

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Wednesday, 18<sup>th</sup> October, 2023

#### Afternoon Sitting

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

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

#### PRAYER

#### DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

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

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

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

*(The Quorum Bell was rung)*

Serjeant-at-Arms, I am informed that we do have Quorum now. Kindly, stop the Bell.

Clerk, proceed to call the first Order, please.

Sen. Omogeni and Sen. Mumma, kindly take your seats.

#### COMMUNICATIONS FROM THE CHAIR

**The Speaker** (Hon. Kingi): Hon. Senators, I have the following Communications to make.

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VISITING DELEGATION OF UNIVERSITY STUDENTS'  
LEADERS FROM KISII AND NYAMIRA COUNTIES

I would like to acknowledge the presence in the Speaker's Gallery this afternoon, of a visiting delegation of university student leaders from Kisii and Nyamira counties. The delegation is 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. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

*(Applause)*

VISITING DELEGATION FROM FAITH VENTURES  
CHRISTIAN ACADEMY, NAIROBI CITY COUNTY

I have another Communication to make. In the public gallery, we have 21 students accompanied by two teachers from Faith Ventures Christian Academy in Roysambu, Nairobi City County who are in the Senate on an education tour.

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

*(Applause)*

I will allow Sen. Omogeni to extend some welcoming remarks for the delegation from Kisii and Nyamira counties, under one minute. Thereafter, I will allow the Senator for Nandi County to welcome the delegation from Nairobi County, under one minute.

Kindly, proceed.

**Sen. Omogeni:** Thank you, Mr. Speaker, Sir, for giving me the opportunity. I take this opportunity to welcome the students from the counties of Kisii and Nyamira, on my own behalf and on behalf of my brother, the Senator for Kisii County.

These are our future leaders. When we used to be in school, we used to be told that we are the future leaders. Least did I know that one day I will be here welcoming university students. It is a great honour. I have no doubt that in the fullness of time, when I retire as the Senator for Nyamira County, in the midst of these students, will be Senators, Governors and Speakers.

I am sure they draw a lot of inspiration from many of the leaders who are here, including Sen. (Dr.) Khalwale. I assure them that we started as students like them. Let them also be focused and leave a mark. I remember when we were leaving school, there are students who used to write on the notice board that, "Remember, Okong'o Omogeni used to be here". However, we do not want you to be remembered that way. We want you to be remembered by the people of the Abagusii Community that you served as their

leaders and left a mark. Do not be like a conveyor belt. Contribute as the youth to the betterment of this country. Take your role as leaders.

The other day, the Senate passed a Bill, which I believe will be assented to by the President tomorrow, where we have made a provision that in the management of health facilities, there will be a place for youth. One youth will be among the eight members who will be in charge of management of our health facilities. Do not take a back seat.

When you go back home, aspire to have a youth amongst you, to be one of the people who will be leading those health facilities. We will now open accounts in those facilities, not the way it is now in our county headquarters.

I welcome you here and wish you a safe trip back to your respective campuses. I wish you well. I hope that you will leave a mark as future leaders of this country.

Thank you, Mr. Speaker, Sir.

**Sen. Cherarkey:** Thank you, Mr. Speaker. Sir. With your permission and indulgence, I join you in welcoming our beautiful students from Faith Ventures Christian Academy in Roysambu.

I wish them well as they continue to learn the role of Parliament, the Senate and what we do. On behalf of all of us, we are proud of them. I encourage them that the sky is not the limit. They need to go for the best, be disciplined, focused and work hard.

Mr. Speaker, Sir, some of us who have lived in this City know Roysambu very well. The area Member of Parliament (MP) is my friend. Mine is to wish them well. Let them continue learning. I thank your office and the Secretariat for allowing them to come and learn what we do. As Sen. Omogeni has said, we hope that one day they will become the leaders of today, not tomorrow.

We wish them a fruitful learning experience. Pass our regards to your teachers and families. Tell them we are working very hard for the betterment of our great nation.

I thank you, Mr. Speaker, Sir.

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

**The Speaker** (Hon. Kingi): Hon. Senators, I have three Messages that I wish to communicate.

## MESSAGES FROM THE NATIONAL ASSEMBLY

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

I wish to report to the Senate that pursuant to Standing Order No.46 (3) and (4), I received the following Message from the Speaker of the National Assembly regarding the passage by the National Assembly of the Sugar Bill (National Assembly Bills No.34 of 2022)-

The Message, which is dated Thursday, 28<sup>th</sup> September, 2023, was received on Monday, 16<sup>th</sup> October, 2023 in the Office of the Clerk of the Senate. Pursuant to the said Standing Order, I now report the Message -

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“PURSUANT to the provisions of Standing Order No. 41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly-

WHEREAS the Sugar Bill (National Assembly Bill No.34 of 2022) was published *vide* Kenya Gazette Supplement No.150 of 6<sup>th</sup> October, 2022, as a Bill seeking to reinstate provisions of the Sugar Act, 2001 that was repealed through the enactment of the Crops Act, 2013, to re-establish the Kenya Sugar Board and restore its roles that are currently performed by the Sugar Directorate of the Agriculture and Food Authority established under the Agriculture and Food Authority Act, 2013 and to reinvigorate the sugar sector through re-establishment of the Sugar Development Levy and the Sugar Development Fund; and to establish the Kenya Sugar Research Institute;

AND WHEREAS, on Wednesday, 27<sup>th</sup> September, 2023, the National Assembly considered the Sugar Bill (National Assembly Bill No.34 of 2022) and passed it with amendments and in the form attached herewith;

NOW THEREFORE, in accordance with the provisions of Article 110 of the Constitution and Standing Orders 41(1) and 142 of the National Assembly Standing Orders, I hereby refer the Bill to the Senate for consideration.”

Hon. Senators, the Message was received with a request from the Sponsor of the Bill, Hon. Emmanuel Wangwe, CBS, MP, of the National Assembly that Sen. Wafula co-sponsors and introduces the Bill in the Senate.

Pursuant to the provisions of Standing Order No.163 (2), which states that -  
“Before a Bill originating from the National Assembly is read a First Time in the Senate, the Speaker shall notify the Senate whenever a Message is received from the Speaker of the National Assembly naming a Senator or Senators who have been nominated by the Sponsor of the Bill to co-sponsor the Bill in the Senate.”

Hon. Senators, in this regard, this request has been conveyed to the aforementioned Senator for his further action.

I thank you.

PASSAGE OF THE FACILITIES IMPROVEMENT  
FINANCING BILL (SENATE BILLS NO.43 OF 2023)

Hon. Senators, I wish to report to the Senate that, pursuant to Standing Order No. 46 (3) and (4), I received the following Message from the Speaker of the National Assembly regarding the passage by the National Assembly of the Facilities Improvement Financing Bill (Senate Bills No.43 of 2023).

The Message, dated Tuesday, 17<sup>th</sup> October, 2023 was received on Tuesday, 17<sup>th</sup> October, 2023, in the Office of the Clerk of the Senate.

Pursuant to the said Standing Order, I now report the Message-

“PURSUANT to the provisions of Standing Orders 41(1) and 144 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly -

WHEREAS, the Facilities Improvement Financing Bill (Senate Bill No. 43 of 2023) was published *vide* Kenya Gazette Supplement No.168 of 15<sup>th</sup> September, 2023 to provide for public health facility improvement financing and the management and administration of facility improvement financing in the country.

AND WHEREAS, the Senate passed the said Bill on 27<sup>th</sup> September, 2023 and referred it to the National Assembly for consideration in accordance with the provisions of Article 110 (4) of the Constitution;

FURTHER WHEREAS, on Tuesday 17<sup>th</sup> October 2023, the National Assembly considered and passed the Facilities Improvement Financing Bill, (Senate Bill No. 43 of 2023), without amendments, and in the form passed by the Senate;

NOW THEREFORE, in accordance with the provisions of Article 110 of the Constitution and Standing Orders No. 41 (1) and 144 of the National Assembly Standing Orders, I hereby convey the decision of the National Assembly to the Senate.”

Hon. Senators, I am in the process of forwarding the Bill to His Excellency the President for assent.

I thank you.

*(Sen. Cheptumo walked into the Chamber)*

Sen. Cheptumo, you are a seasoned politician and legislator. Move to the Bar and freeze as I conclude the Message.

*(Sen. Cheptumo moved to the Bar and stood in his place)*

Very well.

PASSAGE OF THE PRIMARY HEALTH CARE BILL  
(SENATE BILLS NO.44 OF 2023)

**The Speaker** (Hon. Kingi): Hon. Senators, I wish to report to the Senate that Pursuant to Standing Order No.46 (3) and (4), I received the following message from the Speaker of the National Assembly, regarding the passage by the National Assembly of the Primary Health Care Bill (Senate Bills No. 44 of 2023).

The message dated Tuesday 17<sup>th</sup> October 2023 was received on Tuesday 17<sup>th</sup> October 2023, in the Office of the Clerk of the Senate.

Pursuant to the said Standing Order, I now report the Message-

“PURSUANT to the provisions of Standing Orders No. 41(1) and 144 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly –

WHEREAS, the Primary Health Care Bill (Senate Bills No. 44 of 2023), was published *vide* Kenya Gazette Supplement No. 169 of 15<sup>th</sup> September, 2023 to provide a framework for the delivery of, access to and management of primary health care;

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AND WHEREAS, the Senate passed the said Bill on 28<sup>th</sup> September, 2023 and referred it to the National Assembly for consideration, in accordance with the provisions of Article 110 (4) of the Constitution;

FURTHER WHEREAS, on Tuesday 17<sup>th</sup> October, 2023 the National Assembly considered and passed the Primary Health Care Bill (Senate Bill No. 44 of 2023), without amendment and in the form passed by the Senate;

NOW THEREFORE, in accordance with the provisions of Article 110 of the Constitution and Standing Orders No. 41 (1) and 144 of the National Assembly Standing Orders, I hereby conveyed the said decision of the National Assembly to the Senate.”

Hon. Senators, I am in the process of forwarding the Bill to His Excellency the President for assent.

I thank you.

Next Order.

## PETITION

### DELAYED ALLOCATION OF ALTERNATIVE LAND FOR MWABUNDUSI LAND SQUATTERS IN BOBARACHO WARD

Hon. Senators, I hereby report that a Petition has been submitted to the Senate by representatives of Mwabundusi land squatters in Bobaracho Ward in Kisii County, concerning the delayed allocation of alternative land for their ancestral land that was alienated for the construction of Kisii Agricultural Research Institutes and Kisii Farmers Training Centre. As you are aware, under Article 119 (1) of the Constitution -

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

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

(1) THAT, originally the land where Kenya Agricultural Research Institute (KARI) and Kisii Farmers Training Centre (KFTC) are located, belong to the families of Mogaka Nyabaro, Naftali Openda, Christopher Mbaka and Atogo Mogaka among others.

(2) THAT, between the years of 1963/1964 the Ministry of Agriculture in coordination with the then Provisional Director of Agriculture, alienated 83 acres of land to lease KARI and KFTC for a period of 37 years and the lease agreement has already expired.

(3) THAT, up to date, the land is still under ownership of KARI and KFTC and currently occupies more than 300 acres of land despite the initial land set aside for their use which was 38 acres.

(4) THAT, in 2015, the residents of Mwabundusi lodged a complaint with the National Land Commission (NLC) on the expansion of the land from the initial 83 acres to over 300 acres, and abuse of the lease agreement by KARI and KFTC.

(5) THAT, the Petitioners whose ancestral land is occupied by KARI have been forced to settle near the river banks which under the Environmental Management and Coordination Act, 2012 is termed as riparian public land and they are facing eviction.

(6) THAT, the Petitioner has made efforts to have this matter addressed by the NLC which has failed to give a satisfactory response.

The Petitioners, therefore, pray that the Senate intervenes in this matter with the view to do the following -

(1) Have the NLC determine the actual acreage allocated to KARI and KFTC.

(2) Have an expeditious resettlement of the Petitioners to any available public land.

Hon. Senators, pursuant to Standing Order No.237, I will allow limited comments. I will take two from the Minority side and two from the Majority side.

In that case, therefore, I will start with Sen. Kinyua.

**Sen. Kinyua:** Asante Bw. Spika kwa kunipa fursa hii. Mambo ardhi imekuwa ni donda sugu katika Jamhuri yetu ya Kenya.

Ninaungana na hawa ndugu zetu wa Mwabundusi kwa kusema ya kwamba mashamba yao yamenyakuliwa au kuchukuliwa. Kulingana na ardhilhali yao, wanasema ya kwamba shirika hili la serikali lilikuwa limepewa zaidi ya ekari 83, halafu sasa wakaongeza mpaka hekari 300.

Bw. Spika, jambo hili ni la kuvunja moyo sana kwa sababu nchi hii ya Kenya ni yetu. Hakuna vile wananchi walalahoi watasukumwa katika nchi yao na kupelekwa katika sehemu ambazo wanakaa kwa shida nyingi.

Bw. Spika, sio ardhilhali pekee yake. Katika Seneti hii, ninawashukuru kwa sababu wameona kwamba wakileta ardhilhali yao katika Seneti, itashughulikiwa ipasavyo. Sina shaka Kamati ambayo inaongozwa na Sen. Methu, watalishughulikia shida hiyo kwa kidharura ndio wapate suluhu la kudumu.

Laikipia pia ina hiyo shida kuhusu watu ambao wamefurushwa kutoka mahali ambapo walikuwa wakiishi. Wanaitwa *Marmanet Evictees*. Wanaishi maisha ya uchochole na shida ilhali wameleta ardhilhali yao hapa na ikasemekana ya kwamba Kamati iliyoishughulikia ilitoa mwelekeo.

Kamati hiyo ilisema kwamba Serikali tayari inapaswa kuwafidia. Kwa hivyo, bila kupoteza wakati, ningependa kusema ya kwamba Kamati ambayo itashughulikia hili swala ni muhimu wapate jawabu ya kudumu.

Wakipata jawabu, haitoshi kwa sababu wanatoa mapendekezo ambayo yanabaki kuwa mapendekezo tu. Hayatiliwi mkazo ili yaweze kutekelezwa.

Kwa hivyo, mimi naunga mkono hii ardhilhali. Naomba Kamati itakayokabidhiwa iishughulikie. Tukipata mapendekezo, basi yashughulikiwe.

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

**Sen. Omogeni:** Mr. Speaker, Sir, I want to declare that I come from the Omogusii community. I am not directly affected, and so, I have no personal interest in this matter. However, it is really sad to hear that a public entity such as KARI wants to oppress poor people from Omogusii Community.

Mr. Speaker, Sir, we all know that Kisii County is one of the most densely populated regions in this country, where a land dispute can cost you your life. In Kisii County we do not joke with land. If you do, you can easily lose your life.

Mr. Speaker, Sir---

**The Speaker** (Hon. Kingi): Senator for Laikipia County. Hoja yako ya nidhamu ni ipi?

**Sen. Kinyua:** Bw. Spika, nimemskiza Seneta wa Kaunti ya Nyamira akisema eti jambo lile halimhusu ndewe wala sikio. Lakini, yeye ni Seneta. Jambo lolote linalomhusu Mkenya linamhusu pia.

**The Speaker** (Hon. Kingi): Ni Kanuni gani ambayo unatumia kuleta hoja yako?

**Sen. Kinyua:** Bw. Spika ni kwa sababu sisi ni wawakilishi wa Wakenya. Kipengele cha 96 cha Katiba ya Kenya---

**The Speaker** (Hon. Kingi): Tafadhali Seneta. Ni kanuni gani?

**Sen. Kinyua:** Bw. Spika ni katika Katiba ya Kenya sio---

*(Laughter)*

**The Speaker** (Hon. Kingi): Sen. Omogeni, endelea na hotuba yako tafadhali.

**Sen. Omogeni:** Mr. Speaker, Sir, that happens after you have had a five-course lunch.

As I was saying, land is very sensitive. We welcome the Government institutions like Kenya Agricultural Research Institute (KARI) to undertake their business in Kisii County. We benefit a lot from them. However, they need to acknowledge that people who have their ancestral land in Kisii also have their own rights.

I am placing a lot of faith in this Committee headed by Senator for Nyandarua County, my good friend, Sen. Methu. I remember that in the last session, such a matter was brought by petitioners from Baringo County. We dealt with it. We summoned the then Cabinet Secretary for Lands and she agreed to compensate the affected people.

As Sen. Kinyua has put it, these Kenyans have shown faith and trust in this House. We can only reciprocate by also getting to the bottom of this matter by doing a thorough investigation. If there is an injustice being committed against these poor Kenyans, then we should stand with them.

Under the new Constitution, land has been elevated so much that we have a chapter dedicated to land issues. Under the Judiciary, in Article 162, we have created a specialized court that is dedicated to dealing with issues of land and environment.

That shows how serious Kenyans took this issue of land when enacting the Constitution, 2010. I trust that my friend, Sen. Methu, will go into depth of this matter, listen to these Kenyans and be fair to everybody by not just listening to the mighty. These poor Kenyans have right to be listened to and receive justice.

I hope this matter shall be solved amicably, so that we can have co-existence between KARI and the people living in the ancestral land in Kisii.

I thank you.

