

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

**Wednesday, 27<sup>th</sup> February, 2019**

*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

#### INVITATION TO A MEETING WITH TWO CSs OVER NIIMS

**The Speaker** (Hon. Lusaka): Hon. Senators, as you are aware, during the Senate Sitting on Thursday, 21<sup>st</sup> February, 2019, the Senator for Kericho County, Sen. Aaron Cheruiyot, M.P., requested for a Statement from the Standing Committee on National Security, Defence and Foreign Relations regarding the National Integrated Identity Management System (NIIMS).

Following comments by Senators, pursuant to Standing Order 48 (3)(a), it was agreed that the Committee invites the Cabinet Secretary, Ministry of Interior and Coordination of National Government to the Senate to address the matter.

The Chairperson of the Committee has informed me that the Committee shall hold a meeting with the said Cabinet Secretary and the Cabinet Secretary, Ministry of Information, Communication and Technology, tomorrow Thursday, 28<sup>th</sup> February, 2019 at 8:00 a.m., in the Senate Chamber, Main Parliament Buildings. It is expected that the two CSs will appraise Senators on the matter and provide a comprehensive response to the issues raised. You are hereby invited to attend the meeting. The meeting will be preceded by breakfast at the Parliament Main Restaurant, at 7.00 a.m.

I thank you.

What is your point of order, Sen. Cheruiyot?

**Sen. Cheruiyot:** Mr. Speaker, Sir, I would like to react to the Communication that you have given by requesting my colleagues, fellow Senators, to turn up in large numbers. This is a matter of great national importance and I believe that the media will be covering this event live. It will be unfortunate if, after inviting two Cabinet Secretaries, they walk here to empty seats in Parliament. Therefore, I kindly request that further Communication be given, through other means, so that all the Senators can be aware of this event.

(An hon. Senator spoke off record)

Mr. Speaker, Sir, there are colleague Senators who are asking which Cabinet Secretaries will be showing up. To the best of my knowledge, the question was to the Ministry of Information, Communication and Technology and the Ministry of Interior and Coordination of National Government.

**The Speaker** (Hon. Lusaka): All that information was in my Communication, unless those who are asking are not sure who the Cabinet Secretaries are. Senators, you better listen when I am making Communication, because it is important.

Next Order!

## PETITION

### COMPENSATION FOR PERSONS AFFECTED BY THE JAMES GICHURU ROAD JUNCTION-RIRONI HIGHWAY (A104) PROJECT

**Sen. Wamatangi:** Mr. Speaker, Sir, as the Senator representing the people of Kiambu, I present a Petition to the Senate concerning compensation and resettlement of persons affected by the rehabilitation and the capacity enhancement of the James Gichuru Road Junction from the Rironi Highway Project on Road A104.

(*Loud consultations*)

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

**Sen. Wambua:** On a point of order, Mr. Speaker, Sir. I think this House is getting unruly. It has become very difficult for us to follow any proceedings in this House. Kindly call the Senators to order because we want to follow the Petition that is being presented by the Senator for Kiambu County.

**The Speaker** (Hon. Lusaka): Order, Members! I have repeatedly said that the world is watching us. Let us consult in low tones, so that we become an orderly House. That is why after a presentation someone will ask what was said.

Kindly proceed Sen. Wamatangi.

**Sen. Wamatangi:** Mr. Speaker, Sir, this is a Petition to the Senate concerning compensation and resettlement of persons affected by the rehabilitation and the capacity enhancement of James Gichuru Road Junction - Rironi Highway Project on Road A104.

The undersigned citizens of the Republic of Kenya, the residents of Kangemi, Mountain View, Uthiru, 87, Kinoo, Muthiga, Zambezi and Kamandura of P.O. Box 4247-00100 Nairobi, draw the attention of the Senate to the following-

(1) According to the resettlement action plan implementation schedule, the activities related to the construction of the project were expected to commence on February 2018, by which time the Persons Affected by the Project (PAPs) were expected to have moved from the site.

(2) The Kenya National Highways Authority (KeNHA) started construction within the road reserves as the contractor, China Wu-Yi Company, was already on site before the PAPs were compensated and resettled.

(3) That most of the landlords and landladies are seriously affected by this project because when KeNHA surveyors marked their buildings and flats for acquisition since September 2017, this triggered a mass exodus of tenants. Most of these people had taken huge loans to construct the flats and buildings and are now unable to service the same and banks have now sent their auctioneers to them.

(4) Most of the businesses report violation of human rights for blocked access to economic livelihoods because of serious road disruptions, preventing potential customers from accessing businesses. Some businesses are blocked by high erected walls and unmanageable dust affecting both businesses' and PAPs' health, all denying owners access to the economic resources.

(5) Despite compensation delays, the project Environmental and Social Impact Assessment Report and Resettlement Action Plan, World Bank Policy designed to mitigate against impoverishment risks associated with involuntary resettlement and the restoration or improvement of income earning capacity of the project affected persons, are all not being enforced fully.

(6) They are supposed to be paid within 90 days as per the resettlement action plan and just timelines as per the land laws of the Land Act Laws of 2012.

(7) We have made the best efforts to have these matters addressed by the relevant authorities, all of which have failed to give a satisfactory response.

(8) None of the issues raised in this Petition is pending in any court of law, constitutional or any other legal body.

WHEREFORE, your humble petitioners pray that the Senate urgently investigates this matter and resolves that-

(1) KeNHA and the National Land Commission (NLC) promptly compensates all the persons affected by the projects along the James Gichuru Road Junction - Rironi Highway Project on Road A104;

(2) the China Wu-Yi Company carries out the many unattended corrective actions emanating from the construction and compensate PAPs where necessary, using the contingency vote provided for; and,

(3) The China Wu-Yi Company discloses what Corporate Social Responsibility (CSR) they have put in place for each of the sub-lot sections at James Gichuru-Uthiru Sub-lot A and Uthiru-Zambezi Sub-lot B and Zambezi-Kamandura Sub-lot C.

In the absence of any, the committee proposes a multi-storey market at each of the three sub-lot sections A, B and C, incubation centre at Kinoo Polytechnic and/ or a recreational centre, where grounds can be provided for the relocation of the borehole at Section 87 near Uthiru.

Mr. Speaker, Sir, this Petition is dated the 27<sup>th</sup> of November, 2018 and signed by the following-

- (1) Jackline Njoki Njoroge of Kangemi, ID No. 1809979.
- (2) Johnson Kairu of Uthiru, ID No. 11179821.

- (3) Grace Wanjiru Nduta of Uthiru, ID No. 2037228.
- (4) Samuel Njoroge of Kinoo, ID No. 24817941.
- (5) Charles Kimani Njuki of Kinoo, ID No. 5363247.
- (6) Peter Wamagata of Kinoo, ID No. 5192598.
- (7) Martin Karanja of Muthiga, ID No. 11349353.
- (8) Hon. Samuel Kimani Wanjiku of Muthiga, ID No. 24922263.
- (9) Joseph Kiongo Njuguna of Zambezi, ID No. 13031484.

Mr. Speaker, Sir, this Petition is presented and countersigned by myself, Sen. Wamatangi Kimani, the Senator for Kiambu County.

I thank you.

**The Speaker** (Hon. Lusaka): Hon. Senators, before I open the Petition for debate, I would like to rearrange the Order Paper for the convenience of the House, so that we proceed to voting since we have numbers.

Let us proceed to Order No.8

*(Interruption of Debate on Petition)*

## BILL

### *Second Reading*

#### THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL (NATIONAL ASSEMBLY BILLS NO.10 OF 2018)

*(Sen. Murkomen on 29.11.2018)*

*(Resumption of debate interrupted on 19.2.2019)*

**The Speaker** (Hon. Lusaka): I call upon the Mover to reply.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, this Bill has been in this House for two Sessions now; last Session and this Session. I listened to Senators and went through the HANSARD, and there are a number of things that were raised by the Members concerning this Bill, including how to manage the two existing schemes. The Senate Business Committee met yesterday and said that it was important to prioritize this Bill today, so that it can go to the Committee of the Whole.

Mr. Speaker, Sir, there are serious issues being raised about the Bill. There was a similar Bill that was moved in this House and it stalled because we received this Bill from the National Assembly. As agreed by the Senate Business Committee yesterday, the Committee of the Senate, whose Members I have seen here - there is Sen. Cherargei, Sen. (Dr.) Milgo, Sen. (Dr.) Musuruve and Sen. Were - will now have an opportunity to marry all those suggestions that we had in our own Bill, which had already been considered by the Committee.

Any other suggestions that Members or the public might have that go to amending the Bill to suit concerns that the Senate may have will be taken on board. This includes

the Council of Governors (CoG), who had written some representations to this House. I, therefore, request Senators that we vote together in the affirmative in this vote for today. This is because it will now give an opportunity to our Committee to interrogate and come up with whatever suggestions and amendments they might be having that will make sure that this Bill can move forward.

Mr. Speaker, Sir, I do not want to say more because I said much when I was moving the Bill, but this is an opportune time for us to interrogate this issue. I beg the Senate that this becomes the last time we continue playing with this kind of a Bill forever. This is because our workers and employees are waiting for a scheme through which they can have guarantees. I know we may not have accommodated the concerns of governors in this Bill; and, Sen. Olekina of Narok had also suggestions about the Deputy President's Office.

I believe that when it comes to the Committee stage, we should carry governors and deputy governors there so that they can also have a mechanism for how they save their money as a scheme of service that provides for what happens when a governor ceases to hold office, and what benefits they are all going to get. We now have the opportunity to interrogate all these things.

Mr. Speaker, Sir, I beg to move and request that, since we have the numbers, having being advised by the Whips, that we can ring the bell for five minutes so that we go for the division,

Thank you, Mr. Speaker, Sir.

**Senate Speaker** (Hon. Lusaka): Okay, I direct that the bell be rung for five minutes.

*(The Division Bell was rung)*

I now direct that the Bars be drawn and the door be locked.

*(The Bars were drawn and door locked)*

Order Members! I now put the Question, which is that The County Governments Retirement Scheme Bill (National Assembly Bills No. 10 of 2018) be read a second time.

Okay, log in. You can now vote.

*(Voting in progress)*

## DIVISION

### ELECTRONIC VOTING

*(Question, that The County Government Retirement Scheme Bill (National Assembly Bill No.10 of 2018) be now read a Second Time, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Haji, Garissa County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Linturi, Meru County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwaruma, Taita Taveta County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Outa, Kisumu County; Sen. Poghisio, West Pokot County; Sen. Seneta, Kajiado County; Sen. Shiyonga, Kakamega County; Sen. Wamatangi, Kiambu County; Sen. Wambua, Kitui County; Sen. (Rev.) Waqo, Marsabit County; Sen. Wetangula, Bungoma County and Sen. (Dr.) Zani, Kwale County.

**NOES:** Nil.

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

**Ayes:** 27

**Noes:** Nil.

**Abstentions:** Nil.

The ‘Ayes’ have it.

(*Question carried by 27 votes to nil*)

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

**The Speaker (Hon. Lusaka):** We will go back to comments on Sen. Wamatangi’s Petition.

Proceed, Sen. Mwaura.

(*Resumption of debate on Petition*)

## PETITIONS

### COMPENSATION FOR PERSONS AFFECTED BY THE JAMES GICHURU ROAD JUNCTION-RIRONI HIGHWAY (A104) PROJECT

(*Sen. Murkomen consulted loudly*)

**Sen. Mwaura:** Mr. Speaker, Sir, I am not anybody’s delegate. Senate Majority Leader, that is out of order.

**The Speaker (Hon. Lusaka):** Order, Sen. Mwaura!

**Sen. Mwaura:** Mr. Speaker, Sir, Kiambu County is not a person. Excuse me! Let us respect each other.

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

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

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, a few months ago, another Senator in this House said something about Sen. Mwaura. However, we rose to his defence because according to the Constitution, he is a Member of the delegation of Kiambu County and a fellow delegate for the delegation led by Sen. Paul Kimani Wamatangi. It is not something to be ashamed of. Is he in order to deny a constitutional definition of his office?

**Sen. Mwaura:** Mr. Speaker, Sir, I state on record that I am not anybody's delegate. I vote for Kiambu as a County and not on behalf of anybody. Let us proceed.

Mr. Speaker, Sir, I rise to support the Petition by the distinguished Senator for Kiambu, Sen. Wamatangi, whom I ably vote for, for my county, in his absence.

(*Laughter*)

I am not anybody's delegate as Sen. Murkomen is recommending. He also does not have a delegate.

The laws that are made in this country state that we have to compensate anyone who is adversely affected. I congratulate the Senator for bringing out the plight of the people of Kiambu County. This matter does not only affect the people of Kiambu; it also affects the people of Nairobi. The 'super' Sen. Sakaja is here and he will rise to the occasion to defend his people.

We have seen cases where there is a lot of corruption when it comes to compensation for lucrative projects such as the Standard Gauge Railway (SGR). That matter is still live in the court of public opinion in this country. Therefore, it is unfair to not compensate genuine people whose lands have been affected. These people cannot access resources yet they did not get idle lands and cash-on the Government's reparation programme. If we are to investigate further, it will not be a wonder to find that, may be, some money had already been appropriated for that very reason.

Mr. Speaker, Sir, this country is very interesting. It is just the other day that this House we went through The Land Value Index Bill. Therefore, we have a proper regime to ensure that these issues are done in a fair and transparent manner.

Therefore, I support this Petition and call upon the Government and the Chairperson of the relevant Committee to give us the right answers so that these deserving Kenyans can get their rights. We should ensure that they are properly compensated for whatever losses that they have incurred as a result of expansion of our infrastructure.

**The Speaker** (Hon. Lusaka): Hon. Senators, there is a lot of interest on this Petition. I will, therefore, give the remaining Senators three minutes each.

Proceed, Sen. Wambua.

**Sen. Wambua:** Thank you, Mr. Speaker, Sir. I rise in support of the Petition brought to the Floor by Sen. Wamatangi.

This matter is not exclusive to the Western By-pass and the areas that Sen. Wamatangi has mentioned, especially the areas around Rironi and Kinoo. This matter is

almost becoming a national disaster. The Constitution and the laws are very clear on what the Government should do if it becomes necessary to acquire private land for public use.

Mr. Speaker, Sir, Article 40 of the Constitution on the protection of the rights to property is very clear that, if the Government wants to acquire land to use for any public purpose, compensation to the land owners should not just be prompt; it should be done in full. However, what is happening across the country even from Kitui County, where I come from, land owners are asked to vacate their private land and their property is destroyed with a promise that someday there will be compensation. However, there is no commitment as to when that compensation will take place or any arrangement as to where the people who are uprooted from their private land are supposed to be resettled.

Mr. Speaker, Sir, I urge the Committee to which the Petition will be committed to take this matter very seriously. Road agencies are required to live within our means. If there is no money to compensate for land acquired, then we should not be in a hurry to construct roads.

**Sen. Halake:** Thank you, Mr. Speaker, Sir. I rise to support the Petition that has been brought to the House by Sen. Wamatangi. I congratulate him because this is becoming very rampant and is bordering on rights abuses because it is not just relocation, but arbitrary eviction. Under Article 43, we must protect the rights of the people from whom this land has been taken.

Mr. Speaker, Sir, it is not fair - regardless of whether it is a Chinese company or a Government agency or anybody else - to do development without compensation being provided for. I sit in the Senate Committee on Lands and Natural Resources, and given the number of Petitions that are being brought to that Committee, I am starting to think that the Government, at both levels, is on a land grabbing mission from communities and people living on the development corridors. People are not being compensated; they are being arbitrarily removed from their ancestral land. Even the compensation formula is so punitive that they do not get what is due to them. It is not just in Kiambu County but all over the country.

Where I come from, in Isiolo County, through the LAPSETT and other land acquisitions, people have been disenfranchised. As a House we must stand to be counted. I look forward to working on this in the Senate Committee on Lands, Environment and Natural Resources. We must make sure that communities are given what is due to them. In terms of compensation, there is a very narrow definition of what constitutes compensation. For instance, where I come from, where a place has not been developed, range lands, biodiversity hotspots and livelihoods must be compensated and not just buildings. I hope that, moving forward, we are going to make sure that the definition is much broader as to what constitutes compensation.

Mr. Speaker, Sir, we have just been told about the land index. In fact, the land index is very punitive because it follows a colonial model where people are evicted without due consideration or compensation.

I am glad that this Petition has come. It is the 15<sup>th</sup> Petition that is before our Committee; from the Standard Gauge Railway (SGR) land in Mombasa, all the way to Naivasha, people are suffering. We want to make sure that as we go along, the rights abuses or the arbitrary relocations and acquisitions are not condoned.

Mr. Speaker, Sir, one other thing that is very disturbing is that, as people are being evicted from their water sources and their ancestral graves, what is being compensated is very---

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

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I rise to support this Petition. One of the reasons I disagreed with the Land Value Index Bill and the proposal to relocate people and compensate them much later is based on experience.

I have brought two Petitions of two communities in Makueni County. One in a place called Mulima Dam and another one called Manooni. The Government took away their land in 1984. They are Internally Displaced Persons (IDPs) to date.

A gentleman by the name Matere whose land was supposed to be compensated for the SGR at Kshs8 million, has tractors of China Wu YI company somewhere along Ongata Rongai. He has not been relocated or paid and does not know where to go.

I do not know who has changed the law of this country to say that Government projects, particularly Chinese ones have become more important than land, to the extent that one is told, "Go, we will construct a road for you and then we will come and compensate you." We cannot distort the law on land. It is wrong and cannot happen.

Mr. Speaker, Sir, the fact that Prof. Swazuri and his Committee were gangsters who mistreated Kenyans and stole land on the SGR, is not a good reason to take our people's land. The people who are affected, whether it is on the highway where Sen. Wamatangi is talking about or Makueni or Maasai land, are ordinary people who have nowhere to go. In most of these cases including Thwake Dam, you are relocating people who have left the graves of their ancestors there and you are telling them to go away and that you will pay them after two years. It is unfair.

Sen. Wamatangi, if we do not agree with your Petition, you should go to court because that is where you will get justice. I do not think that the Government is thinking about ordinary Kenyans as we go along. Everybody is thinking about highways, roads and most likely the 2 or 2.5 per cent that they are getting for contracts.

Thank you.

**Sen. Cherargei:** Thank you, Mr. Speaker, Sir. I rise to support the Petition by the distinguished Senator of Kiambu County, Sen. Wamatangi. I agree that these are very serious issues. There is violation of human rights. As the Committee concerned, we will be very keen and interested to look at the human rights aspect regarding this project of James Gichuru- Rironi road. I think that the contractors, the law and the agencies that are given opportunity to discharge their work must do it.

Mr. Speaker, Sir, one interesting thing about China Wu YI company is that, it is the same company that has been---. The Senator for Kisumu City County, Sen. Outa could be an expert on this. He has the same problems, the same Petition, on the same issues which were raised about Uasin Gishu County where they are constructing the Eldoret Bypass.

It is the same problem and the same perpetrator; the National Land Commission (NLC). I saw them celebrating that they have done a lot but they have robbed the rights of many Kenyans in terms of compensation.

Mr. Speaker, Sir, we must agree that the Kenya National Highways Authority (KeNHA) and the Kenya Rural Road Authority (KeRRA) are also accomplices of some of these problems that our people face because they are the overseeing authorities that ensure the law and proper procedures are followed before a contractor is on site.

Mr. Speaker, Sir, I hope the Senate Committee on Energy, Roads and Transportation and other relevant committees that you will commit this Petition to, ensure there is justice for these people of Kiambu County and even Nairobi City County and also the one being processed about Uasin Gishu County on the Eldoret bypass. We must respect the rights of the people.

As a Senate Committee on Justice, Legal Affairs and Human Rights, we will also be willing to work with any committee that you will assign this Petition to so that we can move forward. The one being presided over by KeRRA has gone to the rot and I hope they are listening and can be able to address some of these challenges.

I support.

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

**Sen. Wetangula:** Mr. Speaker, Sir, I support the distinguished Senator for Kiambu and the Petition he has brought. Under the Constitution, any public acquisition of property must be followed by prompt and adequate compensation.

What is happening in this country today is the opposite. People's property is taken and you can see that compensations are only prompt where there are kickbacks. We have seen screaming headlines today where people have been paid money and two years down the line, there is no construction. However, where they have constructed and evicted people, there is no payment.

My colleague should borrow a leaf from us in Bungoma County. You remember when they wanted to construct what they described as a mega dam in Tongaren Constituency. We told them that if there was any compensation, it had to be upfront. Five years down the line, there has been no compensation or dam. It means that if we had accepted them to do that, by now, nobody would have been paid a cent.

