

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

**Tuesday, 5<sup>th</sup> May, 2020**

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

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

### PRAYER

### MESSAGE FROM THE NATIONAL ASSEMBLY

PASSAGE OF THE LIVESTOCK AND LIVESTOCK  
PRODUCTS MARKETING BOARD BILL  
(NATIONAL ASSEMBLY BILL NO.2 OF 2019)

**The Speaker** (Hon. Lusaka): Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.41 (3) and (4), I have received the following Message from the Speaker of the National Assembly regarding the passage of The Livestock and Livestock Products Marketing Board Bill (National Assembly Bill No.2 of 2019).

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

“PURSUANT to the provisions of Standing Orders 41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly –

WHEREAS the Livestock and Livestock Products Marketing Board Bill (National Assembly Bill No.2 of 2019) was published vide Kenya Gazette Supplement No.6 of 7<sup>th</sup> February, 2019 as a Bill concerning county governments to establish the Livestock and Livestock Products Marketing Board;

AND WHEREAS the National Assembly considered and passed the said Bill on Wednesday, March 12, 2020 with amendments in the form attached hereto;

NOW, THEREFORE, in accordance with the provisions of Article 110(4) of the Constitution and Standing Order 142 of the National Assembly Standing Orders, I hereby refer the said Bill to the Senate for consideration.”

Hon. Senators, pursuant to Standing Order 157, which requires that a Bill originating in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading, in accordance with Standing Order 139, I direct that the Bill be listed for First Reading on Tuesday, 12<sup>th</sup> May, 2020.

Thank you.

**PETITIONS****CORRUPTION AND EMBEZZLEMENT OF FUNDS  
IN NAROK COUNTY GOVERNMENT**

**The Speaker** (Hon. Lusaka): Hon. Senators, pursuant to Standing Order Nos.226(1)(a) and 230(2)(b), I hereby report to the Senate that a Petition has been submitted through the Clerk by Mr. Simon L. Kilonga and Mr. Olenana D. Oleltulet, residents of Narok County.

As you are aware, under Article 119(1) of the Constitution:

“Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.”

The salient issues raised in the said Petition are:

- (1) That, there is alleged misappropriation of the county revenue, particularly of the years 2014/2015 to 2018/2019, in which millions of shillings were allocated to projects that were never undertaken as listed below:

- (a) Flywheel Engineering and Construction Ltd was awarded a tender with a contract sum of Kshs19,924,000 for improvement and gravelling of Paka Nyeusi-Mashangwa Road section. The project was to commence on 23<sup>rd</sup> March, 2015 and be completed on 23<sup>rd</sup> July, 2019, but to date, no work has been done.

- (b) Agus Investment Ltd was awarded another tender worth Kshs18,980,000 for improvement and graveling of the same road, Paka Nyeusi-Mashangwa Road section. The project was also to commence on 23<sup>rd</sup> March, 2015 and be completed on 23<sup>rd</sup> July, 2015. However, this was not fulfilled.

This means that the Paka Nyeusi-Mashangwa Road project had two tenders awarded in the same year, but no work has been done on the Road.

- (c) The Narok County Government awarded a tender worth Kshs2,693,520 to Flywheel Engineering and Construction Ltd for proposed construction of water pans. The project was never carried out and yet payment was made.

- (d) The Narok County Government awarded another tender worth Kshs3,491,994 to Flywheel Engineering and Construction Ltd for renovation and partitioning of a boardroom. The project was never carried out, yet payment was made.

- (e) Another tender worth Kshs2.6 million was awarded to Flywheel Engineering and Construction Ltd for proposed construction of water pans. The project was never carried out, yet payment was made.

- (f) The Narok County Government awarded a tender worth Kshs19,925,000 to Gorgeous Construction Ltd for improvement and graveling of Sankale-Topot Road. The contract was never fulfilled, yet payment was made.

(2) That, the matter was reported to the Director of Criminal Investigations (DCI) in August, 2019 and not action has been taken since. Consequently, the Petitioners pray that the Senate:

- (a) investigates the issue raised to establish the circumstance under which the irregular tenders were awarded; and,
- (b) directs the Auditor-General to conduct a special audit exercised in view of the foregoing issues and makes appropriate recommendations on those found culpable, especially in the fraudulent payment for work not done.

Hon. Senators, pursuant to Standing Order No.231, I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes. If we can keep it short, the better for us because we have other business to transact.

With the masks, I am not very sure of the faces.

*(Laughter)*

Sen. Linturi, proceed.

**Sen. Linturi:** Thank you, Mr. Speaker, Sir. I thank the petitioners for bringing the Petition to this House. Time has come that we must appreciate what the public is doing. The public is keen in whatever we are doing and they are watching.

These are some of the desperations that the public is trying to express through this House for failure to have an Auditor-General in this country for a very long time. The Petition falls directly, in my view, under the Committee on County Public Accounts and Investments, where we had elections yesterday.

Unfortunately, this is a complaint from his county, and I am sure that there will not be any kind of conflict. However, I want to say that if we are not careful as a House, money will be stolen during this time and used in the wrong way. That is the reason this House must rise up to the occasion and deal with the issues as they come despite the different circumstances that we find this country in following the COVID-19 pandemic.

Let me say thank you to this good Kenyan citizen who has decided to raise this matter.

Thank you.

**Sen. Ndwiga:** Thank you, Mr. Speaker, Sir. Indeed, the petitioner should be congratulated by the House because our mandate is to oversight counties, yet most of the time we are not on the ground.

We need to encourage Kenyan citizens, who are out there and most of the times observe misappropriation of funds by the counties, to use this avenue of petitions to this House.

Whichever Committee, and I believe it is the County Public Accounts and Investments Committee (CPAIC), you will commit this Petition to, should deal with it diligently, so that Kenyans may find that this is a path that they can reach the Senate. This is also a path that will assist us, as the Senate, to perform our oversight duties.

There are many cases in counties where monies are allocated to mysterious contractors and work is never done. In fact, I have had occasions where people, not necessarily from my county, have told me about misappropriation of funds in their counties by county governments.

We want to encourage the citizens of this country to use this avenue of petitions to the Senate.

Thank you, Mr. Speaker, Sir.

**Sen. Dullo:** Thank you, Mr. Speaker, Sir. I wish to congratulate these petitioners from Narok. As my colleagues have said, this is a matter that is happening in most counties. Unfortunately, even if members of the public raise these issues, they do not find a solution. Is money changing hands within the relevant institutions? Somebody needs to explain.

I have a very good example and a Statement on it; I do not know whether you will allow me. There is a matter that has hit the social media in my county concerning the Intensive Care Unit (ICU). Some youths have raised an issue about misappropriation of funds and the manner in which ICU equipment were hired. Right now, the county government is using security apparatus to intimidate those boys and they are threatening to arrest them.

Members of the public have a constitutional right to raise those issues. However, I think there are a lot of challenges on the ground, especially from the county governments, where they are using tactics to stop people from doing what they are doing. If we are not doing good work as the Senate, members of the public will lose confidence in us.

I hope that the Committee that will consider this petition will handle the matter properly and make sure that the petitioners have received the prayers they have asked for.

Thank you, Mr. Speaker, Sir.

**Sen. Malalah:** Thank you, Mr. Speaker, Sir. I want to congratulate the petitioners and remind ourselves that the Constitution of Kenya and the County Governments Act have provided a platform and a way in which the Senate together with respective county assemblies can perform their oversight roles.

As Senators, we only rely on the reports of the Auditor-General to oversight our counties. We need to have a more meaningful engagement in overseeing our counties in their day-to-day running.

As it is right now, it is only the Members of the County Assemblies who can do the day-to-day oversight of the county executive. However, we have county assemblies that have gone to bed with the executive.

Recently in my county, I wrote a letter to the Speaker requesting for a meeting with the Public Accounts Committee (PAC) of the county assembly, so that we can come up with a way in which we can oversight the money set aside for the COVID-19 Emergency Fund. The County Assembly Speaker wrote back to me and said that we do not have a law that provides for an engagement between a Senator and Members of the County Assemblies.

The County Assembly of Kakamega has been mismanaged. Recently, we asked them to resume and pass the supplementary budget that the executive has forwarded to them. You cannot imagine a county assembly doing adjournment for recess through SMS; no motion was moved on the floor of the House to adjourn the County Assembly of Kakamega. They communicate through SMS.

Mr. Speaker, Sir, it is important that this House provides mentorship to the respective county assemblies, so that they appreciate the essence of oversight. We have seen misappropriation of funds in county governments. However, we can do little, as Senators, to avert such situations. Therefore, it is important for the Members of the

County Assemblies to know that it is their role to do the day-to-day oversight. As Senators, we can only wait for the Auditor-General's reports.

This reminds me that this House was supposed to be funded with the oversight fund, but it has never come to pass. As Senators, we cannot oversight when we do not have fuel to move from our offices to ascertain whether, for example, a 100 kilometre roads project was done. How do you expect a Senator to perform oversight, yet he has no cent to carry out that function, unless we are assuming that oversight is a personal mandate of the Senator and not a mandate as enshrined under Article 96(3) of the Constitution.

Mr. Speaker, Sir, I would like to urge the leadership of this House, including you, to ensure that in the next financial year and the years to come, Senators are empowered with oversight fund, so that we can do valuable oversight to the counties.

**The Speaker** (Hon. Lusaka): Sen. (Dr.) Zani.

I will now limit contributions to three minutes per Member.

**Sen. (Dr.) Zani:** Thank you, Mr. Speaker, Sir. I also wish to congratulate the petitioners because they have had confidence in bringing their Petition to the Senate.

I think this Petition from Narok County could just be a petition from any other county. As this Committee embarks on its work, maybe they could have an expanded mandate about projects that are promised and not actualized. Payments have been made, yet work has not been done. This runs across the issue of transparency and accountability, which even in our second phase of devolution, is the same issue that keeps coming up over and over.

By the petitioners bringing this Petition to the Senate, they hope that they will have sufficient answers for the questions that they have raised. For a long time, open governance and open governance partnerships are very critical. Let me stress on the issue of transparency and accountability. Adequate provisions have been put in the Constitution, specifically on the County Integrated Development Programme (CIDPs) and the need for them. Indeed, even in the County Governments Act, 2012 to ensure that county governments can indicate the projects that they want to have, there is a system to ensure that these have been---

First, they indicate the sort of projects they want to have and then have in place a system to ensure that these have been done, including the oversight from the county assemblies, and also enabling public participation from these counties.

Mr. Speaker, Sir, even as I speak, it is unfortunate that we still do not have this Bill in place. I think we did everything that we could as the Senate. We know that sometimes public participation is not done in the specified way. It is high time that we ensured that money that goes to the counties is used for the intended purpose. This is because if we do not put in place a deterrent, we might be saying this in the next two or three years, and it will go on and on. This means that everything will be done in vain, in the hope that one project or another will be finished.

This particular road that was expected to be constructed and coordinated by *Paka Mweusi*, should have been done by now. As we commit this Petition, which I support, I hope that when it gets to the relevant Committee, they can expediate and give the answers that will create confidence and assurance to the citizens of Narok County and this country.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Sen. (Dr.) Milgo, and then Wamatangi.

**Sen. (Dr.) Milgo:** Thank you, Mr. Speaker, Sir. I also wish to support this Petition and say that it is high time that issues of social audit are taken very seriously. This is a sign that we need the Auditor-General as early as yesterday.

Mr. Speaker, Sir, what is happening in Narok County is actually applicable in all counties. I hope that when this Committee takes up this particular Petition and starts their work, they will also look into many other counties. For example, in my county, Bomet County, there is a 12-kilometre road for which a tender was awarded and paid, but to date no work has been done on it.

Mr. Speaker, Sir, most of the Members of County Assemblies (MCAs) have gone to bed with the governors because they are the first line of accountability before we come to the Senate. For most of the projects that are not completed, you will find that these MCAs are also involved.

Mr. Speaker, Sir, this Petition should ensure that we have the Auditor-General in place. Once we find out that someone has embezzled money through his position as governor, we then stamp our authority, so that it serves as a warning to the rest. Otherwise, the public is losing so much money through many shoddy projects. Even those that are done are not completed. I remember a bridge in my county that was built using bricks. However, when the rains came recently, that particular bridge was swept away together with the millions that went into building it.