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

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**Sen. Kisang:** Thank you, Mr. Speaker, Sir. I wish to comment on this particular Petition. The families were generous to give 38 acres to KARI for research in that part of the country, but they took advantage and used about 300 acres, which they do not need.

They have pushed the families to live on riparian land, which is very dangerous due to these issues of climate change. It is important, since the lease has expired, to give back the land to the community and families, so that they can make use of the riparian land. They can grow trees to help with the issue of climate change.

This issue is not only in Kisii County. There are many families and communities that have been generous. Our grandparents and parents donated land to schools and colleges. However, because of their ignorance, some of these institutions took advantage and acquired titles in their names without the families knowing. So, I believe the Committee should investigate these particular issues, so that if there are any injustices, the families are given back the land.

In fact, there is an issue in Elgeyo-Marakwet County at the Chebororwa Farmers Training Center (FTC), where 1,800 acres were given. However, along the way, they decided to take all of it and pushed the families to non-fertile land where they cannot farm anything.

I hope the Committee shall listen to both sides, so that justice can prevail and the two families get back about 262 or 267 acres. KARI can also continue with the other 38 acres. If anything, they have also lost a lot of land that was grabbed in the 1980s. They do not need that big piece of land

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

**Sen. Faki:** Asante Bw. Spika kwa kunipa fursa hii kuchangia ardhihali ambayo imeletwa na wakaazi wa maeneo ya Kaunti ya Kisii. Wanalamika kwa sababu ya kunyakuliwa kwa ardhi yao ya jadi na taasisi ya KARI na Kisii Farmers Training Center (FTC). Haya ni masikitiko kwa sababu watu walitoa ardhi kwa taasisi ya Serikali lakini taasisi imemiliki ardhi yote ya jamii hii. Hii ni sawa na kumkaribisha ngamia nyumbani kwako alafu akakutoa ndani ya nyumba.

Nimeona katika maelezo kwamba walienda katika Tume ya Ardhi ya Kitaifa mwaka wa 2005. Lakini, karibu miaka minane baadaye, hawajapata suluhu ya swala hili. Nawapongeza kwa kuwa na imani kwamba Seneti itaangalia mambo yao ili dhulma ambazo wamefanyiwa zimewekwa kikomo.

Bw. Spika, hata wakati wa ukoloni, ardhi zetu zilichukuliwa vile. Tunaanza kidogo baadaye mnaelezwa kuwa hamfai kuishi pale na ardhi inaenda hivyo kiholela. Baadaye, ardhi inapewa mabwenyenye wanaoanza kufanya biashara na ukulima na mambo kama hayo.

Mwaka 2021, kulikuja ardhihali kama hii ya jamii ya Wajomvu kutoka Kaunti ya Mombasa. Licha ya kupea pendekezo Tume ya Ardhi ya Kitaifa kuingilia jambo lile, mpaka sasa, hawaja ita mkutano wala kukaa kulifuatilia jambo hili.

Kwa hivyo, maswala haya yajadiliwe na Bunge ili itoe mapendekezo na ni lazima yatekelezwe. Haina faida watu walete malalamiko yao katika Bunge hili la Seneti na lito kauli, lakini baadaye zikaliwe na wahusika katika Serikali.

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

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**Sen. Tabitha Mutinda:** Thank you, Mr. Speaker, Sir. I rise to support this Petition. Article 43 on Economic and Social Rights is very clear that every person has a right to a good life.

Matters agriculture are very passionate to me. This is an institution that deals with agricultural research that ensures that we have the levels of farming and agricultural feedback to the standards needed.

Mr. Speaker, Sir, we discussed a Motion yesterday concerning our neighbouring county of Machakos, regarding the illegalities on the land matters. Case example, Kisii County is asking to have the land to put up an agricultural institution.

I support it. It is a plus because it will create more employment to ensure our farmers have quality produce, different markets hence expansion.

I do not want to forget, that at times, individuals have their own interests. They hold on to land so that eventually they end up benefiting themselves. We have seen what is happening in Mavoko. Cartels and leaders in this country have decided to fraudulently take money from innocent Kenyans. As we speak, families are suffering because people have pocketed their money. I am happy that the Director of Criminal Investigations has published a list of these criminals. He needs to expand it and state all the leaders who are supposed to represent the people, yet they are 'eating' money from innocent Kenyans. This is an important institution. I have a Bill that is about agricultural extension services. This is one area that will be impactful on agricultural research.

I support the Petition.

**The Speaker** (Hon. Kingi): Sen. Olekina, proceed.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. I rise to support this Petition. There are a couple of things that struck me on it. Two Government institutions under the Ministry of Agriculture, Livestock, and Fisheries, have been allocated 83 acres of land on a leasehold of land belonging to private individuals.

The first question that Sen. Methu and his Committee on Agriculture Livestock and Fisheries will try to look into is land ownership. The Committee should ask the right questions. For instance, when this lease expired, what happened? It is important to ask this because once we have the right question asked, we can assist the people who are now referred to as squatters. The last time I heard of the name 'squatter' in the history of this country was when it was referred to people who worked in tea estates and coffee plantations.

However, this has affected the Kisii Community, who are now spread across a country as large as Kenya because their own land has been taken away by Government institutions. I hope that the Committee on Land will determine what happened to the title deeds of the real owners of this land. How can you come to my land and give a 37-year lease to an institution way back in 1964, and to date, you are still living in the land?

If we resolve the problem of land in this Petition, then we can help other Kenyans get access to land and live in their homes happily. The reason we have squatters is because of ignorance. It is true that our community did not know the value of a title deed. However, how can a Government institution be given a leasehold of 37 years and still sit on the land? They were only leased 87 acres and they have now taken 300 acres. They are

lucky it is not Masai land. Otherwise, we would have kicked them out ourselves because they have no right to come in and take the land that does not belong to them.

This has affected every community. In Nakuru County, there is the Maasai Community displaced by the Kenya Agriculture Reforms & Innovations (KARI). I believe it is the same tactics which was used. Maybe KARI was only given a portion of land. However, they took the entire land. Today during this drought season, all Masai cows go back to where they belonged before. The land that was taken away from them.

I support this Petition, but it would be important to clarify two things. If you look at issue number four, the petitioners are praying that the National Land Commission (NLC) determines the actual acreage allocated to KARI. I found that to be contradictory to the Petition. Earlier the issues raised by the Petitioners were quite clear. They mentioned that the land allocated to KARI was 83 acres. This is confusing. Is that the issue to be determined or the issue of the lease agreement? If you look at the salient issue, they have said that the lease was for a period of time, what happened to all the other leases?

I hope Sen. Methu will extend the scope of his investigation to look at the 99-year lease given before. This land was allocated to foreigners. What happened to those leaseholds? Laikipia County has a big land issue. We have land which was allocated to foreigners, the Maasai are almost living as squatters because the foreigners are still living in their land. You will find over 100,000 acres under one title deed.

*(Sen. Mungatana and Sen. M. Kajwang consulted loudly)*

**The Speaker** (Hon. Kingi): Order, Sen. M. Kajwang' and Sen. Mungatana. You are out of order. Kindly be orderly.

Sen. Olekina, conclude your remarks.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir, for protecting me. I never thought Sen. M. Kajwang' would be speaking across the aisle. On a serious note, it is important that we resolve the issue of leaseholds. If your leasehold of 99 years ends, unless it is renewed, you have to vacate the land and revert back to the original owner. This is an important Petition and I hope we can give the people of Kisii County the justice they deserve for them to go and live on their land and leave the riparian land for conversation.

**The Speaker** (Hon. Kingi): Sen. Wafula, proceed.

**Sen. Wafula:** Asante, Bw. Spika kwa nafasi hii. Kuna mchakato ambao unaendelea wa shamba na watu kufurushwa kutoka mashamba yao asilia. Uchunguzi wangu kupitia vyombo vya habari ni kwamba, awamu ya matumizi ya shamba hilo ilitamatika na shamba hilo lilipaswa kurejeshewa wahusika ambao ni wazao wa eneo hilo.

Haya ndiyo maswali ambayo watu wa Kaunti ya Kisii wanauliza. Iwapo makataa ya muda wa matumizi ya shamba hili yametamatika, ni jambo la busara mashamba haya yarejeshewe wenyeji kwa sababu wametumia kwa miaka mingi. Miaka iliyoliwa na nziye lazima irudishwe.

Watu kuishi kama kwamba si wakenya, na wanafahamu urithi wao uko wapi lakini wanasimamiwa na askari kwa mitutu ya bunduki kufurushwa katika mashamba yao, sio jambo ambalo tutakubali. Tunaomba Kamati ya Ardhi, Mazingira na Maliasili ichunguze ni mashamba yepi ambayo yaliwachiliwa na watu wa maeneo husika ambayo serikali imechukua. Ili iwapo awamu hizo zimekwisha hatua Madhubuti zichukuliwe ili wahusika ama wenyeji wa maeneo haya wapewe mashamba yao.

Haya maswala yako kwenye Bunge la Seneti kwa sababu, tumeyaona pia kwenye maeneo ya misitu ya Kakamega na Kaunti ya Migori. Wakaaji wa Kaunti ya Kisii wamewasilisha Ardhi hii. Tunaomba kwamba haya maswala yashughulikiwe kwa haraka.

Asante, Bw. Spika.

**The Speaker** (Hon. Kingi): Sen. (Prof.) Tom Ojienda, SC, you may have the Floor.

**Sen. (Prof.) Tom Ojienda, SC:** Thank you, Mr. Speaker, Sir. Let me contribute to this question with the background of litigation in this area.

The people of Kisii must be guided by a number of things. The first is the Gazette Notice that acquired this land for purposes of the two institutions; KARI and Kenya Farmers Training Centre (KFTC). This Gazette Notice will remain alive until the objectives are exterminated or spent.

I have had the advantage of doing cases in this area. I have done a case for Sony Sugar on the acquisition of land from individual citizens. After the purpose was used for the establishment of the sugar factory, the original owners came to court to claim parts of land that had been used to develop Awendo Town. This is a matter that we litigated to the Supreme Court which held that titles once acquired and compensation made to original owners, cannot revert back to those original owners. This is the question that the Petitioners find themselves in.

Mr. Speaker, Sir, currently, we have a live issue of the land question in Mavoko. The land of the East African Portland Cement has been acquired by other people using fake titles and subsequently subdivided. Another 500 acres of land for Numerical Machining Complex (NMC) belonging to the Government has been acquired by five parties using the same mechanism.

Therefore, I would advise that where land acquisition is involved, under the Land Acquisition Act Cap294; or under the framework now guided by the National Land Commission (NLC), the Committee will have to examine the purpose for which the land was set apart. Only if and when that purpose has been extinguished, can part of that 300 acres revert to the public and will then be available for allocation by NLC. Other than that, the original purpose must be met first.

Let these institutions be created and if they say they require only 200 out of the 300 acres, only then can 100 acres revert. Since there was compensation – because that was the beginning of acquisition – that land will revert to the Government and will then be available for allocation to third parties. Perhaps that is when these individuals and their grandsons can claim priority because they are the original owners, but they were compensated.

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Mr. Speaker, Sir, I rest my case.

**The Speaker** (Hon. Kingi): Hon. Senators, pursuant to Standing Order No.238 (1), the Petition should be committed to the relevant Committee for its consideration.

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

*(The Petition was committed to the Committee on Land, Environment and Natural Resources)*

Before we move to the next Order, allow me to make the following Communication.

### COMMUNICATION FROM THE CHAIR

#### SUBSTANTIATION OF UTTERANCES BY SEN. OSOTSI

Hon. Senators, as you may recall, at the sitting of the Senate held on Thursday 5<sup>th</sup>, October 2023, the Temporary Speaker then, Sen. Abdul Haji, MP, directed Sen. Godfrey Osotsi, MP, to substantiate utterances made in the course of debate. This followed interventions pursuant to Standing Order No.105 (1).

Standing Order No. 105 provides-

“(1) A Senator shall be responsible for the accuracy of any facts that the Senator alleges to be true and may be required to substantiate any such facts instantly.

(2) If a Senator has sufficient reason to convince the Speaker that the Senator is unable to substantiate the allegations instantly, the Speaker shall require that such Senator substantiates the allegations not later than the next sitting day, failure to which the Senator shall be deemed to be disorderly within the meaning of Standing Order 121 (Disorderly conduct) unless the Senator withdraws the allegations and gives a suitable apology, if the Speaker so requires.”

Hon. Senators, the Senator was unable to substantiate his statements pursuant to Standing Order No.105 (1). Subsequently, he requested the Speaker to provide the evidence at the next sitting day in accordance with Standing Order 105(2). Having acceded to the request, the Speaker, pursuant to Standing Orders, directed the Senator to substantiate his allegations the next sitting day. Subsequently, the substantiation was not carried out the next sitting day due to the business at hand.

I have, therefore, reviewed the HANSARD Report of the proceedings held on Thursday 5<sup>th</sup>, October 2023 and ascertained the remarks that necessitated the Senator to be challenged to substantiate his claims.

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The particulars of the allegations that requires substantiation by the Senator are as follows; Sen. Cherarkey sought the intervention of the Chair to require Sen. Osotsi to substantiate the statement that;

“We have heard issues even recently in my county on the boundary between Vihiga and Aldai at a place near Serem. This was very recent in the last month. The attackers came, provoked and attacked a village. They killed and burnt animals, injured people and burnt houses. That was not given the coverage that Sondu is being given now.”

Hon. Senators, pursuant to Standing Order No.105(2), I now invite the Senator to forthwith substantiate his claims, failure to which, the Senator shall be deemed to be disorderly within the meaning of Standing Order No.121. In the absence of such substantiation, the Senator will be required to withdraw the statements and apologise to the Senator, failure to which, the Senator will be required to withdraw from the Chamber.

Proceed, Sen. Osotsi.

**Sen. Osotsi:** Mr. Speaker, Sir, I am ready to substantiate. On Tuesday, 5<sup>th</sup> October, 2023, during a Motion of Adjournment under Standing Order No.37 moved by Sen. Munyi Mundigi titled, “Ukosefu wa Usalama Katika Kaunti ya Turkana na Eneo la Sondu”, I contributed to the Motion giving incidences of similar conflicts that have happened in the recent past. One such incident is at the boundary between Aldai and Hamisi Constituency in Vihiga County. Animals and houses belonging to people in that area were burnt down.

Sen. Cherarkey, the Senator for Nandi County, under Standing Orders No.105 and 110 requested to know why I was inciting the people of Aldai and Vihiga by alleging that there were no boundary clashes in Serem and Vihiga, which had not been recorded in any police station.

Mr. Speaker, Sir, consequently, on that day, Sen. Abdul Haji was sitting in the Chair. He requested that I substantiate on the issues of clashes in Aldai and Vihiga. In this regard, I wish to substantiate as follows:

(1) On the 15<sup>th</sup> August, 2023, there was an attack at Kaptikany/Koitabut Village in Aldai, which is near the boundary between Vihiga and Nandi counties. Three suspects were arrested following the incident. The matter was reported at Nandi South Police Station. The Reference Number in the Occurrence Book (OB) is 3/15/8/23.

(2) On the morning of 15<sup>th</sup> August, 2023, rowdy youth estimated at 100 in number, attacked the above mentioned village. This was viewed as a retaliatory move following the death of a 32-year-old man, who was killed and his motorbike torched in the area.

(3) Three houses were torched. The number of animals that were killed is not mentioned, but it is in the OB statement. There was also destruction of vegetation such as banana plantations.

(4) The names of the victims are; Mr. James Chanzu, Ms. Regina Onzere and Mr. Japheth Angustustu. This is persuasion that they are Luhyas living along that border. The perpetrators who are now the suspects in the OB were; Mr. Kennedy Kibet and Mr. Nicholas Kipchoge.

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(5) From the news gathered, the number of times such attacks have occurred, they have been persistent, questioning the effectiveness---

**The Speaker** (Hon. Kingi): There is a point of Order from Sen. Cheruiyot.

### POINT OF ORDER

#### SUBSTANTIATION AS PER PARLIAMENTARY PRACTICE

**The Senate Majority Leader** (Sen. Cheruiyot): Mr Speaker, Sir, I did not intend to interrupt Sen. Osotsi, but there is a practice long set in this House that when you are substantiating, you do not seek to elaborate for long and lead the House into unnecessary discussions.

Substantiation, by the practice of Parliament, and those who have been here long enough know this, means that you table the evidence. You do not read a statement. This is a new practice. Perhaps we are deviating from the norms of Parliamentary Practice. Can you guide the House because I know what substantiation is?

Anybody who has been in this House long enough knows that once you have been challenged to substantiate, then what Sen. Osotsi should be doing is to table that OB that he is referring to, then you read. It is perused through the House and then we will be satisfied. Not reading a statement. Please guide this House.

**The Speaker** (Hon. Kingi): Yes, Sen. M. Kajwang, you have the Floor.

**Sen. M. Kajwang**: Mr. Speaker, Sir, the person with the duty and obligation to be a judge on whether the substantiation is within the Standing Orders and the Rules and Procedures of Parliament is the Speaker. The House does not take a vote, and the House does not have an opinion.

This is one of those decisions where the Speaker has full authority and responsibility to determine whether what the Senator is submitting addresses the issues that were challenged.

