treatment for themselves and even their families because they do not have money. They must be compelled to remit statutory deductions on time.

Counties rely a lot on the equitable share monies. There is a lot of money within counties, but they do not put much effort and the money is not collected or is collected, but not accounted for.

Secondly, the water function is devolved. The water agencies and many water service boards hold and get a lot of money from the Exchequer.

Mr. Speaker, Sir, it is time this Senate moved fast to push the national Government to take all devolved functions from these water service boards to counties considering that at times, there is duplication of work. You see counties digging dams and boreholes. The water companies are doing the same thing. That money can be taken to counties so that---

(Sen. Abbas's microphone went off)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM MAJANI MINGI SECONDARY SCHOOL

The Speaker (Hon. Kingi): Hon. Senators, before we move to the next Order, I would like to acknowledge the presence in the Public Gallery this afternoon, of visiting teachers and students from Majani Mingi Secondary School.

The group comprises six teachers and 41 students who are in the Senate for a one-day academic exposition. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of Senate and my own behalf, I wish them a fruitful visit.

(Applause)

The Senate Majority Leader, under one-minute, kindly welcome the students and teachers.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Speaker, Sir. I take this opportunity on behalf of the Senate to welcome the visiting students and teachers from Majani Mingi Secondary School in Nakuru County. It is a neighbouring county not far from where I come from.

I hope and believe that these young children will get the full value for the time they have taken to visit with this House. This has been a very eventful afternoon with many reports being presented, Motions being processed and, in the next few minutes, they will hear a Bill being moved by none other than the Majority Leader. It is not on every afternoon that you get to have a spice of everything that happens in Parliament.

I hope that they will enjoy, be inspired as they prepare to take on the baton of leadership from the current generation that is in this House. It is for them that we are trying to make this country better. Once they get it, it is my hope that they will make it better than what we will have handed over to them.

Mr. Speaker, Sir, on behalf of the students Senator, Sen. Tabitha Keroche, who is out of the Senate today on other engagements, I welcome them to the Senate and wish them a fruitful stay.

Thank you.

The Speaker (Hon. Kingi): Next Order.

BILLS

First Reading

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

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

First Reading

THE COUNTY HALL OF FAME BILL
(SENATE BILLS NO.18 OF 2023)

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

First Reading

THE RICE BILL (SENATE BILLS NO.19 OF 2023)

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

The Speaker (Hon. Kingi): Next Order.

Second Reading

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS NO.16 OF 2023)

The Speaker (Hon. Kingi): Senate Majority Leader, proceed to table the report and then move it.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Speaker, Sir, I needed that guidance.

PAPER LAID

REPORT ON THE PUBLIC FINANCE MANAGEMENT
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO.16 OF 2023)

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Speaker, Sir. I beg to lay the following Paper on the Table of the Senate-

Report of the Senate Standing Committee on Finance and Budget on the Public Finance Management (Amendment) Bill (National Assembly Bills No.16 of 2023).

Mr. Speaker, I beg to lay.

(Sen. Cheruiyot laid the document on the Table)

Mr. Speaker, Sir, this is a pretty much straightforward Bill that has been ably considered by our Standing Committee on Finance and Budget that touches on a very important discussion that is going on in our country.

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

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

Mr. Temporary Speaker, Sir, I want to congratulate and appreciate the diligence of all nine Members of the Senate Committee on Finance and Budget: Sen. Ali Roba, Sen. Tabitha Mutinda, Sen. (Dr.) Khalwale, Sen. Korir, Sen Tabitha Keroche, Sen. Faki, Sen, Onyonka, Sen. Shakila Abdalla and Sen. Oketch Gicheru.

I know how hard it is to be a Member of the Committee on Finance and Budget---

The Temporary Speaker (Sen. Wakili Sigei): Senate Majority Leader, let me just guide you for purposes of proper procedure. Kindly, Move the Bill for the Second Reading.

Please, proceed.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Temporary Speaker, Sir, I beg to move that the Public Finance Management (Amendment) Bill, (National Assembly Bills No.16 of 2023) be now read a Second Time.

Mr. Temporary Speaker, Sir, I resume from where I was previously by making comments that I appreciate the diligence and the hard work that it takes to serve in the Committee on Finance and Budget.

I make no light of the work that all our other committees do. However, I say this with utmost good faith that, it takes a Senator of great discipline and dedication to the work of this House to serve in this particular committee.

On many occasions, if it is the Budget Policy Statement that is laid on the Floor of this House, we are told within 14 days you need to have considered it, listen to the reports of all the other committees and table your report in this House. Immediately after, we move to the budget cycle. Again that commences immediately after the beginning of a financial year and these colleagues of ours have to churn out reports.

We have just concluded on the Cash Disbursement Schedule of which we are told that we are out of time. We should have made that consideration, but you know for a fact that the timelines fell when we were on recess. Therefore, I appreciate the work that this Committee has done.

Mr. Temporary Speaker, Sir, this Bill was introduced in the National Assembly as National Assembly Bills No.16, with the sole intention of amending certain provisions of the Public Finance Management (PFM) Act of Parliament. I think this is the most amended Act of Parliament in the history of Parliament.

Every other financial year, something keeps on coming up. The reason why people continue to violate the PFM Act is because it keeps on changing so quickly that they do not even follow through or many people do not get the time to appreciate and understand its provisions.

That is not to make an excuse for any accounting officer, that they can get the clip of the Senate Majority Leader speaking and say that you can see even the Senate Majority Leader has acknowledged that because of the many changes they make to the PFM Act, it is hard to stick or follow through with the regulations.

As good public servants, we expect them to be abreast with all the happenings in Parliament such that when we conclude on any amendment, they are able to read and follow through.

Mr. Temporary Speaker, Sir, from the chairperson's foreword, I appreciate that quite a number of stakeholders appeared before this Committee to make their submissions; the National Treasury, the Council of Governors (CoG), the Institute of Certified Public Accountants of Kenya (ICPAK) and the International Budget Partnership Kenya. These are very important stakeholders. Over the years, these are amongst stakeholders that always appear whenever there is any item before the Committee on Finance and Budget.

I have forgotten the name of their Director. He is a small-bodied gentleman, but greatly patriotic and loves this country. He appears each time that there are matters before the Senate to come and make their contribution.

Last but not least, is the Commission on Revenue Allocation (CRA). In my first stint in the Committee, we actually had a dedicated Chair, for the CRA Chairperson because it is impossible as the Committee on Finance and Budget to consider any matter without the CRA to come and make their presentations. On many occasions, they never fail us. Therefore, I follow through with the proposals that have been made.

I forgot some of my notes, but I just want to go through this, clause by clause, in quick succession because this is a fairly straightforward Bill, about two or three pages only.

This Bill seeks to amend the following sections of the PFM Act No.18 of 2012, to operationalize the public debt and borrowing policy with regards to the framework for monitoring the level of public debt and align it with provisions of Article 214(2) of the Constitution of Kenya, 2010, which defines public debt to mean all financial obligations attendant to the loans raised or guaranteed securities or guaranteed by the national Government.

This is an important conversation. I wish Sen. Okiya Omtatah was here. Out there, he has been quite vocal about this conversation of the need for us to rethink, and perhaps have a better conversation on how we keep our debt stockpile and how we report. What framework we can create as the legislative body so that at any given time, we, as a country, know the value of the debt that Kenya owes to any lenders; be they domestic or foreign.

We are greatly in need of this particular policy; monitoring public debt borrowing policy framework because I know that two years ago before this House as a Member of the Committee on Finance and Budget, the then Cabinet Secretary for National Treasury and Economic Planning appeared before us one afternoon.

I do not remember the exact legislation that we were considering, but when we insisted that he present us with an accurate reporting mechanism of what is it that Kenya owes its lenders, we were presented with an Excel spreadsheet and told that is the only register that can be maintained. That points out to the challenge that we continue to face. To be sincere, this legislation on its own is not enough. It is not sustainable to cure that malady in terms of reporting.

If today Kenyans wanted to visit a specific website or Government office where they will get an accurate representation of the amounts of money that we owe our lenders, I am afraid that you will struggle around Harambee Avenue until you go back home without an accurate figure of what the exact amount is.

Mr. Temporary Speaker, Sir, this Act is beginning to direct us towards the preparation of a framework to guide that particular process. However, I still feel that we, as Parliament, that is both us and the ‘lower’ House, need to move further than just creating the framework.

We must provide the reporting mechanism for every lending that the country incurs to be reported. The justification for the same should be provided in an open way. I have watched people present before television screens, including Senators, sometimes and I know that part of the debts that we are paying cannot be accounted for. I know there is a possibility that some of it never even found its way to this House. That is a serious indictment of us as a House of Parliament.

I hope that by creating this framework when we come to the reporting regulations because that is what is being proposed in this particular Bill, the reporting mechanism, we will make it possible for both the National Assembly and the Senate to do a thorough audit of this debt; what were the conditions for that particular borrowing and the purpose for which it was borrowed for because that remains unclear.

You cannot expect that the people you represent in this House will be in a better position than you, as a Senator, who serves in this House, to tell them of this mechanism.

Clause 3 of the Bill seeks also to amend Section 12 of the Act by deleting Paragraph B and introducing provisions that provide for the proper management and efficient use of budgetary resources by national Government entities.

There is also the issue of the definition of public debt. There is this conversation about national debt that has created the thinking, especially in Kenya because we have two levels of government, that people imagine that even when we borrow for purposes of funding certain projects in our counties, there is the perception that there is a debt for counties and a separate debt for the national Government.

Kenya is one unitary State despite the fact that we have two levels of government. Therefore, it is my expectation and appreciation that even as we make this amendment, we will be in support of the proposal to conclude on this issue and ensure that we just call it a public debt because it is a debt owed by the people of Kenya.

As I conclude, Clause 5 of the Bill seeks to amend Section 31 by deleting the words "national debt" wherever they appear and replace them with "public debt" for the same reason I have just explained. It is for the people of Kenya and it makes it in sync with the constitutional provisions.

