



THIRTEENTH PARLIAMENT
THE SENATE
OFFICIAL REPORT



Fourth Session

Wednesday, 30th July, 2025 – Afternoon Sitting

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 30th July, 2025

*The House met at the Senate Chamber,
Parliament Buildings at 2.32 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)

Order, Hon. Senators. We now have quorum. Clerk, you may proceed to call the first Order.

MESSAGE FROM THE NATIONAL ASSEMBLY

NATIONAL ASSEMBLY DECISION ON THE SENATE AMENDMENTS TO
THE HOUSES OF PARLIAMENT (BICAMERAL RELATIONS) BILL
(NATIONAL ASSEMBLY BILLS NO. 44 OF 2023)

The Speaker (Hon. Kingi): Hon. Senators, I wish to report to the Senate that I have, pursuant to Standing Order No.46(3), received the following Message from the Speaker of the National Assembly regarding the decision of the National Assembly on the Senate amendments to the Houses of Parliament (Bicameral Relations) Bill (National Assembly Bills No.44 of 2023). The Message dated Thursday 24th July, 2025 was received in the office of the Clerk of the Senate on the same date.

Pursuant to Standing Order No.46(4), I now report the Message.

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Pursuant to the provisions of Standing Orders No.411 and 148 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly.

WHEREAS the Houses of Parliament (Bicameral Relations) Bill, (National Assembly Bills No.44 of 2023), was published *vide* Kenya Gazette Supplement No.130 of 28th July, 2023 as a Bill seeking to give further effect to the procedures relating to matters of bicameral nature between the Houses of Parliament as contemplated in Chapter Eight of the Constitution of Kenya.

AND WHEREAS the said Bill was considered by the National Assembly on Thursday, 21st March, 2024 and passed with amendments and thereafter forwarded to the Senate for consideration.

FURTHER, WHEREAS while debating a Motion for the consideration of the Senate amendments to the Bill, the National Assembly noted the concerns of the Departmental Committee on Justice, Legal Affairs and Human Rights, that despite the Bill passed by the National Assembly seeking to enrich institutional committee by legislating a framework for the manner of conducting matters of a bicameral nature, publication of Bills, circumstances which give rise to a question on whether a Bill concerns county governments, resolution of a question on whether a Bill concerns county governments and conduct of joint processes, the amendments passed by the Senate misapprehended the objects of the Bill by deleting 16 of the 20 provisions of the Bill and altering the title of the Bill, thus reducing the scope of the Bill to only two matters namely, providing a framework for determining the nature of a Bill and the procedure for determining whether a Bill concerns county governments.

AND WHEREAS for the foregoing reasons, on 8th April, 2025, the National Assembly negated the Motion for the consideration of the Senate amendments to the Houses of Parliament (Bicameral Relations) Bill, (National Assembly Bills No.44 of 2023) thereby committing the Bill to a mediation committee in accordance with the provisions of Article 112(2)(b) of the Constitution.

NOW, THEREFORE, in accordance with the provisions of Article 112 of the Constitution and Standing Orders Nos.41(1) and 148(b) of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate and seek the appointment of nine Senators to a mediation committee to consider the Bill in accordance with Article 113 of the Constitution.

Hon. Senators, pursuant to the provisions of Standing Order No.166(2) of the Senate and in consultation with the Senate Majority Leader and the Senate Minority Leader, I will, at an appropriate time, appoint Senators to the mediation committee.

I thank you.

Next Order.

QUESTIONS AND STATEMENTS

STATEMENTS

Statements pursuant to Standing Order No.53(1).

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Proceed, Senator for Bungoma County, Hon. Wafula Wakoli.

DEPLORABLE CONDITION OF THE
KISUMU-BUSIA ROAD

Sen. Wafula: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Roads, Transportation and Housing regarding a matter of inter-county concern namely, the deplorable condition of the Kisumu-Busia Road, which is a critical transport corridor connecting Kenya to Uganda and other East African countries.

In the Statement, the Committee should address the following-

(1) The immediate steps taken by the Ministry of Roads and Transport to address the deplorable condition of the Kisumu-Busia Road, which is currently riddled with numerous and deep potholes that have been linked to a series of recent accidents, including details on the budgetary allocation for rehabilitation of the road in the 2025-2026 Financial Year, the scope of the planned rehabilitation works and the projected implementation timelines;

(2) Whether there have been any ongoing maintenance contracts for the road and if so, obtain information on the responsible contractors and the reasons for deficiencies in the maintenance works or delays in the execution of the contract;

(3) The findings of all previous assessments of the structural integrity and safety of the Kisumu-Busia Road, as well as the status of implementation of the recommendations arising from the assessments;

(4) The measures in place to ensure routine maintenance and long-term sustainability of the Kisumu-Busia Road as well as other regional link roads in the country.

Thank you, Mr. Speaker Sir.

Mr. Speaker Sir, the second Statement is on the utilisation of money from the Equalisation Fund in Bungoma County.

UTILISATION OF THE EQUALISATION
FUND IN BUNGOMA COUNTY

Mr. Speaker Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Finance and Budget on a matter of county-wide concern regarding the utilisation of the Equalisation Fund in Bungoma County in the 2021/2022, 2022/2023, 2023/2024, and 2024/2025 financial years.

In the Statement, the Committee should address the following-

(1) Whether the allocations for the marginalised areas in Bungoma County from the Equalisation Fund in the 2021/2022, 2022/2023, 2023/2024, 2024/2025 financial years were fully absorbed and strictly utilised to provide basic services in the water, road, health, electricity and education sectors;

(2) The identification process of all implemented projects, including whether each project was identified through proper needs assessment and community engagements in the targeted areas, and if so, obtain documents for the same;

(3) The measures in place to prevent duplication or double funding of projects by the County Government of Bungoma and the national Government and whether the implemented projects were integrated into the County Government of Bungoma Annual Development Plan and the County Integrated Development Plan, (CIDP);

(4) Whether the selection of contractors and suppliers of goods and services for all the implemented projects complied with the Public Procurement and Asset Disposal Act;

(5) The status of implementation of the projects, including details on whether each completed programme was implemented within the original timelines, and budget and attained its intended objectives, whether each ongoing project is on course for completion within the original timelines, as well as the steps being taken to revive and complete all stalled or abandoned projects.

OPERATIONAL STATUS OF UNDER VEHICLE SURVEILLANCE SYSTEMS AT JKIA

Sen. Beth Syengo: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Roads, Transportation and Housing on a matter of national concern on the operational status of security infrastructure at the Jomo Kenyatta International Airport, (JKIA), with specific reference to the Under Vehicles Surveillance Systems (UVSS) at the terminal entry points.

Mr. Speaker, Sir, Jomo Kenyatta International Airport (JKIA) is Kenya's busiest airport and a key regional hub, making it an essential part of the national security framework. At the terminal entry points, vehicles are expected to be screened using Under-Vehicle Surveillance Systems (UVSS) while passengers pass through metal detectors. However, it has come to light that several of the UVSS scanners are not operational, leading to over dependence on manual checks.

While passengers are still required to alight and walk through scanners, vehicles are often allowed through with limited or no scrutiny. This situation presents a serious security risk and undermines the effectiveness of the airport's screening procedures. In the Statement, the Committee should address the following-

(1) The reasons for the failure of the UVSS at the JKIA;

(2) The immediate steps taken by the Kenya Airport Authority (KAA) to repair or replace the faulty systems;

(3) The operational status of all security screening infrastructure at the JKIA and other major airports, including Wilson Airport and Moi International Airport; and,

(4) The existing policy framework for regular maintenance of airport security equipment and the measures in place to ensure redundancy in the event of equipment failure.

Thank you.

The Speaker (Hon. Kingi): Hon. Senators, before we proceed to the next Order, allow me to make this Communication.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM THE INSTITUTE OF ECONOMIC AFFAIRS, KENYA

The Speaker (Hon. Kingi): I would like to acknowledge the presence, in the Public Gallery this afternoon, of a visiting delegation of seven officers from the Institute of Economic Affairs (IEA), Kenya. The delegation is undertaking a study visit in Parliament.

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

I will call upon the Senate Majority Leader, in under one minute, to extend a word of welcome.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Speaker, Sir. On behalf of the House, I join you in welcoming the team from the IEA to the Senate this afternoon as we transact business.

This is an institute that follows through many of the public participation calls for memoranda from the various committees of this House on matters that affect our economy. Their input and insights have always been valuable on many issues in the public space. They provide great insight to Members of our Committee.

I appreciate that they have found time this afternoon to be with us. I hope, as they interact with our members of staff and Senators, they will share even further insights and also gain a deeper understanding from us as lawmakers. I welcome them and wish them well during the time they will be here this afternoon.

The Speaker (Hon. Kingi): Sen. (Prof.) Tom Ojienda.

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

Hon. Senators, we will rearrange today's Order Paper and handle Order No.8 and 9 and then we come back to Statements.

Clerk, can you proceed to call the Orders.

BILL

Second Reading

THE TECHNOLIS BILL (NATIONAL ASSEMBLY BILL NO.6 OF 2024)

(Sen. Cheruiyot on 22.07.2025)

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(Resumption of debate interrupted on 29.07.2025)

The Speaker (Hon. Kingi): The Mover of this Bill, you may proceed to reply.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I thank colleagues who spoke on this Bill yesterday and last week as well. We began consideration of the Technopolis Bill (National Assembly Bill No.6 of 2024) on Thursday last week. I was elated because there is a practice that is disappearing in this session of Parliament that is rather worrying.

Senators who have been here for a while know that this is a House of debate. I know what people say from back in the day, particularly on some of the legislations that have stayed in the corridors of Parliament for a while, like the Local Content Bill, 2023. If you ask me, I know the particular views of Senators who have served in this House.

It is good that I say this when you have stood down on provisions of Standing Order No.53(3). That provision either needs to be relooked or suspended all together. Unfortunately, a new trend is emerging where you know the views of colleagues on various Statements sought by colleagues in the House. This is equally important because that is business before the House. However, immediately after the comments on Statements, you hardly hear people speak to Bills.

I was very happy that many people, about 15 Senators, spoke on the Technopolis Bill (National Assembly Bills No.6 of 2024). They shared their insights and thoughts on things that they think need to be done to improve and make Kenya a competitive country in the digital and ICT space.

I urge colleagues that Parliament is a House of debate. It will reflect so badly 20 years after you have left this House and people want to hear your views, and all the records of the House indicate that you were just commenting on Statements. It is important that we take time to debate every Bill that comes before this House. That is why the Order Paper is published well in advance to ensure Members can prepare to contribute to these debates. For instance, yesterday at the rise of the House, Sen. Catherine Mumma was moving the Tobacco Control (Amendment) Bill (Senate Bills No.35 of 2024), a very important piece of legislation. Many of us are young parents and some among us are parents to children who are nearly my age.

As a country, we should be concerned. It should be reflected in our official records. When people look back, they will ask: What did you say when this challenge of e-cigarettes, some with toxic substances and surrounded by very limited regulation, was being debated? People will be interested to know what you said when the Bill was before the House.

Yesterday, I listened to Sen. Mumma move the Bill with so much passion. I believe she did so as a parent of adult children. She knows that in working for this country, she is also doing so for herself. That may be the case for many others in this House, especially the younger Senators of my age, who are raising young children. The laws we pass here will affect the society, including your children.

That is why I urge that we do not lose a very important practice of putting our views in the record of this House. If possible, let us file amendments. We have a very

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cordial relationship in the Senate, unlike our counterpart House. Hardly do we defeat amendments that are filed by our colleagues. In fact, many times a practice that had been set by our technical staff; if I have an amendment to the Bill and Sen. Ledama has an amendment that disagrees, they invite you for a conversation. You will then agree on which will be the better way to handle that piece of legislation.

That is a very sacrosanct process that is buried deep in the roots of legislation in this House from the time that I came. I have seen people post-trade, sit down, negotiate and bargain with each other until they eventually agree on a position. Hardly does the Senate vote along divided lines. We close ranks more often than any other House that you can think of. This is because we convince each other with reason.

I appreciate that each afternoon, there is an opportunity to speak to any Bill. If you see today's Order Paper, there is business that we will consider at the Committee of the Whole, which is also another important space. I like the fact that there are colleagues who on many times ask the movers of various amendments to perhaps convince the House. It is an important exercise. You will recall at one time, for example, and I do not know who I was seated next to, Mr. Speaker, but during Committee of the Whole, many people do not appreciate. I do not know whether I should be saying this because it is a weapon that sometimes we deploy as House leadership when you want to frustrate certain businesses.

There are colleagues who know this, that at the putting of a question, it is a Motion just like any other Motion, which actually the House should debate and take a vote on. However, many times, of course, given that there is hardly ever acrimony in the House on many of the proposals and the questions that are being put, we just vote with a simple 'Aye'. However, I have seen previously, on contested Bills before this House, if I recall back to history, when we did, for example, The Independent Electoral and Boundaries Commission (Amendment) Bill, if you remember, the one that switched the country from manual to electronic voter registration, almost every clause was contentious. This is because those that were on the Minority side tried to filibuster and find ways of wearing those that were trying to hurry that particular law. Those are practices which we should not lose as a House, and we should always seek to guide.

This Bill impressed me and helped me to reflect. When I listened yesterday in the afternoon when Members were contributing, it helped me to reflect on the legislative processes of the House and why it is important at every space to participate. I have just risen a few minutes ago to contribute on welcoming the people from the Institute of Economic Affairs. There are particular institutions that have been very consistent in their contributions to this House in the legislative-making processes. When you consider any item, for example, at the Committee on Finance and Budget, Sen. Roba and I want to believe that is a practice, almost on any Bill that goes to that particular Committee, you will never miss a memorandum from the Citizens Alliance. There is another one called Budget and something public forum. They are always making contributions and asking us, as a House, to consider this. That is part of lawmaking.

I believe that part of the improvement of our processes as Parliament and on procedure that we are being called to, in the last few months and years that Parliament has come under very serious scrutiny in terms of how we do our work and the processes

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that we undertake in this House, is how inclusive are we in considering the views of those that take the time to send memoranda to committees. This can only be informed by Members reacting to those memoranda, because if you read to all these reports that chairpersons table before this House, including on this Technopolis Bill, the report that is here, you will see a memorandum that was sent to this Committee by various practitioners in the ICT space in the country and how they feel their views need to be accommodated.

I wish it will be the practice in this House, going forward, that apart from Members reacting to the Bills, they will also consider the submissions by members of the public who are most of the time industry practitioners in that particular space of the Bill. If it is a Bill on mining, you will find people who practise in that space. They send memoranda to this House. That is a very important part of the legislative-making process. This is because Kenyans are speaking to their representatives in this House and they are saying, as you consider this law, please, look back, reflect on this.

Many a time people scan through the reports and go to the recommendations, perhaps, on what needs to be amended and so on and so forth. I wish that we will always reflect and recall. The Committee should do so. The courts have tried, though much as I disagree with them, we have almost been pushed to a point of being guided in a straight-jacket manner that even when members of the public submit memoranda and ask us to consider a certain proposal, that if we disagree with it, we are supposed to give reasons for every item. I do not know how practical that might be. This is because we are lobbied in all forms and shapes, including the people who speak to us in public forums, weddings, funerals, harambees and empowerment forums. People speak to us on many things and they tell us this is not right, as lawmakers, include this or the other.

