

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 28th July, 2020

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

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

PRAYER

COMMUNICATION FROM THE CHAIR

STRICT ADHERENCE TO HEALTH PROTOCOLS AND
GUIDELINES ON COVID-19 DURING SENATE
PLENARY AND COMMITTEE SITTINGS

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Members! Take your seats.

Hon. Senators, as you may note from recent reports, the COVID-19 cases in Kenya are on the rise and according to the Ministry of Health, 89 per cent of these cases are asymptomatic. Therefore, now more than ever before, we need to strictly adhere to the protocols issued by the World Health Organization (WHO) and the Ministry of Health on containing the spread of the pandemic and staying safe.

You may recall that at the onset of the COVID-19 pandemic, the Ministry of Health, on the request of the Parliament of Kenya, inspected the precincts of Parliament to assess the conditions that Parliament needed to meet to facilitate Plenary and Committee Sittings. A comprehensive report was provided, and subsequently, guidelines were issued by the Speakers of both Houses to facilitate the business of Parliament.

On 13th March, 2020, the Speakers of both Houses of Parliament issued guidelines consequent to the declaration of the COVID-19 as a global health pandemic and the confirmation of the first cases of the disease in Kenya.

Some of the salient issues in the guidelines were that -

(1) All foreign travel by Members and staff of Parliament would be suspended forthwith.

(2) All conferences, retreats and workshops shall be held within the precincts of Parliament.

(3) Committees to defer the sittings and visits outside the precincts of Parliament.

(4) Members and staff to observe hygiene by regularly washing hands and wearing masks at all times.

(5) Members and staff to maintain a distance of at least one meter.

(6) Those not feeling well, particularly, with symptoms such as fever, cough and difficulty in breathing to stay at home.

Hon. Senators, in the Communication issued on 31st March, 2020, I indicated that the Senate Chamber had been re-configured to sit a maximum of 28 Senators only. I ruled that there shall be no consultations at the Speaker's Chair or at the Clerk's Table, and accordingly, it shall be out of order for a Senator to approach the Speaker's Chair or the Clerk's Table for this purpose; and that Senators shall, while entering and leaving the Chamber, observe the social distancing requirements.

You will recall that at first, the Senate Majority and the Senate Minority Leadership were tasked with determining the 28 Senators to attend Plenary sittings, but following concerns raised on the need for all Senators to participate, the Senate Business Committee resolved on 20th May, 2020, that arrangements be made in line with the Ministry of Health protocols and guidelines on social distancing and staying safe, to ensure this was achieved.

In addition, Committees were encouraged to transact business remotely, to request for submission of memoranda remotely and that no media shall be allowed in physical sittings of Committees, where it is absolutely necessary to hold a physical sitting.

Subsequently, the New Wing Lounge of the Parliament restaurant was designated as part of the Senate Chamber to accommodate the other 40 Senators and Parliamentary officers, and attendance of Plenary Sittings from the Senate Chamber was open to all Senators on a first-come-first-served basis, with the exception of the Deputy Speaker, Majority and Minority Leadership and Senators with disability, who would have reserved seats.

In an effort to reduce the time for the voting process, the ruling made on voting on matters concerning counties was thus varied from Roll Call voting, as stated in the guidelines issued on 17th April, 2020 to –

- (i) Electronic voting for Senators sitting in the main Senate Chamber; and,
- (ii) Manual voting for those sitting in the extended Chamber.

Hon. Senators, adherence to these guidelines symbolizes that you value your life and those of other people, and that of their families. Let us abide by them for our own safety. For this reason and the avoidance of doubt, I direct and reiterate that the health and social distancing protocols as contained in the Guidelines issued on 31st March, 2020, apply in both the Senate Chamber, the New Wing restaurant of the Parliament buildings for the Plenary sittings and for all Committee meetings. Senators and Parliamentary officers are required to strictly adhere to these guidelines, which were purposely developed to contain the spread of COVID-19 in Parliament.

Let us ensure that these guidelines are implemented and adhered to by all Senators and Staff, and it is everyone's responsibility to draw the attention of the Speaker to violations both within and outside the Chamber.

I thank you.

POINT OF ORDER**RE-ORGANIZATION OF BUSINESS TO GIVE PRIORITY TO THE
MOTION ON REVENUE ALLOCATION AMONG COUNTIES**

Sen. Mutula Kilonzo, Jnr.: Mr. Speaker, Sir, thank you for your Communication. In view of the Standing Order 40, I request that before you call the next Orders, all of us are anxious about the formula. I plead with you to rearrange the Order Paper. I have seen the Chairman of the Committee on Finance here. Please, order that we begin with the Supplementary Order Paper and the Motion on the formula to be debated.

(Applause)

This is so that you give us enough time to ventilate on these issues.

Today is one of those days when we do not want three or five minutes, so that we can speak to this issue with a lot of time before we go home at 6.30 p.m.

Mr. Speaker, Sir, I pray for your direction.

Sen. Murkomen: Mr. Speaker, Sir, in line with what Sen. Mutula Kilonzo Jnr. has said, there is something that has been bothering me for some time. When the Senate is dealing with very important issues like impeachment, division of revenue formula; things that the country would like to know our position and the record of the House needs to reflect the position of most of the Senators, we have always reduced ourselves to two or three minutes, with five or six people speaking.

Why do we not for once, when we have such a very important debate, take the reasonable time for each one of us to give their views? Some of these things are too sensitive that if you were to be told just to vote, people would never understand what informed your voting.

If I look at parliaments in other countries such as the United States (US) and the United Kingdom (UK), people sit even up to midnight for them to canvass the issues, and for their people to follow those issues.

Mr. Speaker, Sir, going forward, following what Sen. Mutula Kilonzo Jnr. has said, I request for your direction. Parliament is about debate, and as the Senate, we should change this culture and create enough time to explain ourselves on the issues that we are deciding for this country. We should give future generations a proper record of what we really thought about certain issues in this Chamber.

I thank you.

The Speaker (Hon. Lusaka): Sen. Olekina.

Sen. Olekina: Mr. Speaker, Sir, I rise to support the sentiments of my two colleagues from both sides of the aisle and request that today, for once, we focus on our debate, because everybody in Kenya is watching. Wherever they are, they are waiting to hear what their Senators will say. We receive a lot of communication.

I would like to second the proposal by the Senate Minority Whip that we suspend all the other business and deal with this issue of the formula until the time we exhaust it, even if it means spending the night in this Chamber today.

I thank you.

The Speaker (Hon. Lusaka): Sen. Cherargei.

Sen. Cherargei: Thank you, Mr. Speaker, Sir. I have a contrary view, because what we are telling Kenyans is that there are some things that are more important than others in our Order Paper.

Hon. Senators: But, of course!

Sen. Cherargei: The Order Paper has been designed for a specific reason. Upon your guidance, what we should do is to ensure that we minimize the discussion based on the items that have been put in the Order Paper.

By the telling the country that since the revenue formula is more important than Petitions or other Statements of significance, then we are lying to the nation. Let us stick to the rules that we have created and the Standing Orders that we have. The revenue formula will come and go, but there is more important business that we can discuss.

I thank you.

The Speaker (Hon. Lusaka): Sen. Madzayo.

Sen. Madzayo: Asante, Bw. Spika. Ninakushukuru kwa kunipa nafasi hii. Jambo la kwanza ningependa kutamka ni kwamba leo kila Seneta aliye hapa apewe nafasi ya kuongea juu ya Hoja iliyo katika Bunge hili. Tunazingatia zaidi kwamba Hoja hii ni ya kitaifa. Kwa hivyo, ni muhimu kila Seneta aliye hapa apewe nafasi hiyo.

La pili ni kwamba, kuna nia kuwa Mwenyekiti wa Kamati ya Fedha na Bajeti atakapomaliza kusoma Hoja, baadaye awe *seconded*. Utapata ya kwamba kuna watu watataka kufanya mageuzi kidogo kwenye hiyo Hoja, pengine mimi nikiwa mmoja wao. Ikiwa nafasi itapatikana, ningependa nafasi hiyo ipeanwe ili Seneta mwengine pia apate nafasi ya kufanyia Hoja hii mageuzi, alafu tuendelee kujadiliana juu ya Hoja hii ya pesa.

The Speaker (Hon. Lusaka): I can see a lot of interventions. I want to make a decision, so that we move forward. That will be fine.

Sen. Khaniri, proceed.

Sen. Khaniri: Mr. Speaker, Sir. I rise on a point of order.

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

Mr. Speaker, Sir, I will need your response on my point of order. Therefore, I had to wait for you to finish the consultation.

I have two issues. The first one is on the Communication that you have just made on the control of the spread of the Coronavirus Disease (COVID-19). Are you satisfied that Sen. Linturi, Sen. Cheruiyot and Sen. Iman are properly seated? We will need your intervention on that.

The second issue is that we cannot keep flip-flopping on this matter of the revenue formula. I had seen the Order Paper, and it did not have the Motion, but I am happy that it is now in the Supplementary Order Paper. However, in the Supplementary Order Paper, there are still two Motions, and we will need to get your guidance. The net effect of the two Motions is the same thing.

There is the Motion by the Chairperson of the Committee on Finance and Budget and the Motion by Sen. Sakaja. These are two Motions and they are listed as two different items. How will we deal with these two items?

The Speaker (Hon. Lusaka): Order, Members! I know that we have a very serious matter before us, but just as I indicated in my Communication, COVID-19 is real. If we want to live to realize what we want to pass, we must observe the health regulations. The following Senators are sitting in places where they are not designated to sit. Please, I seek your indulgence so that we read from the same page.

The Senators are: Sen. Iman, Sen. Halake, Sen. Kihika, Sen. Linturi, Sen. Murkomen, Sen. (Dr.) Mwaura, Sen. Mwaruma, Sen. (Dr.) Lelegwe, Sen. Zawadi, Sen. Kinyua, Sen. Cherargei, Sen. Ndwiga, Sen. (Dr.) Ochillo-Ayacko, Sen. (Arch.) Kasanga and Sen. Pareno. I seek your indulgence so that we observe this, please. Let us take care of our health. Hon. Senators, it is a serious health matter.

(The mentioned Senators withdrew from the Chamber)

Please, let us move with speed and observe the health regulations.

Sen. Linturi, what is it?

Sen. Linturi: Allow me to raise a point of order as I move out.

The Speaker (Hon. Lusaka): Okay, Sen. Linturi.

Sen. Linturi: Mr. Speaker, Sir, if I recall what the Constitution of Kenya provides about the mandate of the Parliamentary Service Commission (PSC), under Article 127, it is for the PSC to take care of the welfare of Members.

Sen. Khaniri has been given that mandate by this House, to take care of the welfare of Members. I am informed that he is the Chairman of the Committee on Security and Welfare of the PSC.

Is it in order for Sen. Khaniri to enjoy sitting at the PSC and raise issues to do with affairs that touch on his mandate as a Member of the Parliamentary Service Commission (PSC), when he is not giving this House an update on what he is doing to ensure that the New Wing is complete and prepared, so that Members can comfortably follow the proceedings and participate in debates, because those are our duties?

Sen. Khaniri: Mr. Speaker, Sir, I have the uttermost respect for Sen. Linturi. When I raised the point of order, I had nothing personal. I am just concerned because from where I sit, I have the privilege to know what is happening. I know the statistics of what is happening in terms of COVID-19 in this place, and it is a serious matter.

I raised this point of order in good faith; that we must observe the rules and regulations that you, Mr. Speaker, Sir, have put in place.

On the issue that he has raised about providing facilities, that is exactly what we are doing. We have engaged an overdrive gear to make sure that all our projects are completed. I think you can all see from the time we took over what we have been able to do. Therefore, I challenge Sen. Linturi to come to the Commission and raise these matters. This is because we cannot deliberate them on the Floor of the House. However, he is free to come to the Commission, so that we can explain to him in detail what is happening.

However, observing the rules and regulations to prevent COVID-19 is a must; we cannot compromise on that.

Sen. (Dr.) Ochillo-Ayacko: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of order, Sen. (Dr.) Ochillo-Ayacko?

Sen. (Dr.) Ochillo-Ayacko: Mr. Speaker, Sir, I am one of the Senators that you have mentioned and asked to move to the other Chamber. Without appearing to defy your rules, let me just put the record properly.

Pursuant to your rules, I came to this House on time and inserted my identification card. However, when I came back, I found that it had been moved. Therefore, I was here legitimately like any other Member, and I found that it had been moved here.

Mr. Speaker, Sir, what is important today is that I will be seconding the Report of the Committee because I am the Vice Chairperson, and I thank the House for appointing me.

While I am going out, I want you to hear me on two things. First, I did not violate the COVID-19 regulations because I was here legitimately.

Secondly, I have been removed and the whispers I have is that the Serjeant-at-Arms Department was involved in this. They have violated my right of appearing here first.

Thirdly, as I move out there, remember that I am in the unknown Chamber. Therefore, call me back immediately so that I can second the Report.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): I observe that there is good social distancing. Therefore, I use my discretion to allow you to stay.

(Applause)

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

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

Sen. Sakaja: Mr. Speaker, Sir, before you make the final determination on the earlier requests by Sen. Mutula Kilonzo Jnr. and Sen. Murkomen, allow me to draw your attention to Standing Order No. 40 (2). It says:

“Business shall be disposed of in the sequence in which it appears in the Order Paper or in such other sequence as the Speaker may, for the convenience of the Senate, direct.”

Sen. Cheragei was saying that we need to follow our rules. This provision of rearranging orders for the convenience of the House is properly provided for in the Standing Orders. I want to appeal to you to accept that plea.

Secondly, the root word of “Parliament” is the same root word of the word “parlance.” Parliaments are about speaking. Before I came to this House, when I was in the ‘lower’ House, we used to admire the Senate greatly because of the quality and depth of debates.

Whenever I would see Sen. Haji, Sen. Hassan Omar from Mombasa and Sen. Mutula Kilonzo Jnr., you could hear strong and well-researched debates. I want to urge you not to limit Members to two or five minutes, but let us live up to that *parler* for us to be able to talk.

In the past, if you read the HANSARD, you will see the late Shikuku and late Tom Mboya could talk for three hours, three days and so on. Therefore, I urge you to accept those two requests. Allow us to speak fully to this matter, and we go to this before we can come back to the other Statements that we may have.

Sen. Kang'ata: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. Kang'ata, what is your point of order?

Sen. Kang'ata: Mr. Speaker Sir, is it in order for the Hon. Senator of Nairobi, Sen. Sakaja, to anticipate debate? We are yet to reach that business. I have seen several Members discussing and asking you to give this time. I strongly believe that they need not go that direction because we are yet to reach there.

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

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

Sen. Madzayo: Mr. Speaker, Sir, everyone one of us here is in anticipation. Therefore, the idea of asking how one anticipated that we would take this or that much time should not arise. We are here for that purpose, to anticipate.

The Speaker (Hon. Lusaka): Hon. Members, at this rate, we are not even going to dispose what you are saying is very important. So, let me give a direction.

There are orders that I am going to suspend, so that we move to the Motions that everybody is anticipating. Therefore, I ask the Clerk to read the Orders, then I will give direction.

PETITIONS

REPORT: IMPLEMENTATION OF THE REPORT OF TJRC

(Petition deferred)

NON-PAYMENT OF SALARIES BY THE NANDI COUNTY GOVERNMENT

(Petition deferred)

HISTORICAL LAND INJUSTICES INVOLVING PLOT NO. 162/V/M.N.CR 1070, IN MOMBASA COUNTY

(Petition deferred)

PAPERS LAID

REPORT ON THE ELECTIONS (AMENDMENT) BILL

(Laying of Paper deferred)

REPORT ON THE LIVESTOCK AND LIVESTOCK PRODUCTS MARKETING BOARD BILL

(Laying of Paper deferred)

NOTICES OF MOTIONS

APPROVAL OF THE THIRD BASIS FOR REVENUE ALLOCATION
AMONG COUNTY GOVERNMENTS

Sen. Sakaja: Mr. Speaker, Sir, I beg to give Notice of the following Motion: -

THAT, AWARE THAT under Article 217 of the Constitution, the Senate by resolution is required to determine the basis for allocating among the counties the share of national revenue that is annually allocated to the county level of government;

FURTHER AWARE THAT, the Senate mandated the Standing Committee on Finance and Budget to consider the recommendations of the Commission on Revenue Allocation, and consulted the Cabinet Secretary responsible for Finance and the Council of Governors among others and subsequently conducted public participation pursuant to Article 118(1)(b) of the Constitution, as documented in the Report tabled in the Senate on Monday, 13th July 2020;

NOW THEREFORE, the Senate resolves that pursuant to Article 217 (1) of the Constitution, the third Basis for sharing revenue among counties, for the Financial Year 2020/2021 to 2024/2025 be as follows-

(a) **Equitable share not exceeding Kshs. 316.50 billion**

The following formula shall apply

CAi1= Allocation per County for FY 2019/20

(b) **Equitable share over and above Kshs. 316.50 billion**

The following formula shall apply

CAi2= 0.18*Population Indexi+ 0.17*Health Indexi+0.10*

Agriculture Indexi+ 0.05*Urban Indexi+0.14* Poverty Indexi+ 0.08*Land Area

Indexi

+0.01*Fiscal Efforti+0.06*Roads Indexi+0.01* Prudence Indexi +0.20* Basic

Share Indexi 1

Where,

Parameter	Indicator of Expenditure Need
Health services	Health index- health facility-gaps (20%), three years average number of primary health care visits to levels 2 and 3 health facilities (60%)and three years average in-patient days in levels 4 and 5 hospitals (20%)

	$\text{Facility gap factor}_i = \frac{\text{Facility gap funding in county } i}{\sum_{i=1}^{47} \text{facility gap funding in county } i}$ $\text{Primary health care factor}_i = \frac{\text{No. of primary health care visits in county } i}{\sum_{i=1}^{47} \text{No. of primary health care visits in county } i}$ $\text{In – patient days factor}_i = \frac{\text{No. of in – patient days in county } i}{\sum_{i=1}^{47} \text{No. of in – patient days in county } i}$						
Agriculture services	$\text{Agriculture Index}_i = 0.005 * \text{Minimum Share index} + 0.095 * \frac{\text{Rural households in county } i}{\sum_{i=1}^{47} \text{Rural households in county } i}$						
Other county services	$\text{Population index}_i = \frac{\text{Population in county } i}{\sum_{i=1}^{47} \text{Population in county } i}$						
Minimum share	$\text{Basic share index} = 0.19 * \text{Equal Share index} + 0.01 * \frac{\text{inverse of population in county } i}{\sum_{i=1}^{47} \text{inverse of population in county } i}$						
Land	$\text{Land area index}_i = \frac{\text{Land area in county } i}{\sum_{i=1}^{47} \text{Land area in county } i}$						
Roads	$\text{Roads index}_i = \frac{\text{Rural access index in county } i}{\sum_{i=1}^{47} \text{Rural access index in county } i}$						
Poverty level	$\text{Poverty index}_i = \frac{\text{No. of poor people in county } i}{\sum_{i=1}^{47} \text{No. of poor people in county } i}$						
Urban services	$\text{Urban Index } i = \frac{\text{urban household in county } i}{\sum_{i=1}^{47} \text{Urban Household in County } i}$						
Fiscal effort	$\text{Fiscal effort index}_i = \frac{\text{OSR collections of county } i}{\text{GCP of county } i}$						
Fiscal prudence	No.	Variable	Indicator	Score	Responsible	Weighting	
	1	Audit Report	Non-Qualified	4	County Executive Assembly	CE=90% CA=10%	
			Qualified	2			
			Adverse	0			
			Disclaimer	0			

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	2	Development Expenditure	At least 30%	1	County Government	100%
			Below 30%	0		
	4	Internal Audit Committee	In place	1	County Executive Assembly	CE=90% CA=10%
	4	County Budget Economic Forum	In place	1	County Government	100%
		Not In place	0			

(c) **Total Equitable share of a County** The following formula shall apply $TES_i = CA_{i1} + CA_{i2}$

Whereas;

TES_i = Total Equitable share of County i

CA_{i1} = Allocation per County for FY 2019/20

CA_{i2} = Equitable share over and above Kshs.316.50billion

The basis used is as shown

No.	Parameter	Weight
1	Population	18%
2	Health	17%
3	Agriculture	10%
4	Urban	5%
5	Roads	6%
6	Poverty	14%
7	Land	8% capped
8	Basic Share	20%
9	Fiscal Effort	1%
10	Fiscal Prudence	1%

APPROVAL OF SENATOR TO SERVE IN THE *AD-HOC* COMMITTEE ON THE COVID-19 SITUATION IN KENYA

Sen. Kang'ata: Mr. Speaker, Sir, I beg to give Notice of the following Motion -

THAT, pursuant to Standing Orders 187 and 189, the Senate approves the nomination of Sen. (Dr.) Christopher Andrew Langat, MP, to serve in the *ad hoc* Committee on COVID -19 Situation in Kenya, to take up the vacancy occasioned by the resignation of Sen. Johnson Sakaja, CBS, MP.