If you read Articles 211 to 214, it is referred to as public debt and not national debt. Therefore, this was an act of poor legislative drafting. Students of legislative drafting should follow this conversation.

Many a time while moving Bills here, I have pointed out the need for us to try and maintain the wordings in the Constitution in Bills that we bring to Parliament. When you introduce new phrases or clauses, you confuse members of the public and open yourself for litigation. I agree with that proposal.

Clause 6 seeks to amend Section 50 of the PFM Act, that requires the Cabinet Secretary for National Treasury and Planning to submit to Parliament in writing an explanation where specific public debt has exceeded the threshold as is set out in law and also provide reparative measures to restore or improve it.

Appreciating the fact that we know where we are as a country, there is no need for further debate on our debt sustainability situation. At least we are beginning to take our place as Parliament and having our stand. Where the public debt has exceeded certain thresholds, a written explanation should be offered to Parliament. Parliament should take its rightful position by receiving all the reports.

Many times we are criticised about what we do as legislators. When debate on public debt comes to Parliament, they want to know what we say or do. I appreciate that finally we will have the reins of power. It will enable us do that with ease because it is expressly provided for in the Constitution and subsequently in this legislation.

I must commend our Committee because of the way the Bill is drafted; the reporting mechanism was only to the National Assembly. I do not know where some of the drafters come from. I think some of them wake up from drinking stupors and draft legislation without proper reading and reflecting on what the Constitution says.

The Constitution says clearly that Parliament shall provide legislation for reporting mechanism on public debt. However, some idiot sits somewhere and drafts a legislation stating that the National Assembly shall be receiving the reports. This is something we have continued pointing out to the State Law Office. If they do not learn, they shall do so, the hard way.

This is something I have been mentioning to them on many occasions. I tell them to read the Constitution. They may not like the Senate, but they should appreciate the powers that the Constitution and the people of Kenya have given it.

Sen. Oketch Gicheru: On a point of order, Mr. Temporary Speaker, Sir. Sen. Cheruiyot is my leader. I never want to interfere, especially when he is submitting on serious issues that define our relationship with the National Assembly. I empathise with his passion in submitting on this issue. However, is he in order to use the words "some idiot"?

I understand the immense issue because we are not involved in issues of finances. There is no financial matter in this country that does not touch on counties. In any case, this House has got some of the soberest minds that can help the country think about budget issues and I support the passion.

For the first time, I think the Senate Majority Leader is standing strong for this House to have a voice on financial matters. However, I urge that he withdraws the word "idiot" because it is non-parliamentary.

The Temporary Speaker (Sen. Wakili Sigei): Senate Majority Leader kindly withdraw and apologise.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Temporary Speaker, Sir, I withdraw the word "idiot" and replace it with "some ignorant fellow".

The Temporary Speaker (Sen. Wakili Sigei): Senator, also mind the requirement under Standing Order No.92 on the language you use.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Temporary Speaker, Sir, I am guided and I appreciate.

The Temporary Speaker (Sen. Wakili Sigei): Proceed.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Temporary Speaker, Sir, lastly is Clause 7 that seeks to amend the PFM Act by introducing a new paragraph. That is Section 63 to add additional functions to the public debt management office. It will include advising Parliament and Cabinet Secretaries on sustainable levels of the public debt and annual borrowing limit.

This is a superfluous provision. I do not mind it, but I do not see how extremely useful it is to Parliament. We have the Parliamentary Budget Office (PBO) that does exactly that. I find their advice to be more prudent than any other you can get from any part of the country. They include debt sustainability and whether we have breached certain provisions. I find the advice of the PBO to be more responsive to my needs as a legislator than any other.

While I do not mind those provisions, I feel that our committee should continue to use the PBO's advice. They have professional analysts that serve in that directorate. We have some of the brightest minds in public finance that you can find in this country.

Last but not least, is the conversation about anchoring the public debt as a percentage of the Gross Domestic Product (GDP) in present value terms. This will ensure the consistency we have been looking for and promote sustainability in public debt. On two occasions when I have had the opportunity to vote on public debt, I voted against the decision to place it on a static figure.

I followed through this conversation and I appreciate that those of us who held the view that having our debt measured as a percentage of our GDP in net present value is a better and consistent measure than putting a static figure of, for example, Kshs5 trillion, Kshs10 trillion or Kshs9 trillion as has been the case. I am glad that finally we have been listened to and that is the proposal coming.

Why do we argue so? If you look at many countries that measure their debts using this particular model that we want to adopt, you will realise that they appreciate that economies fluctuate because they are not static due to certain reasons. Today you could be doing so well as an economy, like many global economic power houses were before 2020. However, when something like COVID-19 comes up, do you rush to Parliament to make adjustments or do all these proposals?

I do not think there is a difference in how you should run public debt and personal finances. If you know that you are doing well economically, you can walk to a financial institution, give the justification and borrow against your own expectations.

Basically that is what we are saying, other than tying a figure around your head knowing that at any given time you cannot borrow beyond, let us say, Kshs1 million or Kshs2 million. Therefore, I appreciate the wisdom of the committee in agreeing with that proposal.

I have explained that the committee has proposed an amendment in terms of the reporting mechanisms. Even if they did not, Article 211(2) already states so. It speaks to the Houses of Parliament and not any House. Whatever games were being played on that particular part of the Bill, even without our committee pointing out, our powers are safely secured. We shall continue to demand that reports are brought to this House.

Mr. Temporary Speaker, Sir, I appreciate and hope that as a House, we will conclude on this particular Bill, so that we await the regulations where we shall answer many questions. If you read through the report and the presentations, it has been promised that in subsequent regulations---

I agree with the need to anchor some of these provisions by having regulations rather than through legislation because while it is difficult to make many amendments, you can always argue this or that way with regulations and amend them with more ease without having to hold our economy at ransom. Therefore, with those many remarks, I beg to move that this Bill be now read a second time and ask Sen. Ali Roba, the Chairperson of our Committee on Finance and Budget, to second.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Ali Roba, please proceed.

Sen. Ali Roba: Thank you Mr. Temporary Speaker, Sir. I rise to second. As I second, the Senate Majority Leader has explained the object behind what informed this amendment to be pushed. Globally, the best practise out there is to anchor the public debt ceiling as a percentage of the Gross Domestic Product (GDP), which is performance based.

This means that the number, which is proposed in the amendment as shared, is 55 per cent of the GDP. We have analysed through consultation with the National Treasury as well as our own Parliamentary Budget Office and determined that currently, it stands at 64.1 per cent.

The Committee that I Chair further engaged with the Cabinet Secretary (CS) for National Treasury and Economic Planning whom I have a lot of faith in. I say so because we have had a little less than a one-year engagement with CS (Prof.) Ndung'u of National Treasury. Whatever he has discussed with us as the Committee, we have managed to see consistency and determination to be able to bring out what he said.

Mr. Temporary Speaker, Sir, as I have shared before, I have served as a governor for 10 years. In nine years, this is the first time that National Treasury was able to release all monies due to county governments by 30th June as required by law.

The same, in 10 years, this is the first time that the National Treasury was able to release monies due to National Government Constituencies Development Fund (NG-CDF), by 30th June as required by law.

In 10 years having served as a governor, this is the first tranche of sharable revenue due to counties was released in the month of July. Normally, it comes in September or October. That means that the CS is determined to make sure the performance of our GDP, as far as revenue performance and discipline is concerned, complies with the requirement of the law that is anchored.

We engage the CS for National Treasury and Economic Planning in the public participation engagement and taken him on in terms of how he intends to make sure the 61.4 per cent is translated, should we adapt public debt to GDP ratio as proposed at 55 per cent. When translated, it stands at 64.1 per cent. How does he intend to bring it down to 55 per cent as per the requirement of this amendment?

The CS for National Treasury and Economic Planning shared that in 2024, he intends to bring it down from 64.1 per cent to 61.8 per cent and in 2025, to 60.1 per cent. In 2026, to bring it down to 58.2 per cent and by 2027, to comply and bring it down to 55 per cent which is a very serious and healthy commitment from the CS for National Treasury and Economic Planning.

Should our GDP grow, then this percentage will mean growth in borrowing ceilings within the 55 per cent but a higher number as opposed to what we used to have where there is absolute debt ceiling number regardless of performance of Government.

If you look at the public debt ceiling over the past number of years and you draw a graph, you are going to see that the number in absolute terms has consistently continued going up, but not against any explainable formula that makes sense.

The Bill suggests anchoring public debt as a percentage of GDP which is going to instil prudence and limit in terms of the free will by the CS for National Treasury and Economic Planning to decide if he can take on board available debt just because it is available.

It will force the National Treasury team to go back and compute based on the current GDP performance. That is the window of borrowing they have where it is now bursted and over the next five years. The objective and intent of this Bill is to make sure that it is brought down from 64.1 to 55 per cent within the law.

I beg to Second.

(Question proposed)

The Temporary Speaker (Sen. Wakili Sigei): Sen. Cherargei, please proceed.

Sen. Cherarkey: Thank you, Mr. Temporary Speaker, Sir, for this opportunity. I rise to support the Public Finance Management (Amendment) Bill (National Assembly Bills No.16 of 2023).

It has to go on record that for the different occasions when the ceiling of public debt was being raised on the Floor of this House, I voted against it. This is because it was no longer sustainable to put an absolute figure.

As you are aware, the debt would now be anchored on a percentage as opposed to absolute figure then. As we speak, the Kshs10 trillion public debt that the country is facing is 64.1 per cent of the GDP. This issue of public debt continues to be a serious issue especially when the country is struggling with both domestic and foreign borrowing. The President, Dr. William Ruto, has on several occasions averred that he is willing to ensure we stop foreign borrowing so that we have a sustainable public debt in this country.

Anchoring percentage into GDP at 55 per cent is very critical. In any extreme cases, increasing it by five per cent by the CS in charge of National Treasury and Economic Planning and by only explaining the breach of that five per cent increment upon 55 per cent of GDP and explaining it to Parliament.

Article 201(c) of the Constitution on the Principals of Public Finance, says -

"The following principles shall guide all aspects of public finance in the Republic-

(c) the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations."