Mr. Speaker, Sir, as we do this, the management of land is a devolved function. Surveyors, planners and valuers are in the counties. I think this House should start thinking along the lines of passing all these responsibilities to counties so that they do the valuations, tabulate everything and call for money from the national Government to pay their people in the counties.

Otherwise, if you look at the last six years, my colleague Sen. Orengo and those of us who were involved in writing the Kenya Constitution 2010, will start wondering whether bringing on board the NLC was the right direction given what we have seen them do.

The Government should not be in the business of impoverishing people but must be in the business of making people live better. From now on, we as the custodians of the people in the counties must ensure that any public project that requires dispossession of people's property must be compensated upfront before the projects start. If they can pay Kshs6.5 billion for a forest and wasteland, I am sure that they can pay the people of Kinoo for cutting through their homes so as to construct roads. We want development, but the rights of the people are sacrosanct.

**The Speaker** (Hon. Lusaka): The interest has grown. I am reducing the time to two minutes.

**Sen. Dullo:** Thank you, Mr. Speaker, Sir. I wish to support this Petition because land acquisition is a problem everywhere. As a country, we need to be serious on how we acquire land.

We need to give the relevant Committee that is going to be assigned this Petition some responsibility because land acquisition has been abused. In Isiolo County, where the Lamu Port-South Sudan-Ethiopia-Transport (LAPSSET) project is passing, there was supposed to be public participation on Saturday yet the members of the public were not aware of it because there was no public notice to that effect.

Secondly, the people are being told that they cannot be compensated for the land that will be used by LAPSSET because it is a community land and that is illegal. We need to take this matter seriously, as the Senate and a country. We should say no to compulsory acquisition of land without compensation because land is an emotive issue. It is a source of livelihood and it is sensitive. It is also an inheritance from our parents. The pastoralist community may own the land as a community but they do have title deeds and identity of those particular pieces of land that they own. This matter has to be taken seriously.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. I rise to support the Petition by the Senator of Kiambu County.

I am positive that sanity will finally prevail on the issue of land acquisition and compensation. We recently amended the Land Value Index Laws (Amendment) Bill (National Assembly Bills No. 3 of 2018) which clearly states how and when compensation should be done. The problem that is affecting the people of Kiambu has also affected the Maasai nation for some time. Our land has been acquired by the Standard Gauge Railway (SGR) and people are still going for compensation until today.

I want to be critical and my views are going to be different. We are all seeking for development and are asking for better roads and transportation services but the question is: At what cost; and are we prepared to pay that cost? I do not agree with the views of my colleagues that we should do away with compulsory land acquisition. If we do that, where are we going to build a super highway yet we are still importing tonnes of used cars?

At one given time, the number of cars are more than the population of the Maasai nation. We need to implement the laws that we pass. We can sit here, lament and argue about the process of compensation for the land that is acquired forcefully. I am more optimistic that we can have a proper system once we push forward the implementation of these laws.

The funding that we get to construct these roads comes from the World Bank and anyone can petition the World Bank to stop that process if their land---

*(The red timer was switched on)*

**Sen. (Eng.) Maina:** Thank you, Mr. Speaker, Sir. The importance of this Petition cannot be emphasised with words. The issue of people not being compensated for their

land is a prevalent thing and it takes years which leaves one to wonder if the common man has a right.

Bodies such as KeNHA at times behave as if they do not abide by the law. The other day, they went to Nyeri and demolished stores that were not necessarily on their road reserves without any notice. It took a “big” voice for them to compensate the people yet that compensation was not sufficient. This matter should be taken seriously.

More importantly, when is this country going to talk of itself? It is more than 50 years since independence yet we are still talking about Chinese when countries that got independence with us, such as Malaysia ,are talking about their own people. When the Chinese come here, they are treated with silk gloves and I do not know what they do. The commission paid for some of these jobs is sufficient to compensate the ordinary people. They should first pay the people before one gets the commission. We have read of commission being paid even when there is nothing. I heard some people say last night ---

*(The red timer was switched on)*

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for giving me the opportunity to add my voice on this. I want to thank Sen. Wamatangi for coming up with this noble Petition. It is important for people of Kiambu County to know that they have a true defender in this House.

Land is a factor of production hence it is not easy to come by. It is wrong for someone to have taken a loan to develop his land, then repaid the loan for 20 years, just for his land to be acquired compulsorily for the construction of a road. There is need to compensate the people whose land has been taken away because we need to protect the people of this country as per the Constitution.

Article 40(3)(b) says that there is need for full compensation in the event that one's land is taken away. Compensation, should, therefore, be upfront. Someone should be compensated for the land that they have bought in order for development to take place. There is need for intervention and justice to be done. Justice should not be delayed because as we speak right now, there are families that are frustrated because they are repaying loans yet their land has been taken. There is need for us, as Senate, to stand and defend the people of Kiambu.

**Sen. (Eng.) Hargura:** Thank you, Mr. Speaker, Sir. I want to support this Petition. I know that it will be come to our Committee and we will do the much that we can.

More often than not, the Government borrows money from the international organisations for development and those organisations expect the Government to compensate for the land. However, the Government does not plan for that compensation and that is why we end up with a contract yet the people have not been compensated and they want the contract to go ahead. That is the case that we have in Eldoret and other parts of this country.

I urge the Government that when they decide to have development, they must have their contribution for that development for Kenyans not to suffer because their own Government is not fulfilling its part of the contract.

Whenever the Government wants to do any projects and it borrows money from international organisations, it must have its contribution upfront, so that Kenyans do not suffer because of laxity of the Government of Kenya.

I thank you.

**Sen. Mwaruma:** Asante Bw. Spika, kwa kunipa hii fursa ili kuchangia na kuunga mkono ombi la Seneta wa Kiambu, Sen. Kimani Wamatangi. Kumekuwa na shida nyingi katika Kenya nzima upande wa kufidia wananchi amba wanaondolewa sehemu fulani ili maendeleo yafanyike.

Kule Taita-Taveta ninakotoka mradi wa Voi-Holili Road uliofadhliliwa na African Development Bank (ADB) uliisha mwaka wa 2012 na mpaka leo wananchi wa kule hawajapewa fidia. Vile waheshimiwa walivyosema, imekuwa kama mtindo, kwamba mradi ukifanyika Kenya, watu hawapewi fidia kwa muda unaofaa. Sijui itakuwa namna gani kwa sababu muda wa maafisa wa *the National Land Commission (NLC)* umekwisha.

Kuna vitu vingi ambavyo havijatimizwa kwa sababu watu wengi wameleta maombi ama *petitions* nyingi kwenye hii Seneti wakitaka kulipwa fidia. Hadi wa leo, watu waliokuwa wakiishi kuanzia kilimita sufuri hadi ishirini kutoka kwenye reli hawajafidiwa. Watu hao ni wa kule Taita-Taveta, Makueni---

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

**The Speaker** (Hon. Lusaka): Muda wako umeisha. Niwie radhi.

**Sen. (Rev.) Waqo:** Mr. Speaker, Sir, I stand to support this important Petition. Many hon. Senators have already said how many Kenyans have suffered in the past and continue to suffer.

We know that Kenyans are very hardworking people. Some of them have worked hard and bought and developed their parcels of land but when development comes, it appears as if we as Government do not care about our citizens. Any government which does not care about its citizens is not a visionary government.

We have made many Kenyans to suffer in the past. We know many people who have committed suicide as a result of that and because of the frustrations they go through. Many have developed serious illnesses and many Kenyans continue to suffer.

In many parts of Kenya, many people have been displaced. When we have big projects, there has always been conflict between the people and the contractors. Many at times, the projects have been stopped but we have always denied Kenyans their right.

It is high time that our country and Government---

**The Speaker** (Hon. Lusaka): Time out!

Hon. Senators, in the interest of time, I will allow two minutes to the following Senators; Sen. Ochillo-Ayacko, Sen. Shiyonga and Sen. Sakaja in that order.

**Sen. Ochillo-Ayacko:** Thank you, Mr. Speaker, Sir, for the opportunity to make my remarks on this important request. I thank Sen. Wamatangi for raising this issue. In my part of the world, there is a road from Katitu-Kisii-Isebania that is under expansion.

In Rongo, Awendo and Suna East areas, there have been evictions of people under the claim that their parcels of land are on the road reserve. Those people are

generally poor people. In as much as that project is important, it contributes to increasing poverty prevalent in those areas.

I support Sen. Wamatangi for raising this issue. It is true that we need development but we must ensure that in the process of implementing our development quest, we do not impoverish our people and overrun their human rights.

I thank you.

**Sen. Shiyonga:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to support the Petition. I thank the Senator for Kiambu, Sen. Wamatangi, for bringing this Petition.

The issue of land is painful. It is an issue that Kenyans want corrected yet we have seen very little being implemented.

If you have land in Kenya, you are considered to be one of the richest people. However, people are now using land to become corrupt. As a result, they inflict pain on the poor people who give out their land for development. It is high time that this House recommended the formation of an implementation committee, so that we follow up on all the issues that we have been raising that touch on land.

*(Loud consultations)*

Mr. Speaker, Sir, please protect me from the noise.

**The Speaker** (Hon. Lusaka): Hon. Members, consult in low tones.

**Sen. Shiyonga:** Thank you very much, Mr. Speaker, Sir.

The So called “Wui Wai Wu” – I do not know if they are companies or what – have worsened the situation in Kenya.

**The Speaker** (Hon. Lusaka): Hon. Senator, are you talking *Kiluhya* or something?

*(Laughter)*

**Sen. Shiyonga:** I am not talking *Kiluhya* but the Chinese Company, “Wui Wai Wu” has brought a problem in Kenya. Since they stepped in our land and started dealing with issues of land, we have had a problem of land grabbing and corruption and compensation has become a problem.

As a Senate, we need to correct that and the---

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

**The Speaker** (Hon. Lusaka): Your time is up. Let us have Sen. Sakaja.

**Sen. Sakaja:** Mr. Speaker, Sir, I request that you add me one more minute because my county is equally affected.

I was dealing with this matter. As the Senator for Nairobi City County, I received correspondence from four Members of County Assembly (MCAs); Hon. Kibiru of Uthiru-Ruthimitu, Hon. Alvin Palapala of Kitisuru Ward, Hon. Paul Shem Shilaho of Kangemi Ward as well as Hon. Maurice Onyango of Mountain View Ward. When this

Petition will be listened to, the Committee can also invite this four MCAs that I have mentioned.

Mr. Speaker, Sir, we have been trying to engage KeNHA and the rest on this matter and there are issues that we agreed on. For instance, there was the local implementation committee that was to oversee the issues of resettlement but that has not happened. They had agreed to compensate people before any project begins but clearly they have gone against their own word. They have not done what we agreed on public consultation and awareness.

Markings on the roads have not been done properly and we have had a lot of accidents. For example, at a place called Rungiri. There have been deaths and causalities because of the frequent change of traffic flow without informing people. Senators who went to Nakuru the other day also saw that when we were coming back. There are no proper road markings and that change in that area is causing danger.

Finally, the youth from those areas are wondering why we have such a project yet they are not being engaged. Those young people can be engaged to do part of the construction work because there is a lot of work to be done. When they see people from elsewhere doing small jobs that they can also do, they get discouraged. So, I would urge that---

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

**The Speaker** (Hon. Lusaka): Okay. One minute.

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir, for being kind. Kiambu County is my neighbour and so this problem is affecting both counties. I have been dealing with this matter.

I think the culture of proper engagement of the public is missing. Yes, the project is good and we want it. However, we should not assume that the people who have been sitting on that land or have been in that area can be taken for granted. They must be taken seriously. We want to see, even as the Committee considers the petition, before you take 60 days immediately, the locals must be consulted, harmonised into that Committee, sit with the four MCAs from the Nairobi County side. I know we also have another number of MCAs from the Kiambu County side. That way, we can make sure that this is done properly.

Finally, the National Land Commission (NLC) made a lot of mistakes even in the spellings in their Gazette Notice. That needs to be corrected and we have asked them to do that. I think we need the strength of that Committee to make sure that they do that and come up with the final actual Gazette Notice.

**The Speaker** (Hon. Lusaka): Okay. Hon. Senators, pursuant to Standing Order No.232(1), the Petition stands committed to the Committee on Roads and Transportation.

In terms of Standing Order No.232(2), the Committee is required, in not more than 60 days from the time of reading the prayer, to respond to the petitioner by way of a report addressed to the petitioner and laid on the Table of the Senate.

Thank you.

**THE ALLEGED TRANSFER/DUMPING OF STREET CHILDREN  
BY NAKURU COUNTY GOVERNMENT**

**Sen. Kihika:** Mr. Speaker, Sir, I beg to report that I have received a Petition from the residents of Nakuru County as their elected Senator. The Petition concerns unlawful rounding up, detention, transfer and dumping of street children by the County Government of Nakuru.

**An hon. Member:** Sad!

**Sen. Kihika:** Very sad!

We, the undersigned, citizens of the Republic of Kenya and residents of Nakuru County, draw the attention of the Senate to the following-

(1) THAT, on the night of 6<sup>th</sup> February, 2019, officials from the Nakuru County Government rounded up 41 street children from Nakuru Town, held them in detention and, later that night, drove them into Chemasusu Forest in Baringo County, where they dropped them off in groups of fours and fives, each group approximately a kilometer apart;

(2) THAT, the said street children were ferried to Chemasusu Forest using two county government registered vehicles; that is, KBR 801U and KBR 803U, driven by Mr. Joram Mbugua and Mr. Paul Musili, respectively;

(3) THAT, while being rounded up, detained and ferried to Chemasusu Forest, the children were violently manhandled by the County Government officials and some lost their belongings in the process;

(4) THAT, while 36 of the street children were recovered and returned to Nakuru, five of the children are still missing and unaccounted for;

(5) THAT, since the said incident, the County Government officials have embarked on an elaborate scheme to defeat justice for the street children, including by bribing and intimidating potential witnesses. The Police officers in Nakuru have also failed to take action despite a formal complaint being lodged, under OB/No.67/7/2/2019, and evidence presented to them;

(6) THAT, the actions of the Nakuru County Government officials were in blatant violation of the Constitution, the Children Act, and international treaties and conventions that Kenya is a party to regarding the protection and care of children;

(7) THAT, we have made the best efforts to have these matters addressed by the relevant authorities, including the Children's Department in Nakuru and the National Police Service, all of which have failed to give a satisfactory response;

(8) THAT, none of these issues raised in this Petition is pending in any court of Law, constitutional or any other legal body.

Wherefore, your humble petitioners pray that the Senate urgently investigates this matter with a view to ensuring-

- (a) That the responsible authorities and officials are held to account;
- (b) That the rights and welfare of the affected children are upheld; and,
- (c) That appropriate measures are taken, including necessary policy and legislative interventions, to ensure that street children across the country are

treated with dignity, protected from cruel and inhumane treatment and are accorded the opportunity and social protection necessary to advance and become successful citizens contributing to the economy of the country.

The Petition is dated 27<sup>th</sup> February, 2019 and five details and signatures are attached.

Thank you.

**The Speaker** (Hon. Lusaka): Hon. Senators, pursuant to Standing order 231, I shall now allow comments, observations or clarifications in relation to the Petition for not more than thirty minutes.

Senate Majority Leader, you have the Floor.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, the Constitution of Kenya provides in Article 53(1)(d), among others, that-

“Every child has a right –

To be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment and hazardous or exploitative labour.”

Mr. Speaker, Sir, I watched the story of Nakuru County from the media. I could not help but get shocked not just that children were dumped in a forest at such an age and time, but there are allegations that county vehicles were used. It was also alleged that the reason why those children were dumped in the said forest was because it was believed that they came from that area. Now, these are street children in Nakuru Town. You cannot really tell whether they came from East or West, whether they were born in Narok, Nairobi or Nakuru itself, Eldoret, Baringo or Kericho counties.

Mr. Speaker, Sir, this issue is very serious. It speaks to our core values as a nation. The manner in which we treat our children---. Like the Bible says, the manner in which we treat children, especially orphans and even widows, speaks a lot about what our society is. Since this is a constitutional issue, I believe that the relevant Committee that will be given the responsibility to investigate this matter should do it thoroughly. This is because this practice of picking up of children from towns and dumping them in a rural area, forest or certain place in the belief that you will be given marks because the town is clean and free of street children ---

Our county should provide shelter as provided for in Article 53, being a right of the child to have shelter. They should provide compulsory basic education to those children. They should also provide nutrition and healthcare as provided for in the Constitution, instead of abdicating that responsibility of providing basic rights to our children. Our counties are resorting to shortcuts of eliminating the existence of these children and dumping them out of town.

Mr. Speaker, Sir, I saw the Governor of Nakuru County also making a similar complaint. The question that we all ask ourselves is, is he not in charge of these county vehicles? We want, at the first instance, the officer in charge of the vehicle that was used should to be first suspended and made to record a statement. The officer in charge of children in that county should be suspended and must be made to record a Statement until this matter is solved.

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

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

That way, our children will feel like we, adults and those of us who are in positions of authority, care about them.

Thank you, Mr. Deputy Speaker, Sir.

**Sen. Faki:** Asante, Bw. Naibu Spika kwa kunipa fursa kuchangia Ombi ambalo limeletwa na Seneta wa Nakuru, Sen. Kihika. Lilikuwa ni jambo la aibu na la kuvunja moyo sana kuona watoto zaidi ya 40 wakilalamika kwamba wametupwa msituni na maafisa wa Kaunti ya Nakuru. Ningependa kuwapongeza wakaazi wa eneo ambalo watoto walitupwa kwa ubinadamu wao. Waliwapokea wale watoto, wakawapa chakula na kuwasaidia kwa usafiri kurudi Nakuru.

Jambo kama hili halifai kufanyika wakati huu wa sasa baaada ya kupitisha sheria mpya ya watoto, yaani *Children Act*, ambayo ilipitishwa kutoka Mwaka wa 2005. Inafaa vyombo vyta usalama vichukue hatua mara moja kuhakikisha kwamba wale ambao walifanya huu unyama wameshitakiwa, kufungwa na kupoteza kazi zao katika Kaunti ya Nakuru. Hii ni kwa sababu jambo hili linatia dosari na doa Serikali ya Kaunti ya Nakuru.

Bw. Naibu Spika, mambo kama haya yanaendelea kutokea katika sehemu tofauti. Ukiangalia hata hapa Nairobi, watoto wengi ambao wanarandaranda wanachukuliwa kama wahalifu, ilhali ni jukumu la Serikali ya Kaunti kuhakikisha kwamba wanapata makao, chakula na nguo, ili waishi kama binadamu wengine. Jambo kama hili ni lazima lichunguzwe na tuhakikishe kwamba wale ambao walihusika na huu unyama wanapewa adhabu ya kutosha.

Asante, Bw. Naibu Spika.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Sakaja, proceed.

**Sen. Sakaja:** Thank you, Mr. Deputy Speaker, Sir. This situation is really sad and we had a chance, together with a number of colleagues, to visit these children on Monday. It was completely heartbreakng. In fact, at that meeting, many of us could not even talk. These are children with hopes and dreams, but treated like animals, all for the reason that a county is trying to get city status or be looked at as having improved.

Mr. Deputy Speaker, Sir, we cannot be putting things before people. I want to tell whoever is involved in it that if you think that is what will make you a city, forget it. If it comes through this House, forget about it. In fact, we would want to see the status of how your county is taking care of vulnerable people. We want to see whether you have rehabilitation centers and how you take care of them; it is not about painting and plastering white in towns and capitals or city centres.

Mr. Deputy Speaker, Sir, it was heartbreaking to hear one of the young boys saying that this was not the first time he was dumped. He had been thrown out before. They were left in a forest so that they could die. I hope that will be brought to my Committee, because I think it is a social welfare issue. If it is not, I hope it will be brought to my Committee on National Security because it is a security issue. Either way,

we will deal with it perpendicularly, because we cannot allow governors to keep doing that. It is completely unfair.

Some of those young people were saying how one of them wants to be President. Another one wants to be a Member of County Assembly (MCA). I want to thank Sen. Kihika and hon. John Mututho because they are at his rehabilitation centre. In the Bible, James 1:27 says that the religion that God our Father considers faultless and pure is taking care of widows and orphans. It by such yardsticks that we will be measuring performance of governors and people who are in charge of whatever kitties, including the Cabinet Secretaries *et cetera*.

Mr. Deputy Speaker, Sir, I pray that you refer that matter to my Committee; I will deal with it.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Why are you begging, Sen. Sakaja, when there is a criteria for reference of matters to Committees? If the criterion includes begging, then there will be very many beggars here.

Hon. Senators, we have a busy afternoon. We have a report on another petition coming, some statements, the Motion on the Budget Policy Paper, conclusion of debate on the *Ad-Hoc* Committee report on the Maize Crisis, *et cetera*. So, I will not be in a position to grant as many requests as you would have wanted.