Therefore, I want to beg, because what the Senate Majority Leader has said, perhaps could have been a practice out of experience, but not as captured in Standing Orders No.105.

So, I beg that you rule out Sen. Cheruiyots's objection, so that we can allow Sen. Osotsi to complete his statement, and it is you, the Speaker, who shall then determine whether it addresses the concerns raised.

**The Speaker** (Hon. Kingi): Yes, Sen. (Dr.) Khalwale and Sen. Madzayo, then you will allow me to rule on that.

**Sen. (Dr.) Khalwale**: Mr. Speaker, Sir, I would like to persuade you, that the point of order raised by the Senate Majority Leader has merit. The reason the Senator of Vihiga County was challenged is because he was making allegations. We wanted him to move from allegations to giving evidence.

The tradition of this House is that the only thing he should have done would have been to lay the evidence on the Table, and then sit down. The Clerks-at-the-Table would

have given you that evidence, you look at the evidence, and if it is credible, you would then allow it to stand.

However, he is just bringing allegation upon allegation the way he did in the first instance. I thank you.

**The Senate Minority Leader** (Sen. Madzayo): Thank you, Mr. Speaker, Sir. The tradition of the House when you are called upon to substantiate, is that you give the facts because those are the ones to be determined in the ruling.

I can see in this statement, the name of the place where the incident took place. This matter has even been recorded at the police station and there is an OB Number. There is even a video clip that can be laid before the House.

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

**The Senate Minority Leader** (Sen. Madzayo): Mr. Speaker, Sir, allow me---

**The Speaker** (Hon. Kingi): Sen. Madayo, you should not go that route. You are not the one substantiating.

**The Senate Minority Leader** (Sen. Madzayo): Mr. Speaker, Sir, I am not substantiating, but he has been told to substantiate, and it is only fair if he is allowed to complete his substantiation

**The Speaker** (Hon. Kingi): Very well, Senator.

**The Senate Minority Leader** (Sen. Madzayo): Mr. Speaker, Sir, if you want the video clips, they can be provided.

**The Speaker** (Hon. Kingi): Sen. Madzayo, you speak through the Chair.

Now, Hon. Senators, when you are called upon to substantiate, the first thing you need to know is you restrict your substantiation to the matter that you have been called upon to discuss.

Sen. Osotsi, this is the statement that you have been called upon to substantiate. I am going to read it to you and you will restrict yourself to that particular statement that you made.

“We have had issues even recently in my County on the boundary between Vihiga and Aldai at a place near Serem. This was very recent in the last month. The attackers came unprovoked, and attacked a village, killed animals, burnt them, injured people, and burnt houses.” It was not given the coverage that Sondu is now being given.”

So, that is the only evidence that you need to table. The problem with reading a speech is that you attract a debate immediately, but evidence cannot be debated. If you state that the matter was reported in Nandi--- you were doing very well until you started giving a speech.

The matter that happened in Vihiga County between Aldai at a place called Seram was reported to this police station, here is the OB then table it. The attackers came, unprovoked, attacked a village, killed animals and burnt them. Here is the video that captured that particular incident. I thought you could take only a minute to do this.

Do not explain, just give us the evidence that “This is the OB to confirm that it happened”. I talked about attackers and animals killed and burnt, here is the video showing the attackers and the animals burnt and that is all.

You simply table and you will be good to go.



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

**The Speaker** (Hon. Kingi): Senator of Nandi County, I have ruled on the matter, let us not prolong it into a debate.

Proceed, Sen. Osotsi. You just need to prove those two things that it happened, and the OB is the evidence, animals were burnt by the attackers, and here is the video, then you are good to go

**Sen. Osotsi:** Mr. Speaker, Sir, thank you for your guidance. However, I want to state that I have the videos of the animals that were burnt, I have the video clip of the news coverage by *Citizen TV* and a copy of the OB. All these documents are in this flash disk. They have been reviewed.

**The Speaker** (Hon. Kingi): Sen Osotsi, just table it. I will review them, and then I will communicate. So, just table it, and take your seat.

*(Sen. Osotsi laid on the table the evidence)*

**Sen. Osotsi:** Mr. Speaker, Sir, all the evidence is here; the substantiation that I was to make is to---

*(Loud consultations)*

**The Speaker** (Hon. Kingi): Order, Senators! Order! Allow the hon. Senator to conclude.

*(Loud consultation)*

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

**Sen. Osotsi:** Mr. Speaker, Sir, please, protect me from Sen. Cherarkey.

As I conclude, I want to urge the local administration to deal with this matter which is before them. The evidence is here and the incident happened and I have even spoken to Sen. Cherakey before. He confirmed that indeed, it happened.

Moving forward---

**The Speaker** (Hon. Kingi): What is your point of order, Senator for Nandi County? Sen. Osotsi, I have told you not to go that route because you are going to attract debate.

**Sen. Cherarkey:** Mr. Speaker, Sir, there the responsibility of facts as per Senate Standing Order No.105. It is unfair for Senator Osotsi, my good neighbour, to drag me into his woes because if there was an issue, it is a fact that I should have known. However, we have never discussed this with him. The only time we meet is when we are having a cup of tea in the Lounge. We have never had a discussion.

In conclusion---

**The Speaker** (Hon. Kingi): Very well.

Senator for Nandi County, I know where you are going. Please, take your seat.

**Sen. Cherarkey:** Okay, Mr. Speaker, Sir.

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**The Speaker** (Hon. Kingi): We will review the evidence as has been tabled by Senator Osotsi, and thereafter, I will make a Communication in that regard.

*(Sen. Osotsi spoke off record)*

What more do you need? You have tabled your evidence. Do you have more evidence or you want to make another speech? I am interested in evidence.

*(Laughter)*

Clerk, please, call the next Order.

### PAPER LAID

**The Speaker** (Hon. Kingi): Senate Majority Leader, please proceed.

#### REPORT ON THE STATE OF PUBLIC/PRIVATE PARTNERSHIPS FOR FY 2022/2023

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Wednesday 18<sup>th</sup> October, 2023 -

The National Treasury Economic Planning 2<sup>nd</sup> Annual Report on the State of Public/Private Partnerships for Financial Year 2022/2023.

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

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

### POINT OF ORDER

#### PROCEDURE FOR SITTING OF SENATE COMMITTEES

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

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

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I am rising for guidance at this stage of laying of the papers. I wish that you guide us, as a House, in respect of contravening of Standing Order Nos.100, 205 and 206. The relevance of this request is as follows.

This House formed a select committee, *Ad Hoc*, to look into the matter of Shakahola. It has come into public domain that one of the witnesses who is being investigated not just by this Committee, but also by the State, has hosted some Members of that Committee. Allow me so that I can speak to the matter, to refer to the provision of Standing Order No.100, which says-

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“No Senator shall refer to the substance of the proceedings of a Select Committee before the Committee has made its report to the Senate.”

Mr. Speaker, Sir, allow me, so as to argue my case, to read out for clarity, Standing Order No. 205.

It says-

“(1) A notice of a meeting of a Select Committee shall be issued by the Clerk, in writing, to all members of the Committee showing the date, time, venue and agenda of the meeting.”

Standing Order No. 206 says-

“A sitting of a Select Committee shall be held at such place, date and time as shall be determined by the Chairperson or on a Petition made by at least five Members of that Committee but no meeting of a Committee may be held outside the precincts of Parliament without the approval of the Speaker.”

Bearing those Standing Orders in mind, the witness who has hosted Members of this specific Committee is a witness by the name Pastor Ezekiel Odero. This witness, who is currently out on bail, is being investigated for at least 14 offences that include aiding suicide, murder, abduction, radicalisation, genocide, crimes against humanity, child cruelty, fraud and money laundering.

Mr. Speaker, Sir, where I have reached, it is now clear that you have to guide us on the following-

(1) How did these Members visit this witness in the name of the *Ad Hoc* Committee when they were not accompanied by the Secretariat that was meant to clerk that Committee?

(2) Why did they go to that home of the witness without the HANSARD to record the proceedings?

(3) Could you clarify whether the Office of the Clerk funded the trip; the flights plus return, accommodation and meals?

(4) Could you also confirm whether the Office of the Clerk procured security for these Members?

If you do so, then I am inviting you to guide this House and the public on the fidelity of the report of the select committee in view of the fact that it smirks off compromise.

*(Loud consultations)*

**The Speaker** (Hon. Kingi): Hon. Senators, I am afraid I will not allow any other Senator to speak on this particular matter.

*(Loud consultations)*

Order, Hon. Senators.

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

Sen. (Dr.) Khalwale, we will start and end with you.

*(Loud consultations)*

Hon. Senators, kindly, let us be orderly.

Sen. (Dr.) Khalwale, I listened to your submission very keenly and you stated that this is a matter in the public domain. Were you referring to newspaper articles or news item? What is your source?

**Sen. (Dr.) Khalwale:** I am an experienced Member of Parliament in this country.

**The Speaker** (Hon. Kingi): That much I know.

*(Laughter)*

**Sen. (Dr.) Khalwale:** Secondly, I am aware that reports from the media do not make parts of what can move a Senator to convince the House on any Motion. I am also aware that a matter, which is in public domain, can form part of the reason of moving this House. Allow me to demonstrate that the matter is in public domain.

Membership of that Committee is part of public domain. Since the Members of that Committee have spoken to that issue and to Members of this House, including myself, it then privileged us to be part of the awareness that the matter is in public opinion. If I am pushed, I will then volunteer the name of the Senator who brought me into the loop of the matter being in public domain.

*(Loud consultations)*

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

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, in the history of this country, no Member of Parliament or a group of MPs have ever sponsored themselves to meet the cost of discharging the mandate of a committee. It is in public domain, the pronouncements made by Members of that Committee who went to the home of this witness trying to persuade us that: "Forget it, we sponsored ourselves." The same Members have also persuaded us in order to dissuade us from being angrier that, "I can show you how I bought my own ticket to the rendezvous."

I beg that I do not get pushed further because this is the first time---

*(Loud consultations)*

**The Speaker** (Hon. Kingi): Order, Senators. Sen. Mungatana, as the Chairperson, I will give you an opportunity to speak after Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale, there is a cardinal rule that he who alleges proves. So, do not feel like you are being pushed far, you are already there.

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

*(Laughter)*

I just want to conclude by appealing to the “I” in our minds that the only other *ad hoc* committee that captured the imagination of this country almost to the levels of the Shakahola Committee was when J.M Kariuki was murdered.

The issue of Shakahola has captured the country more to the extent that when I attended one of the sittings as a friend of the Committee, Sen. Cherarkey and I, the whole country was riveted on their chairs and their eyes were glued on the screen.

Over 400 Kenyans have died in relation to this incident. They are hoping that two institutions; the Directorate of Criminal Investigations (DCI) and Parliament, will give them justice. We have never had a greater responsibility than the one we have today under Shakahola.

I rest my case.

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

**Sen. Mungatana, MGH:** I thank Sen. (Dr.) Khalwale who is my good friend and we have served a long time in this House. I want to believe that he is doing this in good faith.

Indeed, when Sen. Cherarkey and Sen. (Dr) Khalwale came for the meeting on Friday, I treated them with the highest decorum and gave them opportunity to make submissions. They can testify to this. While we were there, the DCI who was a witness in that meeting requested that we visit the headquarters, so that we can see the points they are making. They requested it be done in-camera and Sen. (Dr.) Khalwale and Sen. Cherarkey were present. We told them that we would consider the request.

The other witness who came was Pastor Ezekiel. He also made the same request that he would like to invite the Committee---

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

**Sen. Cherarkey:** Mr. Speaker, Sir, on Standing Order No.s101, 105, this is a very sensitive and emotive matter. Dragging the name of Sen. Cherarkey into this is very dangerous. The Chair should say that I was present in the meeting, which was held in the precincts of Parliament when the witness appeared, so that people do not get confused. I was not present in Mavueni in Kilifi. I was not part of it.

*(Laughter)*

I cannot be among the innocent people who will be crucified with Jesus.

*(Laughter)*

**The Speaker** (Hon. Kingi): Sen. Mungatana, as you mention names, try to be specific.

**Sen. Mungatana, MGH:** Mr. Speaker, Sir, the problem with my colleague, Sen. Cherarkey, is that when you are making submissions in this House, he is consulting and not following what is happening. So, he is totally out of order.

Let us get serious, I mentioned that there was a request from the DCI and a request from Pastor Ezekiel that we make a visit, so that whatever evidence they were giving us, which was crucial evidence, we get to see for ourselves the challenges and the issues that were there.

Mr. Speaker, Sir, after the meeting we sat as Senators - and I take full responsibility for this - and majority of us except those who were absent said, 'look, our time for this Committee comes to an end on Thursday. Being on a Friday, we only have Monday, Tuesday and Wednesday.'

Today being on a Wednesday, we have been interacting with the report. We came here, but we will go back until we finish. On Tuesday, we had given summons to witnesses who had not come, so that they can appear. So, the only practical day was Monday.

Since the Members were there, I made the decision that we shall visit the DCI and Pastor Ezekiel and that while in Kilifi, we shall visit the County Security Committee after finishing with Pastor Ezekiel.

We then asked our clerk of the Committee to go and seek the normal procurement procedures. In fact, I also made a phone call to the Clerk of the Senate to ask him if he can make urgent arrangements for us to travel. While we were waiting, because it was in the evening with only a day remaining for us to cover the Coast and DCI, we then agreed that if it is possible, in the normal manner of operations, we can go up and beyond our call of duty to visit DCI, the Security Committee in Kilifi and Pastor Ezekiel.

We then travelled with the understanding that in the event that the procurement procedure will not have been complied with, once we come back, we shall regularize as is always the case. It is not the first time; personally; I have even travelled out of this country and because of Exchequer delays---

*(Sen. Orwoba stood up on a point of order)*

**The Speaker** (Hon. Kingi): Sen. Orwoba, acquaint yourself with the Standing Orders. The Member is on a point of order. All these Members who are speaking on the Shakahola issue are doing so on the platform of a point of order. So, you cannot draw a point of order on a point of order.

Proceed, Sen. Mungatana.

**Sen. Mungatana, MGH:** Thank you, Mr. Speaker, Sir. So, it is not abnormal and all of us know here that you can travel even outside the country, pay for your own accommodation and later on make arrangements for reimbursement because either procurement procedures delay or the Exchequer is delayed. For someone to say that we have not done this witness or the other, therefore, the Committee has failed, that is okay. That is a genuine concern. However, for someone to crucify a public---

*(Sen. Cherarkey consulted with Sen. Mutinda loudly)*

Mr. Speaker, Sir, protect me from Sen. Cherarkey.

**The Speaker** (Hon. Kingi): Sen. Tabitha Mutinda, kindly give your Chairman an opportunity to vindicate.

**Sen. Mungatana, MGH:** Mr. Speaker, Sir, if we fail in our duty, it is in the place of this House that has sent us out, to castigate us. However, if we have gone beyond our call of duty, then it is in the place of this House to support us, unless you have a hidden agenda.

*(Loud consultations)*

I want people and hon. Senators to see that there were serious allegations that graveyards and a mortuary existed in that New Life Prayer Centre and Church. The ideology of starvation of people to death so that they can meet Christ existed in that Church. If the Committee goes out of its way to see this is where the graveyard is supposed to be--- However, facts are established that this is a construction site. We go to the alleged mortuary, but we are seeing that this is a centre of distribution for energy. We are taken to the---

**The Speaker** (Hon. Kingi): Sen. Mungatana, do not discuss the contents of the report.

**Sen. Mungatana, MGH:** Thank you, Mr. Speaker, Sir, for your guidance.

I want to also tell Sen. (Dr.) Khalwale, my colleague and friend about the hours we spent at the Directorate of Criminal Investigations (DCI) and what we established. I can assure him that he will read it from the report we shall file. The Digital Forensics Laboratory (DFL) that is under the DCI has been frustrated beyond even performance by the very people who are sponsoring this negativity. They know the bombshells we are going to lay in this House. They know and that is why they are sponsoring negative articles to divert attention.

Mr. Speaker, Sir, tell them and the Executive Arm of the Government that no matter how hard they try to hide, we shall expose them for who they are and for how they fail the people of Kenya. It does not matter whether you send the Government's Whip here or whoever, we shall expose you.

That report will change the way things operate. It is good for the country to know what is happening at the DCI, what is happening where the alleged graves are and what is happening at the District Security Committee of Kilifi. It will cost us nothing, but time. We will have to come back and make our claims. Even today, we will go.

Yesterday, we had summoned Paul Mackenzie to come before the Committee. We had no budget to go, but what we were asking---

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

**Sen. Mungatana, MGH:** I am concluding, Mr. Speaker, Sir.

**The Speaker** (Hon. Kingi): I will give you more time, do not conclude. Sen. Mungatana, I can see you are veering off the point of order that has been raised.

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Sen. (Dr.) Khalwale, raised a point of order based on our Standing Orders. One of the things he said was, before any Standing Committee of the Senate sits within or without the precincts of Parliament, there are certain procedures that are supposed to be followed. There are some critical security personnel that would accompany that particular Committee. I thought you will restrict yourself to that. Please keep the shockwaves in that report and leave them there.