So, even if it means borrowing, we must be considerate of the posterity and what is happening as had been envisioned in one of the principals of sustainable public borrowing by the Government. We must ensure that the future generations have an inheritance not only in public debt but also development.

This can be seen in many of the developments that have been done, for example, the Thika Super Highway by the late President Kibaki's administration. The people we borrowed may not have appreciated then when they were borrowing to ensure that that road was expanded. We now value the road many years down the line, when Nairobi City County has expanded, and we have a huge population and use of that use it.

The anchoring of debt in percentage is very critical because it is the international best practise. So, this Amendment is straightforward. This is a is straightforward amendment. We are ensuring best practices by anchoring our debt in percentage. This will allow the Government to operate in unprecedented times.

For instance, if you wanted to raise public debt during COVID-19, you can imagine the challenges that could have come with it, for example, raising quorum for Senators to vote. There was also the issue of nonphysical contact and social distancing. This Bill will be crucial in unforeseen circumstances like COVID-19.

Kenya's public debt ceiling is Kshs10 trillion. Therefore, there must be discipline in terms of the management of public resources.

As we anchor public debt in this Bill, the commitment of the Government and President William Ruto is that the fight against corruption is at the center. We do not have to borrow huge chunks of money and put the country in huge debt. We were nearing an economic crisis by allowing corrupt individuals within and outside Government to plunder, mismanage and waste public funds yet the money being plundered was borrowed.

Mr. Temporary Speaker, Sir, at individual level, we do not borrow money to go and *piga sherehe* or take *chai na mandazi.* Everybody who borrows a loan from a bank would want to account for each and every coin. If we translate the same commitment as what we do to personal loans and mortgages, this country will go far.

I agree with the President in the commitment to fight corruption in national and county governments as a top priority. We have heard about the pending bills in Vihiga County, which Sen. Osotsi has brought to the attention of the House. We want to laud the Government.

You have heard a former Governor confess, on the Floor of the House, that during their tenure and since the inception of devolution, under Article 219 of the Constitution, money has never been given out at an opportune time.

For example, in the month of June and July, Nandi County has received over Kshs1.2 billion in cash disbursement. The National Government-Constituencies Development Fund (NG-CDF) to Members of the National Assembly has also been disbursed. Therefore, there is no reason why our businessmen and women across the country should continue to suffer, yet there is sufficient money.

Yesterday, the Intergovernmental Relations Technical Committee (IGRTC) appeared before the Committee on Devolution and Intergovernmental Relations. They made an assertion that the national Government is yet to release Kshs272 billion to follow functions that have been devolved.

This means that the national Government devolved the functions without following them with the costing. Kshs272 billion is a lot of money. It is more than half of what we are giving counties this financial year which was Kshs385.3 billion.

As a Senate, we need to play our role. If Kshs272 billion is lying in Nairobi instead of being allocated to 47 counties, then we must work hard towards releasing these funds. I am happy that there was a circular that indicated that any borrowing by the counties must be guaranteed by the national Government.

At the tail end of the Third Senate, before it adjourned *Sine die,* the Laikipia county government made an application for approval of borrowing to the Senate. It was a few months to the elections. Out of the wisdom of the Senate, we declined the application. This is because we were not sure what the money was intended for since elections were approaching. We were aware that the governor in office was defending his seat.

I support that public debt and borrowing should be anchored in percentages. This is the best international practice. It is also convenient and efficient for Government.

People will ask what the role of Parliament will be when we anchor 55 per cent and an extra five per cent in case of a breach. The result of this law is that they will give an update in case the Cabinet Secretary exceeds the set percentages. Therefore, it is within our interest to bring down the percentage from 64.1 per cent to 60 per cent of our Gross Domestic Product (GDP) in terms of borrowing in the present value terms.

Is there a disease; a cancer or a terminal illness at the State Law Office? Article 93 of the Constitution defines Parliament as the National Assembly and the Senate. I know they are watching these proceedings and they can refer to that Article.

Yours truly and Sen. Faki drafted pleadings and went to the High Court to seek interpretation of Article 110 on non-concurrence of over 24 legislations. Who are the drafters of this Bill? Why would they want to conveniently move the Senate away from participating in the public debt discourse?

Public debt is not a concern of Members of the National Assembly or the national Government alone. It is also a concern of the counties. When the national Government takes a loan on behalf of Kenya, it is not for the national Government alone. Money is borrowed on behalf of all people who are in counties.

In the height of the hearing on the role of the Senate in the Division of Revenue in 2013, the Chief Justice *Emeritus* Willy Mutunga asked: "If you are borrowing and spending money, where are you spending the money at? I thought you are spending in the counties." This is the question Members for the National Assembly and the drafters of this Bill at the State Law Office. We must be candid.

I do not know the intention of the supremacy battles between the National Assembly and the Senate. The National Assembly should accept their role as junior brothers. The amendments propose that the Cabinet Secretary shall submit the reports to the National Assembly. This is unfortunate. I believe it was the mistake of the drafters. Why would you submit to the National Assembly? Where is the role of the Senate?

Article 93 of the Constitution is clear. We do not want to go to court. These are small things that can be rectified. The Committee on Finance and National Planning in the National Assembly should be responsible on the issue of public debt. They should consider the report and submit it on the Floor of the Senate.

As the fourth Senate, we should not legislate ourselves out of our legislative business. Why are we legislating ourselves out of the role that we have been given under Article 96? The role of Parliament is to legislate, oversight and represent. I am here on behalf of the great people of Nandi County who are close to one million, despite the fact that the county has six Members of the National Assembly.

When borrowing, they want the Senate to be involved, but when assessing reports and budgeting for the money borrowed for international organizations, we are sidelined. I encourage my colleagues from both sides of the House, let us not legislate ourselves out of our work. We are slowly taking ourselves out of our work.

The Bill proposes that the National Assembly shall discuss the report from the Cabinet Secretary. The Committee on Finance and Budget of the Senate must consider the report and table their verdict.

If I am told that the people paying public debt through taxation are not in the 47 counties, then I will not have a problem. Unless there is a different set of Kenyans who do not live in counties. If they do not live in counties, then we can agree with this proposal.

We must amend this proposal. We should proceed to the mediation Committee. We will amend the amendment to ensure that we anchor the role of the Senate in the management of public debt. The principles of public finance under Article 201 are clear that Parliament is bicameral.

Mr. Temporary Speaker, Sir, another interesting thing is Clause Six of the Bill, which states that-

> "A public debt incurred by the national Government is a charge on the Consolidated Fund, unless the Cabinet Secretary determines, by regulations approved by Parliament, that all or part of the public debt in a charge on another public fund established by the national Government or any of its entities."

Why are they cherry picking the role of the Senate when it comes to the approval, reporting and explaining the breach? Why is the Cabinet Secretary for National Treasury comfortable to send the explanation of five per cent increment above 55 per cent anchored on Gross Domestic Product (GDP) on present value terms to the National Assembly as opposed to sending it to the Senate? We must stop this mischief. We should not legislate mischief. We should not violate the Constitution. I agree with Article 213 of the Constitution coupled with Article 212 on the public debt. In fact, Article 214 (1) of the Constitution is very clear. It states that –

> "The public debt is a charge on the Consolidated Fund, but an Act of Parliament may provide for charging all or part of the public debt to other public funds."

The Constitution recognizes the role of Parliament. Even if you have charge on Consolidated Fund, the Act of Parliament, which is the Public Finance Management (PFM) Act, may provide for charging all part of the public debt to other public funds. This is very clear. All financial obligations and public debt have been defined. When you look at the borrowing by the national Government, there is about reporting mechanisms in Article 211 (2) which states that–

> "Within seven days after either House of Parliament so requests by resolution, the Cabinet Secretary responsible for finance shall present to the relevant committee, information concerning any particular loan or guarantee, including all information necessary to show—
>
> (a) the extent of the total indebtedness by way of principal and accumulated interest;
>
> (b) the use made or to be made of the proceeds of the loan;
>
> (c) the provision made for servicing or repayment of the loan; and
>
> (d) the progress made in the repayment of the loan."

Mr. Temporary Speaker, Sir, you are a learned senior. I know your prowess and competence because you have represented me in different courts of note in this country. Pursuant to Article 211, this proposal by PFM Act and legislative drafters---

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

The Temporary Speaker (Sen. Wakili Sigei): What is your point of order, Sen. Faki?

Sen. Faki: Mr. Temporary Speaker, Sir, I do not wish to interrupt my junior, Sen. Cherarkey. However, he said that he has been represented in courts of note in this country. Is the Resident Magistrate Court in Kapsabet a court of note or a court of record?

The Temporary Speaker (Sen. Wakili Sigei): I believe Sen. Cherarkey meant courts of law but because of where he comes from and his dialect, he was unable to pronounce it very well to the satisfaction of the Hon. Senator from Mombasa.

Proceed, Sen. Cherarkey.

Sen. Cherarkey: Mr. Temporary Speaker, Sir, you know the dominant language of Sen. Faki is Kiswahili. Some of us are speaking Queens English, but I just meant courts of law. I do not doubt that Sen. Faki is conversant in both languages. However, my prowess and the grasp of English language and Queens Language, can only be equated to the late Kijana Wamalwa.

(Laughter)

In conclusion, this is a straightforward amendment. When you look at Article 211, we still have a role. Even if these drafters are mischievous, I do not want to use the bad language or unparliamentary language, it will be negated.

Sen. Okiya Omtatah, with all due respect or any other Kenyan might move to court and have this part nullified. Article 211 is very clear that Houses of Parliament do reporting on public debt. We need to determine the competence of people who are drafters in the State Law Office, or they need to come for capacity building before the Senate or to some of us who can do *pro bono*. Why would we legislate a law that somebody would go to court and nullify it? We need to amend this.

Mr. Temporary Speaker, Sir, with those many remarks I support this amendment to anchor the public debt on percentage of GDP to present value terms. We are struggling with the public debt of Kshs10 trillion. I hope when this is anchored, we will bring the public debt GDP of 64.1 per cent to 55 per cent and ensure that the country moves forward. We need to give it to the President so that he implements the plan of transformation and economic prosperity going into the future, where all Kenyans will enjoy under the Kenya Kwanza Administration.