Perhaps, I will give one last person to comment on that petition, and that is, the Senator for Bungoma County.

**Sen. Wetangula:** Thank you, Mr. Deputy Speaker, Sir. Sen. Kihika of Nakuru County is so right. Four years ago, the Governor of Uasin Gishu County rounded up children in Eldoret and dumped them at Alupe Leprosy Hospital in Busia County. On the eve of elections, the same governor rounded up children in Eldoret and dumped them in a forest in Kitale, Trans Nzoia County. Now, we have Nakuru County

It must be told to anybody and everybody with ears to hear and understand that Kenyans have a right to live anywhere and everywhere in this country. Kenyans have a right to own property anywhere and everywhere in this country. Children are the most vulnerable of Kenyans and must be protected. What the County Government of Nakuru has done and the County Government of Uasin Gishu did are criminal acts. They are not even acts to be investigated by this House; they are acts to be investigated by the Directorate of Criminal Investigations (DCI) and the culprits prosecuted.

We cannot, as a society, allow errant and truant characters to start molesting children, who have no responsibility whatsoever on how they came to this earth and how they live. It is the duty of every right thinking leader in this country to offer protection to the vulnerable in each and every way possible. Taking children and dumping them in the forest in Baringo was a clear manifestation of a premeditated act to expose children to harm, and if possible, death because this is a forest with wild animals.

This Senate should not countenance this cowardly and criminal act; we must condemn it. As the Committee goes to look at it, we must emphasize the criminal culpability of this act.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Senators. Hon. Senators, pursuant to Standing Order 232 (1), the Petition stands committed to the Standing Committee on Labour and Social Welfare.

In terms of Standing Order 232 (2) the Committee is required, in not more than 60 days from the time of reading the prayer, to respond to the petitioners by way of a report addressed to the petitioners and laid on the Table of the Senate.

It is so ordered.

Sen. Sakaja, that has nothing to do with your begging. It has to do with Standing Order 232 (1), because begging is not a criterion for committal.

Next is the Report on the Petition from residents of Isiolo County regarding the agreement between Living Goods and the County Government of Isiolo.

Chairperson, Standing Committee on Health, proceed. Please, note two things. One, you have to lay that Report on the Table of the House, if you have not. Secondly, I will give further directions once you make brief comments on the findings of your Committee.

Proceed, Chairperson.

What is your point of order, Senate Minority Leader?

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, would I be in order, in line with your direction that the Chairperson, in making brief comments, should talk about action points so that it forms a foundation for any comments that we make. This is because if it is general observations, then it may not be very useful for us. Please put the action points or what you want us to do.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is so ordered.

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

**Sen. Mutula Kilonzo Jnr.**: Mr. Deputy Speaker, Sir, in view of the interest that this matter has generated, I would propose that the directions be issued that the document be circulated. We do not want to make comments generally; we want to interrogate the Report itself.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is so ordered. Chairperson, proceed to lay the Report on the Table of the House so that it can be circulated with immediate effect. We need to dispose off this matter within the shortest time possible.

#### REPORT ON PETITION: AGREEMENT BETWEEN LIVING GOODS LTD AND THE COUNTY GOVERNMENT OF ISILO.

**Sen. Mbito**: Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today Wednesday, 27<sup>th</sup> February 2019 –

The Report on the Petition from residents of Isiolo County regarding the agreement between Living Goods and the County Government of Isiolo.

Mr. Deputy Speaker, Sir, copies have been circulated to the Speaker, the Deputy Speaker, the Clerk and the Hansard.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you very much. You can now proceed to make your comments as the Report is being circulated immediately.

How many copies do you have, Chairperson?

**Sen. Mbito:** This is the only copy I have here.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You have only one copy?

**Sen. Mbito:** I circulated five copies.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Does that bundle constitute one Report?

**Sen. Mbito:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): But those are annexures, I presume?

**Sen. Mbito:** These are the Minutes and---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): We do not need that for now; but how big is the main Report?

**Sen. Mbito:** It is 35 pages.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): We have two options; we can suspend this item and have it discussed tomorrow to give the House time so that the Report is circulated, now that you have laid it on the Table of the House.

It is directed that it be placed on tomorrow's Order Paper.

**Sen. Mbito:** Thank you, Mr. Deputy Speaker Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It should be circulated immediately.

Next Order.

## PAPERS LAID

**The Deputy Speaker** (Sen. (Prof.) Kindiki): We have the annual report of the financial statements of the Kenya National Commission on Human Rights and the report of the Auditor-General on the financial statements of Bungoma County Trade Development Fund.

Proceed, Senate Majority Leader.

**The Senate Majority Leader** (Sen. Murkomen): Now that you have read it, Mr. Deputy Speaker Sir, should I just lay it?

(Laughter)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Order, Senate Majority Leader! The Speaker is not in competition with the Majority Leader. The Speaker cannot lay any Paper in this House. Therefore, can you lay your Papers?

### REPORT ON THE FINANCIAL STATEMENT OF KNCHR

### REPORT ON THE FINANCIAL STATEMENT OF BUNGOMA COUNTY TRADE DEVELOPMENT FUND

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I beg to lay the following Papers on the Table of the Senate, today Wednesday, 27<sup>th</sup> February 2019-

- (a) Annual Report of the Financial Statements of the Kenya National Commission on Human Rights for the Year 2016/2017.
- (b) Report of the Auditor-General on the Financial Statements of Bungoma County Trade Development Fund for the Year ended 30 June, 2016.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Are you done on the two Papers which you wanted to sub-contract to me?

*(Laughter)*

Proceed, Sen. (Eng.) Mahamud, the Chairperson of the Committee on Finance and Budget.

**ADDENDUM TO THE COUNTY CASH DISBURSEMENT  
SCHEDULE FOR FY 2018/2019**

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today Wednesday 27<sup>th</sup> February 2019-

Addendum to the schedule of cash disbursement to county governments for Financial Year 2018/2019.

This is as a result of the amendments we did to the County Allocation of Revenue Act (CARA) and the Division of Revenue Act (DORA) last time.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Chairperson.

Next Order.

**NOTICE OF MOTION**

**THE PLIGHT OF STREET FAMILIES IN URBAN CENTRES**

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Do we have any notices of Motion? Proceed, Sen. Beatrice Kwamboka.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! Use the Dispatch Box.

**Sen. Kwamboka:** Thank you, Mr. Deputy Speaker, Sir. I beg to give notice of the following Motion addressing the plight of street families in urban centres-

AWARE THAT the Street Families Rehabilitation Trust Fund (SFRTF) was established on 11<sup>th</sup> March, 2003, by the then Ministry of Local Government to address the concerns of all homeless, destitute and vulnerable persons in urban areas; and was registered as a body Corporate in August, 2010, under the Trustees (Perpetual Succession) Cap 164, Laws of Kenya;

FURTHER AWARE THAT the mandate of SFRTF includes coordinating rehabilitation activities for street families; conducting public education on street families' issues; mobilizing resources and fundraising as well as receiving donations and funding street families rehabilitation programmes; managing donations for the rehabilitation of street families through a trust fund; monitoring expenditure and disbursement of donations; and advising the government and other relevant agencies on matters relating to rehabilitation of street families;

NOTING THAT Article 43(1) of the Constitution of Kenya provides for the right of every person to the highest attainable standard of health, accessible and adequate housing, adequate food of acceptable quality, clean and safe water in adequate quantities, education, and social security;

CONCERNED THAT the street family phenomenon has persisted despite the existence of the SFRTF and street families do not enjoy the rights enshrined in the Constitution due to lack of a national policy on the rehabilitation of street families, with women and children being the primary victims;

COGNIZANT THAT the Ministry of Devolution and ASAL Areas, through the SFRTF, supports children and youth through charitable and community based organizations which are vetted and approved for funding under the rescue, rehabilitation and reintegration of street families programme;

NOTING THAT both the National and county governments have a role to play in addressing the plight of street families across the Country;

NOW THEREFORE the Senate resolves that the Ministry of Devolution and ASAL Areas in collaboration with the Council of Governors-

- (1) conducts a census of street families in all urban centres in the country to determine their numbers and demographics;
- (2) develops a clear policy on street families rehabilitation and reintegration at county level; and,
- (3) tables an audit report of how funds allocated to the SFRTF have been utilized since the Fund was established, indicating the impact of the rehabilitation exercise.

Thank you Mr. Deputy Speaker Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Kwamboka.  
Next Order.

Proceed, Sen. Kwamboka.

## STATEMENTS

### THE STATE OF WATER AND SEWERAGE SYSTEMS IN NAIROBI CITY COUNTY

**Sen. Kwamboka:** Thank you, Mr. Deputy Speaker, Sir, I want to request for a Statement on the state of water and sewerage system in Nairobi City County.

Pursuant to Standing Order No. 48 (1), I rise to seek a Statement from the Standing Committee Land, Environment and Natural Resources on the issue of water and sewerage system in Nairobi City County, with special focus on Mathare, Mihang'o in Utawala, Dagoretti Corner, Kangemi, Kawangware, Mukuru Kayaba, Mukuru kwa Reuben and Mukuru kwa Njenga areas.

In the Statement, the Committee should-

(1) Explain the status of sewer lines within Nairobi City County with special focus on Mathare, Mihang'o in Utawala, Dagoretti Corner, Kangemi, Kawangware, Mukuru Kayaba, Mukuru kwa Reuben and Mukuru kwa Njenga areas.

(2) Confirm whether residents of Nairobi City County are able to fully enjoy the right to clean water as stipulated in Article 43 (1) (d) of the Constitution of Kenya.

(3) To elucidate the action being taken by the Nairobi City County government and the relevant agencies to ensure distribution of clean water in the county and also the measures being put in place to ensure the sewerage system is efficient and sustainable.

Thank you.

**The Deputy Speaker** (Sen. (Prof) Kindiki): Thank you, Sen. Kwamboka. I direct the Chairperson of the Standing Committee on Land, Environment, and Natural Resources and the Committee to get seized of the matter and negotiate appropriate timelines and responses with the Senator who has requested for the Statement, not necessarily here.

It is so ordered.

What is it Sen. Sakaja.

**Sen. Sakaja:** Mr. Temporary Speaker, Sir, on this specific issue, I would ask that you give firm directions to the Committee. I raised the same Statement---.

**The Deputy Speaker** (Sen. (Prof) Kindiki): Are you suggesting that I have not been firm enough?

**Sen. Sakaja:** A firmer one and with timelines.

Mr. Deputy Speaker, Sir, I raised the same Statement on water issues in Nairobi City County on the 15<sup>th</sup> October 2018 and what we got was not satisfactory. Could you please direct that on top of the Ministry that the Committee invites the entire Nairobi delegation - my Member of the delegation has spoken - Nairobi Water and Sewerage Company and the County government.

The Cabinet Secretary (CS) Water and Sanitation just came and read out a list of projects, yet we did not get any light. We just got hid in that discussion.

**The Deputy Speaker** (Sen. (Prof) Kindiki): Under the new Standing Orders, as you are aware Sen. Sakaja, what you are saying should be canvased between you and the

Chair. Unless you have difficulties, it is not incumbent on the Chair to do Committee work. Therefore, Sen. Mwangi would you want to say something quickly?

**Sen. Mwangi:** Mr. Deputy Speaker, Sir, we are going to investigate this matter and bring back a report. However, as we investigate, I will also invite the super Senator---

**The Deputy Speaker** (Sen. (Prof) Kindiki): Order!

**Sen. Mwangi:** Sorry, Mr. Deputy Speaker, Sir. We have no super Senators in this House. So, I will invite Senator----

**The Deputy Speaker** (Sen. (Prof) Kindiki): That is a nickname. You are using nicknames here and pseudo titles---.

**Sen. Mwangi:** Mr. Deputy Speaker, Sir, I will invite Sen. Sakaja to the Committee, so that he can also be able to put questions to Nairobi City government and the CS for Water and Sanitation.

**The Deputy Speaker** (Sen. (Prof) Kindiki): Very well, canvass that outside this Chamber because that is Committee work.

Next Statement; Sen. (Dr.) Langat Senator for Bomet County.

**DELAY IN DISBURSEMENT OF OPCT MONEY  
TO THE ELDERLY**

**Sen. (Dr.) Langat:** Thank you Mr. Deputy Speaker, Sir, for giving me this opportunity, to make a request for the Statement on the delay in disbursement of the Older Persons Cash Transfer (OPCT) to the elderly.

Pursuant to Standing Order No. 48 (1), I rise to seek a Statement from the Standing Committee on Labour and Social Welfare on the delay in disbursement of the Older Persons Cash Transfer money to the elderly.

In the Statement, the Committee should-

(1) State whether the disbursement of the Older Persons Cash Transfer money to the elderly person is up to date and, if not, give reasons for the inordinate delay in disbursement and more particularly in Bomet County.

(2) State when the Government intends to release the funds.

(3) Explain what the national Government is doing to prevent such delays from happening in future.

Mr. Deputy Speaker, Sir, my concern is in the fact that these elderly people travel for long distances trying to find out if this money is ready and, therefore, incurring several expenses on the same.

My other concern is the delay in the National Health Insurance Fund (NHIF) payment, because this is the money they use to pay for NHIF. Most of them are also bread-winners to their families because most of them are taking care of grandchildren left behind by their sons and daughters who passed on through HIV/AIDS and other problems.

Those are my concerns. They are suffering and this Committee should address this particular issue.

**The Deputy Speaker** (Sen. (Prof) Kindiki): Very well, Sen. Sakaja. You have noted, you are the Chairperson of the Labour Committee, is it not?

**Sen. Sakaja:** Yes, Mr. Deputy Speaker, Sir. We shall deal with that matter, but I would also like to urge you to reconsider your earlier position. You know, when five million Nairobians like the prefix super, it is the same way I hear Sen. Wetangula saying distinguished Senator so and so. So, super Senator is also just descriptive; it is like distinguished Senator.

(*Laughter*)

**The Deputy Speaker** (Sen. (Prof) Kindiki): Order, Sen. Sakaja. There are many ways in which you can claim fame and that is not one of them.

What is it, Sen. Dullo, Senator for Isiolo County?

#### IMPLEMENTATION OF UHC/MES IN COUNTIES

**Sen. Dullo:** Thank you, Mr. Deputy Speaker, Sir. There was a Statement I requested on the Floor of this House before we went on recess. That is the Statement on medical equipment. I remember we summoned the CS for Health here, after that we formed a Committee and it looks like we have lost track. What is the status?

**The Deputy Speaker** (Sen. (Prof) Kindiki): Says who? Why are you alleging we have lost track? Who has lost track and how?

**Sen. Dullo:** Mr. Deputy Speaker, Sir, it is the House because we have not received the report up to now and we do not know what the status is.

**The Deputy Speaker** (Sen. (Prof) Kindiki): Order, Sen. Dullo. How does the House not receiving a report constitute loss of track?

I remember very well I gave some orders during the last session on this matter. I would want to hear from the Chairperson because by now, the report should have been tabled before this House. I had given them the first day of this Session; I later revised that ruling and gave them a week or so because of the Constitution of the SBC and other reasons which were considered.

Where is the Chairperson of the Health Committee; the Vice Chairperson or any Member of that Committee?

Senator for Kisumu. Let us hear from Sen. Outa.

**Sen. Outa:** Mr. Deputy Speaker, Sir, we want to thank you. I want to inform the House that we are working hard in order to bring the report to the House. However, you know we had also a matter---

**The Deputy Speaker** (Sen. (Prof) Kindiki): Did you say that you are working hard?

**Sen. Outa:** We, as a Committee on Health.

**The Deputy Speaker** (Sen. (Prof) Kindiki): So, why have you not complied with the directives of the Chair?

**Sen. Outa:** Mr. Deputy Speaker, Sir, we request that because this is a matter of national concern---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What have you done up to now as a Committee?

**Sen. Outa:** Mr. Deputy Speaker, Sir, somehow, we have invited some of the witnesses to come before us.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Who have you invited?

**Sen. Outa:** Mr. Deputy Speaker, Sir, I lost track of how many witnesses we have invited.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Outa. Please take your seat for a moment. This matter is of national importance because of its gravity, enormity, urgency and its relevance to devolution. I do not want to repeat what we canvassed as a House during the last session. By now, I expected that the report should be before this House. In fact, if there were any extenuating circumstances, the right thing would have been for you to converse with the Chair before the expiry of your deadline.

So, I am keenly listening if I will find reason to excuse why the report is not here. So far, the trajectory you are following is not very helpful. For example, you cannot tell the House that you cannot recall how many witnesses have appeared before you. Can we get more particular and precise information?

**Sen. Outa:** Mr. Deputy Speaker, Sir, I will consult with the Chairperson and the Committee, then report how many witnesses were before us.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): We have to dispose of that matter now so that we move to the next Order.

**Sen. Outa:** We request for an extension of time.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Is there another Member of that Committee present here?

**Sen. Shiyonga:** Mr. Deputy Speaker, Sir, the way my colleague has said, we have discussed this issue. For us to report anything of national importance, we should have, at least, precise and adequate answers. The issue that Sen. Dullo raised does not affect her alone; it affects every person. The Chairperson needs to give us the final details because he is the one to speak. He has been here. I wonder where he is. The truth is that we have dealt with half or three-quarters of the matter.

(*Laughter*)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Can you explain the half or the three-quarters that you have done?

**Sen. Shiyonga:** Mr. Deputy Speaker, Sir, I have said three-quarters because we have done something. We have not just been sitting; we have been meeting to discuss this issue. The only thing is that it takes time to get accurate and quality answers from people. We do not need to lie.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Shiyonga, this casual approach to issues like this is what makes the House to sometimes attract not so kind comments from those who do not sit here with us. However, I know that this House is doing a great job in this country and we have discussed very important issues. I do not know why this

matter appears to be odd. If you remember, last time, I did not have good comments about the performance of this Committee and neither did Members.

**Sen. Cheruiyot:** Thank you, Mr. Deputy Speaker, Sir. I want to make a comment on the circus that we are being treated to, as a House, by this Committee. To the best of my knowledge, I concur with the sentiments raised by the Senator for Isiolo that somehow, as a House, we appear to have lost track on this issue. This is because, earlier on, there was a ruling from the Chair that this matter be taken up by a Committee of the Whole House.

You will recall that when the Cabinet Secretary (CS) for Health appeared before us, it was the Senate Majority Leader who led the deliberations that day. Therefore, it was our assumption at that particular time that, that was the trail of thought or line of pursuit that we were to follow on this particular matter. That appears to have hit a snag or dead end and the matter reverted to the Committee.

Mr. Deputy Speaker, Sir, last week, seated on that same Chair and posing as you are right now, you gave clear and concise instructions that this House be furnished with this report without fail. First of all, the fact that the Chair of the Committee is not available to show goodwill and state the challenges that they have faced, is a clear case of not taking the work and business of this House seriously.

Mr. Deputy Speaker, Sir, I request that you give direction on this matter. The Chairperson was seated here a few minutes ago. He should be found wherever he is - I believe he is still within the precincts of Parliament - and be brought to the House to give an explanation.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Meanwhile, Sergeant-at-Arms, look for the Chairperson of the Committee on Health. We must get to the bottom of this matter today.

**Sen. Cherargei:** Thank you, Mr. Deputy Speaker, Sir. I want to comment on this issue because at one point after the Committee of the Whole, the Chair of the Committee on Devolved Government and Inter-Governmental Relations, the Chair of the Committee on Health and I presented an interim report. However, since this is a weighty matter that affects many counties which are facing a lot of problems, it has cross-cutting issues.

Mr. Speaker, Sir, I propose that with your Solomonic wisdom, that this issue be re-assigned to a Committee of the Whole of the entire Senate so that these issues can be dealt with once and for all. This issue is affecting all Kenyans across the 47 counties. Therefore, we need to get to the bottom of this matter. It seems that this issue is becoming too weighty and is overwhelming the understanding and capacity of the Committee on Health to prosecute it.

Mr. Deputy Speaker, Sir, you should give us Solomonic guidance on this matter. Last week, you gave similar directions but the Committee has decided to go on a jamboree exercise and not do justice to this matter. Kenyans are watching keenly and everybody is following these issues.

Mr. Temporary Speaker, Sir, we need to relook this matter for the benefit of all Kenyans. Not only for the sake of Isiolo County but all the 47 counties so that it can be put to rest.

**Sen. Poghisio:** Mr. Deputy Speaker, Sir, I have two things to state. I need to know from the Chair, the status of the new Statement brought by my neighbor, Sen. (Dr.) Langat before we lose sight of that. I would also like to make a comment on Sen. Dullo's point of order.