I believe as an employee, because we are employees of the Republic, we cannot dictate to our employers how they need to instruct us. Not all of them can write. Not all of them can put together an email. In whatever form and shape they choose to instruct you, as a lawmaker, their views are important and need to be carried.

I say this to the House this afternoon, that I wish we would get to a point where we would see more debate on Bills, like has always been the tradition of Parliament over the years. Therefore, I register my appreciation to the 16 Members who spoke on this Bill and wish that even further today, when any of us, whoever has a Bill on the Order Paper today, gets a chance, I do not know if it will be--- I have not had an opportunity to recall who exactly will get a chance to do that, but we take time to speak to those Bills. This is because those thoughts and ideas will reflect 100 or 200 years after we are long gone from this House and this world, perhaps, and people will know that either we cared or what informed our decision-making.

With those very many remarks, I beg to reply and appreciate every Senator who contributed on the Technopolis Bill, 2024.

Mr. Speaker, Sir, pursuant to Standing Order No.66(3), I beg to request that the putting of the question be deferred until a later date.

I thank you.

The Speaker (Hon. Kingi): It is so deferred.

(Putting of the question on the Bill deferred)

We now move to Order No.9.

BILL

Second Reading

THE TOBACCO CONTROL (AMENDMENT) BILL (SENATE BILLS NO.35 OF 2024)

(Sen. Mumma on 29.07.2025)

(Resumption of debate interrupted on 29.07.2025)

The Speaker (Hon. Kingi): At the interruption of debate yesterday, Sen. Ledama had the Floor and had a balance of 11 minutes.

You may proceed, Sen. Olekina.

Sen. Olekina: Thank you, Mr. Speaker, Sir. Let me appreciate the Majority Leader for reminding us of the importance of debate and the importance of paying attention to the kind of Bills that we are discussing in this House.

As I rise to make submissions to The Tobacco Control (Amendment) Bill Senate Bills No.35 of 2024), it is imperative to note - and I hope that Senators on both sides of the aisle will be able to remember that the last time that this Bill was actually brought to this House was back in 2007. In 2007, we did not have challenges of e-cigarettes or the younger generation being used to make profit for these companies that manufacture tobacco.

One of the biggest problems that I have seen that I am so glad that Sen. Mumma is trying to resolve when it comes to discussing this Bill, is the issue of preventing the youth from being lured to smoke different flavours, where people will just come in without stricter regulations, where in countries that people are exporting tobacco into this country, there are no stricter regulations.

I was very happy to go through this Bill. I happen to be a Member of the Senate Committee on Health. So, we went through the Bill clause by clause and understood the challenges. There is an issue of profit versus health in this country. Yesterday, we discussed the issue of the levels of nicotine. The good Senator is proposing to this House that we control and limit the amount of nicotine in any nicotine delivery system, or even in a cigarette, from 20 milligrammes to 10 milligrammes.

It is important to note that the industry is insisting and saying in their submissions, because I really hope that by the time we go into the Committee of the Whole Stage, my colleagues will have an opportunity to read the report of the Senate Committee Health on this Bill, you will see the submissions brought about by members of the public. You will also see submissions brought about by the industry, and you will be able to decipher what is important between the members of the public and the

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industry. It is simply a matter of profit versus health. It is a matter of preventive versus curative.

The other issue which is very important for us to look at is that all pieces of legislations which were passed many years ago at some point will need to be updated, because nothing is static in this world. Things change on a constant basis.

We have this challenge of the e-cigarettes. Yesterday before the rise of the House, I sat down with Sen. Mumma. It was very interesting that she had an e-cigarette where on the outside cover of the packaging, it talks about the dangers, but the moment you remove the packaging, you toss it out, then you will find that the e-cigarette itself looks like a toy. I have just been handed this and it is imperative because we have youth sitting here. You will see that in this cigarette, there is a very big warning. However, the moment you toss this away, then you are left with this.

The youth will sit with this e-cigarette and it looks like a rubber and they will continue vaping. Actually, it looks like a power bank as well. The dangers in it is something that all of us must be alive to the fact that we are killing the younger generation.

There is a question that Sen. Mumma raised as she talked about flavours. Some of us, when we were growing up, knew people who were smoking what they called *keraike*. When that person comes in 20 meters, you will note that that is a smoker. Today, there is no *keraike* anymore. Someone will be able to smoke a strawberry flavor, walks in and you think that they just had a strawberry milkshake yet they are killing themselves.

Those are the things that we are being invited to debate and agree on how we will save the younger generation from being sick and from their lungs collapsing. The good Senator has raised one very important point in terms of taxation. This is an issue that we were agonising on because when we start talking about taxation, then we start discussing issues to do with money Bills, which we know that the Senate, under Article 114 of our Constitution, is sort of in the borderline in terms of the origination of the money Bills. It has to be from the Lower House.

She talks about a very important thing which all of us must look into in this Bill. This is so that by the time we go into the Committee of the Whole, the amendments that will be brought are those that will enrich the Bill and put up strict regulations. It is imperative that all the taxes that are collected from the tobacco industry, either today, some of it goes to the Social Health Authority (SHA), so that when you are taken to the hospital with your lungs having collapsed because of being a chain smoker, there will be money to pay for you and that can come from there.

Two, we discussed the issue of approval and testing. We agreed that it is important that we divide those two. Let the Ministry approve, let Kenya Bureau of Standards (KeBS) test, so that we know whether what the kids are smoking is good and they set proper standards.

I see my time is running out. Let me reiterate that one of the things that, Sen. Mumma, we need to tighten is on strict regulations of the tobacco industry in this country. We must tighten the regulations. In fact, I was of the opinion that we increase the age of smoking from 18 to 21 years, such that if you are 21 years old, it is the only time that you can be allowed to buy a cigarette.

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Three, is on advertising. It is important. Yesterday, when we were seated in the Committee, I remember the argument that we had with the Majority Leader of this House when we were discussing the Gambling Bill in terms of how can you restrict online advertisement. How can you restrict people from gambling online? There is such a gray area in terms of allowing and restricting advertisements. That is something that distinguished Senators have to agree on.

In my view, I still feel that warnings are better than trying to say there is no online advertisement. When you say there is no online advertisement, there will be IP addresses from all over the world. You cannot stop them. The youth will still be able to get into that.

It is important to balance the economic concerns as well as the health concerns. It is imperative to focus a lot on preventive rather than curative. That is the only way we can develop legislation that can help this population.

As I conclude, I would love to see a country where we have less of the population who smoke. In fact, Sen. Mumma, I would say that Kenya has almost adapted to an environment where people do not smoke as much. If you go to Europe, almost everyone smokes. So, we cannot compare the laws in Europe and the laws here. We have to say we are going to be completely unorthodox when it comes to legislation making and look at what fits this economy and this population.

I would love to say no advertisements. Let us ban advertisements. I would love to say let us stop smoking. In fact, my dear sister, Sen. Veronica, yesterday was saying she wished that she was seconding a Bill that would ban smoking in this country. That is not the reality. It can never happen. So, because people will smoke, let us figure out how we balance these economic concerns because it is about money. In fact, what I would propose is that when it comes to growing of tobacco in this country, it should be zoned to a particular region. When you zone it in that particular region, you will know it is only that area which people will be able to smoke.

One of the last things that the Ministry was proposing in their submissions during public participation was amending the Bill to make sure that it controls both substances with nicotine and those without nicotine. For those who understand, marijuana does not have nicotine. I think the Ministry was also getting into that area of saying that we now come up with one Bill to control everything to do with any delivery system of nicotine and non-nicotine substances.

As I conclude, let me thank the good Senator, but I want us to be realistic in terms of balancing the economic needs of this country versus the health of the population. Yes, tobacco kills, but can we run away from saying that we will now force every citizen of this country not to smoke? Let us be realistic that some will smoke. So, stricter regulations, let us tax and all that money, in my proposal, should go to SHA, so that it treats those people. Very little should be left to prevent it.

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

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I rise to support the Tobacco Control (Amendment) Bill (Senate Bills No.35 of 2024) by Sen. Catherine Mumma. This is a very important piece of legislation by our colleague.

This is for the history books. Like I had mentioned earlier, should our colleague succeed to steer this Bill through this House and subsequently to the counterpart House and provide clean, neat and efficient coordination on the delivery, sale, manufacture and production of these products, then she will have actually ticked the box in terms of being active legislators who are reacting to the demands of society as they arise. This is because there are many challenges that come up these days which, unfortunately, legislators, do not react to.

I know very little about smoking, but I am a lawmaker. In fact, I must confess that I grew up at a time where raising a child was communal. Therefore, one time, as a 14-year-old, I had come across Kshs5. I went to a shop and bought a bar of cigarettes. It was around 7.30 p.m. I wanted to be cheeky just like any other teenager. No sooner had I lit it than a thunder of a slap fell on me from one of the neighbourhood's elderly men. Up to date, when I see somebody smoke, my cheeks twitch a bit when I recall that hard slap from that gentleman. I have never tried that again in my life.

I know, Sen. Mumma, that I am a lawmaker and we must do laws for those that smoke and those that do not. The people who sent me to this House to pass laws should not ordinarily fit into my taste and preferences. I must do the law for them, including those that I do not agree with and the things I may not perhaps like. That is why I find this piece of legislation quite ingenious of a legislator.

Mr. Speaker, Sir, I know Sen. Mumma is passionate about this topic because it has been more than a year she has hunted me for this Bill, telling me: "Please, help me. We need to conclude with these issues. Are you not concerned?" She has been reminding me that I may not see it as a problem right now because my kids are young, but I should remember that in another 10 years, I may not have the luxury and I do not want to look back and say that I wished I did something about it.

The truth of the matter is that there are drugs and substances finding their way into the hands of our children and the society in the form of e-cigarettes. This is because of lack of a proper regulatory framework to govern that space. I like the fact that Sen. Mumma is specific on this Bill. It is nicotine related substances, including e-cigarettes. These cool things that young people carry in their handbags and pockets may not be easily recognized as substances that can harm their health. They take them in a nice, easy and relaxed way in public fora and in places where ideally they should not be taking them.

We know that smoking is restricted to specific zones, away from public spaces. That law is one of the most successfully implemented legislation and is part and parcel of what Parliament does. That law was passed in 2007. I remember the hue and cry in this town because back in the day, people would walk about smoking and doing whatever they wanted. On the streets of Nairobi, Nakuru and other parts of the country, they would blow fumes into your face until another legislator, just like what Sen. Mumma is trying to do, thought about a minute and said: "Wait a minute. This is not right. You cannot be puffing out fumes in a public transport vehicle, library or in a shopping centre where there are young children, elderly people and people with health challenges."

Mr. Speaker, Sir, they decided to restrict that space. Since then, up to date, that law is respected and applied in very strict consideration, together with its fines. I like that

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bit about the work that has been done by this House. Many times, people speak and forget that Parliament, as an institution, has passed progressive legislations over the years. It is only that on some occasions when people disagree on a certain topic for whatever reason, that they cast Parliament in bad light; it is the weakest link in our democracy and things like that. However, I know that in many spheres of our society, Parliament has successfully been able to give us legislations and good laws that have enabled us to live in a better country. That is one such example.

Therefore, I like this Bill together with its provisions and its definitions that are either getting altered, deleted or added to the previous Tobacco Control Act, 2007. I appreciate that Sen. Mumma expands the definition of tobacco products. That is important because in a litigious country like ours where sometimes, judges make certain decisions and when you try to reflect back, you say; even if the language might have been a challenge, surely, was that the spirit and the object of what Parliament or the lawmakers intended? This is because, we have had arguments on even whether, it should have been “a.m.” or “p.m.”. While you read that legislation, you can follow through and know the intention of the House.

I know in the Senate we may not have dealt with this, but I know that in the National Assembly, especially on matters of taxation, they have been asked to provide clearer definitions on certain legislations they have passed. On account of that, people have gone to court to challenge the intention of the House even on an issue as simple as a date. A law is signed in January and somehow, in the reading and interpretation or the fine print of the definition was not meticulous and then you find that there is a way you can read it and it reflects to times gone by, instead of times that are ahead and the courts agree with the petitioners.

Therefore, Mr. Speaker, Sir, the expansion of the definition is important. This is something I would like our legislative drafting department to be keen about. Nowadays, given the country we live in, definitions are extremely important. It is also important to expand and appreciate that in our country, we can lose good intentions such as this Bill on account of a definition.

I say that to make the point that it is not for lack of work to do, but it is out of the abundance of caution that these new phrases are being introduced into our Bills where we are expanding the definitions. Ideally, someone would say that everyone knows that nicotine is a tobacco product, but on many occasions, you have to provide it in black and white as has been done in this Bill, which includes, tobacco leaves and extracts. You have to say that even the extracts alone are important, including synthetic formations. Substances like what Sen. Ledama showed us, otherwise, someone would argue and say that they are just extracts and that they do not contain the things we are speaking about.

Additives also are important. There can be an argument on what the dominant product in a certain item is. Many of the vapes and what Sen. Mumma is talking about are 80 percent non-harmful substances. They are a cool smoke. I do not know how they generate that and nicotine is a small element of them. That is why they are popular with young people. It is important that additives have been added which means that a substance other than tobacco that has been added to a tobacco product unit. This includes flavors that are being defined.

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Mr. Speaker, Sir, there is also the definition of the electronic cigarette and what it means. I like part (b) of this drafting. It need not be a medical substance or medically defined as defined in the Pharmacy and Poisons Act. Why is this important? The provisions of this Act have previously been abused by people who consider that these are health devices.

In the administration of tax or even on tax alone, definitions are important because when determining the coding for where an instrument will fall under, it depends on what Parliament defined it as. Many of these devices can easily pass as medical devices if clarity is not provided as is being done in this law. There are people who import alongside other medical substances and when they are packaged in their country of origin, a simple collusion between the exporting country and local agencies here easily passes some of these items alongside other medical devices. This causes more harm or sometimes denies the country revenue that would have been realized from the sale of these substances.

Mr. Speaker, Sir, there are more details provided deep into the Bill, including the manufacture. In Clause 14, where the Principal Act is being amended by Clause 7-

“Where a person shall not manufacture or place in the market, the sale and the distribution or use of electronic delivery system or refill container uses unless the conditions are being provided. The nicotine containing liquid is contained in a dedicated refill container, not exceeding volume of 10 mls in a disposable electronic cigarette or in a single use cartridge and that the cartridges or tank does not exceed the volume of 2 mls.

(b) The nicotine containing liquid does not contain nicotine exceeding 10 mgs per mls.”

Sen. Mumma, there is need on the way that word is drafted. Remember what I mentioned earlier on about fluency in legislation. The way those words are written, somebody can easily confuse and think it is one word, yet I know for a fact that it is “milligrammes per millimeter”. The way it is written, you can easily confuse and think they are two instead of three words.

I do not need to repeat myself because I had earlier spoken about the need for us, as a legislature, to ensure that we provide clarity on all these Bills. Otherwise, people can go to court.