Mr. Temporary Speaker, Sir, with those many remarks, I support the Amendment with the amendments proposed.

I thank you.

The Temporary Speaker (Sen. Wakili Sigei): Proceed, Sen. Osotsi.

Sen. Osotsi: Mr. Temporary Speaker, Sir, I thank you for the opportunity to contribute to the Public Finance Management (Amendment Bill), 2023.

From the onset, I support the Bill, but with reservation. Having listened to a number of contributions from colleagues, clearly this Bill will require some amendments.

There are provisions in this Bill, which clearly violates the Constitution. For instance, when you make reference to the National Assembly under the Amendment 2 (d) that says that -

"The Cabinet Secretary shall submit to the National Assembly by 30th April in every year a report on debt status and the borrowing undertaken by the national Government."

Mr. Temporary Speaker, Sir, this Clause ignores the role of the Senate. Article 225 (1) of the Constitution on financial control, states –

"An Act of Parliament shall provide for the establishment, functions and responsibilities of the national Treasury."

Article 225 (2) talks about -

"Parliament shall enact legislation to ensure both expenditure control and transparency in all governments and establish mechanisms to ensure their implementation."

Article 225(2) clearly implies that the Senate has a role in financial control in determining expenditure control and transparency in all governments. All governments include even county governments. This particular Clause offends Article 225 of the Constitution that requires involvement of Parliament, in this case, the National Assembly and the Senate.

Hon. Senators, I implore you that we should not pass this Bill unless the amendments that recognize the role of the Senate are included in this Bill. I have also noticed that the amendments that requires the Cabinet Secretary to determine by regulation that all or part of the public debt or resulting financial obligation is a charge on another public fund, it is unconstitutional.

If you refer to Article 214(1) of the Constitution on public debt, it is very clear. It states–

"The public debt is a charge on the Consolidated Fund, but an Act of Parliament may provide for charging all or part of the public debt to other public funds."

The Cabinet Secretary for National Treasury wants to give himself powers that he does not have by circumventing an Act of Parliament and bringing in regulation. The Constitution does not refer to regulation. It refers to an Act of Parliament. The reading of that Amendment offends the Constitution and makes this Bill unconstitutional.

I agree with my colleagues who have suggested the amendment to amend the debt threshold to 55 per cent of the GDP in present value terms. I support that. However, that can only work if you have an economy that is thriving; where the cost of living is managed, there is no inflation, and it is stable.

The period given of five years is short. I think we are going to have a challenge of attaining the 55 per cent threshold because of the current economic situation in our country.

Mr. Temporary Speaker, Sir, this Bill also seeks to amend the Public Finance and Management (PFM) Act since it makes reference to the public debt and not the national debt. I even wonder where they got the word 'national debt' from because it is a strange term in the Constitution. It forgets about the county government. I, therefore, agree with the amendment. The PFM Act needs to be amended so that any reference to the national debt is replaced with public debt.

Mr. Temporary Speaker, Sir, I have also seen an amendment proposing that the Cabinet Secretary (CS) for National Treasury and Economic Planning will by 30th of April of every year, submit a report on the status of public debt to Parliament. As I have said before, that should be Parliament. Again, if amended, that would be a good provision because Parliament will keep on monitoring the status of debt. Right now, we do not get a report.

We even heard the other day the Office of the Auditor-General complaining that they are not aware of the public debt statement. They cannot verify the statement of public debt. I think that was a very unfortunate thing. The Committee responsible, which in this case is the Committee on County Public Accounts (CPAC), needs to invite the Auditor-General to shade more light on that revelation. We have a responsibility as Parliament to know how much we are borrowing and our debt status.

I think this provision, save for the fact that it is only making reference to the National Assembly and not Parliament, is a very progressive amendment. The words 'Parliament' and 'every year.' I propose that it even be done every six months. We should know the position in as far as public debt is concerned.

Mr. Temporary Speaker, Sir, I hope that the Committee on Finance and Budget will sponsor these amendments that I have suggested so that we, as a Senate, should not legislate ourselves out of work. If we allow this Bill to pass as it is, then it will be an unfortunate moment for this Senate because we will be legislating ourselves out of work and then complain later.

We expect the Committee on Finance and Budget to make appropriate amendments to ensure that this Bill is constitutional. As it is now, this Bill is unconstitutional. Any Kenyan has a right to move to court to challenge the provisions contained in this Bill.

Mr. Temporary Speaker, Sir, with those few remarks, I support but with reservations. I have made comments in relation to the constitutionality of this Bill and as far as the position of Senate in this matter is concerned.

Thank you.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. Osotsi. Proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Thank you, Mr. Temporary Speaker, Sir. I rise to support the Public Finance Management (Amendment) Bill (National Assembly Bills No. 16 of 2023) which is now on the Floor.

Mr. Temporary Speaker, Sir these are very exciting times to live in. For the first time, in the long history that I have been in public service in this country both as a doctor and a parliamentarian where I have been privileged to serve as a Member of the National Assembly and Senate, the Government in office is ready and willing to release funds from the centre to the periphery.

As we speak now, the Government has released money to the Higher Educations Loans Board (HELB). Our children are now applying on clear cut criteria so that the poor will be at the forefront, to be first served before the children of the rich can have a bite at the cherry.

Secondly, the popular National Government Constituency Development Fund (NG-CDF) has been released to all Members of Parliament. The funds for Women Representatives have also been released. Last but not least and thanks to the mismanagement of the economy by the 'handshake' Government; all the monies owed to the county governments has now been released.

The people of Kakamega will be very excited this afternoon to hear that on the 15th of July, Kshs1,097,574,932 for this financial year was given to their governor, Hon. Barasa. Therefore, Gov. Barasa is swimming in billions of shillings. I hope, like all other governors, he is going to give ---

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

The Temporary Speaker (Sen. Wakili Sigei): What is your point of order Sen. Osotsi?

Sen. Osotsi: I am sorry my elder, Sen. (Dr.) Khlawale.

Mr. Temporary Speaker, Sir, on Thursday evening, I was challenged under Standing Order No.105 on statements of facts by my good friend Sen. Wafula, on the issue of disbursement of funds to counties. I had stated that the County Public Investments and Special Funds Committee (CPISFC) did a commendable job in contributing to the issue of disbursement of funds by 30th of June.

Sen. (Dr.) Khalwale: How does that concern my contribution?

Sen. Osotsi: It does because you were making reference to the same.

The Temporary Speaker (Sen. Wakili Sigei): Sen. (Dr.) Khalwale, he is on a point of order. Let us listen to him.

Sen. Osotsi: Mr. Temporary Speaker, Sir, you directed that I substantiate it this afternoon. I have come with a set of documents ready to substantiate.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Osostsi, kindly take your seat.

I remember you had mentioned that position earlier on to the Chair. I made an inquiry and do confirm that it did not amount to a requirement for you to substantiate it today because the factual issue then was clearly before the Floor of the House. You are therefore not required to substantiate it this afternoon. I made an inquiry with the Clerk-at-the-Table and I confirm that is the position. It is therefore not a point of order. I, therefore, ask you to take your seat.

Proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Thank you, Mr. Temporary Speaker, Sir. With due respect, I would like Sen. Osotsi to take it easy and learn the rules. You can only rise on a point of order, in my time, when I am out of order. However, if it is a procedural issue, then you can sort it out with the Offices of the Speaker or Clerk.

The Temporary Speaker (Sen. Wakili Sigei): Sen. (Dr.) Khalwale, proceed to make your contributions to the Bill.

Sen. (Dr.) Khalwale: Thank you, Mr. Temporary Speaker, Sir. I was complaining so that I catch your sympathy so that you can give me the time I lost through his intervention.

The Temporary Speaker (Sen. Wakili Sigei): You can be sure that you will be granted your lost time.

Sen. (Dr.) Khalwale: Thank you, Mr. Temporary Speaker. I was announcing the good news to the people of Kakamega. That our governor, thanks to this Senate, my persuasiveness in the Committee on Finance and Budget and my own drive, is now swimming in billions of shillings. I urge him and all the governors of Kenya to give priority to two things. First, is the pending bills owed to business people. Some of them have died because of debts and pressure from their creditors. Those pending bills should now be settled. We want the fruits of devolution to be enjoyed by creditors.

Mr. Temporary Speaker, secondly, all governors should give priority to on-going projects and complete them before new ones are started. For example, whenever I fly over Bomet Stadium on my way to Kakamega County, I feel very offended that 11 years into devolution, that stadium is incomplete. The same to Bukhungu Stadium, Shamakhuvu Hospital, Mumias Level 5 Hospital, Malinya Market, Khayega Market and Butere Hospital all in Kakamega County. These projects must be prioritised before my governor then embarks on new projects.

I agree with the proposed amendments in Section 2, 12, 15 and 32. However, I think when it comes to the amendments proposed in Section 50, the public deserves to hear us. Therefore, allow me to use this opportunity to examine the proposed amendments in Section 50.

This is a paradigm shift. For the first time, we want to align the management of public debt with the best international practices as you find in the United States of America (USA), Australia and Canada. We shift from the outdated debt ceiling to the principle of debt anchor.

Mr. Temporary Speaker, Sir, this amendment proposes that the public debt must never exceed 55 per cent of the Gross Domestic Product (GDP). Let me acknowledge that today, we are in a bad place because of the greed of the "Handshake" government. The then President went on and borrowed right, left and center and left this country. We are currently at 66 per cent of our GDP, we are in debt. We are in a hole.

I am glad that Prof. Njuguna, a professor of Economics from the University of Nairobi---

For the benefit of this House and I can see the Senator for Mombasa County is having a closed eye reflection on my contribution. He is even nodding his head. That is very good. Prof. Njuguna comes from our generation of the University of Nairobi.

This is the distinguished generation that has served this country wherever they have gone. We are the generation that has given this country the first open heart surgery and a kidney transplant in the region, competing only South Africa on the continent.