Mr. Speaker, Sir, this Petition is very important. It has come at a right time when we are complaining about issues of public money embezzlement.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Sen. Wamatangi, Sen. Mutula Kilonzo Jnr. and Sen. Faki, kindly proceed in that order.

**Sen. Wamatangi:** Thank you, Mr. Speaker, Sir. This Petition has come at the right time, especially when the matter of the County Allocation of Revenue Bill is before the Senate.

Mr. Speaker, Sir, one of the issues that have always bugged my mind is why there is no relationship between the County Allocation of Revenue Bill and the budgets that are passed in the county assemblies. Why has it never occurred to us, as Senators, that it is important that when budgets are passed by the county assemblies, we need to create an avenue where that budget should land in the Senate? This includes any other follow up, including budget execution and such a time when members of that county are supposed to appear before any Committee of this Senate on matters about how funds have been implemented.

Mr. Speaker, Sir, it is time for us, as Senators, to ask ourselves: After a budget is passed by a county, how shall it have a relationship with the amount that is allocated to that county by the Senate?

Mr. Speaker, Sir, when we had the last meeting of the County Public Accounts and Investments Committee (CPAIC) with all chairpersons of Public Accounts Committees in the county assemblies, one of the issues that came out so prominently is that not less than 10 counties out of 47 counties reported that the budget that was implemented by the county executive is not the one that was passed by the county assemblies. Whenever a budget is passed by the county assembly, the executive withdraws it and implements another one. These are issues that must be addressed by this

House, to ensure that we have a system that will hold county governments, especially the county executive, to account on how they implement their budgets.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Sen. Mutula Kilonzo Jnr., Sen. Faki and Sen. Prof. Ongeru. Kindly, proceed in that order.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. This is a very important issue. I would like to bring to the attention of my colleagues here, maybe, the ones who have been in Parliament for long--- I remember a gentleman by the name Mr. Njoroge who was the Controller and Auditor-General at that time. He used to perform the same function. I recall meeting a lady in Germany whom they call the president and is an Auditor in the same terms as the Auditor-General. I wondered why we amended our Constitution to include a Controller of Budget (CoB). To some extent, I believe there is merit in that question. How can counties procure, put in a budget a certain item to purchase, do an infrastructure project and end up changing that concept when the money arrives in the county? There is connivance in the Office of the Controller of Budget and we must address it.

The second issue that bothers me is that when I was young, I appeared before Sen. Mwangi Githiomi and Sen. Ochillo-Ayacko at that time, during the Public Investments Committee, and I was an intern. People used to fear the Committee of Sen. Mwangi Githiomi. When you stepped inside there, you were a victim. They treated you like a criminal. I just wonder why governors are comfortable with the Committee of the Senate. What is it that makes them so comfortable? It is a question that we must ask.

The third one and last one; we want oversight funds. We elect nine Members to sit in a committee, but truth be told, they are not auditors and experts.

Mr. Speaker, Sir, the next Senate must find a method, and I propose that we have a Senate Audit Office, where we can send people to check various counties, for example, Narok, Elgeyo-Marakwet and Makueni. Every Senator here is disappointed because our governors, who are on their second term, - with the way things are going on in this Senate - will walk away, go to the Isle of Man and celebrate that they were elected governors because we are never going to put them to task.

I thank you.

**Sen. Faki:** Asante sana Mhe. Spika. Kwanza, ningependa kuwapongeza *Petitioners* kutoka Kaunti ya Narok kwa kuweza kuleta *Petition* yao katika Bunge la Seneti. Tulikuwa na *Petition* kama hiyo kutoka Kaunti ya Nyamira ambayo nafikiri inazingatiwa na Kamati ya Sheria na Haki za Binadamu za Bunge. Wakati fulani, wale ambao walikuwa wameleta hiyo *petition*, walikuwa wameamua kwamba waiondoe hiyo *Petition* kwa sababu walikuwa wameona kwamba malalamishi yao yamewezwa kutekelezwa.

Mhe. Spika, matatizo yako katika mabunge ya kaunti na vile vile yako katika ofisi ya *Auditor* kwa sababu ile miradi yetu gushi ambayo imefanyika ama imedaiwa kufanyika, haingii katika ripoti ya *Auditor*. Kwa hivyo, ikiwa haikuandikwa katika ripoti ya *Auditor*, hakutakuwa na swali ambalo litaulizwa na *Auditor* kwa mfano: Kwa nini barabara hii ilikuwa inatakikana itengenezwe na haikutengenezwa?

Mhe. Spika, ofisi ya *Contoller of Budget* pia inahusika katika mambo kama haya kwa sababu wao ndio wanajuwa pesa ngapi zimetolewa na ni kwa miradi gani.

Kwa hivyo, mwisho wa mwaka, ile miradi gushi zote ambazo zimetengenezwa na pesa zikaliwa, hakuna hata moja inayotokea katika ripoti ya *Auditor*. Kwa hivyo, hii ni njia ambayo imepangwa mahususi ya kuweza kula pesa za kaunti. Hii ni kwa sababu hakuna njia ambayo unaweza kujua mpaka uwe unaishi katika eneo lile ambalo unaweza kuenda mwenyewe ukathibitisha kwamba ule mradi haukufanyika.

Kwa hivyo, Bw. Spika, ile Kamati husika ambayo itapewa *Petition* hii ni lazima isafiri Narok ili iweze kuthibitisha kwamba hii miradi ni gushi na wale wahusika wote wakamatwe na washtakiwe.

Asante.

**Sen. Sakaja:** On a point of order, Mr. Speaker, Sir. As much as this is a very important matter, I see that the Order Paper has more than 12 Statements and another Petition; we have a lot and it is already 3.00 p.m. Would I be in order to ask that we take the comments made or shorten the contribution, because it looks like we may not be able to finalize the business before us? We have quite a lot according to the Order Paper. That is my request.

**The Speaker** (Hon. Lusaka): Okay, I will just give a chance to Sen. (Prof.) Ongeru and Sen. Ochillo-Ayacko, and then we finish.

**Sen. (Prof.) Ongeru:** Thank you, Mr. Speaker, Sir, for this opportunity. This Petition has come at the right time and is a developing story because you must balance the revenue and expenditure aspect of the county governments. This is because you cannot spend what you do not have. You can also not spend if you have not put it in the development plan and budget, and if the county assembly has not approved these resources for that particular element of the expenditure that requires to be spent.

If you carefully read the County Governments Act, it enumerates the steps that must be taken before you are able to do certain things in requiring authority to incur expenditure. If you read the Public Finance Management (PFM) Act, it stipulates the manner in which the resources available will be spent. More so, when you read the Public Procurement and Disposal Act, it clearly stipulates the procedure in which anything that must be procured must be done.

We need to remind the governors to adhere to the procedure and the laid down law that has given them the opportunity to incur expenditure in a lawful manner. That is all we are asking of them because short of that, then they are liable for many other faults and punishment that may occur.

I thank you.

**Sen. Ochillo-Ayacko:** Thank you, Mr. Speaker, Sir, for an opportunity to make a few remarks on this matter. First, I want to congratulate the petitioners for this Petition. It means that they are patriotic citizens, and they mind and care about utilization of public funds.

It is sad that in this day and age, there are still issues relating to outright theft of public funds. If you study the trends the world over, in developed nations, you will find out that audit queries are in the nature of value for money. Counties and institutions do not have audit queries that relate to outright theft of public funds.

This is a matter that ought to have been concluded by the Ethics and Anti-Corruption Commission (EACC) or the Directorate of Criminal Investigations (DCI). These people should have been in jail because it took place about six years ago. It is sad that it still continues. I hope that when we get a new Auditor-General, we will be

focusing more on value for money and not on outright theft of public funds, because that is the era of primitive generation. Stealing public funds like that without doing anything, is something that should not have waited to come to the Senate; it should have been dispensed with by the line institutions that deal with criminal activities.

Mr. Speaker, Sir, I am happy that this Petition has come here. I hope that we will use this to deal conclusively with people who have this kind of behaviour.

**The Speaker** (Hon. Lusaka): Hon. Senators, pursuant to Standing Order 232 (1), the Petition stands committed to the Standing Committee on Finance and Budget. In terms of Standing Order No.232 (2), the Committee is required, in not more than 60 calendar days, from the time of reading the Prayer, to respond to the petitioners by way of a report addressed to the petitioners and laid on the Table of the Senate.

Thank you.

REPORT ON PETITION: PENDING BILLS  
BY NATIONAL YOUTH SERVICE

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Tuesday, 5<sup>th</sup> May, 2020-

Report of the Standing Committee on Finance and Budget on a Petition to the Senate by Mr. Edward Mwangi, concerning unpaid pending bills by the National Youth Service to contractors and service providers.

Pursuant to Standing Order No.226 (1)(a) and 230 (2)(b) of the Senate Standing Orders, on 9<sup>th</sup> October, 2019, a public Petition to the Senate was reported by the Speaker on behalf of the petitioner; a contractor and a service provider, Mr. Edward Mwangi. The Petition was on unpaid pending bills by the National Youth Service to contractors and service providers. The petitioner drew attention of the Senate to the following:

- (1) That the National Youth Service engaged a number of contractors and suppliers who carried out their work diligently, especially during the Presidential directive on restructuring and rebranding of the NYS.
- (2) From 2013 to June 2018, suppliers and contractors supplied goods and services to NYS. These supplies and services have not been paid for, at the date of the Petition.
- (3) At the end of each financial year, since 2013 there was a promise to pay contractors and suppliers but the promise was not honored.
- (4) In the financial year ending 30<sup>th</sup> June, 2019, the President gave a directive on payment of all pending bills. However, during the last week of June, 2019, a list of service providers was released by the NYS, but most of the genuine suppliers and contractors were not among the firms to be paid.
- (5) That NYS suppliers and contractors had experienced grievous economic distress as a result of loss of hard-earned wealth and properties to auctioneers due to loans, death, medical conditions associated with stress, family break-ups and shattered irreparable livelihoods.

The Petitioner, therefore, prays that the Senate investigates the matter with a view to ascertaining genuine pending bills and claims for verifiable works and services rendered and recommends that the payments be made without further delay, so as to ease the unbearable economic distress to the suppliers and contractors.

Pursuant to Standing Order No.232 (1), the Petition stands committed to the Standing Committee of the Senate on Finance and Budget for consideration.

Mr. Speaker, Sir, the Standing Committee on Finance and Budget, at a sitting held on 5<sup>th</sup> November, 2019 deliberated on the matter and resolved to invite the petitioners. At a sitting on 14<sup>th</sup> November, 2019, the Committee held a meeting with the petitioner, Mr. Mwangi, who was accompanied by other contractors and suppliers.

The meeting resolved that the petitioner should urgently provide more information to enable the Committee to assess the Petition and respond to the Prayers.

The documents requested were:

- (a) A tabulation of the name of the company, indication on whether a service or goods were provided and amount owed by NYS.
- (b) Company documents indicating claims like tender documents, evidence of supplies of goods and services and details of communication with the NYS and other stakeholders on the matter.

Mr. Speaker, Sir, although the petitioner was required to expedite and submit necessary documents to the Committee, it is now almost six months later and he has not submitted the information required. The documents requested by the Committee are vital in conducting the investigation and facilitating response to the prayers of the petitioner. The Committee is inhibited from conclusively considering the matter due to the failure of the petitioner to submit the necessary documents.

Aware of the provisions of the Standing Order No.232 (2), requiring the Committee to investigate and respond to the prayers of the petitioner and report back to the House the Petition within two months, the Committee resolved to bring this matter to a close and table its Report to the House.

Mr. Speaker, Sir, I beg to lay.

*(Sen. (Eng.) Mahamud laid the document on the Table)*

**The Speaker** (Hon. Lusaka): Next Order!

### PAPERS LAID

#### THE PUBLIC PROCUREMENT AND ASSET DISPOSAL REGULATIONS, 2020.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today Tuesday 5<sup>th</sup> May, 2020 -

The Public Procurement and Asset Disposal Regulations, 2020.

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

#### THE FOURTH PROGRESS REPORT OF THE AD-HOC COMMITTEE ON THE COVID-19 SITUATION IN KENYA.

**Sen. Sakaja:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today Tuesday 5<sup>th</sup> May, 2020 -

The Fourth Progress Report of the *Ad-Hoc* Committee on Covid-19 situation in Kenya.