What is it that the Kenyan Judiciary cannot do? If they have invented something called--- What is it called if you are anticipating arrest? It is called anticipatory bail. I am struggling to recall other parts of the world that dishes them out so voluntarily. If you know that you have committed a crime and you suspect that they may come for you, you go and get it and it is granted like ice cream. I do not know about it, but just warning that we have to be careful about a particular thing.

The New Clause 14B speaks to an area which will be of concern to all young legislators who are here. It talks about nicotine pouches. It states that those pouches should be tamperproof and used without spilling their contents. The fancy way in which some of these pouches are made, a kid walking with a father into a supermarket can easily pick and confuse them for a sweet or lollipop, if it is not properly defined, that access to the contents inside those pouches should be difficult such that a kid will struggle to access. Otherwise if it is just easy to access---

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Sen. Mumma, I hope that when approving the pouches in which these substances are sold, the State Department for Health will take that into consideration and knowing well that these are things that can be very harmful to children.

Lastly, Sen. Mumma, perhaps it is further down in the Bill, but I may have missed it. You did not mention into what changes you may want to bring to the Kenya Tobacco Control Board (KTCB). If you remember, when the Cabinet Secretary for Health was last here responding to questions before the Senate, I think it was Sen. Maanzo who asked something about administration of funds in the Tobacco Fund, but no good vibes came out of that particular statement. In fact, the Cabinet Secretary said on the record of this House - he is not just an ordinary Cabinet Secretary, but a person who served as the Majority Leader for eight years. Therefore, he knew what he was saying. He said he was not satisfied with the answer that had been provided. He added that that statement was prepared for him and he only got to see it that morning. He said he would be unfair to us, as a House, if he just read through. He then asked for time to come back with a more comprehensive answer. I found that to be quite telling, because when a Cabinet Secretary raises alarm on how certain funds are being used---

Sen. Mumma, perhaps, in the Committee of the Whole, we may want to tie up that particular institution to ensure that those funds are used for the purpose they were meant. This business of creating Funds where you only enrich a few fat cats in the Ministries who go for seminars across the world, from one to the other, without implementing a single item of the things they learn from those conferences must come to an end.

We must put a cap on any of the funding, particularly sinking funds like the one for tobacco where monies are realised from a particular product. That money should be used to either respond to health challenges that arise from use of that particular product or teach citizens the benefits or otherwise of that product. That is what should be done.

It cannot be that you have a Fund, but if you check what its contribution is in improving the livelihoods of citizens, it is all about conferences and trips for those who have access to those funds. We need to put a capping such as 80 or 85 per cent.

I have always spoken of the genius of the National Government-Constituencies Development Fund (NG-CDF) and why it continues. I say this fully aware of the matters that are before us and why it continues to be a darling of the citizens in terms of any public funds. It is because of the capping that has been provided on how much you can use on administrative issues. It provides for 2.75 per cent maximum. The rest, which is over 95 per cent, should be actual work that can be demonstrated to citizens to tell them the work the funds did.

If you do not have any better use of those resources, take it to the Emergency, Chronic and Critical Illness Fund that we created under the Social Health Authority (SHA) because in any case, at the end of the day, many users of these products eventually burden our public health infrastructure. Therefore, there is no harm putting those funds into public utility. Being used to do the kind of things I heard Sen. Maanzo say on that particular Fund puts to question so many other things.

Mr. Speaker, Sir, I hope that when Cabinet Secretary, Hon. Duale, returns to this House, he will remember to bring us that response because while we are actively

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considering this Bill, that is an item that need not disappear from us. Colleagues, I know other issues. In that institution, since they license---

Sen. Mumma, why we must rejig that institution is because sometimes it is used to fight corporate wars, where when an entity wants to take domination of a particular product line, they use officers from that agency to either ban or frustrate growth of their competitors. That incident has been recorded on many occasions before us and in the media circles. That is something that should be of concern to us.

Mr. Speaker, Sir, since I know that we will get a chance to consider all these issues, I hope we will reflect on how to administer that particular Fund in this space in a better and neater way.

With those many remarks, Mr. Speaker, Sir, I beg to support and hope that we will improve on this legislation to make it better.

I thank you.

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

Sen. Cherarkey: Thank you, Mr. Speaker, Sir, for this opportunity to contribute on the Tobacco Control (Amendment) Bill (Senate Bills No.35 of 2024).

From the onset, I would like to congratulate Sen. Mumma who also serves as a Member of the Speaker's Panel because this Bill is critical.

Legislation is a moving target. If you have watched a movie called *Hard Target*, one of the leading lights in that movie tries to get a perfect shot when they are moving. In 2007 when distinguished Members of Parliament (MPs)--- Mr. Speaker, Sir, I do not know whether you were a serving Member or not because I was fairly young then.

When they legislated the Bill, the challenge then was smoking in public. With the advancement of technology, we have to appreciate that going into the future, we will keep legislating on matters of technology because we now have e-cigarettes.

When I travelled to the United States of America (USA) a few years ago, I was honoured to have dinner with one of the senior leaders in this country. Apparently, as we were having chitchats, that senior leader was smoking an e-cigarette. We did not realise until we saw smoke coming out of his nostrils and mouth. We were in the famous Manhattan Street. I do not want to name names, but, of course, that person was smoking. We did not find it odd because it was an e-cigarette. We only noticed because of the smell and there was discomfort after some time. I think I was in the wrong company because a number of us were consuming hard substances that were definitely not soda, water, milk or juice. When I went back to my hotel room in New Jersey, I had to do serious prayers via phone with my pastor for cleansing after being in that session, which I found unholy and unfortunate.

Mr. Speaker, Sir, personally, I have never smoked in my life and I do not think I will because of my strict upbringing and religious background. We have to do what we have to do. There are people who smoke, there are others who do not. My argument has been that my rights begin where yours end. As we legislate, we want to bring decency and discipline within the public forum. We can legislate on alcoholism and cigarettes, but I want to appeal and call upon parents that we cannot legislate morals.

Sometimes values and discipline are instilled by the parents. So even as we legislate, we cannot legislate values, discipline and morals. It behooves us, as leaders and

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parents, to always be on the lookout, so that we do not need to legislate on each and everything.

The definition of e-cigarettes has been given very well. There was a hue and cry of the consumption of Shisha in public places. I am happy the Ministry of Health has given regulation on smoking of Shisha.

Mr. Speaker, Sir, one funny thing with these people who are taking hard substances, be it cocaine, nicotine, alcohol or smoking cigarettes, a few years down the line, they will start an M-Pesa pay bill because of lung cancer and they want to travel to India to receive treatment. Even as we legislate on how to enable people who smoke, drink alcohol or use other hard substances, we should also be sure that the same individuals will burden up to 80 per cent the health infrastructure and service in this country. After some years, they may get sick with throat or lung cancers. They will go online and start fundraising through M-Pesa and other platforms of online fundraising, even individual fundraising, because of abuse of e-cigarettes and others.

I am in agreement with the National Campaign Against Drug Abuse (NACADA) that the consumption age of alcohol in this country should be raised to 21 years. I also propose, and I know the Mover or the “owner” of the Bill should consider that the smoking of e-cigarettes or any other form of smoking should be raised to 21 years, as has been proposed by NACADA, so that we can have a society that exist and is well-structured. I am saying this noting the fact that this week we have a number of schools which are your guests attending most of these sittings. We should raise the minimum age of consumption of alcohol and other drugs to 21 years.

Mr. Speaker, Sir, I know there were people that were proposing that the sexual consent should be reduced to 16 years as in some European countries. We should raise it to 21 years instead of 18 years, so that we can arrest child marriages and other forms of abuse. The intent of the Sexual Offences Act is to protect our future generations. It does not make sense when you are no longer there.

I agree on the definition of vape and the product. When I was growing up, you could tell a smoker from maybe their lips, discoloration of their teeth and also the smell. It is called tobacco or *kiraiko*, as one of my colleagues has put it. You could smell from far. My grandmother used the hard one that was being planted in the--- In the past there was a lot of discipline. There was a certain age where people could consume alcohol, even in Samburu and other parts.

It was only senior people of a particular age. I know it is only the *Nchuri Ncheke* who are allowed to consume certain types of alcohol, and even smoke the cigarette. Unfortunately, every Tom, Dick and Harry is smoking nowadays. That decency and moral should go back to where were--- I remember when I was growing up, they could get that tobacco, dry it in the sun then they stuff smoke it. With the pungent smell that used to come out, you could not even sleep or get oxygen around you. For this e-cigarette, the challenge is simple. It is easy to carry and has various flavours such as strawberry or vanilla. One will not notice. I agree that labeling is important.

I think taxation is very clear. On Article 114 on money bills, this matter has been legislated or interpreted by the Supreme Court of Kenya. I think there is no where in the law that says that the Senate cannot legislate on things that concern even taxation.

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Article 210 of the Constitution on the imposition of tax says-
“Parliaments shall legislate---”

From the reading of Article 93, the definition of Parliament is the Senate and the National Assembly. The principle of interpretation of constitutionalism according to one of my professors, Mutakha Kangu, one of the leading lights of the drafters of the Constitution, is that we must interpret the Constitution in a cohesive manner. So, you cannot tell us in Article 93 and 210, that Parliament shall legislate on the issue of taxation. Then you go back and argue under Article 114 on money Bills.

I agree on periodic review of taxation and progressive taxation. Of course, we do not want retrogressive taxation. I agree that even in their amendments on periodic review of taxation, we can always look at the Finance Bill that we normally generate.

On advertisements, I think we should ban the advertisement of these hard substances even during watershed period. I know some people would argue that from 10.00 p.m., the children are asleep, but the children of nowadays do not sleep. They do not sleep because of the nature of our--- When we were young, we used to sleep by 6.00 p.m. I was told by my high school teacher that the reason poor people have so many children is because they sleep early. The only activity they engage in, of course, the jury is out there.

With the current generation, there is television, Netflix and Amazon. People are watching and the internet is available. So, you cannot say by 10.00 p.m., these youngsters are asleep. They do not sleep, especially when the schools are closed.

I think we should propose stricter, limited watershed period maybe between midnight and 4.00 a.m. of course, the Kenyan time, but you cannot also prevent online advertising. This is because when it is daytime now, it is night in America or when it is night in America, it is daytime here in Kenya, and there is different time zoning. We must be very strict in terms of advertisements.

I remember on the NACADA’S proposal on the Alcoholic Drinks Control Act. They said they needed to ban the alcohol that was being sold in polyethylene bags and sachets. So, I agree that we must limit the sale and the size of e-cigarettes.

On the issue of advertisements, we need to be careful. We need to balance on the issue of raising of revenue. I agree on the principle that you tax more luxuries over necessities. That is why we tax more on alcohol and cigarettes because more are luxuries. Let us tax more the luxuries, like e-cigarettes, cigarettes generally and alcohol, so that we can give tax exemption to necessities such as bread, *unga*, among other items.

I think we agree with Sen. Mumma that nicotine content should not exceed 10 milligrammes. I agree with Sen. Mumma that it should not does not exceed 10 milligrammes.

In regards to health, I remember cigarettes and alcohol used to have a conspicuous warning before 2007. I would like to offer free advice to owners of companies and advertisement agencies. Be simple. They used to say, “*Tusker baada ya kazi*”. It was a simple message, but it encouraged and addressed a lot of challenges. There was also another advertisement in Kiswahili about family planning, “*Familia bora, jamii bora*”. Let us use concepts that are easy to sell.

I find it weird that the warning on some of these cigarette brands is so small that one might need a kaleidoscope or magnifying glass to read some of those statements. It should be mandatory that the warning should be conspicuous. I have seen some that have removable stickers.

Fourthly, I disagree that Cabinet Secretary should be given sweeping powers under Clause 14 (c). In my opinion, giving one individual those sweeping powers for approval of sale or manufacture of e-cigarettes is giving the Cabinet Secretary concerned a lot of powers. We should push for the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) as a board to be given powers to approve, manufacture and sell. Let us not give powers to Cabinet Secretaries. In the principle of the French Revolution, they say absolute power corrupts absolutely. Imagine of a Cabinet Secretary who is too religious. He might decline in approving, yet we have even cults like Shakahola and many others. For example, there is a cult that does not allow a husband and a wife to sleep on the same bed or feed their children.

What will happen when you get a Cabinet Secretary, God forbid, who does not believe in smoking, yet this somebody's business? So, let us not give the Cabinet Secretary sweeping powers. Let us give this to the board so that it is subjected such that even when you are being declined license, you can appeal. Let us give the advertisement and approval process to NACADA or even another board. There are so many boards that can do it. We can come up with a board where the Cabinet Secretary in charge of the Ministry of Health, NACADA and the counties nominate individuals to the board so that we can have a balance.

I saw the issue of banning of Kenyan products by the Tanzanian Government. I hope they will include also the issue of selling of e-cigarettes in East Africa. However, the principle of banning businesses is not good because it violates the East African Community Trade Protocols. We need to encourage each other and interdepend. We saw President William Ruto and President Yoweri Kaguta Museveni, the elder of the East Africa Community having a conversation on trade. Therefore, what Tanzania did is quite unfortunate. I know of senior Government officials from Tanzania whose children are schooling in Kenya. So, if you start creating boundaries like the colonialists did, you might need to even ban them from getting the schools. In my opinion, they should have banned the ill-behaved activists who went to disrupt their peace.

Mr. Speaker, Sir, let us put up a board. There is unfair competition in business. When I was in a primary school, there was a lot of hue and cry. Sen. Kathuri might have been around then. There were accusations that Members of Parliament were being taken by agents interested in violating the Tobacco Bill then. Allegedly, they were taken to Mombasa for retreats and what came out was hue and cry. So, we do not want to give it to one power so that he can abuse it.

In conclusion, I would like to comment on the issue of advertisement. In institutions of basic education, teachers should be aware of this. I know there are a number of teachers who are accompanying students before us. They should be aware. Some of them might be smokers, but they should be aware that you cannot smoke in basic education training institutions and places of worship. I do not think anyone would

want to smoke in places of worship unless that is a different place. In many churches, people rarely smoke. The only smoke you are allowed is that of the Holy Spirit.

It does not make sense to smoke in hospitals, clinics and other health institutions, children's homes, children care facility and playgrounds. However, I found residential houses weird. What will happen to the children if the father and mother are smoking, yet they are living in the same roof? How will we enforce that, Sen. Mumma? You will teach us. Will the children be reporting that dad and mum are smoking? It is a bit dicey to implement that. I do not know what you are thinking around it. Perhaps when you do reply, you can educate us. Some homes have a cabinet where they stock hard substances that is not milk or water.

Mr. Speaker, Sir, I agree that smoking should be prohibited in public service vehicles and police cells. I do not know if there is anybody who smokes in police cells. I thought cigarettes are contraband because I used to chair the Senate Standing Committee on Justice, Legal Affairs and Human Rights (JLAHRC). I was remanded in Kamiti and a number of police stations. I never saw that.

With those remarks, allow me to support.

I thank you.

The Speaker (Hon. Kingi): Before I call the next Senator to take on the Floor, allow me to make this Communication.

(Interruption of debate on the Bill)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM ST. MARY NYANGWA GIRLS SECONDARY SCHOOL

Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon, of visiting teachers and students from St. Mary Nyangwa Girls Secondary School in Embu County. The delegation comprises 60 students and four teachers who are in the Senate for a one-day academic exposition.