**Sen. Mungatana, MGH:** Mr. Speaker, Sir, let me finish what I am saying and then I address myself.

The point of the matter is that Sen. (Dr.) Khalwale has misinformed this House that, that Pastor was out on bail. We had the lawyers. That person had been held by police, but there are no charges that have been presented. These are the facts.

It would be good not to anticipate debate. Wait for the report. It will be presented here on Thursday. However, to address that particular issue that we were supposed to follow procedure, we did and asked the Clerk of our Committee. We also communicated to the Clerk of the Senate. The timings were restrictive, but there was information that was required. The Committee had said that before we sign any report, there were some critical witnesses it must listen to, including Paul Mackenzie.

Mr. Speaker, Sir, we served those summons and asked him to come and it will be in that report. At the beginning, there was obstruction. However, later on, Shimo la Tewa Prison and I thank the officer who is there, made arrangements for him to be available. However, the Inspector General (IP) of Prisons because of security arrangements that were needed and given the fact that Paul Mackenzie is a high profile prisoner, asked for more time. The lawyers also asked for more time. That is why we were unable to reach him.

That is why even yesterday, the team was ready again to travel at their own expense and then come back and make claims. This is how we have covered it. We did not have the clerks for the reason that, at the time of going, they could not raise funds. However, we made sure that everything was captured and put on record. This is what we did. As the Chairman and for the Members who attended, I gave a report of what we observed from the meetings of the witnesses, how we got invitations and everything. The Members of the Senate Committee who accompanied the Chairman also gave their observations.

Mr. Speaker, Sir, the things we saw at the DCI are going to change the way this country thinks. We have been placing the wrong blame on the wrong people. There are people who have messed up this country and it is not the DCI.

I will conclude by saying that tomorrow we shall file that report and I take responsibility for going out of my way with the support of my Committee to do more. If this Committee was added more time, the one person we wanted to meet, but because of logistical issues we could not meet, was Paul Mackenzie. However, we have already had one extension and it is difficult for us. We agreed that we cannot be given another extension because of budgetary constraints.

Mr. Speaker, Sir, what we have, especially from the last witnesses and what we saw and the information we have collected, Kenyans will be proud of the work we have



done. This Senate will stand high irrespective of people who have cast aspersions on this Committee.

*(Applause)*

I thank you.

**The Speaker** (Hon. Kingi): Hon. Senators, you know---

*(Sen. Orwoba spoke off record)*

Order, Sen. Orwoba!

Hon. Senators, there are matters that are better handled administratively and others are better handled through Plenary. This is one such matter that is better handled administratively. The point of order is on procedural administrative issues. This matter was brought to my attention yesterday. I have already engaged the gears of administrative offices. The matter is being handled. Safe to say that the integrity of parliamentary processes will always be upheld

*(Applause)*

Let us leave it at that.

Hon. Senators, at this juncture, allow me to invoke Standing Order No. 45(2) and rearrange the sequence of the Order Paper for the convenience of the House. We move to prosecute Order No.11. If we have the numbers, we can proceed to Order Nos.12, 13 and 14. If not, then after Order No.11, we can resume the normal flow of Orders as contained in today's Order Paper.

Clerk-at-the-Table, proceed to call Order No.11.

## **BILL**

### *Second Reading*

#### THE EQUALIZATION FUND APPROPRIATION BILL (SENATE BILLS NO.30 OF 2023)

**The Speaker** (Hon. Kingi): Sen. Tabitha Mutinda, kindly proceed to move.

**Sen. Tabitha Mutinda:** Mr. Speaker, Sir, I beg to move that the Equalization Fund Appropriation Bill (Senate Bills No.30 of 2023) be now read a Second Time.

Mr. Speaker, Sir, the Equalization Fund is key to the Senate.

*(Sen. Orwoba and Sen. (Dr.) Murango consulted loudly)*

**The Speaker** (Hon. Kingi): Sen. Orwoba and Sen. (Dr.) Murango, order, please.

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**Sen. Tabitha Mutinda:** Thank you, Mr. Speaker, Sir. The Equalization Fund Appropriation Bill (Senate Bills. No. 30 of 2023) was published in the *Kenya Gazette* No.103 on 20<sup>th</sup> July 2023. The Bill was first read in this House on the 19<sup>th</sup> September as per our Standing Orders No.145 through the Standing Committee on Finance and Budget where I am privileged to sit as the Vice-Chairperson.

The Equalization Fund was established under Article 204(1) of the Constitution. It was established to take care of the basic services and needs, including water, roads, health facilities and electricity specifically to the marginalised areas.

I had the privilege to move the same Bill earlier. I stated that 1,024 regions, which are situated in 34 different counties in this country, are beneficiaries of this fund. The fund is important because it affiliates with our Constitution 2010 as far as devolved governance structure is concerned. This is because the devolved government promised to ensure equal distribution of resources in every part of this country. Why? Every Kenyan pays taxes and they have a right to good roads, clean water, health services and electricity.

That is why during the establishment of these regions, there was a keen look at the needs to be achieved. The system of the centralized Government after Independence and before the promulgation of the Constitution perpetuated marginalization in some parts of the country, especially the far-flung areas. This resulted in significant levels of disparities in matters of economic development among different regions.

A few weeks ago, we, as a House, were privileged to undertake the Senate *Mashinani* in one of the great counties in this country, Turkana. While there, we saw the levels of development from the time the devolved government kicked off. The Senate noted a low percentage of development, especially on issues of water in that county. One element of this Equalization Fund is to ensure the provision of water.

Colleagues saw young children stop and request for a basic commodity. Any funding for different counties is key in this Senate. Our major role is to ensure that counties have money. This is a key fund for different counties. The Senate holds this fund key.

One of the underpinning principles of the Constitution is the promotion of an equitable society with comprehensive protection of the social and economic rights of all Kenyans. This fund ensures that there is equality and economic empowerment for different Kenyans in the different regions that they come from. To give effect to equity, the State is required to put in place measures that address the disadvantaged groups due to marginalisation. Article 204, which establishes the fund, to be used for basic services in marginalised areas to the extent of bringing the equality of services in these regions.

I note that the reason this fund has been delayed is that we have a Court Case from Wajir County because of the marginalised areas that had been identified by the Commission on Revenue Allocation (CRA). This court case has stopped and hindered the distribution of these funds to different counties. When we tabled the Bill, we stated clearly that this fund will be distributed from the county level, but not to the County Revenue Fund (CRF) Account.

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There will be special accounts that have been put in place so that these funds can be distributed to different counties. We have experienced a number of challenges. I urge the Senators, notably the 47 elected Senators, more so the 34 Senators whose counties are benefitting from this fund, to ensure that they play a key role in ensuring that the projects that have been identified in those regions are well executed to completion level and usable to the community. Our role as Senators is oversight so that there is an impact on the funds that have been given to these regions on matters of the four basic needs that I had mentioned earlier.

We have political issues whereby you will realize that, when governors are coming in, they are coming with their own new projects all the time. Therefore, what happens to the shells that have been built and they cannot serve Kenyans?

It is a high time, especially on this particular fund, for the Senators to ensure that the disbursed Equalization Fund, which is an additional allocation to these counties, are utilised as per the plan of the Committee that has been set in place. There is a Committee on matters Equalization Fund.

Mr. Speaker, Sir, they need to ensure that these projects kick off to completion to avoid matters pending bills because the funding is available. The first time I stood here on the same Equalization Fund Bill, you realize that we had funds. The total sum for this fund started at Kshs52 billion. However, there was the earlier disbursement amounting to about Kshs26 billion.

*(Sen. (Dr.) Khalwale and Sen. Cheruiyot consulted loudly)*

Mr. Speaker, Sir, I wish to be heard in silence by the leaders.

**The Speaker** (Hon. Kingi): Sen. (Dr.) Khalwale and the Senate Majority Leader, Sen. Cheruiyot, you may consult, but in low tones.

**Sen. Tabitha Mutinda:** Thank you, Mr. Speaker, Sir. These are money or fund matters. It is key to note that Kshs10,867,400,000 on the Equalization Fund is the budget for this Financial Year 2023/2024. Of the proposed amount is Kshs10,541,378,000. This is the amount that will be shared to the 34 beneficiary counties based on the second policy on marginalization. The Annex of the Bill as had been tabled and is the schedule on the Equalization Fund allocation to the 1,424 marginalised areas, are identified in the 34 counties. A sum of Kshs326 million is to be allocated on the Advisory Board.

These monies amounting to Kshs326 million will be able to cater for the administration cost of the Board that is in place that will ensure it oversees the distribution of these funds.

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

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

As I had said earlier, the Bill further provides that the allocation be transferred to the special accounts of the beneficiaries pursuant to Article 207 (1) of the Constitution.

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Madam Temporary Speaker, the passage of this proposed law by Parliament will provide a legal framework for the transfer of the funds from the Equalization Fund for allocations made in the Financial Year 2023/2024.

I had stated earlier, in the first tabling, that we had a deficit of Kshs3 billion in the last disbursement. However, currently in the Kshs10 billion as I had earlier mentioned, there is the inclusion of the Kshs3 billion that had earlier been omitted.

I appreciate and commend the stakeholders that were able to appear before our Committee, especially the Council of Governors (CoG) and gave their input. As you know, the CoG are playing a very key role on ensuring that their representatives are able to sit as members of this Committee in the identification of the projects.

The CRA was also a key part in this. They were able to bring in the issues of naming of the specific wards that are supposed to receive these funds. It was a matter that the Committee had also noted and ensured that through the Independent Electoral and Boundaries Commission (IEBC), they were to get the correct names of the wards that are supposed to benefit from this particular fund. This is because during the amendment, these were some of the issues that came about and were to be corrected through IEBC.

The International Budget Partnership Kenya was also another stakeholder, which also played a key role on how the budgeting was done. In this respect, the Committee will be proposing amendments to the Bill, so as to ensure that the Schedule reflects an appropriation of the Equalization Fund for Financial Year 2023/2024, as mentioned earlier, Kshs10,867,400,000 as indicated in Clause Three of the Bill. It shall introduce a clause to ensure that the time will not lapse on the approved appropriation under this Bill. I wish to put emphasis on that to the 34 Senators who are benefiting from this fund. It will not lapse until all the projects have been identified, approved and successfully completed and are in a level of use by the specific community.

Madam Temporary Speaker, the worry that had been brought earlier in regards to the issue that the seven-year period is almost lapsing has been shortened or these funds could not be utilized because of the court case is taken care of. However, the good news is that the Bill has given room to ensure that the time will not lapse on those conditions of identification, approval and, at the same time, completion.

This is not the end of this fund. Our proposal as a Committee is to ensure that all the 47 counties benefit from the Equalization Fund. There are areas or counties that were not able to benefit. Out of 47 counties we have 34. We have about 13 counties that have not benefited from this fund.

What I want to state clearly is that this funding is a balance of what had been budgeted for the 34 counties on the onset. However, as a House or Committee, our role is to ensure that the distribution cuts across the 47 counties, being more specific on the villages or the ward areas whereby marginalisation has been identified on the four specific agendas. However, it is good that we carry on with the 1,424 regions, so as to set an example for any request of what will be additional.

Madam Temporary Speaker, at this time, I request that my colleague, the Majority Whip, Sen. (Dr.) Khalwale seconds this Bill.

I thank you.

**The Temporary Speaker** (Sen. Mumma): Proceed, Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Thank you, Madam Temporary Speaker. I rise to second the Equalization Fund Appropriation Bill as moved by the Vice-Chairperson of the Finance and Budget Committee. I associate myself with her moving speech because it was factual and with direct reference to the Bill.

Madam Temporary Speaker, I want to spend my time very briefly by drawing the attention of the Members to the Schedule.

*(Loud consultations)*

**The Temporary Speaker** (Sen. Mumma): Order, Senators! Sen. Cherarkey and Sen. Madzayo, you are disrupting the House. Please, sit down.

**Sen. (Dr.) Khalwale:** Thank you, Madam Temporary Speaker. As colleagues will realize, the Schedule indicates the counties that are beneficiaries. There is an indication of some of the constituencies and the wards within those counties that are partaking of this particular fund.

Madam Temporary Speaker, so that we do not get into a quagmire during the time of voting as it happened earlier, some Members mistook the sharing of this fund to be an entitlement of all the 47 counties and all the 290 constituencies and the 1,450 wards. Far from it, the error arose from the anger of some Members. After seeing certain counties benefitting, they started to ask themselves, why not theirs?

When people see Baringo County, they tick. There are high levels of poverty there. They then see Turkana, Wajir, Marsabit and Mandera counties and others and they tick. However, when counties such as Bomet, Bungoma, Kericho and Kisumu start to benefit from this fund, there is a bitter taste. People started to say, if Kisumu County can benefit, why not my County of Kakamega. If Bomet can benefit, why not Vihiga?

I appeal to colleagues that there was a criterion that was worked on by the CRA which then went for pockets of poverty. To the extent that, when you see Bungoma County, it is because of a unique pocket of poverty in the harsh terrain in Mount Elgon that invites this award. This is the same argument for the rest of the counties.

I appeal to colleagues to vote for the Bill. The CRA has painstakingly identified these pockets of poverty in reasonably well-off counties such as Kisumu, Bomet, Kericho and Murang'a because of those extreme things. That is my substantive contribution. I appeal to colleagues. We just came from Turkana County the other day. You realize the challenges these people from the Arid and Semi-Arid Lands (ASALs) are faced with.

I conclude by saying that never again in the history of governance of this country should we have a blunder like the one that was made in the Sessional Paper No.10 of 1965. This Paper profiled the ASAL areas as non-deserving of development because their populations were not big enough.

For a period up to 2013, these ASAL areas were left behind in development. The intention of the 2010 Constitution, as you know, since you are one of the drafters, was that an affirmative action be applied for a period of 20 years to see if these areas could be

given water, electricity and improved road infrastructure so that they could come reasonably nearer to other areas.

This noble spirit has been misunderstood. People have confused this with a fund for fighting poverty. The money for fighting poverty is domiciled in the shareable revenue where areas with high levels of poverty get more money. This money was over and above the poverty index.

I thank you for this opportunity. I appeal to my colleagues to vote for this Bill. I second.

*(Question proposed)*

**The Temporary Speaker** (Sen. Mumma): Senate Majority Leader, proceed.

**The Senate Majority Leader** (Sen. Cheruiyot): Madam Temporary Speaker, it is a matter of procedure under Standing Orders No.111(2). I rise on limitation of debate. This is a very important Bill, which I believe many colleagues will want to speak to. We can agree on 10 or five minutes---

*(Several hon. Members spoke off record)*

**An hon. Member:** 10 minutes.

**An hon. Member:** Five minutes.

**The Senate Majority Leader** (Sen. Cheruiyot): Hon. Members are saying five minutes. Let us do seven minutes so that we balance between those who are saying 10 and five minutes. If we can do seven minutes each then, they can explain themselves.

**The Temporary Speaker** (Sen. Mumma): Hon. Members, we go for seven minutes. It is a good balance.

Proceed Sen. Cherarkey.

*(Sen. Cherarkey crossed the Floor without bowing to the Chair)*

**Sen. Cherarkey:** Thank you---

**The Temporary Speaker** (Sen. Mumma): Order, Sen. Cherarkey! Can you follow the correct protocols of this House?

*(Sen. Cherarkey bowed to the Chair)*

**The Temporary Speaker** (Sen. Mumma): Thank you. You may now proceed.

**Sen. Cherarkey:** Thank you, Madam Temporary Speaker. I do not know why Sen. Oketch Gicheru is excited today. He must have eaten something in Machakos County.

I rise to support the Equalization Fund Appropriation Bill. This is a straightforward Bill for the allocation by June, 2024.

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In the interest of time so that most colleagues can contribute, I am happy that Nandi County will benefit Kshs10,867,400,000 in this Financial Year 2023/2024 through the Equalization Fund. Nandi County might appear as the County of milk, honey and the land of opportunities because there are rains. However, we still have challenges here and there.

Under Article 204 of the Constitution---

*(Sen. Cherarkey's microphone went off)*

---Roads so that the people of Nandi County can have opportunity to enjoy the fruits of devolution as envisaged under Article 174 of the Constitution of Kenya.

I am happy to tell the great people of Nandi County that two constituencies, Nandi Hills and Tinderet, which is in Nandi South, have been considered to benefit from this fund. When you go to Kapchorwa Constituency which has been given Kshs13,040,766, there are no passable roads. There are challenges with school infrastructure and health facilities.

I am happy some areas in Tereno, Kapchanga, Cherondo, Kiptegaa, Kapkoros, Ainapng'etuny and Koisegem will form the basis of the beneficiary within Kapchorwa Ward.

We passed a law and brought an amendment with Sen. Omogeni to ensure that a Senator will be part of the planning and approval of developments.

Madam Temporary Speaker, I remember you were also part of those championing for that.

Secondly, in Tinderet Constituency, Chemelil-Chemase sub-counties. The areas of Cheswerta, Kibisem, Potopoto all the way to Musengeret and Kopere that border Kisumu County, there are always challenges. There is gold in Chemelil-Chemase. However, when you visit, the roads are bad and there is no water. All those areas which belong to Chemelil-Chemase which borders Kisumu County, will benefit with Kshs12,364,008.