Mr. Deputy Speaker, Sir, you have already made a ruling; to cause the Chairperson of the Committee to be brought to the Chamber. Therefore, we would really love to speak and make our comments when he is in the Chamber. This is because it is good to hear the required answers from him. Apparently, Members of the Committee are groping in the dark when it comes to the issues that require answers. Therefore, let us wait for the Chairperson as you direct us on the new Statement.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Poghisio, I slightly got distracted at some point. What is your proposal?

**Sen. Poghisio:** Mr. Deputy Speaker, Sir, I propose that we deal with the new Statement by Sen. (Dr.) Langat as we wait for the Chairperson for the Committee on Health.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. I thought we dispensed with the Statement by Sen. (Dr.) Langat. The matter now lies with the Committee to give him an answer within a negotiated timeframe under the new Standing Orders. Therefore, I will invite a few more comments as we wait for the Chairperson. If he is not available in the next five minutes, we will still make some directives. We cannot be on this matter forever.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let us have Sen (Eng.) Maina from Nyeri County.

**Sen. (Eng.) Maina:** Thank you, Mr. Deputy Speaker, Sir. This is a serious national matter and instead of this House going around in cycles due to the sensitivity of the issue and health being the sustenance of life, we must address it. We are truly seeing many challenges in this county not just in Isiolo. The other time, we had the issue of nurses going on strike. Now we are being told about this equipment.

I challenge anybody here, and I said it another day, let us one day fly to some dispensary in Kwale, Siaya, Nyeri or Wajir and we will see a very deplorable situation. Therefore, within the powers vested in your Chair and this House, let us look for a way to bring some solution to these matters.

It is not pleasing for us to be talking something as serious as health day in, day out, and nothing happens. You also have to order the Serjeant-at-Arms to give some assistance to the House. It does not augur very well.

Mr. Deputy Speaker, Sir, I am on record for having said that we should relook at whether health should be a function of county governments or the national Government. In saying that, it has nothing to do with devolution. Devolution has nothing to do with counties. I am saying this because of the seriousness of this matter.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): How would you advise this House to deal with the issue at hand?

**Sen. (Eng.) Maina:** Mr. Deputy Speaker, Sir, I am just saying---.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That one can go on record for consideration during the referendum or constitutional review process.

**Sen. (Eng.) Maina:** Mr. Deputy Speaker, Sir, there are some things that could be done before referendum. That is the information I have.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Including reverting heath to the national Government?

**Sen. (Eng.) Maina:** Mr. Deputy Speaker, Sir, not in the real sense of taking the whole thing. Whenever you assign some work to a person and he is not able to do it, you take it over and give it to another one. The Bible says so.

(*Sen. Cherargei stood up in his place*)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Cherargei?

**Sen. Cherargei:** On a point of information, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Would you want to be informed by Sen. Cherargei?

**Sen. (Eng.) Maina:** Mr. Deputy Speaker, Sir, he is my neighbour. He could just whisper to me. I do not know why he would want to involve the whole House on a matter touching on a neighbour.

(*Laughter*)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): He could not have disrupted you when you were talking.

**Sen. (Eng.) Maina:** Mr. Deputy Speaker, Sir, I am only saying this on a very serious note. I believe we have the knowledge and everything. Let us look at what can be done by this House to ensure that health services are improved to serve our people well.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Wetangula.

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, how I wish we finished this quickly and went to the report of the *ad hoc* Committee as real business.

I urge the Chair that persons of Senators in this House who have been given the responsibility to chair Committees must be serious about this House. It is the duty of every chairman of a committee to sit here in anticipation of business touching on their committee until we go to other substantive business.

(*Applause*)

My Chairman of the Senate Committee on Finance and Budget is sitting here and following the debate. My good nephew- the Chairman of the Senate Committee on Labour and Social Welfare is studiously sitting here and following the debate.

Mr. Deputy Speaker, Sir, we are having a situation where chairpersons of Committees just pass through the Senate. They enter and disappear when in fact, they know that business touching on their Committees can come up anytime, including where the Chair has directed that they act in support or response to issues raised.

I urge, especially in a matter where the questioner is the Deputy Majority Leader, that the Chair from her own side has very little regard even for her. We want serious

business and urge the leadership of the Majority Side that provides the bulk of the Chairpersons of Committees to take this House seriously.

Otherwise, they should reconsider their positions. There is no shortage of other people who can become chairpersons on their side, whatever their quality.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Maybe, we have two other contributors before I make my determination. Kindly, the House will be interested in a resolution of the current issue. I will be interested to get the mood of the House in terms of how we resolve this matter. Let us give practical suggestions because even if we lament the failure by the Committee or Chairperson, we still need to address this matter as our responsibility.

Proceed, Sen. Ochillo-Ayacko.

**Sen. Ochillo-Ayacko:** Thank you, Mr. Deputy Speaker, Sir. I have listened to the lamentation by Members regarding the inability of this Committee, particularly on the Chair to deliver a response that we desire.

I believe that your instruction should not be taken in vain. My proposition is that this House works through committees which are very important. I propose that such a Chair and future Chairs who are behaving the way this particular one is doing should be “Named”.

That is my humble suggestion, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. I think the rest of you have spoken. Proceed, Sen. Sakaja.

**Sen. Sakaja:** Thank you, Mr. Deputy Speaker, Sir. I had not spoken on this matter. As all the Members who have contributed have said, this is an extremely important issue.

Just as we have been dealing with those amounts that have gone to the medical leasing equipment, during the Budget Policy Statement (BPS) discussion, we have seen another Kshs6 billion being set aside for the same purposes. Counties are still paying Kshs200 million.

This morning, I was at a function on universal health care. It was the Chair of the National Assembly Committee on Health who was invited yet; health is the biggest devolved function. The space of the Senate has been completely eroded and taken away by the National Assembly on a matter that is clearly devolved.

Mr. Deputy Speaker, Sir, I raised matters here on Pumwani Maternity Hospital when bodies of babies were found in paper bags and boxes. We went to the Committee and to date, there has been no resolution or response to that.

The Senate Minority Leader and the Deputy Leader of Majority are here. I would suggest that in the spirit of the “handshake”, we spice up some of our committees. Let us do some shaking up of some of them. I am willing to resign from one of my positions. I am Chair in one and Vice-Chair in another. Let us bring some new energy in our committees.

Secondly, on this specific issue, we saw the progress we made when the Senate Majority Leader chaired the meeting when the Cabinet Secretary appeared before us sitting as a Committee of the Whole and everybody came. If you direct that the Leader of Majority still handles this matter to its conclusion---This is because the Committee then

took up a matter that had been under the steering of a different person. If you direct that the Leader of Majority personally, just as he chaired that meeting, to bring the final response and the report, I think we will get the suitable answers because we have a lot of questions on this issue of health care and equipment.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Proceed, Senate Minority Leader.

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, the bigger question is that the Chair and the Committee have undermined the authority of the House. That is a matter that needs to be dealt with quite apart from the Report. This matter has been with us for a very long time. As we can see, even locating the Chair is proving to be difficult, despite the fact that there is the Serjeant-at-Arms. Normally, in the tradition of Parliament, when the Serjeant-at-Arms is sent to fetch a Member, it is not a matter that you can laugh over.

It is in exceptional circumstances that the Speaker directs the serjeant-at-arms to look for a Member or to evict a Member from the Chamber and that is because the House cannot find any other means of enforcing its directions or orders.

It will be difficult to deal with this matter in plenary; I suggest that we distinguish two issues. The first one is to deal with the Chairperson because he has undermined the authority of the House and I suggest that he appears before the next Senate Business Committee meeting to explain to the Committee the reason as to why he has undermined the regular dealings of the House because of his inability or lack of confidence in the House.

Secondly, on this particular issue, I am prepared to go by those who are suggesting that the Senate Majority Leader be seized of the matter and it be dealt with by the whole House as we did earlier. When that was done, there was some progress. What concerns me more is the fact that the Committee and the Chairperson have undermined the authority of the Chair and that of the House itself.

**Sen. Mwaura:** Thank you, Mr. Deputy Speaker, Sir. This matter has been canvassed well in the House. There has been perpetual complaint about the conduct of the Committee on Health, particularly the Chairperson of the Committee. Health is a devolved function and it is not good for us to be asking for a Report of a very contentious scheme that seems to be undermining devolution of health, yet it cannot be the property of the House.

As we look at the Budget Policy Statement and I am not anticipating debate, we are at pains to allocate another Kshs6.2 billion for the same project. Initially, this project was supposed to be Kshs4.7 billion for seven years but it has been fluctuating. It is not even possible to ascertain how much money has been spent and governors are complaining about the increase, in terms of the use of those machines. Some of them are moribund. We just had a discussion with the Council of Governors yet the Senate is not seized of this matter because of lack of this Report.

My suspicion is that it may not have been properly developed and that is why somebody has not presented it. There is also a possibility that there are very serious cartels who are using the leadership of the Senate, in regard to this Committee, to frustrate these investigations. Therefore, the Chairperson of the Committee should be

called to order and he should account for his position, for this Senate to proceed with its mandate, that we are so willing to execute.

## CONSIDERED RULING

### THE CONDUCT OF THE CHAIRPERSON OF THE COMMITTEE ON HEALTH

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators. First and foremost, I am of the view that the remarks that I am going to make as my directive, fall within the ambit of Standing Order No. 1(1) which states that-

‘In all cases where matters are not expressly provided for by these Standing Orders or by other Orders of the Senate, any procedural question shall be decided by the Speaker.’

I say so because this is a unique situation. It is not something that we have had very often, where a Member who holds a position of responsibility in the House treats the House with such a casual approach that we have no other words to explain it other than to say that we are extremely disappointed.

I am extremely disappointed with the conduct of the Senator for Trans Nzoia County, who is also the Chairperson of the Committee on Health. For the last three months, I have engaged him with a view to assisting him and his Committee dispose of this matter on behalf of the House. Instead of him cooperating with the House, the Chairperson has demonstrated a very casual approach and this has climaxed in what has happened this afternoon before the eyes of all those who are present. The Chairperson was in this Chamber.

I remember having reminded him earlier this week that he needs to dispose of this matter. I am also informed that the Clerks at the Table had informed him that this matter might come up at some point because it was not sorted out. Nevertheless, he has walked out and he cannot be reached on phone. For that reason, I want to reiterate my disappointment and the disappointment of the House with that conduct.

As we have said before, we exercise the responsibilities on behalf of the people of Kenya. Any Member who has Business in this House even if they do not occupy positions of leadership, have the responsibility of staying around, following through and making sure that any Business that touches on them is executed on behalf of the House and the people of Kenya. It is even more incumbent upon those in positions of leadership, such as the Chairpersons of Committee, and I have made my comments known before, that as a Chairperson, you have a serious responsibility, on behalf of your Committee, to make sure that the Business of this House is not frustrated.

There are ways of managing your Committee even if you are not physically here by delegating duties to the Vice Chairperson or a Member of your Committee. However, as we have seen, none of the Members present from that Committee has a clue or a clear clue of where we are on this matter.

Considering that the issue of the managed equipment scheme is so critical to the success of devolution and has caused a bit of concern, I want to direct as follows-

(1) That the leadership of the House, on behalf of the House, relook at the Membership of that Committee and make recommendations on how this House can be more efficient in that Committee and report to the Speaker in two weeks of their recommendations, and the Speaker will make further directions on how those recommendations can be carried through.

(2) That this matter is no longer a matter being handled by this particular Committee because we will not want to perpetuate this delay further. For that reason, I direct that this matter be recommitted to the Senate Business Committee in their next meeting. Having listened to the mood of Members present here, the Senate Business Committee in their deliberation should take into consideration the suggestions of the Members of this House, namely; that the matter be either committed back to the Committee of the Whole or be the subject of an *ad hoc* Committee, which could perhaps get seized of this matter and deal with it expeditiously.

I, therefore, direct the Senate Business Committee (SBC) to seize itself of this matter and make recommendations to the House by Tuesday next week.

Finally, just a kind reminder, when the Chair makes the directives, they do so on the authority and on behalf of the House and not on their own behalf. For example, when the Chair says that the report should be tabled without fail, the words, "without fail" mean exactly that. When that is not done and no effort is made to explain, in fact, that constitutes contempt of the House.

I think time has come for this House to look, within the Standing Orders, for ways of dealing with contempt that may be akin to what courts do when litigants, people or parties are contemptuous to the courts. Therefore, all those who are supposed to take action, including the SBC and the leadership of this House, should either put this matter before the Committee of the Whole or before an *ad hoc* committee or rethink the constitution of that committee with a view to enhancing efficiency. Please observe the timelines, once again, so that we are not contemptuous of our own House and our own rules. It is so ordered.

Next Order!

## MOTION

### ADOPTION OF REPORT OF THE *AD-HOC* COMMITTEE ON THE MAIZE CRISIS IN KENYA

THAT, this House adopts the Report of the *ad hoc* Committee on the Maize Crisis in Kenya laid on the Table of the House on Tuesday, 27<sup>th</sup> November, 2018, subject to the following amendments to the report-

(a) by inserting the words "and the Inter-Ministerial Committee on Food Security" immediately after the words "The Cabinet Secretary, the National Treasury & Planning and the Cabinet Secretary, MOALF&I" appearing in Paragraph 3 on page 11 of the Report;

(b) by inserting the words "and the Inter-Ministerial Committee on Food Security" immediately after the words "The CS National Treasury and CS, MOALF&I" appearing in column 1 of recommendation 7 on page 111 of the report; and,

(c) by inserting the words "and the Inter-Ministerial Committee on Food Security" immediately after the words "CS, National Treasury, CS, Agriculture" appearing in column 3 of recommendation 7 on page 111 of the report.

*(Sen. (Prof.) Kamar on 19.2.2019 (amended on 26.2.2018) )*

*(Resumption of debate interrupted on 26.2.2019)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. pursuant to Standing Order No.62, I will propose the question again. I know debate had begun on this item on the Order Paper but there was an amendment to the Motion. So, I will propose the question in an amended version and then allow debate to continue. I will propose the question which is–

THAT, this House adopts the Report of the *ad hoc* Committee on the Maize Crisis in Kenya laid on the Table of the House on Tuesday, 27<sup>th</sup> November, 2018, subject to the following amendments to the report-

(a) by inserting the words "and the Inter-Ministerial Committee on Food Security" immediately after the words "The Cabinet Secretary, the National Treasury & Planning and the Cabinet Secretary, MOALF&I" appearing in Paragraph 3 on page 11 of the Report;

(b) by inserting the words "and the Inter-Ministerial Committee on Food Security" immediately after the words "The CS National Treasury and CS, MOALF&I" appearing in column 1 of recommendation 7 on page 111 of the report; and,

(c) by inserting the words "and the Inter-Ministerial Committee on Food Security" immediately after the words "CS, National Treasury, CS, Agriculture" appearing in column 3 of recommendation 7 on page 111 of the report.

*(Question of the Motion as amended proposed)*

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, I support this Motion as amended. In contributing to this Motion, I must commend the Committee for the work they have done and other committees should take the example of the *ad hoc* Committee. The Committee was time bound but within the time allocated, it came up with a report that has received wide support from both sides of the House.

It is also important to note that the *ad hoc* Committee has not just given general observations but also made recommendations and most of the recommendations are actionable. In my view, at a particular time, the Senate should revisit this matter just to

determine whether or not the recommendations of the Committee are being acted on, and the status of our farmers in view of the problems that we have had in the past and the experiences that the farmers have wherever they are.

For some of us who have the read *The Godfather* by Mario Puzo, the fiction in that book is unbelievable. It is something that is beyond imagination. It is something that a writer like Mario Puzo could come up with.

(*Sen. Cheruiyot consulted with Sen. Murkomen*)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators!

Proceed, Senate Majority Leader.

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, if what is happening in Kenya today is put in context, it is stranger than fiction. We are talking about the issue of maize and that is not a new thing. During colonial days, there were various reports and commissions of inquiry that were established to look into the issues that were affecting the maize sector.

During the Kenya African National Union (KANU) era, so many committees and commissions of inquiry were established to look into matters that were affecting the maize sector. Even during the era of the two previous governments before the current administration, there were many *ad hoc* committees, including parliamentary committees, to look into problems affecting farmers, particularly in relation to the maize sector.

What is happening in the country has to do with leadership and integrity because that is where the problem lies. When you look at other sectors, be it the sugar industry, fertiliser and sometimes in areas that we thought were beyond action that would affect the nation like tourism, there is something that we must deal with as a nation in order to bring matters like these to an end.

We were in Eldoret and farmers in Uasin Gishu County were crying. Even as we were trying to address the issues under the capable chairing of Sen. (Prof.) Kamar and the distinguished Senator for Bungoma, the farmers were pointing fingers at us and saying that we must be part of the cartels because we did not go there with lasting solutions that will resolve the problems facing the farmers of this country.

That being the case and in view of what is happening in the country at the moment, I urge that the work of the Committee should not go away for nothing as one component or way of dealing with this problem. However, looking at what is happening in the country now, all these matters to do with corruption are leading to one direction. Article 143 of the Constitution says the only person who is above the law in a very limited way is the President of the Republic of Kenya. If you look at the powers of the presidency, which makes him the Head of State and Head of Government, they are enjoyed and the authority exercised from the good of the nation.

I am beginning to have a feeling that the Government is getting a little weak-kneed in dealing with some of these problems. When you want to kill a viper, you do not go for its tail, but the head. Other countries have demonstrated, when they have had problems like this, they directly dealt with it.

In South Korea, for example, they had experiences in all the sectors – industrial, agricultural, *et cetera* – but when they decided to deal with the problem of corruption, they did not go for petty crimes. I urge this Senate and the Jubilee Government that in the current campaign that we are seeing, they are dealing with grand corruption. However, they are dealing with petty crime.

Mr. Deputy Speaker, Sir, a time has come when we have to change strategy if we want to deal with this animal called grand corruption. If you look at how the whole saga in the maize sector came about, having a Report in which we are told that a Toyota Probox vehicle carried 10,000 kilogrammes of maize. It is stranger than fiction. We have reached a situation in this country where a spade must be called a spade. I have no fear of contradiction in saying that the Jubilee administration now, in matters to deal with corruption, should graduate from dealing with petty crime to dealing with grand corruption.

That is why I support the amendment to this Motion. It is in order to make sure that anybody who was involved in the decision making, particularly in crafting that dubious Gazette Notice, is brought under scrutiny. Gazette notices do not come about. Sen. Wetangula and I, have been in the Cabinet and know that when you want to publish a gazette notice. It does not end with your Ministry. It has to go to the Attorney-General and all the sectors involved must have an input, with the documents coming up and down for consideration. It is not just a matter of putting a pen on the paper. All the people concerned must have an input. If you look at these gazette notices, they were not just a matter that came about or a typographical error. It was deliberate to make sure that this kind of maize was brought in from as far away as Brazil.

Mr. Deputy Speaker, Sir, I want to use the Floor of this House today, although some people may not be very happy with what I wish to say. That is why I started by saying that there is nobody in this country who is above the law. Article 143 of the Constitution makes that very clear. Even the President, when it comes to international crimes, is not above the law.

If you read this Report and the one on the dam scandal carefully and what is coming out so far, and even look at other scandals that relate to embezzlement of public resources, the road just leads to one headquarters. The road leads to one place. The Senate should rise up to the occasion and encourage the President in what he is doing; that he should follow through where the evidence is leading. The evidence is pointing out that there is a particular office in this land and a particular individual who, in all circumstances, is encouraging corruption to take place in this country with impunity.

I say without fear or favour that what happened in South Africa, forcing President Zuma to leave office, was corruption. The most popular President in the history of Brazil, Lula, is in jail. While he was in jail, they added another 10 years and is now in for 25 years. The President of South Korea came here with a lot of fanfare. Now she is in jail for 20 years. She still will have more 10 years in jail.

Mr. Deputy Speaker, Sir, you cannot fight corruption by arresting policemen who are taking little money along the road; you must go for the big fish. Mr. Haji said that he would go for the whales and sharks. I want everybody to look me in the eye and I look at them in the eye - like the hon. Senator from Mandera is looking at me – and say that if it

is the Deputy President, who in all circumstances, it is clear that the evidence is pointing to him, and Article 143 of the Constitution does not---

**The Senate Majority Leader** (Sen. Murkomen): On a point of order, Mr. Deputy Speaker, Sir. With all due respect to Sen. Orengo, he is dragging in the name of the Deputy President in this debate. We are discussing matters of maize. The Report before us does not in any way point to the Deputy President. There is no report even across the country that point to him.