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

REPORT ON CONSIDERATION OF THE COUNTY ALLOCATION OF REVENUE BILL,  
SENATE BILLS NO. 7 OF 2020

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today Tuesday 5<sup>th</sup> May, 2020: -

Report on the Standing Committee on Finance and Budget on Consideration of the County Allocation of Revenue Bill Senate Bills No. 7 of 2020.

*(Sen. (Eng.) Mahamud laid the document on the Table)*

REPORT ON FISHERIES MANAGEMENT AND DEVELOPMENT (AMENDMENT) BILL  
(SENATE BILLS NO. 22 OF 2019)

**Sen. Ndwiga:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today Tuesday 5<sup>th</sup> May, 2020 -

Report of the Standing Committee on Agriculture, Livestock and Fisheries on the Fisheries Management and Development (Amendment) Bill (Senate Bills No. 22 of 2019).

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

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

**NOTICES OF MOTIONS**

ALTERATION OF THE HOURS OF MEETING  
OF THE SENATE

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I beg to give notice of the following Motion -

THAT, pursuant to the Senate Resolutions made on 27<sup>th</sup> February, 2020 (Approval of Senate Calendar) and 14<sup>th</sup> April, 2020 (Alteration of the Senate Calendar), the Senate, pursuant to Standing Order 31 (3)(b) resolves to hold additional Sittings every Tuesday morning, starting from 10.00 a.m and ending at 12.30 pm, commencing from Tuesday, 12<sup>th</sup> May, 2020 until Tuesday, 2<sup>nd</sup> June, 2020.

ADOPTION OF THE FOURTH PROGRESS REPORT OF THE  
*AD HOC* COMMITTEE ON COVID-19 SITUATION IN KENYA

**Sen. Sakaja:** Mr. Speaker, Sir, I beg to give notice of the following Motion -  
THAT, the Senate adopts the Fourth Progress Report of the Ad-Hoc Committee on COVID – 19 Situation in Kenya, laid on the Table of the Senate on Tuesday, 5th May, 2020.

**STATEMENTS**

THE SCALING-UP OF THE UHC PROGRAM

**Sen. (Dr.) Mbitio:** Mr. Speaker, Sir, pursuant to Standing Order No.51 (1) (a), I rise to make a Statement regarding a matter that is presently before the Standing Committee on Health.

As you may recall, on Tuesday, 25<sup>th</sup> February, 2020, the Senator for Makueni County, Sen. Mutula Kilonzo Jnr., M.P., requested for a Statement from the Senate Standing Committee on Health regarding the scaling-up of the Universal Health Care (UHC) Programme to the 47 county governments;

In accordance with the Senate Standing Orders, the Standing Committee on Health sought a Statement from the Ministry of Health through the Office of the Clerk in a letter dated 26<sup>th</sup> February, 2020 and received a written response on 9<sup>th</sup> April, 2020.

In summary, with regard to the information sought, the Ministry of Health responded as follows:

(1) Regarding details of the Intergovernmental Participation Agreements (IPAs) entered between the national Government and county governments, the IPAs set out terms of understanding between the national Government through the Ministry of Health and county governments, which entail;

(a) Human resources for health: The placement of 4,000 health workers on internship at Level 2 and 3 health facilities countrywide under the Public Service Commission Youth Empowerment Programme. Further, it entails the recruitment of 5,500 skilled health workers on a three-year contract for deployment to Levels 1 to 3 health facilities in counties;

(b) Essential medicines and medical supplies: The provision of a Kshs10.5 Billion conditional grants to counties for the supply of essential medicines and medical supplies to all county health facilities through drawing rights at KEMSA;

(c) Community health and primary health care services: The setting up of the full complement of community health units by counties; the recruitment of Community Health Extension Workers (CHEWs) by counties; placing of Community Health Volunteers (CHVs) on an agreed stipend of Kshs2,000; TOT training of community units by the Ministry of Health; provision of CHV kits by the Ministry of Health; and, the provision of technical support to counties by the Ministry of Health for establishment of efficient PHC services;

(d) Basic equipment: The procurement of basic clinical and laboratory diagnostic equipment for county health facilities by the Ministry of Health at a total cost of Kshs1.5 billion; and,

(e)Special Portable Medical Clinics: The allocation of two special portable medical clinics to all counties by the national Government for the provision of medical services in informal settlements and hard to reach areas.

Regarding the financial arrangements, under the IPAs -

- (i) the national Government has committed to progressively increase the budgetary allocation to health as a proportion of the total Government budget towards the recommended 15 per cent, as per the Abuja Declaration within the next 4 years;
- (ii) counties are to allocate a minimum of the 30 per cent of their total county budgets to health;
- (iii) The national Government shall transfer monies earmarked for medicines and medical supplies to KEMSA and grant counties drawing rights;
- (iv) The national Government shall transfer the funds for basic clinical and laboratory equipment to KEMSA; and,
- (v) county governments are to ensure that funds for health including facility improvement funds are ring fenced at county level.

Mr. Speaker Sir, as you may have already realized, the Ministry of Health response raises more questions than answers. Having closely analyzed the Statement by the Ministry, the Standing Committee on Health has raised several issues and concerns.

Mr. Speaker, Sir, we note that the statement was sought before the COVID-19 outbreak. As such, to begin with, the Committee acknowledges that a realignment of UHC funds to match emerging priorities may have been necessitated at the Ministry of Health. As such, it is possible that the resources referred to in the Statement have since been channeled elsewhere.

Mr. Speaker, Sir, notwithstanding, the Committee notes that according to the response given by the Ministry of Health, curative services have been prioritized under the Universal Healthcare (UHC) programme at the expense of more effective health promotion, prevention and interventions such as water, sanitation and hygiene.

As you may further recall, in the 2019 Budget Policy Statement Report, the Senate raised serious concerns regarding the intended procurement of Community Health Volunteer (CHV) kits and basic equipment by the national Government on behalf of the counties. The Committee, however, notes that despite the concerns raised by the Senate in its report, budgetary provisions for the provision of CHV kits and basic equipment were nonetheless included in the Ministry of Health budget for the Financial Year 2019/2020.

It is further apparent to the Committee that the Intergovernmental Participation Agreements executed between the national and the county governments are in essence retrospective, as specific provisions under the Innovations for Poverty Action (IPA), for example, the CHV kits and basic equipment, *et cetera*, had already been budgeted for under the Ministry of Health for the Financial Year 2019/2020 at a total sum of Kshs21 billion.

Mr. Speaker, Sir, the Committee further takes issue with the fact that under the Constitution, the Ministry of Health is assigned policy and national referral functions while the provision of community and primary healthcare services falls under the functional domain of the county governments.

However, based on the Statement by the Ministry of Health, the IPAs executed between the national Government and the county governments appear to transfer specified implementation rules and functions to the Ministry of Health in the provision of primary and community health services without any reference to Parliament or the county assemblies. It not only offends the constitutional and functional assignments set out between the two levels of government, but also represents an insidious assault on devolution as a whole.

Mr. Speaker, Sir, while admittedly county governors may have indeed signed the IPAs, it must be noted that the governors do not equal devolution and devolution does not equal governors. As such, the future and fate of devolved functions cannot be left to county governors to decide. As demonstrated by execution of the IPAs, the risk to devolution is too high. While the Ministry of Health should continue to play its role in the development of appropriate policies and standards and guidelines, counties must retain their implementation roles and functions.

The Committee further notes with concern an apparent attempt by the Ministry of health to sanitize the special portable clinics under the UHC programme. The special portable clinics that were first implemented under the Slum Upgrading Programme in the Financial Year 2015/2016, have been a subject of investigation by the Ethics and Anti-Corruption Commission (EACC) and audit queries by the Office of the Auditor-General.

Based on this and other concerns, the Committee on Health has commenced investigations on the proposed UHC upscale and will be tabling a substantive report to this House with clear recommendations.

Further to this, the Committee held a meeting with the Committee on Health, the Council of Governors (CoG) and Gov. (Dr.) Mohamed Kuti earlier today, on 5<sup>th</sup> of May, with a view of addressing some of the Committees concerned. The Committee is also set to meet the Cabinet Secretary (CS) of Health, Hon. Mutahi Kagwe, as it seeks clarification on matters that have arisen as a result to the response from the Ministry of Health.

In addition, the Committee has scheduled meetings with Kenya Medical Supply Agency (KEMSA) and the National Hospital Insurance Fund (NHIF) via *Zoom* online platform over the next week as it seeks to get to the bottom of the issues raised.

Mr. Speaker, Sir, further and of particular concern to the Senators, the Committee has written to the Ministry of Health seeking among others, copies of all Intergovernmental Participation Agreements that have been executed between the national Government and the county governments on this matter. Once obtained, copies of the IPAs will be circulated to every Senator for their reference and information.

As I conclude, allow me to take this opportunity to thank the Senate Minority Whip, Sen. Mutula Kilonzo Jnr., for bringing this very important matter to the attention of the House.

I beg to table the response from the Ministry of Health.

Thank you.

*(Sen. (Dr.) Mbitio laid the document on the Table)*

**The Speaker** (Hon. Lusaka): Thank you so much.

Next Statement under Standing Order 51 (1) (a) is from the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries.

**Sen. Ndwiga:** Mr. Speaker, Sir, I have two Statements; I do not know which one to read. Maybe I will start with the one for locusts, then come to the one on coffee, with your permission.

**The Speaker** (Hon. Lusaka): Proceed.

#### LOCUSTS INVASION IN PARTS OF THE COUNTRY

**Sen. Ndwiga:** Thank you, Mr. Speaker, Sir. As you may recall, at a sitting of the Senate held on 18<sup>th</sup> February, 2020, Sen. Wambua requested a Statement on the locust invasion in parts of the country, pursuant to Standing Order 47 (1) of the Senate Standing Orders.

Noting that the locust invasion was a matter of national importance, threatening food security in the country, the Deputy Speaker directed the CS for the Ministry of Agriculture, Livestock, Fisheries and Co-operatives be invited to a meeting of the Standing Committee on Agriculture, Livestock and Fisheries to which all Senators were invited.

The Committee met with the CS on Thursday, 27<sup>th</sup> February, 2020, where he assured the Committee that the Ministry was up to the task and briefed Senators on the Government's efforts to control and contain the locust threat to the country, including, deployment of aircraft for spraying and surveillance, procuring of 28,000 litres of control pesticides, distribution of control equipment to affected counties, including vehicles and Personal Protective Equipment (PPEs), deployment of 500 National Youth Servicemen for locust ground control, among other initiatives, with the support and collaboration with development partners, including FAO Food and Agriculture Organization (FAO); 10 aircraft for spraying and 10 for surveillance, and to acquire and deploy 20 vehicles equipped with suitable sprayers for ground control of mainly the hatching hoppers.

Mr. Speaker, Sir, to establish the extent of damage caused by the locust invasion and to establish the measures taken to mitigate the effects of the invasion, the Committee undertook county visits to Embu, Tharaka-Nithi and Samburu counties on Friday, 28<sup>th</sup> February 2020, the findings of which I reported to this House. At its 74<sup>th</sup> Sitting held on 22<sup>nd</sup> April, 2020, the Committee deliberated on the imminent second generation locust invasion, projected to be 20 times worse than the January, 2020 invasion.

Noting the serious threat to food security in the country, more so, in light of the Coronavirus (COVID-19) situation, the Committee resolved to invite the CS of the Ministry of Agriculture, Livestock, Fisheries and Co-operatives to appear before it to address among others the preparedness measures in place to control the second generation locust invasion. The Committee met with the CS on Monday, 4<sup>th</sup> April, 2020 on the *Zoom* online meeting platform, where he briefed Senators on the Government's preparedness for the continued invasion as follows-

The Ministry has set up six operational bases at Turkana, Marsabit, Wajir, Masinga, Garissa and Isiolo.

The Ministry has trained 30 master trainers, 502 national youth servicemen, 240 extension staff, and 300 community scouts for surveillance and ground spraying.

The Ministry has six aircrafts for spraying and three for surveillance. The Ministry has deployed 16 vehicles mounted with sprayers for ground control. Plans are there to purchase 24 more vehicles. The Ministry has deployed a digital application, the E-Locust 3M Application, for reporting on desert locust.