He has explained to us as a Committee and our minds are very clear. He is telling us that if you have an appetite for loans, go and borrow. However, if you must borrow, start by growing the GDP. If you grow the GDP enough, you can go and borrow. It will allow you to borrow but not exceed 55 per cent.

This should not look like something very strange or difficult to understand to Kenyans. Kenyans; as they say in English, if you want to run a family well, you should run it the way you cook a fish. What is the fish in this context? Today, if you go to Cooperative Bank of Kenya, Kenya Commercial Bank (KCB), Absa Bank and Equity bank and try to borrow, they tell you to go for the money for God's sake. Before they credit you with the money you want to borrow, they look at your performance and how good your account is. If it is good, you borrow. If it is poor, you do not borrow.

We are now saying our big reserve, the GDP, will in future be determining whether we can borrow or not. Therefore, this lays emphasis on scientific management of public debt. It shifts the focus on growing the GDP.

I remember the then Minister for Finance, the late Hon. John Michuki approached us in 2009. He wanted us to raise the debt ceiling. I think those days you must have been in class eight or below.

(The Temporary Speaker (Sen. Wakili Sigei) smiled)

Mr. Temporary Speaker, Sir, why are you smiling? I suspect I have misquoted your age. Forgive me. The former Member of Parliament (MP) for Imenti Central, Hon. Gitobu Imanyara, was hawk-eyed. He spotted the mischief. Sen. Mungatana you will remember that is what gave birth to the famous computer errors.

(Sen. Mungatana, spoke off record)

There can be mischief when it is not scientific. Now that we are making it scientific, it will be forever easy for us as Parliamentarians to see that somebody is exceeding the 55 per cent anchor.

Therefore, I thank Members of the Minority side. I have listened to your contribution, including Sen. Osotsi's. There is very good grasp of this. The distinguished Senator for Mombasa County is in my committee and he was the first to spot what was concerning us. What was that? We were concerned that the provision that allows the Cabinet Secretary for National Treasury to exceed the 55 per cent on exceptional circumstance, could visit this country a disaster. I salute you, Sen. Faki.

We put Professor under a lot of pressure to convince us why we would give moratorium of five years where the Minister is enjoying that window and he convinced us. Therefore, if there is still any Member in this House who does not sit in the Standing Committee of Finance and Budget, I persuade you, we have represented you well. We have understood that there can be exceptional circumstances where you need to go beyond the borrowing ceiling.

What did we do as a committee? We then insisted that it be clear what exceptional circumstances can be. We found that one such exception circumstances is the depreciation of the Kenya Shilling. The Kenya Shilling can depreciate so fast that it can hurt our public debt then we end up---

(Loud consultations)

Mr. Temporary Speaker, Sir, there is a lot of loud consultations.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Oketch Gicheru and Sen. Ali Roba, may you consult in low tones to allow the Senator to be heard in silence.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, it is exactly what we are going through now.

Most of you have your Kenya Shilling account and others have got the Forex account. You have seen if, in the last few weeks, you left your money to be in your shilling account and not in the dollar account, by the time you swing back, you have lost a lot of money. Therefore, this becomes an exceptional circumstance.

Another exceptional circumstance is in the event of an epidemic. When I was a young man in medical school at the University of Nairobi, we were taught by Prof. Pamba about pandemics and epidemics and it used to look purely academic until just three years ago when we all lived through the COVID-19 problem.

These things do happen. You can see that I was in medical school over 20 years ago. I had never seen this kind of thing when I was being taught at medical school. I thought it was just theory, but it came to pass. So, this law anticipates that eventuality.

We have negative climatic change. You know that we are just coming out of the longest drought period. The fact that it happened means it can happen again and force the Cabinet Secretary for Finance to treat it as an exceptional circumstance to force him to borrow.

The internal conflict leading to civil strife can be a cause of this kind of problem. With the bad manners of some Hon. Members not in this House but at other levels, putting *sufurias* on their heads, it can move into an internal strife. So, we want to anticipate this and as we do that we want to urge our *sufuria* wielding leaders in this country to realize that the answer lies in growing our Gross Domestic Product (GDP).

We also know that external shocks can become a serious exceptional circumstance. You and I are lucky that we are now living in times when we have witnessed an actual external shock namely the war and conflict in Ukraine. It is external; far removed, over 8,000 kilometers away from here but it has affected us.

Last but not least, is the issue of natural disasters. It might look laughable, but who would have known that locusts which were last a threat in this country after the Second World War would again be a threat in our lifetime? So, such disasters including floods, e*tcetera* are a real thing.

I want to conclude by registering my disappointment with the Attorney-General who is my friend. In fact, after this I am going to give him a call. When this proposed amendment was brought before the House, it went to the Cabinet and the---

(Sen. (Dr) Khalwale's microphone was switched off)

The Temporary Speaker (Sen. Wakili Sigei): Your time is up, Sen. (Dr.) Khalwale. Just for your information, the public stadium that you made reference to in Bomet has been condemned unfit for completion by the Ministry of Sports after having swallowed millions of shillings and having been there for the last seven years.

Sen. Faki, you may proceed.

Sen. Faki: Asante Bw. Spika wa Muda kwa kunipa fursa hii kuchangia Mswada wa marekebisho wa Sheria ya Fedha ya 2023. Kwanza ningependa kusema ya kwamba naunga mkono marekebisho haya lakini ningependa kufanywe mabadiliko katika marekebisho ambayo yamependekezwa katika mswada huu. Kwanza kabisa, vyombo vya habari vimeripoti kwamba Dollar ya Marekani inabadilishwa kwa Kshs150 ya pesa za Kenya.

Kusema kweli, hili ni jambo la kusikitisha kwa sababu, ina maana kwamba sarafu yetu inapungua dhamani ikilinganishwa na Dollar ya Marekani ambayo ndio sarafu inayotumika kimataifa.

Baadhi ya mambo ambayo yamesababisha kupungua kwa nguvu ya sarafu yetu ni baadhi ya sera za Serikali hii ambayo tuko nayo. Serikali ilipoingia mamlakani, Dollar ilikuwa inabadilishwa kwa Kshs100; Kshs110 au Kshs120. Lakini sasa tumeona kwamba imeongezeka wa asilimia karibu thelathini katika muda mchache kabla ya mwaka mmoja kuisha. Hii inamaanisha kwamba hii Serikali lazima iketi chini iangalie ni vitu gani wanavyofanya ambavyo hawastahili kufanya.

Wamesema kumekuwa na vita Ukraine, lakini vita vya Ukraine vimekuwepo sasa zaidi ya mwaka. Vita vya Ukraine vilianza February mwaka uliopita kwa hivyo kwa sasa haviwezi vikawa ni nyenzo inayochangia kupungua kwa dhamani ya sarafu ya Kenya.

Kipengee cha 211 ya Katiba yetu kinaipa Bunge hili fursa ya kutunga sheria zinazoangalia maswala ya kukopa na pia kuweka wazi sheria ambayo itamruhusu Waziri wa Fedha kuweza kutoa ripoti kwa Bunge. Nikizungumzia Bunge nazungumzia Bunge la Seneti na Bunge la Kitaifa. Huu Mswada unapotaka kupunguza hii fursa ya kuleta ripoti, ukipelekwa kwa Bunge la Kitaifa pekee yake, ina maana wanakiuka Katiba katika kipengee cha 211.

Tukiangalia baadhi ya marekebisho kama vile 2(b) (c) (d) na (e), zote zinasema kwamba Waziri wa Fedha atapeleka ripoti katika Bunge la Kitaifa kabla ya tarehe 30th mwezi wa nne, kila mwaka. Ina maana ile nafasi ya kuripoti itakuwa haiji tena katika Bunge la Seneti. Itakuwa inapelekwa kwa Bunge la Kitaifa pekee yake na hiyo itakuwa inakiuka Katiba katika kipengee cha 211.

Kipengee cha 211(b) inasema katika muda wa siku saba baada ya kauli kutoka kwa Bunge lolote yaani Bunge la Kitaifa au la Seneti, Waziri anaweza kuitwa akaeleza ripoti ya mikopo iliyochukuliwa na vile pesa zimetumika katika mikopo hiyo. Kwa hivyo, kwa vipengee hivyo viwili, ina maana kwamba kipengee cha 211(d)(e) zote ziko kinyume na Katiba na hazifai kukubalika na Bunge hili.

Jambo la tatu ni kwamba kwa sasa deni letu limewekwa takriban trillion kumi au karibu na trillion tisa nukta nane ama tisa nukta tisa. Sheria hii inajaribu kubadilisha mfumo wa deni, yaani deni iwe ni asilimia fulani ya mazao yanayotokana na nchi yetu ya Kenya. Kwa mfano, kwa sasa, mazao yako trillion kumi na tano. Tukiweka katika asilimia ya hamsini na tano, itakuja takriban trillion nane ama kiasi kama hicho.

Iwapo sheria hii itapita inamaanisha kwamba deni letu litakuwa limekwenda zaidi ya asilimia 55 ambalo limependekezwa katika Mswada huu.

Tukibadilisha, Waziri husika atakuwa na muda wa miaka mitano. Kwa maoni yangu, miaka mitano ni mingi kwa sababu kila mwaka Seneti na Bunge la Taifa hujadili *Budget Policy Statement* (BPS) ambapo Serikali inatoa mapendekezo ya jinsi ya kupunguza madeni kwa muda mfupi na baada ya muda mrefu.

Mwaka ujao, Mwezi wa tatu au wa nne, tutakuwa tunajadili kuhusu BPS. Tutajadili kuhusu mapendekezo yatakayotolewa na iwapo yatasaidia kupunguza madeni kutoka asilimia 64 hadi asilimia 55 ambayo inapendekezwa katika Mswada huu. Hatuna shida na kubadilishwa kwa mfumo wa deni kutoka Kshs10 trillioni hadi asilimia 55 ya *GDP*.

Serikali karibu inapita kiwango cha Kshs10 trillioni. Kwa hivyo, mabadiliko haya hayataipa Serikali afueni kwa sababu tayari wamevuka mpaka unaofaa wa Kshs10 trillioni hadi asilimia 55 ya *GDP*. Kuna haja ya Serikali kupewa muda. Muda huo unafaa kupendekezwa na Bunge. Kulingana nami, unafaa kuwa muda wa miaka mitatu.