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

Sen. Wambua: Mr. Speaker, Sir, you have just given directions regarding COVID-19, and for the second time, I have seen the Majority Whip going to the Dispatch Box and speaking with his mask off. That microphone is a shared facility. Can you direct that we use that microphone properly?

The Speaker (Hon. Lusaka): Hon. Senators, we are taking some matters lightly. Majority Whip, let us take this matter seriously, please.
Proceed, Sen. (Dr.) Milgo.

DEVELOPMENT OF DAY CARE POLICY IN THE
COUNTIES AND DEPARTMENT OF BASIC EDUCATION

Sen. (Dr.) Milgo: Thank you, Mr. Speaker, Sir. I wish to give Notice of the following Motion: -

THAT, AWARE THAT, the Constitution of Kenya (Article 53) affirms that children have basic rights, including the right to education, nutrition, shelter, healthcare and parental care, provisions that are aligned with those cited in both the Convention on the Rights of the Child and the Africa Charter on the Rights and Welfare of the Child, to which Kenya is a signatory---

The Speaker (Hon. Lusaka): Order, Sen. (Dr.) Milgo! Put on your mask, please.

Sen. (Dr.) Milgo: Thank you, Mr. Speaker, Sir. I am advised.

CONCERNED THAT, the current status of daycare facilities in the country are not child friendly or habitable and there is need to bridge this gap to capture the play group class in the new 2-6-3-3-3 curriculum that is replacing the 32 year old 8-4-4 system;

ACKNOWLEDGING THAT, most parents lack access to quality daycare facilities, which would provide a safe and stimulating environment to take care of their children while they are at work;

NOW THEREFORE, the Senate urges that county governments in conjunction with the Ministry of Education to ensure that:

- (a) Counties allocate at least 10 percent of their budget on Early Childhood Development Education (ECDE) towards this vulnerable group; and
- (b) Policy is developed to incorporate the needs of children who are less than three years of age.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. Ndwiga, you wanted to lay a Paper.

PAPER LAIDREPORT ON THE LIVESTOCK AND LIVESTOCK
PRODUCTS MARKETING BOARD BILL

Sen. Ndwiga: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Tuesday, 12th May, 2020: -

Report of the Standing Committee on Agriculture, Livestock and Fisheries on The Livestock and Livestock Products Marketing Board Bill (National Assembly Bill No. 2 of 2019).

Thank you, Mr. Speaker, Sir.

(Sen. Ndwiga laid the document on the Table)

The Speaker (Hon. Lusaka): Next Order.

STATEMENTS

The Speaker (Hon. Lusaka): All Statements are deferred.

APPOINTMENT OF SEN. (DR.) GERTRUDE MUSURUVE INIMAH
TO THE POSITION OF CO-CHAIR OF THE INTERNATIONAL
PARLIAMENTARY NETWORK ON EDUCATION

(Statement deferred)

POLLUTION OF THE ENVIRONMENT BY INDUSTRIAL EMISSIONS

(Statement deferred)

PROPOSED INCREASE OF EXCISE DUTY ON BEER MADE FROM SORGHUM,
MILLET AND CASSAVA

(Statement deferred)

SOURCE AND UTILIZATION OF FUNDS ON THE BEAUTIFICATION AND “NGARISHA JIJI”
PROGRAMME BY NAIROBI CITY COUNTY

(Statement deferred)

ACTIVITIES OF THE COMMITTEE ON JUSTICE, LEGAL AFFAIRS
AND HUMAN RIGHTS

(Statement deferred)

DEMISE OF RENOWNED ARTIST POPULARLY KNOWN AS
PAPA SHIRANDULA

(Statement deferred)

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 4TH AUGUST, 2020

(Statement deferred)

MOTIONS

APPROVAL OF SENATOR TO SERVE IN THE *AD HOC*
COMMITTEE ON COVID-19 SITUATION IN KENYA

The Speaker (Hon. Lusaka): That is a procedural Motion, and so, it should not take a lot of time.

Sen. Kang'ata: Mr. Speaker, Sir, I beg to move that I replace the former Chairperson of the *Ad hoc* Committee on COVID-19 Situation in Kenya, my brother, Sen. Sakaja, who resigned on his own volition, and replace him with Sen. (Dr.) Lang'at. I think that---

The Speaker (Hon. Lusaka): Senator, move the Motion.

Sen. Kang'ata: Mr. Speaker, Sir, I apologize. I beg to move the following Motion-

THAT, pursuant to Standing Orders Nos. 187 and 189, the Senate approves the nomination of Sen. (Dr.) Christopher Andrew Lang'at, MP, to serve in the *Ad hoc* Committee on COVID-19 Situation in Kenya, to take up the vacancy occasioned by the resignation of Sen. Johnson Sakaja, CBS, MP.

The Senator for Nairobi County, Sen. Sakaja, resigned from that Committee and we thought of giving the opportunity to Sen. (Dr.) Langat, who is very well educated and competent. We strongly believe that he is going to do good work once he gets to that Committee.

Mr. Speaker, Sir, he will also bring a dimension on the COVID-19 situation in the Rift Valley region, which currently needs good representation in that Committee, so that we can enrich the deliberations that will occur.

The former Member, Sen. Sakaja, has done a good job, but we think that it is time now to also give Sen. (Dr.) Langat that opportunity to serve in that Committee.

I beg to move and request Sen. Cheruiyot to second the Motion.

Thank you, Mr. Speaker, Sir.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir. I second this Motion that has been moved by the Majority Whip, inviting the Senate colleagues to approve the nomination of our colleague, Sen. (Dr.) Langat, to serve in this Committee that was set up about three or four months ago. Up to this stage, they have furnished this House with about seven or eight reports.

The only challenge that I would like to pose to Sen. (Dr.) Langat as he joins this Committee with the approval of the House is that he should ensure that their reports are turned into actions. They should not just become reports that fill up and gather dust in the Houses of Parliament.

The Senate colleagues have requested on many occasions - and this is a request that I had personally made to the Chairperson who has resigned - that the Senate be furnished with all the expenditure that various county governments have used.

Mr. Speaker, Sir, it is in my best interest, as the Senator for Kericho County, to know how much the County Government of Kericho has spent up to this particular point in terms of preparation for all COVID-19 related activities. The reports that we are getting are disheartening. This is a view that is shared by each of our Senate colleagues. At least, that is the least that he could do because we are a House of oversight.

There is the second and most important thing, and I rose last week to raise it, while we were debating the issues that were before this House. We keep reading in the newspapers, as colleagues in the Senate, that County X has this number of isolation and Intensive Care Unit (ICU) beds. Could we be furnished with documents confirming or disputing that report?

Mr. Speaker, Sir, it is a shame that, as Senators in this House, we have to rely on newspaper reports to know about the level of COVID-19 preparedness in the counties. Some of us are not able to tell where the county governments have placed these facilities.

It would be important to see the filings they are giving to the Ministry of Health, so that we countercheck and verify. Otherwise, somebody seated at Afya House may very well read that Bungoma County, for example, has 300 isolation beds that have been set up. It is only Sen. Wetangula, when he reads and sees that a certain number of beds are stationed in a particular station, who will be able to tell the Ministry that it is a fraud. We know that these are things that many of the Governors can do.

Colleague, Sen. (Dr.) Langat, I wish you well as you serve in this Committee. Bring in the vigour and energy that you are always known to portray. I know him also to be a man of prayer. Therefore, I know that he will not be tempted or distracted by anything else. He will ensure that he serves to distinction.

(Loud consultations)

I mean that Sen. (Dr.) Langat will always pray for this country, on top of the Senate prayer in the course of--- That is not to say that Sen. Sakaja is not a prayerful man; he is a Christian as I am.

Mr. Speaker, Sir, I second.

(Question proposed)

(Question put and agreed to)

(Applause)

The Speaker (Hon. Lusaka): Next Order!

ADOPTION OF REPORT ON THE THIRD BASIS FOR REVENUE
ALLOCATION AMONG THE COUNTY GOVERNMENTS

The Speaker (Hon. Lusaka): Before the Chairperson comes, Sen. Khaniri raised an issue on why we have the two similar Motions. The matter came up at the Senate Business Committee (SBC), which ruled by consensus, so that in the event that the Chairperson again does not appear, there is a fallback position, so that this issues if disposed of.

The SBC agreed that if the Chairperson moves it – and I can see him here - then the other one will technically be out.

Proceed, Chairperson.

Sen. Kibiru: Thank you, Mr. Speaker, Sir. Before I move the Motion, I note that the Parliamentary Service Commission (PSC) is doing well. I can see we have new uniform. We have some new ties; I do not know why I was never given one.

I beg to move the following Motion-

THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the Third Basis for Revenue Allocation Among the County Governments, laid on the Table of the Senate on Monday, 13th July, 2020, and that pursuant to Article 217 of the Constitution, approves the proposed Third Basis for Revenue Allocation Among the County Governments as contained in the Report.

Mr. Speaker, Sir, I know that this an issue that the whole country is waiting for the Senate to make the approvals, so that we can move on and develop the country and give services to our people.

Article 217(1) of the Constitution demands that we need to do exactly what the Motion seeks, which is to determine the basis for revenue allocation among the counties.

The Tenth Parliament, in November, 2012, determined the revenue sharing formula for Financial Years 2013/ 2014, 2014/2015, 2015/2016 and 2016/2017. The Eleventh Parliament, in 2016, determined the revenue sharing formula for the Financial Years 2017/2018, 2018/2019 and 2019/2020. The two have been in existence.

This Motion seeks now to request the Senate to determine the revenue sharing formula for the Financial Years 2020/2021 to 2024/2025. As it were, Article 216 (1) the Constitution provides the principal function of proposing the revenue sharing formula to the Commission for Revenue Allocation (CRA). The Commission tabled a proposal to the Senate on 30th April, 2019.

Further, Article 217 (2) of the Constitution provides that in determining the basis of revenue sharing under Clause 1, the Senate shall—

- (a) take the criteria in Article 203 (1) into account;
- (b) request and consider recommendations from the Commission on Revenue Allocation;
- (c) Consult the county governors, the Cabinet Secretary responsible for finance and any organization of county governments; and,
- (d) invite the public, including professional bodies, to make submissions to it on the matter.

Pursuant to this provision, the Committee in considering the Third Basis for Revenue Allocation Among the County Governments, invited a number of stakeholders. We had the CRA, Council of Governors (CoG), the National Treasury, county governments, Institute of Certified Public Accountants (ICPAK), International Budget Partnership (IBP), Kenyan Chapter, The Institute of Social Accountability (TISA), and the general public who were invited to give their views on the basis for revenue sharing.

Mr. Speaker, Sir, some Senators and their county assemblies submitted their memoranda. I, for one, did, and I think one other Senator. Over the period, we have held a *Kamukunji* to deliberate on these issues.

In sharing all the revenue and resources, a number of issues were and are to be considered. One of the issues we considered as a Committee is the parameters that had been proposed by the CRA, which were given different weights. The parameters include: health, agriculture, urban services, roads and other county services.

Mr. Speaker, Sir, if you allow, I will just try to mention, to cut across because I know Senators will be debating these issues. There has been a lot of consultation, where Senators were invited to Hotel Kempinsky. The CRA took us through the processes they were considering in arriving at some of these parameters. At the same time, we were invited to the Bomas of Kenya and taken through how they arrived at some of these parameter and they went through the econometrics and the statistics of trying to give weight, to ensure that there is both equity and equitable distribution of the scarce resources.

The first parameter that the CRA proposed was health, which we adopted as a Committee and gave it a weight of 20 percent. This is a devolved function and, as we all agree, is one of the thorny issues that are facing our counties. We have seen strikes and deplorable situations in our counties because of the health issues.

They say a healthy nation is a wealthy nation. As the Senate, we want to make the counties more sustainable when it comes to issues of health. In this regard, we looked at the health parameter and gave it 20 per cent of the revenue that is to be shared. The 20 per cent is based on health facility gap, 60 per cent on three years average number of primary care health visits to Level 2 and Level 3 health facilities. Those are the lower levels of facilities, including the health centres and clinics. The other 20 per cent is based on three years average in-patient in Level 4 and Level 5 hospitals.

Mr. Speaker, Sir, we do not need to overemphasize that given the issues of COVID-19, we have seen that counties are unable to provide the 300 isolation beds that are required. It was important for us to look at that parameter and be able to agree with the Commission on Revenue Allocation (CRA), but improve on it since it is an important parameter.

Mr. Speaker, Sir, the other parameter is Agriculture Services, which is also a devolved function. We agreed that when it comes to agriculture, it involves all spectra of issues to do with agriculture, be it fishing, cattle or animal husbandry, sugarcane farming, rice farming *et cetera*.

Looking at the international protocols that govern some of the issues that we look at, we gave it 12 per cent as a weight. This is based on households. Whether you are keeping camels, doing fishing, chicken farming, or whatever it is that you are doing that

involves farming in whatever nature, the parameter takes care of the services, more so, the extension services.

Mr. Speaker, Sir, the other parameter is 'Other County Services.' This is a parameter that includes functions which are practised by the county governments. Among this is pre-primary education, the Early Childhood Development and Education (ECDE), the village polytechnics, homecraft centers, children facilities, cultural activities and public entertainment, like bullfighting in Kakamega and the likes. This parameter is taking care of issues of drugs, pornography and so on. We gave this parameter 16 per cent, so that counties can offer services and even do some preventive measures on some of the issues that I have highlighted.

Mr. Speaker, Sir, the fourth parameter is the Basic Share. We know that counties have operational costs. They must survive in one way or another. Therefore, they must meet their operational costs. We decided that 20 per cent of the sharable revenue be shared equally to all the counties. However, we took one per cent of the allocation to be shared on inverse of the 2019 Population Census. This is to take care of the counties that have very low population.

Mr. Speaker, Sir, the other parameter is poverty. This is something that raises emotions. One of the things that comes up when we talk about poverty is that it has been agreed and confirmed---The Kenya Integrated Household Budget Survey (KIHBS) of 2015/2016 provided data on the number of people living below the poverty level or the so-called the poor. We allocated 14 per cent to that parameter. The sharing was based on parameters for development needs, economic disparities, among others.

Mr. Speaker, Sir, we all know that when it comes to poverty, there could be some poor people in rural areas, for instance, Makueni County, but at the same time, we have the urban poor people. The urban poor could be poorer than the people who are in the rural areas.

(Loud Consultations)

The Speaker (Hon. Lusaka): Hon. Senators, kindly, consult in low tones.

Sen. Kibiru: Mr. Speaker, Sir, using the data that was given, the parameter was able to distribute the 14 per cent, taking care of the inequalities of the urban poor, so that we do not continue marginalizing the urban poor in the guise that the poorest people live in the rural areas.

The Speaker (Hon. Lusaka): Order, Members! Chair, let me interrupt you. Hon. Senators, I am giving directives that must be followed. This is a House of order. The following Senators are sitting in places that are not designated: Sen. Omanga, Sen. Were, Sen. Wamatangi and Sen. Nyamunga.

Sen. Kibiru: Thank you, Mr. Speaker, Sir. I was saying that we do not have to fall into the trap of systematic marginalizing of the urban poor in the guise of saying that the poorer are always in the rural areas. A person who is poor in an urban area may not be able to afford any food, must pay rent *et cetera*. Therefore, on that parameter, we agreed with the CRA because they had done a lot of statistics, logarithms and econometrics to arrive at a distribution of 14 per cent.

Mr. Speaker, Sir, the other parameter is Land. This has also been contentious, even when we tried to talk to our colleagues in the *Kamkunji*. We need to agree that when

we talk about land - this also came out very well through the CRA - we are talking about the cost of service delivery. The cost of delivery is a question of looking at how to offer services regardless of the type or shape of a county.

Mr. Speaker, Sir, arguments have been put forward that you cannot calculate a radius of an irregular shape. We want to dispel this myth. As long as you have the shape of the area, you can calculate the radius. In attributing this parameter, we need to ask: how much does it cost you to move from Point "A" to "B" to offer services? If an extension officer or a surgeon is moving from Point "A" to "B", what is the distance? Instead of using square kilometers, what distance does that person travel, so that they can offer the services? That is all we need on the parameter of land.

Mr. Speaker, Sir, the other one is Urban Service. We allocated 4 per cent to this parameter. We are aware that through other means and donor funding, there is concentration in helping urban centres. A good example is the Nairobi Metropolitan Services (NMS), where the national Government has come in and can always chip in and help the urban areas. We decided to give the Urban Service parameter 4 per cent.

Mr. Speaker, Sir, the eighth parameter is Roads. The measure should be rural access index. This is information that was given by the Kenya Roads Board (KRB) and published in 2018. For this purpose, we actually used it as it was. We have not updated the data that had been given in 2018, so that we can stabilize the issues of sharing.

Mr. Speaker, Sir, last but not least is the fiscal effort. We are encouraging counties to increase generated revenue. We gave it 1 per cent.

The Speaker (Hon. Lusaka): Order, Senators! Sen. Khaniri, please, observe social distancing.