I am happy that the great people of Kabirirsang, Kapkuong, Potopoto, Musengertet, Cheswerta and all the areas within Chemelil--- Chemase Ward, will have an opportunity.

I am happy that Songhor/Soba Ward, which is one of the biggest in terms of land size in Nandi County, will have opportunity. The terrain of this area is always a challenge. There are factories which have been set there near Mbogo Vale among other areas. These are areas that border the forest separating Tinderet area and Songhor/Soba Ward. It is crucial up to Kabwareng and many other areas within Tinderet Constituency.

I am happy that Songor/Soba Ward is getting the highest allocation of Kshs85 million. I have been there on several occasions. There are no passable roads, water and hospitals. Health centres like Kibukwa Dispensary need a maternity ward. We are doing the biblical ordination of filling the earth by giving more births after nine months. This is the other job we do outside the normal duties that God has given us. These are some of

the challenges that this fund will help mitigate. Roads also need to be improved so that the people of Soba/Songor Ward can have the opportunity to utilize Kshs85 million.

Tinderet ward, the Uwanja Ndege area up to Kapkitang, Soin, Sigawet, Kipyawor, just to mention a few, will have the opportunity of getting over Kshs12.2 million. I am happy that Nandi Hills Constituency will get Kshs13,047,066, and Tinderet Constituency will get Kshs109,773,924. It is our interest as a Senate to ensure the approved funds for the four wards of Kapchorua, Chemilil/Chemase, Songor/Soba and Tinderet will be used for the intended purpose.

I would also want to see a ward like Terik benefit from this fund. The Kaborua area in the Chepterwai Ward in the Mosop sub-county has similar challenges with wards that have received funds. I hope in the future the Committee on Finance and Budget will allow us to allocate funds to more wards in Nandi County.

Kaptuiya and Terik wards as you are headed to western Kenya also face similar challenges and should be declared as a hardship area. Government employees in these areas should receive hardship allowances, especially from the Teacher Service Commission (TSC). This is the money that we are pushing to go to people in *Mashinani*.

We should ensure that the Equalisation Fund is allocated to counties transparently and equally in terms of development across our country. As the Senator of Nandi and a member of this great House, we should always endeavour to ensure that every shilling we appropriate is used for the intended purpose.

I was near Migori County over the weekend – I do not know what Sen. Oketch Gicheru has done to the light at the dispatch, it is now red.

I support the Bill.

*(Interruption of debate on Bill)*

## COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM KAPKWEN  
BODA BODA GROUP, BOMET COUNTY

**The Temporary Speaker** (Sen. Mumma): Hon. Members, I would like to acknowledge the presence in the public gallery this afternoon, of a visiting delegation of the Kapkwen *boda* Group from Bomet County. The delegation is in the Senate on a courtesy call.

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

I would like to request the hon. Senate Majority Leader to welcome them for not more than one and a half minutes.

**The Senate Majority Leader** (Sen. Cheruiyot): Thank you, Madam Temporary Speaker. I would like to extend a welcome to the visiting team from Kapkwen. I hope they get to have a full view of the Senate this afternoon as business is being transacted.

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They will get the full pleasure of seeing their Senators debate. The Motion that is present on the Floor is a Bill known as the Equalization Fund prepared under Article 204(1) of the Constitution where 1.5 per cent of the nationally raised revenue is sent to counties that are most deserving based on basic services such as water, roads and health centres. It benefits 1,490 wards in the country. I am not sure whether this is the right figure. However, there is a specific number of wards analysed by the CRA.

I mentioned this so that they appreciate and understand what is being debated on the Floor. It will serve my good neighbours from Kapkwen to know that Bomet ----

*(Sen. Cherarkey consulted loudly)*

**The Temporary Speaker** (Sen. Mumma): Order, Sen. Cherarkey!

**The Senate Majority Leader** (Sen. Cheruiyot): Madam Temporary Speaker, Bomet County is one of the benefitting counties. Chebunyo, Nyongores and Sigor wards are among the benefitting wards. They will get funds to the tune of Kshs6.7 million.

Follow the debate, and enjoy your stay here in Parliament. Unfortunately, your Senator is not with us. He is on official business in the Republic of China. He is doing an exemplary job representing you here. Enjoy your visit, my good neighbours.

**The Temporary Speaker** (Sen. Mumma): I will also give one minute to Sen. (Dr.) Khalwale who will at a later date move a Bill on *boda-boda*.

**Sen. (Dr.) Khalwale:** Thank you, Madam Temporary Speaker. It is a great honour for me to be allowed to, not only acknowledge their presence, but also to reassure them that---

*(Sen. Cherarkey consulted loudly)*

**The Temporary Speaker** (Sen. Mumma): Sen. Cherarkey, it is possible to consult without disrupting the House. Consult in low tones.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I would like to assure them that we appreciate the role they play in the transport sector of this country. We are aware that these young people work under difficult circumstances, both environmental, law and social. We appreciate the role the *boda boda* play in getting all of us elected. I hope the young people will take this message back home.

More importantly, I assure them that we will recognize *boda bodas* in Kenyan laws. The journey for making a law for *boda bodas* in this country started yesterday. There is a Bill, which I have brought before this House. It will be adopted here, hopefully, and then the other House. We want to make *boda boda* profitable, decent and tie people who want to misuse *boda boda* and make it not look like a criminal enterprise.

I welcome you. I would love to meet you on another day back home.

**The Temporary Speaker** (Sen. Mumma): Sen. (Dr.) Oburu, proceed.

*(Resumption of debate on Bill)*

**Sen. (Dr.) Oburu:** Thank you, Madam Temporary Speaker. I do not want to speak long on this. This is a Bill which was discussed and approved by the Senate. Therefore, we expressed our views. I expressed my views on the purpose for which this Equalisation Fund was created. What we are doing now is giving authority for funds to be withdrawn from the Consolidated Fund and then spent. With this authority, we have an opportunity to emphasize our concerns.

My concern then and even today is that the Equalisation Fund is not serving the purpose for which originally we thought it was. It was established to address the inequities and inequitable distribution of wealth, which was created because of Sessional Paper No.10 of 1965.

In that document, the Government introduced a policy that the areas that would be developed by the Government are those with the highest return – which meant that they had the highest return on investment. The amount of money you get out of every shilling you invest. These high-potential areas did not include the ASAL areas. These were the areas which---

*(Sen. Nyamu walked into the Chamber without bowing to the Chair)*

**The Temporary Speaker** (Sen. Mumma): Order! Sen. Nyamu, this is an honourable House. Can you do what you are supposed to do? You need to bow when you get into the House.

*(Sen. Nyamu bowed to the Chair)*

Thank you. Continue, Sen. (Dr.) Oburu

**Sen. (Dr.) Oburu:** Madam Temporary Speaker, if you went to some of these ASALs, you will see the type of marginalisation meted out over a very long time.

I used to work for the National Treasury in the Department of ASALs and I travelled extensively all over the country. I saw the lack of facilities and the distances travelled to reach certain facilities. Over and above the poverty levels spread across the country, this fund was created as an affirmative action. It was not forever, but for a specific period of time; up to 20 years from the time of promulgation of the Constitution. The Constitution has now existed for 13 years, so I think it will exist for another seven years or so.

Madam Temporary Speaker, the way these monies are being distributed, I do not think we shall have achieved what was called equalisation at the end of the next seven years. There will be no equalisation because it is being spread so thinly across the board.

Having said that, I am grateful and happy that my county is getting Kshs33 million distributed in three constituencies. However, what I have said is my overall belief in how this fund ought to have been dispensed with.

I support this Bill and hope that those 34 counties that have benefited, will use the funds appropriately to address the pockets of marginalised areas within those counties.

With those few remarks, I support.

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**The Temporary Speaker** (Sen. Mumma): Sen. Cheruiyot, proceed.

**The Senate Majority Leader** (Sen. Cheruiyot): Thank you, Madam Temporary Speaker. I join the rest of my colleagues in supporting this Bill; The Equalisation Fund Appropriation Bill (Senate Bills No.30 of 2023). This is a great step in the right direction, especially if you know the fight that existed before this fund was operationalised. We almost concluded the sun set years of this fund without a shilling ever having gone to the counties.

As the Senate, we now have the opportunity to begin the Bill and devolve funds to counties each year. That is a step in the right direction and one of the things that the Senate needs to be hailed for. Over the years, while it was clear that our colleagues from our sister House were not as keen on this particular issue, we stood firm and steadfast on compliance with Article 204 of our Constitution.

If you read the Budget Policy Statement (BPS) reports of each of our Committees over the years from 2013 all the way, this is one of the issues that the House sent back to the National Treasury. There was need to establish the basis upon which these funds are divided.

Madam Temporary Speaker, further to that, you would understand the fight that would ensue immediately after. This is Kenya and everybody feels marginalised in one way or the other. You know the conversations that we always have about one man, one vote, one shilling and one kilometre.

Recently, at the National Dialogue Committee (NDC), I heard of something else. I have come to appreciate that Kenyans are increasingly becoming ‘woke’ so to speak; if I may use that colloquial used by our young people. It means to reveal or to be socially conscious. They are conscious of such Government operations and things that need to be done.

Madam Temporary Speaker, we must also hail the CRA for the study that they undertook. Back in the day, the thinking in most Government circles was that marginalisation was limited to specific broader areas. It was either certain provinces – even after we moved from provinces - people continued to refer to them as certain areas of the North, Coastal Region and so on although they are not necessarily geographically present in our Constitution.

The CRA studied and came up with the second policy of marginalisation, different from the Sessional Paper No.10 of 1965 that was referred to by Sen. (Dr.) Khalwale a few minutes ago. They guided us and said that the least or the smallest electoral unit, which is the ward, is the best place to place these funds and guide the discussion.

They undertook a study and returned a figure of 1,424. This is the figure I was looking for earlier on when I was welcoming the Kapkwen *boda boda* Group that was here. A total of 1,424 wards have been identified as marginalised areas and are spread across 34 counties in the second policy on marginalisation.

Madam Temporary Speaker, it will be known for a fact that in counties that are extremely advanced, perhaps you will find better connectivity. This is because this fund, let us not fool ourselves, is limited to only about three or four functions if in strict

compliance of Article 204. That is water, electricity, health services and I think one or two other things.

While it may be possible in certain counties, by view of the county headquarters and the figures that they generate, you may think that development is equally spread out. Yes, there are counties that are blessed and endowed with resources. However, within the same county, you will find areas that are terribly marginalised.

Madam Temporary Speaker, the genius of that second policy is what has informed us this afternoon to debate this Bill and look into the 34 counties. You can see in the Schedule that all the counties are broken down into the wards. It is by specific requests to our Committees, especially those that oversight these funds, to ensure that the Senate plays a key role in ensuring that not even a single shilling of this fund goes to any form of administration.

These funds, in their entirety, should go to development 100 per cent. This is because administration is already there. If it is Kshs6 million specific to a ward in my county, I want to see that Kshs6 million spent on putting up a health facility or a water project.

There is no need to do electricity because that is not the function of counties. I think that is meant to just comply with Article 204(1)(a), which provides that the national Government may as well make use of these funds. We long had that debate in our Committees until the national Government accepted and said these funds be managed in coordination with county governments.

I expect that 100 per cent of these funds will go to specific tangible projects. In the next few months, we should be able to report back to our counties that much of what we devolved last year under this specific board, has done good projects. Such projects include opening up a road network, a water project or a health facility in these specific wards. The same should not be affected by all the other divisions that they do within the county.

This Bill is extremely progressive. I request that as a House, we expedite its passage so that this fund can be devolved to our counties.

With those very many remarks, I beg to support.

**The Temporary Speaker** (Sen. Mumma): Sen. Omogeni, proceed.

**Sen. Omogeni:** Thank you, Madam Temporary Speaker, for this opportunity to contribute. From the onset, I go on record as being one of the Senators who opposed the formula that was adopted by the CRA. It is because it is really a lie when we share money to counties that everybody knows--- Even if you ask people who have not studied Economics, they will tell you that those are counties that are thriving. When you place Nandi County in the same shoes with Wajir County, we are living a lie.

I supported this Equalisation Fund when it was benefitting the 14 initial counties. When you drive from Nakuru to Kericho on your way to Nyamira, you pass through Kericho. Do you want to tell Kenyans that Kericho is more marginalised than Nyamira County? That is not right. After five years, we must do away with this formula

I mean even if you drive through Bomet County, you will realise that the best-grade cows are found in the County of Bomet. However, we are telling Kenyans that Bomet is one of those marginalised counties. That is not proper.

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

**The Temporary Speaker** (Sen. Mumma): What is your point of order, Sen. Olekina?

**Sen. Olekina:** Madam Temporary Speaker, I have a lot of respect for the distinguished Senator, Commissioner, Sen. Omogeni. However, is he in order to suggest that an independent commission which is set out by the Constitution of Kenya, given all the tools, the resources to traverse the entire country did not come up with the right formula? He is now lying to the people of Kenya that Kericho is not developed? That another county is not developed, seriously?

Earlier on, the Speaker had requested the distinguished Senator for Vihiga County to substantiate and he did. It is about time that we respected independent institutions.

The distinguished Senator should substantiate what he is saying or demonstrate to this House that he has the tools and the resources that the CRA has to determine how people are marginalised in this country.

Every time we keep on making statements and saying that this Commission is coming up with a formula that is informed. For us to be proper leaders, the Senator ought to provide alternative information, so that we can then compare apples to apples.

Madam Temporary Speaker, Sir, for him to stand here to say that the CRA does not have the necessary tools and resources, then what is the point of having that Commission in the first place? Let him substantiate that.

**The Temporary Speaker** (Sen. Mumma): Sen. Omogeni, do you want to substantiate which counties---

**Sen. Omogeni:** Madam Temporary Speaker, there is a practice that has emerged in this House. Any time a speaker is on the Floor speaking, a Senator pops up like popcorn to raise a point of order, which is not within the Standing Order.

**The Temporary Speaker** (Sen. Mumma): Order, Sen. Omogeni!

**Sen. Omogeni:** Madam Temporary Speaker, you have followed the deliberation, what he is making is an argument. You cannot stand on a point of order and then make an argument. That is not a point of order.

So, I beg that you allow me to continue because that is not a point of order.

The point I am making is that as a Senator, representing the ---

**The Temporary Speaker** (Sen. Mumma): Sen. Omogeni, my understanding of Sen. Olekina's point of order is that you are casting aspersions to a Commission that has done its homework and found that there is a need in this county to benefit from the equalisation fund.

He is asking you to substantiate your assertion, whether it is not correct or not. He wants you to substantiate that information. That is my understanding of that point of order.

**Sen. Omogeni:** Madam Temporary Speaker, you cannot box me into a corner. I am entitled to my opinion. I respect the CRA, but I have a right to differ with the formula that they applied.

**The Temporary Speaker** (Sen. Mumma): Okay. There is a point of information. Can Senator---

**Sen. Omogeni:** Madam Temporary Speaker, on that particular point---

**The Temporary Speaker** (Sen. Mumma): Hon. Senators, can I have a point of information from Sen. Wambua. Let us hear him and then I will give you time.

He said that he had a point of information. Sen. Omogeni, please sit.

**Sen. Wambua:** Madam Temporary Speaker, I just want to inform the Senator for Nyamira County. He is my good friend. He should not allow himself to be distracted by the point of order by Sen. Olekina. The information that I want to share with him---

**The Temporary Speaker** (Sen. Mumma): Order, Sen. Wambua!

**Sen. Wambua:** Madam Temporary Speaker, I am sharing information---

**The Temporary Speaker** (Sen. Mumma): Order, Sen. Wambua! No, you are not. You are playing the role of the Speaker. Can you pass on the information that you have?

**Sen. Wambua:** Madam Temporary Speaker, if you take debate that way, then people will not debate. Allow free flow of opinion.

I want to inform the Senator of Nyamira County that in the last session, the commission that he is referring to, the CRA, brought a formula that I saw Sen. Olekina himself stand up against. He was almost tortured by the administration at that time. The CRA is made up of human beings who can make mistakes. It is not a divine institution.

**The Temporary Speaker** (Sen. Mumma): Thank you, Sen. Wambua.

*(Laughter)*

Sen Omogeni, just hold on.

What is your point of order, Senator Commissioner?

**Sen. Kinyua:** Thank you, Madam Temporary Speaker. It is in the public domain how they arrived at that formula. It is by what we call the poverty index. I support what Sen. Olekina said. A county can, indeed, be very rich, but when they go to the sub-location level in that county, that sub-location might be very poor.

For them to say that the equalisation fund is supposed to be given to only 14 counties---

**The Temporary Speaker** (Sen. Mumma): Senator, are you explaining or you are responding? What is the point of order?

**Sen. Kinyua:** Madam Temporary Speaker, I am not responding. I am saying that he is supposed to be responsible. I am rising under Standing Order No.105 on statement of fact. Nandi County can be rich, but it has a sub-location that is poor and is supposed to be brought to a certain level in terms of development. That is why we call it equalisation fund.