The Ministry has set up a multi-institutional technical team drawn from the Division of Plant Protection, Kenya Agricultural and Livestock Research Organisation (KALRO), Kenya Plant Health Inspectorate Service (KEPHIS), Pest Control Products Board, Desert Locust Control Organisation for Eastern Africa (DLCO-EA), Food and Agriculture Organisation (FAO), University of Nairobi (UoN), International Centre of Insect Physiology and Ecology (ICIPE), and Centre for Agricultural and Biosciences International (CABI).

The Ministry has stockpiled 100,000 litres of assorted pesticides. The Ministry has mobilised further support from the development partners such as the FAO, the World Bank and the African Development Bank (ADB). The FAO being the knowledge leader in this field, it is about to commission an impact assessment survey to enable the Ministry and other partners decide recovery and livelihood restoration packages.

The Cabinet Secretary (CS) projected that by the end of June, 2020, the locust invasion shall be adequately contained internally, noting that the Ministry had no control over the threats of external swarms from neighbouring countries. In addition, following deliberations, the CS committed to provide a report on funds spent so far in the control of the locust invasion and to provide the Committee with status updates on a monthly basis until the threat is finally contained.

Mr. Speaker, Sir, the Committee is taking this matter seriously and shall report to the House periodically.

I thank you.

**The Speaker** (Hon. Lusaka): Since that is work in progress, we will encourage you to continue updating the House. Kindly go to the next Statement.

#### CRITERIA FOR ALLOCATION OF WB FUNDS TO IMPROVE PRODUCTION OF COFFEE IN THE COUNTRY

**Sen. Ndwiga:** Mr. Speaker, Sir, Standing Order No. 51 provides that a Committee Chairperson may make a Statement relating to a matter for which the Committee is responsible. In fulfilment of this provision, I wish to make a Statement in regard to the criteria for allocation of the World Bank funds for the improved production of coffee in the country.

Mr. Speaker, Sir, at a sitting of the Senate held on Tuesday, 21<sup>st</sup> April, 2020, Sen. Moses Wetangula, EGH, MP, requested a Statement on the criteria for allocation of the World Bank funds for the improved production of coffee in the country.

Pursuant to Standing Order No. 47(1) of the Senate Standing Orders, at the sitting of the Senate held on Tuesday, 28<sup>th</sup> April, 2020, Sen. Wetangula rose on a point of order and raised concern on the possible disbursement of the funds to certain counties, to the exclusion of other coffee growing counties, prior to the scheduled meeting of the Standing Committee on Agriculture, Livestock and Fisheries on Monday, 4<sup>th</sup> May, 2020.

The hon. Deputy Speaker directed that any precipitate action, or action of any kind regarding the disbursement of the funds, be withheld until the matter has been

considered by the Committee and the Senate. The Committee met with the CS on Monday, 4<sup>th</sup> May, 2020, on the *Zoom* Online Platform, where Sen. Wetangula was in attendance.

The CS briefed Senators as follows:

(a) That following His Excellency the President's direction that the recommendations of the National Coffee Task Force be implemented, the World Bank made a commitment to support the implementation of the coffee reforms.

(b) That this was followed by the launch of a pilot project involving eight counties; Kiambu, Murang'a, Nyeri, Kirinyaga, Meru, Tharaka Nithi, Embu and Machakos. This was supported through the World Bank funds.

(c) That the first phase of the World Bank supported coffee revitalisation project would focus on the eight counties and based on the outcome of these pilots, the programme will be upscaled and outscaled to all coffee growing counties.

(d) That the pilots will be funded by the World Bank for Kshs1.5 billion and the county governments will also avail counterpart funds of up to Kshs500 million.

(e) That the selection of the eight counties was guided by the following criteria.

(I) Current production and farmers' population. About 75 per cent of all the clean coffee produced and 70 per cent of the smallholder coffee farmers in the country are in the selected counties.

(II) Alignment of coffee revitalisation to county priorities for agriculture development. In all the above counties, coffee is prioritised in the County Integrated Development Plans (CIDPs) as an intervention in addressing food security.

(III) Other ongoing complimentary revitalisation initiatives such as value chain support programmes. The county governments have committed a lot of resources in addressing the challenges in the coffee sector. The programme will complement their efforts.

(IV) Willingness by counties to inject additional investment of up to Kshs1 million to the coffee revitalisation project.

(V) Potential for quick wins through productivity increase.

The national Government, through this World Bank supported initiative, will provide a catalytic push to have a major impact as the county governments have made major steps towards the revitalisation of this important sub sector.

Phase 2 of the project that is expected to begin in September 2020, shall bring on board other coffee producing counties. Since the project was initiated, the Ministry has involved the Council of Governors (CoG). During the launch of the projects, all the Phase 1 counties were invited and they all participated.

The World Bank supported coffee revitalisation programme will be anchored in two World Bank funded programmes, which are ongoing in the counties. Therefore, at the county level, these projects have functional implementation structures, which shall be used in the management of the projects.

At the national level, a technical advisory committee has been formed. The committee is made up of the relevant national Government institutions, the County Executive Committee (CECs) members of the implementing counties and a representative of stakeholder institutions.

The terms of reference of the committee are to coordinate and ensure efficient and effective implementation of the project and prudent utilisation of resources among others.

The project implementation is subject to World Bank conditionality and normal audit processes. A concern was raised by the Senators present on the failure of the Ministry to adhere to Article 10 of the Constitution in the allocation of the World Bank funds, noting that the criteria used was unconvincing.

It was noted that it was untrue that 75 per cent of coffee was grown in the eight counties and that Kiambu County could not be said to have high production as at least half of the county is currently under real estate.

Mr. Speaker, Sir, in addition, counties such as West Pokot that had set aside approximately Kshs250 million for coffee revitalization programmes had not been included in the pilot phase of the project.

The Cabinet Secretary (CS) asserted that there was no hidden agenda in the disbursement of funds. He added that the rationale was that if the funds were spread out, the impact of project would be very minimal. He requested that the project proceeds as it is currently to unlock funds for Phase Two.

Following deliberations, the CS committed to bring forward the commencement of Phase Two of the project to July, 2020, and to table before the Committee the World Bank commitment evidencing the availability of funds for the second phase of the project.

Mr. Speaker, Sir, I also wish to inform the House that I am uncomfortable reading this Statement because my county is a beneficiary of these funds. However, the Statement is not about which county, but the rationale of the distribution of the funds.

I thank you.

**The Speaker** (Hon. Lusaka): It is also work in progress, but I will allow Sen. Wetangula who asked to make a comment. Keep them brief. We will then hear from Sen. (Prof.) Onger, Sen. Wamatangi, then we close.

**Sen. Wetangula:** Mr. Speaker, Sir, this rigmarole from the Chairperson of the Committee, a man I respect so much, is very sad. When he was the Minister for Cooperatives, Sen. Ndwiga did a sterling job, visiting every area of this country, including Bungoma County.

The CS is right that there is no hidden agenda in the disbursement because it is an open agenda. We can see it. He has deliberately taken World Bank funds to one region of the country.

Yesterday, I participated in the hearing and the CS was completely unable to explain the basis for this skewed use of resources in our country.

Coffee grown in Kisii, Nyamira, Bungoma, Trans Nzoia, West Pokot, Kericho, Nandi, Kakamega, and Vihiga counties is all brought and milled in Thika, hence the assertion that is false that 75 per cent of coffee comes from Central Kenya. It is our coffee that is milled in Thika that creates that 75 per cent.

We demand that the Chairperson of this Committee, who has not given his conclusion or direction on the matter, stops the CS from disbursing these funds.

Mr. Speaker, Sir, yesterday, I asked the CS: "How can you say that Phase Two is coming and you will fast-track and bring it forward, when you have no control over how the World Bank disburses its money at all?"

Secondly, like I did say, in Kiambu County, for example, almost half of the coffee production has crumbled to real estate. On what basis are you saying that Kiambu County

is growing more coffee than Trans Nzoia, Bungoma or Kisii counties? This impunity must stop.

I consulted the Governor of West Pokot County. He has allocated Kshs250 million for coffee production this year, yet the county is not here.

The CS had the courage to tell us that Tharaka-Nithi County has put Kshs50 million and that is why it is there. Where is justice in this?

Mr. Speaker, Sir, we demand that if this House has to continue representing the people of Kenya in equitable distribution, benefit and fairness on the resource of this country, this programme must be stopped, and counties that produce coffee must be brought on board.

Lastly, I also spoke to the Chairperson of the Council of Governors (CoG), Gov. Oparanya. He denies CoG ever being invited to send their County Executive Committee Members (CECs) for agriculture to participate in this programme. What the CS is calling CECs for agriculture are the CECs of his chosen counties to participate in a skewed, flawed, unfair, irrational, and unconstitutional process. We need help from this House for the country to benefit from resources that come to this country.

**The Speaker** (Hon. Lusaka): Sen. (Prof.) Onger, proceed.

**Sen. (Prof.) Onger:** Thank you, Mr. Speaker, Sir. I thank the Chairperson of the Committee on Agriculture, Livestock and Fisheries for bringing us this brief report.

The esteemed Chairperson knows very well that at one time, those of us when he brought up the coffee rehabilitation programme, the rules that need to apply to coffee, we went to every county.

I remember the Chairperson, Sen. Ndwiga, travelling to Kisii and Nyamira counties. He went to the western part of Kenya, Kericho, Nandi, Vihiga, Kakamega, and Bungoma counties.

It was quite clear. There was a rare hope that for once the coffee industry would be revived, because it is one of the most important cash crop economies that can be spread out throughout the country.

We do not have the pleasure and the luxury of developing horticultural farms. That pleasure is not with us. However, we have the ability to grow coffee in our respective regions.

Mr. Speaker, Sir, I have no quarrel with the World Bank giving money to Kenya. In fact, we welcome it. However, I have a problem in rationalizing how this experiment, rather as it were, was only skewed to one region. The conclusion I can make is that this is one way of marginalization.

We are the people's representatives and cannot accept a situation where resources of rehabilitating one of our most export-earning crops in the name of coffee.

One part of this country is being just blanked out, and it is not fair. As Sen. Wetangula has said, most of these coffee cherries and the other things were brought all the way to Ruiru in Thika in the interest that they will have a better machinery to process all these things for better coffee exports.

We agreed and have no quarrel with that. However, why should a farmer be marginalized? That is the only earnings that they can get from coffee.

Mr. Speaker, Sir, the tea industry is also on the downward trend. It is only the other day that we had the *Ad hoc* Committee led by Sen. Aaron Cheruiyot, and I was a Member of that Committee. I think Sen. Ndwiga was in that Committee too. We came up

with a perfect solution on how to handle tea. Farmers had high expectations that if both coffee and tea were resuscitated, the economy of small-scale farmers would be improved.

The other day when I spoke in this House, Kisii and Nyamira counties and the neighboring counties were extremely happy when this issue brought by Sen. Wetangula came to this Floor. Today, that answer is going to make them be very miserable. I request the Chairperson of this Committee to persuade the Ministry to go back and rationalize whatever pilot schemes that they are doing, so that we are able to get this country well represented.

Phase two will also cater for some many other counties that have been left out. You cannot cramp that section alone in one area and then say that it is a pilot scheme and the next will come after 2022. That is an election year and that is a promise in the basket.

**The Speaker** (Hon. Lusaka): Let us have Sen. Wamatangi. Honorable Senators remember we are sitting up to 6. 30p.m and we are having Division to do in a short while, so keep it brief and short.

**Sen. Wamatangi:** Thank you, Mr. Speaker Sir. I will be very brief. I acknowledge that the concerns that have been raised by Members of this House are well placed and legitimate for any representatives of the people to ensure that the concerns of every Kenyan are addressed.

There is none of us, especially those of us from coffee growing areas, who can pretend that they do not know the plight of coffee farmers in general. If there are farmers who have suffered, it is coffee famers. I am a witness because I go to their meetings all the time in Kiambu. These people live a miserable life from hand to mouth no matter how many acres of coffee one has.

I regret that my colleague, Sen. Ndwiga, the Chairperson of the Senate Committee on Agriculture did not invite me to that meeting. As one of the Senators from the coffee growing areas, I would have loved to be invited to that meeting so that we could also add value to the discussion. I pray that he invites all of us in the next meeting so that we can make valuable contribution.

Let me correct the misconception that half of Kiambu County which is an agricultural county largely is now under real estate. I need the House to appreciate that post-independence, all the people of Kiambu who were farmers rushed to adopting coffee farming because it was profitable.