Sen. Kibiru: Mr. Speaker, Sir, protect me because the way they are breathing, I am getting scared. There is vapour from the 'ladies' lounge,' and I am getting scared.

Fiscal prudence is the last parameter. This is to give incentives to counties, so that they can take audit issues seriously. The issues of audit and governance and optimization of resources by way of value for money and performance audit need to be addressed. We gave the parameter 1 per cent.

If you get unqualified opinion, you get money. If you establish county budget and economic forum, you also get some money. The law is very clear that 30 per cent of the money going to counties needs to be ploughed back for development. Establishment of internal audit is another consideration when we looked at the prudence parameter.

Mr. Speaker, Sir, the Committee is cognizant of the prevailing circumstances and impact caused by COVID-19 pandemic on the county governments. Secondly, the Committee notes the need to take into account the provisions of Article 203 (1) (K) of the Constitution, which provides that:

"In considering the basis for revenue sharing, there is need for flexibility in responding to emergencies and other temporary needs based on similar objective criteria."

The Committee acknowledges that the financial year in which the Third Basis for Revenue Sharing is set to commence, is already ongoing. Thus, the Committee recommends to the House that the Third Basis be approved, but its application be commenced from the Financial Year 2021/2022. This recommendation of the Committee

on the Third Basis for sharing revenue allocated to the county government level, pursuant to Article 218 of the Constitution.

As I conclude and seek support from the Senators, we have had debate of gains and losses. However, we, as the Senate, are losing it. We have been in this Senate and proposed an increase in the sharable revenue, participated in mediation and been able to push for the increase of the cake to be shared.

We need to shift our gear from saying who gets what and who loses what. We need to agree that this country is ours and ask whether as the Senate because we have tried different 20 simulations. Before we joined the Committee, it had one year and they could not agree on any one formula to table in the Senate. We took upon ourselves and decided that as a new Committee we must bring something to the Senate to deliberate on.

I urge the distinguished Senators to have a paradigm shift on how we look at some of these emotional issues, then, ask ourselves whether it is the duty of the Senate to ensure the cake to be shared is increased. The answer is, yes. As much as we argue here, we must forge the vertical sharing of revenue to ensure that resources follow functions. If a function is devolved, for instance, health, it is the duty of the Senate as the Legislature and elected people to ensure money for devolved functions go to the devolved functions.

Mr. Speaker, Sir, I urge fellow Senators to support the formula and then as we move forward, we agree on the minimum allocation to the counties. From where we sit as a Committee, the minimum that should be taken to the counties should not be less than Kshs350 billion.

The other issue we need to ask ourselves is whether prior to devolution, county councils, including the Nairobi City County used to meet their obligations. They used to pay salaries, build tarmac roads, collect garbage and collect money. Indeed, a county like Murang'a was so rich in terms revenue generation that it threatened to loan money to Tanzania. What happened? Now, we are getting money, but still do not have enough money to offer services.

My proposal that we will put on the table is to encourage the county governments to pull up their socks in terms of internally generated revenue. The CRA) and other bodies have carried out a survey of the potential the counties have. They looked at six parameters; that is, property rates, business permits, building permits, outdoor advertising and liquor licenses. If Nairobi City County can marshal that, it will collect over Kshs80 billion. If all the counties that are collecting less than 20 per cent in these parameters were able to pull up their socks and get 60 per cent, we would have almost Kshs300 billion generated by the counties.

Finally, we need counties to be innovative, trade with each other, identify comparative advantage and be able to state that as County 'X' we are good in producing this and can trade with Bloc 'X' of counties.

In conclusion, innovation includes establishing disease-free zones for goats and cattle that can be exported. Statistically, Somali land is exporting over three million goats to Saudi Arabia with all their problems. Counties need to be innovative and generate more money. We, as a Senate, need to negotiate and legislate for increased revenue, and also pass the Equalization Fund Bill.

Mr. Speaker, Sir, with those few or many remarks, I beg to move the Motion and ask the distinguished Senator for Migori to second it.

Sen. (Dr.) Ochillo-Ayacko: Thank you, Mr. Speaker, Sir. I am happy to second this Motion. Our Committee chaired by Sen. Kibiru took over the matter when the stand-off and pulling apart had gained root and grounded in our preceding Committee. This is why it was not possible for the Committee that we took over from to deliver their report based on consensus for the period they were in office.

Mr. Speaker, Sir, I do not wish to repeat the details contained in the Report that my Chairman has read because it will be repetitive and of no use. I also want to underscore the fact that it has been with Members for some time. Therefore, they are familiar with its contents, details and the resolutions we made as a Committee.

I have a few things to add, which I hope Members will take into consideration when making a decision on this matter. What is considered as the greatest Senate in the world is found in the United States of America (USA). Those who have studied history, politics and law will remember the story of the senatorial saucer. The story is about a discussion between the first President of the USA, George Washington and the third President, Thomas Jefferson in 1789. The two said that the need to have two chambers is premised upon the fact that one chamber initiates legislation that is extremely hot; as hot as the formula that we are discussing here. The work of the other chamber, just like the saucer, is to cool and moderates it, so that the public can consume a cool and sweet legislation.

As the Senate, we find ourselves in a very unique position. We must cool emotions in this nation. We must cool every feeling that would divide us.

We find ourselves in what the USA found itself in 1789, of establishing two chambers. One chamber, specifically the Senate, is supposed to be cool, moderate and unify people. That is against the background of diversity and leadership. This Senate is so diverse in terms of representation. The economic situation in Mandera is quite different from the one that is obtaining in Nairobi, Migori or any other place. What is key is coming up with the spirit that would capture the diverse feelings that we have as a nation.

Mr. Speaker, Sir, as we debate this matter, I urge colleagues to try and agree to what our Committee did in coming up with a formula that would accommodate the diversity that we have in this nation. A famous African author, the late Prof. Albert Chinua Achebe, in his book, 'The Arrow of God,' wrote about a character who attempted to carry water and fire in the same mouth. This Senate must attempt to carry water and fire in the same mouth and make sure that the water does not extinguish the fire. That is the delicate situation we find ourselves in. Therefore, we must keep the embers of the fire blowing with water in the same mouth.

The transition arrangement here is an attempt at making sure that as we vote and pass the formula that has been the subject matter of discourse in this House, we all have a way of ensuring that there is no shock, suffering or loss. We should move together as a nation. Life is based on optimism, and so, we must be optimistic as a nation that the economy will row again and grow.

As long as we pray to God and hope that progress will be made, more money will come to this nation. When this formula is applied, more money will soften and heal those who feel hurt if it is implemented immediately on the basis of hope for this nation, expectation that there will be growth and on the understanding that we represent diversity, yet we need to progress.

Mr. Speaker, Sir, I believe that the Report of the Committee is good. I believe that all the Members of goodwill or in the spirit of negotiations and compromise, should support the Report. If there is need to improve the report, the spirit of negotiations and compromise should be part and parcel of the proposed improvement.

The spirit of walking together as diversity should be part of the improvement that may be suggested. Knowing that Members want to stick to this subject matter and say something about this Motion, I would like to conclude by reminding them that as they think of their counties, they should also think about other counties. If we asked Members to come up with their formulae, each Member including the Member for Migori County has their own formula. However, I have to give away certain things as well as accept certain suggestions from different quarters.

In the spirit that the Chairperson, Sen. Kibiru, has moved this Motion and that I have proposed, I wish to second the Motion and urge the House to adopt this Report.

Mr. Speaker, Sir, I thank you.

(Question proposed)

The Speaker (Hon. Lusaka): Kindly proceed, Sen. Malalah.

Sen. Malalah: Mr. Speaker, Sir, I rise pursuant to Standing Order 105. The matter before the Senate this afternoon is serious. It is an emotive matter and the whole country is waiting to see how the Senate is going to determine and bring this matter to a close. It is in that spirit that we received the Order Paper with the amendments to this Motion that were proposed by Sen. Sakaja. As we were walking into the Chamber, I saw a further proposed amendment by Sen. Kang'ata.

The Speaker (Hon. Lusaka): Sen. Malalah, kindly, wear your mask.

Sen. Malalah: Mr. Speaker, Sir, the hon. Members need time to go through the amendment as proposed by the Senate Majority Whip, Sen. Kang'ata.

I, therefore, request under Standing Order 105 that we adjourn the debate of the Senate for 20 minutes for consultations. We can resume once we will have read the contents of the amendment as moved by Sen. Kang'ata.

I beg to move that the debate be now adjourned for 20 minutes and call upon Sen. Kang'ata to second.

(There was a technical hitch)

(The House adjourned temporarily at 3.55 p.m.)

(The House resumed at 4.50 p.m.)

(Consultations)

(Resumption of Debate on Motion)

The Speaker (Hon. Lusaka): Order, Senators! Take your seats and observe social distancing. I have given you time to consult.

The Senate Minority Leader, I can see you want to intervene.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, if I may be allowed, I stand under Standing Order 105 and move that the debate be now adjourned.

Reporting positively on this matter, because I have heard the discussions that have been going on between us informally, at least there is some consensus that is developing. The way I understand consensus is that there is no Senator who wishes to see any county losing any money. Generally, there is consensus on that issue.

However, we still do not have sufficient consensus on the other conditions that will fully constitute the basis upon which revenue will be allocated under the Constitution. Normally, a debate about resources is very divisive. I am pleading with the House that the trajectory, which this discussion is now taking, may be with us for generations to come.

I think that we would have the authority and integrity of the Senate protected and safeguarded if we did not rush to a decision, when there is an opportunity to close the loopholes where there is no general agreement.

I remember, and Sen. Wetangula is the one who was advising me on this, that the issue of division of revenue among counties, the first bite on this matter was in the National Assembly before the Senate was elected. The National Assembly had the powers of the Senate at that time because there was no Senate. At that time, it took quite a number of meetings on this single issue, to sit and reason together and come up with a solution that was acceptable to most of the Senators.

In the second resolution that was made, similarly, I think we went to Naivasha, and those who were here would remember. We took four days discussing this issue. When we left Naivasha, there was no Sen. Orengo's or Sen. Murkomen's Motion, because he was there. It was a decision that we reached together as the Senate.

Mr. Speaker, Sir, I plead with you because what I am seeing, and when we look at the way it has been portrayed how this allocation may go, we are making the same mistake that was made during the colonial period. We are making the same mistake when Sessional Paper No.10 was discussed in the National Assembly. That Sessional Paper No.10, Prof. Mazrui described it as neither African nor socialist because it was saying that resources should go where there is development already, and we do not want to repeat that.

I am begging, and I have spoken to many Members in this House for the last one week. I had a session with Sen. Haji in the last one hour. Together, we can continue to talk until we have a position that is acceptable to most Senators.

We should not be afraid that our integrity may be lost because we are seen to be dithering. A lot of decisions that have changed the world have taken quite a bit of time. Even at Serena Hotel, we took quite a bit of time. The discussions that came after the wars took a lot of time.

Therefore, when some people say that our integrity will be undermined and as soon as we make a decision, the debate will be out there; that people disagreed along these lines, I think that is not the right thing to do.

I want to thank Sen. Wetangula because he is the one who came with this proposal, so that all the amendments that are before the Senate, including Sen. Olekina's, Sen. (Dr.) Ali's, Sen. Githiomi's and Sen. Sakaja's amendments, will be discussed fully

with their simulations. This is so that when we take the vote, we will know the decision that we have made and are prepared to live with it.

I do not want to go beyond that. I want to beg the House that we sleep over this matter and meet at the next Sitting, by which time through your Office, we may have organized such a meeting, to ensure that we have a consensus on this matter.

I beg to move.

Sen. Wetangula: Thank you, Mr. Speaker, Sir. I beg to second this adjournment Motion. In looking for consensus, one must be ready to take a very painstaking process. Tomorrow, we will be burying one of the most skillful negotiators for peace in this region, the former President of Tanzania, His Excellency Benjamin Mkapa.

I do recall when we went to Dar es Salaam to discuss about peace in Burundi with the Late President Pierre Nkurunziza, who was then a rebel fighting to take over the Government. We sat with the late President Mkapa for 72 hours continuously negotiating to find a consensus.

At one point, I remember us taking over 12 hours to reach a consensus on just one small thing. I always tell the distinguished Senator for Mandera, Sen. (Eng.) Mahamud, that we sat in Safari Park Hotel with President Museveni to negotiate about Somalia. Some male Somalia delegate said something that infuriated a woman in the room. She stood up and hit him so hard that he fell on the Floor. Somebody stood up and said: *Isideji, Isideji. Isideji* has now become part of my vocabulary.

Mr. Speaker, Sir, I want to urge this House that, as Sen. Orenge has said and I believe that the Senate Majority Leader has no difficulty with this, we can hold this session and have a quick vote. The majority will have their way and the minority will have had their say, but we are going to create some serious polarities in this country. I urge that in this House our most important constitutional function is division of revenue.

In 1963, the late President Moi, Masinde Muliro and Ronald Ngala spent their energy crisscrossing this country to tell Kenyans that equity must be the cornerstone of the management of the affairs of the country. Eventually, the Kenya African National Union (KANU), that had the majority, saw the sense in what those three great men were saying.

Mr. Speaker, Sir, we went through a 300 degrees cycle to come to where the late President Moi, Masinde Muliro and Ronald Ngala were to create devolution. Devolution is not about running away with what you can get; it is about sitting and saying live and let live, not live and let die.

In my county, where you also come from, in the permutation on the Floor, we are gaining Kshs928 million. However, that is not the end in itself. We can walk away with that money. What about the Kenyan in Kwale, Elgeyo-Marakwet or Vihiga counties?

Mr. Speaker, Sir, it was not easy in the last Parliament. Sen. Murkomen of Elgeyo-Marakwet, Sen. Orenge, Sen. Khaniri, Sen. Cheruiyot, and Sen. Mutula Kilonzo Jnr. can bear me witness. It was four days working and we were sitting with the Commission on Revenue Allocation from 7.00 a.m. to 8.00 p.m.

When we walked here, there was consensus *par excellence*; everybody agreed. I urge the House that my suggestion that Sen. Orenge has talked to, does not kill any initiative or distinguish any interest. We are polarized. Forget about what the newspapers are saying; they are polarizing us even more.

Mr. Speaker, Sir, they are now defining the country by drawing maps. There are red and green zones. When you look at those red and green zones, it reminds you of 1963. This is not the direction I would wish us, as the second Senate in the new Constitution, to visit upon our country.

I urge my younger brother, Sen. Kang'ata, because he has been displaying a bit of agitation on this matter, that we all agree that in the next Sitting, some consensus would have been built not necessarily on which formula to take, but which steps we should take.

Mr. Speaker, Sir, the Constitution is very clear that if there is no new formula, then the formula in place remains the formula until we have a new one. Therefore, there is no *lacuna*. The country will not operate without a formula.

I tell you, Senators, as I finish that you may think that the perimeter you hold dear is the only one that obtains in your county. The next day, there will be a shift of population to a different area of the country altogether because of economic activities. The parameters will change. So, there is no fixed position for anybody. The fixed position is the interest of the people of Kenya. That is what should be the fixed position.

Mr. Speaker, Sir, with those few remarks, I urge my colleagues that all of us must be patriotic enough to know that the pain of a Kenyan in Korogocho must be felt by a Kenyan in Vanga. The pain of a Kenyan in Turkana, must be felt by a Kenyan in Murang'a.

That is what the nation is all about. When you hear that somebody has been gunned down in Wajir, you feel the pain because he or she is your compatriot. That is not the same pain you probably would feel when you hear somebody was gunned down in Fiji, although it is humanity.

Mr. Speaker, Sir, I urge you my distinguished colleagues – and I can see the tycoon from Nyeri County staring at me - that this is the direction we should go. This is the direction that will hold us together. Let us not have winners and losers in this debate. Let us have Kenya as the winner in this debate.

Thank you.

*(Question, that debate on the Motion
be now adjourned, proposed)*

The Speaker (Hon. Lusaka): Sen. Kang'ata, proceed.

Sen. Kang'ata: Thank you, Mr. Speaker, Sir. With all due respect, allow me to oppose the Motion for adjournment.

We have discussed this issue not once, twice, thrice, four times, but more than five times. This is the sixth Sitting in which we are discussing this issue. There are options that we have currently before us. It means that if one was to support Sen. Sakaja's or Sen. Kang'ata's proposal, no county loses this year. Therefore, the options that we have before us are the best. They are enough! We have discussed and caucused. We need now to come and say: this is the end of the discussion.

Mr. Speaker, Sir, I appreciate my Minority Leader, Sen. Orengo. He is a good lawyer. However, surely, after all those discussions and concessions--- Remember, the discussion commenced when we had what we call the CRA. Is that not so? We discussed the CRA, then, there was a further amendment by the Chairperson of the then Committee on Finance and Budget, Sen. (Eng.) Mahamud.

Then, there was another one by the then interim Chairperson, Sen. (Dr.) Mwaura. There was another amendment by the Committee and the so-called Sen. Linturi formula. There was another amendment to propose and come up with one year cushioning, and again we went.

Mr. Speaker, Sir, now we have another proposal from Sen. Kang'ata proposing effective date to take two or three years. We also have Sen. Sakaja's proposal. We have tried all measures and it is now time to decide. Kenyans out there are watching. They want a Senate that is decisive. I am ready to take whatever outcome that the honourable Senators will decide on here.

I am happy that now with the kind of options we have on the table, at least, we shall not have a gaining or losing county. I thought that was the main reason this discussion was so protracted. Now, with the two options we have, please, once we make the decision, we shall be brothers and sisters. This is because we shall go home knowing that no single county has lost or gained this financial year or the next financial year.

Mr. Speaker, Sir, with those few remarks I stand to oppose.

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

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I stand to oppose the adjournment for the following reason. Since the last adjournment or even the previous one---

(Loud consultations)

I beg your attention.

The Speaker (Hon. Lusaka): Order, Members! Consult in low tones.

Sen. Mutula Kilonzo Jnr.: Since the last adjournment or even the previous one, we have not met. I sit here as a leader and I know the sort of caucusing that has been happening over the weekend. Some of us had to switch off our phones because we know the caucusing they were doing. They would call one Senator here and another there in a room in another place and a room in another place.

Sen. Sakaja and I were requested to look for a middle ground. That proposal by Sen. Sakaja was as a result of a request by the Majority and Minority leaders.

I would have expected the very least that all those Senators who have amendments would have come and debated them. At that point, we can say that we go and caucus before voting. We know that even the Chairperson of the Senate Committee on Finance and Budget was not ready to move. I am aware and I can say it openly. I can tell you that postponing this is just making sure that we are lobbied, and phone calls are made throughout the night. We are not sleeping. We are being called and statements being issued.

The Book of Psalms 23:5 says—

“You prepare a table before me in the presence of my enemies.”

I want to see Senators voting against Makueni. I want to see Senators voting and saying that the Chairperson of the Building Bridges Initiative (BBI) should lose money. It is simple. Today is the day. I want to see the people who are prepared to ‘hang’ Makueni. Do it now. Do not postpone our misery. Hang us now. We are ready so that from

tomorrow no Senator will say that there is a county of bushes, of livestock and shrubs. No Senator will go to a wedding and threaten us. Threaten us on the Floor with your vote.