In our usual tradition of receiving and welcoming guests to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

I will call upon the Senator for Embu County to extend a word of welcome under one minute.

Sen. Munyi Mundigi: Asante, Bw. Spika, kwa kunipa nafasi niweze kukaribisha shule ya St. Marys Nyangwa Girls kwa hiki kikao.

Ningependa kuwashawishi wanafunzi mjifunze vizuri kwa sababu hapa katika Seneti mnaona upande huu, kuna msichana au mama ambaye ni Seneta, na ambaye amesomea Embu County. Nawahakikishia kuwa ikiwa mtasoma kwa bidii, wakati ujao ni ninyi mtakuwa Maseneta, Spika au Rais walakini, mkiweka mchezo hamtapata hivo vyeo.

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Nawakaribisha hapa. Jukumu letu katika Seneti huwa tunaongea mambo ya *Devolution* katika *counties* na vile pesa zitafika mashinani. Kwa mfano, wakati huu, Maseneta wamepigania kaunti zote 47 na tumepata Shilingi 415 bilioni ili maendeleo mashinani kama vile kilimo na usambazaji wa maji yaweze kuimarika.

Vilevile, huwa tunachangia kuhusu utendajikazi wa Cabinet Secretaries. Wakishindwa kufanya kazi, huwa tunawaita hapa na kuwauliza maswali kadha kuhusu wizara zao.

Wakati huu, mmepata Mswada unaohusika na uvutaji wa sigara hapa nchini. Walakini, hamkupata tukijadili Mswada juu ya madawa ya kulevya na bangi. Mjepushe na matumizi ya madawa ya kulevya na bangi. Mkifanya hivyo, mtakuwa viongozi wa wa kesho. Karibuni.

Bw. Spika, wakati mmoja ulitembea huko kama mgeni mashuhuri wa Diocese of Mbeere. Mkirudi Embu County, msemi mmeingia pahali ambapo Spika anafanya kazi pamoja na Maseneta wale wengine.

Bw. Spika, kwa dakika moja ningeomba huyu Seneta aweze kuchangia ili hawa wanafunzi wakike waweze kuona kuwa hata wao wataweza.

Asante, Bw. Spika.

The Speaker (Hon. Kingi): Sen. Mundigi, your request has been declined.

Sen. Tabitha Mutinda, you may take to the Floor to contribute to the Bill. While doing so, you may extend a word of welcome to the girls.

Sen. Tabitha Mutinda: Thank you, Mr. Speaker, Sir. Thank you, my neighbour, Sen. Munyi Mundigi, for the kind request.

I want to take this great opportunity to welcome you to this House. It is the 'upper' House, the Senate. I am a product of St. Anne's Kiriari Girls School in Embu County. I pursued my four years there. The English that I speak, the excellence that I have, is from the great County of Embu. It is a county that, when it comes to matters of education, is very top-notch. I wish you the best. I wish you excellence. I wish you God's guidance. Respect your teachers and enjoy your studies. God bless you.

(Resumption of the debate on the Bill)

Mr. Speaker, Sir, allow me to start by really thanking our colleague, none other than Sen. Catherine Mumma, for this great Bill, the Tobacco Control (Amendment) Bill (Senate Bills No.35 of 2024). It is a Bill that, if we implement the necessary changes correctly, will significantly impact our country's current state.

In Clause 2 of this particular Bill, the definition of smoking has been well-defined. It has also gone on to Part (b) where it has also talked about the tobacco products.

When I went through it, I realized that its sponsor, Sen. Mumma, focused more on the e-cigarette, rather than the traditional cigarette, which has been in the market for years. She is trying to ensure that we legislate correctly and put regulations as far as the e-cigarette is concerned.

In my view, the e-cigarette is the synthetic nicotine that has gone through a manufacturing process and that is also smoked in a digital, fancy, classy, modern way by a big market share; that is, the young generation.

Part (b) says that synthetic nicotine formulations are intended for use by smoking, inhalation or chewing. Part (b) has defined the e-cigarette, how it is put into the market. It is through chewing gums, it is through inhalation, sniffing, vaping and sucking. It comes in forms of tubes, filters and electronic delivery systems.

This is where the catch is because with these kinds of gadgets that are already in the market that our young people are using, you realize there is no regulation on these e-cigarettes. They have flooded the market, they are already here, but there is no control.

Anybody even children as young as 10 years have access to these particular cigarettes. They can easily within their friendship circles be able to show each other how to use them. This has enhanced the penetration of the product into the market massively with minimal control.

If this product is allowed to continue the way it is today, we will be allowing our children to continue accessing a product that not only negatively affects them, in terms of what we know cigarettes do or what nicotine does to the health system; it is very endangering. The sad part is that its accessibility to the young people is sort of 100 per cent today, as I speak.

As I looked at the Bill at Clause 2(c), it talks about characteristics of flavours. The Bill has defined and talked about the issue of flavours. I have googled these products and found that they have different flavours. For example, we have strawberry and vanilla; all those kinds of sweet flavours. These flavours are the ones that are bringing the desire and encouraging the young people to keep on purchasing this product. They are also making it difficult for the guardians and the parents to be able even know if their children are smoking.

As compared to the old cigarette or the traditional cigarette, if you smoke a traditional cigarette, definitely, you can smell the air and know that this person was smoking something. With the e-cigarette, because of the sweet flavours that are in place, it is very difficult for a parent or a guardian to even know if their children have started indulging in this particular type of cigarette.

In my view, Sen. Mumma, this issue of flavours should be scrapped. The e-cigarette should retain its traditional nicotine. The e-cigarette should have that original smell of the nicotine so that it becomes easy to detect when these young people are smoking this product.

Even the adults who smoke are changing from the traditional nicotine to the e-cigarette. It becomes sometimes difficult for someone to detect that this person is smoking anything. So, the Bill should allow that these flavours should not be allowed to be part of the product that is in the market.

As I continue, there is the other issue of the regulations. Today, as we speak, the traditional cigarette has regulations. The Act is very clear. First, there is a ban that you cannot buy just one stick of cigarette. You have to buy it in a full packet. It is never sold as a single stick. It is sold in a full packet.

Secondly, it is not just sold anywhere. It is sold in designated places. When we go to the supermarkets, we find that it is placed in just one area for those above 18 years, where there is alcohol and cigarettes. That is where they are secluded. They are put in a different place. These are some of the regulations that are in place. So, the regulations for the e-cigarette should be different. There should be regulations in regards to the e-cigarette separate from traditional cigarettes.

These regulations should be separated because at the time when we did the Tobacco Control Act, the e-cigarette was not in place. So, we cannot assume and say the same regulations that are in place for the traditional cigarette be the same used for the e-cigarette. The synthetic nicotine and the traditional nicotine need to have their separate regulations because they are different products. As much as the end product is nicotine, but the way the product has been packaged is very different. So, it cannot have similar regulations.

Mr. Speaker, Sir, Clause 6(2)(a) of this Bill talks about the implementation of tax policies where appropriate, prices, policies, tobacco products and all that. When I looked at Clause 6 (a) (i), (ii) and (iii), it talks about the issue of taxation. My opinion would be that the issue of taxation should be dealt with by the National Treasury. If a room is opened on different taxation on different amount of nicotine milligram per milliliter, there might be corruption. Manufacturers might indicate a lower milligramme to pay lesser taxation. However, in reality, it is probably at a higher level.

When it comes to the issue of taxation and policies concerning the e-cigarette, let the National Treasury also guide. They should use the same approach they have used for alcoholic products. Currently, there is a policy in place regarding traditional nicotine. However, as far as e-cigarettes is concerned, let it not be so separate from the National Treasury which has been advising on matters of taxation.

Mr. Speaker, Sir, as I continue to read the Bill, I came across the issue of product approval and testing. The Mover of the Bill, Sen. Cathy, mentioned that the Ministry of Health handles approval, testing and related matters. However, in my view, the testing of nicotine and standardisation should be done by the Kenya Bureau of Standards (KeBS). They are the ones with the machinery, the technical know-how, skills and personnel to provide proper guidance on setting the standards for e-cigarettes. Their point on approval by the Ministry is okay, Sen. Cathy. That would make sense. After the standards have been done by KeBS, which is mandated to guide on the standards, they will then be approved by the Ministry. The Ministry will be left with the issue of just approval, but not testing.

Further to that, I saw 50 per cent of fees paid for testing and approval under Clause (14)(e). Today, we have a budget for the Tobacco Board that is provided for by the National Treasury. It is not in small amounts; it is in billions. This fund is used for awareness and we do not see much happening. From where we are, we know the disadvantages of smoking tobacco. We know the health issues that come with smoking.

What am I trying to say? The 50 per cent that the sponsor has suggested as the fee being paid for testing or approval, an amendment should be made that percentage and be added to the Social Health Authority (SHA) as a health insurance fund. It should be narrowed to cases such as lung cancer and similar diseases brought about by smoking.

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This Fund will help the people who become sick from the effects of smoking. It will help them in their health insurance instead of it being given to the Board for awareness that we no longer even see. We do not even know what they really are doing. Since the e-cigarette came into the market, we have not seen the Tobacco Board do anything. We have not seen them come out, talk about it or giving guidance to the young people on the effects of tobacco. This 50 per cent should be added to SHA to aid in health insurance.

The other thing I noticed is nicotine volume levels. Clause 14(b) states that a person shall not manufacture or place on the market nicotine pouches unless the nicotine content of each pouch does not exceed 10 milligrammes. I agree with the Mover on this. Yes, 10 milligrammes per milliliter of nicotine may seem like a small amount. However, when the content is higher, it allows the smoker to inhale more and they may have consumed far more nicotine than they intended. Keeping it at 10 milligrammes ensures a reduced intake.

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

[The Deputy Speaker (Hon. Kathuri) in the Chair]

Mr. Deputy Speaker, Sir, the cost of manufacturing will increase because producers must package the nicotine at that specific level. This will result in higher production costs. However, whom are we protecting? We are protecting the end user. A slightly higher cost will discourage excessive purchases and consumption unlike when the nicotine content is 20 milligrammes or more where production costs are lower.

The pouches that are being used should not be disposable. Disposable products will be easy to find in the market. The cost of a disposable material is less, so it makes the product even cheaper. In contrast, non-disposable materials are more expensive. The higher the cost of this product, the lesser the accessibility to market.

The other issue is hawking, online sales and advertisement. As we speak today, the Tobacco Control Act is very clear that tobacco should not be advertised. It is against the law. What makes it different with the e-cigarette, which still has nicotine? It should not be advertised. There should be no online sales or hawking of this product. Otherwise, we will not be solving the problem. We will be encouraging the young people to get easy access to this product with online delivery and all that. It should be restricted the same way the traditional cigarette is very restricted, as I speak.

Concerning the smoking zones, I have seen she has stipulated very well that we do not smoke in the public, churches or even in this Chamber. There are designated places and areas. The same should apply to e-cigarettes. As you walk in the streets of this beautiful country, the Capital City of Kenya; Nairobi City, the one I represent, you will see someone removing a small, beautiful, nice gadget that looks like a lip gloss for ladies. Someone sniffs something, puts it back and you are left seeing smoke in the air. So, the areas for smoking should be designated and adhered to as required.

Let me finalise on the issue of the NACADA. I agree with what Sen. Cherarkey said on NACADA. All these things should not be left to the Ministry of Health. The Ministry of Health has a lot to do. We have the issues of SHA, the killings in Kenyatta

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National Hospitals that we are totally condemning and many other things that the Ministry of Health is trying to streamline.

Yesterday, I requested for a statement on why we have the county staff still working in their private clinics and they are paid their salary yet they should be in this public hospital. Some duties should be done by the NACADA Board. They should assist in ensuring that these policies are implemented.

This Bill is originating from the Senate and has county issues. Counties should have offices that help in the licensing. That is also revenue to the counties and narrows down as far as the county level is concerned.

With those many remarks, I fully support the Bill. I congratulate Sen. Cathy for this great Bill. I thank you.

The Deputy Speaker (Sen. Kathuri): Thank you. Next is Sen. William Kisang.

Sen. Kisang: Mr. Deputy Speaker, Sir, I also rise to support the Tobacco Control (Amendment) Bill (Senate Bills No.35 of 2024 by Sen. Mumma.

An Hon. Senator: Smokers?

Sen. Kisang: No, I have never smoked, my dear. We are not smokers, maybe something else. In the past, 1970s and 1980s when we were in primary school and high school and even in the university days, smoking was almost like not there. You would see one or two people smoking. Our teachers who used to smoke, you would never see them smoking. Maybe they did so in the staff room or wherever. However, I do not know what has happened of late. Smoking has become almost fashionable for people, especially this new one now called e-cigarette, which is endangering the lives of our youth.

The regulations that are already there in place is for the traditional cigarette that we used to see. There were two companies within the country that used to manufacture cigarettes before we got the imported ones. Regulations were put in place. We thank the Member of Parliament (MP) who came up with law for designated smoking areas. If you go to the Central Business District (CBD), you will see two or three places designated for smoking. You cannot see just people smoking on the streets. There used to be a lot of cigarette filters all over the towns and cities in this country before that law came into effect. This Bill once enacted will now regulate the sale and smoking of e-cigarette in this country.

I agree with my colleague. Sen. Mumma has given a proper definition of smoking, especially in the advent of this e-cigarette. I know it is not easy to legislate morals. However, there is a way that we can legislate, at least, to reduce or minimise the use of these products.

On Clause 4, my colleagues have said that 50 per cent of the fees for testing should be put in a particular fund, even if it is the SHA, so that it can go into the critical illness or prevention. When we get these funds, it should not target just strictly those with diseases related to smoking, but also other areas, for instance, the NACADA.

We are talking about NACADA which was formed to sort out issues related to drug abuse and cigarettes. Currently, in our towns and villages, people are consuming second-generation alcohol. I was very surprised last Sunday. We had to destroy many crates and bottles of *chang'aa* and second-generation alcohol. This is just pure spirit that should not be in the market.

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Mr. Deputy Speaker, Sir, these particular resources should be channeled to ensure that those organizations are supported. We can support the SHA in this particular area by giving it resources so that people with chronic diseases related to either alcohol, cigarettes and e-cigarettes are taken care of.

I also want to discuss Clause 14C. There is something that I saw here that caught my eye. We need to look at it. Clause 14J of the Bill states that a person shall not produce or supply tobacco products containing vitamins or additives that create the impression that a tobacco product has a health benefit or presents reduced health risk. These are the additives, the flavours of the e-cigarette. These manufacturers put in some sweet additives to attract the youth. They say, this is nice, it feels nice to smoke and inhale this particular brand. We should completely ban any additives or flavours that will be put in the e-cigarettes so that the smoker knows the original flavour. They should know the dangers involved with this particular e-cigarette.

Regarding online sales, there is no particular restriction on age. When they advertise, it is not sold to the people below 18 years. When the youth buy these products online, there is nowhere in the application where age is indicated. Therefore, we need to ensure when online applications are developed to sell either alcohol or cigarettes and e-cigarettes, there should be a mandatory age field. This will ensure that if somebody does not have an ID or is below 18 years of age, the system should not allow them to procure these products online. This is where the danger is.