Vipengee vingine ambavyo vinaleta shida ni 2(b) na (c) ambavyo vinasema kwamba Waziri anaweza kukiuka kiwango hicho cha asilimia 55 na baadaye kuleta ripoti Bungeni ili kukubaliwa kufanya hivyo. Hatuwezi kama Bunge kukataa wajibu wetu wa kutunga sheria.

Vipengee hivi vikipita ina maana kwamba Serikali itakuwa na *freehand or blank cheque* ya kuongeza kiwango cha deni kulingana na jinsi wanavyotaka kisha baadaye watuambie kuwa waliongeza kwa sababu ya jua kali, uvamizi wa mashamba na nzige katika sehemu fulani au kwa sababu hakukuwa na hiki au kile nchini.

Hatutaki Kipengee 2(c) kwa sababu itanyima Seneti na Bunge la Taifa nafasi ya kuhoji jinsi pesa zitakavyotumika. Ni bora Waziri aje katika Bunge na kusema anataka kuongeza deni kwa sababu fulani kisha Bunge likubali au likatae kuliko atumie pesa halafu baadaye aje aseme aliongeza deni kwa sababu, kwa mfano, alijenga makazi mapya ya Rais au Naibu wa Rais, au waliongeza *Chief Administrative Secretaries (CASs)*.

Kwa hivyo, Kipengee 2(c) hakifai kupitishwa kwa sababu kitakiuka Katiba. Bunge lina uwezo kikatiba kuhakikisha kwamba sharia inafuata. Huu ni wakati mwafaka wa kuwa na mjadala kuhusiana na ofisi ya kudhibiti deni la umma. Kwa sasa, wadhfa huo uko chini ya Wizara ya Fedha na Mipango.

Madeni huathiri nchi nzima kwa sababu tukishindwa kulipa, nchi inaweza kusambaratika. Hatungependa maswala ya madeni kusimamiwa na watu ambao wameajiriwa na Serikali na kusimamiwa na Waziri wa Fedha na Mipango. Ofisi hiyo inafaa kuundwa kando ya kikatiba ili maamuzi yafanywe kulingana na sheria.

Kwa mfano, *the Central Bank of Kenya (CBK)* ni taasisi huru ambayo hufanya maamuzi kulingana na sheria na hakuna mtu anayeweza kukataa maamuzi yao. Kwa sasa, maswala ya madeni yako chini ya Wizara ya Fedha na Mipango na maamuzi yote---

The Temporary Speaker (Sen. Wakili Sigei): Sen. Faki, did you mean *ofisi ya kudhibiti madeni isiundwe kikatiba?*

Sen. Faki: La, Bw. Spika wa Muda. Nimesema kwamba iwe ofisi huru. Yani *independent office*.

The Temporary Speaker (Sen. Wakili Sigei): That is not what you said, but it is good you have corrected.

Proceed.

Sen. Faki: Bw. Spika wa Muda, ofisi ya kudhibiti madeni ni muhimu sana. Kwa hivyo, haifai kuwa Idara katika Ofisi ya Waziri wa Fedha na Mipango katika nchi yetu.

Kuna madeni ya Serikali ya kitaifa na serikali za kaunti ambazo zinatambulika kikatiba. Kuna serikali za kaunti ambazo ziko tayari kukopa kulingana na fedha wanazopata. Mapato yao yanawawezesha kukopa ili kutekeleza mipango yao kwa haraka na kuendeleza maendeleo kisha walipie pole pole kulingana na uwezo wa kaunti zao.

Hapa tunazungumzia madeni ya Serikali ya kitaifa pekee. Serikali za kaunti zikitaka kukopa, wanaambiwa kuwa hawana uwezo au wasubiri. Mara nyingi, Wizara ya Fedha na Mipango haiko tayari *ku-guarantee* kwamba serikali za kaunti zinaweza kukopa.

Ipo haja ya kugawanywa madeni ili serikali za kaunti ziweze kukopa kiwango fulani na kiasi fulani kiwe cha Serikali ya kitaifa. Kwa mfano, Serikali kuu inaweza kukopa asilimia 70 na serikali za kaunti zikope asimilia 30 ya 55; au iwe asilimia 60 kwa 40. Hiyo itakuwa bora kwa sababu kwa sasa hatujui jinsi serikali za kaunti zinaweza kukopa kwa kuwa ni kama ni lazima wale wanaotaka kukopa wapitie kwa Serikali ya kitaifa.

Kwa mfano, ikiwa mimi ndiye nafanya maamuzi kuhusu ukopaji kisha Sen. Ali Roba aniambie anataka kukopa, nitahakikisha kuwa nimeridhika kwanza kabla ya kuangalia mtu mwingine. Hivyo ndivyo Serikali ya kitaifa inavyofanya kwa sababu madeni ya serikali za kaunti yatachangia deni la kitaifa. Hiyo ina maana kwamba nafasi ya Serikali ya kitaifa kukopa itakuwa imepungua kwa sababu ya madeni yatakayokopwa na serikali za kaunti.

Kuna haja ya kuwa na mazungumzo ili kujua asilimia gani ya kiwango cha deni itakuwa inakopwa na serikali za kaunti na asilimia gani itakopwa na Serikali ya kitaifa. Lazima serikali za kaunti pia zipate fursa ya kufanya maendeleo bila kushurutishwa au kuzuiliwa kwa njia moja au nyingine.

Bw. Spika wa Muda, kwa kumalizia, tunaunga mkono Mswada huu lakini marekebisho lazima yafanywe. Kipengee cha kuripoti kwa Bunge la Taifa pekee kiondolewe. Jinsi tunavyojadili Mswada huu, lazima ripoti ziletwe katika Mabunge yote mawili; Bunge la Taifa na Seneti.

La pili, hatukubali uwezo wa Waziri kukopa kisha baadaye aje kuuliza kibali kutoka kwa Bunge. Tutakuwa tumempa Waziri uhuru wa kupita kiasi kuweza kukopa. Hiyo itakuwa kinyume na matarajio ya nchi yetu ya Kenya.

Mwisho ni kwamba lazima tuwe na mjadala kuhusiana na mambo ya ofisi huru ya kudhibiti madeni; yani *independent public debt office*. Tunafaa kujua asilimia ya deni ambayo serikali za kaunti na ya Serikali ya kitaifa zinaweza kukopa kwa sababu zote ni serikali ambazo zina mapato na zina haja ya kufanya maendeleo katika nyanja tofauti tofauti katika nchi yetu ya Kenya.

Bw. Spika wa Muda, naunga mkono lakini kwa masharti ambayo nimezungumzia.

The Temporary Speaker (Sen. Wakili Sigei): Thank you very much, Sen. Faki.

Proceed, Sen. Mungatana.

Sen. Mungatana MGH: Mr. Speaker, Sir, I thank you for an opportunity to make a brief contribution and associate myself with the comments and contributions of previous speakers. Without repeating, I fully agree with the contributions with regard to the question of the standing of the Senate. That was a mistake.

Mr. Temporary Speaker, Sir, regarding the debt anchor, I also fully endorse those submissions that have been made by the hon. Senators who have spoken to this Bill.

I will make a slightly different point from what the preceding speakers have made. We are only discussing the question of procedure of how to report the debt, manage it and how to be responsible holders of public debt. This is also an opportunity for us to speak to the National Treasury about debt itself. I know that there is a theory about growing in debt and development through debt. However, the debt levels in this country are not sustainable at all. We need to seriously speak about it. This is an opportunity for us to debate this issue.

The debt that is accumulated in the public space comes because of excessive spending. A government that goes into debts and deficits is because they are spending more than what they are generating. That deficit that happens in this financial year adds to the public debt stock that we have. No one from the National Treasury has come out strongly to tell us about the measures the nation is putting down to cut down on public debt.

Mr. Temporary Speaker, Sir, this is a debate we must have. The Senate will use this opportunity to tell the National Treasury that the levels of public debt are worrying. We are not hearing positive voices from the National Treasury saying how they will manage. They must come out with a plan. It is bad where we are now.

Whether we say we are going to report debt using the Kshs10 trillion absolute figure or public debt to Gross Domestic Product (GDP) ratio, you are still not giving Kenyans confidence that you want to manage public debt and the plan that you have to manage public debt.

The National Treasury is too quiet. Senate must muse this Floor to explain to the Treasury that this Administration promised that it was going to control and reduce the public debt. However, we do not get to hear a concrete plan. Instead, we are now hearing about the way they are going to report the debt every year. They are not telling us what should happen.

Mr. Temporary Speaker, Sir, we want to hear a strong voice on spending cuts and how they will reduce this deficit. They must tell us where they are going to cut off, so that we can reduce and live within our means. The President has spoken many times about living within our means, but the lieutenants who are supposed to actualize these words are not telling us what the plan is.

The Senate will take the opportunity when they bring this to tell them that we are not happy. The plan is not clear and we are not seeing what they are doing to reduce the public debt. Unfortunately, Kenyans are watching us. In four years, we will have to explain whether we reduced the public debt as we promised or what we did when we had the opportunity.

What I am saying is not rocket science. They must cut down on the spending. In the 1990s, Canada had a huge deficit and they did it with 20 per cent spending cuts. They did it within a period of four years, and in three years, the public debt went down to zero. Within those four years, the public debt to GDP ratio was reduced by one-third.

Mr. Temporary Speaker, Sir, we are asking that the National Treasury speaks to this issue because it is worrying to all of us. Otherwise, we support these Amendments that have been brought with the amendments that have been proposed by other hon. Senators.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Oketch Gicheru.

Sen. Oketch Gicheru: Thank you, Mr. Temporary Speaker, Sir, for giving me the opportunity to share some thoughts on the Bill. As I had told the substantive Speaker, I am grateful to be back in the House in order to contribute to the business. I will not forget to thank the people of Migori for the support they have given me in the last three and a half months that I have been unwell.