I oppose.

Sen. (Prof.) Kindiki: Mr. Speaker, Sir, I oppose at the outset. I have a lot of respect for Sen. Orendo and Sen. Wetangula both of whom are my senior in the legal profession.

This House is faced with the fate of the young man in book *Arrow of God* by the late Chinua Achebe who was sent to deliver a diplomatic message to the other village. An old man called Obierika asked whether it was in order to send a young man without preparing him with the skills to carry both fire and water in the same mouth. What this House had to do today is to be able to carry fire and water in one mouth. The story before us here this afternoon begun in the 1960s with great nationalists such as Ronald Ngala and others. Unfortunately, four years down the line they lost the battle. They crossed the Floor.

Those who were favouring a situation as we have today where a lot of resources remain at the centre took advantage and brought out Sessional Paper No. 10 of 1965 which simply said, "Keep money in Nairobi and use it to develop places near the railway line." Since the Coast Province was then a protectorate, it was left out and marginalized with areas that were further away from the railway line.

Devolution came to sort out this problem. However, today we are faced with a choice and no amount of procrastination will help. Let us make our decisions and leave with them.

Mr. Speaker Sir, as I end, the sponsor of this Motion and the seconder have not given any timeframes. So, we are just wasting time, dithering and looking bad in the eyes of Kenyans. We have spoken enough. We want to tell those who are against other parts of the country and using very derogatory terms that you may not be brave enough to answer us today, and perhaps, you will keep quiet. However, I want to remind them of the lion that chased an antelope which fell over a cliff. The lion asked the rock, "Have you seen my antelope?" the rock did not reply. He asked the other rock the same question and the rock did not reply. The lion said, "You may not answer me, but you have heard me."

I oppose.

The Speaker (Hon. Lusaka): Let us have Sen. Khaniri then Sen. Kihika.

Sen. Khaniri: Mr. Speaker Sir, I rise to vehemently oppose the Motion moved by Sen. Orendo; the Senate Minority Leader.

In my long stay in the House of Parliament, I have never seen a situation where the Leader moves a Motion and the Whip opposes the same Motion. What does it tell you? That even if we extend time, I do not think there will be any agreement that we are seeking.

(Applause)

People have already taken positions on this matter; we have options on the table for us to decide on and the time is now.

We were all opposed to the idea of some counties losing money. Sen. Kang'ata has put it very well that all the options we have on the table will guarantee that all

counties will get what they got in the last allocation. As a Senate, we must be guided by Article 96.

(Loud consultations)

The Speaker (Hon. Lusaka): Order! Hon. Senators, consult in low tones. Please observe social distancing. This House will be closed down.

Sen. Khaniri: Mr. Speaker, Sir, as a Senate, we must always be guided by the provisions of our Constitution in particular, the provisions of Article 96 that the Senate represents the counties and serves to protect the interests of the counties and their governments.

As a House, we must always be ready to stand for all the counties. Injustice in one county is injustice to all counties. We want to know today, who these Senators are that are not abiding by the provisions of our Constitution particularly Article 96. This selfishness must come to an end.

We oppose the Motion by Sen. Orenge. We are ready to debate the Motion by Sen. Orenge and the amendments proposed by Sen. Sakaja so that we take a decision today. The country is awaiting the decision of this House.

I oppose.

The Speaker (Hon. Lusaka): Let us have Sen. Kihika and then I will put the question.

(Loud consultations)

Order! Members. We have to make a decision after I put the question. If we decide to continue, we will need time to debate. The arguments of those who are for adjournment and those who are against are clear. Therefore, once I put the question, we take a vote and then the matter will be decided.

Sen. Kihika: Thank you, Mr. Speaker, Sir. I also rise to oppose the Motion and state that as much as I respect the Senate Minority Leader as well as Sen., Wetangula, I believe that is not the right direction. As we sit here today, the country is waiting to hear what it is that the Senate will come up with regarding this formula.

Mr. Speaker, Sir, by postponing the decision, we just keep kicking the can down the road. We have had about a year or so to canvass on this formula. We have had many sittings that---

(Loud consultations)

The Speaker (Hon. Lusaka): Let us consult in low tones.

Order, Senators! Let us consult in low tones and observe social distancing.

Sen. Kihika: Mr. Speaker, Sir, we have canvassed on this issue of the formula for the last one year. We have had very many meetings. In the last few weeks, we have mobilized, lobbied and come to the House to take the same decision or take the same decision and every time, we have decided to postpone the inevitable.

Mr. Speaker, Sir, I believe that it is the right time to proceed. Let what will be, be. It will be the same Senators a week, three months or a year from now. I believe whatever it is that the Senators will come up with it today, a year from now, some will not be satisfied and some will be. It does not make sense to keep postponing what we must do.

Mr. Speaker, Sir, being a leader means that you must be decisive.

(Applause)

We cannot be indecisive and expect to lead this country. I call upon the Senate to go ahead today and handle this very difficult issue, whether you agree with it or not, let us get it done today.

I thank you.

(Hon. Senators stood up in their places)

(Loud consultations)

The Speaker (Hon. Lusaka): Order Senators! Take your seats. Senator for Baringo County, observe social distancing.

Order Senators! I am going to put the question and then thereafter, we shall have electronic voting. Those who are outside the Chamber will come in our normal way to vote.

(Loud consultations)

Order Senators. We will now have a brief adjournment because I want to give everybody an opportunity to vote. Otherwise, those who are outside the Chamber will be disadvantaged. Let us be fair to everyone.

I put the question, which is that the debate be now adjourned. Prepare for the vote. I direct that the Division Bell be rung for one minute.

(The Division Bell was rung)

Order! Hon. Senators, take your seats because we want to vote. Those who are in the extended chamber can start coming forward.

Take your seats. We are voting.

Let us vote. Start the voting. Those who are in the extended chamber to come to the Dispatch Box. The assisted voters in the other Chamber to kindly come to the Dispatch Box.

Hon. Senators, also observe social distance. Please, I am pleading with you. Take the minimum time, so that you observe social distancing.

Hon. Senators, those who have voted to clear the way, so that we observe social distancing.

(Voting in progress)

The Speaker (Hon. Lusaka): Those who have voted, please, clear the way. Let us observe social distancing.

Order! Order! If your name is not there, write it and sign.

(Voting in progress)

Hon. Senators, please, take your seats. We have some timelines to meet before we proceed, otherwise, we will adjourn by default. We have only two minutes left.

(Interruption of voting on Motion)

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

The Speaker (Hon. Lusaka): Sen. Sakaja, who is moving the Procedural Motion? Okay, Sen. Khaniri, proceed.

Sen. Khaniri: Mr. Speaker, Sir, I beg to move that pursuant to the provisions of Standing Order No.31 (3) (a), the Senate resolves to extend its Sitting time until conclusion of business listed on today's Order Paper as Order Nos.9 and 10.

I call upon Sen. Sakaja to second.

Sen. Sakaja: Thank you, Mr. Speaker, Sir. It is straightforward. I second, due to the time we have left.

(Question proposed)

(Question put and agreed to)

(Resumption of voting on Motion)

The Speaker (Hon. Lusaka): Hon. Senators, take your seats. I want to announce the results.

DIVISION

ELECTRONIC VOTING

(Question, that Debate be now adjourned pursuant to Standing Order No.105, put and the Senate proceeded to vote)

AYES: Sen. (Dr.) Ochillo-Ayacko; Sen. Orengo; Sen. Poghismo and Sen. Wetangula.

NOES: Sen. (Dr.) Ali; Sen. Boy; Sen. Chebeni; Sen. Cherargei; Sen. Cheruiyot; Sen. Dullo; Sen. Faki; Sen. Farhiya; Sen. Haji; Sen. Halake; Sen. (Dr.) Kabaka; Sen. (Prof.) Kamar; Sen. Kang'ata; Sen. Kasanga; Sen. Khaniri; Sen. Kibiru; Sen. Kihika; Sen. (Prof.) Kindiki; Sen. Kinyua; Sen. (Dr.) Langat; Sen. (Dr.) Lelegwe; Sen. Linturi; Sen. Loitiptip; Sen. M. Kajwang'; Sen. Madzayo; Sen. (Eng.) Mahamud; Sen. (Eng.) Maina; Sen. Malalah; Sen. (Dr.) Mbitio; Sen. Moi; Sen. Mpaayei; Sen. Murkomen; Sen. (Dr.) Musuruve; Sen. Mutula Kilonzo Jnr.; Sen. Mwangi; Sen. Mwaruma; Sen. Mwaura; Sen. Ndwiga; Sen. Nyamunga; Sen. Olekina; Sen. Omogeni; Sen. (Prof.) Ongeru; Sen.

Outa; Sen. Pareno; Sen. Sakaja; Sen. Seneta; Sen. Shiyonga; Sen. Wamatangi; Sen. Wambua; Sen. Wako; Sen. (Rev.) Waqo and Sen. Wario.

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

AYES: 4

NOES: 52

ABSTENTIONS: Nil

The “Noes” have it.

(Question negatived by 52 votes to 4)

The Speaker (Hon. Lusaka): Hon. Senators, that means that we go back to the main Motion.

(Resumption of Debate on the Motion)

What is your point of order Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, since we have many amendments, I would like you to direct us on how to prosecute them in sequence because some of the amendments that have been proposed by Sen. Olekina and I are similar to the amendments that have been proposed by Sen. Sakaja. It is, therefore, important for us to know how to prosecute the amendments. I would like to know whether once Sen. Kang’ata moves his amendment, we will move to the other amendments or we will go to voting.

The Speaker (Hon. Lusaka): Sen. Kang’ata is making an amendment on the Committee’s Motion. Once we are through with that, we will take a vote. If it carries the day, you will move your amendment. However, if Sen. Kang’ata’s amendment will not carry the day, we will see what to do next.

Kindly proceed, Sen. Kang’ata.

Sen. Kang’ata: Mr. Speaker, Sir, allow me to move the Motion to amend the report of the Standing Committee on Finance and Budget on the Third Basis Criteria for Allocating among the Counties, the share of the national revenue for the 2020/2021 to 2024/2025 financial years in the following manner-

THAT the Motion be amended by deleting the full stop at the end and inserting the following words-

‘subject to the following amendments to the report-

- a) that Paragraph 26 of the report be amended by deleting the phrase ‘commencement, Financial Year 2021/2022 appearing on Page 16 of the report.
- b) insertion of the following new paragraph immediately after Paragraph 26 of the report –

27) (a) the proposed third basis/criteria for allocating among the counties the share of national revenue for the 2020/2021 to 2024/2025 Financial Years shall commence in the Financial Year 2022/2023

(b) Despite sub-paragraph(a), the criteria applied to allocate among the counties, the share of the national revenue for the Financial Year 2019/2020 shall continue to apply until the commencement of the criteria under sub-paragraph (a)’.

Mr. Speaker, Sir, I brought this amendment because I heard the cries of my brothers from various counties. We belong to one Kenya. We respect our brothers from the Coast and North Eastern. I agree with the whole idea that devolution should be aimed at assisting the so-called marginalized counties. I, therefore, do not support counties losing money in this financial year or the next.

When the Committee on Finance and Budget came up with this formula, there was an uproar among Senators and many Kenyans because many Kenyans were going to lose money. The narrative of some counties losing money as others gained in the process was really propagated by the media and that is when I started talking to my colleagues and asked them to give us suggestions to remedy their problems with the proposed formula. Many of the counties that were to lose money said that they were okay with any formula that guaranteed them not losing money.

Mr. Speaker, Sir, I was the first one to talk to my colleagues who serve in the Committee of Finance and Budget and told them to postpone the effective date with one year. This was adopted by the Committee. After that, I realized that my colleagues were still not comfortable with the postponement. I, therefore, made an effort to come up with this Motion to further amend the report of the Committee and give them up to 2022. If my brother, the Senator for Nyamira Country is candid, he will tell you that he is the one who gave me this idea when we spoke on phone. The Senior Counsel told me that if I could postpone the effective date, many Senators would be okay. I, therefore, crystalized the idea into the amendment to this Motion. I urge hon. Senators to support this idea that ensures no county will be imparted negatively. My amendment ensures that we shall be happy as one Senate family. The narrative that has been propagated out there about gaining and losing counties will not apply. We shall have status quo for at least a period of time.

There is a Bill that we are still discussing concerning equalization and other measures so that everyone is carried on board before the actual effective dates takes in. I urge the Senators to support this amendment which is a very good compromise under all the circumstances.

Mr. Speaker, Sir, with those few remarks, I beg to move and ask my brother, Sen. Kajwang to support this amendment. I thank you.

Sen. M. Kajwang: Mr. Speaker, Sir, I rise to second the amendment that has been brought to the House by Sen. Kang'ata. I must start by saying that we find ourselves on the horns of a dilemma. We have to make decisions on the wrongs. We are not making a decision between a wrong and a right. We are making a decision between two wrongs.

Before I accepted to second this Motion, I was convinced just like many other Members in this House that we needed further consultations to ensure that we do not end up with a divisive situation. However, the time has come when a decision has to be made. Decision making is part of the calling of leadership. I second this Motion on the basis of the principles of public finance that are laid out in Article 201 of the Constitution. Those principles of Article 201 talk about the stability and predictability of the public finance management process.

Some of the formulas and simulations that have been brought to this House had the effects of disrupting the planning and budgeting processes of counties. Some of those simulations would have led to counties losing over Kshs1 billion over night yet the

counties have concluded their budgeting and their Appropriation Bills have already been enacted. This amendment proposes that for the next two financial years, the effects of the formula that this House is going to adopt shall not be felt.

My second principle is that we should not have gainers and losers. I feel disheartened when speakers step to this podium to talk about 'us' versus 'them'. This is not a conversation about winners and losers. It should not be a conversation of 'us' versus 'them'. This should be a conversation about Kenya. What do we expect to achieve in two years? We have cynics and optimists in politics. I belong to the optimist's school of thought. A day is a long time in politics. I was not aware of this amendment until today, mid-day.

I congratulate Sen. Kang'ata because he has seen the light and has accepted to come down despite his hardline position over the weekend. Initially, Sen. Kang'ata wanted the formula proposed by Sen. Kiburu to be applied immediately and that would have disrupted the budgeting of the counties. As at yesterday, the concession was a moratorium of one year, but we do have a moratorium of two years today and that makes me glad. Two years in politics is a long time. The optimists like us believe that there will be other political processes that will result in an increased allocation of resources to the counties. That will help us avoid a scenario where we have gainers and losers.

Those of us who sit in this House have a solemn duty of allocating or dividing revenue between the national and the county governments. We have put here a defeatist argument that we are sure that we shall never get more than Kshs316.5 billion when it is our constitutional duty to negotiate with the National Assembly and the National Treasury to increase the resources that go to the counties.

We have been let down by our governors in the past and I am not afraid to say that. The Committee on Finance and Budget, led by Sen. (Eng.) Mahamud, would always propose that the counties be given more money, but the governors would go to the Intergovernmental Budget and Economic Council (IBEC), sit in a cocoon, and agree with the national Government. The Senate would then be left with egg on its face. I encourage the new Chairperson of the Committee on Finance and Budget to use the vigor that he has used to push for this formula in the next conversation on the Division of Revenue, for the counties to get more money so as to ensure that the loss effect of the formulas that we are talking about are not felt. We have simulations which show that if we increase the allocations to counties by about Kshs10 or Kshs1 billion, no county is going to lose. That is the reason I support this amendment.

None of the formulas that have been brought to this House are perfect. Homa Bay County loses in one formula and it gains in another. The size of the cake is not changing; when Homa Bay gains, someone else loses. I support this amendment so as to ensure that Homa Bay County does not gain in this Financial Year at the expense of Mombasa County and that Kiambu County does not gain at the expense of Tana River County.

The health parameter in the formulas that are before us are completely wrong. A County like Homa Bay with the greatest disease burden and high prevalence of HIV and Aids is allocated the least amount on that health parameter. Something is wrong with that formula. There are those who are convinced that the formula advances the one man one shilling principle, but if you look at the per capita allocation, it is a fallacy. It is not in this formula. However, we have to take a decision. We are on the horns of a dilemma. As

someone said before, ‘if you cannot have the one you love, love the one you have.’ We must adopt a formula that will apply properly without causing loses.

We cannot convince the country to walk with us if we resort to a language that borders on insult and intimidation. As I support the amendment by my friend, Sen. Kang’ata, I want to also advise him that his weekend activities should not be about telling people to do things his way or the highway. It should not be about biting the bullet. It should not be about adopting the Motion or having the Building Bridges Initiative (BBI) collapse. BBI was not meant for only one corner of the country. It is meant to unite the entire nation and nobody should pray for that process to collapse over Kshs316 billion in a Kshs3 trillion budget economy.

I second and support the amendment.

(Several Senators stood up in their place)

The Speaker (Hon. Lusaka): Order Senators. Take your seats.

(Question of the amendment proposed)

Sen. Cherargei: Thank you, Mr. Speaker, Sir. I rise to support the amendment by the Senate Majority Whip, Sen. Kang’ata. I was of the view that the proposals be implemented immediately because an addition of Kshs1.4 billion to Nandi County would have done wonders. However, I am a patriot and I have looked at the issues that have been raised. I did not want the implementation to even delay for one year, but I have a big heart and I am compassionate to our friends. That is why I have accepted this.

In 2007, President George W. Bush told Iran that all options are on the table. I am happy that the Senate is going to make a decision today. We have had five sittings without any decision. This is the right time for us to provide direction as a Senate. We must agree with the amendment of Sen. Kang’ata for us to dispense with this formula. This formula would have worked against many counties because the budgetary process for this financial year had commenced. We should support this and move forward because the country needs to move forward.

Sen. M. Kajwang’ and Sen. Kang’ata have talked of the BBI, but those are things that can be discussed in burials or funerals. I am happy that the President has banned any gatherings. That means that BBI might actually be discussed in WhatsApp groups. We must move forward. We should desist from BBI and handshake discussions. We should protect devolution as provided for under Article 174 of the Constitution.

I have read the Committee Report and many parameters have been used to arrive on the formula. The formula might change, but one thing that will not change in allocation of resources in this country is movement of resources to the people. That is one thing that will remain constant. As we look at the urban poor of Kibra, we must consider the people of Nandi County and Mandera County. As we push for an equitable society, we must not punish populous counties and that is why some of us have always stood for one man, one shilling, one vote. That is what we have been trying to do to achieve equitable sharing of revenue in this country.

As we delay the immediate effect of this formula, I challenge the counties to work on innovative ways of generating own source revenue. The Senate has been fighting for more allocation to counties, but the governors have been cutting a deal with the national Government behind our back. There was a time when we were pushing for the Kshs329 billion yet the governors had already made a decision with the national Government for Kshs316 billion. We challenge the governors to be innovative so as to generate own source revenue.

I support this amendment.

The Speaker (Hon. Lusaka): Can we hear from Sen. Omogeni? Give him the microphone. Are they working?