The nature of the farms we have in Kiambu are very small. Those who have both big and small farms went to coffee farming but because of the invite of real estate, a substantial number of people have abandoned coffee farming. However, the bulk of large-scale farmers in Kiambu who are still having their farms under coffee are very many. I want it to be clear and in the records of this House that majority of famers are still farming coffee.

Lastly, about five months ago, I was invited to another meeting. I would want to pass this information and also table documents in this House. I was invited by a company called **Blue Marble Co. Coffee Mission** which has been contracted by the World Bank (WB) to do research with a view of supporting coffee farming in Kenya. I have the documents here which I was given at that meeting. My concern - and this is the controversy - is that the county of Kiambu and other counties in that section have been left out in this pilot project that is being done with a view to assisting coffee farmers by the World Bank (WB) and helping them market their coffee. The documents are here. I

will share them with the rest of the Senators. I will table them and give them to the Committee.

Unless, in my view, the WB is carrying out two parallel projects--- This was one of the meetings that was held at the Kempinski Hotel. I was invited as a member of a coffee growing area. We could add value to this by asking: Are there two parallel procedures that even the CS was not aware of?

**The Speaker** (Hon. Lusaka): Sen. Omogeni is desperately looking for attention.

**Sen. Omogeni:** Thank you Mr. Speaker Sir, for giving me this opportunity. I want to go on record as fully agreeing with the sentiments that have been put forth by Sen. Wetangula.

As the Senator of Nyamira, I have been bombarded by many questions from the many farmers who grow coffee in Nyamira. I remind the CS for Agriculture that in terms of square kilometers, the land we occupy in Nyamira may not be the same as the land in the county of --- So this idea of 75 per cent coffee coming from Central Kenya could be because of the land size.

I know the CS for Agriculture. He is a colleague and a lawyer and a wise man. Wise men change their minds. He can read the mood of the House and see the sentiments of representatives of the people from Western Kenya and Nyanza. A mistake was made and there is time to correct it. It is not fair to go along with this kind of arrangement where all the counties from western Kenya and Nyanza have been left out.

I make an appeal to the CS for Agriculture to review the decision that he made and take into account that farmers are suffering. We are going through this COVID-19 pandemic and there is desperation all over the country. This should even give him an opportunity to review his decision and think about the farmer in Nyamira, Bungoma and Kisii. We are speaking on their behalf. There is nothing about politics here. It is a matter of us wanting a process that is not only fair but is seen to be so.

I urge the Chairperson of the Senate Committee on Agriculture to convince the CS for Agriculture to review his decision and ensure that farmers from these other regions also benefit.

**The Speaker** (Hon. Lusaka): I think Chairperson of the Senate Committee on Agriculture, you want to say something before we conclude.

**Sen. Ndwiga:** I have listened to my colleagues. This is the truth of the matter. I am surprised because I was with Sen. Wetangula. I called him even in the morning to come and join us because we wanted to know the truth about this project. What has happened is the following: There are two funds. One was cotton the other was coffee. The Ministry, in their wisdom, decided that since all this is revitalization, they would start with cotton on the Western side and coffee from this other side.

In other words, those of us from the Eastern side of Kenya were not benefiting from the cotton fund. Before we even go to the cotton fund, on the issue on the table on coffee, I wish my colleague would read that document. The amount of money is Kshs1.5 billion. If you were to spread it throughout this country, the effect will not be felt. Even as it is now, this money is not to revitalize coffee in coffee estates and places. It is specifically for cooperative societies. In my own county, out of 32 cooperative societies, only four will benefit from this program. If we were to spread that amount throughout the country, what then would happen?

I had promised that I will make a follow up today and as I was coming to the House today, I heard the sentiments of my colleagues from the western side. This morning I followed up with the Cabinet Secretary to know when the next project will start. Whereas I agree that if this World Bank project is going to be effective, we have got to use the money the way it is. Sen. Wetangula and I have been in the Government and we know that if there is a project which the World Bank has committed to fund, they will not release another tranche before you take the first one.

Mr. Speaker, Sir, this morning I was convinced that the Ministry will now be summoning the governors because it is the counties who are on the front line; it is the counties which must put in the counterpart funds. They are also going to summon the governors from the western side and the governors are aware. The County Executive Committee Members (CECM) Sen. Wetangula is talking about are the CECMs of the counties which are benefitting from the initial projects; those are the ones who were invited and not all CECMs. The CECMs from the western section will be invited once their counties have put in the commitment for these funds.

On West Pokot County - I even praised them today - West Pokot County has done very well. I was in charge of these cooperative issues, I travelled all over and I know the future of coffee is not the eastern side but Bungoma, West Pokot, Trans Nzoia and those other places. I am more than convinced that if we are going to have revitalisation and this project working it has to be national.

Mr. Speaker, Sir, secondly, on the cotton issue, those of us who come from the eastern side, we have not complained that we are not benefiting. I have not heard the Makueni Senator complain in the House that he is not benefiting from this Fund because he should. They also grow cotton in Makueni. As it is now, I am convinced beyond doubt that we need to have this program moving the way it has been set.

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Mwaruma.

**Sen. Mwaruma:** Thank you, Mr. Speaker, Sir. I did not know what the report was all about,. So it would not be proper---

**The Speaker** (Hon. Lusaka): So, how do you comment on something you do not know?

**Sen. Mwaruma:** Mr. Speaker Sir, it was before he started presenting, but now I am privy to what he is saying.

My good friend Sen. Ndwiga, I want it to go on record that Taita Taveta County also produces coffee and the county is very viable when it comes to production of cotton. We are neighbours with the Senator for Makueni who has not complained. However, I am complaining because next to Makueni, we have Kishushe which is an area that is viable for cotton growing. We normally communicate through WhatsApp and some of this information should have been put in WhatsApp so that all---

**The Speaker** (Hon. Lusaka): Is that a point of order or point of information?

**Sen. Mwaruma:** It is a point of order because information concerning all Senators is disseminated using WhatsApp. Instead, the chair used phone calls to Sen. Wetangula instead of putting it in a place like WhatsApp where all of us can see and benefit from it.

**The Speaker** (Hon. Lusaka): Sen. Ndwiga, can you conclude because we are running out of time.

**Sen. Ndwiga:** Mr. Speaker, Sir, the issue of cotton is not about Mount Kenya east or west. We have a lot of cotton in Taita Taveta and Tana River which is down at the Coast. It was not in the first project and today, I insisted that the whole country must be incorporated. When I come to this Senate, I am talking to the country and the Senators who are the representatives of the people are all here. We cannot have a section of people that are not represented in whatever the Government is doing.

As the chairperson of the Agriculture Committee, I commit to bring regular reports on this particular project. By June, we would want to know how far we have gone with the projects in western Kenya. I commit to this House that that will happen for both cotton and coffee.

**The Speaker** (Hon. Lusaka): Sen. Wetangula very briefly.

**Sen. Wetangula:** Mr. Speaker, Sir, the chairman of the Committee---

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

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, to be fair to the House, the business that is ahead of us is a lot. We have two Bills; one which must be disposed of today. The Senate Business Committee had said today that the Statements will be read and there will be no debate. You have already allowed a large latitude in most of those Statements. In the interest of time, I request that follow up questions are taken to the committee.

**The Speaker** (Hon. Lusaka): I will allow Sen. Wetangula, then after that, time allowing, we shall come back.

**Sen. Wetangula:** Mr. Speaker, Sir, I will be very brief.

The Senator for Embu is not being serious with the House. The World Bank does not choose counties where to put money. It is a flawed thinking in the ministry that picks one region and excludes all others and that is what we are protesting. Let us not mix the issue of cotton and coffee. We do not even know how much money there is in cotton. We have not seen any record or report here on cotton; we are dealing with coffee. Let us not muddy the waters; we want fairness. I expect my brother, the Senator for Embu, Sen. Ndwiga who carries a lot of respect from his previous engagement in coffee to bring fairness to the country. Do not justify the unjustifiable because, Sen. Malalah, Sen. (Prof.) Ongeru and everybody else here, we are not happy. You cannot pretend to be giving us an assurance here and then we smile away; we are not happy!

**The Speaker** (Hon. Lusaka): Sen. Wetangula, to be fair, the chair has committed himself. He has heard the sentiments and this is also an ongoing matter. I would ask that as you consult further with the Cabinet Secretary, please note the sentiments or the concerns that have been raised. What is your point of order Sen. Malalah?

**Sen. Malalah:** Mr. Speaker, Sir, Sen. Wetangula was very clear as to what resolution he would want this House to adopt. He had suggested that this House adopts a resolution that the disbursement and the implementation of that project be stopped until this matter is resolved amicably. I wish this House can resolve to say that the disbursement of these funds be stopped until we resolve as a House.

**The Speaker** (Hon. Lusaka): For that to be done, there needs to be a Motion. There is a proposal that has been put forward which the chair has noted and when he gives the report, then we will decide on how we move forward.

Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, Sen. Ndwiga mentioned that coffee is grown in Makueni. I have nine coffee factories in my own village. I am proposing, for good order, let him send the report and then we can follow up later and deal with this issue as we go along but also address issues which were raised by Sen. Wetangula and Sen. Malalah. Thank you.

**The Speaker** (Hon. Lusaka): Noted. Next Order!

## BILLS

### *First Reading*

THE PARLIAMENTARY POWERS AND PRIVILEGES  
(AMENDMENT) BILL (SENATE BILLS NO. 4 OF 2020)

*(Order for First Reading read - read the First Time and  
Ordered to be referred to the relevant Senate Committee)*

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

**Sen. Sakaja:** Mr. Speaker, Sir, just for good order of the House, it will be good for you to tell us at what point we will go back to Statements. Right now, there are more than 5,000 people who are homeless in Kariobangi and this is really an urgent Statement.

I know other Senators have Statements but for good order, it will be good for us to know when we will come back to that because we must speak to those issues to address those who currently, as we speak during the COVID-19 pandemic, are homeless because of demolitions that have happened in Kariobangi in Embakasi North Constituency.

**The Speaker** (Hon. Lusaka): I said after Orders Nos.10, 11 and 12, time allowing, we will come back to Statements that are urgent. I direct that the clerk reads the next Order.

### *Second Reading*

THE FISHERIES MANAGEMENT AND DEVELOPMENT  
(AMENDMENT) BILL (SENATE BILLS NO.22 OF 2019)

*(Sen. M. Kajwang' on 19.2.2020)*

*(Resumption of Debate interrupted on 19.2.2020)*

I direct that the Division Bell be rung for three minutes.

*(The Division Bell was rung)*

I now direct that the Bars be drawn and Doors be closed.

*(The Bars were drawn and Doors closed)*

**DIVISION****ROLL CALL VOTING**

*(Question, that the Fisheries Management  
and Development (Amendment) Bill  
(Senate Bills No.22 of 2019) be read a Second Time,  
put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Faki, Mombasa County; Sen. Halake, Isiolo County; Sen. (Eng.) Hargura, Marsabit County; Sen. Kamar, Uasin Gishu County; Sen. Kihika, Nakuru County; Sen. Linturi, Meru County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. (Dr.) Milgo, Bomet County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Sakaja, Nairobi City County; Sen. Wetangula, Bungoma County; and, Sen. (Dr.) Zani, Kwale County.

**NOES:** Nil

**ABSTENSIONS:** Nil

*(The Clerk-at-the-Table tallied the results  
and transmitted them to the Speaker)*

**The Speaker** (Hon. Lusaka): Hon. Senators, these are the results of the Division -

Ayes: 26

Noes: 0

Abstentions: 0

The "Ayes" have it.

*(Question carried by 26 votes to nil)*

*(The Bill was read a Second Time and  
committed to a Committee of the Whole tomorrow)*

*Second Reading*

THE INDEPENDENT ELECTORAL AND BOUNDARIES  
COMMISSION (AMENDMENT) (NO. 3) BILL  
(NATIONAL ASSEMBLY BILLS NO.35 OF 2019)

*(Sen. Murkomen on 19.2.2020)*

*(Resumption of debate interrupted on 20.2.2020)*

**DIVISION**

**ROLL CALL VOTING**

*(Question, that the Independent Electoral and Boundaries Commission (Amendment)  
(No. 3) Bill (National Assembly Bills No.35 of 2019) be Read a Second Time, Put and  
The Senate Proceeded to Vote by County Delegations)*

**AYES:** Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kihika, Nakuru County; Sen. Linturi, Meru County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. (Dr.) Milgo, Bomet County; Sen. Murkormen, Elgeyo Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu; Sen. Ochilo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Sakaja, Nairobi City County; Sen. Wamatangi, Kiambu County; Sen. Wetangula, Bungoma County and Sen. (Dr.) Zani, Kwale County.