**The Temporary Speaker** (Sen. Mumma): Senators, please allow me.

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Sen. Omogeni, you will respond and substantiate to the point of order to demonstrate which location in which county has been picked and does not deserve to be picked

**Sen. Omogeni:** Madam Temporary Speaker, I respect your ruling. However, this is a House of debate and I am entitled to my opinion. I have been informed and I agree tremendously with the information that I have received from the Senator for Kitui County. We received a formula here from the said commission---

**The Temporary Speaker** (Sen. Mumma): Sen. Omogeni, please respect the Chair.

**Sen. Omogeni:** No, Madam Temporary Speaker---

**The Temporary Chairperson** (Sen. Mumma): It is a matter of fact. It is an issue of fact.

**Sen. Omogeni:** Madam Temporary Speaker, I cannot substantiate the obvious because what I have stated here--- I have been elected to speak on behalf of the people of Nyamira.

**The Temporary Speaker** (Sen. Mumma): Sen. Omogeni, please substantiate what the Chair has ruled.

**Sen. Omogeni:** Madam Temporary Speaker, what do I have to substantiate? Make a ruling and tell me what to substantiate.

**The Temporary Speaker** (Sen. Mumma): Which location and in which county did not deserve—

**Sen. Omogeni:** Madam Temporary Speaker, I have not referred to any location. I have stated that I disagree with the formula by the CRA where only 34 counties are benefiting. So, what do I need to substantiate?

Where I come from in the County of Nyamira for your information---

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

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

**Sen. Oketch Gicheru:** Madam Temporary Speaker, I am rising on Standing Order No.111 on the limitation of debate.

This Bill that we are discussing here today is a Bill whose principle objective is to provide for payments out of the equalisation fund for the Financial Year 2023/2024. It is not a Bill to discuss the formula that was used to arrive at this.

That debate had been discussed and dispensed with in this House. Where we are right now---

*(Sen. Olekina spoke off record)*

Madam Temporary Speaker, can you protect me? The issue of the formulae that was used by CRA was already dispensed with. Here, we are simply discussing the schedule that should go to counties. Therefore---

**The Temporary Speaker** (Sen. Mumma): Sen. Oketch Gicheru, please sit down.

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I agree with the Senators who said that opinion may be expressed. Opinion can be expressed over and over again on something that has passed. However, Sen. Omogeni, one of the things that you said beyond your opinion was that there are counties, which are on the Schedule, which do not deserve to benefit from this fund. That is what I wanted you to substantiate. If you cannot substantiate, please withdraw. Nonetheless, your opinion is respected in regard to matters what you think of the CRA formulae.

**Sen. Omogeni:** I want to be informed by Sen. (Dr.) Khalwale.

**The Temporary Speaker** (Sen. Mumma): Sen. (Dr.) Khalwale, please proceed.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, the opinion of Sen. Omogeni, remembering that he is a Senior Counsel and his experience in this House, forces me to refer to the constitutionality of what he has said. Article 204 of the Constitution provides as follows-

“(1) There is established an Equalisation Fund into which shall be paid one half per cent of all the revenue collected by the national government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.”

“(2) The national government shall use the Equalisation Fund only to provide basic services including water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible.”

Madam Temporary Speaker, it does not matter which school you went to---

**The Temporary Speaker** (Sen. Mumma): What is your point of information to Sen. Omogeni?

**Sen. (Dr.) Khalwale:** I am now encouraging him that there were areas in this country called counties that had been marginalised. It was agreed that there was poverty in many parts of Kenya. However, the poverty in these areas was as a result---

**The Temporary Speaker** (Sen. Mumma): Sen. (Dr.) Khalwale, what information are you giving to Sen. Omogeni?

**Sen. (Dr.) Khalwale:** I am informing him that the Equalisation Fund was to manage marginalisation and not poverty. So, CRA made a mistake by basing it on pockets of poverty rather than marginalisation.

*(Sen. Omogeni spoke off record)*

Sen. Omogeni is right. In fact, *tunamsherehekea*.

**The Temporary Speaker** (Sen. Mumma): Sen. (Dr.) Khalwale, you cannot be the one ruling on your own. Sen. Omogeni, I hope you have heard me clearly. You are entitled to your opinion, but you will name which county was included that should not have been included or withdraw.

**Sen. Omogeni:** Madam Temporary Speaker, my statement, which you can confirm from the HANSARD, is that the formula that was applied by CRA has



erroneously benefitted 34 counties some of which are undeserving. I am entitled to that opinion; you do not need to agree with it. That is why we are Senators. We are here to debate. We do not need to be boxed into one line of thought.

**The Temporary Speaker** (Sen. Mumma): The fact that is required for you to provide is the ‘undeserving’ counties.

**Sen. Omogeni:** I have mentioned that if you look at the poverty index, counties like Kericho and Bomet are very undeserving. In fact, let me inform my friend here from Narok County, if you go to Canada, the formula that is applied has been there since 1957. The best way to do it is to pay the devolved units; the county governments.

**The Temporary Speaker** (Sen. Mumma): Sen. Omogeni, you are trying to make a point about the formula. That the poverty index is the wrong formula. Is that your point?

**Sen. Omogeni:** I am contributing, but you do not need to agree with it. That is the essence of debate. My point is if you go to a country like Canada, they take into account the physical capacity of a Government.

If you go to Narok County which is benefitting from this Equalisation Fund, the revenue that they collect from the expansive Masai Mara National Reserve is about 20 times what Nyamira County collects. So, when we are raising these issues---

*(Loud consultations)*

**The Temporary Speaker** (Sen. Mumma): Please let him finish. Hon. Senators, can we allow somebody to finish what they are discussing.

**Sen. Omogeni:** Where I come from in Nyamira County, do you know how many people live per square kilometre? They are 675 people. If you go to Narok County, that is land for one person. So, when I stand here to defend my people of Nyamira County, I have a constitutional right to do so. We live like we are in an urban centre. My people in Nyamira County barely survive because they are hard working.

So, when we find a formula like this that picks our neighbouring counties like Kericho and Bomet--- If you drive through Kericho County, you will see tea farms. We have no luxury of owning such expansive tea estates in Nyamira County. Therefore, when we are raising this issue, we hope that CRA is watching. That is why we have public debates here. That is why the House of Parliament gets live broadcast; so that they see and correct some of these injustices next time.

Even if you go to Kericho County and look at the households that are enjoying piped water, they are far much higher than Nyamira County. Even in electricity connection and road networks, they are much ahead than Nyamira County.

When we raise this issue, the point we are making is, when we have an opportunity to look at this formula next, with tremendous respect, we should not put the County of Wajir in the same shoe with Kericho County. Imagine a woman giving birth in Wajir County travels for more than 20 kilometres. Tell me any ward in Kericho County where you will travel for 20 kilometres without finding a health facility. There is

none. Look at the rivers flowing through the County of Kericho then go to Mandera County and see how many streams are there. You cannot compare.

The point we are making is the intention of enacting Article 204 of the Constitution was to uplift counties that were left behind by the bad policies of the successive governments. I have given an example of what happens in Canada. They do not address wards because that is skewed. You deal with county governments.

As I finalise, I hope that when we look at this issue next, we will bear in mind that there are people in this ASALs counties---

*(Sen. Oketch Gicheru spoke off record)*

**The Temporary Speaker** (Sen. Mumma): Sen. Oketch Gicheru, you are out of order. You cannot just interrupt when somebody is speaking. It is not acceptable.

**Sen. Omogeni:** Madam Temporary Speaker, out of 28 million Kenyans who live in water stress counties, the majority are in those 14 marginalised counties. For now, there is very little we can do. We are just passing this Bill so that money can be disbursed. However, the point I am making is that when we consider this formula next, we should bear in mind the intention and the spirit of Article 204 of the Constitution.

**The Temporary Speaker** (Sen. Mumma): Sen. Thang'wa, please proceed.

**Sen. Thang'wa:** Madam Temporary Speaker, thank you for the opportunity. Without looking jealous, my county has not received anything. As you can see, there was some discussion whether the formula that was adopted to give counties this money was the best one.

I tend to agree with Sen. Omogeni. This money is not to develop counties, but areas within counties. Since Kiambu County contributes to the Gross Domestic Product (GDP) of our nation, we are among the three counties that contribute highest. It does not mean we do not have those marginalised areas.

Look at Ndeiya in Limuru Sub-County; Ndeiya is next to Kajiado, we share the same land, but the other side of Kajiado is getting hundreds of millions. We need to relook into this formula and to not think as county as a whole but at that particular ward that requires basic needs.

Madam Temporary Speaker, when we are talking about basic needs, we are talking about water, roads and health care. There are so many areas in Kiambu without water yet we supply water to Nairobi City County. We have Karimani dam, Ruiru Dam and the next dam that is supposed to be built in Ndarugo yet the people from those areas, Ndeiya, Kilimambogo and Thika do not have water. This Equalization Fund should cater for areas, but not necessarily counties as a whole.

The Senator for Vihiga and I are co-sponsoring a Bill called County Wards Equitable Development Bill. That Bill together with this Equalization Fund should work in tandem so that at least the formula that the counties are going to use to take money to marginalized areas should be the same formula that the Equalization Fund will be able to use.

Madam Temporary Speaker, Kiambu County is not getting anything from this, but I will not be selfish not to support it because I want other areas of our nation to also be where we are in some areas like my county. I know Kisumu, Baringo, Isiolo and Lamu is getting something and will support them despite not wanting us to have the oversight function that is required. They are not in Parliament but they can take me to court when I am given money to oversight my county.

My county has so many people that I need to walk in every corner of that county. It is sad to tell you that today I attended a meeting that was convened by the leadership of Kiambu, that is 12 Members of Parliament, myself, the Women Representative and the department of Land and Urban Development and Housing and we were told that Kiambu County is on the verge of losing Kshs1.6 billion because the county government is not meeting the requisite requirement to receive that money. The requirement is just to employ a municipal manager. For one year the governor has not been able to employ seven municipal managers. We are just about to lose Kshs1.6 billion.

That is why when I stand here to ask for that oversight, it is because I want to do everything possible to let the people of Kiambu know what is happening with their Governor. However, when I stand here to bring up that issue, we have some Senators who are taking us to court so that we do not get the fund yet they are not even here now to fight for their counties. I am fighting for their counties on their behalf.

Madam Temporary Speaker, I propose that next time when we are looking into this issue, the formula change should at least go hand in hand with the law that we are just about to bring on the Floor of this House.

To finish my argument, I want to say this Equalization Bill is only supposed to do what we call Bottom up Economic Transformation Agenda because we are trying to uplift those who are downtrodden to bring them to certain area so that we can walk together.

Thank you very much.

**The Temporary Speaker** (Sen. Mumma): Proceed, Sen. Olekina.

**Sen. Olekina:** Thank you, Madam Temporary Speaker. I rise to support the Equalization Appropriation Bill. It has been a long time coming. We have been agonising every year about money being distributed not for equality but for some form of equity. The framers of the Constitution decided that it was important to uplift the standard of living of those people who were left behind when this country was developing.

I have listened to my colleagues especially my good neighbour the Commissioner opposing this Bill and I wonder whether he truly understood the meaning of marginalization. If you traverse the expansive Narok County, or traverse the expansive Kajiado County and all the other 32 counties that have been allocated with just a little more money to ensure that there is a hospital; to ensure roads are graded not paved; to ensure that those residents who live in those dilapidated areas get access to some form of water, you will be shocked.

Today if you go to Mosiro in Narok East, it is a place where when the sun is there during the dry season, people die. However, with just little money, a dam can be built and

a reservoir created for those people to be able to get water for their animals and own consumption.

Madam Temporary Speaker, if you go to Narok South in Narosora, you will be shocked. There is no road. There is a place in Narok South, up in Loita called Limpumputia where there is no road. The framers of the Constitution saw it fit to ensure that those people who are in the border of Kenya and Tanzania with no road can be given some money. Not to be equal with people from other counties like Kiambu as an example.

I love the Senator for Kiambu, but if you traverse Kiambu, even the remotest part of Kiambu, you will find a paved road. I travel a lot and I am happy to take my friend through Kiambu going to Limuru.

You will find that even roads going to nowhere have been tarmacked. Why is that? When development was knocking, those areas had tea plantations. Of course, the colonial masters saw it fit and subsequent administration also followed suit in ensuring that they paved those roads.

If you go to Kagwe today and drive through Kiambu going up all the way on Kiambu road to any rural part where you do not see any vehicle, you will find that the road is paved. I want to challenge my good friend from Kiambu to get in my car and I will be able to show him those places.

**The Temporary Speaker** (Sen. Mumma): What is your point of order Sen. Thang'wa? Hold on Sen. Olekina.

**Sen. Thang'wa:** Madam Temporary Speaker, my good friend the Senator of Narok is misleading this House because not every corner of the great County of Kiambu is either tarmacked or gravelled. Where he has just mentioned Kagwe Ward, the neighbouring ward called Kamburu is getting tarmacked for the first time since Independence.

If you go to the ward in Ndeiya, they are also getting the first tarmac since Independence. Sen. Olekina should not mislead this House. We equally require money for development because we do not have the roads that he is purporting to say that we do have in Kiambu County. Stop misleading this House. We need more money for Kiambu County because we believe we are equally marginalized when it comes to development, transportation and even agriculture.

**The Temporary Speaker** (Sen. Mumma): Sen. Thang'wa okay. Proceed, Sen. Olekina.

**Sen. Olekina:** Madam Temporary Speaker, I want more money to go to Kiambu and every part of the country, but is it not ironical that the distinguished Senator from Kiambu would sit here and tell us that we want more money yet he was the first one to oppose the Division of Revenue Bill to send more money to Kiambu. Come on! You cannot bake your cake and eat it. You need to be able to look at the whole thing.

Right now, we are saying he opposed more money to go to Kiambu. He voted against the Division of Revenue Bill to send – was it Kshs435 million - and more money to Kiambu? He is now saying---

**Sen. Thang'wa:** On a point of order, Madam Temporary Speaker.

**Sen. Olekina:** Madam Temporary Speaker, whatever I am saying here is completely factual.

**The Temporary Speaker** (Sen. Mumma): Sen. Thang'wa, you have half a minute.

**Sen. Thang'wa:** Madam Temporary Speaker, I cannot sit again for the Senator---

**The Speaker** (Hon. Kingi): Just address your point of order.

**Sen. Thang'wa:** My point of order is that when you are giving information, you give information that is right. Just the other day, we gave more money to the counties and I was here supporting and asking for more money. What we did before was to hold a little bit of money because we did not know what kind of governors we have.

We did not know, but the Senator should not stand here and try to insinuate that I never voted. I voted yes. The other day I voted for more money and today, I am even asking for more money. That is why I am also fighting that the governors should use the monies that we sent to the counties.

**The Temporary Speaker** (Sen. Mumma): Sen. Olekina, you can finish. Please give Sen. Olekina the reminder of his time.

**Sen. Olekina:** Madam Temporary Speaker, I begin by supporting this Bill because when I was trying to make my case, I was interrupted severally. It is about time that I see the people of Mosiro and Loita getting water. I am happy and I will take what I am given. Every time I am given a shilling to go to Narok County, I will take it there.

Today, I echo the words of the Vice-Chairperson of the Committee on Finance and Budget Committee, Sen. Tabitha Mutinda. She said, "Distinguished Senators, make sure that you follow this money." Other Senators who spoke also said that they hoped that this money will not be used for administrative purposes. I echo those words and I assure them that we shall follow because we have to ask ourselves very basic questions. How do you measure the poverty index? That is one of the things every Senator should know. Access to education is one of them. Education enrolment is another one. If you look at the availability to drinking water is another one. Sanitary and most importantly, electricity.

Madam Temporary Speaker, I am always calling on a daily basis the Rural Electrification and Renewable Energy Corporation (REREC) and Kenya Power to take electricity to my people of Narok. The distributed Kshs811 million is peanuts, but I will take that money because I know my good people of Emurua Dikirr will get about Kshs23 million. People there are poor. The people of Narok East particularly Mosiro will get about Kshs55 million. The total of Narok East will get about Kshs95 million.

People forget that people in Kilgoris Constituency are very poor, but I am happy to see that they are getting about Kshs226 million to be able to help them get water, roads and hospitals. This is very important. I plead with all distinguished Senators to vote for this Bill and allow this money to go. There are projects that were initiated.

Madam Temporary Speaker, just give me 30 seconds because I know this is ending. That were initiated about seven years ago with this Equalization Fund---

*(Sen. Olekina's microphone went off)*

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**The Temporary Speaker** (Sen. Mumma): Just give him 30 seconds.

**Sen. Olekina:** Those projects were initiated almost 10 years. They are white elephant projects because the contractors were never paid. There are hospitals and roads in Kilgoris. Those roads have to be done again. We just have to be diligent and ensure fiduciary responsibility.

Madam Temporary Speaker, in this case I plead and echo the words of my sister, Sen. Tabitha Mutinda that for once, Senators and both County Public Investments Committee (CPIC) and County Public Accounts Committee (CPAC) should ensure that this money is actually accounted for. To the Office of the Auditor-General (OAG), for once, please do something that will make people remember you. The same thing for the Controller of Budget (CoB) and the National Treasury. When that money is released, make sure that money is paid towards what it is intended for. If it is a hospital, it is taken care.

I thank you.