This is very serious because Sen. Orengo is not just an ordinary citizen of this Republic. He is a Senator, but also a Senior Counsel. It is the greatest honour for any practicing advocate in this country. I say this with tremendous respect because the leading defender of suspects of corruption in the country is Sen. Orengo. He is doing so, because he believes in the presumption of innocence. He is not just an ordinary lawyer, but the lawyer of the Deputy Chief Justice, which is akin in the Executive, to the Deputy President. When he drags the name of anybody to questions of corruption, he knows the consequences. The Standing Orders are very clear. Can you rule him out of order?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The Senate Minority Leader, you have been in this House for a long time and know the Standing Orders. But, please, respond to the Senate Majority Leader.

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, if you look at Standing Order 95, the only person whose conduct cannot be talked about in any form or shape is the President, Judge and a Head of State of a friendly Government. That will be completely out of order. I have not touched on any name or office of any person that attracts the operation of Standing Order 95. I also chose my words very carefully. I know the guilty are always afraid; I said, “if the Vice President,” and as far as I am concerned, there is no post such as the Vice President in the Republic of Kenya. I chose those words very carefully and I said---

**An hon. Senator:** You said deputy---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order!

**The Senate Minority Leader** (Sen. Orengo): We can refer to the HANSARD.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Order!

Proceed, Senate Minority Leader; or is that all?

**The Senate Minority Leader** (Sen. Orengo): Yeah---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): So, in other words, you meant the “Vice President” and not the “Deputy President”?

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, the words I used was “if the vice president.” We can haggle over this, but we can check the HANSARD tomorrow. I chose the words very carefully. But all I am saying is that---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): So, is your view, therefore, that you did not refer to the Deputy President?

**The Senate Minority Leader** (Sen. Orengo): My words were, “If the Vice President;” those were my words.

*(Sen. Murkomen spoke off record)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senate Majority Leader! I do not want us to reduce this to a court room.

You know that we have no such official as the “vice president” under the current Constitution. The Senate Majority Leader, by inference, says that you were referring to the Deputy President. What I need to clarify from you, because I do not want to be part of the debate, is whether you meant the Deputy President. Who did you want to refer to when you referred to the “vice president?” That clarification will be enough, and then I will request that we do not sensationalize this beyond that point.

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, I meant the words that I used. I did not mean any other words other than the words I used. If in the reckoning of the Senate Majority Leader those words meant the Deputy President, then I cannot help him. Do you know that in Kenya today, there are presidents and vice presidents? I did not say the Vice President of the Republic of Kenya. However, in relation to the President, I said the President of the Republic of Kenya. I was very clear about his powers and his authority. When I used the word “vice president,” I was very careful and the only thing that can sort that out is the HANSARD tomorrow.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let us not spend too much time on this.

The Senate Majority Leader, would you want to bring this to an end?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, the Senate Minority Leader used the words, “Deputy President;” but if it is in his---

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

I want you to hear me, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well; proceed, the Senate Majority Leader.

**The Senate Majority Leader** (Sen. Murkomen): Yes, Mr. Deputy Speaker, Sir. The words used by the Senate Minority Leader were “Deputy President.” But if he quickly forgot, he intended to use the words “vice president.” He can, as well, with your permission, just say that he substitutes the words he wanted to say, “deputy president” to “vice president,” and that will be the end of the issue. This is because on record – and many people bear witness to this – he used the words “Deputy President.”

However, if his intention was to use the words “vice president,” he can replace them and proceed, because we know who the vice president is. We know that there are a number of former vice presidents. Since the former Prime Minister still carries public reference for Prime Minister, he would have meant one of the vice presidents in this country and I have no issue with it. However, I have an issue when he raised the word “Deputy President.”

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Okay, proceed, Senate Minority Leader.

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, the words I used were three words, “if the vice president.” We can check the HANSARD. Now that the Senate Majority Leader is insisting, I also can say that if the evidence leads to the

words “Deputy President,” then the consequences of his actions should be in accordance with law, because he does not enjoy any protection. If the evidence points to any other Kenyan, then the consequences of the law should follow.

Mr. Deputy Speaker, Sir, the point that I was trying to make and, in fact, that is why I do not like when people overreact. There was a time when, in the House you mentioned the word “President,” everybody would be on their feet. I hope that we are not getting back to that kind of situation.

The maize saga is question of corruption, and that is what we are dealing with; it is nothing else. If you are going to take the kind of people I have seen being taken to court; farmers who have 20 to 30 acres, and that has happened many times, even during the first Kenyatta Government. If you read the Report on maize, many people were taken to court and Ministers lost jobs.

We are here dealing with a question of grand corruption. In fact, if you read this Report, it is strange and fiction. It could not have happened through the connivance of plans of an ordinary being, like the Senator for Nandi. The money that is being made under this maize scandal is beyond your comprehension, Senator for Nandi. I am very sure this money that was supposed to be paid to the maize farmers in the country, but we were paying farmers from Brazil. That was what the whole idea was all about.

Mr. Deputy Speaker, Sir, I hope that this will not just be another Report; that it will not just be just another *ad hoc* Committee making a report to the Senate. This Report requires action and should be seen in the context of what is happening in the Republic as whole. I am urging that the President of Republic of Kenya should not be weak-kneed; he should show leadership because he enjoys powers that are only vested on the President of the Republic Kenya. He is the only one who enjoys immunity, and that is for a reason. Therefore, do not hesitate; so, lock up the sharks, but deal in accordance with the law. Lock up the sharks. If the shark is the Deputy President, lock him up! If it is Orengo James, lock me up!

(*Sen. Murkomen spoke off record*)

(*Laughter*)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! The Senate Minority Leader, I know you have a maximum of one hour. However, I want to request you, for the interest of meeting the deadline for the Budget Policy Statement, which by law must be passed by tomorrow; that we take minimum time. This also applies to even the other speakers, and not just the Senate Minority Leader. This is so that we are able to conclude this and, at least, initiate debate on Budget Policy Paper. Kindly.

**The Senate Minority Leader** (Sen. Orengo): I will not take all the time because I know everybody will want to contribute, but let me finish by saying that, in the light of this Report we should see a difference; that everything will happen on time, farmers will get their fertilizers and get their seeds and when they want to sell their produce, they will be able to get it to the market. If it is the National Cereals and Produce Board (NCPB), let them pay the farmers in time.

The suggestion that is coming out in the Report and which I think is useful, is that, the NCPB should be devolved. We should have units based at the county level that will deal with the problems of farmers more effectively than when it is centralized as it is for now.

With those remarks, I support.

**The Deputy Speaker** (Sen. Prof.) Kindiki): Thank you very much Senate Minority Leader.

The Senate Majority Leader, the same request applies to you. You are entitled to your time, but please, try to help the House manage the remaining agenda.

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Deputy Speaker, Sir. I totally agree with you and I will take as little time as possible.

First of all, I want to support this great Report that captures the aspirations, dreams and concerns of the people of this country who are maize farmers. When we were in Eldoret, like the Senate Minority Leader said, you saw the passion of most of the maize farmers who were looking for action. I must say that the problem - like the former Senate Minority Leader always liked quoting the trouble with Nigeria - with maize is not just a problem of people stealing or delivering wrong maize to the NCPB. It is a strategic problem as a country, a policy problem. It is a problem of assuming that we can reap where we did not sow.

For a long time, agriculture was a strategic sector earning us a lot of foreign exchange. That was taken for granted. That is why we have problems in the tea sector and coffee sector. All these problems that we are facing in the agriculture sector are the assumption we have as country. Some of us who come from North Rift face the same problem when it comes to sports. This nation prides itself to be great sports nation. A country that has great sportsmen, but we do not have any investment of the State or even a proper investment of the private sector for sports.

So what happens? We assume that all the time we would be winning world medals and having good athletes. If you go to Iten in my county where you have these athletes, you will notice that the training facilities and environment is not very conducive, but they earn the glory to this nation. They advertise this nation. The same applies to agriculture. Maize farmers, for many years, we assumed that they are just maize farmers; they will plant, harvest, feed the nation and we like discussing in public and we say the bread basket of this Republic is in the North Rift, Trans Nzoia, Uasin Gishu, parts of Bungoma and parts of the former Western Province.

We have not sat down as a nation and put long-term policy positions, first about agricultural research. If you go to what is called Agriculture and Food Authority (AFA) now, we have amalgamated various parastatals in the past that were doing research; the ones that were dealing with different crops like tea, maize, coffee and pyrethrum. All of them were brought together in one body with one Director-General who I think even at the moment is not in office. I think he is in acting capacity. Then we created a Directorate to take care of food. That is where you find maize at the corner there being called food department. I think that was abolished.

Mr. Deputy Speaker, Sir, we, as a nation, now wake up every year and ask ourselves why our farmers are complaining. Why are we not getting enough food? Why

are we not investing in the right place? There is a main problem. The Constitution says that the national Government's responsibility is policy, but the policy framework that we have is a cake. Kenyans do not know what is the agriculture policy like the Policy Paper No. 10 of 1963.

You do not have such a guiding principle. A proper policy, understood by both national and county governments. This confusion is reflected in the recommendation of this Committee which tries to allocate what functions the county should do. Even when we did devolution functions, now we are still debating here that counties and national Government should take up their responsibilities because we came up with a devolved system of government. We have a Constitution, but the policy framework that we are operating in is not clear. If you do not allocate the person who is supposed to do his job, it becomes a no man's job.

Secondly, there is no money in the agriculture sector. Our investments in the agriculture sector do not reflect the results that we want. I know Mr. Deputy Speaker, Sir, you are a researcher, interested in matters of international trade just as I am. In the World Trade Organization (WTO) or in Europe, debate on agriculture is about subsidies. The part that has been safeguarded by all countries in the world is subsidies in agriculture. Agriculture and WTO battles between Europe and USA, between USA and China, is around agriculture. Everybody is trying to protect agriculture because food security is so strategic that even in the GAT Agreement it had to become an exception of the MFN Principle.

This is one area that we, as a nation, have not sat down and asked ourselves, what the budgetary allocation for the agriculture sector is and which areas of the nation will plant which crops. If you look at these recommendations, you realize that one of the reasons why production has gone down is because the soil has become acidic, little research is being done in the country and we have very few agriculture extension officers.

I know the Chairperson and the Vice Chairperson of this select Committee must have done a lot of research on this and listened to a lot of proposals on this. Why should county governments put up to Kshs300 million or Kshs400 million to school bursaries? Under what function do they give bursaries to high school and universities? Instead of hiring agriculture extension officers to help farmers produce agricultural products, sell in their markets and take their children to schools?

We are killing the seed money that should go to solve the problem that people are facing by just giving token to our citizens. My concern is that, you will find some counties are building technical teachers' colleges, medical schools, referral hospitals, secondary schools, putting seed money for building a university. If we took this money and just concentrated it on the agriculture sector, as counties, we will make a difference in the agricultural sector in the same way as the national level. If the policy framework was so clear so that you have a lean top and then the agriculture subsidy programme becomes clear that we are subsidizing fertilizer in the country and seeds to a certain level then that would help.

The message that I would like our people to get is that the other issue that is lacking, particularly in the North Rift region is that we all rely on maize completely. The message that is now going round the place is that we need diversification in agriculture. It

can come about if the Ministry of Agriculture had a programme on research and market research.

When the President went to China and came back, the information was that he has opened a market in China for horticulture products. Nobody came back and told the citizens that they need to produce this number of horticultural products. This are the seeds we are providing and the market guarantee is in this or that country.

What is the role of our Ambassadors out there, when we talk about looking for market for our agricultural products? When Ambassadors of other countries come to this country, their first assignment is to look for market for their products. When the American Ambassador is sitting here, he is thinking about what security equipment they will sell to this country. That is the same to European Ambassadors. They want to know the market of goods that they manufacture in their countries that they can sell in this country. Our ambassadors must be fast to take up opportunities for our agricultural products out there.

Mr. Deputy Speaker, Sir, my first proposal to this nation is that the Cabinet Secretary (CS) in the Ministry of Agriculture, other than all these conversations, even these stories you are saying we want to have a corruption conference, we want to have this, corruption is a consequence. We should first invest in what is important to us.

We should first have a conference on agriculture to discuss the things that bedevil the agricultural sector and agree on what is the policy that will guide this country and what is the target. What are we doing in potatoes, pyrethrum, cashewnuts, macadamia, avocado and tomatoes? What value addition are we put to mangoes, bananas and paw paws in Kerio Valley, where I come from?

Mr. Deputy Speaker, Sir, if I was the CS of Agriculture of this day, my main responsibility would be to put in place a policy framework that would guide counties on what they want to do, so that when we sit at the Senate, and we are dealing with conditional grants to various parts of the country, we will know that a condition grant that goes to Siaya County, deals with sisal, to Tharaka-Nithi County might deal with issues of cotton and Trans-Nzoia County will work on research of matters of maize so that we can audit ourselves and ask if we are achieving the Maputo Protocol of 10 per cent funding to agriculture as a nation, when we cumulatively look at our resources that goes to the county and at national level. These are the integral issues that we must talk about in the agricultural sector.

On the question of storage of goods, Mr. Temporary Speaker, Sir, when we were doing transfer of functions as a Senate, we said that counties should be able to build their stores but even silos must be able to transferred to counties because these are storage facilities. Therefore, I agree with the Committee when they proposal that these transfers must go to the counties.

Mr. Deputy Speaker, Sir, one of the proposals of this Committee was to deal with matters corruption and particularly, in so far as importation and storage of maize, and allocation of that market quota that citizens of this country could deliver. I agree with the Committee that this process was abused and there was corruption. However, I do not agree with the Senate Minority Leader that corruption becomes corruption because of a big man. To me, that is the silly mentality that has driven this country in a circus.

Corruption by a small or a big person is the same. Corruption is sin. Corruption committed by a nurse or a clinical officer in Pumwani Maternity Hospital to collude with people who are stealing children and selling them is corruption. They do not have to have a big person or one has to be elected. As the Bible says, a big and a small sin must get equal punishment. Therefore, when we sit, as a House here, and say that we are only looking for big men, or what is now being called in this country, cartels and sharks and big fish, that is absolute nonsense and is circus.

Mr. Deputy Speaker, Sir, there is nothing like a bigger sin, every sin is sin. If you steal Kshs10 billion and you steal Kshs1 million, is a sin. It could be that Ksh1 million was everything to somebody else and the Kshs10 billion was everything to everybody. Let us not encourage this mentality that people have this country. If a child steals Kshs10 today, it means tomorrow, he can steal Kshs1,000, the other day Kshs10,000, and the other week, Kshs10 billion. Therefore, we cannot come here and excuse any level of corruption in our country.

Secondly, Mr. Deputy Speaker, Sir, I do not agree with the reaction of the Ministry of Agriculture to the question of having said that there was delivery of maize. I will conclude in another five minutes. I do not agree with them that the reaction to that is now to make it impossible for poor farmers to deliver maize to National Cereals and Produce Board (NCPB). First, those farmers have not been paid since 2017. There are people who are still begging for payment from the Government since 2017.

Thirdly, the regulations that have now been put in place have made impossible to deliver maize to the NCPB silos. If you go to my place, very few people have title deeds. They are now being punished that they cannot deliver their maize to NCPB because they must show title deeds. Where will they get the title deeds in Embobut? Where has the Government provided title deeds in Embobut or in most places of Kerio Valley or all those parts of Elgeyo-Marakwet County?

Fourth, where we come from, and Sen. (Prof.) Kamar can tell you, when someone wants to lease land from the neighbour, they do not enter into written agreements. They just tell someone "this year, I am unable to till my land, take the five or 10 acres and give me something, so that I can pay school fees and continue". Now, we are being asked to go and look for lease agreements. We are asking people who have never gone to school to do so. They do not know what a school is. You are telling them to look for a lawyer so that they can update lease agreements so that they can deliver their maize.

Mr. Deputy Speaker, Sir, a Government that punishes its own farmers is a Government that is destined to food insecurity. We, as a nation, must be careful on how we treat those people. We cannot treat them using regulations and rules that have been passed in white collar offices in Nairobi. The reality on the ground, the people who are dealing with maize farmers must go and sit with them in Trans-Nzoia County. They must go to Cherangani, Moiben, or Kwanza and sit with them and apply processes and systems that are responsive to the desires of poor farmers in this country. You cannot punish them by virtue of not having certain legal documents that are not easily accessible in the Government or creating processes that are impossible.

Mr. Deputy Speaker, Sir, the Government cannot now justify that they will not subsidize fertilizer this year as a result of the challenges they had last year. If the

Government's reaction to every purported corruption scandal will be to abandon provision of services, will we have a country at all? We will never have a country at all. That reaction that every farmer should go to look for their fertilizer must stop. I want to ask the Chairperson and Vice Chairperson of this Committee to come up with a mechanism of imposing on the Government to continue performing its responsibility of having farm inputs that have subsidized prices. If they cannot do so, they should assist farmers to form cooperative societies that can help them to buy fertilizers at a cheaper price. Those are the two things that if we do right, we can take agriculture forward.

Mr. Deputy Speaker, Sir, no one should lie to our farmers that they must always deal with maize. I am a firm, committed, and serious proponent of diversification. The role of our county departments of agriculture is to ensure that they do proper research and lead our farmers to do things that other people do to make money. This is not a charity. There are people who were talking to maize farmers like they are performing a charitable work and must continue doing that work in this country. County governments must be able to do so.

Lastly, Mr. Deputy Speaker, Sir, in the fight against corruption, the worst form of corruption is to accuse someone of a crime they did not commit. There are some people who are looking at this Report and looking for certain names. Where is Sen. Murkomen's name? Why is Sen. Orengo's name is not here? Why is Sen. (Prof.) Kamar's name is not there? They survive on politicization of corruption. I see newspapers in this country which cannot sell without ---

**The Deputy Speaker** (Sen. (Prof) Kindiki): The Senate Majority Leader, I thought the name of Sen. (Prof.) Kamar is there as the Chairperson of the Committee.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I was saying in so far as recommendations are concerned. People want to see how to blame Sen. (Prof.) Kamar for the maize issue, or any other person. I am just using her name as an example.

**The Deputy Speaker** (Sen. (Prof) Kindiki): Please, conclude because of time.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I see newspapers in this country, and I could see where the Senate Minority Leader was going. In this nation, we have weaponized the fight against corruption, it is a political tool. You must find a way of dragging a certain politician to reach there. If there is the worst form of campaign that is going on in this nation, it is the fact that everybody wants to throw mud to another person in preparation of 2022. We know them because they cannot compete on policy, programmes or anything else. They have to just look for a newspaper article and drag the name of so-and-so.

Sen. Orengo spoke very well. He said "if you are a former Prime Minister and you have been mentioned that you stole public land for your local people in your community, you must take charge, or if you are former Vice President and even the President must be held responsible even though it is not a court process. However, there is a political process of holding people responsible. I have seen that if anything comes up, they say it is the President's sister or brother. This is because someone wants to drag in a big man so that they sound like they are fighting corruption. I caution this nation that if we politicize the fight against corruption, we will never succeed. Let the evidence lead

to the arrest of the suspect. Let us not weaponize the Office of the Director of Criminal Investigations (DCI) to fight political wars; let it do its job.

Mr. Deputy Speaker, Sir, some of the things that they parade in newspapers are laughable. Sen. Orengo, Sen. Wetangula and I, being lawyers, can read and see through them. However, the citizens of this Republic are duped that so and so has been arrested. Therefore, the newspaper sells. In fact, courts are also intimidated to receive evidence as it is and convict people so that it looks like people are working.

If we want to meticulously fight corruption in this nation, we must go from the evidence which should lead us to the criminals. Let us make less noise and work more behind the scenes to get the evidence. Let the DCI go the Director of Public Prosecution (DPP) with proper evidence, so that he can go to court with watertight cases. Let this country move forward.

Mr. Deputy Speaker, Sir, if there is something I agree with and defend is, let us not fight corruption for the sake of statistics and being seen to do so. Let us do it because we want and mean well for this great Republic.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Senate Majority Leader, although, you did not keep time.

*(Sen. Murkomen and Sen. Orengo consulted loudly)*

Order, Senate Majority and Minority Leaders! You have held us at ransom for a while.

Hon. Senators, I had communicated earlier on the issue of time and how we need to manage the conclusion of debate on this issue. This is because we cannot stop now and initiate debate on the Budget Policy Statement (PBS) which is very important. Since, this matter on the deadline of BPS is not expressly provided for, I will apply Standing Order No. 1. The deadline on the PBS is in the Public Finance Management Act and has to be adhered to. Therefore, I will allow a few more speakers. Once more, I recommend that you take few minutes. Get your points right and communicate so that you articulate yourself on them.

The fact that there are no time limits does not mean we can spend the entire week on this report because we have other competing issues that we have to attend to. So, kindly, all the speakers, take the shortest time possible. The shorter your speech, the greater you encourage efficiency of this House.