They sent me to this House, but they have been courteous when I was in my lowest moment. I thank them too because during that time, I was able to engage appropriately with the Committee on Finance and Budget that their vote enabled me to be part of.

In that regard, I also thank the Chairman of that Committee, Sen. Ali Roba, "Captain" who has for the first time, enabled us to engage soberly with the National Treasury on the debt burden of our country.

Mr. Temporary Speaker, most of my thoughts and alignments in support to this Bill were echoed in the Report of the Bill that has been tabled here. However, there are some aspects of this Bill that I want to emphasize on. I will start with where my senior, Sen. Mungatana, started with on deficit.

I understand the concern that he has on the issue of deficit. However, I want to be liberal on this issue because the Government is not a trading entity. To the extent that we are always going to have a deficit if you are going to be in Government, what then constitutes a deficit?

If your deficit is more on development, then it is a worthy deficit. However, if it is an issue of more consumption and what we are seeing as paying bills in this country, where over 62 per cent of our Government's spending goes to paying recurrent expenditure, then that becomes a problem.

The second bit I want to emphasize on because it might water down this Bill, is how to finance that deficit. If you borrow from outside the country, it would make it easier than if you borrowed within the country, which would then lead to crowding out.

If I were to reframe the essence of this Bill, it would be a debt-relief Bill. Having a debt is okay, but when you have a debt that you cannot manage, then you need to have a relief mechanism. The Bill, in its essence, is about making us realise that as a country we need to manage the debt. It is not that we have a problem with having the debt.

Mr. Temporary Speaker Sir, for the first time, we went through all the options that we have to be able to manage our debt. I honestly appreciate it. In Kiswahili, they say *Mgala muue na haki mpe.*

We sat with the Chairperson of the Committee on Finance and Budget and the Cabinet Secretary for Finance and Economic Planning, hon. (Prof.) Njuguna, whom I appreciate. We went through every tool that economically makes sense. We looked at all options that are available for us to manage our debt, starting from how we can engage in interest reduction.

We also looked at whether we need to change the terms of our loans to be able to manage this debt. We also thought of the classical idea of reducing the principle around debt issues in this country, consolidating the debt or refinancing the loans.

When we looked at all these things, it became eminent that we were able to interrogate the single problem in our debt management in this country. The problem, as articulated by this Bill, is what we call the metric discipline. When the parliamentarians who came before us thought about borrowing, they came up with an absolute number and then they capped it to borrow up to Kshs10 trillion. However, what you lose sight of is that if the Kshs10 trillion was to be subjected to our Gross Domestic Product (GDP), what does it come up to?

That is how we came up to realize that our debt situation is 64.1 per cent of our GDP. This is because we started by putting a number without realizing where we stand in terms of our GDP? Therefore, this debt relief Bill is going to help us to objectively put this debt borrowing mechanism of 55 per cent as a percentage of GDP, in its net present value. This means that at any given time we look at our GDP, and we want to borrow. As a country, we will look at what is our GDP at that particular point in time and then grow 55 per cent of that.

I find this brilliant because it then helps us to put it as a performance metric. This will enable us to do three things that are very important for this country to manage our debt.

First, if in any case we find that our economy is contracting, then it will mean that the percentage remains. Therefore, borrowing will become a constant and it also contracts. This is brilliant because that is the mechanism that will help us manage a debt that we cannot deal with.

The good thing is that *vice versa* is also standing in the sense that, if the economy expands, it means that the gap and the window of borrowing that we have will expand. That would mean that it will be a development metric that forces us to start thinking about borrowing within some priority items, which for me will be very developmental.

If you think about it, we are having exchequer receipts. Every single day, at the end of the week, the National Treasury has to think about paying for interest. Therefore, if we go with these metrics, it means that remains the same and true for interest. When the economy contracts, the interest also contract because we are pegging this to a percentage of our GDP rather than absolute value.

Lastly, I invite the House to think about this critically. When we discussed this with the National Treasury and the Cabinet Secretary for Finance and Economic Planning, we told him that, if this is a good idea, how then do we come up with a compliance plan?

The Cabinet Secretary together with our Committee worked very hard on this Bill to come up with absolute values. If we choose the matrix in this Bill, how do we come from 64.1 per cent down to a manageable level of 55 per cent, which we can constantly go with?

We have a compliance plan in this Bill, which says that by 2024 this will have reduced to 61.8 per cent. This is a target we have given the National Treasury and we can hold them accountable as a House and Parliament together with the National Assembly. By 2025, we are proposing that it shall go to 60.1 per cent. By the year 2026, they should take it down to 58.2 per cent and by 2027, automatically get it to 55 per cent as envisaged in this amendment. I find it brilliant.

The Bill recognises and appreciates the elements of Article 214, which anchors the fundamentals of the Houses of Parliament to speak on when the National Treasury and Ministry go out of the established premises of the Bill. That is why we have an exceptional clause, which states that if there are exceptional circumstances, where we need to borrow out of what we have set as a country, then we can go back, and review.

Mr. Temporary Speaker, Sir, these exceptional factors are obvious. We have seen them in national and global occurrences. Globally we have seen currencies, which we trade on, being very volatile because of different challenges. In case we have a runaway exchange rate because the currencies that we are trading on have caused a devaluation of our own currency, then it is natural economically to come back to the House and seek permission to go beyond a regulation.

We have instances that we have seen in this country such as COVID-19 and other vagaries of nature that caused many staggering elements in the issues around debt management. We can review it at that point. We can end up being in a war situation with another country or within the country, which necessitates the review our debt management.

Lastly, we have seen in this country instances of natural calamities such as famine and locust invasion. If you do not adjust on what you can borrow, then you end up mismanaging the economy. With these kinds of proper propositions on debt relief and management, I urge the House that this is the first time the Standing Committee on Finance and Budget together with the National Assembly and the Ministry have thought more scientifically on how to manage our debt. I urge my colleagues to support this Bill because it gives us a compliance plan that we can go with and assess whether we are making progress.

I thank all the colleagues who have contributed. I hope that we can make sure this Bill goes through.

I thank you.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. Oketch Gicheru. I applaud you for taking time off the hospital bed and the demands of the condition you are in to be in the House.

I can see from my requests list that Sen. Omogeni and Sen. Olekina have intentions to contribute to this Bill.

Sen. Omogeni, proceed.

Sen. Omogeni: Thank you, Mr. Temporary Speaker, Sir, for giving me an opportunity to contribute to this proposed amendment to the Public Finance Management Act.

We know that globally, whether you go to the United States of America (USA) or in South Africa, one of the strongest economies, Governments do borrow. That is a globally accepted phenomenon in managing the finances of countries. Therefore, it is a good thing when, as a country, we are trying to put in place a framework that will be predictable on how our Government will borrow. There is no doubt about that.

We are here to support the amendment, which is on the Floor, but of course, with a few concerns to raise. When the Kenyan Constitution was enacted by the people of Kenya in 2010, the Senate was left with a very weak legislative mandate. I have always made this argument that when you read the 2010 Constitution, there are two things that you easily desire. There are roles that are reserved for Parliament. When the Constitution mentions the word 'Parliament,' it means the legislative mandate is co-shared by the National Assembly and the Senate.

The drafters of this Constitution intended a legislative mandate to be a preserve of the National Assembly that has also been provided for specifically in this Constitution. There is the other approach where under Articles 93, 94, 95, and 96 the mandate of the Houses has been limited specifically in the Constitution.

When it comes to this issue of national debt borrowing by the national Government, my argument has always been that this is a mandate that is co-shared by the two Houses. We know the practice in the Commonwealth. If there is a practice that has been followed by a House of Parliament successfully each year, then that acquires the force of law.

I remember the last time we were here as a Senate, we engaged in a serious debate on raising the debt ceiling that was considered by the National Assembly and the Senate. Therefore, we must guard against any attempt of taking away that mandate from the Senate. This is because, if you read plainly the provisions of Article 211 of the Constitution, it starts by saying-

'(1) Parliament may, by legislation-

(a) prescribe the terms on which the national government may borrow; and

(b) impose reporting requirements.'

Therefore, on the plain reading of Article 211, there is no way a proposed legislation can limit the reporting obligation to be a preserve of the National Assembly. We should never allow that. I hope the Chair, whom I have commended many times, has made an appropriate amendment to ensure that, that mandate remains a mandate of the two Houses. Anything short of that will be unconstitutional.

The Supreme Court has made so many pronouncements, especially in the Advisory Opinion 2 of 2013. It says that it is actually us, as a House, through our Speaker, that can give away our legislative mandate. The argument of the Supreme Court is that virtually each and every legislation affects counties.

I say so because even if you go back to borrowing, we all know that our national debt is always the first charge when we come to share our revenue. The debt must be removed first. Whatever remains is what we share. Therefore, if we allow our Government to borrow in a manner that is not properly managed, it means we will not have enough money to share with our counties.

We say these things here. At times we say them jokingly, but they come back to bite us. On Thursday, if you recall, on this Floor, I did mention that our Governors should take issues of health facilities seriously.

Yesterday, three Members of County Assembly (MCAs) from my County of Nyamira were travelling to Nairobi City for a meeting and got involved in a road accident before Mai Mahiu. One of the MCAs, who is the County Assembly Majority Leader waited for over one hour to get help. The ambulance that was called took more than two hours to arrive and we lost him.

They were taken to Naivasha Level Four Hospital, which has no Computerised Tomography (CT) scan or Magnetic Resonance Imaging (MRI). We had to look for ambulances from AAR Healthcare to go to Naivasha to bring the MCAs to Aga Khan Hospital.

Any time we discuss issues that affect money that will be available to counties, we should proceed with caution. That is why I always warn that the consequences for any legislation we are passing today could be at your doorstep tomorrow. Yesterday, I learnt that from Narok all the way to Nairobi County, there is no Government facility that can save somebody involved in a serious road accident. That is why we keep arguing that if we get an opportunity to share money to counties, let us give counties enough money that can assist them in performing the important devolved functions to the people.