Currently, alcohol and cigarettes are sold in supermarkets in a restricted area and the shops are not open until 10.00 a.m. and they close 11.00 p.m. We need to ensure that these cigarettes, as colleagues have said, advertisements be done during the watershed period, maybe 10.00 p.m. to around 6.00 a.m. in the morning. We can push it to midnight or around 4.00 a.m. It has been alluded in this House that the youth now do not sleep like ourselves. They used to sleep by 8.00 p.m. or 9.00 p.m. and wake up at 5.00 a.m. or 6.00 a.m. Nowadays, they sleep late. They are online all the time. This watershed period should be reviewed so that these particular adverts are done within the times that we believe everybody is asleep.

Clause 15 of the Bill, subsection 33 of the principal Act is amended by defining the areas. The sponsor of the Bill has given us the areas where e-cigarettes will not be smoked. This is right. This includes institutions of basic education and training, places of worship, hospitals, clinics, children's homes, childcare facilities, residential houses and other premises where children are cared for.

Sen. Mumma, this is where it is tricky. Residential areas, as colleagues have said, there are parents who are smokers. So how will we enforce this particular clause? You need to re-look at this and maybe re-word it because maybe if people are smoking and they smoke at home, there is no one to police them. It is their choice. You know it is their right. People also have their own rights.

On public service vehicles, I believe this one has been enforced on the traditional cigarettes. We also have public passenger vehicles, school buses, vans, commercial passenger vehicles, commuter boats, ferries and others. On police cells, I think we should also bring it here. I have seen a sign in prisons written that "smoking is prohibited in

the following areas, except in designated areas”. I believe prisoners while in prisons, may not have that right to smoke.

This Bill is progressive and we need to support it. While supporting it, we need to find a way of increasing the capacity or building capacity for NACADA because it has been here for a long time. However, we still see the effects of drug abuse. We still have a lot of issues with addiction.

Mr. Deputy Speaker, Sir, if you go across all our towns in the country, the abuse of alcohol is very high. That is why we are saying NACADA needs to build capacity and have officers across, even at the constituency level. It is like at the current moment, they are only at the county level. They are not able to assist our youth maybe because of resources. However, I believe with the passage of this Bill, they should be able to get additional resources, build capacity and employ more youth because we have a big problem of unemployment. Basically, we can even use volunteers.

Apart from that, they also need NACADA in conjunction with the county governments, to set up rehabilitation centres across all our county headquarters for both for men and women.

On regulations, I also agree with my colleagues that we should not give too much powers to the Cabinet Secretary for Health to do, regulations. Let us empower NACADA to do regulations. Let them be the ones issuing licenses so that they can get additional resources. If NACADA declines a license, at least, the business community will have a second level to appeal to the Cabinet Secretary to review the reasons why they have not been granted the license.

With those few remarks, I want to say that we need to urge ourselves as a country. We need to do a reflection. What is it that we are not doing right, that our youth are engaging in this serious and dangerous act of overindulging, both in drugs and in alcohol? It was not like this before. We need to talk to our religious leaders. We need to go back to the basics. Can we go to our churches? Can we go to our Mosques? Can we go to our tabernacles and talk to the youth? They need to go back to the basics and then we follow, we get good values, so that, at least, we do not lose a generation.

With this trend, we, in the near future, may not have a generation which will come after us and build this great country called Kenya because of addiction of alcohol and of cigarettes and this particular one called e-cigarette. You can imagine this is not nicotine. I thought nicotine is banned in Kenya. When we prescribe small quantities, slowly, they can say it is 10 milligrammes. However, in real sense, what they are packaging could not be those 10 milligrammes. It could be more. We do not have the policy to go and check every cigarette. You know the way Kenyans are very innovative. As soon as a product is out in the market, you will see a lot of counterfeits of the same product, but very dangerous product that we can kill.

Thank you, “Madam Temporary Speaker,” I support.

The Deputy Speaker (Sen. Kathuri): Sen. Kisang’, what did you say?

Sen. Kisang: I said thank you, Mr. Deputy Speaker, I support.

The Deputy Speaker (Sen. Kathuri): Next is Sen. Wakili Sigei.

Sen. Wakili Sigei: Thank you, Mr. Deputy Speaker, Sir. I was expecting Sen. Kisang’ to confirm that the statement he made was by default owing to the presence of

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Sen. Mutinda standing next to the Deputy Speaker. Nonetheless, I believe that was sorted out.

Thank you for allowing me the opportunity to contribute to this very important and timely Bill. I would like to appreciate Sen. Catherine Mumma for taking her time, doing the research and pushing through the system to make sure that this timely Bill is published and got the opportunity to have it debated on the Floor of the House.

This is a very timely Bill. Sen. Catherine Mumma, it is a confirmation of the interest and the attention that you have personally taken to make sure that despite the challenges that we have experienced as a country, as a global world and village, there is need to still fight out, to make sure that though there are so many possible protests and challenges against regulating this particular product, there is still a window. We are trying to do, by this legislation, is to regulate in order to protect the future generation. Not only of our own generation here in Kenya, but beyond.

The Tobacco Control Act was first enacted in 2007 and it was reviewed in 2012. We are, therefore, talking about a period of over 10 years. That 10-year period has definitely given rise into so many changes in terms of value system within the society, the exposure of our generations, the young ones, including the availability of the changing trends in market and marketing for products, which products include tobacco, the traditional one and the present product; that is, nicotine and other such related products, which previously the law did not regulate in any way.

Sen. Mumma, this is something that we have to run through within the legislative system of this House as well as the stakeholders. You stated yesterday while you were moving the Bill, that, definitely, there will be a lot of marketing against the passage of these amendments.

I know we still have got a good number of good souls. Kenyans of goodwill will definitely support such informed amendments to the law. It is also not lost on us that the Government over time has enhanced the enforcement of the existing law. Notwithstanding such laws being in place, there is a possibility that not every effort is to achieve the desired intentions by the enforcing it.

Alive to the fact that there is a decline in the market in the use of the traditional products of tobacco smoking by adults, there is an enhanced utilisation of the emerging products, which are nicotine products, vapes and such related products. There is changing trends in values and marketing all over and beyond. There is also the packaging, which is not highly regulated. So, the effort by this Bill is to make sure that we advance at least some regulations, especially in this emerging utilisation of nicotine and related products.

Sen. Catherine, I believe that mostly the introduction of the various amendments which we have made will also expand and align most of them to the various definitions of the Constitution. For instance, under the various clauses starting from Clause 5, there is a general reference to the Minister.

In this case, that will mean we have to seek to amend that the word “Minister” and replaced it with the “Cabinet Secretary”. I have picked from Clause 3, Clause 5, Clause 8 and henceforth. For example, the provision which you have proposed to amend Clause 5, Section 8 in the Principal Act. It will not be possible to debate and make certain proposals on this particular Bill without cross-referencing it with the Principal Act.

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Mr. Deputy Speaker, Sir, I am alive to the fact that several proposals have been cross-referenced. When you look at the provisions of Section 8, it talks about a fund, the tax pricing and policies on the licensing of this product. The introduction of Clause (D)(a), where the proposed amendment seeks to ensure that there is need for publication of an annual report for purposes of ensuring research, advancement of certain programmes as well as the impact of such programmes.

Once these amendments are passed, an institution mandated to run these programmes is required to equally publish a report and we will have action points. We will also know that following the provisions done by that institution, certain action points were made and if they were enforced. It will be the one to support the Government to ensure that enforcement is achievable. It will also ensure that it achieves its intended purpose. That is a welcome proposal. We will be looking at how the institution will enforce those proposals made by the publication of regular or periodical reports.

The proposal under Clause 14, Section 7 on the principal Act is on the conformity of requirements. The introduction of a new Clause 14(a) running all the way to 14(j) is a welcome move. Sen. Mumma, that is important because the principal Act does not reach out in its provisions as to the consequences of non-conformity with the provisions of the Act. Under Clause 14(a), the quantity and the content of the nicotine in a product is provided for. If there is a product that has been marketed and does not meet the provisions, that was not provided in the previous law, but now in Clause 14(a), this will be achieved. Therefore, the marketing or the manufacturing of the product will be required to have complied with the provisions of Clause 14(a).

Clause 14(b) talks about the manufacturing for purposes of marketing those products. This is the gist of the proposed amendments because it says that a person shall not manufacture or place on the market, nicotine pouches unless such pouches are child-tamper proof and can be used without spilling their contents. Beyond that, provisions ensure that we protect our young ones and our children from being availed products they can misuse because of their age.

Mr. Deputy Speaker, Sir, approval of tobacco products, information to be contained in the request for approval is a welcome proposal. The proposal under Clause 14(e) on the submission and testing of samples - Samples will require to be availed for testing. If they meet quality, that will be the only time they can be licensed for the market. This means that control will be enhanced that whatever is permitted in the market has gone through procedures that allow it to be placed in the market for sale.

Clause 14(f) talks about the period within which the Cabinet Secretary is required to communicate in writing to the decision that has been made on the request for approval for a product to go into the market. The provision that is seeking to have the Cabinet Secretary have 90 days seems to be long if the application is by someone who is a manufacturer. I propose that Sen. Mumma considers amending that period to a lesser period for purposes of ensuring that whoever is manufacturing these products is allowed to enhance the quality or the quantity of packaging to comply with the law.

Mr. Deputy Speaker, Sir, the creation of offence under Clause 14(g) for someone who contravenes this section of Kshs1 million or five per cent of the person's gross turnover is a bit lenient. I propose that it be enhanced to make it more punitive because

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we desire in this law to ensure that we restrict these products from going to the market. Once they are out there in the market, control mechanisms are not easy.

The requirement by a Cabinet Secretary to ban the products that do not conform with the market should be compulsory. That should be amended to reflect that the Cabinet Secretary shall ban that product if the product does not conform with the requirements of this Act. If we allow that discretion, that can be misused, especially from the trends that we all know on resource mobilization the manufacturers or traders in this business can do.

The requirement on Clause 14(j) provides that a person shall not produce or supply tobacco products containing vitamins or other additives that create the impression that a tobacco product has a health benefit or presents reduced health risks. That is a good provision. I agree with colleagues who said that, if there is a way in which we can completely ban additives or flavours in these products, the better. This is because the more the flavours, the lesser the possibility of appreciating that someone is smoking. We are looking at how we can support our young ones. If the flavours can distort the smell or the appreciation that someone is smoking, I would rather we amend this law to completely ban the flavours in the products.

Mr. Deputy Speaker, Sir, under the provisions of the proposed amendments to Section 15 of the principal Act, it talks about the age limit -Being a youngster who is not an adult to be someone below 18 years of age. The proposed amendment which seeks to delete sub-section (5) does not make reference to the age of 18. I propose that should be introduced.

More importantly, I would like Sen. Mumma to relook and ensure that in the principal Act, Clause 15(2) which talks about fines that can be levied on someone who has sold tobacco or nicotine products to a child under 18 years and below is only liable when found guilty and fined Kshs50,000 and imprisonment of not less than six months. This is a critical provision because if one can sell, six months or Kshs50,000 is too minimal a fine that will not be in any way be a deterrence at all and those in this market have resources. They will sell to the young ones, knowing very well that if they are caught by the law, they can just walk away by paying Kshs50,000 fine. They may intentionally do it because they want to market, sell their products and make profits because Kshs50,000 as fine is not punitive enough to be a deterrent to them.

Lastly, Mr. Deputy Speaker, Sir, as I said earlier on, this is a timely amendment to the Tobacco Control Act, 2007 and I support it. I also request that the additional proposed amendments by Members be put in place to ensure that it achieves the objectives that we want; supporting and protecting the future because the future is our young people who are highly targeted by these products we have and which we seek to control.

With those many remarks, Mr. Deputy Speaker, Sir, I support. Once again, I applaud Sen. Mumma for this particular amendment.

I thank you.

The Deputy Speaker (Sen. Kathuri): Thank you. Next is Sen. M. Kajwang’.

Sen. M. Kajwang’: Mr. Deputy Speaker, Sir, I rise to support the amendments to the Tobacco Control Act as proposed by Sen. Catherine Mumma.

If you look at the global dynamics of regulation and control of e-cigarettes across the world, Africa has been a free for all. It has been a market where anyone can come in with e-cigarettes and distribute them because there are no strict regulatory requirements. As a result, our children have found it easier to access e-cigarettes. It is much easier than accessing the traditional cigarettes.

It is becoming a serious problem. Those of us who are parents sometimes hear of stories in boarding schools that children sneak in with e-cigarettes because they are very difficult to detect and they do not emit the traditional smoke.

In the olden days, if you had some naughty boys smoking cigarettes in the toilets, the pungent smell would call in teachers immediately. With e-cigarettes, it is very possible for people to smoke and children to access those products without consequences being meted upon them.

Mr. Deputy Speaker, Sir, Sen. Mumma has made proposals to ensure that electronic nicotine delivery systems and advertising of tobacco products are regulated and that the sale of tobacco products, including electronic nicotine delivery systems, to persons under the age of 18 is prohibited.

Further, Sen. Mumma has proposed that these electronic nicotine delivery systems should not be manufactured, distributed, imported or sold in Kenya without prior authorisation by the Cabinet Secretary responsible for health. This is necessitated by the current situation where markets are open and anyone can bring in electronic nicotine delivery systems without paying taxes, their quality being vouched for and the health impact being looked at.

There are countries that have placed outright bans on electronic nicotine delivery systems. One such country is India which said it is not going to subject its population to that novelty. Another country that has put in very tight restrictions is Australia. In Australia, some of the electronic nicotine delivery systems are classified as therapeutic solutions, such that to access them, you need a prescription and you can only access them from a pharmacy.

Other countries have imposed a blend of restrictions ranging from age, advertising and even content. In Kenya, we have not had any restriction whatsoever. Therefore, it has been a wild waste when it comes to abuse of this novelty. We must take a multi-pronged approach to this particular subject.

One of the greatest ironies is that Kenya is a producer of tobacco and tobacco-growing goes on in Western Kenya, particularly in Nyanza, more so areas of Migori, especially around Kuria. Tobacco is a big economic crop there. According to the latest reports, 36,000 farmers rely on tobacco-growing for sustenance and about 13,500 hectares of land has been put under tobacco cultivation. Perhaps, we need to have a conversation on how to transition these communities to healthier products because in any case, it has not been established that tobacco-growing has led to wealth and increased the lot of those who practice tobacco-growing.

When you move around those areas, you can stare poverty straight in the eyes, yet you have farmers who dedicate and break their backs trying to produce tobacco which eventually ends up in certain value chains that mess up the health of our people and put an inordinate burden on the health systems in this country.

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Whereas we could argue that we produce tobacco in Kenya, it is possible to transition our farmers into healthier products. Where tobacco grows, sunflower and many other products like soya beans and avocado can grow. I believe that the best solution is not to have policemen running around with *rungus* and handcuffs after tobacco smokers, but to have a comprehensive policy that is designed to prevent and address the root causes of tobacco consumption and abuse in this country.

The tobacco lobby is extremely strong. I have been in this Parliament and I have seen instances where we have made proposals to amend the Tobacco Control Act. You will find people working in the tobacco companies hanging around Members' Lounge and Restaurant trying to talk to MPs against making certain proposals. They always argue that because of sinking tax and excessive excise duty that are imposed on tobacco products which is such a critical economic factor that we should not interfere with. However, we must balance the economics with the long-term health impact.