**NOES:** Sen. Malalah, Kakamega County.

*(The Clerk-at-the-Table tallied the results  
and transmitted them to the Speaker)*

**The Speaker** (Hon. Lusaka): Hon. Senators, the results of the voting are as follows-

**AYES: 25**

**NOES: 1**

**ABSTENTIONS: Nil**

The "Ayes" have it.

*(Question carried by 25 votes to 1)*

*(The Bill was read a Second Time and  
committed to a Committee of the Whole tomorrow)*

**MOTION**

ADOPTION OF REPORT REGARDING THE IMPLEMENTATION STATUS  
OF THE SENATE RESOLUTION ON COUNTY GOVERNMENTS'  
INFRASTRUCTURE PROJECTS

THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget regarding the implementation status of the Senate Resolution on County Governments' infrastructure projects comprising County Executive Headquarter offices, Assembly chambers and offices and County State officers' residences laid on the Table of the Senate on 28<sup>th</sup> April, 2020.

*(Sen. (Eng.) Mahamud On 28.4.2020)*

*(Resumption of Debate interrupted on 28.4.2020)*

**DIVISION****ROLL CALL VOTING**

*(Question, that the Senate adopts the Report Regarding the Implementation Status of the Resolution on county Governments' Infrastructure Projects put, and the Senate proceeded to vote by county delegations)*

**AYES:** Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kihika, Nakuru County; Sen. Linturi, Meru County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. (Dr.) Milgo, Bomet County; Sen. Murkormen, Elgeyo Marakwet County; Sen. Mutula kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu; Sen. Ochilo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Onger, Kisii County; Sen. Orenge, Siaya County; Sen. Outa, Kisumu County; Sen. Sakaja, Nairobi City County; Sen. Wamatangi, Kiambu County; Sen. Wetangula, Bungoma County and Sen. (Dr.) Zani, Kwale County.

**NOES:** Nil

*(The Clerk-at-the-Table tallied the results  
and transmitted them to the Speaker)*

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

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

**Sen. (Dr.) Mwaura:** Mr. Speaker, Sir, I have just received some concern from some other quarters saying that the Senate Majority Leader and the Senate Minority Leader are voting on behalf of Senators. If that is the case, I think the Bills from this House might be rejected by the other House.

Since the Senators are here, would it not be in order for them to vote even when the delegations have been confirmed?

**The Speaker** (Hon. Lusaka): I think I gave guidelines. If that is the issue, I will give a further ruling in the next Sitting.

**Sen. Mutula Kilonzo Jr.:** Mr. Speaker, Sir, I am equally concerned where Sen. (Dr.) Mwaura is sitting *vis-a-vis* where Sen. Halake is sitting. There is no distance in between them. It is in complete violation of the rules. I am actually more concerned about Sen. Halake.

**The Speaker** (Hon. Lusaka): Okay, let us proceed.

These are the results -

**AYES: 26**

**NOES: 0**

**ABSTENTIONS: Nil**

The "Ayes" have it.

*(Question carried by 26 votes to 0)*

**The Speaker** (Hon. Lusaka): I now direct that the Bars be withdrawn and doors opened.

*(The Bars were withdrawn and doors opened)*

We will now go to the next Order; Order No.13. Please bite that we still have Division on the County Allocation Revenue Act (CARA).

## **BILL**

### *Second Reading*

#### THE COUNTY ALLOCATION OF REVENUE BILL (SENATE BILLS NO. 7 OF 2020)

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, I beg to move that The County Allocation of Revenue Bill (Senate Bills No.7 of 2020) be now read a Second Time.

The House will recall that we passed the Division of Revenue Bill 2020/2021 and Kshs339.8 billion enabling it to be allocated to counties. This is made up of Equitable Share of Kshs316.5 billion as set out in the First Schedule to the Bill. The second is the conditional allocations from the national Government share of Revenue - Kshs.23.16 billion - as indicated in Schedule No.2 of the Bill. Third is conditional allocations as loans and grants from development partners totaling to Kshs30.2 billion as indicated in the Third Schedule.

The House is aware that we are seized of the third generation revenue sharing formula which supposed to guide revenue sharing between counties, but this has not been finalized to date. The law under Article 217 of the Constitution requires that Parliament, by resolution of both Houses, adopts a new formula as submitted by Commission of Revenue Allocation (CRA).

The House is aware that we have gone through that substantially, but because of the situation we are in today, we have not been able to finalise it. The County Allocation of Revenue Act (CARA) has been introduced as required under Article 218(b) of the Constitution, which required that the Bill be introduced two months before the end of the financial year so that counties can do their budgets.

Mr. Speaker, Sir, Article 217(7) of the Constitution provides that a basis that has been approved by Parliament shall be binding until a subsequent resolution is approved. For us as a Committee, we are of the view that the second generation formula can still be used because the other one has not been put in place.

The process thus required under the third generation is very rigorous because the third generation introduces different parameters. In fact, the parameters are very elaborate and as good as they are, we have not been able to finalise it. Before the onset of COVID19, we were planning to have a series of engagements with Senators and stakeholders and sessions to elaborate so that we can finalise the formula.

Since we have not finalized, we are proposing as per Article 217 of the Constitution, the Bill that had already been approved by Parliament, that the second generation be utilised. As you are aware, the other part of the Bill is the issue of Nairobi City County and pursuant to Article 187(2) of the Constitution and Gazette Notice No. 1609 of February 2020, some functions of Nairobi County government as set out in part two of the Fourth Schedule of the Constitution were transferred to the national Government.

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

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

*(Sen. (Eng.) Mahamud remained standing)*

**Sen. Sakaja:** Mr. Speaker, Sir, please, advise the Finance Committee Chair to sit down.

*(Interruption of debate on Bill)*

## POINT OF ORDER

### FAILURE TO PASS THE THIRD GENERATION REVENUE SHARING FORMULA

**Sen. Sakaja:** On a point of order, Mr. Speaker, Sir. Please, advise the Chairperson of the Committee on Finance and Budget to sit. No two Members shall be on their feet at the same time.

Mr. Speaker, Sir, the Chairman of the Committee on Finance and Budget has raised an issue that I think truly needs your direction. The Constitution is very clear with respect to the basis for sharing of revenue. At this time, we have been waiting for the Third Generation Formula of revenue sharing since many of us feel that the second generation formula has been disfranchising our counties, especially counties that are populous.

Mr. Speaker, Sir, before moving forward on this stage of this Bill, I want to ask that you rule on whether, despite the provisions of the Constitution and the fact that it is

the same Committee that has sat on the formula for many months, we should proceed with this Bill.

Mr. Speaker, Sir, I feel very strongly for the people of Nairobi City County, that we deserve a new formula. I know very many other counties know that it is not just a suggestion; the Constitution is clear about how long one formula should stay. We cannot benefit from them not doing their work of giving us a formula.

Mr. Speaker, Sir, I want you to rule on whether we should proceed on this before we have the formula brought by the same Committee. Could you rule that the Committee within one week--- Even if they want to bring the same formula, let them do so and let us consider a formula for sharing revenue. There is no other more serious work that a Senator has apart from determining the manner in which our counties shall divide money.

Mr. Speaker, Sir, I beg for your ruling on this matter before we proceed any further.

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

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. I would like to join my colleague, Sen. Sakaja, and express my dissatisfaction with the Committee. This is a very important matter. Right now, Narok County is receiving money based on a population of 850,000 people, yet we know that the people who reside in that county, based on the 2019 Population Census, are 1.1 million. The amount of money being divided for the people of Narok County is less than what they should get.

Mr. Speaker, Sir, it is about time that we stopped rushing things and decide matters for the interest of the 47 million people of Kenya. The Commission on Revenue Allocation (CRA) has come up with a proposed formula, which I believe is what we should be discussing here, instead of hearing the Chairperson of the Committee on Finance and Budget, whom I have a lot of respect for, talking about the challenges that they have encountered dealing with the issue of the third generation formula. We cannot be setting the Constitution in abeyance. We need to sit down and discuss, so that when we divide money, it does not matter who gets what, but we are within the law.

Mr. Speaker, Sir, I would like to request that stop the debate on this County Allocation of Revenue Bill until we are able to comply with the Constitution in terms of the third generation formula.

I thank you.

**The Speaker** (Hon. Lusaka): Sen. Wamatangi, kindly, proceed.

**Sen. Wamatangi:** Thank you, Mr. Speaker, Sir. The record of this House and the activities of the Senate bear witness to the fact that the endeavour to have the formula that is supposed to be used in disbursement of funds at this time--- The record has been so clear. Indeed, this matter has been before the Committee on Finance and Budget for so many times. There has been numerous correspondence and endeavours by the Members of this House to have this matter resolved by the Committee on Finance and Budget.

Mr. Speaker, Sir, it is completely out of order that the House can and should endorse an unconstitutional process. That is outside the Constitution in lieu of excuses by the Committee on Finance and Budget.

**The Speaker** (Hon. Lusaka): What is your point of order, Senate Majority Leader? Order, Senate Majority Leader! Sen. Wamatangi is still on a point of order.

**Sen. Wamatangi:** Mr. Speaker, Sir, I am on a point of order. My point of order is simple; that it is unconstitutional. Is the Chairperson in order to fail to live up to his

responsibility and the mandate of his Committee, in terms of facilitating this House to be in line and compliant to the constitutional requirements of disbursing monies to our counties?

Mr. Speaker, Sir, in that respect, I want to firmly join my colleagues in saying that the Committee must - they should - and this House cannot agree with the Committee, until they bring the formula that has been discussed here. We shall only pass the County Allocation of Revenue Bill based on a third generation formula; not any other formula, but the one that we have discussed.

Mr. Speaker, Sir, we have had meetings---

**The Speaker** (Hon. Lusaka): You have made your point.

Sen. Kihika, kindly, proceed.

Senate Majority Leader, I will give you a chance.

**Sen. Kihika:** Thank you. I also join my colleagues in restating almost the same thing. I believe very strongly that there is no reason we should proceed with The County Allocation of Allocation Bill based on the previous formula. This issue has been in the Committee on Finance and Budget for a very long time. I actually remember very many meetings last year, including many breakfast meetings that were called and cancelled, and never really upheld. So, we are wondering if there is mischief in bringing The County Allocation of Revenue Bill before bringing the third generation formula

However, I have a lot of respect for the Chairperson of the Committee on Finance and Budget. Maybe there is a misunderstanding, but as a House, I believe we should not proceed until we have the new third general formula.

**The Speaker** (Hon. Lusaka): Senate Majority Leader, kindly, proceed.

**The Senate Majority Leader** (Sen. Murkomen): Mine is just more or less on the way forward.

Mr. Speaker, Sir, the issues being raised are valid and are the same. I did not just want to over repeat. My suggestion to you is, first, listen to the Chairperson with regard to why they have not brought the formula. Secondly, since there is usually no guarantee that the formula will pass in the manner each one of us thinks for their benefit---. It usually comes back here and is negotiated like we did last time.

I would suggest the way forward that if Members feel that the formula must be used for this year, in whatever form we will have passed, we continue today with the Second Reading, with part of the contribution saying that it will be amended in the Committee stage to follow the formula. We should complete the Second Reading and before the Committee stage, sort out the formula first before we go and amend. If not, the next step is to advise the Chairperson of the Committee to withdraw, depending on the answer he has concerning the formula. However, the concerns are valid.

**The Speaker** (Hon. Lusaka): The Chairperson of Committee on Finance and Budget, can you respond before I make a ruling?

Sorry, Sen. Orengo. Please, proceed.

**The Senate Minority Leader** (Sen. Orengo): On a point of order, Mr. Speaker, Sir. If there is a provision in the Constitution that is clear on the power and authority of the Senate, it is on the question of the generation of the formula. Every other action that is taken by other organs of State is dependent on the resolution of the Senate.

If the Senate is not clear on that resolution, then every other action that follows consequentially is not based on a material that has been properly considered by the

Senate. I believe that in times like this, when the county governments are being put against the wall on what they are doing about many challenges, and at the end of the day the question of the sharing of revenue and what goes to the counties is central--- We cannot proceed without abiding by that constitutional provision.