Sen. Omogeni: Thank you, Mr. Speaker, Sir. I want to go on record as vehemently opposing the proposed amendment by Sen. Kang'ata. I want to be very candid and confirm that I had a discussion with Sen. Kang'ata on the proposed amendment that is before the Floor.

It is said that sometimes a good idea gives room to an even better idea. After I had a discussion with Sen. Kang'ata, I have received a better idea which is on the Order Paper today and is being moved by super Senator Sakaja.

(Applause)

Mr. Speaker, Sir, therefore, I am opposed to this amendment because we are merely postponing a problem. If we go by the amendment being proposed by Sen. Kang'ata, it means that my people of Nyamira are only going to postpone this problem for two years, but it will come back to haunt us.

There is no way I will watch somebody who represents our Head of State, who we are proud of, and who is behind the Building Bridges Initiative (BBI), but comes to this Floor and threatens the same BBI by the President.

Mr. Speaker, Sir, if we love this country, we must move together. Moving together means that we must care about the interests of the 47 counties. It does not make any of us, as Senators, proud that we take money from Turkana, Mandera or Nyamira and give it to another county. That does not advance the dreams of our two principals, President Uhuru Muigai Kenyatta and the former Prime Minister, Raila Amollo Odinga.

The only concern for some of us here is that we should not cause pain to any Kenyan by reducing the allocation of funds that we give to those counties. What this proposed amendment by Sen. Kang'ata implies is that "Yes, we are going to starve you of finances, but we will allow you to smile for two years, then you will start mourning for another three years." That is not something I can support as the Senator of the County of Nyamira!

(Applause)

I, therefore, oppose this Motion that is supposed to mislead the people of Nyamira that they may smile for two years, but start mourning after three years. If you want to kill us in Nyamira, kill us today, not tomorrow!

Hon. Senator: Yes! Yes!

Sen. Omogeni: I can assure you that the people of Nyamira are watching on television today.

Mr. Speaker, Sir, I oppose this amendment.

(Applause)

The Speaker (Hon. Lusaka): Sen. Linturi.

Sen. Linturi: Mr. Speaker, Sir, I rise to support this amendment. I am one of the happiest Senators this evening after defeating the adjournment Motion because it is said that as leaders, we had better make wrong decisions than fail to make any at all. For whatever it is - and I do not know the outcome of this debate - I will go home knowing very well that the matter of the formula will have been decided in whichever way. To me, that will be very good progress.

Mr. Speaker, Sir, realities must be spoken, and we must always be ready to tell the truth. We also say that cowards die many deaths before their actual death.

Sen. Mutula Kilonzo Jnr., you better listen to this because I have heard you say that we want to slaughter you and we should do it now. My brother, I am very confident and happy that because of the kind of optimism that you invite your death today, I will be naïve to give you palliative care when you are terminally ill. You better go now than sit in the hospital continually and continue eating our money.

Today, I want to remind the Members of this House that we cannot run away from our constitutional duty of passing a formula for whatever it is; we must do it. Since we must do it, we should be in a position to think about these issues and think of a greater Kenya.

Mr. Speaker, Sir, I stand here to speak clearly because I am proud to have come from Meru County. The region that many people would like to intimidate and blackmail throughout by imputing, or telling us that we have sat on them for a very long time. The poor people in Meru, Chuka, Timau, Kangeta and everywhere else, feel the same pain as the people in Kwale, Kisumu or anywhere else.

When there is a proposal on how to share resources for this country for service delivery for health, water or agriculture and the bearing of the formula is based on the people that deserve those resources, it must be clear in our minds that all of us cannot be the same at the same time. Parameters used for allocating money have changed. For that reason, there will be changes.

When we are discussing this matter, let us be honest with ourselves. Let us be candid because we do not want to start rubbing wounds, have had an opportunity to benefit from a formula that has disadvantaged other people for a very long time; and we cannot speak about it because we are afraid of being associated with people that are said are powerful.

Mr. Speaker, Sir, when I speak here or when anybody else coming from a county that deserves so much money and has not been getting it going to his county, we must bear that we have a responsibility to push money for allocation of resources to the people that we represent.

Cognizant of the fact that we must always be able to compromise; a compromise has been agreed upon. A proposal has been brought before this House by the Majority

Whip. I do not find it difficult for us to say let us now go and start thinking as Senators, how we can engage our people in our counties and give the task to governors to raise more revenue so that when the formula is applied, we can have enough own-source revenue for the counties.

We continue fighting here because we are poor. If we were all working very hard and paying taxes correctly and timely, we would generate enough resources. I am sure since most of the governors in this country have sat there to enjoy and do not care about how much revenue they waste--- If we compare when we had defunct county councils, more money used to be raised yet the revenue streams that used to apply at that time were not as many as this time.

Mr. Speaker, Sir, we have a challenge as a nation and leaders of this country to come up with ways and see how we can generate more revenue. In the generation of more revenue, then there will be enough money to share. We will not continue fighting because of poverty. Let us think out of the box. Let us create wealth so that there is more money to share.

I support.

Sen. Olekina: Mr. Speaker, Sir, and to my hon. colleagues from both sides of the House, I rise to oppose this Motion vehemently.

(Applause)

Mr. Speaker, Sir, the Motion proposed by the Majority Whip does two things to this country. It divides this country into two. It pushes more resources to those people who have always had resources. The problem we have in this country is that sometimes people think we are ignorant, but we are not.

Earlier on when the Chairperson of the Committee on Finance and Budget read his report, he gave reasons why he was proposing to deviate from the parameters which were proposed by the Commission on Revenue Allocation (CRA). What this means is that when you increase health to 20 per cent, you go against every principle and even go against the Ministry of Health policy.

Mr. Speaker, Sir, the Abuja Declaration was very clear that the amount that should be given to health is 17 per cent minimum. Even if it is the minimum, how do you increase it by three percent and yet you do not come here to tell us what statistics you use? This is because that takes money from counties like Narok.

It will be shameful for me to go back and tell the people of Narok County that as your Senator, I have sat there and witnessed a few people divide this country and kill the dream of the President and Hon. Raila Amollo Odinga in uniting this country as one.

Mr. Speaker, Sir, what the three percent does is that it benefits three counties. Those are the counties that have more households. That is Kirinyaga, Kakamega and Bungoma counties, while in our counties where people are sparsely distributed, they lose money.

If you tell me today that you want to postpone this problem for the next one or two years, you are being indecisive. We will still have this problem. When you do that, you are being selfish because you are telling Kenyans that you only care when you are the Senator, but you do not care about the future of this nation.

Mr. Speaker, Sir, when you tell me that you want to increase the parameter on agriculture to 12 per cent, from even one and yet statistically the Maputo Declaration puts it at 10 per cent, you will be taking money away from counties that have fewer households to counties that have more households. You are taking money away from Nairobi City and Mombasa counties.

What this proposal, which is now being amended by the Majority Whip is doing, is dividing this country into two. When are we ever going to say that we are tired of people in Narok County being poor? We are tired of our brothers in Mandera and Wajir Counties losing their lives because of poverty, because development cannot get to them.

Mr. Speaker, Sir, it behooves us as leaders for once to allow the doctrine of separation of powers to prevail and have a meaning in this country. This Senate with the indecisiveness that we have portrayed to the nation shows that we can never make a decision. We are being controlled by other forces out there.

I would like to plead with my colleagues on the other side, and particularly those who are happy with the minimal gains that they are getting, to vote against this proposal by Sen. Kang'ata and support the one by our dear brother, Sen. Sakaja.

Mr. Speaker, Sir, my biggest problem is this: If today we say we are postponing the issue for two years, Narok County will still lose money. If we say we run the second generation formula, we would have killed the process of us having a third generation formula. As a result, the CRA will run the fiscal effort afresh and we will lose money.

We have to be very specific on exactly what is this that we are saying. The parameters as proposed by CRA were not the best but they had a rider. We came in with different proposals on how we can make it easy for this country.

I have heard debate and arguments that the people in the North enjoyed money for a long time. However, those people have been discriminated against for many years.

Mr. Speaker, Sir, this Motion that is now being amended by the Majority Whip does precisely what I have told you; it divides this country into two. We cannot say that we do not care or do not give a hoot about the people at the Coast, Narok, Turkana or the Kamba nation. We are a nation of 45 ethnic groups. As leaders, who have been elected not by our tribes, but all the people who live in those counties that we come from need to think about their future and not our own selfish gains.

The amount of lobbying happening here makes us even shameful. We are useless as leaders – let me put it that way - if we can entertain to be whipped in a particular way and enticed to support a process, which we know very well will have serious repercussions on the unity of this nation. We will be failing as leaders.

I plead with my colleagues that before you vote for something you must ask yourself what it is you are voting for. I have taken time to analyze all the proposals that are being brought here by the Committee, and now being pushed or postponed by the Majority Whip.

On the issue of land, the proposal on the table is that we reduce allocation of revenue to five percent and introduce something else, which is so strange and has never been used in the world, which is called a square root. That means that you are now reducing, where you can bring development. I listened very keenly to the Chair of the Committee, when he was proposing the issue of capping land at five percent and introducing a square root.

Where did the Committee get statistics to back that? If you take Narok County, which is 17,000 square kilometers, and now reduce it to a square root of 143, it means that the people of Narok who live in Kilgoris can never get any services. It also means that any rural access money that can be given to Narok County, which we will be losing drastically--- We can only do so up to Lolung'a, and cannot move money all the way to Kilgoris.

It is sad for this country, but I am only happy today because of one thing. I am happy that we are finally going to make a decision. When you make a decision, it means you are ready to become a leader.

I only plead with my colleagues that we should not support at all this Motion of extending a problem. We should kill the entire Motion and the entire Committee Report now. This is because we do not want a situation where if you sit and ask the Committee Chairperson where he got the issue of square root, he will not tell you.

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

The Speaker (Hon. Lusaka): What is your point of order? The systems are not working.

Sen. Sakaja: Mr. Speaker, Sir, as a matter of procedure, I rise on a point of order. I know my brother, Sen. Olekina has spoken at length, but right now, would you direct that we are speaking to the amendment by Sen. Kang'ata and not to the entire report? In fact, once we dispense of with the amendment, Members can talk about the report and speak again.

Maybe moving forward, from the next Senator, would you restrict their comments to the amendment of the commencement date and not the variables? That will be good guidance.

The Speaker (Hon. Lusaka): That is right. Also, try to keep it short, so that others can have an opportunity.

Sen. Olekina: Thank you, Mr. Speaker, Sir. I summarize by saying the following words; I strongly oppose the amendment by Sen. Kang'ata, the Senate Majority Whip, because I do not believe in postponing the problem. If we have to make a decision in two years, we might as well be decisive, right or wrong, and make a decision. If we postpone this matter for an additional two years, it will be very selfish of us because it will continue biting us.

Mr. Speaker, sir, later on, I can expound on the statistics, why the Committee report---

I thank you.

(Sen. Olekina spoke off record)

(Technical hitch)

The Speaker (Hon. Lusaka): Proceed, Sen. (Dr.) Langat.

Sen. (Dr.) Langat: Thank you, Mr. Speaker, Sir, for also giving me this opportunity to support this particular Motion with the amendments given in it.

First, I congratulate this particular House for taking a decision instead of postponing it forward. It is very important because Kenyans were almost seeing this House as a center of indecisiveness. However, today we are making a decision to move forward and that is a plus to this particular august House.

I support these particular amendments, first, because of time. Time is a healer of all maladies in life. The two years that have been proposed, I want to add and tell Sen. Kang'ata to also pressurize the National Treasury to make sure that we are given more funds, so that we get enough to share instead of engaging ourselves in scrambling for Kshs316.5 billion.

By the time these two years elapse, that particular opportunity will have been engaged to make sure that we push the National Treasury to give us more money. I want to notify this particular House that the budget of the national Government has been growing right from 2013, at a point of Kshs1.7 trillion, to the current Kshs3 trillion. The stagnation at the county level to the point that we are scrambling for only Kshs316.5 billion should not be something to be heard of in this country.

We have a perception of losers and gainers because we are scrambling over very little funds. I support that we make a decision today because Kenyans look forward to us as a decision making institution.

I support this particular amendment. The greatest challenge that I want to add on top of this is not how much money we are getting in our counties; the greatest challenge goes to the issue of oversight. If only this particular House could be given oversight funds, so that we monitor whatever money gets into the counties.

I remember at one time when Sen. Wetangula said that the money that gets into our counties is developing individuals faster than our counties. If only this particular House is empowered to get proper funding, so that we get specialists and people who can assist us in effective oversight, the problem that is there in the counties would not be there right now.

In as much as we are fighting for more funding to go to our counties, we should also remember that this is a House with little capacity to oversight counties. We are using our own resources to oversight. Some of our counties are vast with very bad road networks. So, it is not easy to access some parts of our counties. This has posed challenges to oversight activities. Therefore, this House must unite and get money for the oversight role.

I support the Motion with amendments and request my colleagues to support it so that it succeeds today.

The Speaker (Hon. Lusaka): Sen. Madzayo, you have the Floor.

(Technical hitch)

Sen. Madzayo: Asante sana, Bw. Spika. Naambiwa Kiranja wa Bunge la Seneti, ndugu yangu Sen. Kang'ata anakanyaga waya. Amekanyaga tena.

(Technical hitch)

Bw. Spika, naipinga Hoja iliyoletwa na ndugu yangu, kiranja wa wengi katika Seneti, ya kuleta mabadilisho katika Hoja ya ugavi wa pesa. Sababu za kuipinga Hoja hii ni kwamba italetwa mtafaruku mkubwa kama tuilionao leo miaka miwili baadaye. Hoja hii italetwa aibu kubwa katika Seneti. Ugavi wa pesa ni jukumu la Seneti lakini tumeshindwa kulitekeleza. Nasema hivyo kwa sababu ikiwa tutahairisha kutengeneza mipango ya

ugavi wa pesa, kikamilifu na kwamba baada ya miaka miwili, tutarudi katika ugavi wa hesabu uliokuwepo awali, tutagandamiza kaunti zingine na zingine zitafaidika. Hii inabainisha ya kwamba ukisema utaniua leo, basi afadhali unie sasa hivi kuliko kuniambia utaniacha leo lakini utaniua baada ya miaka miwili.

Uhairishaji wa Hoja hii ya ugavi wa pesa inamaanisha kwamba tutakuwa sawa sasa hivi na mwaka ujao lakini baada ya miaka miwili, tutarudi pale. Bunge hili la Seneti lina jukumu la kurekebisha hali ilivyo. Nilitembea katika Kaunti ya Nandi na nilifurahi na Wanandi. Nataka uhakikisho kwamba baada ya miaka miwili, kaunti zote 47 zinapata mgao wao kisawasawa. Hakupaswi kuwa na mtafaruku kama tulionao sasa hivi. Ijapokuwa Kiranja wa waliowengi katika Seneti amesema kwamba hakuna kaunti itakayo poteza pesa kwa miaka miwili, athari iliyoko ni kwamba Hoja hii itakuja tena katika Seneti baada ya miaka miwili na utaturegesha pale.

Bw. Spika, taratibu tunazoziona mbele yetu hivi sasa ni aibu katika Bunge letu la Seneti. Hatujawahi kuwa na hali kama hii katika miaka minane ambayo nimekuwa Seneta. Kwa mara ya kwanza katika historia ya nchi yetu ya Kenya, tunataka kuigawanya Kenya yetu. Kenya ni nchi moja na sisi wote ni wakenya. Mwenendo ambao tunataka kuchukua, utaleta shida baada ya miaka miwili. Tarabitu inayopendekezwa italazimu wengine wetu kubeba mabango baada ya miaka miwili kusema kwamba 'Pwani si Kenya'. Nasema hivyo kwa sababu sehemu za Pwani zimelaliwa sana. Sehemu za Kaskazini Mashariki pia zimelaliwa sana.

Sehemu ambazo wanatoka ndugu zetu wa North Eastern, Maasai na Ukambani zimelaliwa sana kwa ugavi wa pesa tangu uhuru upatikane. Tumeahidiwa lakini bado tunarejea pale pale. Tunaambiwa eti, 'ndugu zetu, pigeni *tick*. Tutawapa miaka miwili mufaidike kidogo lakini hamtakuwa Kenya baada ya miaka mitano.' Ni lazima tutafakari swala la uteti kama huu ndiposa tusipasue nchi mara mbili. Hii ni kwa sababu tunataka Kenya yetu iwe nchi moja.

Hili swala la kupitisha ugavi kwa miaka miwili ni kama kupea mtu ambaye anaugua *cancer* ama maradhi fulani *Panadol* badala ya kumpea dawa ama shindano zinazotakikana kutibu ule ugonjwa. Kuhairisha hii ni kukosa kutibu ule ugonjwa. Tukitaka kutibu huu ugonjwa, ni lazima tuitibu na taratibu za hesabu ili kila kaunti ya Kenya ifaidike saa hizi na sio baadaye. Kila mtu atakwenda nyumbani ikiwa ugavi wa pesa hizi utakuwa uko sawasawa na hiyo ndiyo ukamilifu kama sote tuko wakenya. Hatutaki kukubali kisha tuanze kugombana na kuleta fujo, ghasia na aibu katika bunge la Seneti kama vile tunavyo iona hivi sasa baada ya miaka miwili.

Sen. Dullo: Thank you, Mr. Speaker, Sir. I oppose this Motion and the Report of the Committee because we are being taken to the dark days of this country and we will not accept that. There is no difference between the Motion by the Committee and Sen. Kang'ata's Motion. We should not lie to each other.

What was brought by the Committee was illegal because they threw away the formula that was proposed by the Commission on Revenue Allocation (CRA). What is on the table for the affected counties is marginalization versus one man, one shilling. Marginalization versus BBI; marginalization versus population. I cannot append my signature on something that will affect my County and children in the history of this country. What will happen to my County if I allow this formula to work for two years? That County will curse me and my children until I die. I will even be cursed in death. I

cannot allow that to happen. We cannot allow people to sit in Nairobi and make decision for people who live in my County, which is 1,000 kilometers from here yet they do not understand the dynamics of those counties.

Isiolo County is currently getting Kshs4.2 billion and the formula is taking away Kshs869 million which is close to Kshs1 billion. I am being told to put a signature on something that will deny my County development for five years and I will not accept that.

Mr. Speaker, Sir, people need to understand what we go through. I think people should understand that even today, in those counties, our mothers are travelling hundreds of kilometers to look for water. When we append our signature to this formula, we are saying that our mothers should trek for the next five years. We cannot allow this.

Today, the country is watching to see which counties will be marginalized and who is punishing those counties and taking them back to the dark days of---

The Speaker (Hon. Lusaka): Switch off the other microphones, please.

Sen. Dullo: Mr. Speaker, Sir, I oppose this Motion because we are told that the Building Bridges Initiative (BBI) is proposing a 35 per cent revenue increase, but where is it? We are being told that we should pass the formula or BBI will collapse. We do not care! Let BBI collapse, because money is everything to us.