I want to support this proposed amendment Bill because ultimately, we must put in regulations and prescribe a certain regulatory or statutory framework for electronic nicotine delivery systems. As we do it, we must also be conscious of certain trends that are going on that we might not catch as Parliament and as parents.

Marijuana has been illegal in this country for the longest time. Its consumption, distribution and sale has been illegal, yet it is still widely available in the country. The chiefs and Administration Police (AP) officers know where it is. It has become a cash cow at the village level, from the village elders all the way up. They know where marijuana is grown and who the peddlers are. However, since it sustains a criminal enterprise, we cannot get rid of it.

Young people have now transitioned from smoking to eating it. There is an emerging trend of weed cookies that are easily found online and in urban centres and entertainment spots. You can think it is just a normal cookie yet it is laden with illegal products and substances that have got a dangerous effect on our health. How are we going to catch up? How are we going to keep up with our young people? How are we going to keep up with the criminals who are intent on using innovative approaches to escape the established laws?

Beyond the weed cookies, there is what they call e-weed. The same devices that can be used to deliver nicotine electronically can also be used to deliver cannabis electronically. We need to ensure that when we do legislation, it is as broad as possible, but ultimately, it is not legislation that will help us.

We must reset our moral fabric and our moral compass as a country. We must ask ourselves the underlying reasons that would drive a young person who has been in the church choir, pathfinder or alter boy all through then all of a sudden at the age of 13 or 14 decide to engage in some of these activities which the parents did not train them to do. Is it because of overexposure to the media or advertising? Do we have advertising systems and algorithms that trap our children into certain consumptive behaviour?

Mr. Deputy Speaker, Sir, the story is told of Japan. Originally, Japan was a tea-drinking nation. For a long time, the Japanese never used to drink coffee. When the big coffee multinationals came into Japan, they were unable to penetrate the market. They got a child psychologist to develop for them an advertising campaign. He tried and put

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coffee in children's food from an early age such as coffee-flavored infant formula, candy and chewing gum. Children started getting the idea of the feel and taste of coffee from an early age. It took only one generation for coffee to dominate as the biggest beverage in Japan that almost overtook tea. Why? Because they exploited the psychology of children.

We must look carefully at even the advertising space in this country. Are we having adverts that are enslaving our children? It goes beyond what Mr. Ezekiel Mutua used to do when he was in the Film Classification Board, declaring something pornographic and ungodly. We must have scientific approach and scientific vetting of the marketing campaigns in this country. They make it look cool to smoke and so the children want to smoke.

The star in Hollywood movies is always smoking. In many of these Sitcoms, you find a parent is smoking in the presence of children. Our children grow up thinking that it is cool and fashionable. That is where we need to prune. If we do not deal with the perverse influences in advertising and glorification of alcohol and cigarettes that we see in mainstream media, our children will find themselves enslaved by it.

Regulating morals is extremely difficult. Some countries have tried to ride the tiger. There is an ongoing conversation now related to what we are discussing on a policy for regulation and control and distribution of alcohol in this country.

We have seen a lot of proposals coming up that will make it extremely difficult for young people to access alcohol and for alcohol to be widely accepted.

Let us be fair and honest with each other. If someone at 18 is mature enough to vote, then that person can make other decisions in their lives. If you are going to be pushing these ages higher, then you would rather say that you start voting or driving at 21, because that is the age where you can have alcohol or nicotine products. We must be careful around these things. Certain countries have built entire economies on some of these products ensuring that there is quality and there is consistency in their production.

Cuban cigars are very famous and they fetch good money. They built a brand around it, but that does not mean that it is abused domestically. A Cuban cigar is so expensive that an average Cuban worker cannot afford it and cannot smoke it for leisure. It has been positioned as a luxury product. Other countries have done similar with alcoholic products.

Mr. Deputy Speaker, Sir, the French have their Cognac and they talk of Cognac diplomacy. When you meet a French diplomat and you are given the choice between Cognac and Scotch, they will insist on Cognac because it tells the story of the French.

They have their Champagne where the grapes come from only one part of that country. They have made it become a luxury product, not accessible to the hoi polloi, but they sell it to the upper classes of third world countries.

When you go to Scotland, they have their Scotch Whisky. They have branded it to an extent that one would want to drink the oldest. You may find someone drinking a 50-year-old whisky and themselves are not even 50 years by age. This is because it has been branded and psychologically, we have been made to believe that this is it. When you have made it in life, you should not be drinking 12-year-old whisky but the 50-year-old.

If you go to America, they have got their Bourbon. Even our neighbours, Uganda, they have their Waragi. Tanzania have their Konyagi. Nigeria have got their Ogogoro.

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Jamaica have Rum. You can scan the entire world. Certain countries like South Africa are famous for their wine that comes from the Stellenbosch region.

Mr. Deputy Speaker, Sir, we must mix, we must blend between making sure that we build products that can build our economy, but also ensuring our citizens are shielded from adverse and perverse effects.

Mr. Speaker, I know that you are a man who loves literary works. I want to invite the House to read a very interesting story by Leo Tolstoy. It is entitled *The Imp and the Crust*. Leo Tolstoy tries to tell the story of how man discovered alcohol. It is not a very nice story. It is a story that says that the devil came to enslave man and that is why the story is entitled *The Imp and the Crust*. Very, very interesting and I want to encourage you and the children who are in the gallery to read that story. You will realize that things such as alcohol and cigarettes perhaps are inventions of the devil intended to enslave us and intended to keep us in a state where we are dazed. We are not able to work hard and we are not able to praise and give worship to God who created humanity.

Let me finalize by saying that sometimes when we do good laws like this, we then provide an opportunity for rent-seeking for the enforcement officers. We have seen some things that happen at our airports. Immediately we pass this Bill, I am sure that some rogue customs and border officers will be asking tourists to open up their suitcases. If they find a vaping device, then they will use that to seek rent.

We have seen where counties have come up with alcohol restriction laws. I think Nairobi City County came up with certain tobacco restriction laws. They went ahead to deploy plainclothes policemen to walk around. They would frustrate people found somewhere with a cigarette, handcuff them and demand some bribe. They would generally embarrass people.

Let us make sure that enforcement of these regulations and enforcement of this statute does not open another back door for rent-seeking, for opportunistic behaviors from our enforcement officers.

Let us also allow county governments to be in this space because the Fourth Schedule of the Constitution makes things such as tobacco control and liquor licensing to be a function of county governments. All these policy directives coming from NACADA and the national Government, must be owned and must be put into place by the county governments.

The Bill is a good innovation. It will protect our young people from the adverse effects of these devices. We must support this, but fine-tune it to ensure we are not trying to regulate morals. We must deal with the root cause that drives our children into tobacco, alcohol abuse and drug abuse.

I support.

The Deputy Speaker (Sen. Kathuri): Thank you, Sen. Kajwang. You have announced so many textbooks and storybooks to be read. Maybe you do me some favour and write them down because I could not even get what you mentioned. So, you give me the list and where I can get the books.

Hon. Senators, let me make this communication as we proceed with the contributions.

(Interruption of debate on Bill)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM KIBIRICHIA JUNIOR
SECONDARY SCHOOL, MERU COUNTY

Hon. Senators, I would like to acknowledge the presence in the public gallery this afternoon of visiting teachers and students from Kibirichia Junior Secondary School in Meru County. The delegation comprises five teachers and 60 students who are in the Senate for a one-day academic exposition.

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

I thank you.

Since I am the Chairperson, I will give this opportunity to a Senator from Kitui County, but we took her to Meru County and she accepted to be a *merian*.

Sen. Tabitha Mutinda, please, invite these people. However, before you do that, let me say that this is a good school from my county. I schooled at Kibirichia Boys and they are Kibirichia Girls, an area that is conducive for learning. So, proceed and welcome the visitors.

Sen. Tabitha Mutinda: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to welcome my small brothers and sisters from Kibirichia Junior Secondary School, in my matrimonial county, Meru, the great county, which our Deputy Speaker represents.

As you have heard when Sen. M. Kajwang' was doing his submissions, he mentioned so many books. The Deputy Speaker loves reading, as you can tell by wanting to read more books. He has also stated that he is an alumnus of Kibirichia Boys, an indication that he has continued with the motto of the school, up to the Floor of this House. That reading and acquiring knowledge and the skills that are required is the best way to go. These are skills that nobody will ever take away from you. Education is the weapon that nobody will ever take away from you. The future belongs to those who believe in it. You have a bright future.

I am married in Meru County. It is my other home, apart from where I come from. I am happy to be here. You can also be here. Anybody can be in this particular space. I would like to tell the young people to respect your teachers and enjoy your studies. There is no reverse. You have a very good opportunity. Some of us did not even have an opportunity in the schools that we used to be to come to the gallery of Parliament. You have one. Use it well and make the best out of it.

I wish you well and God's blessings. My network tells me that the Deputy Speaker had sent something for you. I see the heads are nodding that you have received whatever that he has sent to you. May God bless you.

Thank you.

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The Deputy Speaker (Sen. Kathuri): Let us hear the perspective of this Bill from the Vice-Chairperson of the Senate Standing Committee on Health.

(Resumption of debate on Bill)

Sen. Mariam Omar: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity.

I appreciate Sen. Mumma for coming up with this amendment. The last amendment on the parent Act was in 2009, before devolution. That shows that there was a gap in the parent Bill, that is, the Tobacco Control (Amendment) Bill (Senate Bills No.25 of 2024). Sen. Mumma saw that Act and decided to fill it. I, therefore, stand to support the Bill.

Mr. Deputy Speaker, Sir, if I go direct to the Bill, the definition of ‘smoking’ has been done well. It has incorporated nicotine, as well as tobacco products, because the parent Act has tobacco product, but with no synthetic nicotine definitions. That means that the objective of the Bill is to come up with a regulation of the electronic nicotine Bill.

Mr. Deputy Speaker, Sir, I appreciate Clause 3, where Sen. Mumma wishes to amend that one person be nominated by the county government, because the parent Bill was done before the devolution. This one is considering in the county government, hence, involving devolution.

Clause 4, which is an amendment of Section 7, gives 50 per cent of the fees paid for testing and approval of the products. One of the Senators also brought that on board. We have to separate the role of the approval and testing - the approval to be done by the Cabinet Secretary in charge of Health, and the testing to be done by Kenya Bureau of Standards (KeBS). I know it is bureaucratic to restrict these conceptions, but for the industry players not to be riddled in bribery, we need to separate the approval and testing.

The consumers of these products, in the long run, end up with health problems, for instance, lung cancer. Under the Social Health Authority (SHA), there is a chronic illness fund. So, my suggestion is the 2 per cent from the source that is deducted, to go to the chronic illness fund. That is one of the amendments which I may suggest, so that at least people who are suffering from lungs cancer and many other chronic diseases can be catered for healthwise.

In reference to the volume of the nicotine in the electronic cigarettes, Sen. Mumma suggested it should not exceed 10 milligrammes. Internationally, the limit 20 milligrammes, which is suggested by industry players. It shows that they wanted the consumers to be more addicted. To counter that, we need to reduce the volume of the nicotine in the cigarettes. So, I agree with the 10 milligrams nicotine in the cigarette.

Mr. Deputy Speaker, Sir, with regards to the flavours, these electronic cigarettes are packaged in some kinds of packaging. For instance, there is a filter pen and flash disk, of which an ordinary person, cannot know until an experienced person tells them it is a cigarette. If it had smell, I could recognize. However, it has so many flavours that you cannot even think that this person is smoking cigarette. So, in my opinion, and in the agreement of Sen. Mumma, we should ban the flavours.

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In any way, if you are a smoker, why do you have to hide? To be on the safer side with our youth and children at home, if we ban this flavor, we can tell the behaviour of our children at home.

Mr. Deputy Speaker, Sir, with online sellers or hawkers, as well as online adverts, there is easy accessibility by our youth. Therefore, we have to restrict online sales, because nowadays all of us do sales from our bedrooms. We may think that our youths are doing some other things, when they are ordering this thing online. To avoid that, we have to restrict the mode of sales, that is, online sales, and also advertising.

Mr. Deputy Speaker, the other thing is the warning written on the electronic cigarette. The industry players suggested that we cannot do that because maybe some of them are like a pen and writing that warning on that, it will be a tiny thing. So, as a Committee, we decided that the warning must be written on the traditional cigarettes and also on electronic cigarettes.

My suggestion on the licensing requirement is this: The way liquor licensing is different from others, let also tobacco and electronic cigarettes licensing be different, so that it cannot be sold anywhere. Currently, it can be sold in a kiosk and anywhere else. However, if we restrict the licensing, it is more of a control measure, so that not everyone can access the substances.

The other one is about the board. I have already highlighted that Sen. Mumma has incorporated the county governments, and the Senate plays oversight over the county government.

There is also the matter of the Tobacco Control Fund. As I have already highlighted, the Tobacco Control Fund is currently not being used properly. They are getting the money from the Exchequer and that 2 per cent or 5 per cent roughly can be deducted to go to the chronic illness fund.

In Clause 5, there is a place of supplies for and by young persons. That is restricting, that no person should sell tobacco products to a person under 18 years old. That shows that we can have kids nowadays access electronic cigarettes, which are not regulated. It is everywhere in primary schools and secondary schools. So, if we pass this Bill, our primary and secondary schools will be safe, because the students there are under 18 years and it will be safe.

Mr. Deputy Speaker, Sir, regarding promotions and advertisements, no person should advertise a tobacco product on any medium that is electronic, print media or any other form of communication. That falls under online advertisement.

There is also the issue of smoking zones. The Bill talks of areas where smoking of cigarettes is prohibited. It is highly recommended that we are not supposed to smoke in a working area. There must be a strategic place for cigarette smoking.

With those few remarks, I support the Bill.

I thank you.

Sen. Omogeni: Mr. Deputy Speaker, Sir, I thank you for the opportunity to contribute to this Bill that has been sponsored by my good friend, Sen. Catherine Mumma.

I begin by saluting Sen. Mumma for coming up with this Bill. The use of e-cigarettes, which is being addressed in this Bill, poses a big challenge to the future of our

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children. I am happy that I am making my contribution when in the gallery there are a number of students who I believe will pay some attention to what I am going to say.

I have read the Memorandum of Objects and Reasons in support of this Bill. I want to begin by making an appeal to my good friend, Sen. Mumma, because of what I am going to state on this Floor. We should amend our Statement of Objects and Reasons for the Bill such that instead of saying that-

“The Bill seeks to ensure that no products, particularly electronic nicotine delivery systems are manufactured, distributed, or imported or sold in Kenya without the prior authorization of the Cabinet Secretary.”

I propose that we should amend this Bill to ban totally the use of e-cigarettes in this country. If my good friend, Sen. Mumma, is persuaded, we should amend this Bill and propose a total ban on e-cigarettes in this country.

If you speak to any doctor, I was present at a sitting of the Senate Committee on Health when we received views from a number of stakeholders. One of the stakeholders in that meeting was the widow of a son of a former Cabinet Secretary and a former Minister during Moi's Government; the widow of the late Peter Oloo Aringo Junior.