*(Applause)*

We have been complaining about what the other House does when they pass things without abiding by the Constitution. Now, we want to, for convenience, pass something because we are going to the Third Reading. The most dangerous phase in the deliberation in the House is the Third Reading. This is because in the Third Reading there is no debate. But at the point at which Senators can talk significantly and concretely on the issue of the formula is during the Second Reading.

I plead with the Chairperson of the Committee. You have been doing a very good job, but on this question, where the Constitution is very clear, we do not share this power with any other authority. Other powers are shared. Please, on this one, come with what the Constitution demands and we shall agree with you if you persuade us, but not on the condition that we just pass and then go to the Third Reading.

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

**Sen. Sakaja:** On a point of order, Mr. Speaker, Sir, I am glad that my colleagues have been put on their toes and we are in agreement, majorly and again, as Sen. Kihika has said, this is with a lot of respect and high regard to the Chairman of this Committee.

Fortunately, our Standing Orders give us a way out; in Standing Order No.32; Adjournment of the Senate:

(1) A Senator may, at any time, for reasons stated, seek leave to move “That, the Senate do now adjourn”.

Mr. Speaker, Sir, we can use this provision to adjourn debate on this Motion so that we can thereafter consult and agree on how the formula is brought to us. However, we can use this provision to adjourn debate on this Motion of this Bill.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, as I said, we must find a way forward. There is a better Standing Order than the one Sen. Sakaja has referred to. I am trying to get it; which I used last time to withdraw a Bill from the House. It was actually midway when I was moving it. That is not even the issue.

However, on this particular issue, I want you to prepare the House on the issue of the formula, which is very important for all of us, if that is where we are going now, if we agree today that we withdraw the County Allocation of Revenue Bill (CARB) and deal with the formula first.

First of all, the Chair and the Clerk must prepare a better Chamber for that debate because it cannot be delegated to 28 Senators. All 47 counties must be represented. Sen. Orendo has said as he has done that it is a very weighty matter; there is no one who will delegate to someone to say that this or that person will represent us.

So, Chair, please give us the formula but during the debate of this formula and in future, of course, on issues that are of that nature or comparative level, it will be very difficult to designate 28 Senators.

**The Speaker** (Hon. Lusaka): You have not given an alternative Standing Order. You said that there was a better one.

**The Senate Majority Leader** (Sen. Murkomen): No, I said that I will get it for you; if I do not give it to you, then the clerks will give you. But I will do so shortly.

The main point that I was making was not about the Standing Order. The main issue, from my experience, when it comes to this formula itself, everybody usually wants to go on record about their county. The 47 counties must be in the Chamber when that decision is being made. It is very weighty, it takes five years and it has great implications on how resources are going to be shared. So, this is one of those issues that as a Majority Leader, I will not be comfortable to designate 15 Senators to come and deliberate.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. I am a Member of the Committee on Finance and Budget and like everybody else has said, Sen. (Eng.) Mahamud has steered this Committee very well.

The Committee has met with the Commission on Revenue Allocation (CRA), and we have gone through the formula. We have actually had a unanimous view on the formula. So, what we need and I agree with Members who have raised concerns that this is one singular most important constitutional assignment for this House, there is no other. This is a very important assignment because it is the only time that the relevance of this House rises to the highest notch; sharing of revenue.

I want to urge my Chair, following what the Senate Majority Leader has said; it is very simple. Erect a dome at the Nyayo Stadium or Moi International Stadium, Kasarani, for the entire Senate to sit and deliberate on this important issue.

This can be done very easily or take the entire plenary of Kenyatta International Conference Centre (KICC) or the National Assembly, which accommodates all of us so that, because of the importance of this matter and the constitutional budgetary cycle going on - I would even urge the leadership of the House - that this House can actually sit on Thursday this week and go through the formula. Once we approve it, then we move to CARA.

I also share the view that certain counties including mine are not getting a very good deal, hanging on to the old formula. The work has already been done and I must say that CRA has done a very commendable job in bringing a new formula.

**Sen. Mutula Kilonzo Jnr:** Thank you, Mr. Speaker, Sir. I agree with the views of the Members, and of course, I must disclose that I sit in the Committee on Finance and Budget with Sen. (Eng.) Mahamud.

Just like Sen. Wetangula has mentioned, the Report of this formula is already with us. I think that what needs to be done, like you have proposed, is that the information needs to be given to the Senators. Once the information is given to the Senators, then you can make a decision but with a variation.

In the last formula, the Senate Committee on Finance and Budget invited all Senators, first into an informal setting. The reason is as follows; eventually, all these Senators, including Sen. Sakaja, whatever formula is adopted, everybody wants to know what the bottom line is. That is what we ended up with in the last formula; everybody looked at the bottom line irrespective of what the formula was saying.

It will necessitate that, in fact, not only the Senate, including CRA will be required to do some elements of permutations. I will give an example if you allow me an extra minute.

In the last formula, those who had proposed that population quota was too high at 45 per cent, there was a permutation where it was reduced to 43 percent. In the format of

reducing population at that time, Nairobi City County went to the bottom and Lamu County went to the top.

So, there should be an informal setting first and make sure that all these Senators can sit.

The National Assembly is not enough for us to sit because at any given time now, they can only accommodate 70 Members. We cannot be 70, we must be more because we must involve CRA and possibly other stakeholders. So, we need a bigger field where Members can be given an opportunity to interrogate these issues *vis-à-vis* the amount that has been allocated so that when we come back to the county revenue formula that we have as a Committee and the understanding that we are moving this Bill as a Committee, we can then come to pass.

Mr. Speaker, Sir, on disclosure, there is nothing that the Committee is hiding; only that the information should be given to all our colleagues so that a decision can be made.

Thank you.

**Sen. Ochillo-Ayacko:** Thank you, Mr. Speaker, Sir. I heard the Senate Majority Leader say that we can debate and then later on have the amendments brought. That is the point that I want to speak to.

From my feeling and the feeling of Members, I think that the meat, the substance of the debate is in what we are waiting for. It would not be an efficacious way of using time to debate in a way that will be altered completely when the substance is brought.

So, I want to agree with Sen. Sakaja that this debate be adjourned so that when we see the substance; the meat, we can freely debate and conclude in an informed way on the way forward.

Thank you.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, just finally, this Committee is one of the committees that does a very good job. However, my problem all the time with this Committee is that, they come at the last minute, that is, CARA, Division on Revenue Act (DORA) and now the formula, we must pass it.

Let me use this word, which the Senate Majority Leader was using in some platform; you know, we are supposed to be the sages. Things do not just come to you at the last minute, then you rush through it and then you say that we agree.

Mr. Speaker, Sir, on the question of the formula, I urge you to let us get the Report because I understand that there is a Report and even that Report is not being made available to us. I think that before we meet formally or informally; we must get the report in advance. Some people do not read it.

That is justifiable in the sense that somebody has chosen not to read it. They always say that “the devil is in the details”. Let us have this Report in good time and we will support the Committee in its work.

**The Speaker** (Hon. Lusaka): I will give one minute to those who have not spoken.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I will take 10 seconds. For the reflection of the record, I said that there is a better Standing Order for withdrawal. So, I report to the House that it is Standing Order No. 154 where the Mover of the Bill, on his own volition, can withdraw the Bill at any given time. I could not remember at that point in time.

**Sen. (Prof.) Kamar:** Mr. Speaker, Sir, I agree that we need an informal session to freely discuss and ask the Commission to give us different formulas so that we can go through them. By the time we have the sitting, we would have agreed. I suggest that we have the informal session on Thursday morning and an afternoon sitting to pass it. That is my proposal.

**Sen. Olekina:** Mr. Speaker, Sir, I agree with Sen. Mutula Kilonzo Jnr. that it is imperative for all Senators to understand how much money is going to their counties. This is the most important thing. The only way for us to understand is if the Commission on Revenue Allocation (CRA) walks us through each and every parameter, for example, for population and health. This is because there are those who believe that population is 18 per cent while health is between 17 to 22 per cent. What does that mean?

I understand the predicament that the Chairperson of the Committee on Finance, Commerce and Budget is facing. There was that debate which we cannot run away from on whether we are looking at the size of the land or distance to service. These are things that all of us must understand so that by the time we go back to our counties, we will say that as a Senator, I have worked to bring a certain amount of money into the county.

If we read the report the last minute and vote for it, we will not explain anything. So, this informal session between CRA and the Senators will help us to ask questions. For instance, if we decide health is no longer 17 per cent but 22 per cent, what impact does it have?

Mr. Speaker, Sir, one other important thing for all Senators to understand is that these factors are not just brought in arbitrarily. They look at the Ministry policies. We need to understand how the CRA came up with this policy.

**The Speaker** (Hon. Lusaka): What you are now delving in is what will be looked at in the informal sitting.

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, I appreciate the concerns of the Senators. I believe that what they have said is correct. The Committee is not hiding anything; it has been grappling with that formula. In fact, before Covid-19, we had planned for a three-day retreat for CRA to take us through the formula, the parameters and the data that they use. There are things, for example, hospital visits and facility gaps which we do not have with us and we wanted the CRA to bring before us.

*(Sen. Orengo consulted loudly)*

I do not expect people to cast aspersions on our Committee that we are hiding something. We are not hiding anything. In fact, we wanted to have a two-day informal session to go through this together. I assure you that we told CRA to provide further simulations. This is because the parameters and percentage have been set---

**The Senate Minority Leader** (Sen. Orengo): On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): What is your point of order?

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, he has had his time.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, the Chairperson should not be worried. The Members of his Committee, that is, Sen. Wetangula and Sen. Mutula Kilonzo Jnr. have said that there is nothing to hide. So, we do not need to go through that. All that he needs to do is to agree with us and follow the Senate Majority

Leader and defer the Bill so that we meet at a convenient time informally. Nobody has cast aspersions; everybody has said that you are good and are doing a good job.

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, the HANSARD has recorded and I will be cleared. As the Chairperson of this Committee, we have done a lot for this House. It should be on record that I am not hiding anything. I know the thinking behind some Members. We will bring this. Give us the time and facilities so that we can go through it. For the time being, I will not go further.

With the reasoning given by the Members of the Senate, I withdraw the Bill. It is not reasonable to go to the Second Reading.

*(Applause)*

We elect not to proceed further with this Bill.

**The Speaker** (Hon. Lusaka): Hon. Members, I direct the Clerk to facilitate an informal session within this week so that this matter can be discussed conclusively. By the time we discuss the County Allocation of Revenue Act, we have a new formula to use.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, according to your direction, if at all we meet, I request that we should have that Report in advance. We should not walk into the meeting and be given the Report to read as the meeting goes on. It is an ambush and not qualitative.

**The Speaker** (Hon. Lusaka): Chairperson, you will avail the Report to Members before then.

Clerk, we will agree on when we are meeting informally.

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, we want the CRA to take Members through the formula of all the parameters. So, Members should be ready. The Report will be submitted to us by the CRA then we forward to you. A week will be short. I will discuss with the Office of the Clerk to see how to go about it. Thereafter, we require this matter to go to the National Assembly. They must agree with it so that we have the formula done.

**Sen. Sakaja:** Mr. Speaker, Sir, if I heard right, Members of this Committee have said that the Committee has a Report. We are not asking for the CRA report. The Constitution is clear. Article 216 says that CRA recommends. The purpose of this Committee under Article 217 is to deliberate upon those recommendations by the CRA and do their report. This is because it is only the Senate that can determine the basis. In fact, without the CRA report, Sen. Olekina, for example, can write a formula and we will pass it.

That mandate is ours. The Commission on Revenue Allocation (CRA) only recommends. Is there a committee report that we are getting? I think Sen. Mutula Kilonzo Jnr. was clear that the Committee already has a report. So, are we getting a committee report or a CRA recommendation?

*(Loud consultations)*

Mr. Speaker, Sir, if the Committee had actually tabled a report that is the property of the House, that is where our discussion starts. Everything else is just additional information.

I yield completely.

**Sen. (Eng.) Mahamud:** Mr. Speaker Sir, let me say this: We have no report. What we have is the CRA's recommendation to us as a Committee, which they took us through two weeks ago. We will prepare a report now, but I think that by the time we come to the informal meeting, we need the CRA to take the members through their recommendations first. However, there is no report which we have actually finalized.