**Sen. Ochillo-Ayacko:** Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to make my remarks on the maize report.

The political class from both sides has participated in corrupt activities. I have listened to the Senate Majority Leader talk about corruption and say that we should not politicize it. However, when we look at the names mentioned by legitimate institutions that investigate corruption, they are of politicians. Therefore, this is shying away from naming and shaming the devil. Corruption, as we know it, is prevalent because we do not discuss, take action or name people who hold high offices and engage in this vice. This is because we are afraid of the fact that they can, perhaps, visit revenge or have certain adverse effects on us.

Mr. Deputy Speaker, Sir, this Report talks about farmers in this country. These are people who sweat and do not look for employment in the national Government or county governments. They use their sweat to employ themselves and feed those of us who are in need of food. If you look at the statistics, you will find that 80 per cent of Kenyans in rural areas make a living out of activities that are farming related. Therefore, they are the most economically active people in Kenya.

Nowadays, most young people do not want to engage in farming activities; they want to engage in politics and other opportunities where they can get money and get rich quickly. Therefore, farming is being abandoned.

If Parliament does not create an environment to protect and defend these patriots and champions, we will have a situation where every Kenyan will be looking for formal employment in offices which will be impossible. We will become a nation that will import food and raw materials. We will depend on imports which is a fact that is not sustainable the world over.

I take this opportunity to thank the galaxy of Senators who sat in this Committee for the bravery and good work that they did to bring a Report that is now the subject matter of debate. I thank Sen. (Prof.) Kamar, Sen. Wetangula and all the Members of the Committee. I also want to thank my good friend, who depends on agriculture, the Senator for Nandi County, for his able contribution in the process of bringing up the Report.

Mr. Deputy Speaker, Sir, those of us who looked at the anger that the farmers had when they were talking about the frustrations they have had and pointing fingers at the Senate Majority Leader and Members of the Committee and asking for solutions, understands their frustrations.

In Migori County where I come from, we are largely a farming county. We have sugarcane, but right now sugarcane farmers are up in arms. They are pleading to be paid by the Government and threatening demonstrations. They cannot believe that the factories that they supplied sugarcane to are capable of paying them. We have maize farming in Migori County which is so tragic that the maize farmers do not have a Government purchase scheme for the maize that they produce.

If you go to NCPB silos in Kuria, Awendo and Migori, you will meet birds and other things flying all over the place. The place is dead. Yet farmers in those areas have tonnes of grain, but have nobody to purchase from them.

Mr. Deputy Speaker, Sir, tobacco farmers in Migori and Tharaka-Nithi, where you come from, have not been paid. The buyers are not serious about paying them. Therefore, farming is under threat. If we do not look at it positively, as a nation, we are courting disaster and we are likely to suffer serious consequences that we have never known before.

Mr. Deputy Speaker, Sir, there are two ways that we could use to fight corruption. One of the ways---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Ochillo-Ayacko, kindly summarize.

**Sen. Ochillo-Ayacko:** Mr. Deputy Speaker, Sir, I am concluding.

There are two ways of fighting corruption. One of the easiest ways is that those who are in offices and have the opportunity to appoint other Kenyans to serve must not allow suspects of corruption to be appointed.

Recently, a suspect from Migori County who had embezzled Ksh2 billion was in the list of people named to be directors. That is not going on. The suggestion by the Senate Majority Leader that we should always look at evidence and the process will take donkey years. The courts have a backlog of cases and that will take forever.

Mr. Deputy Speaker, Sir, in the interest of allowing other Members to say what they must because this is important, I propose that the Executive, both at the national and county levels, must ensure that those people they identify, nominate and appoint to positions of influence and service are clean, do not smell of corruption and have not been suspected of anything. Other people who have committed obvious crimes, of course, must go to jail.

Mr. Deputy Speaker, Sir, with those very many remarks, I thank you for the opportunity.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Proceed, Sen. Cheruiyot.

**Sen. Cheruiyot:** Thank you, Mr. Deputy Speaker, Sir. I will try and be brief, despite the fact that I have so much to say, just to be sensitive to the fact that many of my colleagues want to contribute on this extremely important matter.

I commend this Committee led by Sen. (Prof.) Kamar and the distinguished Senator for Bungoma, Sen. Wetangula. This is fantastic work of brilliance and courage.

The Motion before us, especially as amended, goes into the heart of the issues that ail this country. In my opinion, the Inter-Ministerial Committee on food security, should be known as the Inter-Ministerial Committee on food insecurity, because that is what they have visited upon the people of Kenya. By the stroke of a pen and the decision they made they condemned many farmers to deep poverty and depression.

It is important that we approve this Report and agree with the decision of this Committee. These people will explain to the country how they were able to sit down and approve those Kenya Gazette Notices that led to flooding the country with cheap imports.

The biggest problem that is continuing to emerge in many of the programmes that we shall continue to deal with as a House, is the desire to have the Government programmes that are vendor-driven and not by the interest of the people of Kenya.

If we are looking at ways and means of making the country food secure, then it is easier to start by ensuring that our farmers and the people who produce for this country within our borders are properly funded and supported. These farmers are suffering because they could not give kickbacks and that is why people sit in high offices with well air-conditioned rooms and who drink very expensive water, could issue gazette notices without winking their eyes. It is unfortunate, evil and I lack words to describe the action that the particular Inter-Ministerial Committee visited upon the innocent farmers of this country.

Mr. Deputy Speaker, Sir, I agree with the sentiments of many of my colleagues who have said that this Report will be a game-changer. Anytime somebody sits to make a decision that will affect the people of Kenya, they will be mindful that there is the Senate

that is watching over them. When tested and given the chance, it will always stand with the people of Kenya.

How difficult was it, for example, before the people that came up with the scandalous programme of Galana-Kulalu to consider investing in our farmers who over the years have been doing farming, before spending billions of Kenya Shillings in a place that is not arable? I am sure that farmers would have been able to produce whatever they were looking for cheaply and affordably in this country. However, since our farmers are too poor to give kickbacks, nobody considers them.

Mr. Deputy Speaker, Sir, finally, I note that the work that this Committee did is how we need to carry out investigations in this country; silently, expeditiously, without drama and malice, but laying all facts on the table. I hope that is the attitude that the DPP and DCI will observe in the investigations they are carrying on.

I am not satisfied that we have an investigator who for every statement that they take, their first point of call is to the newspapers and *WhatsApp* groups. It is a shame and charade; that is not how to fight corruption. We want to see them try their cases in court and not in newspaper headlines.

Mr. Deputy Speaker, Sir, with those very many remarks, I keep true to the promise that I made of not taking more than three minutes.

I support this Report.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done, Senator for Kericho County.

Senator for Bomet County, you have said that in one minute you will have communicated.

**Sen. (Dr.) Langat:** Thank you, Mr. Deputy Speaker, Sir. I want to bring to the attention of this House that there has been a lot of suspicion in Bungoma and the North Rift regions. The farmers want to know exactly who have put them into this great problem. This Committee that produced this Report has shed light to the people of the North Rift. They now know the culprits who brought all the problems to them with regard to maize and sugar sectors.

This high level Committee that made an erratic decision to import maize to the tune of nine million bags, which were not in the Kenya Gazette Notice, is the great enemy of the farmers in the North Rift.

The same Inter-Ministerial Committee made a decision in their meeting of 14<sup>th</sup> November, without a gazette notice, that maize from Mexico was supposed to be imported to the tune of four million bags, and the maize from the local farmers, during the harvesting season, should be reduced to 1.5 million bags. These were the people who made decisions that brought all the problems and opened ways and loopholes for the cartels to bedevil farming in the North Rift and in Bungoma region.

Mr. Deputy Speaker, Sir, it is good that the farmers will know, out of this Report, the real enemies that have put them into the trouble they are in now.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Olekina, please, try and summarise, since we are pressed for time.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir. I rise to support this Report.

From the onset, I state here categorically that the decision by the Inter-Ministerial Committee to allow more importation of maize was designed to cripple the farming industry. It was guided by politically connected cartels in this country.

I have looked at the Kenya Gazette Notice and had various consultations with the Senate Minority Leader on its issuing. I am will make my remarks very brief and focus clearly on the gazette notice

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Please, do. We want to move to the Budget Police Statement (BPS).

**Sen. Olekina:** Mr. Deputy Speaker, Sir, I wish to go on record to say that this is a matter that required so much time because farmers in this country want to see this Senate helping them because they are suffering.

I know that we are pressed of time, but I beg your indulgence in terms of looking at this issue. We should not rush on these matters, so that we can prosecute them and give justice and solutions.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Olekina, I give you three minutes to summarise your thoughts.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir. My three minutes start counting now. I am concerned about the issue of the gazette notice. I have looked at it and it reads as follows:

“The East African Community Customs Management Act 2004.”

There are two issues that I raised during the earlier debate on the amendment to this Report, which has to do with the Cabinet Secretary, National Treasury and Planning and how he ended up giving this notification to the public.

In the gazette notice which I want to refer to, it clearly says that-

‘It is notified for the general information of the public that in pursuit of the powers conferred on the Cabinet Secretary under Section 114(2) of East African Community Customs Management Act, 2004 and in consequence to the declaration by the President and Commander in Chief of the Kenya Defence Forces of the national disaster through Executive Order No. 1 of 2017, duty shall not be charged for the importation of the items set out in the schedule hereinto’.

I believe that the reason as to why the public was notified that maize can be imported into the country was because the Cabinet Secretary (CS) was given the powers under the East Africa Community Customs Management Act, 2004, and that the President had issued Executive Order No. 1 declaring a disaster in this country. However, when the CS issued the gazette notice, according to this Report, there was a ceiling of 6 million bags that was to be imported into this country.

I hope that the DCI would try to find out what happened after the ceiling was reached. According to this Report, over 10 million tonnes were imported. At that level, what was Kenya Revenue Authority doing by allowing importation of maize into this country above the ceiling which was approved by the gazette notice?

My concern is on all the agencies that we keep talking about here. That is where the cartels are and that is where we need to think of how to solve that problem. According to this Report, Kenya Bureau of Standards indicated that the maize were substandard,

then why allow them into the country, in the first place? That is my biggest concern. Currently, farmers are crying because they have tonnes of maize in their stores.

As we rush to debate this Report, we should think of policies that will ensure that there is mopping of the local grain available in this country before any maize or any agricultural product can be brought into this country.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Your time is up, Senator! Could we hear from Sen. Cherargei? You have three minutes.

**Sen. Cherargei:** Thank you, Mr. Deputy Speaker, Sir. I know that we are rushing through and my worry is that we might not do justice to this debate. All the same, I can proceed.

First, I want to support and agree that there are many issues that we have canvassed. We grow a lot of maize in Mosop, Nandi County. We have agreed that the genesis of all these problems was Gazette Notice No.3575 and the formation of the Inter-Ministerial Committee which ensured that an extra 9 million bags were imported. That is what condemned farmers to oblivion, poverty and the many things that we have raised.

I want to thank the Committee for we did our best, where we could, to ensure that justice is served to farmers. An average age of a farmer in this country is 65 years. You will realise that 78 per cent of the population of this country do not want to venture into agriculture for they have realised that agriculture is not economically viable.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Mutula Kilonzo Jnr.?

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I have a small concern which I thought I would get your direction half an hour before time under Standing Order No.31. Hon. Senators want to contribute to the maize debate and the Motion on the Adoption of the 2019 Budget Policy Statement but we are rushing both.

There is one solution to that. We either step down one or you allow, under Standing Order No. 31, that we extend the sitting of this Senate until we debate both matters extensively and exhaustively.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. You have already made the application. Hon. Senators of those two options, what do you recommend? Any comment? What is the mood of the House?

*(Several Senators consulted loudly)*

The Mover of the Motion on the Adoption of the 2019 Budget Policy Statement and the Mover of this Motion, Sen. Mutula Kilonzo Jnr. to approach the Chair.

*(Sen. (Eng.) Mahamud and  
Sen. Mutula Kilonzo Jnr. approached the Chair)*

**Sen. Cherargei:** That is why we are extending the time. Mr. Deputy Speaker, Sir--

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order.

(Laughter)

Upon consultation, I will ask Sen. Mutula Kilonzo Jnr. to quickly move a procedural Motion. You should move it in two words.

## PROCEDURAL MOTION

### EXTENSION OF SITTING

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I beg to move the following procedural Motion-

THAT, pursuant to Standing Order No. 31, the Senate extends its Sitting today, to debate the Maize Report and the Motion on the Adoption of the 2019 Budget Policy Statement until both are exhausted.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. The matter of extending time was brought to the attention of the Deputy Speaker before 6.00 p.m. Therefore, we are still within the rules.

Where is the seconder? Has anybody seconded?

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, I second.

(*Question proposed*)

(*Question put and agreed to*)

Proceed Senator---

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Olekina?

**Sen. Olekina:** Mr. Deputy Speaker, Sir, you have considered the extension of time and I would like to request that you allow me five more minutes for me to make my point.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is not possible because you had already been stepped down. However, on Motion on the Adoption of the 2019 Budget Policy Statement, you are free to also make additional remarks. You can find ways of linking the two.

For us to exhaust the two items, I want us to reach consensus that every speaker takes five minutes, except the Mover and the Seconder and, of course, the Senate Minority Leader and the Senate Majority Leader, who might each have ten minutes.

Proceed, Sen. Cherargei.

**Sen. Cherargei:** Mr. Deputy Speaker, Sir, I thank Sen. Mutula Kilonzo Jnr. for coming to the rescue of maize farmers and Members of the *ad hoc* Committee. I agree that the genesis of these issues was the Gazette Notice No.3575, which led to the importation of extra 9 million bags that was sanctioned by the committee that sat on 21<sup>st</sup> June, 2017, and approved in the subsequent minutes later. That increased the problems of

the farmers because the opening the window for importation of maize was being done at the time they were harvesting maize in Nandi, Uasin Gishu, Bungoma and other parts of this country. It is sad that the meeting of the Inter-Ministerial Committee on Food Security that was attended by high-ranking Government official decided to ruin our farmers.

That meeting was attended by Cabinet Secretaries and it was chaired by the Head of Public Service, Mr. Joseph K. Kinyua. In as much as the matter is in court and we have names like Lesiyampe and others being mentioned, I urge the DCI and the DPP to investigate the issue. Our maize farmers are now suffering because payments have not been made to date.

Mr. Deputy Speaker, Sir, if you read through the annexures, you will be shocked to see that when the Kenya Bureau of Standards (KEBS) sampled maize that was cleared to enter the country, over 63 per cent of it was found to contain high levels of aflatoxin.

When we were in Mosoriot and Kabiyet in Nandi County, you could see the anger of farmers because of negligence of individuals who sit in Nairobi in air-conditioned offices and do some of these things. That is the same scenario even in Kisii or Uasin Gishu.

These issues must be dealt with firmly. We hope that the DCI and the DPP will take up the matter. The people mentioned here must face full force of the law. There should be justice to maize farmers of this country.

Mr. Deputy Speaker, Sir, if you see me standing here, it is because of maize. I know how maize is grown. We went to school because of maize and maize is our way of life. We have commercialized maize for the benefit of all of us. It is shocking that the issues of maize, which is the staple food for Kenya, are being handled in a wish-wash manner. The issues of maize must be dealt with, once and for all, and the Inter-Ministerial Committee on Food Security must face full force of the law.

You will agree with me that there was no basis for the Government to do away with the issue of subsidized fertiliser. We are aware that they need Kshs10 billion to import around 745 metric tonnes to sustain farmers that need subsidized fertiliser.

The programme giving subsidized fertiliser to our farmers, which was started during the time of former President Mwai Kibaki, must be sustained because our farmers need an opportunity to plant their maize. The Kshs10 billion should be provided to purchase the fertiliser. In any case, we are losing a lot of money.

We have had scandals like the National Youth Service (NYS) I and NYS II. That money could have been given to farmers who are now at the mercy of merchants and cartels of this country when it comes to the issue of fertiliser. The Government must reconsider the subsidized fertiliser programme for our maize, tea, coffee and other farmers.

Finally, Mr. Deputy Speaker, Sir, we must relook at the National Cereals and Produce Board Act of 1994. We must look at the issue of farmer registration. We must also zero-rate pest control, because we need to. The Value Added Tax (VAT) has been levied on pest control, and yet we need those pesticides that control diseases that will destroy maize.

Mr. Deputy Speaker, Sir, there should also be a national soil mapping in this country, so that we can check the acidity level of the soil that we have in this country and, therefore, assist farmers. We should also see county governments creating county emergency funds. County governments and the national Government should ensure that extension officers assist farmers.

Mr. Deputy Speaker, Sir, I agree that going forward, we should amend the laws that are relevant. The National Cereals and Produce Board Act should be relooked at so that we can get justice for maize farmers. We want to tell the DCI and the DPP that we have seen the fight against corruption. The current DCI, DPP and investigation agencies are so busy that they want to trend on *Twitter* than to build water tight cases in our corruption courts. They are so busy ensuring that they capture headlines and press conferences. They should be told that cases are not prosecuted in the headlines of national dailies or press conferences. They must go back, investigate and build water tight cases.

As I conclude, Mr. Deputy Speaker, Sir, the Chief Justice (CJ) will be addressing the State of the Judiciary tomorrow. I urge the Judiciary that they must stand their ground and not be intimidated in any way. They must follow the law in handling the corruption cases. It seems that the CJ is almost caving in, in the exercise of the Executive in terms of intimidation. We are, therefore, calling upon any investigation agencies not to politicize--

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Your time is up, Senator!

**Sen. Cherargei:** Mr. Deputy Speaker, Sir, I am finalizing my contribution. Let us not politicize or weaponize corruption in this country.

I beg to support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you.

Proceed, Sen. (Prof.) Ongeri.

**Sen. (Prof.) Ongeri:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to commend the *ad hoc* Committee led by Sen. (Prof.) Kamar and Sen. Wetangula. They have done a splendid job.

I will be precise and to the point. Sessional Paper No.1 of 1965 clearly spelt out the enemies of this nation; that is ignorance, disease and poverty. The three eminent elements were the ones that formed this Sessional Paper No.1 of 1965. It was then envisaged that agriculture would be the mainstay of our economy. It remains to be so by any civilized country – whether you are talking of France, a very populous country like India or an advanced democracy like the United States of America (USA) – they give subsidies to their farmers. This is done with the sole purpose of ensuring food security of those nations.

During the period under investigation, this nation almost went on its knees because we saw the price of foodstuff skyrocketing to unimaginable levels. A two kilogramme packet of *unga* was selling at Kshs150. Sometimes it was selling at Kshs200 and eventually up to Kshs300. The farmer swung into action and produced maize, which is the staple food. However, instead of being complemented and cushioned, this farmer has been marooned and torn into pieces. They could not supply their produce to the

NCPB because the cartels had already taken advantage of the window of opportunity of importing maize when there was a ceiling.

Mr. Deputy Speaker, Sir, I must sound a caution. I have been a Member of the Cabinet and I know Cabinet works through various sub-committees. When a sub-committee is set up, at the end of the day, whatever decisions and deliberations they arrive at; the person who finally bears the blunt of that action is the Minister in charge of that docket.

I think we should run from generalities to pinpointing where the blame lies. We should not just be saying an *ad hoc* Committee or a committee of this nature, because, at the end of it, those who are culpable are the ones who effect the policy because whatever happens, even when a Cabinet decision is made, it is the person who will effects that policy that will carry out the mandate of Cabinet.

Mr. Deputy Speaker, Sir, I have no intention of condoning anybody. What I am worried about right now is we are looking at farmers who have their maize in the stores – they cannot sell them anywhere – they cannot do anything with the maize. There are people hawking around, buying them for a paltry Kshs1,700.

They do not even know where they will get the fertilizers from because the subsidized fertilizer has disappeared from the stores and the vendors of fertilizers are now selling it – the latest this morning was at Kshs3,250 of Diammonium Phosphate (DAP), *Chapa meli*. That is the latest I got this morning. What is this farmer going to do?

The planting season is within reach. In the next 10 to 15 days, the rains will be with us. The farmer is left at the mercy of this Government and that of the cartels, and yet we are afraid of nailing down those who have brought that economy to the bottom. When it comes to the issue of corruption, whoever was involved in this importation of excessive maize, must take the blame and the burden.

I also think that instead of blaming the DCI and the DPP – I think they are doing their good job - give them the opportunity to be able to nail down these people because they are the saboteurs of our economy. How else are our people going to succeed? How else are our people going to grow the economy if agriculture which is the mainstream of our economy is being run down, day in, day out?

We should be merciless and be able to put a price on those who have run down this sector. There should be no mercy about it. That is why I support this Report in its totality and we must now look at the things that have brought this sector to the bottom. When you look at agriculture, when you are talking about maize, sugar, tea or anything else, it is collapsing. How else is this nation going to survive?

I support this Report.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, very much. Well done, Sen. (Prof.) Ongeri, Senator for Kisii County. Sen. Abshiro Halake.