**The Temporary Speaker** (Sen. Mumma): The next speaker is Sen. Nyamu.

**Sen. Nyamu:** Madam Temporary Speaker, I rise pursuant to Standing Order No.110 to adjourn this debate---

**The Temporary Speaker** (Sen. Mumma): Is that a point of order or you are contributing?

**Sen. Nyamu:** It is a point of order I was asking for when Sen. Olekina was speaking.

**The Temporary Speaker** (Sen. Mumma): I wanted you to contribute. I have not given you that chance. It is okay, let her raise the point of order. I have allowed it.

**Sen. Nyamu:** Madam Temporary Speaker, I am requesting to adjourn this Debate because we have a very urgent matter on the Order Paper that has timelines and has to do with the extension of the mandate and time for the National Dialogue Committee.

I will read Standing Order No. 110 -

“Adjournment of debate

(1) A Senator who wishes to postpone---

**The Temporary Speaker** (Sen. Mumma): Senator, you do not need to read that Article.

Hon. Senators, I will straight away put the Question and the House can help to determine. Sorry, there is no need for a Seconder on this.

*(Question put and negated)*

**The Temporary Speaker** (Sen. Mumma): Hon. Members, we will continue with the debate. Sen. Oketch Gicheru.

*(Sen. Nyamu stood in her place)*

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You used your position differently, sorry. Sen. Nyamu, sit and I will give you an opportunity.

**Sen. Oketch Gicheru:** Thank you, Madam Temporary Speaker, for giving me the opportunity to contribute to this Bill. There are some misconceptions that have been shared in this House about the role of the Commission on Revenue Allocation (CRA). I wanted to debunk them given that I sit in the Committee of Public---

*(Loud consultations)*

Madam Temporary Speaker, protect me from Sen. Cherarkey and those who are making noise.

The Equalization Fund came about because in 1965, there was Sessional Paper No.10. It was an Executive Order that in the wisdom or lack of it of the then Executive, made sure that some areas which in our current order ended up being 14 counties that are in our territories today, were not good for investment.

The framers of this Constitution thought of how to deal with issues of historical marginalization and apprehend future marginalization. This is the point I wanted to make very strongly for Members like Sen. Omogeni and Sen. (Dr.) Khalwale.

Article 216 (4) of Constitution states that-

“The Commission shall determine, publish and regularly review a policy in which it sets out the criteria by which to identify the marginalized areas for purposes of Article 204 (2).”

That Article establishes the Equalization Fund. What does this Article mean? It means that marginalization was not only a problem in the past. It is also a concern that could keep on happening within our borders in different forms. We have observed a number of marginalization happening in our Country. For example, recently when there was recruitment of teachers, we saw some regions getting more teachers than other regions. That is a form of marginalization. The framers of the Constitution saw it best to arrest as things go.

We have also witnessed marginalization in the recruitment of the Kenya Defence Forces (KDF). I can assure you that in Nyamira, the number of people who were recruited to KDF was probably smaller compared to other places. Marginalization will continue to happen in this Country. Therefore, it is best if this House protects Commissions like the CRA so that the Commission can do its job of identifying the pockets of marginalization that continues to happen within our borders.

I am proud that somewhere like Kuria West in Migori County, a Ward called Nyamosense/Komosoko, which is the biggest Ward in that Sub County, has been considered. If you go to Komosoko, they do not even have water. I know that in Sessional Paper No. 10 of 1965, Migori as a County was never marginalized. However, if you look at the people of Kuria Community who reside in Migori where I come from, they have been marginalized by subsequent administrations. Basic things like water and electricity are a problem to them.

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Got Kachola Ward has been allocated Kshs13 million. Kaler Ward in Nyatike Constituency, Migori County has been allocated Kshs14 million. Macalder Kanyaruanda Ward has been allocated about Kshs20 million. Muhuru Bay and North Kadem Wards have been allocated about Kshs34 million. Those are areas that constantly face things that you cannot even imagine in the 21<sup>st</sup> Century would face.

You all know about Kabuto floods and lack of electricity in those areas. Muhuru Bay Ward has never even seen a tarmac road despite being a place where you have got serious fishing that feeds the nation. This demonstrate that marginalization as well pockets of marginalization continue to be in our borders. Therefore, as Senators and distinguished Members of the House, we must continue to support the independence of institutions such as CRA to continuously make sure that they arrest these pockets of marginalization.

If it were not for that, Wasimbete and Wiga Wards in Suna West, Migori County could not have been allocated a total of about Kshs50 million to deal with lack of water in those Wards. Uriri Constituency where I come from, North Kanyamkago Ward, has an eminent problem of water. Drinking water is a problem in that area to an extent that somebody would come all the way from Aego and Nyamasare to go almost three kilometers to Oyani River to fetch water, which is not treated. That is where all the animals drink water, women washing clothes there yet they are supposed to use the same water to drink.

I do not see a problem if the CRA as has identified North Kanyamkago as a marginalized areas and allocated Kshs.13 million to solve the issue of water. Therefore, the interest of this House must empower the CRA to continue looking at other forms of marginalization. Not only those that are informed by---

**The Temporary Speaker** (Sen. Mumma): Sen. Oketch Gicheru, your time is up. Sen. Tobiko, you may proceed.

**Sen. Tobiko:** Madam Temporary Speaker, I thank you for this opportunity to contribute to this debate. This is not the first time we are interacting with this Bill. We are happy that finally we are going to get these funds disbursed to our counties and see the difference that it will make for Kenyans in the marginalized areas.

I support the distribution of the Equalization Fund to the areas that have been identified particularly areas in Kajiado Central, Kajiado County. Dalalekutuk, Matapato North, Matapato South and Purko wards are going to benefit with a total of Kshs151 million for Kajiado Central Constituency. In Kajiado South, Entonet/Lenkisi, Mbirikani/Eselen Ward, Keikuku and Rombo are going to receive a total of Kshs66 million.

Kajiado West Constituency is going to receive the lion's share; Ewuaso Oonkidong'i, Keekonyokie, Magadi, Iloodokilani and Mosiro which are extremely marginalized are going to receive a total of Kshs218 million. I support the Equalization Fund Appropriation Bill, (Senate Bill No.30 of 2023).

However, whereas I support the areas in the entire country that are going to receive and benefit those marginalized areas, I have a problem with the formula. The CRA formula did not take into consideration other aspects of marginalization. In our

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urban centres, a place like Kitengela, which is very close by in Nairobi, should be looking like part and parcel of Nairobi. We have a place called Kya Ng'ombe in Kitengela where children have no space for a school. That town has no sewer system. Kitengela Town has water issues.

There are areas in our urban centres like in Kajiado North in Rongai, Kiserian, Ngong', we have a place called Geshagi, we have Gataka, areas that are marginalized and are in need of services but were not considered because they were looked at as areas that are in towns and were not considered for this Fund. It does not mean those who are in towns are comfortable. There are areas in towns that are very needy. If you find those who are needy in our urban centres, then you will know what poverty really means.

The CRA formula did not go deep into consideration of aspects of poverty that is bedevilling Kenyans. In the rural parts like where I come from in Kajiado East, it has not been allocated a shilling in the Equalization Fund. We have been viewed to be almost part of Nairobi, because we have Nairobians who are living around Kitengela. They are people who have moved out of the middle class in Nairobi into our area and built beautiful homes.

However, that does not mean the Maasais are not living in Manyattas. They are living in Manyattas with no water, roads and electricity. So, there is poverty in the midst of some plenty from some areas.

Madam Temporary Speaker, the CRA should go deep to address and get a formula that will address the real issues of poverty in this country.

Today, I can invite my colleagues to where I live, in a place around Konza City. Within one and a half hours you will be there as it is not far. However, I live in Nairobi because I cannot stay at home, like the people in Kiambu who go to their homes in Thika and come back.

My place should be a 40 minutes' drive, but it is not. It takes two hours as the road is bad. There will be wear and tear. Should the *El nino* come, I will not be able to reach my home because we do not have tarmac yet we are so close to Nairobi.

Somebody somewhere in this country must explain why we have the inequalities in this country. Some Government somewhere must be responsible. The Jomo Kenyatta Government and the Moi Government did not address the inequalities of this country neither did the Uhuru Government.

I hope and pray that my President today will address the inequalities of this country. That should we receive 38 kilometres of tarmac between Isinya and Konza, many of us will be operating from our homes and feel the pleasure of operating from home and coming to work in Nairobi the way the people from Thika do.

We want to feel what these other privileged Kenyans feel. We want to come from our homes, work and go back to our farms. It is possible, but we have been marginalized while being the bedroom of Nairobi. We have been marginalized, while so near to development. We just get to see the skyscrapers of Nairobi and the Standard Gauge Railway crossing our area.

**The Temporary Speaker** (Sen. Mumma): Your time is up, Senator.

**Sen. Tobiko:** Madam Temporary Speaker, we even see the Kenya Electricity Transmission Company Limited (KETRACO) power lines---

**The Temporary Speaker** (Sen. Mumma): Your time is up Senator. Proceed, Sen. Osotsi.

**Sen. Osotsi:** Thank you, Madam Temporary Speaker, for the opportunity to say something on the Equalization Fund Appropriation Bill.

This particular Bill is supposed to appropriate money to go to these deprived areas. We are talking about 34 counties which are going to benefit from this fund. Looking through it, my county is not included among the 34.

Madam Temporary Speaker, I am very concerned. When this Bill first came to this House, I engaged the CRA. They told me that they were going to consider areas in counties which are at least quantile one or two and some of my areas are in quantile two.

However, when I look through the Bill, my county is not listed. I join my colleagues who have said, we need to relook at the policy that identifies the areas that needs to benefit from this Equalization Fund.

Madam Temporary Speaker, even before we consider this Bill, it will be important that we consider the marginalization policy that this distribution is based on. It must be considered and approved by this House.

We cannot just come in at the last moment where we are being told to appropriate money. We must also look at the policy itself. How are they identifying the so called the marginalized sub locations and how are they categorizing them into various quantiles from quantile one to quantile four.

Madam Temporary Speaker, when I was given a list by the CRA, we had areas in my county, which ideally deserve to benefit from this Equalization Fund. There is a sub-location called Mwembe and Ivola which are in Tambua Ward. There are two sub-locations; Vigulu and Chagenda which are in Mungoma and South Maragoli and are not listed here.

These are heavily marginalized areas. People in Chagenda stay in stones. They have no access to water, hospitals and roads yet they are categorized as sub-locations which are not going to benefit. That is why we must question the process of determining marginalized sub locations instead of waiting to approve money to go into these areas.

There is an area in Emabungo Ward which is on a hill. Getting there is a problem and children struggle to access their schools. This area is not listed among those that are to benefit.

Vigulu and Chagenda have always experienced hailstorms. About two weeks ago, the houses in these areas were destroyed by heavy hailstorms. These people have not benefited from any emergency support from the Government. They are experiencing climate change challenges because of the destruction of Maragoli Forest. The Government is doing nothing. When this opportunity arises, I expect such areas to benefit. However, they are not because of the policy that we have not looked at or done in a skewed manner.

I want to respect the independence of the CRA. However, being independent does not mean you are not subject to oversight. We want to see how they determine marginalization in our areas.

In any case, the Equalization Fund was meant for ASAL areas. Now that the counties to be considered have been expanded to 34, then we must question why the 34 and not the other remaining 13? For example, Kakamega County is not included. We know there are places in that county such as Lugari and Matungu Constituencies which are heavily marginalized but are not included.

Madam Temporary Speaker, we cannot sit here talking about which area to get the Fund when we do not participate in reviewing, discussing and debating the marginalization policy upon which the determination of these areas is done.

In the next year, when we will be looking at the 2024 Bill, we expect to check the list of areas, the quantiles they belong and the marginalization policy being used before we pass those figures.

I feel so bad that my county is being categorized among the rich counties. We know that Vihiga is one of the most densely populated counties. Moreover, due to the dense population, our people have no land to cultivate anything. Our people are going hungry every day. Then, you come here and say that they are not marginalized and look for other areas which are and leave out potential marginalized areas in this list.

Madam Temporary Speaker, areas like Kiptemes, Imarakwa and Ivola are remote areas and getting there is a problem. There is no water and electricity but they are not included here. So, even though CRA is independent, it does not mean that they do things in a skewed manner. You need to subject that policy---

**The Temporary Speaker** (Sen. Mumma): Sen. Osotsi, your time is up.

Sen. Nyamu, proceed.

**Sen. Nyamu:** Thank you, Mr. Speaker, for giving me this opportunity to make my contribution towards this Bill. I support---

**The Temporary Speaker** (Sen. Mumma): Sen. Nyamu, I have not changed my sex yet.

**Sen. Nyamu:** Madam Temporary Speaker, I apologise. From the onset, I support the Bill. I support the concept of marginalized areas being given extra funds to channel development on the face of it. I also support the Bill because it elevates the burden of the already strained county budget and the fact that it is project and area-specific.

However, I have an issue with the formula. Nairobi City County has been presumed as rich because we have rich estates like Karen and Muthaiga. We ignore the slum dwellers of this county. Article 204 of the Constitution that creates this Bill is clear that the funds are supposed to benefit the marginalized areas.

In Nairobi City County, we have a lot of marginalized areas that are also densely populated. Nairobi is the home of large slums like Kibera, Mathare, Korogocho, and the Mukuru Kayaba. I am sure you have never heard of a slum called Silanga. The deplorable state that Kenyans are living in has continued to be ignored by policymakers and legislators in this and the other House.

I was privileged to serve on the board of the Nairobi Water and Sewerage Company for three years before I became a Senator. We had marked Nairobi County into seven regions. We have the central region which includes the Central Business District and its environs and the southern region. We saw it wise and necessary to have a separate region that included all the slums. I forget the name, but the slums were under one region, regardless of the location and the geographical area.

How we dealt with the slums was not the same way we dealt with other regions. In terms of billing and water supply, they are more populated and less privileged. I would like the policymakers and the Commission on Revenue Allocation (CRA) to recognize these regions as marginalized. Korogocho, Soweto, Viwandani, and Riruta areas have been ignored because of the neighbouring Karen, Muthaiga, and other rich estates. They are not children of a lesser god.

We have been crying for the slum dwellers, but they have been ignored over the years. We are going to resort to unorthodox means. As women of Nairobi City County's Laini Saba, Kiboro, and Mji wa Huruma we are going to undress so that we can get the attention of the policymakers and the legislators.

Nairobi City is not a rich county. Just because we are the seat of Government and we happen to have rich estates does not mean that we are rich. Enough of these talks, we are going to find solutions for ourselves. Governor Wavinya Ndeti said Kambas have their ways of solving things, in Nairobi, we will find a way of having our slum dwellers recognized by the highest office in this House.

Thank you.

**The Temporary Speaker** (Sen. Mumma): Sen. Wambua, you may have the Floor.

**Sen. Wambua:** Thank you, Madam Temporary Speaker, for this opportunity to also add my voice to the Equalization Fund Appropriation Bill (Senate Bills No.30 of 2023).

From the onset, I stand in support of the Bill for several reasons. First, for the first time since the advent of devolution, we are now almost at the tail end of actualising the debate around the equalisation fund and action on marginalisation. Article 204 of the Constitution establishes the Equalisation Fund. The Article makes it mandatory that we consider the recommendations of CRA in appropriating any funds to deal with marginalised areas. That has been done.

I wish to emphasise that yes, CRA is a Constitutional institution. However, it is also an institution populated by human beings who can make mistakes. When they do make those mistakes, we have a duty of care to correct those mistakes.

At least now 34 counties will receive these funds. It is unfortunate that counties such as Nyamira are not been listed. However, the beauty is that we do not expect some areas that have been identified as marginalised in the FY2023/2024, to automatically be listed to benefit from this Fund in FY2024/2025. We will be very keen on this. We expect that some areas will acquire a level of development that will push them out of the list of marginalisation, so that other areas maybe listed.

Secondly, I know there is matter that is pending before this House. I call upon Members of the County Assemblies (MCAs), in the areas that have been listed as marginalised and therefore benefiting from this fund. I want these MCAs to realise that there will be additional allocations to their wards. This must be taken very seriously. The funds that we are taking to the 17 wards in Kitui out of the four constituencies that have benefited from this Fund, are additional funds specific to development.

Madam Temporary Speaker, the Kshs139 million is going to Kitui East Constituency to cover Chuluni, Endau/Malalani, Mutito/Kaliku, Voo/Kyamatu and Zombe/Mwitika wards. These amounts must be seen to be undertaking basic services in those wards. The same applies to the monies that is going to Kitui South, Mwingi Central, Mwingi North and all the other wards in all the 34 constituencies that have benefited from this Fund.

We do not want to end up with a situation where this money is released to the counties and then governors realise that they now have additional funds to recruit more staff and do other things, outside of the wards that have been identified. That is very important for MCAs to understand. There are monies that have been allocated to specific counties for basic services. Those monies must be spent in those wards and provide those basic services.

In support, I thank this House for agreeing with me, because I know that they will, to send Kshs418,142,557 to Kitui County for the Equalisation Fund.

With those remarks, I support.

**The Temporary Speaker** (Sen. Mumma): I now call upon the mover to reply, Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Thank you, Madam Temporary Speaker. I rise to reply.

I thank all my colleagues for the support that they have shown for this very important Bill. We have noted their comments, especially on the unfairness of the formula that was developed by CRA.