**The Speaker** (Hon. Lusaka): I think that the Committee can give whatever it has, whether it is a report or some draft, so that Members can go through, then the CRA can take the Members through it in the informal sitting.

*(Loud consultations)*

Order, Hon. Members! We are not proceeding with the moving of the Bill under Order No. 13. The debate on the Bill is adjourned. We shall, therefore, resume the Second Reading after the meetings and consultations with CRA.

*(Debate on the Bill was adjourned)*

Next Order.

## MOTION

### ALTERATION OF THE HOURS OF MEETING OF THE SENATE

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

THAT, pursuant to the Senate Resolution made on 27th February, 2020 (approval of Senate Calendar) and 14th April, 2020 (alteration of the Senate Calendar), the Senate, pursuant to Standing Order 31(3)(b) resolves to hold additional Sittings every Tuesday morning, starting from 10.00 am and ending at 12.30 pm, commencing from Tuesday, 12th May, 2020 until Tuesday, 2nd June, 2020.

Mr. Speaker Sir, the Senate Business Committee felt like there are many Statements that are coming to the Floor. We also have a lot of other business and considering that we are sitting for only a day, it was necessary to have more time for Members to prosecute the Statements that are coming from the constituents and concerns that usually do not wait for a long period of time as has been demonstrated today by the many Statements that are before you.

Since this is also a procedural issue and a very necessary change for this House to move forward, I would request the Senate Minority Leader to second, and also request the House that we do not deliberate on this one so that we can proceed to the more substantive issues.

I, therefore, beg to move and request Sen. Orengo to second.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, I wish to second this Motion and abide by the wishes of the Senate Majority Leader in that we do not spend time on this. We have seen that in the last three weeks, other issues are emerging. We have been dealing with the Coronavirus (COVID-19), now there is the issue of floods, and there are other issues that may arise.

Therefore, it is important that the Senate or Parliament as a whole, have more sittings in order to deal with these problems. Like today, if you look at the business that we are supposed to deal with, maybe we will not be able to cover even half of the business that is in the Order Paper.

Mr. Speaker Sir, I support this and wish to second.

Thank you.

*(Question proposed)*

**The Speaker** (Hon. Lusaka): Sen. Wetangula.

**Sen. Wetangula:** Mr. Speaker Sir, I urge the Senate Majority Leader that the known sitting times of Parliament is 9.00 a.m. to 12.30 p.m., and 2.30 p.m. to 6.30 p.m. If we agree to sit on Tuesday, let us go by the norm of House sittings, because we have a lot of business. I have Motions of Adjournment to discuss the issue of floods, the issue of trucks on the Malaba border that are now queuing for 40 kilometers before they cross the border, and many others.

I want to urge the Senate Majority Leader to shift the time from 10.00 a.m. to 9.00 a.m., so that we do not lose this valuable one hour, to cover as much business as we can. We agree to sit on Tuesday morning and Tuesday afternoon, but let us not lose that critical hour, because precedence tells us that Houses of Parliament in this country always sit from 9.00 a.m. to 12.30 p.m. and 2.30 p.m. to 6.30 p.m.

**The Speaker** (Hon. Lusaka): Let that, therefore, appear as an amendment.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, I think that the sentiments by Sen. Wetangula are justified, but let us take it in its stride. Originally, we had said that we are going to meet until 5.00 p.m., but we have amended that as time progressed. I think that the Motion can be passed as it is, so that next week we meet at 10.00 a.m., but the following week the appropriate amendment can be made so that we meet at 9.00 a.m. in the morning.

**The Speaker** (Hon. Lusaka): I think that in the interest of time---

**Sen. Wetangula:** I can live with that.

*(Question put and agreed to)*

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

Clerk, let us go back to Statements.

Sen. Sakaja.

## STATEMENTS

DEMOLITION OF HOUSES IN  
KARIOBANGI NORTH WARD

**Sen. Sakaja:** Thank you very much, Mr. Speaker Sir, for your very kind indulgence on this matter. I would like to request a Statement. Pursuant to Standing Order No.48 (1), I rise to seek a Statement from the chairperson of the Standing Committee on Lands, Environment and Natural Resources on the demolition of Houses that has left more than 5,000 residents of Kariobangi North Ward in Embakasi North Constituency homeless.

This is an exercise that is totally inhuman, ill advised, and executed at the wrong time without even giving reasonable notice to the residents to vacate. It is sad to note that despite a court order that was issued stopping the demolitions until the case is heard and determined, government agencies have acted with impunity and evicted 5,000 residents out into the cold and the rain during the COVID-19 pandemic.

It is completely incomprehensible as to why anybody would be in such a rush to render thousands of families homeless at such a time when we are facing a pandemic and citizens are being urged to stay at home. The Government is contravening its own guidelines by removing those homes where those people would stay in. In as much as we support the repossession of public land, proper humane methods must be used. Those affected by these demolitions are the most vulnerable in our society and they deserve protection from the Government.

Mr. Speaker Sir, in view of the above, I would like to request the Chairperson, in his response, to address the following -

(1) Give us a detailed report explaining the circumstances that have led to eviction of the residents of Kariobangi Sewerage Area in Kariobangi North Ward, because we know about the other demolitions that are being planned.

(2) Give a report on all the land in Nairobi City County that is officially mapped as public land and road reserves and tell us where else these people intend to demolish so that we take care of our people.

(3) Outline the mechanisms that have been put in place to ensure human rights of innocent residents are not infringed upon during such exercises.

(4) Give the status of any legal action taken to charge Government officials involved in illegal allocation of public land in Nairobi City County.

(5) Explain how the Government is going to compensate the affected residents, take care, and cushion them.

Mr. Speaker, Sir, the Chair should note that today the Government announced that there are 29 COVID-19 cases just five kilometres from where those people have been evicted. We need to know the urgency of leaving people out in the cold at a time when they have been restricted because they cannot even go to their rural homes if they want to leave Nairobi.

Mr. Speaker, Sir, kindly direct that we get a response in a week.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, time and again, this Senate has been firm on issues that affect the common *mwana* *nchi*. I, therefore, congratulate the Senator for Nairobi for coming up with this Statement.

I watched with awe and shock the event of demolition. It is not just in Nairobi alone because this has been happening in other parts of the country for a long period of time. We need to remind public officers that the fact that we are facing a pandemic does not mean there is suspension of human rights, the rule of law, and that persons holding public office are not going to be held accountable for their actions under their departments or dockets.

Therefore, so that this Senate can be taken seriously, I think even one week is long. The Committee must act immediately, so that by tomorrow, they update this House about the progress, even online. We want to see action being taken. The Committee should summon the officers involved to appear before them tomorrow and tell the public the remedial actions they have taken.

As I speak, Sen. Sakaja knows that his county has been militarised; it is no longer a civilian government. Nairobi is now a military county, something I would have never imagined when we passed the Constitution of Kenya, 2010. It is shocking that active military men who are supposed to operate in barracks and on borders of Kenya are running civilian governments, yet Members of this House are sitting here ululating, clapping and cheering.

When functions of Nairobi City County were handed over, I made a Statement here. However, the newspapers reported that I am so and so's man. I want to remain consistent. The militarisation of a civilian government in a county government is the worst form of violation and overturn of our Constitution.

I want to warn this House. You may not agree with the Governor or the leadership of Nairobi City County, at the moment. Tomorrow when we become governors and a worst president is in office, all our counties will be militarised and taken over by force.

It must be known by the people of Kenya that I, Kipchumba Murkomen, am totally opposed to the manner in which Nairobi is being run by military men and many more being seconded to this County. What the hell is happening in this country? What is going on? As I said outside this Chamber, the authority of the Senate and Parliament must be restored and truth and justice must be seen.

Sen. Sakaja, you may be happy with the transfer of functions but as long as you continue asking questions here against the military men, you should know that their place of trial is a court martial and not the court of public opinion. Therefore, we must fight for the management of Nairobi City County in a manner that is responsive to our Constitution and civilian rule.

**The Speaker** (Hon. Lusaka): I can see a lot of interest. So, let us limit it to three minutes. We will have Sen. Mutula Kilonzo Jnr. then Sen. Olekina before we hear from Members from this side.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, what is happening in Nairobi, particularly regarding the evictions is a violation of human rights. What is happening in Nairobi in the middle of a pandemic is actually an international crime because those people are staying out in the cold and mixing with people who they do not know whether they are infected.

Something is wrong with this Government. The Coalition for Reforms and Democracy (CORD) needs to find out something about this Government. There is something wrong about the way they treat human beings as if this Government was elected by cows and goats.

I wish I was in Government because the majority of the complaints are from those in the Government. What are we people seated on this side supposed to do when the majority of the people who issue complaints are sitting on the majority side?

**Sen. Sakaja:** On a point of order, Mr. Speaker, Sir. Apart from the point of order on relevance, because I am talking about people who are homeless, every Senator in this House, whether on the majority or minority side, are supposed to oversight the Government.

I do not know why Members of the minority side are cheering. We are also oversighting and nobody complains. This is not a House of complaints. It is a House of oversight. Whether you are in the Jubilee Party or the National Super Alliance (NASA), let us oversight the Government.

**The Speaker** (Hon. Lusaka): Let us not lose focus. Proceed, Senate Majority Leader.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, as the Senate Majority Leader, I have said over and over again, that this House is called the Senate. It is not the “Government of President Uhuru Kenyatta” or the “Executive.”

All over the world, whether you are elected by the party that forms the Government or not, your responsibility is to oversight the Executive. In many counties, including mine, there is no minority side. Do you want to tell me that there is no oversight of Elgeyo-Marakwet County because everybody was elected on Jubilee Party? Please give us a break! We are Parliament and everybody here has a responsibility to oversight the Executive because we are not the Executive.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, the statements I am making are bitter, but I have to make them for them to understand that there is a reason why we are the minority and why there is the majority.

That said, there is no difference between what happened in Elgeyo-Marakwet where people were abandoned after the mudslide; there is no difference about what happened in Solai when people died; and there is no difference about what is happening in Nairobi. All of it is the same. We have a Government that does not value human beings. They have power and power is sweet. It is sweeter and it is concentrated. Power corrupts and it has corrupted.

I agree with Sen. Murkomen that we cannot wait for a week. Children are hungry and it is possible that nobody is going to offer any of the landless people accommodation. It is sad. Could somebody wait for another day to do this? Therefore, the answer must come immediately.

There is nothing that prevents the Senate Committee from getting Personal Protective Equipment (PPE) tomorrow and going to Kariobangi. If we are serious, we must be seen where these things are happening. Let us go together with Sen. Sakaja and find out where the people who have been evicted slept, where they get food, and where the children go for the most simple basic human dignity such as toilets.

Mr. Speaker, Sir, recently I mentioned the Book of Revelations. Sen. Ochillo-Ayacko told us where the Book was written.

When judgment is finally written about this Government, I am telling you only the Book of Revelation is going to tell you; there will be gnashing of teeth. There will be a bottomless pit for members of this Government.

Thank you.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Olekina, then Sen. Halake.

**Sen. Olekina:** Mr. Speaker, Sir, I am ashamed to be in this House during this period. We are completely failing. Human beings are being terrorized and stigmatized even during the Holy month of Ramadan. I am not a Muslim, but I sympathize with the people who were evicted. It is about time that we say 'no' to the executive. I am completely against the militarization of this county called Nairobi. What is happening is against the Constitution.

Article 187 of the Constitution is clear on the issue of transfer of functions. I am so glad that even today we suspended debate on County Allocation of Revenue Act. Whatever is driving this move of demolition of houses which I can only sum up as commodity interest versus community interest, must come to an end.

Mr. Speaker, Sir, this Senate must come out very clearly and tell the executive that what they are doing is evil. It is completely abominable. Some of us on a daily basis, our Mpesa savings are empty because of the amount of money we load and send to the village. What about the people who live here? I request that the Committee and the entire Senate must come out and audit this Government.

*(Sen. Malalah moved from his seat to consult)*

**The Speaker** (Hon. Lusaka): Order, Sen. Malalah! Observe the social distancing please.

**Sen. Olekina:** Mr. Speaker, Sir, they must call this Government. Whatever interest or drive that is moving these people to abuse human rights of individuals who live in this county must come to an end. I would request each Senator that tomorrow let us go there and stand with those Kenyans. They need us now. All these commodity interests will mean nothing during this COVID-19 period. Let us respect human beings.