We have been marginalized over the years. Therefore, we cannot sit here and be lied to that we will pass this formula for two years then we will change it after two years. What will happen to those Senators who will come in at that time? Who knows whether we are going to be here or not?

We have a history where people sat and actually reduced the responsibility of the Senate in the previous Parliament. When they came to the Senate, they regretted. The same thing will happen if you come back to this House and find the formula that you appended your signature on when you were in this House.

Mr. Speaker, Sir, I am not going to accept this because, look at the mother who is in Kapsabet. Look at the mother who is in Kericho, who travels hundreds of kilometers to get service delivery. People need to understand all that when we are making these kinds of decisions. I do not want to waste a lot of time, but I am saying that we need to understand the dynamics of this country.

Mr. Speaker, Sir, I oppose both the formula and the Committee's report.

I thank you.

The Speaker (Hon. Lusaka): Sen. (Dr.) Ochillo-Ayako.

Sen. (Dr.) Ochillo-Ayako: Thank you, Mr. Speaker, Sir, for the opportunity to contribute to this proposed amendment. From the tone of the Members, you will see how distant we are to each other. There is a group of Members proposing one extreme and another group proposing another extreme, yet we must make one decision.

Mr. Speaker, Sir, in a democratic process, the principles of negotiations and compromise are a must. If you look at the making of the American Constitution, there was compromise called the Common Compromise, or the Connecticut Compromise. In fact, they had disagreed completely, and they would not have a constitution.

On 29th May 1787, it was summer and it was very hot. There were mosquitoes and flies that were biting people. They reached a compromise between the interest of

large states and small states, and they have a constitution to date. It was a difficult compromise, as difficult as the one we have today.

We may not believe in miracles, but we must be optimistic. Two years is a long time, and if you are not a prophet of doom, this country is not winding up. I believe that the economy will grow and what will be shared will be bigger. I believe that during that time, there will be presidential candidates who will talk to us and address these issues to specific counties. Those candidates will come to your region and tell you how they want to fix it, but we are stuck with this decision and as a Senate, we must solve it.

I am not a presidential candidate. I do not want to recede to Migori County and say that since I am benefiting, I am not interested in Narok. I would not want Narok to recede to other counties and say that since they are losing, they are not interested in Migori.

The point here is that we, as the Senate, are giving an opportunity for remission. It is like a serious chronic disease, but we are giving it two years, hoping that a political miracle will happen and there will be more money to feed and share among all the needy counties, and we are all needy. Murang'a County is needy; I saw food being distributed to the poor. I did not know that there are poor people in Murang'a.

In Migori we are extremely poor, but we do not want for these two years that I have a mandate here, to make Narok, Makueni, Kitui and Turkana counties poor. The two years that are being proposed is what the Senate can give. When we give it like this one, it is unfortunate that some people may claim that we are selfish. We cannot be selfish when we, in Migori, are saying that we are not taking a cent from you when this formula-- Whichever formula you apply; if you apply the Commission on Revenue Allocation (CRA) formula or the Committee formula that is based on the CRA, somebody will lose. However, what we are saying is: "Hold on, we do not want you to lose because I am here." That is what we can give, as the Senate.

We should adopt the approach that we can dialogue the national Government to allocate more money. If it is allocated to Kshs350 million or by miracle the Building Bridges Initiative (BBI) that some people do not like, allocates more money, then we will not be talking the way we are talking.

Mr. Speaker, Sir, I want to support this amendment, knowing that in South Africa, there is a principle called 'phasing in implementation.' Often, South Africa has to come up with a revenue sharing formula. Their revenue sharing formula that is based on data and on the advice of a Constitutional entity is phased in for three years. In the first year, 30 per cent of the proposed formula is implemented. In the second year, 60 per cent is implemented and in the third year, it is the remaining 30 per cent. That is how it is done in South Africa.

What we are debating here is not new; it is something that works in diverse nations like South Africa. It is something that should also work here. I am sure that two interests that are prevailing and are irreducible in this House. Everybody wants to gain money and nobody wants to lose it; those are two principles.

Going by whatever formula, even if we were to postpone this remission to one, two or three years, whatever formula you bring, will cause more suffering.

I want to conclude by saying that I appreciate the distance apart that we are, but we must come to one decision that involves negotiations and compromise, however

difficult. The compromise that is not hurting anybody is that you are not going back to your county this year and next year with less money than your county has been getting. You must continue praying and working at it that more money will come. Believe that you are working as a nation. We were talking about the economy, which will grow. If it does grow, then we will be talking a different subject. When we are talking a different subject, we will all talk about it happily.

I beg to support the amendment that has been introduced by my brother and friend, Sen. Kang'ata.

Thank you, Mr. Speaker, Sir.

Sen. (Dr.) Ali: Thank you, Mr. Speaker, Sir. I stand to vehemently oppose this amendment. This amendment is not different from the original Motion. It is the same so-called square root, which does not exist anywhere in the world. We are supposed to talk about an equitable society and development. However, what we are talking about here is that some people are more equal than others; this is the animal farm. Let us say the truth the way it is.

The so-called marginalized regions suffered tremendously from Independence to date, and we continue being marginalized. Sessional Paper No.10 of 1965 is the way this formula is dividing this country.

Mr. Speaker, Sir, Article 201(b)(iii) on Principles and Framework of Public Finance states-

“Expenditure shall promote the equitable development of the country, including by making special provision for marginalised groups and areas;”

Are we thinking of that? Everybody who talks here and are from the devolved regions have everything. They have the roads, health facilities and water. Where I come from, there is no water, roads and health services yet I am still being told we are getting more money. What monies?

Mr. Speaker, Sir, when there is oil in Turkana County, people run to that place and say: “Bring that oil here to the central Government”. However, when it comes to revenue sharing, you do not need to give Turkana County anything. When you talk of the wind generation in Marsabit, it is brought up to Suswa. The people of Garsen do not benefit. However, when it comes to resources, we are told we do not deserve anything.

When we get oil in Wajir County, it will be the same thing. If the coal in Kitui County was used, it is the same thing. What is this thing about the centre and these ones who always have it? We will not accept that. This is not right, fair and not acceptable. We cannot be pushed to the periphery every time. What is Kshs316 billion? It is nothing when you get billions and trillions from the national Government and you still talk about these areas.

Mr. Speaker, Sir, these two years are nothing, it is a waste of time. As the Senator for Makeni County said, if you want to kill us, the knife is there. Do it and stop talking politics here. Stop talking about this or that. We have had enough and we are tired!

(Loud consultations)

The Speaker (Hon. Lusaka): Let us consult in low tones Senators.

Sen. (Dr.) Ali: Mr. Speaker, Sir, we are tired. We will not keep quiet throughout our lives to be threatened and that we are being fed, that we come from areas with nothing and there are only trees there. Come on, if you remove those areas of the so-called land mass and you do not want them, how will the map of Kenya look like? Show us the map of Kenya. There are people who say they have all the numbers and they do not need these areas. They are free to do what they want. Give us federalism. Release us if you so wish, but this is not what we will accept. This is not what we were envisaging when we were talking of Kenya as one.

I am wearing this tie today. This is the flag of Kenya and nobody can intimidate me. Nobody can tell me that we do not produce this or that. About 60 per cent of the money which everybody is trying to brag about comes from Nairobi City County. About 30 per cent comes from Eastleigh and then we are told we do not produce anything. Two years down the road is not going to help us. Whether it is two or five years, I oppose it to the last bit of my breath.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. (Dr.) Musuruve then from the other side, Sen. Ndwiga.

Sen. (Dr.) Musuruve: Mr. Speaker, Sir, thank you for giving me this opportunity. I support the amendments by Sen. Kang'ata. The amendments come in to show that he is flexible. A true leader needs to be flexible, but not rigid. Can I be heard? Am I on record?

The amendments by Sen. Kang'ata show that he is accommodating. According to these amendments, no county should lose. As the Senate, we have to ensure that no county loses in any way. Most counties have already made their budgets and they have expectations. All of a sudden, if a county gets less money, the county will be confused. There is need to ensure that no county loses.

Mr. Speaker, Sir, this is a moment to think about the yonder years, so that if there are amendments to be done on the budget, they should be well-thought out. However, this is also a learning process for all of us. Therefore, I support that the status quo remains and our counties get their share.

Mr. Speaker, Sir, we need to have a conversation so that more money is allocated to counties. In future, no county should lose money. We must strive to have a win-win situation because it is our mandate to protect the interest of counties and their governments. Therefore, I support Sen. Kang'ata's amendments because all 47 counties need development.

Sen. (Eng.) Maina: Thank you, Mr. Speaker, Sir. I stand to support the amendment brought by Sen. Kang'ata. It is most unfortunate today we are not talking as a Republic. It is a bit mind boggling how we reached where we are.

The decision being made today has to be made because we have been talking for a long time. This matter has been looked at left, right and centre. Let us not also forget that the essence of democracy is one man one vote That is the basis of democracy in the world. From the very beginning when man decided that he will no longer be ruled by a king, it was decided they would be governed on the basis of man and not any other way.

The sentiments we are expressing are being heard all over the world. In America, Alaska is seven times the size of California. However, California has 52 college votes

while Alaska has two. On what basis? This is because Alaska is sparsely populated. Not many people live there.

The notion that some counties are richer than others is not true. There is so much poverty in Kiambu, Nairobi and Nyeri. There are villages where people cannot afford a meal. Therefore, it is unfortunate to talk of riches while citizens in those areas are struggling to put food on their tables.

The parameters used such as agriculture, health and population are okay. We cannot say they have no basis in life. That is a basis of whatever happens in a fair distribution of resources.

We can be in this House and decide to divide this country or unite it. I would wish all of us to tone down and speak of a united country. Today, there is this feeling and a picture being painted, which I want to deny and demonstrate on the Floor of this House that it is not true. Look at this formula today, the money going to the so-called "Mt. Kenya region" is not a lot. In fact, most of it is being reduced from other counties going to North Rift, Western and Nyanza regions. Very little is going to Mt. Kenya region. Nyeri County, for example, where I come from, is getting less than Kshs300 million. Therefore, the notion that this is being done by a certain clique of people is not right. It should not be propelled by leaders who believe in the national unity of this country.

Mr. Speaker, Sir, in this House, we are leaders and representatives of the people. You can see how eager we are to look for money for our counties. That is well and good. However, gentlemen, sit back and ask ourselves: Do we know how all of this money we are fighting for so hard in this House is utilized? We are told Kenya is losing about 30 per cent of its resources nationally to corruption. How much is being lost in the counties to corruption? Maybe, it is up to 80 per cent.

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

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

Sen. Cherargei: Mr. Speaker, Sir, I do not want to interrupt my brother, Sen. (Eng.) Maina, but looking at the time---

(Sen. (Eng.) Maina stood up in his place)

The Speaker (Hon. Lusaka): Kindly, take your seat, Sen. (Eng.) Maina.

Sen. Cherargei: Sen. (Eng.) Maina, I am on a point of order. My point of order is that looking at the time and considering---

(Sen. (Eng.) Maina remained standing in his place)

The Speaker (Hon. Lusaka): Order, Sen. (Eng.) Maina! The two of you cannot be on your feet at the same time.

Sen. Cherargei: Mr. Speaker, Sir, considering the curfew that was issued by the President that no *Mheshimiwa* or anyone should be spared if found flouting it, and that it should be enforced; I request that you provide appropriate guidelines on how we should proceed considering it is almost 9.00 p.m., the curfew time. Have you talked to the Inspector General (IG) of police, so that some of us might not be harassed when we are going home?

The Speaker (Hon. Lusaka): Okay, I will give guidance on that. Let me consult. Can you conclude, Sen. (Eng.) Maina?

Sen. (Eng.) Maina: Mr. Speaker, Sir, I think that rule should apply to the next Member who will be speaking on the Floor. I do not intend to continue talking here forever.

Let me conclude. My appeal to this House on this very emotive matter and for heaven's sake, is that let us not try to make statements here that will divide this country. Let us try to do as much as we can and whatever language we use, to try to unite this country. That is my appeal to you.

Mr. Speaker, Sir, it is high time we realized that the utilization of that money is more important than thinking of pumping more money to counties is the solution to poverty. No. You can be poor with Kshs10 billion or Kshs1 billion, if you are mismanaging it. Therefore, it is high time we strengthened oversight. It is high time that this House had some money to do proper oversight, so that the money we are clamouring is utilized properly for provision of services to *Wanjiku*.

Mr. Speaker, Sir, as we continue gunning for this money, let us ask ourselves how this House will end up having enough resources to do oversight role and make sure it is utilized properly for the benefit of *Wanjiku*. We should strengthen the office of the Attorney-General by allocating it enough resources. We want them to open office in every county and be working in conjunction with the Senators. That could be a better solution to giving service to our people and alleviating poverty than thinking there is need for more money---

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

The Speaker (Hon. Lusaka): Let him conclude.

Sen. (Eng.) Maina: Mr. Speaker, Sir, I conclude.

The Speaker (Hon. Lusaka): Hon. Senators, I seek your indulgence because this is debate on an amendment. We are yet to come back to the Motion and other amendments.

I will invite the Senate Minority Leader and the Senate Majority Leader to say something, then, we take a vote.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I want to speak from my heart. I was always told that in Science when you want to reach an objective like going to Mars and the moon, you must know the objective of where you want to go, then you can synchronize the pathway. Today, I am totally disappointed because we do not know where we are going. I want to look at these figures seriously and see whether the point we are trying to make; we are making it.

Mr. Speaker, Sir, there used to be a ruler in Uganda called Idi Amin. He was given MiG planes from the Soviet Union. When he got those planes, he thought that he was so powerful and decided to attack Tanzania because he had many MiGs. President Nyerere was a very civil and humble leader, while Idi Amin was a field marshal and not even a general. He thought that with the MiGs, he could attack Tanzania and succeed. Lo and behold! When it counted, Amin was on the run.

I have been pleading with Members I could talk to; that let us be smart. As Justice Odunga says, 'let us be like a guided missile.' Look at what you want to achieve before we engage in the debate.

I want to point at the figures as they are in relation to this Motion that has been put before us. Seriously, I am looking at them sequentially - the CRA and at the Committee. I am looking at the places where we are told they have big populations, beginning with Bungoma. If population was the basis upon which we were using the parameter, Bungoma is not getting what it deserves. The Senator of Bungoma County, irrespective of the question of population, wants a middle ground. People who want peace must look for the middle ground.

If you look at what Kiambu is getting, looking at the population, they are not getting what they deserve. Likewise, Nairobi is not getting what they deserve. Sen. Sakaja, I support your patriotism. If it was on population, we would not be talking today. Nairobi has poverty. You can go to Mandera and find somebody with a toilet just like Nairobi, there are people who do not have toilets. I want us to be frank with each other. I was trying to offer a way out when asking for the adjournment.

Look at what the figures mean. Kitui County was going to lose Kshs1 billion, not tomorrow or the next financial year, but now. Through Sen. Kang'ata's amendment, Kitui will not lose the Kshs1 billion for three years, which is a fact.

Mr. Speaker, Sir, I speak for Wajir County more than their Senator because I went Wajir to talk about the people who were persecuted and murdered there. While on the mission to talk about those who were murdered through violence by the military, I was arrested and slept in a cell in Wajir. A county like Wajir is supposed to lose Kshs2 billion now. Through Sen. Kang'ata's amendment, Wajir County is not going to lose money now, next year or in the third year. Siaya County does not talk in terms of gaining billions of shillings. Siaya County is going to gain about 100 million or less. A county like Lamu is going to lose about Kshs100 million. With respect, I think we have lost our minds. I was trying to look for a way forward where we can sit together as a people to decide where we go.

I can go through these figures to point more counties that were going to lose money. Machakos County is one of the growth centres in this country. A lot of the development that is taking place in this Republic is in Machakos County. As you drive on Mombasa Road, you enter Machakos County before you even get to the Jomo Kenyatta International Airport (JKIA). Although Machakos County was not going to lose, it was going to get a minimal increase which does not reflect the growth that is taking place in Machakos County. However, the Senator for Machakos does not support this formula because of what Kitui and Makueni counties are losing. Sen. (Dr.) Kabaka said that he will die with his brothers. It is a shame that the Governor of Machakos County had the audacity to say that the Senator for Machakos County has given away more than Kshs1 billion which he is using as a campaign strategy.

Mr. Speaker, Sir, I would like to say that I am proud of Sen. Murkomen because he has stood up to be counted. Although Elgeyo-Marakwet County was going to gain in this formula, he decided not to support the proposed formula. My county, Siaya County was going to gain in the proposed formula, but I am not going to support the proposed formula because Kenya is one nation.

The preamble of the Constitution of Kenya says that we are one indivisible nation. What we are trying to do here is dividing Kenya into counties and tribes. The other days, somebody gave me a breakdown of the tribes that are gaining and those that are losing.

One of the leaders that I admire in this country is the immediate former President Kibaki. He would always talk looking at the public gallery and begin to address the nation through the gallery. The one thing that President Kibaki did and, probably, no other President will be able to do is to be accessible. I advise the current President to be more accessible to enable us solve these problems.

(Applause)

We would not have gotten here if he was more accessible. I can say that without fear for the benefit of the country, I am not saying it for myself, but for the country. I respect my son, Sen. Mutula Kilonzo Jnr., but I urge him to be wise on this issue. Sen. Wetangula said something fantastic that we should have listened to, but we rubbished it.

I was asked to call for another adjournment or ask Senators to disappear because they can see how the vote is coming. They can see it. The moment has come and when we want to count votes now, the chest thumping will stop because it is a count.

I was with Sen. Haji this morning because I do respect him, and I wanted to find out the best way forward. This young man called Sen. Kang'ata was my student and he learnt his politics from me. He has said things that I do not agree with. He has annoyed me in the last one month. He came to me this morning and told me, 'I am biting the bullet. I want a middle ground.' For that, I respect him. Nobody would believe that he would take this position based on what he previously said.

I support this amendment because nobody is losing in this amendment. I want those who are losing to stand up and show me where they are losing. No one is losing this year, next year or in the third year. Why are we messing up by misleading people? Nobody is losing and nobody should lose.

I respect Sen. Sakaja. This morning, I went through simulations. These parameters are not mathematical absolutes. When we talk about parameter on health, it is not on the basis that it is a mathematical absolute. It is a variable. Therefore, Sen. Sakaja or somebody else can change their variable and end up with a different result.

I want to convince the people from Coast and Mandera that I am with them and I am dying with them because they are losing no cent. Governor Mutua should know that nobody is as patriotic as Sen. (Dr.) Kabaka. Machakos County is not losing any money. I used to practice in Machakos County as a lawyer. Let us be brave today and pass the amendments by Sen. Kang'ata. He has annoyed me, but he has now come back to life. He is my true trainee.

I support.

The Senate Majority Leader (Sen. Poghisio): Mr. Speaker, Sir, allow me to---

(The Senators consulted loudly)

The Speaker (Hon. Lusaka): Order, Senators! Let us consult in low tones.