I took videos of the presentation of that lady, the widow of the late Peter Oloo Aringo Junior. That Kenyan who appeared before that Committee had very convincing health-backed scientific reasons we should not allow e-cigarettes to be sold in this country. I do not think that, as Members of this august House, we should legislate to allow products that are harmful to our children to be sold in this country.

I have seen the proposals in the Bill, especially in Clause 15, where we are saying that we are going to prohibit the smoking of e-cigarettes in our homes. Do you have the capacity to ban your 18-year-old from smoking e-cigarettes in your own home? What will be the legal consequence? The best thing we can do is to keep these products away from our borders.

The research around science supports banning e-cigarettes. I am happy that the Chairperson of the Senate Committee on Health is now here because he was in that meeting when we got that presentation from the widow of Peter Oloo Aringo Jr.

The World Health Organization (WHO) has warned nations all over the world that when you allow e-cigarette consumption in any country, the risk you are posing is to the children, the young people of those countries.

They say that the people at risk are not us, the senior citizens, 50 years and above. No. Nobody is going to convince you at your age to start consuming e-cigarettes. No. The WHO is saying that in countries where e-cigarettes are allowed, about 50 per cent of the people who smoke e-cigarettes are children between the ages of 12 and 18.

According to the World Health Organisation (WHO), where e-cigarettes are allowed, most of the customers are children between the ages of 15 and 24. Just look at the risk. Our country is putting a very vulnerable generation at risk of addiction. The WHO tells us that the easiest path to conventional smoking is through e-cigarettes? Honestly, why should we? Barely because we want to prioritize commercial interests and the tax revenue that comes from it, at the cost of destroying the future generation simply because we do not want the Government to lose tax revenue?

In that meeting, we had stakeholders present and all they were telling us is that if we ban e-cigarettes, there will be a drop in revenue from tax collection to the Government. We should not substitute the future of our children for commercial interests. As a country, we should never.

We are not an island, we are a family of nations. There are countries that have been bold enough to totally ban e-cigarettes within their jurisdictions. Even our neighbor in Uganda, H.E. President Kaguta Yoweri Museveni has totally banned e-cigarettes through the Tobacco Control Act of Uganda. If H.E. President Museveni, our neighbour, can forego tax income from e-cigarettes and the country is still surviving, why not us?

Asia and Thailand have also totally banned the use of e-cigarettes. If you read medical journals, the professional body of doctors in the United Kingdom (UK) published a scientific paper on the risks posed by e-cigarettes, which led to the total banning of e-flavoured cigarettes in the UK.

Mr. Deputy Speaker, Sir, if I had my way, this Bill would require us to retreat, locked up in a hall somewhere and call in professionals. Let doctors speak to us on one issue only: does e-cigarette smoking pose a risk to the health of our youths? If they bring evidence showing that e-cigarettes pose a risk to our young children, then the best thing to do should be in the best national interest. We should legislate bearing in mind that we are doing it in the best interest of the country, not for commercial interest. If we are convinced, then we should all unanimously agree to ban e-cigarettes.

If you destroy a generation between 15 to 24 years, it means we do not have a generation to take over from us. We should address the health concerns of e-cigarette consumption. They are serious. One, e-cigarette consumption, Sen. Catherine Mumma, leads to serious lung damage, what doctors call popcorn lung.

Do you know the serious risk, Sen. Wambua? When you smoke an e-cigarette, you do not feel like it can harm you because it is smooth. It goes down to the lungs very smoothly.

An Hon. Senator: Have you tried it?

Sen. Omogeni: I have not tried it. I am speaking like I have tried it, but that is what I was told in that meeting; that it goes down so smoothly deep into your lung and you do not realise it is causing damage. However, slowly by slowly, it damages the airwaves around your lungs.

In that meeting, we were told that there are documented cases, where young people just collapse and die; the cause being e-cigarette smoking. Why should we handle such a problem with gloves? We should hit the nail on the head and say as a country, we are not going to tolerate anything called e-cigarettes in this country.

The second health concern is nicotine addiction. This e-cigarette is the easiest way of becoming a smoking addict because you look at it like it is fashionable. Young people look at it like it is fashionable, but before you realise it, you become addicted to it. What is more worrying is what doctors are telling us, that these e-cigarettes have some harmful chemicals in them. They call it diacetyl. I do not know whether I have pronounced it well. There is a harmful chemical they use to do the flavours in those e-cigarettes, and our children take them innocently. We should not allow such a thing to happen. We are here as leaders who should be conscious that we need to protect the

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future of our young generation, and the best thing we can do, is to be remembered that the 13th Parliament banned e-cigarettes.

I have said there are so many countries that have banned this. You travel in all continents - You go to the Americas, you will find that Argentina has totally banned e-cigarettes; Brazil and Mexico as well. That is in the Americas. In Asia, there are many countries, including Thailand. I have just talked about Singapore and India. You come to Africa; I have given the case of Uganda. There is the case of Gambia. Let us include Kenya there. Let Kenya be among those countries. Even if you were to remove the health concerns for young people, there is another problem.

The world is currently discussing about issues dealing with environmental conservation. These e-cigarettes pose a serious risk to our environment because the products used are non-biodegradable, meaning that you use an e-cigarette, what remains? You throw it to the environment; you are destroying our environment and that is why countries like UK have totally banned disposable e-cigarettes. This is because they are conscious that we need to protect the environment.

So, I want to urge my good friend, Sen. Catherine Mumma, that she has an opportunity to really go on record as a Senator who brought a Bill that wants to protect the future of our young children. We all know how vulnerable our youths are in terms of some of the products that look very, very attractive, but pose serious health concerns to them.

Therefore, let us all come together and rally everybody to support the total banning of e-cigarettes. There is a time we travelled to Cuba with the Committee on Health. We were taken to firms that make tobacco. I was impressed - though I am not a smoker, Sen. Wambua - that in Cuba, the people who make cigarettes are extremely conscious of the risks that cigarettes pose to human beings, especially the products that are used in manufacturing cigarettes. So, what they do is that they roll those cigarettes using the tobacco leaf itself. They do not use any external material.

The cigarette is made from that tobacco leaf itself and World Health Organization (WHO) is telling us it is better to smoke that tobacco rolled in that tobacco leaf than to smoke an e-cigarette. We have tobacco in Kuria. If we want to allow consumption of tobacco, let us promote the traditional tobacco smoking that was there before industrialisation. I am sure our grandfathers used to smoke tobacco the traditional way; you fold the leaf and smoke it natural from the farm. We should not entertain the selling of e-cigarettes in our country.

I do not want to go to the details of what is contained in the Bill, but I want to draw concern on some of the provisions I continuously see on our Bills. Like what I am seeing in Clause 3, we keep saying that we need one person nominated by Council of County Governors. Have you ever seen, even once, an advert in a newspaper from the Council of Governors inviting Kenyans to apply to be appointed to any board?

What has been happening is that you put this clause, friends or supporters of governors are the ones who are nominated to sit in these bodies. If we want to entertain the involvement of the Council of County Governors in some of these legislations, we should say nominated through a competitive process, so that we rotate all these positions.

We have 47 counties. If in one legislation, a representative is picked from Meru, next time, it should be Kitui. In another legislation, it should be from Nyamira.

This one of just saying nominated by Council of County Governors, without a merit-based process, you will get that it is just friends of maybe--- and I am not referring to the current chairman, but probably it is just friends of either the chairman or if there is a committee that deals with issues of tobacco, they are the ones who select people to sit there. Let us make it merit-based competitive process.

Sen. Wambua, this matter is dear. I hope I have convinced one or two Senators, including yourself, that we should support total banning of e-cigarettes. I have said the WHO supports that position. We have several cases. We can take best examples from countries that have banned it, then we join the progressive countries that want to protect our children.

With those remarks, I support.

The Deputy Speaker (Sen. Kathuri): Thank you, Commissioner.

Sen. Wambua, please proceed.

Sen. Wambua: Thank you, Mr. Deputy Speaker, Sir, for this opportunity to also add my voice on this Bill sponsored by our friend and colleague, Sen. Catherine Mumma. I want to begin by, of course, congratulating Sen. Mumma for bringing this Bill for us to debate, take a vote and then make a decision on which way to go in matters relating to e-cigarettes.

It should be remembered by all of us that from around 2017 when e-cigarettes started making its appearance on our land through the then very famous *shisha* and vapes, to date, it is more than eight years. There is no law, even from the county assemblies, to regulate the sale and consumption of e-cigarettes.

Mr. Deputy Speaker, Sir, even more worrying is the ease with which any person, irrespective of age, can access these e-cigarettes through the various websites. If that is not worrying enough, then you should be worried when you realize the amount of nicotine packed into those vapes by the manufacturers and the dealers. Here in Kenya, and I have had a conversation with the promoter of the Bill and she has shown me vapes containing as much as 12,000 puffs in small units, others with 2,500 puffs and others with 9,000 puffs. However, from the manufacturers, the countries that manufacture these vapes and sell to our children in Kenya, the maximum number of puffs in those gadgets is 600. So, this begs the question; if we are not just a dumping ground for those dangerous vapes, then what are we? We have a duty as leaders to protect our children.

Yes, arguments have been put forth that at the age of 18, we should let our children make decisions on what they want to do with their lives. However, truth be told, this is one avenue where an argument can be put forward that it provides fertile grounds for child abuse and killing the future of our children.

I am happy today because we are debating this Bill when we have students visiting us from different schools and they need to hear it from us; that this is not a question of us legislating on morals because we cannot do that. We cannot even begin to legislate on morals.

The Senator for Nyamira, the Senior Counsel and our Commissioner in the Parliamentary Service Commission (PSC), has proposed an engagement and a

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conversation between us, legislators and the Ministry of Health on the dangers of e-cigarettes. I would like to expound on that proposal and suggest that such a conversation should happen between three parties. One, the legislators, so that we come up with a law that is relevant to the reality of our time. The second partner or party to that conversation should be the Ministry of Health. What we should be asking them to tell us from research, is whether there is any known benefit of inhaling e-cigarettes. They should bring that to table. The third party to that conversation should be the Cabinet Secretary for National Treasury and Economic Planning to tell us how much money we get in tax revenue from trading in e-cigarettes and the amount of money we use to treat ailments emanating from inhaling e-cigarettes. We may be surprised to realize that it is a zero-sum game.

In fact, we could be spending a lot more money on treatment for ailments associated with e-cigarettes and rehabilitation of young people and adults who are hooked to rehabilitation centres than the amount of money we get in taxes. I do not doubt it but if it is true that our neighbour Uganda has decided to forego the revenue emanating from taxes on e-cigarettes, why should we have a problem with making that decision?

Mr. Deputy Speaker, Sir, this is the beauty of debate. I am inclined to think along the line of my colleague, Sen. Erick Omogeni, that perhaps what we should do is to ban the trade in and consumption of e-cigarettes in this country for a good reason.

I have also realised that for some reason in this country – I am not saying this because I belong to the other side of the political divide – people are a bit timid in making bold decisions. Today, I read about a very bold decision which will hurt many of our people in Tanzania, where the Government there has decided to limit businesses that non-citizens can be engaged in while in Tanzania.

They even went ahead to say that any citizen who in any way facilitates a non-citizen to carry out certain business, including our own global innovation on M-Pesa--- Any Tanzanian who aids any person who is not a local to carry out a business on mobile phone money transfer commits a crime and is liable to a fine and a term in jail.

That decision in itself is bad for us, but it is bold. We can make bold decisions in this country and say that because the benefits of trading in and consuming e-cigarettes amount to nothing compared to the losses in terms of health, we should do away with e-cigarettes in this country.

Again, in this country, you will realise that there are websites that sell e-cigarettes. There are so many of them packaged in ways that are attractive to young people. I have had an opportunity to look at some of them packaged as marker pens and they look beautiful. Some of them look like toys, while others look like lollipops.

[The Deputy Speaker (Sen. Kathuri) left the Chair]

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

To add insult to injury, Mr. Temporary Speaker, Sir, they are flavoured with chocolate or strawberry flavours, among others. So, when you consume, you actually convince yourself---

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I heard Sen. Omogeni saying it goes in so smoothly, but he also made a rejoinder that he has not tried it. That must all be subjected to some analysis to be sure. The way he explained it seemed like a person who has firsthand experience. "It goes in so smoothly."

Imagine it going down so smoothly for young people and it is sold as a sweet with strawberry flavour. What will stop our children from buying this product? They then get hooked to nicotine.

Mr. Temporary Speaker, Sir, as a stopgap measure, as we move now towards a conversation on the ban, let us be very clear that you cannot have those products on Kenyan soil if and when they are flavoured. Let us begin from there. Nicotine is nicotine; cigarette is cigarette. It must smell and taste as it should. Do not put flavours into it to make it attractive or want to conceal the danger of cigarette smoking.

Clause 9 addresses the packaging and bans the sale, open sale of e-cigarettes in public vehicles, in public spaces. Clause 8 deals with the packaging using items such as sweets and toys that appeal to underage children. All that is good.

As I conclude, I want to make an observation about that Clause 3, the inclusion of a person nominated by the CoG in the Board. Going forward, I think this Senate will have to make a decision on how to engage with the CoG.

We must decide whether they are a body that we can give legal responsibilities, and in that case, make a decision on how they will be funded, or just decide that they are an amorphous body and then we do not assign any roles and responsibilities to them. This is very confusing. When governors appear before committees of the Senate, they are hard-pressed to explain how they are spending money on CoG activities, but when we legislate, we assign roles and responsibilities to the CoG.

Mr. Temporary Speaker, Sir, because I know you are the able Chair of the Committee on Justice, Legal Affairs and Human Rights, you must unbundle that confusion for this Senate.

From one side of the mouth, the Senate is saying that the CoG should undertake these responsibilities. On the other side of the mouth, you are putting governors on the spot for spending money to facilitate the CoG to undertake activities that you, as the Senate, have given to them.

Mr. Temporary Speaker, Sir, this does not look good. Since you sit there and we know your abilities, do something about that, so that we do not have situations where we are making laws and every time we are debating a Bill, it has a role that has been assigned to the Council of Governors (CoG), yet we are not clear on the legality of that body called the CoG.

With those remarks, I congratulate Sen. Mumma for bringing this Bill. I challenge her and this House to push the Government to make bold decisions and backed by the legislation that we are going to pass, ban the trade-in and consumption of e-cigarettes in the country. If the World Health Organization has pronounced itself on the dangers of e-cigarettes, and we have examples from our neighbours who have imposed that ban, as well as countries where the e-cigarettes emanate who have taken drastic and bold measures to regulate, we should be bold enough to say that we should push for a ban on e-cigarettes.

I support.

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The Temporary Speaker (Sen. Wakili Sigei): Thank you. Sen. Wambua, I took note of the comments that you made regarding the proposal by Sen. Mumma with regards to the membership, which you are proposing to come from the Council of Governors. Remember, there has been litigation on the legality of that Council. Definitely, we will take appropriate action.

Senior Counsel Okongo Omogeni knows the extent with which such positions can be pushed through the House. I think it is worth the comments you made. As the Chairperson of Senate Standing Committee on Justice, Legal Affairs, and Human Rights (JLAHRC), I will also undertake the necessary.