The only thing we can assure them is that now, the ball is in our court. A few years from now, they will be coming before us, for us to approve a new version of that formula, and at that time, we will all bring your views on board. However, I want to agree on one thing, if we are going to extend the benefits beyond the 14 deserving counties then let everybody get it because; there is nobody who does not have pockets of poverty, including the great County of Nairobi City and the great Kiambu County. In Kakamega, people in Maraba Ward are waiting for this money. They will be very grateful. We have the people of Eregi, on the ridges of Eregi. We have people in Ikolomani; the ridges of Ikukhu, Idakho East who are waiting for this money.

So, should the formula have to change, we will have to set a higher standard with those remarks, Madam Temporary Speaker, I beg to reply and beg that under Standing Order No.63(3), you allow the putting of the question to be deferred to a later date.

**The Temporary Speaker** (Sen. Mumma): Thank you. The putting of the question is deferred.

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

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Hon. Senators, pursuant to Standing Order No.45(2), I wish to, reorganise the sequence of the business of today to move to Order No.9.

Can the Clerk read it out, please?

### MOTION

#### EXTENSION OF MANDATE OF THE NATIONAL DIALOGUE COMMITTEE

**The Temporary Speaker** (Sen. Mumma): Can the mover proceed?

**Sen. Omogeni:** Thank you, Madam Temporary Speaker. I beg to move the following Motion -

AWARE THAT, the National Dialogue Committee was established by Parliament through a Resolution passed by the National Assembly and Senate on 16<sup>th</sup> August 2023 and 29<sup>th</sup> August 2023 respectively;

FURTHER AWARE, that the Resolution outlines the mandate of the Committee which includes to facilitate dialogue, and consensus building and recommend appropriate constitutional, legal, and policy reforms on issues of concern to the people of Kenya;

ACKNOWLEDGING THAT since its establishment, the Committee has made tremendous progress in the exercise of its mandate and has achieved the following milestones: Formulated and adopted the Framework Agreement; Framed and adopted the Statement of Issues; Unbundled the Issues and agreed on prioritization of Issues; Harmonized the unbundled Issues; Conducted public participation and stakeholder engagements in line with the requirements of Article 10 of the Constitution; and examined and analysed the memoranda that were received from the public and stakeholder submissions;

FURTHER COGNIZANT, that the Committee is presently in the process of considering the issues for negotiations and recommending appropriate constitutional, legal, and policy reforms on each of the framed issues which are Electoral Justice and Related Matters: Outstanding Constitutional Matters: Fidelity to Political Parties/Coalitions and the law on multiparty democracy: Entrenching the National Government Constituencies Development Fund, National Government Affirmative Action Fund, and the Senate Oversight Fund into the Constitution and Establishment and Entrenchment of State Offices;

CONSCIOUS that the Resolution as passed by both Houses of Parliament, required the Committee to report to the Leadership of Kenya Kwanza and Azimio Coalition within 60 days from 29<sup>th</sup> August, 2023;

RECOGNIZING the need for the Committee to conclude the consideration of the issues for negotiations, the process of making the appropriate constitutional, legal and policy reforms on each of the issues as framed by the Committee and

preparation of a Report for submission to the Leadership of Kenya Kwanza and Azimio Coalition and thereafter, to Parliament;

NOW, THEREFORE, the Houses of Parliament resolve to extend the mandate of the National Dialogue Committee by a further 30 days from 28<sup>th</sup> October, 2023 and consequently, the Committee shall be required to report to the Leadership of Kenya Kwanza and Azimio Coalitions, on or before 26<sup>th</sup> November, 2023 and after that submit its report to Parliament.

Madam Temporary Speaker, this is a fairly straightforward Motion. The mandate of this Committee lapses on the 28<sup>th</sup> October, 2023, which is next week. As you know, this House proceeds on a short recess. So, we are bringing this Motion as a precaution so that the mandate of this Committee does not lapse when we are on recess.

As you may be aware, yesterday, the National Assembly passed a similar Motion and extended the mandate of the Committee on National Dialogue to 23<sup>rd</sup> November, 2023. So, we are trying to synchronize the mandate of the two committees so that the extension of time is on the same date.

We have made quite some progress ever since we got the approval of this House. We took submissions from more than 704 stakeholders and we received more than 60 presentations from stakeholders who appeared from various groups including constitutional commissions. This process has attracted a lot of interest from Kenyans. Even the judiciary appeared before us and made submissions.

I thank Senators who took interest to make presentations before us. I thank Sen. Wambua who wrote a memorandum and appeared before us. Sen. (Prof.) Tom Odhiambo Ojienda who appeared and made a very lengthy submission on the issue of checks and balances more so how to balance power; exercise of legislative power between the National Assembly and the Senate. All those are still matters that are under consideration. I thank the Senator for Narok County who also made a presentation on how to harmonize the roles of these two Houses.

Madam Temporary Speaker, this process is very key and is relevant to us as a Senate. We have already tackled a number of issues and almost agreed on issues of the Independent Electoral and Boundaries Commission (IEBC), entrenching the office of the Prime Cabinet Secretary, fidelity to political parties and multipartism, having a leader of opposition in the House and the three funds; National Government Constituencies Development Fund (NG-CDF), Affirmative Action Fund and Senate Oversight Fund.

There are a number of very important issues that are still pending before the committee including issues of cost of living, checks and balances which touch on the relationship between the Senate and the National Assembly, general issues about governance and outstanding constitutional issues. In view of that, it is the wish of the committee that we get more time so that we can deliberate this matter.

I must thank the delegation from Kenya Kwanza who have spearheaded this process in good faith, a lot of sensitivity and without any trace of vindictiveness. That is how leadership should be. We should never fear amending our Constitution. Do you know that many countries in Africa have very progressive democracies? South Africa

enacted their Constitution in 1996 and amended by 1997. Ghana passed their Constitution in 1992 and amended by 1996.

Many people cheat Kenyans when they say the American Constitution has never been amended. It has been amended many times. It was passed in 1787 and after five years, they passed a total of 10 amendments including the Bill of Rights in 1791.

Therefore, this is a process that we should all embrace. We should not fear if it comes to a referendum. Australia has had more than 19 referendums and they are going to have another one in November. They have made attempts to amend 44 Clauses of the Australian Constitution. In all those, only eight have been successful; the rest have been rejected.

So, going to a referendum to amend our Constitution is not war. It is a mechanism that we have put in our Constitution that there are some Clauses that are protected under Article 255. So, the only way to amend them is Article 255.

Let us isolate issues that can be amended using parliamentary process. If there are those which require us to go to referendum, we do so. It is not anything unusual. Rwanda has amended their Constitution through a referendum. So, we can do it. All we want to do is to ensure that we live as Kenyans.

We want to respect our multi-party democracy, accept that there will always be Executive Side and Minority Side that leads the opposition. I do not want to spend a lot of time; I urge the Senators to support this fairly straightforward Motion so that we can get time to finalize.

I urge Senators to be on the lookout when there is an opportunity to appear before this committee to make presentations. I know even Sen. Cherarkey made his presentation and we did not get time to hear him. Exercise the window that we are giving you with this extension. Come there and share your views with us because when we have such a process we do not want to lock anybody. Anybody who has a proposal to come put it on the table; we will listen to everybody then report back to Kenyans.

Madam Temporary Speaker, with those many remarks, I beg to move and kindly ask Sen. (Dr.) Khalwale to second. Thank you.

**Sen. (Dr.) Khalwale:** Thank you, Madam Temporary Speaker. I thank Sen. Omogeni for giving me the honour to second this very important Motion.

When this Committee was constituted, there was a lot of suspicion and bad blood between the two sides at the dialogue. With time, things have normalized and therefore, it gives me a lot of pleasure to be seconding a Motion that gives them an opportunity to conclude, make the product hygienic and even better.

Madam Temporary Speaker, I will not dwell too much on it because of the interest of time. I want to give five minutes to Sen. Cherarkey to say something, two minutes and two minutes.

I applaud all the people who have made presentations with special acknowledgement to the presentation by Prof. Githu Muigai, a man we respect in this country. He spoke to the issue of the cost of running Government. Under the new Constitution, the cost of running Government is too high. I am persuaded that we do not need 47 counties. We need to make big counties that are economically viable.



If you go to a county like Kakamega because we are huge, we do huge projects but if you go to a small county like Isiolo, they hardly have money for development. So, there is wisdom in what Prof. Githu said and I support him that we should reduce counties to 10 and also reduce constituencies.

The times when people used to say the place is too big is the time when we did not have good means of transport and communication. We are now moving into the modern world, there should be no fear.

I second the Motion as moved.

*(Question proposed)*

**The Temporary Speaker** (Sen. Mumma): Hon. Members, I will call upon Senators to contribute. Pursuant to Standing Order No. 34(4)(a), I wish to extend the time by 15 minutes.

*(Applause)*

Sen. Cherarkey.

**Sen. Cherarkey:** Thank you, Madam Temporary Speaker, for the opportunity. I thank Sen. Omogeni for bringing this Motion and Sen. (Dr.) Khalwale for seconding.

**The Temporary Speaker** (Sen. Mumma): Hon. Senators, I wish that you would take into consideration the time extended and bear that in mind, so that we are able to finalize this. I propose that you do not go beyond five minutes.

**Sen. Cherarkey:** Madam Temporary Speaker, I am well guided and as they say, brevity is the soul of wit, I will abide by your ruling.

As the National Dialogue that has been ongoing for some time demands for time, they must listen to each and every Kenyan. I was shocked when they wrote me a letter that I should not appear yet I am an ordinary Kenyan and a leader. You can imagine if they decline a whole Senator to appear, how will the *mama mboga or boda boda* appear before the Committee?

If there are issues that will need Parliamentary intervention, that report should come to the Floor of the House. We are not worried. You know, there was the Building Bridges Initiative (BBI One). This can be a possibility of BBI Two. Those of us, who have the privilege of being learned friends, know that the Constitution is not cast in stone. We can amend it at any time to improve it.

When we were passing the Constitution, there was general agreement that 70 per cent is good and 30 per cent is bad. We said that we would come back and look back and at the 30 per cent. I hope that when that time comes to make those decisions, no one will throw the baby and the bad water away.

I urge the Committee on National Dialogue to invite me. I have one of the Solomonic wisdom; the silver bullet in unlocking where this Country should go on issues of extension of the presidential term, electoral justice, devolution, and the role of the

Senate as we go into the future. The Senate must occupy its rightful place before the table of negotiations

I hope that the Committee on National Dialogue will come back with a report to this House. They must also report to us, who has been footing their bills at the Bomas Kenya including their sitting allowance. When that report is tabled, Kenyans will know that it is not be based on suspicions. I wish the Committee well. I hope that I will be given an opportunity to appear before them in the next seven days and share with them what I think is best for this country. If there is one person, who loves this country, it is yours truly. We want this country to prosper.

With those, many remarks, in the interest of other colleagues, allow me to support the Motion because it is a Procedural Motion and wish the Committee well. If they do not invite me, their report will not be valid.

I thank you.

**The Temporary Speaker** (Sen. Mumma): Sen. Wambua, you may proceed.

**Sen. Wambua:** Thank you, Madam Temporary Speaker. Very interesting to hear that the validity of this Committee is dependent on the invitation of Sen. Cherarkey to make a presentation.

I rise to support the extension of time for the Bipartisan Dialogue Team that is trying to crack a middle ground and return peace and order back to the country. I was privileged to have served in the first team that disbanded midway arising from disagreements. I am happy that the second team has covered so much ground and they only need a little time to compile their report and present it to the Parliament and the principals of the two coalitions.

My appeal to this team is to consider three things in this order. Number one is the cost of living. Number two is the cost of living and number three is the cost of living. If item number one fails, they should try item number two. If item number two fails, they should try item number three. If that fails, they revert to item number one.

This country is bleeding. Kenyans cannot bear the high cost of living anymore. The cost of fuel is rising almost every week. The cost of maize flour is too much. The cost of school fees for children is unbearable. The cost of living in this Country is unbearable to a great majority of Kenyans.

One of the things that the Azimio Coalition has been pushing is that even if this team is unable for whatever reason to achieve anything else, at least the cost of living must be handled. It must be managed to a level that an ordinary Kenyan is comfortable and proud to be a Kenyan living in Kenya in the year 2023.

After they address the issue of high cost of living, I made a presentation on the creation of Mwingi County and explained myself before the Committee on National Dialogue. I challenge the Committee through Sen. Omogeni that they should learn to listen to everyone. By the time they are tabling their report, there could be administrative issues that will go for a referendum or will need Parliamentary intervention. I hope and pray that when this Committee meets to compile their report, then the injustice to the people of Mwingi, who were denied county status on a technicality, will be cured. They will get a county and enjoy the fruits of devolution.

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With those few remarks, I support.

**The Temporary Speaker** (Sen. Mumma): Proceed, Sen. Madzayo.

**Sen. Madzayo:** Asante, Bi. Spika wa Muda. Pia nami ninaunga mkono hii Hoja iliyoletwa hapa mbele na Seneta ambaye pia ni Kamishna.

Kwanza ni kwamba, hii Kamati ya majadiliano ambayo inaendelea hivi sasa ni muhimu sana kwa taifa na kwa kila Mkenya. Hii ni kwa sababu imeweza kuleta amani na kufanya nchi ikatuliwa, kisha watu wakawa wanaendelea na mambo yao kama kawaida.

Kitu cha kwanza ambacho nataka hii Kamati iweze kufanya ni kwamba iangalie haki ya mwananchi. Sio haki ya polisi pekee yake. Nazungumza kuhusu haki ya wananchi kwa sababu wananchi wengi wanashikwa kiholela bila sababu na kubandikiwa mashtaka.

Ni muhimu kuwe na kitu mwafaka ambacho kitawekwa katika kipengele cha sheria kuona ya kwamba wengi wao ambao wanashikwa, kutakuwa na hali nzuri ya kushikwa kwa heshima. Pia ukitaka kushikwa kama mweshimiwa au kama mimi Seneta hivyo ndivyo mtu yeyote yule atashikwa.

Kamati hii yenye Uelewano ambayo hivi sasa iko katika mazungumzo haya, iweze kuona ya kwamba, kama mimi ukiniagiza niende katika kituao cha polisi mahali fulani nitakwenda.

Hata hivyo, utapata ya kwamba hata waheshimiwa pia hawaheshimiki sasa. Katika macho ya Wananchi, wakiona kwamba waheshimiwa wao hawa heshimiki hata na askari, inakuwa jambo la aibu.

Jana mimi mwenyewe nilikuwa kule Mavoko na tulienda na wale vigogo wetu wa kuu katika mirengo ya siasa. Hata baada ya kuwaeleza ya kwamba tunapeleka chakula na tunaenda kuwaona wale watu ambao wameathirika hatukuruhusiwa.

Hata kama kuna amri, lakini ingekuwa vyema kungekuwa na heshima, kwa sababu wale walikuwa ni viongozi waliowaambia wale askari ya kwamba hakungekuwa na fujo kwa sababu walikuwa wanapeleka chakula na tungeongea vizuri na wananchi.

Ninaunga mkono Kamati hii iongezwe muda ule ambao wamesema wana haja ya kuupata ili waweze kutengeneza ripoti nzuri. Hiyo ripoti ndio itakuwa ngao na ulinzi wa umoja wetu katika Kenya.

Naunga mkono.

**The Temporary Speaker** (Sen. Mumma): The Mover to reply.

**Sen. Omogeni:** Madam Temporary Speaker, I thank the Senators who have spoken this afternoon in support of the extension of time for the National Dialogue Committee.

I am very happy with the bipartisan spirit that I have seen across the Floor, The support from the Majority side and Minority sides. I assure Senators that we are alive to the expectations of Kenyans.

People have actually called us aside and said, “all hopes of Kenyans are on you. So, ensure that you deliver.” We have heard what Senators have said and the pending issues, including the cost of living that Sen. Wambua has spoken about. We have not tackled that issue of cost of living.

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On the issue of governance, I like what Sen. Madzayo has spoken about on how the police officers treat the hon. Members of Parliament. We need to address that so that there is an honor on how you treat MPs.

I assure you, Sen. Madzayo, that we shall address that issue under that sub-heading of governance. We know best practices. Some countries have really progressed. If you go to the United Kingdom (UK), the commissioners who head the eight regions are elected by the people.

In some of the States in the United States of America (USA), judges are elected in the ballot. This is because they want those dispensing justice and enforcing laws to be accountable to the people. These are issues that we need to put on the table.

It is a constitutional moment. I like what Sen. Cherarkey has said that we admitted, as a country, that we had some 30 per cent issue with the Constitution that we enacted in 2010. We will get an opportunity to address all these issues including what has been flagged; the relationship of the two Houses.

I thank you and beg to reply.

**The Temporary Speaker** (Sen. Mumma): Hon. Senators, pursuant to Standing Order No. 84(1), I wish to make the determination that this matter does not affect counties.

*(Question put and agreed to)*

### ADJOURNMENT

**The Temporary Speaker** (Sen. Mumma): Hon. Senators, it is now 6.45 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until tomorrow, Thursday 19<sup>th</sup> October, 2023 at 2.30 p.m.

The Senate rose at 6.45 p.m.