The Senate Majority Leader (Sen. Poghisio): Mr. Speaker, Sir, if you allow me, I will donate my two minutes to Sen. Wamatangi. I will do the rest in a very short time.

Sen. Wamatangi: Thank you, Mr. Speaker, Sir. I want to appreciate the Senate Majority Leader for donating the two minutes to me.

I do appreciate all the comments made by my colleagues, especially the last comments made by the Senate Minority Leader. As one of the few people who was engaged and as a Member of the Committee on Finance and Budget, I sat through many meetings trying to find a middle ground. Every citizen has been watching us and I am sure that there are several questions in people's minds as to why the Senate has taken this long. In the eyes of the public, we almost looked as though we are indecisive, too political or too divided. Indeed, it is a sign of health in the Senate in showing the passion that each Senator has, no matter what position they took, in ensuring that they can secure the interests of each of the people who elected them here.

In that respect, I will quote what Abraham Lincoln said some time, that –

“Though passion may have strained, it must not break our bonds of affection”

I appeal to most of our colleagues, whichever way we look at it, whether you are looking at yourself as a gainer or as loser, I take the position that we have no losers or gainers.

From the first time I was elected to the Senate in 2013 up to date, when all the parameters of the simulations of the first formula in 2012 and the second one in 2016 are applied, capital has flown from different counties. Scenarios have also changed in different counties. At no time have we, as a Senate, taken a position that is so divisive that we would look like we are a House that is about to crumble.

I appeal to my colleagues, now that we have the amendment by Sen. Kang'ata, which seeks to give us a middle ground---

(Loud consultations)

The Speaker (Hon. Lusaka): Order! Let us consult in low tones.

Sen. Wamatangi: Mr. Speaker, Sir, even if the Kshs316 billion was divided, it is still not enough to take care of the needs of the Kenyans in all 47 counties.

As I support this amendment, my appeal is that in accepting and introducing this amendment, as a House, we are, first of all, able to find a way forward together. Secondly, to ensure that we fight the battles of tomorrow, we all recognize that if the amount given to the counties is what the Senate had unanimously decided, we would not be where we are.

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Senators! Let us consult in low tones.

Sen. Wamatangi: This Senate had firmly asked for Kshs350 billion. If we had gotten the Kshs350 billion from the national Government, today everybody would be smiling. Nevertheless, even that Kshs350 billion would not have been enough.

I know that my two minutes are over. Allow me to conclude by saying that we have been through what we have, because Sen. Mutula Kilonzo Jnr. and others have spoken here strongly and sentimentally because they feel like their counties are losing.

If we can forge a way forward together, first, acknowledging that there has been a middle ground that has been built in those two years of moratorium, we will find a way to ensure that whichever funds are available, we will ensure we get the monies that are

right. This includes the Equalization Fund or any other amount that will be available. Let us ensure that we are together, and we will be able to move our counties together.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Senate Majority Leader

The Senate Majority Leader (Sen. Poghio): Mr. Speaker, Sir, I take this opportunity to thank all the members who have spoken to this amendment. This day, I want to use the opportunity that I have to mourn a great man who was the President of Tanzania, President Mkapa.

I was meant to attend the funeral of President Mkapa. I will use this opportunity to send our condolences to the family and to the nation of Tanzania. Sen. Wetangula, Sen. Orenge and I know the man very well. We worked to bring peace to this country.

Let me also use this opportunity to disabuse this House of the kind of terminologies or words that we have used during the past few weeks.

One of the prominent expressions used were ‘losers’ and ‘winners.’ However, the irony of this division of revenue is that the so called ‘losers’ were actually the ‘winners’ while what you call ‘winners’ are ‘losers.’

Mr. Speaker, Sir, I will give you the example of West Pokot County which has never crossed Kshs5 billion mark. When it gains something, it is called ‘gainer.’ Even with that gain, it has never reached where the presumed losers are in terms of how much they get. So, we all need to come together and help those who have been getting less money. Those who have been get a lot of money must give up something. That will be the best formula that will divide the revenue among counties.

The politicization of this formula claiming that they are being marginalized and others saying they will suffer this or that, has been cured by this amendment. This amendment also cures that expression of ‘lose’ and ‘gain’. In fact, if we were to speak candidly to each other, the amendment benefit so called ‘losers’ more than the perceived ‘gainers.’ The amendment keeps the so-called ‘gainers’ on hold, while the so-called ‘losers’ gains. The people who claim to be losers should support this amendment because it good for them.

In the next two financial years, there is nobody who will get less than what they are getting right now. So, without necessarily having to express myself more than this, I appeal to hon. Senators to support the amendment.

There are people that I sympathise with, for example, those from Isiolo who are getting less and they are real losers. Therefore, if we had given ourselves a bit of time and not began to politicise this matter, we might have reached some agreement and have a middle ground. This is because---

Loud consultations)

The Speaker (Hon. Lusaka): Hon. Senators, consult in low tone.

The Senate Majority Leader (Sen. Poghio): The position we have taken is now being subjected to a vote. So, I want to appeal to delegations to support the amendment by Sen. Kang’ata. It is a very reasonable amendment. This is because it will benefit those who are perceived to be losers by giving them the same amount they have been receiving in the past.

Moreover, it is holding those who are supposed to gain for two years. The people who are supposed to gain are very magnanimous and I want to congratulate them. So, let us vote together on this one. There will be no need to bring any further amendments. We finish and go home.

Mr. Speaker, Sir, I support.

The Speaker (Hon. Lusaka): Hon. Senators, I will put the question. After that, we will vote by delegations because it is a matter that touches on counties. Since the system is down, we will use a Roll Call.

I now order the Bell to be rung for one minute.

(The Division Bell was rung)

The Speaker (Hon. Lusaka): For the roll call voting, when you are called, you come here and sign.

Take your seats; we want to start the voting. The Clerk at the Table, let us proceed. Order, Senators! Let us listen.

(Loud consultations)

Order, Senators! The Majority Whip, you should be---
We are doing a roll call voting. Senators, please.

Hon. Senators, make sure you also sign so that we can countercheck here.

(Voting in progress)

The speaker (Hon. Lusaka): Sen. (Eng.) Maina, you have not yet been called.

Sen. (Eng.) Maina: Mr. Speaker, Sir, there is confusion.

The speaker (Hon. Lusaka): There is no confusion. Senators, listen to what the Clerk is reading out.

(Roll Call voting in progress)

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Members! Take your seats.

DIVISION

ROLL CALL VOTING

(Question, that the Motion be amended as proposed by Sen. Kang'ata put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata,

Murang'a County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Linturi, Meru County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Moi, Baringo County; Sen. Mwangi, Nyandarua County; Sen. Ndwiga, Embu County; Sen. (Dr.) Ochillo-Ayacko, Migori County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghisio, West Pokot County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

NOES: Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Dullo, Isiolo County; Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. Iman, Garissa County; Sen. (Dr.) Kabaka, Machakos County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Dr.) Lelegwe, Samburu County; Sen. Loitiptip, Lamu County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. Mpaayei, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwaruma, Taita Taveta County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Sakaja, Nairobi City County; Sen. Wambua, Kitui County; Sen. (Rev.) Waqo, Marsabit County and Sen. Wario, Tana River County.

The Speaker (Hon. Lusaka): The results of the Division are follows.

AYES: 22

NOES: 25

ABSTENTIONS: Nil.

(Question negated by 25 votes to 22)

(Applause)

Hon. Senators, the "Noes" have it. Therefore, we will resume the debate on the main Motion.

(Resumption of Debate on the original Motion)

(Loud consultations)

Order, Senators! I am making that announcement knowing that there are amendments suggested by three Members. The amendments will be moved by one of them because they are similar.

Proceed, Sen. Sakaja.

Sen. Sakaja: Mr. Speaker, Sir, before I move my amendment to the Motion, I want to persuade my colleagues Sen. Mutula Kilonzo Jnr. and Sen. Olekina to withdraw their amendments. However, I beg to move the following amendment: -

THAT the Motion be amended by deleting the full stop at the end and inserting the following words-

'subject to the deletion of recommendation appearing as paragraph 26 of the Report and substituting therefor the following new recommendation-

- 26) The Senate resolves that pursuant to Article 217 (1) of the Constitution, the Third Basis for sharing revenue among counties, for the Financial Year 2020/2021 to 2024/2025 be as follows –
- a) Equitable share not exceeding Kshs. 316.50 billion
The following formula shall apply
 CA_{i1} = Allocation per County for FY 2019/20
 - b) Equitable share over and above Kshs. 316.50 billion
The following formula shall apply
 CA_{i2} = $0.18 * Population Index_i + 0.17 * Health Index_i + 0.10 * Agriculture Index_i + 0.05 * Urban Index_i + 0.14 * Poverty Index_i + 0.08 * Land Area Index_i + 0.01 * Fiscal Effort_i + 0.06 * Roads Index_i + 0.01 * Prudence Index_i + 0.20 * Basic Share Index_i$ ⁴
Where,

Parameter	Indicator of Expenditure Need
Health services	<p>Health index- health facility-gaps (20%), three years average number of primary health care visits to levels 2 and 3 health facilities (60%) and three years average in-patient days in levels 4 and 5 hospitals (20%)</p> $Facility\ gap\ factor_i = \frac{Facility\ gap\ funding\ in\ county\ i}{\sum_{i=1}^{47} facility\ gap\ funding\ in\ county\ i}$ $Primary\ health\ care\ factor_i = \frac{No.\ of\ primary\ health\ care\ visits\ in\ county\ i}{\sum_{i=1}^{47} No.\ of\ primary\ health\ care\ visits\ in\ county\ i}$ $In - patient\ days\ factor_i = \frac{No.\ of\ in - patient\ days\ in\ county\ i}{\sum_{i=1}^{47} No.\ of\ in - patient\ days\ in\ county\ i}$
Agriculture services	$Agriculture\ Index_i = 0.005 * Minimum\ Share\ index + 0.095 * \frac{Rural\ households\ in\ county\ i}{\sum_{i=1}^{47} Rural\ households\ in\ county\ i}$

⁴ The formula will use the 2019 population and 2015/16 KIHBS poverty statistics.

Other county services	$Population\ index_i = \frac{Population\ in\ county\ i}{\sum_{i=1}^{47} Population\ in\ county\ i}$
Minimum share	<p>Basic share index</p> $= 0.19 * Equal\ Share\ index + 0.01 * \frac{inverse\ of\ population\ in\ county\ i}{\sum_{i=1}^{47} inverse\ of\ population\ in\ county\ i}$

Land	$\text{Land area index}_i = \frac{\text{Land area in county } i}{\sum_i^{47} \text{Land area in county } i}$					
Roads	$\text{Roads index}_i = \frac{\text{Rural access index in county } i}{\sum_{i=1}^{47} \text{Rural access index in county } i}$					
Poverty level	$\text{Poverty index}_i = \frac{\text{No. of poor people in county } i}{\sum_{i=1}^{47} \text{No. of poor people in county } i}$					
Urban service	$\text{Urban Index } i = \frac{\text{urban household in county } i}{\sum_{i=1}^{47} \text{Urban Household in County } i}$					
Fiscal effort	$\text{Fiscal effort index}_i = \frac{\text{OSR collections of county } i}{\text{GCP of county } i}$					
Fiscal prudence	No.	Variable	Indicator	Score	Responsible	Weighting
	1	Audit Reports	Non-Qualified	4	County Executive Assembly	CE=90% CA=10%
			Qualified	2		
			Adverse	0		
			Disclaimer	0		
	2	Development Expenditure	At least 30%	1	County Government	100%
			Below 30%	0		
	4	Internal Audit Committee	In place	1	County Executive Assembly	CE=90% CA=10%
4	County Budget Economic Forum	In place	1	County Government	100%	
		Not In place	0			

c) Total Equitable share of a County

The following formula shall apply

$$TES_i = CA_{i1} + CA_{i2}$$

Whereas;

TES_i = Total Equitable share of County i

CA_{i1} = Allocation per County for FY 2019/20

CAi2=Equitable share over and above Kshs. 316.50 billion

The basis used is as shown

No.	Parameter	Weight
1	Population	18%
2	Health	17%
3	Agriculture	10%
4	Urban	5%
5	Roads	6%
6	Poverty	14%
7	Land	8% capped
8	Basic Share	20%
9	Fiscal Effort	1%
10	Fiscal Prudence	1%

FOR ILLUSTRATION ONLY

Simulation using Equitable share of Kshs. 325.7 billion for FY 2021/22 (as per budget estimates FY 2020/21) using Committee proposal 1 for Illustration Purpose

No	County	Actual Allocations 2020/21	Additional allocation in FY 2021/22
1	Baringo	5,095.65	164.90
2	Bomet	5,507.10	172.10
3	Bungoma	8,893.65	270.13
4	Busia	6,013.50	182.45
5	Elgeyo-Marakwet	3,861.30	115.20
6	Embu	4,304.40	132.25

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7	Garissa	7,026.30	190.92
8	Homa-Bay	6,741.45	189.83
9	Isiolo	4,241.10	117.20
10	Kajiado	6,424.95	207.43
11	Kakamega	10,412.85	313.29
12	Kericho	5,380.50	163.69
13	Kiambu	9,431.70	308.37
14	Kilifi	10,444.50	275.08
15	Kirinyaga	4,241.10	136.46
16	Kisii	7,785.90	218.52
17	Kisumu	6,836.40	201.71
18	Kitui	8,830.35	258.82
19	Kwale	7,785.90	190.52
20	Laikipia	4,177.80	136.33
21	Lamu	2,595.30	80.17
22	Machakos	7,754.25	232.84
23	Makueni	7,406.10	195.41
24	Mandera	10,222.95	250.32
25	Marsabit	6,773.10	168.57
26	Meru	8,039.10	236.25
27	Migori	6,773.10	203.10
28	Mombasa	7,057.95	180.39
29	Murang'a	6,298.35	178.20
30	Nairobi City	15,919.95	494.52
31	Nakuru	10,476.15	332.22
32	Nandi	5,348.85	183.14
33	Narok	8,039.10	209.09
34	Nyamira	4,810.80	121.30

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35	Nyandarua	4,874.10	143.03
36	Nyeri	5,412.15	155.29
37	Samburu	4,620.90	134.32
38	Siaya	5,791.95	175.54
39	Taita-Taveta	4,241.10	119.75
40	Tana-River	5,855.25	156.01
41	Tharaka-Nithi	3,924.60	98.91
42	Trans-Nzoia	5,760.30	186.23
43	Turkana	10,539.45	307.91
44	Uasin-Gishu	6,330.00	212.02
45	Vihiga	4,652.55	122.57
46	Wajir	8,545.50	216.29
47	West Pokot	5,000.70	161.43
	Total	316,500.00	9,200.00

I will just mention two components of it, because the amendment is pretty straightforward. The import of the amendment is that in the previous financial year and in this current financial year, the amount of equitable share going to the counties has remained at Kshs316.5 billion.

Everybody who spoke earlier, including Sen. Kang'ata, the Senate Majority Leader and Minority Leader, held that when they were pushing the earlier amendments, the basic principle that we all agree upon as a Senate is that no county should lose a shilling of its allocation. The formula then kicks in once we have devolved enough money to go to the counties.

(Applause)

The Speaker (Hon. Lusaka): The Senators who are standing, please, find a place to sit.

Sen. Sakaja: Mr. Speaker, Sir, the formula is that for any amount of Kshs316.5 billion and below, the allocations shall be as per the 2019/2020 allocation to counties, and that does not change. If your county had Kshs8 billion, you will have a minimum of Kshs8 billion. If your county had Kshs10 billion, you will have a minimum of Kshs10 billion.

Any amount above that, will then be applied based on the formula. The reason for doing this is because we have had to think as Kenyans and make painful decisions. I am

the Senator for Nairobi City County. In the previous proposal of the Committee, my county was going to gain Kshs100 million, which is 0.6 per cent of our allocation. An amount of Kshs100 million here is not the same as Kshs100 million in Garissa, Turkana, Wajir or Tharaka-Nithi.

What would it benefit the people of Nairobi - and many of the 4.3 million people that I represent also come from other counties - to gain 0.6 per cent and have our colleagues lose 25 per cent or 30 per cent of their budget? It will not be right and patriotic.

Devolution is about this country. The Building Bridges Initiative (BBI), and I speak about this because I know where the heart of the President and that of the Former Prime Minister is, we cannot have cohesion without equalization of opportunities.

A child in Mandera must have the same shot at life as the child in Makueni. There is no Kenya 'A' and Kenya 'B.' The notion that we have been having over the past few weeks that there are certain part of the country that have been giving to other parts of the country, is a fallacy and I will demonstrate it. We all belong to this country; one indivisible nation.

(Applause)

Mr. Speaker, Sir, if I go to the formula which came, I want to make it clear because Kenyans must know and we must debunk some of the myths that have been peddled. First, there was no Commission of Revenue Allocation (CRA) proposal before the House today. It was not the CRA formula; it was a formula that was originally CRAs' and amended by the Committee. Therefore, no one has rejected the CRA formula.

Secondly, I need to be clear on this and I will demonstrate. With regard to the one man-one shilling principle, Nairobi would be the biggest beneficiary. However, there is no single proposal that has been brought to this House that is 'one man-one shilling.'

If it was 'one man-one shilling,' Nairobi should be getting Kshs29.8 billion, but we are only getting Kshs15 billion. Many times, urban poverty burns more than rural poverty. For the people in Mathare and Kibra, if they do not have money, they cannot get a place to stay and food. So, the notion that people are being told that there is a 'one man-one shilling' formula is not true. I will demonstrate further.

Mr. Speaker, Sir, one man-one shilling means the population of your county divided by the population of the country, multiplied by Kshs316.5 billion. People have been peddling a rumour that there are certain parts that have been treated unfairly because of not having 'one man-one shilling' allocation. According to 'one man-one shilling,' Kirinyaga County that has a population of 610,000 people should be getting Kshs4 billion. What did it get before and in what I am proposing? It is Kshs5.3 billion and Kshs4.2 billion above 'one man-one shilling.'

(Applause)

Mr. Speaker, Sir, for Laikipia County with a population of 518,000 people, if it is 'one man-one shilling', it should be getting Kshs3.4 billion. However, Laikipia is getting

Kshs4 billion in the first proposal and Kshs5 billion in the second proposal. Do we want 'one man-one shilling' to reduce the allocation to Laikipia or Kirinyaga?

Let me show you Nyeri County because the Senator is here. Nyeri has a population of 759,000. You have been receiving Kshs5.4 billion and the new proposal is Kshs6 billion. If it is 'one man-one shilling,' Sen. (Eng.) Maina, you will receive Kshs5 billion, which is Kshs1 billion less.

We must demystify this notion. If it was one man-one shilling, Kiambu County should be getting Kshs16 billion, yet they are getting Kshs10 billion. It is good for us to disabuse this notion because there are people out there fighting us saying that we do not support the agenda of the President. That is not true. That is conjecture and warped logic.

Mr. Speaker, Sir, let me give you the last example---

Sen. Wamatangi: On a point of order, Mr. Speaker.