Going back to the Bill, we have created a shift to base our borrowing on GDP growth. I still maintain that we are moving fast. We are copying the West and picking best practices from them. Let us not pick abstract theories from the West and impose them on ourselves before we do careful examination.

If you read about international debt, USA has the largest debt portfolio in the world. Nonetheless, look at their economy. The economy of California alone is more than that of the African Continent. When you base their borrowing on GDP, you cannot go wrong.

Look at a country like Kenya. If we are not careful, especially if we get a Government that has a high appetite for borrowing, I have no doubt that some devolved functions such as healthcare and water would suffer because it will be hard to give adequate resources to the counties. I am not laying any blame to the previous Government.

However, imagine if we did not have the kind of debt we had, we would not have had quarrels on the idea of how much money we should give to counties. If our debt portfolio was down, counties would have got more than Kshs407 billion. We are now fighting because a huge chunk of the revenue we collect as a country goes to servicing debt. That is the reality.

If the debt portfolio was properly managed by the previous regimes, we would be having more than enough money to send to our counties. By passing this legislation, we will give a blank cheque to the Government of the day on borrowing.

(Sen. Olekina spoke off record)

Sen. Olekina, do you want to inform me on Article 211 of the Constitution? No, my time is not up.

If anybody became President, even if I became President today and was not under the watchful eye of Parliament as an institution, I will borrow carelessly. If I go to the bank today and I have a blank cheque, I will borrow carelessly. However, if I know that the bank will be careful to ensure that I do not borrow more than 30 per cent of my net income---

The Temporary Speaker (Sen. Wakili Sigei): Sen. Omogeni, it is now 6.30 p.m. The Chair seeks to invoke the provisions of Standing Order No.34(2)(a) and extend the Sitting of the House for not more than 15 minutes. This will allow us to permit Sen.

Olekina to contribute and the Chairperson of the Committee on Finance and Budget to reply.

Sen. Omogeni: In summary, the most important point why I really choose to contribute today is to ensure that we protect the legislative mandate of the Senate. We should never cede that to the National Assembly because that will be violating clear provisions of the Constitution.

If that is taken care of by the Chairperson of the Committee on Finance and Budget, I will be comfortable to support this proposed amendment, but with a caution; that giving the Government of the day a blank cheque on borrowing without Parliament acting as a check is a very dangerous route which we should not take.

Thank you, Mr. Temporary Speaker, Sir.

Sen. Olekina: Thank you, Mr. Temporary Speaker, Sir. I rise to support this Bill. I think it is important that we instil fiscal discipline in management of public resources.

I was sitting down here and having a conversation with the Chairperson of the Committee on Finance and Budget. That is what made me actually contribute to these amendments. One of the things that made me feel very happy about this amendment is the fact that we are now defining the term "Parliament" the way it ought to be defined. You know many people out there would say "Parliament" and, in that case, they will be referring to the 'Lower House.' However, Parliament is both Houses. It is the Senate and the National Assembly.

The fact that you are now requiring anything that has to do with the public debt to be considered by both Houses is an indication that you are beginning to recognize the importance of the county governments.

One of the amendments talks about this issue of the debt ratio to the Gross Domestic Product (GDP). If anyone goes out there and googles the debt ratio to GDP for Kenya, the figures that we have date back to December, 2022, which is at 67 per cent of the debt ratio.

If this amendment which is now being proposed so that by the year 2027, the Cabinet Secretary in charge of National Treasury would be able to lower this down to 55 per cent, it is something that I can actually be able to support.

Already, the figures that have been given and calculated by the Committee have come down to 64.1 per cent, which means there is a slight downward trend of about 3 per cent. What is important is that, as a country, we now have to learn how to live within our means.

Whenever I hear people talking about this bottom-up economics model, I actually tend to believe that none of them really understands what it is. It is just a beautiful phrase that we end up using and say 'this is it.' However, the reality of it is that if you go down and define what that bottom-up should actually mean, it should be defined in a way that creates employment and ensures that at least every county takes up a fiducial responsibility.

Mr. Temporary Speaker, Sir, earlier on we were debating and there was a Statement that had been brought here about the issue of pending bills. Pending bills contribute to public debt. If there is no fiduciary responsibility in the management of resources in our counties, to a greater extent, the discipline in the national Government will continue plunging this country further into debt. We have a serious crisis. I hope we will not just be coming here to speak good English and defining whatever we want to define.

Let us look at the Constitution as an example. These are interesting times. Nowadays we read too much. In the process, our eyes get spoilt and we end up wearing glasses.

The framers of the Constitution envisioned a situation where we should ensure fiduciary responsibility, both at the national Government and county governments. Articles 211 all the way to 214 talk about the public debt and borrowing. Article 211 talks about seven days after either House of Parliament---

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

Sen. Olekina: We have no time for points of order because we only have five minutes. We can talk later.

Mr. Temporary Speaker, Sir, Article 211(2) of the Constitution states-

> "Within seven days after either House of Parliament so requests by resolution, the Cabinet Secretary responsible for finance shall present to the relevant committee, information concerning any particular loan or guarantee, including all information necessary to show—
>
> (a) the extent of the total indebtedness by way of principal and accumulated interest;
>
> (b) the use made or to be made of the proceeds of the loan;
>
> (c) the provision made for servicing or repayment of the loan; and
>
> (d) the progress made in the repayment of the loan."

Mr. Temporary Speaker, Sir, if I read Article 211(2) in line with Article 214 (2), which is what this amendment is meant for, I hope that the Committee on Finance and Budget shall not rush to bring amendments to the PFM Act. If you ask me, we ought to have amended the entire PFM Act. There are certain provisions in the PFM Act, which people cannot implement.

I want the Chairperson to listen. If you look at Sections 109, all the way to 116 of the PFM Act, issues of own source revenue funds are mentioned. The Committee should look at that and bring amendments to make it easy for counties to work.

I am a Member of the Committee on County Public Investments and Special Funds (CPISFC). When you go through the accounts, you realise that the capacity of most governors and accounting officers is wanting when it comes to ensuring fiduciary responsibility. Some of them say we require them to implement the PFM Act, but it is difficult for them to do that.

If you look at the Public Finance Management (County Governments) Regulations, 2015, most practices disregarded Sections on saving. There are things that used to happen before.

(Sen. Ali Roba stood in his place)

Sen. Olekina: We still have time. I think I have done eight minutes and, therefore, you will have two minutes. I am finishing in one minute.

In fact, more Clauses on saving have been put in the Land Act. There are counties that used to collect revenue in a certain way and disregarded that in the PFM Act.

I implore upon the Committee Chair and his able Members to look at the entire PFM Act. They should not just rush to deal with the issue of changing names from national debt to public debt. It is imperative that we look at the entire financial management of this country by the counties and the national Government.

Mr. Temporary Speaker, Sir, because of time, I support.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. Olekina. I now call upon the Mover to reply.

Sen. Ali Roba: Mr. Temporary Speaker, Sir, I beg to reply. I have listened to contributions from my colleagues on various issues. They have raised some issues of critical concern to them relating to amendments proposed in this Bill.

One of the amendments they are concerned with is the issue of reporting about the public debt. Is it only going to be to the National Assembly or both Houses? That is one of our amendments; that it should be to Parliament, meaning both Houses.

On the issue of prudence, is this amendment proposed going to give the Cabinet Secretary for National Treasury the freewill to borrow as he sees fit? The answer to that question is that when our current debt ceiling is translated to percentage of the current GDP, it stands at 64.1 per cent.

What the amendment proposed in this Bill is much more restrictive than where we are currently. The Bill goes further to give the Cabinet Secretary for National Treasury five years to comply to bring down the public debt to within 55 per cent of the GDP. By 2027, they should have brought it down from 64.1 per cent to 55 per cent.

Mr. Temporary Speaker, Sir, we have engaged in public participation extensively with the Cabinet Secretary for National Treasury and Economic Planning. The Senator of Narok County, Sen. Olekina, we have engaged very extensively as to how the Cabinet Secretary and the National Treasury intends to do that. This is because, the object of the Bill is to be able to manage public debt ceiling.

Arbitrarily in the past, it was a request and then we give an absolute number based on nothing. This is what has been happening. We have been saying, for example, Kshs10 trillion or Kshs9 trillion. Based on that trajectory, National Treasury would come and requested Kshs12 trillion as an absolute ceiling. What would that be based on?

It must be based on some scientific data that is able to put a self-restrictive limitation, where borrowing is limited within 55 per cent of the GDP. When the performance of the economy grows, then the borrowing window expands. If the performance reduces, the borrowing window reduces because it is a percentage of the GDP.

When we engaged the Cabinet Secretary for National Treasury and Economic Planning on how he plans to bring it down from 64.1 per cent. What is contained in Budget Policy Statement has been very consistent. The Cabinet Secretary has proposed that by the end of the FY2023/2024, he intends to bring it down from 64.1 per cent to 61.8 per cent, then, by the end of FY2024/2025, further down from 61.8 per cent to 60.1 per cent. In FY2025/2026, further down to 58.2 per cent and finally by 2027, which is the window given, to bring it down to 55 per cent of the GDP. The onus is upon the Cabinet

Secretary for National Treasury to make sure the performance of the Government in terms of GDP growth is realised as it is.

Mr. Temporary Speaker, Sir, as I reply, this critical issue obligates, with prudence, the Cabinet Secretary for National Treasury and Economic Planning to be able to make sure that every time a borrowing is suggested, it will be based on that absolute present value of the performance of the GDP of the Government.

Mr. Temporary Speaker, Sir, I beg to reply. Pursuant to Standing Order No. 66(3), I beg that the putting of the question be put to a later date.

The Temporary Speaker (Sen. Wakili Sigei): Hon. Senators, before we adjourn, we will defer the putting of the question to tomorrow, when the House will resume, pursuant to the request that has been made by the Chair and in cognizance to the fact that we do not have the requisite numbers to do that.

(Putting of the question on the Bill deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Wakili Sigei): Hon. Members, having invoked the provision of Standing Order No.34(2)(a) earlier on, it is now 6.45 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until tomorrow, Wednesday, 9th August 2023, at 9.30.a.m.

The Senate rose at 6.45 p.m.