Hon. Members, there is no other Member who is seeking to contribute to this Bill. Therefore, I will call upon the Mover, Sen. Catherine Mumma, to reply on this important Bill.

Sen. Mumma: Thank you, Mr. Temporary Speaker, Sir. Allow me to most sincerely thank colleagues who have taken time to read this Bill, and have contributed and enriched my thinking on the Bill. I would like to specifically thank Sen. Veronica Maina, Sen. Olekina, the Senate Majority Leader, Sen. Aaron Cheruiyot, Sen. Cherarkey, Sen. Tabitha Mutinda, Sen. Kisang', yours truly, the Temporary Speaker, Sen. Sigei, Sen. Kajwang', Sen. Mariam, Sen. Omogeni, Senior Counsel, and Sen. Wambua, who have contributed in a very profound way.

Mr. Temporary Speaker, Sir, I am glad that colleagues appreciate that this is not just a legislative adventure by Catherine Mumma, but a responsibility that we need to take on as a House. I hope it is a responsibility that we will deliver soon. It is a responsibility that I hope we can persuade the National Assembly to deliver as well. It is a responsibility that I would like to call on the industry to not block, a responsibility that I am asking the Ministry of Health to take seriously.

In my opinion, to the Cabinet Secretary (CS) Duale and the officers in the Ministry of Health need to admit that they have failed the nation by allowing eight years of business that is ruining our children to keep going unchecked. They must be part of the solution. They must not be part of the problem.

Mr. Temporary Speaker, Sir, a number of proposals have been made. I take note of Sen. Cheruiyot's proposal around the need to use the opportunity to see whether we can put greater responsibility on the Tobacco Control Board, which seems to work for the industry more than it works for the people of Kenya. He has made some proposals - and I will go and sit down with him - about how we could hold them accountable to what they are supposed to do. He has made proposals around the Fund that they have; how that Fund can be ploughed back to ensure that we sensitize our society better around the ills of smoking and of e-cigarettes as they have come.

Sen. Omogeni and Sen. Wambua would prefer that we totally ban the e-cigarettes. That is on the other end, but we have Senators also who say that the business is there, our responsibility is to ensure that we regulate this, so that our children are out of harm.

There are those who have talked about going beyond nicotine-based products. Is it Sen. M. Kajwang' who talked about the e-weed? It is something, again. I will have a chat with him to see if there is a clause that might be able to deal with that.

There are those who have raised issues around the taxation, responsibilities of Kenya Bureau of Standards (KeBS), NACADA and so on. There are those who have brought suggestions that I also include a definition of synthetic nicotine and so on.

A profound one comes in around how we get the Council of Governors (CoG) to be reflected in this Bill. Whether we want the CoG to be reflected or whether we want to give responsibility to county governments and even if we do so, to ensure that there is meritocracy in the nomination.

Hon. Senators, I really appreciate it. I just want to tell you that I think this is quite important.

Allow me to just make one demonstration. Sen. Wambua, you are here. This gadget that I am holding, which has 12,000 puffs, if you go to the UK, the EU and China, the minimum nicotine content is 20 milligrammes per millilitre. In Kenya, this gadget in particular is 50 milligrammes per millilitre.

In the UK and the EU, a gadget cannot have more than 6,000 puffs. This gadget has 12,000 puffs. So now, if you have a naughty 10-year-old who gets access to one gadget in the EU and one who gets access in Kenya to this gadget, the child in the EU needs to go to the shop 60 times in order to achieve the same amount of nicotine as in this gadget in Kenya.

So, can you imagine your child in Kenya having one gadget in their bedroom, puffing away on this gadget, but the one who is being naughty in the EU must be extremely innovative to go to the shop 60 times. That is how we are killing our children.

Now, there are those who have raised the issue of how you will monitor residents. The issue is that the law on the protection of children does not say that if your father is a smoker, it is okay for you to smoke. So, how will we protect children, for instance, who must passively smoke because their father is a smoker? When you talk about residents and the children get to know that a household is a place where you should not be smoking, first, even when they are coming in, they need to be careful. Secondly, a careful parent will take that law seriously, will go outside the house when they want to smoke.

So, it is not just a law in vain. Even though it may not be implemented, it sends a serious message that we are also worried about the children of those who smoke. They are children with equal rights in this country. We are cognisant of the fact that you might be making them passive smokers in your house. I would like Members to look at this in this regard.

I would like to tell the Chair of the Committee on Health and Members that this law is so important. I am open to sitting with you and bringing any amendments that would add value to it. Do not be aggrieved that I moved forward. It is just that a year later is too long for us to move. Therefore, I am open to that.

With those remarks, thank you so much. I also thank the Secretariat; Directorate of Legal Services and Directorate of Legislative and Procedural Services (DLPS), who helped to draft this law. I also thank my team, which has done research. I keep sending them to go and research the meaning of certain things. They have worked on this. I would like to thank you for all of this.

Now, pursuant to Standing Order No.66(a), I request for the deferment of putting the question to a later date.

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I thank you.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. Catherine Mumma. Pursuant to---

(An Hon. Senator spoke off record)

Yes, she has replied.

Kindly, rephrase the closing comment.

Sen. Mumma: Hon. Temporary Speaker, I reply. Pursuant to Standing Order No.66, I request for the deferment of putting of the question.

Thank you.

The Temporary Speaker (Sen. Wakili Sigei): That is now in order. Pursuant to Standing Order No.66, the putting of the question is hereby deferred to the next Sitting of the House.

(Putting of question on the Bill deferred)

Now, hon. Members, for the convenience of the House, we will rearrange the Order Paper and call Order No.20.

Clerk, please, call Order No.20.

MOTION

ADOPTION OF REPORT ON STATE OF MARKETS IN VIHIGA AND BUNGOMA COUNTIES

THAT, the Senate adopts Reports of the Standing Committee on Devolution and Intergovernmental Relations on its inquiry into the state of markets in Vihiga and Bungoma counties arising from statements sought by Sen. Godfrey Osotsi, MP, and Sen. David Wafula Wakoli, MP laid on the Table of the Senate on Tuesday, 1st October, 2024.

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

Sen. Mumma: Mr. Temporary Speaker, on Wednesday 27th March, 2024, the Senator for Bungoma County, Sen. David Wafula Wakoli, MP, rose pursuant to Standing Order No.53(1) to seek a statement from the Standing Committee on Devolution and Intergovernmental Relations regarding the state of markets in Bungoma County.

Similarly, on Tuesday 12th March, the Senator for Vihiga County, Sen. Godfrey Osotsi, MP, rose pursuant to Standing Order No.53 (1) to seek a similar Statement from the Committee regarding the state of markets in Vihiga.

In the Statement, Sen. Wakoli, MP, the Senator for Bungoma County, sought a report on the state of key markets in Bungoma, including but not limited to Chepkube in Bungoma Town, Misikhu, Kamukuywa, Matisi, Bukembe, Mateka, Chwele, Kimilili, Cheptais, Sirisia, Kapkateny, Kapsokwony, Kabula, Kanduyi, Mayanja and Mateka,

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specifically addressing the availability and functionality of essential services such as water supplies, street lighting, infrastructure, waste management and sanitation.

Additionally, he requested to be furnished with a status update of all market improvements and/or expansion projects initiated by the County Government of Bungoma from the Financial Year 2013/2014 to date.

Further, the Senator, requested for a breakdown of the own-source revenues generated by the county government from each market from the Financial Years 2018/2019 to date, giving a comparison of the revenue to the total cost incurred for services, construction and market improvements, as well as the amount retained from the revenue.

Similarly, in the Statement by Sen. Godfrey Osotsi, CBS, MP, the Senator for Vihiga County sought a report on the state of key markets in Vihiga, including but not limited to Mbale, Majengo, Luanda, Serem, Chavakali, Cheptulu, Shamakhokho, Esibuye and Mudete markets, specifically addressing the availability and functionality of essential services such as water supply, street lighting, water management, and sanitation.

In considering the statement, the Committee wrote to the County Government of Bungoma and the County Government of Vihiga asking them to submit a response regarding the issues raised in the statements. Further, the Committee resolved to undertake visits to Bungoma and Vihiga counties to inspect the various markets as requested in the statements.

The Committee visited Bungoma County on Friday, 21st June, 2024, where they held a meeting with the Deputy Governor and later proceeded for an inspection of the markets. The Committee inspected Chepkube, Bukembe, and Kamukuywa markets, where they held meetings with the market management development committees and had engagements with the market traders to receive their memoranda and submissions, stating the challenges they face and their proposals of market improvements.

The Committee visited Vihiga County on Saturday, 22nd June, 2024, where they held a meeting with the Governor and members of the county executive committee and later proceeded for an inspection of the markets. The Committee inspected Mbale, Serem, Majengo, Esibuye and Luanda markets, where they held meetings with the market management development committees and had engagements with the market traders.

The Committee did an in-depth analysis of the stakeholders' submissions and made various observations, which are set in Chapter 4 of these reports. The Committee observed that the markets have the necessary essential services, that is, water, street lighting, sanitation and waste management, although they face challenges of inadequacy, vandalism and poor maintenance.

Additionally, the markets face a number of challenges, which include congestion due to limited space, poor drainage and sewerage systems, and insecurity that hinders the business of the traders. Based on its findings and observations, the Committee made various recommendations, which are set out in Chapter 5 of these reports. The Committee recommended that the two respective county governments should ensure provision of adequate services to markets, provide a safe and comfortable working environment for the traders, and address the specific challenges facing traders in each market.

I take this opportunity to commend the Members of the Committee for their devotion and commitment to duty, which made the consideration of the statements successful. I also wish to thank the Office of the Speaker and the Clerk of the Senate for the support extended to the Committee in undertaking these important assignments.

Lastly, I wish to thank the stakeholders who presented their submissions on the statements of the Committee.

Mr. Temporary Speaker, Sir, with those many remarks, I wish to move this Motion and request that the House adopts the reports of the Standing Committee on Devolution and Intergovernmental Relations on its consideration of the statements sought by Sen. David Wafula Wakoli, MP, regarding the state of markets in Bungoma County, and the statements sought by Sen. Godfrey Osotsi, CBS, MP, on the state of markets in Vihiga.

I now call upon Sen. Oburu to second.

Sen. (Dr.) Oburu: Mr. Temporary Speaker, Sir, I was one of the Members of the Senate who visited those markets in Bungoma and Vihiga counties. Indeed, I appreciate the commitment of the stakeholders whom we met everywhere we went. We also thank the members of the Senate who requested for our visit. I really enjoyed our visits to those markets.

Mr. Temporary Speaker, Sir, I realized that sitting here in the Senate without going to *mashinani* to interact with the people and the stakeholders, you do not get a feel of what our Senate should be doing or performing. We got very warm reception wherever we went and made people realize what the Senate does. Many people do not realize the role of the Senate. When we went there and talked to the *wananchi*, they were very receptive and gave us a lot of information, which was very useful to us in writing the reports which have come out here.

I would want to second and urge Members to debate our reports objectively and come up with further recommendations or support the recommendations which we have made in this Report on the markets in Bungoma and Vihiga counties.

I beg to second.

(Question proposed)

The Temporary Speaker (Sen. Wakili Sigei): Hon. Members, the Motion is now available for debate by Members. I see Sen. Wambua has requested to speak to it, and I will allow you to proceed to comment on the Motion.

Sen. Wambua: I will share the time that I have with my colleague, Sen. Omogeni. First of all is to thank the Committee for making those visits to Bungoma and Vihiga counties to see what is happening, especially on our markets in those two counties. I would have wanted to listen to something that they did not capture and, perhaps, this is my way of enriching that Report.

Part Two of the Fourth Schedule of our Constitution lists the development and regulation of markets as a devolved function. In this administration, we have seen an increase in cases where the national Government is overreaching and taking up devolved functions, especially in the area of markets. That overreach, especially in markets, has

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been so controversial that we have seen Kenyans being treated to scenes of leaders physically fighting over who should carry out that function.

I want to remind the Committee that if the national Government has an interest and an appetite for development of markets in the counties, the provisions of Article 187 of our Constitution are very clear, that if you are transferring a function from one level of government to the other level of government, then two things must happen. One, there must be an agreement between the two levels of government and in writing. Secondly, the monies set aside for that function in that level of government should move to the next level, but responsibility remains with the original level of government.

Mr. Temporary Speaker, Sir, I would have wanted to hear from the Committee telling us about the markets that have been developed by the Ministry of Lands, Housing and Urban Development under the economic stimulus programme and how many of those markets have followed the provisions of Article 187 of the Constitution. In the absence of that, is someone at the national Government liable for an offence of misuse or misallocation of public resources?

I am not opposed to the development of markets in any corner of the country. However, it must be clear to the national Government that markets are a devolved function. If they want to undertake those functions, then they should invoke the provisions of Article 187.

Lastly, Mr. Temporary Speaker, Sir, the national Government must not forget that under Part One of the Fourth Schedule, they have a responsibility to build capacity and provide technical assistance to the counties. Perhaps, during capacity and providing technical assistance does not open avenues for exchange of any funds, but it is the responsibility assigned to the national Government by the Constitution.

Mr. Temporary Speaker, Sir, with those few remarks, I support this Report. I thank you.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Okong'o Omogeni. Use the microphone next to you; it is already on.

Sen. Omogeni: Thank you, Mr. Temporary Speaker, Sir. I also thank the Committee on Devolution and Intergovernmental Relations for the visitation they did to the County of Bungoma. How I wish that this Committee had also diverted a bit to my county of Nyamira, in Nyansiongo. The Government sometimes puts us in a lot of difficulties. If you read the Constitution in black and white, markets are a devolved function of our counties. At times, the national Government takes over, makes promises, but never delivers.

Mr. Temporary Speaker, Sir, you are my neighbour from the County of Bomet. In March, 2023, the President was at Nyansiongo Market. He made promises to the people of Nyansiongo and said that he would ensure that Nyansiongo Market will be completed and that within a month, cabro would be put in that market. He also said that within a month, water and electricity would be connected in that market.

If you follow news, three weeks ago, we lost eight lives because the traders were selling their merchandize along the road because that market has not been completed. I thought that this would provoke the Government into taking urgent steps to complete that market. How do people take us when we, as leaders and at that level, come, make

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promises to the people and we do not fulfil those promises? Eight lives were lost in one accident and we did not get any response from the Government.

Mr. Temporary Speaker, Sir, we were in this House and the record can bear me witness. Hon. Chirchir, the Cabinet Secretary for Roads and Transport was in this House. When I drew his attention to that accident, he said that he would act and erect bumps along that stretch, from Sotik and the one that comes from Keroka side. Today, as we speak, the people of Nyansiongo have not seen any intervention from the Cabinet Secretary. How do the people look at their Government if we can make promises in the august House that is---

The Temporary Speaker (Sen. Wakili Sigei): Sen. Omogeni, time is up. I know they have been listening and they will act accordingly. I believe so. For purposes of your continuation of your comments on this Motion, you will have 17 minutes to conclude when the House resumes.

ADJOURNMENT

Hon. Senators, it is now 6.30 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until tomorrow, Thursday, 31st July, 2025 at 2.30 p.m.

The Senate rose at 6.30 p.m.