The Speaker (Hon. Lusaka): Order, Sen. Sakaja. There is a point of order from Sen. Wamatangi.

Sen. Wamatangi: Thank you, Mr. Speaker, Sir. Is the Senator for Nairobi City County in order to offer the misleading explanation he is giving about the one man, one vote, one shilling concept? That concept has been advanced by the people of Mt. Kenya. He has mentioned Kiambu County which I represent. It is a progressive agenda that we have picked as the starting point.

We have been very loud and clear. Today, even if this formula was to pass the way it is, Kiambu County would get the allocation it was going to get and being called a gainer, each person in Kiambu has a per capita allocation. The allocation to each individual would have been Kshs4,700. This is when there are counties still in the same formula, for example, Tana River and Lamu who would be receiving Kshs21,000 and others Kshs19,000. The Senator for Nairobi City County is out of order because he has not first understood the concept and the mission of 'one man-one shilling'.

Sen. Sakaja: Mr. Speaker, Sir, let me just leave that because it is not about understanding the concept. In the Republic of Kenya, I was the first person to write on fiscal decentralization more than ten years ago. I understand this formula very well. The examples I am giving are for illustrative purposes.

Lastly, and I was going to give you a different county, for example, Siaya County, which is Sen. Orenge's county, with 900,000 people if it is 'one man-one shilling', it will get Kshs6.6 billion and they have been getting Kshs6.7 billion. These discrepancies are there.

Mr. Speaker, Sir, the point I am making is in the initial formula, the highest per capita allocation was going to Lamu County at Kshs27,000 and the lowest was Nairobi City County at Kshs3,300 or there about. Even in this formula by the Committee, the highest per capita was still Kshs21,000 and Kshs3,500. The point is: If both formulas are not addressing one man-one shilling concept, and are not reducing the per capita discrepancy, why should we go with a formula that is hurting counties? That is political treason for these Members.

I gave an example. If tomorrow Sen. Cherargei or Sen. (Dr.) Lelegwe go to their counties having lost Kshs500 million and the governor says: "In this budget I wanted to

give you people bursaries of Kshs500 million, but it is not there; go and find it from your Senator.” What does it gain us to benefit two per cent when he is losing all of that percentage?

Mr. Speaker, Sir, I want to move on to the part of the variables of that formula which I found completely wrong. Allow me to talk about my county. First, when we talk about health, that the variable is measuring how many people visit hospitals. What do you do to the counties that do not have hospitals to be visited, in the first place? That county will never ever rate anywhere on that health variable. You cannot use the number of outpatient visits to measure who needs hospitals. You need to see how many hospitals exist in those counties per person.

Look at a variable like poverty index. I have spoken about this repeatedly for the last ten years. Poverty index is a measure of darkness. The world over, we have moved from poverty index and we use what we call human development index which tells you access to the actual facilities for which we were devolving funds.

Mr. Speaker, Sir, in India, they even have something they call provincial Gross Domestic Product (GDP) as a key variable to help some of the states or provinces that are producing to also be encouraged to produce more. That is how we should have gone. I want the people of Nairobi City County to hear me very clearly.

In the agriculture variable, Nairobi City County has been given nothing because of the notion that there is no agriculture in Nairobi City County.

The allocation for agricultural activities in Nairobi City County is only Kshs40 million. If you go to Dagoretti South Constituency, you will see, for example, in Uthiru, Ruthimitu, Mutuini and Waithaka, people do more agriculture than some counties combined.

There is a lot of agricultural activity in Njiru and Ruai in Kasarani Constituency and also in Karen. This formula has such a myopic view of agriculture because agriculture is end to end. The biggest market for agricultural produce in this country is Nairobi City County. It is a pity agricultural activity has been allocated Kshs40 million only. All the livestock from North Eastern is brought to Kiamaiko and Dagoretti markets. All your foodstuffs come to Wakulima Market. Are we saying then that there is no agriculture going on in Nairobi? We must never have a formula that advocates for such voodoo variables.

There are studies that have been done to show that if we invest in storage in Nairobi as agriculture, it reduces post-harvest loses across by 80 per cent. We need to have a better view of what fiscal transfer to counties is.

Nairobi City County does 15,000 extension visits every year yet we are being given Kshs40 million. All in all, a lot of those variables were not objective. We were not able as a Senate to understand how those statistics were arrived at.

The real one man, one shilling formula has not been brought in this House. The day I will see it, I will support it if Nairobi will get the Kshs30 billion that it deserves. For now, for the sake of this country, we cannot allow any part of Kenya to be left behind or to feel less Kenyan than the other.

(Applause)

That is why today we are wearing the Kenyan ties because we have said it is team Kenya. I would rather not get that Kshs100 million more and defer my gratification to day when Nairobi will get the KShs15 billion extra it deserves, but safe 19 or 20 other counties.

Mr. Speaker, Sir, I know the Collective Bargaining Agreement (CBA) negotiation because I am the Chairperson of the Senate Committee on Labour and Social Welfare. Counties will start paying higher salaries to doctors, but we are reducing their money during this COVID-19 period.

(Applause)

I have sat with the Parliamentary Budget Office (PBO) - an office to which we do not give enough credit - they have told us honestly that in the next financial year, it will be foolhardy to imagine that we will go above Kshs316.5 billion. There will be no enough money.

There is a false narrative that some counties get a lot of money. Nairobi City County is given Kshs15.8 billion while our payroll in a year is KShs18 billion. It is more than the Kshs15.8 billion. In the past financial year, we raised only Kshs8 billion.

The operation and maintenance budget in Nairobi City County alone is close to Kshs5 billion. A county of 4.3 million, 17 constituencies and 85 wards has less that Kshs5 billion for development, with the depth of the poverty.

Until we get to a level where we are devolving Kshs400 billion or Kshs500 billion, nobody can say that any part of this country is getting money that it does not deserve. That is devolution. That is the true BBI and the true position of our party leadership. Even in two years when the money increases, with two-thirds we can come to this House and amend this formula. For now, let us be our brothers' keepers.

The Bible says, "What does it benefit a man to gain the whole world and lose his soul?" What will it benefit you to gain Kshs50 million extra for your county and we lose the unity of this country?

Mr. Speaker, Sir, truly we have costed functions. Everybody talks about dividing the pie; that is what we are doing here today, but no one is talking of how we bake a bigger pie for this country. We have a CRA. We will soon need a Commission for Revenue Generation (CRG) in this country because we must start thinking of how to increase revenue and own-source revenue in counties. We must stop this issue of each governor having his or her own Information Technology (IT) system because that is where the corruption is.

As a Senate, we must make sure the monies we are giving to counties are utilized properly. I heard people saying that governors in certain parts of the country are the ones stealing. That is an unfair assessment. Everybody is stealing across the country and we need to condemn it in full. We cannot say that theft is rife in certain parts of the country and yet there is theft in our own backyards. There has been theft in Nairobi. In fact, most

of the impeachments have come from Central Kenya. There has been theft in Nyanza and in the Coast. Let us remember we have one indivisible country.

I know Members want to vote quickly because the mood in the House is palpable. In the words of Sen. Gideon Moi, *Alea iacta est* "The die is cast". I want to tell Senators, please vote with your conscience.

I want to assure Members that this vote is not a vote against the Government; because I support this Government. I was the founding Chairman of The National Alliance (TNA). When the formula first came to this House, Sen. Wetangula was in the other House. It was brought by the Minister for Finance. The Minister of Finance then was President Uhuru Kenyatta. The President was Hon. Mwai Kibaki. That first formula was brought and I can tell you in his heart of hearts, the President supports devolution and he will never push an agenda that pits ones of part of Kenya against the other.

Hon. Members here should stop fearmongering and telling us *tumeitwa*; we have been called. There is no such thing. He would have called me himself. This is in support of his agenda; BBI, uniting Kenya from Habaswein to Vanga, from Turkana to Lamu and from Kisumu to Nyeri; one Kenya.

Mr. Speaker, Sir, I beg to move and ask Sen. Olekina to second.

Sen. Olekina: Mr. Speaker, Sir, I rise to second the Motion to amend the Committee Report. I will be very brief to the point because the distinguished Senator for Nairobi County has completely demystified the myth.

Mr. Speaker, Sir, the reason why I support this amendment is because of one, it is illegal for a county like Turkana or Marsabit which is over 70,000 square kilometres to be reduced into a square root of 266. In that parameter alone, that county loses Kshs1.5 billion. It is evil. We must be our brother's keepers. When I came into this House, I said I am proud to be in this House because this is the House of union. If we are the House of union, it will be wrong for one county to gain, yet the people of Turkana just on the land parameter alone, we will lose Kshs1.4 billion.

Mr. Speaker, Sir, the second reason why I support the amendment by Sen. Sakaja is because of the way that the Committee played around in terms of the parameters we have.

(Loud consultations)

The Speaker (Hon. Lusaka): Hon. Senators, let us consult in low tones!

Please Senators, observe social distancing.

Kindly, proceed.

Sen. Olekina: Mr. Speaker, Sir, when you come and lie to the public that you have the CRA formula and you are now playing around with figures, you amend it and you raise it and give it a weight of 20 per cent then three counties take all the money; that is, Kirinyaga, Kakamega and Bungoma. It would have been a different story if we would have stuck with the issue of CRA. That is why in this amendment, the weight that we gave was the 17 per cent on health because it is in line with the Abuja Declaration.

Mr. Speaker, Sir, the third point which is the last point for me to allow Members to vote is on the issue of agriculture. The Committee played with the weight and they

raised it to 12 per cent. When they did that, they took away money from urban centres like Nairobi and Mombasa which benefit from the urban parameter.

For the sake of the unity of this nation, I want to see Narok County receiving Kshs8 billion which they received last year for the next few years until the time that we can generate more money. I want to see the County of Kirinyaga getting what they got this year, which is Kshs4.2 billion. I want to see Lamu County getting at the minimum the amount of money they received this year, which was Kshs2.5 billion.

The Speaker (Hon. Lusaka) left the Chair]

[The Deputy Speaker (Sen. (Prof.) Kamar) in the Chair]

Madam Deputy Speaker, Article 203 of the Constitution is very clear. When dividing revenue, we must take certain factors into consideration. The marginalized counties have been marginalized for too long. We cannot be the House that continues to kill devolution. We must stand with our people; from Turkana to Rombo in Kajiado.

With those few remarks, I second.

An hon. Senator: Put the question!

The Deputy Speaker (Sen. (Prof.) Kamar): Order Members! You cannot tell me to put a question to something that has not been proposed. Let us do things in order. This is a House of order.

(Question of the amendment proposed)

Sen. (Dr.) Mwaura: Thank you, Madam Deputy Speaker. I rise to oppose this Motion by my very able and distinguished Senator, who we were nominated together in the National Assembly, Sen. Sakaja.

There have been a lot of contestations as to why we are debating this Motion. When you look at the history of this country, the making of Kenya as a nation was for extractive purposes by the colonialist. Indeed, they were able to extract and expropriate a lot of resources to the Crown in London. Upon Independence, with the advent of the Kenya African National Union (KANU) and Kenya African Democratic Union (KADU), there was a big debate about whether we should give monies at the centre or to the *Majimbo* system. It is on record that when *Majimbo* systems were told to generate their own resources they were not able to do so.

The late Julius Kambarage Nyerere is on record having said that there is a big challenge of having only one centre because if you make the mistake at it, it affects the whole country. There is a clear case to justify why we should have many centres, hence the advent of our counties. However, it is true that the Sessional Paper No.10 of 1965 may have abrogated and allocated resources where the rail had passed. Indeed, the 2010 Constitution provided for counties.

(Several Senators approached the Dispatch Box)

The Deputy Speaker (Sen. (Prof.) Kamar): Order! Hon. Senators, you are crowding the Dispatch Box.

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kamar): What is your point of order, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Madam Deputy Speaker, I am afraid there is a technicality that is going to put us in an awkward position. We asked the Speaker to make a ruling about the time. It is 10 minutes to 9.00 p.m. and we are not going to postpone this discussion. The police officers had better be outside Parliament to arrest us. The ruling we want from you---

The Deputy Speaker (Sen. (Prof.) Kamar): Order, Sen. Mutula Kilonzo Jnr.! Why are you prescribing on a point of order? You cannot prescribe to the Deputy Speaker how you are ready to be arrested. I can see another point of order from Sen. (Dr.) Langat.

Sen. (Dr.) Langat: On a point of order, Madam Deputy Speaker. I do not know why my friend, Sen. Mutula Kilonzo Jnr., is anticipating that we are going beyond time thus trying to tell us that we should hurry this debate. We would like to be given enough time to ventilate on this issue. I suggest that we adjourn at 9.00 p.m. which is the official curfew time, and pick up this debate later.

Hon. Senators: No! No! No!

Sen. (Dr.) Langat: Madam Deputy Speaker, we must follow the COVID-19 protocols because we are risking the lives of other people.

Hon. Senators: No! No! No!

The Deputy Speaker (Sen. (Prof.) Kamar): What is your point of order, Sen. Wambua?

Sen. Wambua: On a point of order, Madam Deputy Speaker. The matter raised by the Senator for Makeni County on a point of order is important. Sen. Mutula Kilonzo Jnr. wanted to know the determination as was promised by the Speaker. The issue came up when the Speaker was on the Chair because we needed to extend the time of sitting until such a time when we will have completed this debate. The Speaker was supposed to make ruling on that matter.

The Deputy Speaker (Sen. (Prof.) Kamar): What is your point of order, Sen. Cherargei?

Sen. Cherargei: Madam Deputy Speaker, it is good to be honest. When the President issued the latest protocols of the COVID-19---

Hon. Senators: No! No! No!

Sen. Cherargei: Madam Deputy Speaker, they cannot shout me down. This is not a market place.

(Loud Consultations)

The Deputy Speaker (Sen. (Prof.) Kamar): Order, Senators! Please take your seats. This is a House of order. Sen. Mutula Kilonzo Jnr. requested me to make a ruling, but I can see more points of order.

Sen. Mutula Kilonzo Jnr.: Make a ruling!

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Mutula Kilonzo Jnr., you cannot tell me to make a ruling when you know that other Members have a right as well.

(Applause)

I will allow other Members to raise their points of order before I make a ruling.

Hon. Senators, kindly allow Sen. Cherargei to finish raising his point of order.

Sen. Cherargei: Madam Deputy Speaker, we have agreed that COVID-19 is a serious pandemic and the President issued protocols. He was emphatic that the curfew time is 9.00 p.m. He said that no one should be exempted. In fact, he said a *mheshimiwa*. Therefore, we must follow the health protocols. We cannot be leaders who are breaking the rules. What example will we be showing the country? The curfew starts at 9.00 p.m. and we must go home. That is my concern.

(Several Senators consulted loudly)

The Deputy Speaker (Sen. (Prof.) Kamar): Order, Hon. Senators! There are 15 Members who want to contribute to this Motion and it is their right. I also have six Members who have points of order. This is a House of order. Tomorrow is another day. I do not want us to abuse the process of this House. Let us respect the process of the House and let us allow those who have points of order to raise them. It is not fair for you give your point of order then expect us to skip another Member. I proposed the question and the first Member who wanted to contribute to the Motion was interrupted. Nobody has contributed to the Motion other than the Mover and the Seconder. I want to have a feel of the points of orders.

Sen. Madzayo: Ahsante sana, Bi Naibu Spika. Sisi ni watumishi wa kaunti zetu na tuko hapa kufanya kazi. Sisi ni *essential workers*. Hii ni hoja ya nidhamu. Kwa hivyo, ni vyema uongeze wakati ndiposa tuweze kujadili Hoja hii ambayo ni muhimu kwa maisha ya Wakenya.

The Deputy Speaker (Sen. (Prof.) Kamar): Point taken. Sen. Murkomen, you were on a point of order.

Sen. Murkomen: Madam Deputy Speaker, the issue before you is very simple. There was a Motion that was proposed by Sen. Khaniri and it was passed by this House. It was passed that the Senate will only adjourn if the business in the Order Paper is completed. Anyone desirous of cutting the debate time should use the Standing Orders. Anyone questioning the legal framework that governs our stay here should know that we are governed by the Standing Orders. Let us not be coarse just because we are losing a debate. Let us not cut short the procedures of this House. That is because you are either on this side today, and the other side tomorrow. We should stick to the Standing Orders.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Murkomen, do not go that direction.

Sen. Kihika: Madam Deputy Speaker, I am surprised that the Senators are talking of how long our Standing Orders allows us to stay here yet they are all aware that the President of the Republic of Kenya, President Uhuru Kenyatta, directed that not even the *waheshimiwa* are above the law. The Senate should adjourn at 9.00 p.m. Tomorrow is another day.

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kamar): The last point of order is from Sen. Halake, and then I will rule.

Sen. Halake: Madam Deputy Speaker, thank you very much. I do not know what the debate is about because if lateness is what we are talking about, we are already late. We are already late. This House should conclude on what it is supposed to be doing today. The issue has been overtaken by events, and, therefore, let us continue. Do not run away because you are sensing defeat.

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kamar): Hon, Senators, I am going to make a ruling. I thought we had become very orderly and serious. The country is watching.

(Loud consultations)

(Sen. Omogeni and Sen. M. Kajwang' stood up in their places)

Order, Senators Omogeni and M. Kajwang'. Can you take your seats?

Hon. Senators, this is a discussion that has been with us for a very long time. As a Member said, this discussion has come before us six times and it has been thrown out. You cannot blame anybody except the Senators themselves. We need to blame ourselves first instead of creating a crisis out of a situation that we could have saved.

Hon. Senators, I want to appeal to you. The number of Senators who want to contribute to this Motion is 12. We allowed three hours for the first amendment that we had. We were extremely fair to Sen. Kang'ata's amendment. It would be extremely unfair not to give the amendment by Sen. Sakaja the right time.

(Applause)

We need another three hours. That is the first point. I have ignored the six points of order. Are we going to be the Senate that does not obey the laws of the land?

Hon. Senators: No way!

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kamar): Order, Senators! Hon. Senators, allow me to make the ruling.

Hon. Senators: Put the question!

The Deputy Speaker (Sen. (Prof.) Kamar): Why are you telling me to put the question even before I make the ruling? The only Member who almost started contributing was interrupted by points of order. He was not even able to contribute. We do not even know who is supporting and who is not.

Hon. Senators, the importance of debate is to sway the minds of people who are on the borderline.

Hon. Senators: Correct! *Kabisa!*

(Applause)

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, I will tell you this while standing here that we cannot purport to be fair to Sen. Sakaja's Motion when we gave Sen. Kang'ata three hours and we are giving Sen. Sakaja one minute.

Hon. Senators: He has not complained!

The Deputy Speaker (Sen. (Prof.) Kamar): This Motion is in the House. So, it is not for him to complain or not; it is us because it is now our property.

(Loud consultations)

ADJOURNMENT

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, going by what Sen. Kihika and a few others have said, it is now 9.05 p.m. It is now time for interruption of the business of the House. Therefore, the Senate stands adjourned until, Tuesday, 4th August, 2020, at 2.30 p.m.

The Senate rose at 9.06 p.m.