**Sen. Halake:** Thank you, Mr. Deputy Speaker, Sir. I will not take long. I stand to support this Report. I must also congratulate the team for a good job. All we need for this Report is to take the title to some other sector and it will be true for any other sector in this country. It will be true once we change the title of the report for maize to all other things; be it forestry, natural resources or energy. This clearly indicates that corruption has infiltrated the ecosystem within which we live.

I will not go into details of it because the recommendations and the observations are very clear, pointing to mega corruption in our country.

I want to speak a little bit about power symmetry and corruption. I know it has been said here that we should not politicize or mention big names and that small corruption is equal to big corruption. However, I would like to disagree. The number one driver of corruption is decision making and institutional capture.

On whose hands are these institutions? In whose hands are these decisions or in whose purview are these decisions made? It is very clear that we cannot wish away the fact that mega corruption or corruption of any nature has direct correlation with power and institutional capture by people who are in decision making positions.

As I said it is very sad. I was speaking to someone this afternoon and they told me, "Senator, our country is becoming rubbish and it hurts". I told them: "Yeah, you are right, but we will do something about it". The reason why I have sat here, even if it is midnight, to say something about this is because I was asked this afternoon by somebody: "Do you hold fort for someone?" At that point, I did not think much about it and I said: "No, I do not hold fort for someone. I speak for myself". But I would like that and I say, "yes, I do hold fort for someone." that is, the poor person, the most vulnerable Kenyan who is adversely and disproportionately affected by corruption. That is the person who has been denied access to basic services and who has been affected by violent extremism because of corruption. You can relate corruption to all these things and more.

If anybody is found culpable of corrupt deals for maize, they should be charged with extreme violence and all other vices that corruption comes up with. I know a lot of venom has been directed to the DCI and Office of the DPP, but I think this country must realize that we cannot fight corruption just through criminal consequences. We must fight corruption at the gate. Today, I am appealing to Kenyans, let us provide sanctions ourselves by voting out corrupt individuals. Let us take it into our own hands through the vote and make sure that we do not wait for the DPP and DCI to only use criminal consequences. By the time we rely on criminal consequences, it is, probably, too late because the wealth has transferred hands many times and it is very hard to tell. Perhaps that would be used to also corrupt the investigators.

Kenyans need to hold each other accountable by asking the hard questions, what role can we play as citizens of this country to sanction and use the power of our vote to vote out the people that we have seen are really connected to this. Corruption is systemic. It is an institutional aspect and the capture of our institutions and the people who control them is the costly form of corruption. This is why we are going round in circles because our institutions have been captured by corruption and the corrupt class, even including ourselves as politicians. We observe ourselves speaking for others as though we are owned by somebody them.

I stand today to answer my colleague who asked me if I stand fort, yes, I do but I stand fort for Kenyans, the poor and the vulnerable people who are disproportionately affected by corruption. I am appealing to these people because we have the votes. We are the majority. It is only 0.1 per cent. About 8,300---

(*The red timer went off*)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Senator.

**Sen. Faki:** Asante sana, Bw. Naibu Spika, kwa kunipa fursa hii kuchangia Ripoti ya Kamati kuhusu shida zinazowakumba wakulima wa mahindi.

Kwanza, ninapongeza Kamati iliyoongozwa na Seneta (Prof.) Kamar na Seneta Wetangula kwa kazi nzuri iliyoifanya kuhakikisha kwamba dhambi zote ambazo wakulima wa mahindi walitendea katika eneo la kasikazini ya ponde la ufa na kwingineko nchini Kenya yameaangaliwa na kutolewa suluhisho.

Hii Ripoti ya mahindi inatukumbusha mambo ya sukari katika eneo la pwani. Kiwanda cha Sukari cha Ramisi kilikuwa kiwanda cha kwanza kusaga sukari katika miaka ya 1950. Jambo la kusikitisha ni kwamba sukari ililetwa kwa wingi kama yalivyoletwa mahindi mwaka jana na kiwanda kile hakingeweza kusaga sukari kwa sababu soko ilikuwa imeja sukari kutoka nje. Jambo hili lilifanya kiwanda hicho kufungwa

Jambo la kufurahisha ni kwamba mtambo mwingine umefunguliwa katika eneo la Ramisi na unasaga sukari katika mashamba yale yale ambayo wakulima wa Pwani walikuwanayo. Tumeona pia wakulima wa korosho walilia kama wanavyolioia wakulima wa mahindi. Mpaka sasa, hakujakuwa na suluhisho. Mtambo wao wakorosho pia ulinunuliwa na mtu binafsi. Kwa hivyo, matatizo yalitokea kwa sababu, kwanza, kuna upungufu katika Serikali. Haina mipango yoyote kuhusiana na mazao ambayo yanatolewa katika nchi yetu. Haina mipango yoyote ya soko na jinsi ya kuthibiti mazao yale ili kuhakikisha kwamba mwananchi hapati hasara.

Bw. Naibu Spika, tumeona pia kwamba vikundi ambavyo vinajihuisha katika mambo ya ujisadi vinapata fursa kwa sababu Serikali imelemaa katika kuangazia maswala ya wakulima, yakiwemo kutafuta soko la mazao yao. Bei ya mbegu na mbolea iko juu. Ni vizuri tuhakikishe wakulima wanapata pembejeo mapema ili waweze kuzalisha mazao yao kwa njia ambayo ni rahisi. Kupitia upungufu huo, vikao vya ujisadi vinapata fursa ya kujitajirisha kibinafsi katika nchi hii, wakati wakulima wanaendelea kupata shida.

Bw. Naibu Spika, Ripoti hii inazungumzia mahindi ghushi ambayo yaliuziwa NCPB na watu wakalipwa pesa ilhali hawakupeleka mahindi yoyote. Katika Ripoti hii, kuna mahindi ambayo yaliuzwa ilhali tayari yalikuwa yameharibika na hayakuwa salama kwa matumizi ya binadamu au Wanyama.

Kwa hivyo, tunafaa kuunga mkono Ripoti hii na kuhakikisha kwamba yale ambayo yamependekezwa kufanyika, yanafanyika ili wakulima wasiendelee kuteseka katika nchi yetu.

Bw. Naibu Spika, wakulima wengi si maskini, lakini kutokana na ukosefu wa soko na pembejeo kupeanwa mapema, imewafanya watu wa kuombaomba kila mwaka. Leo wanaomba mbolea, kesho soko na kesho kutwa vitu vingine. Watoto wao wanashindwa kwenda shule na kumaliza Masomo kwa sababu Wazazi hawana pesa. Wangekuwa na pesa wangeweza kusomesha watoto wao bila matatizo.

Bw. Naibu Spika, tumeona pia kwamba ijapokuwa ukulima umegatuliwa, serikali zetu za kaunti zimetenga bajeti ndogo sana kuangazia ukulima. Kwa hivyo, kama Seneti, tunafaa kuhakikisha kwamba zile bajeti zinazotengenezwa katika kaunti zetu

kushugulikia maswala ya ukulima ni za ili wakulima wasiwe watu wa kuombaomba milele na milele katika nchi yetu.

Bw. Naibu Spika, nikimalizia, ningependa kusema kwamba Ripoti hii inaweza kutumika katika sekta zingine zozote ambazo zinahusika na ukulima. Kwa mfano, kuna sekta ya sukari ambayo imelemaa kwa muda mrefu. Vile vile kuna sekta za kahawa, majani chai na zingine ambazo zimeshindwa kujiinua na kujinasua katika lindi la ujisadi ambalo linaendelea kwa sasa.

Asante sana, Bw. Naibu Spika.

**The Deputy Speaker** (Sen. (Prof) Kindiki): Asante sana, Sen. Mwinyi, Seneta wa Kaunti ya Mombasa. Umefanya vyema.

The next one is Sen. Naomi Shiyonga.

**Sen. Shiyonga:** Thank you very much, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this Report on the maize issue. First of all, I would like to commend the *ad hoc* Committee that sat for long hours, looking at the issues of maize in the country, co-chaired by Sen. (Prof.) Kamar and Sen. Wetangula.

Mr. Deputy Speaker, Sir, the agriculture sector has ability to foster and derail national development because it is the bedrock of our economy.

If you look at the Report, there is so much that has been spoken about by my colleagues. So many findings have been given to us and recommendations have been done. However, I would like to point out a few things. First of all, it is evident in this report that a crisis arose as a result of omissions and commission. It was because the stakeholders, State officers and State agencies were there to benefit a few individuals rather than assisting the common mwananchi. The poor farmers in Kenya have really suffered, while the gap between the rich and the poor has continued to widen.

Mr. Deputy Speaker, Sir, if you look at some of the recommendations, there is a rejection of the Government proposal of the Kshs2,300 price per bag of maize. Similarly, there was also a rejection of the proposed price of Kshs3,600 per bag by the Government. Consequently, the farmers have continued to suffer, ail and being poor. The whole issue here is about benefitting individuals. How long are we going to suffer?

My colleague here has said that research and policies will help. However, how many researches have been done in Kenya on issues of corruption? How many policies have been laid on the Table, and have been left to rot on the shelves? None of those policies have been implemented, yet we are talking about having more policies. I beg to disagree.

Mr. Deputy Speaker, Sir, we need to find out where the rain started beating us. The rain started beating us because we accepted what was rejected or what has been rejected by the majority. I commend the Committee very much because if we implement all that my colleagues have said here, we shall win the war on corruption. Otherwise, we have a long way to go.

Mr. Deputy Speaker, Sir, if you look at the Report and if you look at the Maputo Agreement, Kenya has continued to ignore the 10 per cent that should be set aside for agriculture. Kenya has not honoured the international obligation and commitment that was signed in the 2013 Maputo Declaration on Agriculture and Food Security. Where are we headed? Kenya has awarded only 4 per cent instead of 10 per cent of the national

budgetary and resource allocation for the agriculture sector. What are we doing? We need to honour all these declarations.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Lokorio! Your time is up.

Proceed, Sen. Were.

**Sen. Were:** Thank you very much, Mr. Deputy Speaker, Sir. I would also like to thank the leadership of this Committee, of which I was honoured to be a Member.

Mr. Deputy Speaker, Sir, I would like to dwell on only one issue, which is that agriculture is a devolved function. Counties have abdicated this function and left it to the national Government, which is abusing it. Therefore, counties need to take it upon themselves that this maize issue and any other issue within the agricultural sector is their mandate. They need to provide millers in their counties; they need to put up silos as well as driers in at least each constituency in their counties in the maize producing regions in the Western Region of this country. Similarly, where the national Government fails to provide subsidies, they need to come in and do so.

Right now, the national Government has said that they will not provide subsidies for fertilizer. The counties should have taken it upon themselves to adjust their budgets and provide subsidies for fertilizer in their supplementary budgets and also come up with mechanisms of distributing the fertilizers, seeds, as well as disbursement of money.

They need to take it upon themselves because they are closest to the farmers and they know everything about each farmer. They have structures in the villages. Therefore, they need to work on the data for farmers. For example, who are maize farmers in Trans Nzoia? How many hectares does each farmer have so that when it comes to payment by NCPB, they know their farmers? They do not need to need to take the list of farmers to anywhere else. They should be the reference point for farmers in that county so that we do not have the so called cartels. It is because there is a vacuum somewhere that is filled by these cartels. Counties have failed to take it upon themselves to perform this function.

Mr. Deputy Speaker, Sir, when we went to Nandi County, they kept on complaining about something they called “a system”. They claimed that counties have received a ‘system’ from the national level that is supposedly registering farmers. That ‘system’ is complicated and they are using it as a cartel. ‘System’ and cartel are two words used interchangeably in those counties. Therefore, I request counties to take agriculture seriously as their function, perform it and stop creating a vacuum that creates all these problems.

If people at the national level decides for farmers, they will obviously have no idea of what exactly is on the ground. They will, therefore, come up with their own issues. We had people paid in Bungoma County, but they were not farmers. They owned hectares of land that no one in Bungoma can own. Why is that so? It is possible that these farmers could come from another county and declare that they are farmers from Bungoma. This is because Bungoma County does not have a register of its farmers.

Mr. Deputy Speaker, Sir, lastly, the issues that we found when we visited the counties are real issues and they brought a crisis in this country. It affected the whole country because *unga* or maize is a stable food in Kenya. So, the whole country was affected. We need to take this Report seriously and not politicize it. Farmers complained

to us that they had better lives before. They used to know the price of maize before they planted. What has gone wrong?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Summarize.

**Sen. Were:** Mr. Deputy Speaker, Sir, these farmer also have loans to pay from Agricultural Finance Corporation (AFC). If they are not paid by NCPB, it will be a ripple effect and many other institutions will be affected.

Mr. Deputy Speaker, Sir, with those few remarks, I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Were. Last but not least, is Senator for Makueni County, Sen. Mutula Kilonzo Jnr..

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Deputy Speaker, Sir. I rise to support the Report of the Ad Hoc Committee on maize. At the first instance, this report is nothing short of a criminal enterprise.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The Report is a criminal enterprise?

**Sen. Mutula Kilonzo Jnr.:** No, Mr. Deputy Speaker, Sir. It reveals criminal enterprise. The *ad hoc* Committee was being very diplomatic in this report. My concern is that at the first instance, when this crisis was going on, we thought maybe they were those shadowy companies; those we used to call “fat cats” - unknown people who caused this crisis.

What happens to a country where the criminal enterprise is led by Cabinet Secretaries (CSs), where there are official minutes for that criminal enterprise? Who is going to save this country if Government and its CSs who are on oath are the ones who sat in a meeting to agree to the importation of maize and procure, yet some of them have been given the mandate of agriculture? One and a half million bags of maize, Sen. (Prof.) Kamar knows there was no reason to import 4 million bags. There is no record of the exact amount of maize that is in the country; over 10 million bags.

Sen. Wetangula whispered that the criminal enterprise could be worth Kshs18 billion. That is what these people have made, courtesy of CSs. Who is going to save this country? Who is going to arrest CSs? Is the President listening to us? Are we still on the Big Four Agenda? One of them is food security when somebody in November, 2017 says, import 4 million bags of maize, most of which cannot be consumed?

Mr President, we speak to you, could you get rid of the CSs who have caused this problem first for political responsibility before we turn the DCI into something he is not? He cannot only arrest them for criminal responsibility. Where is the political responsibility to the farmers of this country?

Mr. Deputy Speaker, Sir, what is even worse is that, I am told that the farmers who cannot sell their maize will burn it so that the crop that they harvested can now be stored. While the minimum was that they are supposed to break even Kshs5 for Kshs5. They have actually lost Kshs5. That is the money they pay school fees.

We have impoverished people who rely on maize and farmers who are educating their children. We are now asking their children to be arrested because they cannot pay for Higher Education Loans Board (HELB) loans. Who is going to save this country? Observations here are that the NCPB aided people so shamelessly. A saloon car vehicle registration KBB 644W is recorded to have carried 10,000 kilogrammes of maize.

**Sen. Wetangula:** How?

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, another car KCC 433Q and KBX 279W towed trailers carrying 28,000 kilogrammes of maize. What a joke? These people, like any scandal in Kenya, whether it is the National Hospital Insurance Fund (NHIF), National Youth Service (NYS), whether it is Kabura, are heroes. I am surprised Jeff Koinange Live (JKL Live) has not called these maize farmers and these criminals into his show to showcase their prowess in stealing because they are thieves.

Mr. Deputy Speaker, Sir, do you know what is going to happen? Jasmine Revolution was caused by young man who could not get a job in Tunisia when he burned himself to death and caused a revolution there which was the Arab Spring. We are this close to some of these things. The country is reeling in debt. You and I are paying dearly for the national debt, taxes and fuel tax. On top of that, when one plants they cannot make money. Are you telling everybody to steal? Students are committing suicide all over the place. A student was sent to go and buy a barbed wire in Makueni County and he hang himself. People have lost hope.

I ask the question again: Are we just going to be talking? Who is going to save this country? One day, you Senators will not sleep at home. You will find a tree where you can hide because these people will be in our homes. I feel sad for this country, that is happening when we are here. I wish we were not here; we were reading in the newspapers, just like everybody else. Who will implement these decisions? The same Government where these Cabinet Secretaries sit? It is a joke. This Kenya is a joke and this Government is even a worse joke.

I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. Mover, upon consultation with the Chair, you have decided to donate some of your minutes to the Vice Chairperson of the Committee. You will, therefore, share the ten minutes that you had as you had indicated.

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, our collective salutations, as a Committee, go to this House for the overwhelming and positive support for this Report. Each and every Member who has spoken, whether it is Sen. Halake, Sen. Mutula Kilonzo Jnr., Sen. Haji or the Senate Majority Leader, has spoken from their hearts. This is because they feel for the Kenyan farmer.

When an issue like this happened in this country in 1965, upon passage of the Motion, Paul Ngei resigned as Minister for Agriculture. It was the first public scandal in Kenya. Upon passage of the Motion, Bill Martin was arrested and many other people followed. Today, those who are mentioned here are laughing all the way to the bank. They do not care because nothing will happen. A man called Musyoki from Kenya Revenue Authority appeared before this Committee and told the Committee that out of this criminal enterprise, people walked away with Kshs18 billion. Two weeks after appearing before us, he was promptly forced to retire and he is no longer working. Are we serious about fighting corruption in this country?

We know that the genesis of a gazette notice from the common law jurisdiction is a serious matter. A gazette notice can take you to the hangman. If the court of law sentences you to death, the Cabinet Secretary responsible must sign a gazette notice for you to be executed. That is the importance of a gazette notice. When Cabinet Secretaries

sit and draft gazette notices and release it on 13<sup>th</sup> April, saying that; ‘we give you up to 31<sup>st</sup> July’, and on 4<sup>th</sup> July, before you even get to the end of the first week of July, they renew the gazette notice and push it to 30<sup>th</sup> September. Before you even reach to August, they revise it again and say on 27<sup>th</sup> July that they are now moving it to 15<sup>th</sup> October.

I am grateful to this House for ceding to the amendment. An Inter-ministerial Committee sitting sat and said that the ship that is docked in Mombasa with maize that has challenges of documentation be released immediately regardless. I am sure that those challenges must have included the fact that the maize was Genetically Modified Organism (GMO) and unfit for human consumption. That is an Inter-Ministerial Committee chaired by the Head of Public Service. If that is not a crime, I do not know how I would call it. They went further and said that; ‘we direct that 4 million bags of maize be imported from Mexico’. Since when did an Inter-Ministerial Committee become a procurement agency? The least they could say is that we recommend that four million bags of maize be imported subject to procurement procedures.

We have evidence on record that at that time, farmers of Uasin Gishu County had harvested 5 million bags, Trans Nzoia had 5 million bags and Bungoma had 4.6 million bags. How do you ask people to import 4 million bags from Mexico and buy 1.5 million bags from Kenyan farmers? Where are our priorities? We are an agricultural country where 75 per cent of the workforce of this country is in the agricultural sector. How do we prioritise our interest?

I urge President Uhuru Kenyatta that this Report gives him an opportunity---

*(The amber light at the Clerk’s Table was switched on)*

Mr. Deputy Speaker, Sir I request that you give me two more minutes to wind up.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I will give you two minutes.

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, I hope that this Report will give the President an opportunity. We have stood in platforms in public and lauded his statement about the fight against corruption.

Mr. Deputy Speaker, Sir, there is the famous movie of *The Star Chamber* where the good actor called Paul Newman said that there is no other case. This is the case, Mr. President. Let Kenyans see that there are people who have conspired to feed Kenyans on maize that is unfit for human consumption and walked away with billions of taxpayers’ money.

I have no doubt knowing that there are shadowy companies that imported the maize must have shared the money with the committees that make callous statements. Otherwise, why would anybody working for the Republic of Kenya for the 48 million Kenyans make such a foolish decision?

I thank this House immensely for standing together. Not a single Member has spoken against this Report. Like the Senate Minority said, upon passage of this Report, we will encourage the House to allow an extended Motion to give this Committee a life of other four or five months to superintend on the implementation of this Report. The Committee worked quietly and tirelessly and this Report speaks for itself.

We visited a place in Kisii called Nyansiongo. We were shocked to learn that the NCPB brought beans seed labeled “Kenya Seed” and the store was full. Farmers told us that when they bought the seed, the recorded a 100 per cent germination failure. That means that it was not even seed. Then we were told in Nyamira that fertiliser supplied through the cereals board turned out to be quarry dust. What a country! How do we treat our farmers like this?

Finally, Mr. Deputy Speaker, Sir, is the sad case of Bungoma Cereals Board. NCPB must be dissected and bisected and disbanded. That is the only saviour for this country.

I thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you for sparing Wanjiru wa Reuben today.

(*Laughter*)

Let us now listen to Sen. (Prof.) Kamar.

**Sen. (Prof.) Kamar:** Thank you, Mr. Deputy Speaker, Sir. At this juncture, I wish to thank all Senators because almost everybody has participated in this and the support is overwhelming.

I thank the Senate from the day that they joined the Committee in Eldoret because that was the first real highlight of the plight of farmers. It is out of that, that even the Head of State was attracted to respond to the issues and the crisis of maize. I will not mention all the names because of time, but we have had contributions from 26 Members, and I thank everyone of them.

Let me also thank my co-Chairperson, Sen. Wetangula and the Committee Members; Sen. Were, Sen. (Dr.) Mbito, Sen. Cherargei, Sen. Seneta, Sen. (Dr.) Langat, Sen. Okong'o and Sen. (Dr.) Kabaka. I have mentioned them because they worked diligently and gave their time and everything to this Committee. We went to amazing places in this country, where we heard a lot from the farmers. The farmers were clear about what is going on. In fact, we thought that we were going to inform them, but discovered that they were out there to inform us.

I will never forget a farmer in Bungoma County who told us that the Senate was wasting its time going there to discuss maize, as if they did not know that the price of a bag of maize was equal to one *jogoo*. They told us we could be better off sitting in Nairobi and enjoying ourselves. The bitterness that we saw in the farmers of Uasin Gishu County was replicated in Trans Nzoia. We realized that the farmers are getting discouraged and fed up with feeding this nation.

I agree with the Members who have spoken to the President today. I join them in saying that there is no food security that can be assured in this nation unless we protect farmers. Every country protects its farmers. When we talk of subsidies in terms of fertilizers and seed, it is not to the advantage of the farmer, but to give ourselves food. There has been a misconception that farmers are getting advantage because they are being given subsidized fertilizer and seed. That is not true. The day we will know that,

that is not true, is when we will have lost food security in this country, just because of wrong policies and decisions.

Mr. Deputy Speaker, Sir, I agree that a lot has to do with the polices that we have and decisions that are made carelessly, including the ones that were done even outside the gazette notices, and fertilizer was brought in, as was pointed out.

I thank Members for supporting the amendment that was given by Sen. Were, which was a great improvement from what I had proposed; that highlighted the real issues going on in the sector. Food security is in the Big Four Agenda. We will discuss the Big Four Agenda when we go to Kirinyaga for the Devolution Conference next week. We need to start asking ourselves real questions. If we are talking of food security, where are the areas that we must touch?

I also agree that agriculture has been devolved and it is a function that belongs to this House. It is upon us to discuss with governors. I was shocked the other day when I heard governors say that they are not being involved. What are they not involved in? It is already a given duty, and their duties have been outlined in the Fourth Schedule of the Constitution. Therefore, they should not be talking about being involved in health or agriculture. They were arguing about not being involved in health? I asked: Who should be involving who?

Mr. Deputy Speaker, Sir, they should be telling this House that they have not received the same resources that they used to receive in 2012 before devolution, and then we fight a different war. However, they talk of not being involved. Who should involve the Council of Governors (CoG)? They should move out and implement according to what the Constitution has given them. They have their roles cut out, and I hope this House will straighten some of the things when we are in Kirinyaga County for the CoG meeting next week. It is time that we talked candidly. This House has come out with an olive branch to our governors, and we have told them that we are not going to discuss issues of impeachment until we are clear about roles. We want them to take the opportunity that this Senate has given them and their jobs very seriously.

Mr. Deputy Speaker, Sir, I want to wind up by saying that there a number of issues that have been raised which are also in the Report. However, remember that at the beginning, when I was moving, I mentioned that the importation of fertilizer was shrouded in mystery. It is very important that we also take the institutions to account.

When you have different data between two institutions in the Government, what are we saying? Are we saying that the institutions are not communicating; or is there a deliberate distortion of information that is brought before committees? This is something that we need to watch, going forward. If information that you get from Kenya Revenue Authority (KRA) from the entry points is different from the information that is in the mother ministry, then we need to ask ourselves who is giving us the true picture, and who is not giving us the true picture? These are some of the things that led to us saying that it is good that further investigations are done.

Mr. Deputy Speaker, Sir, I want to thank everybody once more. I beg to move and request to defer the putting of the question to another date pursuant to Standing Order 61(3).

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen.( Prof.) Kamar. Although you have jumped the gun a bit, because the Speaker has to determine first whether or not this Motion is a matter concerning counties. Of course, we have ruled on this matter before; and one of the reasons we gave for matters for which Article 123(2) applies, is any matter which touches in any way whatsoever on the exclusive functions of counties, concurrent jurisdiction of counties – those are the shared functions under Article 186(2) – or even residue functions of counties under 186(3). Therefore, agriculture, being devolved and being concurrent, because it is shared. The policies is with the national Government and the substance of agriculture, crops and animal husbandry is with the counties. Therefore, this is a matter concerning counties. I, therefore, direct that the Division be done tomorrow.

It is so, ordered. Thank you very much for the wonderful debate this afternoon.

(Applause)

We will now move to the next Order on the Budget Policy Statement (BPS). Once again, given the deadlines, I would request if we can be patient and exhaust that debate. This is because the Motion we passed at 6.00 p.m. was that we exhaust the two items.

We need to call out the Order first and then we will call the Chairperson.

## MOTION

### ADOPTION OF REPORT ON THE 2019 BUDGET POLICY STATEMENT

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Proceed, Chairperson.

**Sen. Mahamud:** Mr. Deputy Speaker, Sir, I beg to move-

THAT, pursuant to Section 25(7) of the Public Finance Management Act and Standing Order 180(7) of the Senate, this House adopts the Report of the Standing Committee on Finance and Budget on the 2019 Budget Policy Statement, laid on the Table of the Senate on Tuesday, 26<sup>th</sup> February, 2019.

Mr. Deputy Speaker, Sir, pursuant to the Public Finance Management Act (PFMA) 2012, Section 25(2), the National Treasury submitted the 2019 Budget Policy Statement (BPS) and the Medium Term Debt Management Strategy annexed with the Division of Revenue Bill and the County Allocation of Revenue Bill, which was tabled in the House on 14<sup>th</sup> February, 2019.

Pursuant to Standing Order No.184 of the Senate Standing Orders, the BPS was committed to the Standing Committee on Finance and Budget to deliberate upon and make recommendations.

Mr. Deputy Speaker Sir, pursuant to Standing Order No.185 of the Senate Standing Orders, the Committee invited the Cabinet Secretary, national Treasury, Commission on Revenue Allocation, the Council of Governors, the County Assembly Forum and other interested parties like the Institute of Certified Public Accountants and

the International Budget Partnership Kenya to appear before us and give their Memorandum. Many of them appeared in person and those who could not appear submitted their Memoranda to us. We also got the Senate Standing Committees to submit their recommendations to the Committee.

The 2019 Budget Policy Statement mainly focuses on the Big Four Agenda which is aimed at creating jobs and transforming lives. It is, however, important to note that out of the Big Four Agenda, three of them are fully devolved. The BPS is silent on the role of counties in accomplishing the Big Four Agenda.

The role of the Senate in the review and approval of Government economic and spending policies contained in the BPS, are clearly buttressed in the functions of the Senate as clearly set out in Article 96 of the Constitution. The BPS sets out the annual revenue amounts to be collected by the national Government. These are invariably the resources that are divided between the two levels of Government. The Senate's role, therefore, spurns protecting the financing of the counties, ensuring unified economic policies and prosperity in counties for the benefit of all Kenyans and to improve national and intra-county business climate. Thus, there is an overwhelming case for the Senate to pronounce itself on all aspects of the subject which are raised in the BPS not only the financing of the counties.

The BPS targets to raise a total revenue collection including Appropriation-In-Aid of Kshs2.81 trillion for the Financial Year (FY) 2019/2020 compared to Kshs1.832 trillion for FY 2018/2019. All the revenue is projected to be Kshs1.877 trillion for the Financial Year 2019/2020 which is higher than the Kshs1.652 trillion estimated for 2018/2019.

According to the BPS 2019, the projected revenue performance will be based on ongoing reforms in tax policy and revenue administration which are similar to those identified in the 2018/2019 BPS. However, the BPS 2019 does not report on the progress achieved and how it is expected to raise specifically through these reforms.

The economy of this country has grown - according to reports - in a very stable manner for the period 2013 to 2017 at a remarkable 5 per cent, compared to 4.7 per cent in 2008 to 2012 and 4.6 per cent in 2002 to 2007.

The economic growth for 2018 is projected at 6 percent; an increase from 4.9 percent in 2017. While this is a very impressive growth, the emerging concern is that the key drivers of economic growth are not anchored on key policy changes but are based on factors that are beyond the control of policy makers, such as favorable weather conditions, security and calm political environment.

Mr. Deputy Speaker, Sir, agriculture, which earlier on in the Motion was being discussed, is the main anchor of this economy. However, past Government interventions which are supposed to enhance agricultural productivity such as large-scale irrigation, distribution of certified seeds and fertilizer have not enhanced the production as expected, mainly due to poor implementation of these proposals.

The manufacturing sector is suffering because of lack skilled labour in addition to several regulatory challenges. Key areas of focus should be the intervention on the expansion of promotion of small-scale industries.

Mr. Deputy Speaker, Sir, inflation in this country has been reported to be averaging in 6.9 per cent in the last three years.

Mr. Deputy Speaker, Sir, on the Fiscal Policy, BPS says there will be fiscal consolidation as one of the key objectives for 2019/2020 budget policy. It entails the Government tightening its belt through expenditure cuts as tax increments are not favourable option for the economy. While this is commendable, the challenge will be in maintaining a contractually fiscal path given the prevailing expenditure pressures that mostly increase the current expenditures and reduce development expenditures.

As earlier said, the 2019/2020 BPS outlines the Big Four plans as the Government's key agenda to be implemented in the medium term. It is expected that counties have substantial role to play in actualizing the agenda. However, it is not clear from the proposed allocation and policies on what are the roles of the counties in implementing the agenda.

Mr. Deputy Speaker, Sir, on county revenues, over the years, counties have received equitable share of Kshs1,572,000,000 and additional Kshs194 billion in form of conditional grants from the national Government as share of revenue for specific programmes. You will notice from the BPS that the annual growth of the rate of equitable share allocated to the counties have been reducing, from 19.3 per cent in 2014/2015 Financial Year, to slightly below 4 per cent in the 2018/2019 Financial Year. The 2019/2020 BPS proposes a reduction in county equitable share from Kshs314 billion to Kshs310 billion in the coming year; a reduction instead of increment.

Mr. Deputy Speaker, Sir, the main source of financing to counties is equitable share accounting for over 80 per cent. The conditional grants from the national Government as well as the proceeds from loans and grants from Government partners. Counties own share revenue collection has performed dismally. The Own Source Revenue (OSR) is mainly raised from revenue streams such as business permits and imposition of property rates, which is in line with Article 209 of the Constitution

Mr. Deputy Speaker, Sir, on county expenditures, the total approved county budgets for the Financial Year 2017/2018 amounted to Kshs410 billion; made up of Kshs271 billion (66 per cent) for recurrent expenditure and Kshs139.81 billion (34 per cent) for development expenditure. In aggregate terms, this level of approval complied with the fiscal rules, stipulating that 30 per cent of the total county allocation is towards development. However, the actual county expenditures performance translated to only 74 per cent of the approved budget. That is lack of absorption. The expenditure level is also lower compared to the previous financial years, 2016/2017 and 2015/2016. Only 74 per cent of the budget has been utilized.

Mr. Deputy Speaker, Sir, in view of the actual expenditures, compliance to fiscal rules deteriorated during the budget execution, perhaps due to reallocation and virement of allocation between programmes towards recurrent expenditure.

According to the Controller of Budget, county governments' total pending bills as of 30<sup>th</sup> June, 2018 stood at Kshs108.41 billion. This translates to an average of 36 per cent of the 2017/2018 Financial Year equitable share of the counties. This is as compared to the cumulative pending bill of Kshs35.84 billion as at the end of the Financial Year

2016/2017, thus an increase by approximately 202 per cent between the financial years 2016/2017 and 2017/2018.

Mr. Deputy Speaker, Sir, on the vertical allocation between the national Government and county governments, for the Financial Year 2019/2020, the Budget Policy Statement (BPS) proposes a reduction in the county equitable share to Kshs310 billion from the Kshs314 billion which we have in this year provided for in The Division of Revenue Act, 2018. In addition, the total conditional grant is proposed to be at Kshs61.6 billion, of which Kshs38.7 billion is from grants and loans from development partners.

Mr. Deputy Speaker, Sir, on the Medium Term Debt Management Strategy for the Financial Year 2019/2020, it is proposed that a borrowing framework of 38 per cent from external borrowing and 62 per cent from domestic borrowing to finance the national budget deficit. The external debt will be financed through 26 per cent from concessional financing, eight per cent from semi-concessional financing and four per cent from commercial financing.

Mr. Deputy Speaker, Sir, there is the issue of the rising debt level. As at the end of December, 2018 the level of debt, in nominal terms, reached Kshs5.28 trillion, making up 52.7 per cent of the Gross Domestic Product (GDP), having risen by 13 per cent or Kshs698.4 billion, from Kshs4.57 trillion in December 2017. The debt growth is set to continue and reach Kshs5.7 trillion and Kshs6.3 trillion as at the end of the 2018/2019 and 2019/2020 financial years respectively.

The rising debt levels lead to increased debt refinancing requirements and interest payments that shrink the fiscal space in the forward years. We saw the Cabinet Secretary in charge of the National Treasury trying to syndicate funding to finance the debt.

Mr. Deputy Speaker, Sir, the domestic debt comprising of Treasury bills and bonds is worth Kshs.899.40 billion and Kshs1.55 trillion respectively. Treasury is borrowing from the local market and this is, in fact, crowding out the private sector. This is a serious concern because the available finance is being taken up by the National Treasury. In fact, this year, they have said that they will borrow 62 per cent locally. Sometimes, financing from outside the country can be cheaper.

The private sector public Debt Sustainability Analysis (DSA) framework that evaluates a country's capacity to finance policy agenda indicates that the level of debt is still considered sustainable at 60.6 per cent of the Gross Domestic Product (GDP) in the net present value terms against an International Monetary Fund (IMF) threshold of 74 per cent. However, the ratio is beyond the 50 per cent threshold provided for in the Public Finance Management Act Regulations.

Mr. Deputy Speaker, Sir, following the analysis of the Budget Policy Statement (BPS), the Committee observed the following-

The 2018/2019 BPS contains similar priorities but the 2019 BPS does not provide information on the progress of achievement of the priorities of 2018. The policy document lacks a clear implementation matrix especially with regard to the implementation of the Big Four Agenda.

The ordinary revenue projections of Kshs1.8 trillion for the Financial Year 2019/2020 are anchored on the same reforms in tax policy and revenue administration as

had been set in the BPS 2018/2019. However, the approved ordinary revenue targets for the Financial Year 2018/2019 were reduced from Kshs1.74 trillion to Kshs1.65 trillion which led to spending cuts in the supplementary budget. There is concern on over projection in revenues that undermine the set targets rendering the targets unachievable. There is need to set realistic projections to avoid creating fiscal instability and delays in programme implementation.

The National Treasury proposed reduction in equitable share of revenue for the Financial Year 2018/2019 to Kshs305 billion instead of Kshs314 billion will impact negatively on the amount of county fiscal transfers. Counties have already budgeted for that, we are only two months to the end of the financial year. We want to move from the Kshs314 billion approved in this financial year to Kshs305 billion by Kshs9 billion which will affect counties negatively. This contravenes Section 5(1) of the Division of Revenue Act 2018. In addition, the proposal of Kshs310 billion equitable share to counties for the Financial Year 2019/2020 is an unjustified reduction as compared to the Kshs314 billion requested in the Financial Year 2018/2019.

According to the National Treasury when they appeared before us, the revised base is because of revenue shortfalls in the current Financial Year 2018/2019. However, it does not indicate the basis for arriving at the Kshs310 billion.

Mr. Deputy Speaker, Sir, when the Commission on Revenue Allocation (CRA) appeared before us, in their recommendations to Parliament, they set out the county equitable share to be at Kshs335.7 billion. The recommendation of CRA is based on adjusting the current base for inflation to compensate for inflation using an inflation of three years average of 6.9 per cent. This means that on a minimum, the proposed for amount is to finance the current operational and development expenditure levels and means across the counties.

There is a non explained increase in guaranteed debt at the end of December, 2018 that totals to Kshs147.7 billion from the current Kshs133 billion in December, 2017. There is no evidence that the increase in debt guarantees were subjected to parliamentary approval pursuant to Section 58 of the Public Finance Management Act, for instance, the loans which were recently given to Kenya Airways (KQ). There was no evidence that the guarantees were subjected to parliamentary approval.

Although the year 2019-2020 BPS gives greater focus to food security and nutrition, there is lack of clarity in the policy interventions relating to the excess importation of maize and sugar; procurement of fertilizer, irrigation, privatization of cash crops and the agricultural research fund to lead to the achievement of the Big Four Agenda. This is what was being discussed in the other Motion.

Mr. Deputy Speaker, Sir, there is also insufficient information on the BPS on the manner in which the Universal Health Care coverage will be achieved, including agreements between the county and the national Governments. This is with regard to the proposed 6,200 public healthcare facilities earmarked for equipping by the national Government. My Committee wondered whether this is just another type of another messed project which is coming up. There is something called “national interest,” whose criteria is not fully determined. If you look at how the vertical share is proposed by the National Treasury, they net out what they call “national interest,” including debt, police

security and many things, which are all actually national Government functions. The remaining money is then divided between the counties and the national Government.

Mr. Deputy Speaker, Sir, as far as we are concerned, those are functions of the national Government and in any case, national interest is not the privilege of the national Government. The Council of Governors (CoG) went to court over this national interest and I think they were told that they must go through an alternative dispute resolution process. We think this matter must be dealt with so that funding to the counties can improve after defining what “national interest” is, because it takes a lot of money.

Mr. Deputy Speaker, Sir, there is an increase to the allocation for the Ministry of Health. Whereas health is almost 100 per cent devolved, the health budget for the Financial Year 2018/2019 was Kshs90 billion. However, in the coming year, it is proposed to be Kshs93 billion. One wonders what they are supposed to do with this money. Assuming that counties allocate 10 per cent of their money to health out of Kshs314 billion, that will be Kshs30 billion. However, health alone is only Kshs90 billion. Therefore, there is need to query that. Over the next medium term the Ministry of Health is expected to get an allocation of--- In fact, if we go ahead until 2021, they will get an allocation of Kshs288 billion as a Ministry. There is concern over the huge budget allocation to the Ministry of Health, whereas health is a fully devolved function.

Mr. Deputy Speaker, Sir, the Managed Equipment Services (MES) Project has been allocated a conditional grant of Kshs6.2 billion in the year 2019/2020, compared to Kshs9.4 billion in 2018/2019. The decrease is allegedly attributed to advance implementation status of the equipment in most of the identified health facilities as well as settlement of the previous financial year’s arrears. However, the allocations to this project have been fluctuating. This is inconsistent with the original agreements and is a source of concern, making it difficult to ascertain the actual cost of the project. The health sector depends a lot on donor funding. It is high time Kenya looked for its own resources because depending on donor funding for a key pillar can be a bit tricky.

Mr. Deputy Speaker, Sir, on the statement about the debts, the Public Finance Management (PFM) regulations place a maximum threshold of public debt as a share of the Gross Domestic Product (GDP) in net present value terms at 50 per cent. This has been breached by 9.9 per cent for the year 2019, and is set to remain above the threshold at the medium term. Other indicators that the country has breached the threshold in 2018 include the ratio of present value of debt service to revenue at 47 per cent instead of 43 per cent.

Mr. Deputy Speaker, Sir, the Committee makes the following policy recommendations-

The National Treasury should redesign the tax regime to reduce the number of exemptions under the Income Tax and the Value Added Tax Act. Further, a tax gap analysis should be carried out to identify tax gaps at the national Government level.

In pursuit of the fiscal consolidation, the fiscal deficit, including grants, of 5.1 per cent of Gross Domestic Product (GDP), should be binding and any increase in spending should be matched with additional revenue collection.

The National Treasury should come up with the concrete measures to reduce the current debt to GDP ratio in net present value terms to the 50 per cent threshold provided in the Public Finance Management (PFM) regulations.

The Anti-counterfeit Agency (ACA) and the Kenya Bureau of Standards (KBS) need to enhance and sustain the fight against illicit trade and contrabands as this leads to unfair competition that may lead to collapse of the established genuine business enterprises including leakages in taxes. The National Treasury should critically examine the impact of counterfeits on the economy.

This Report was tabled on the 26<sup>th</sup> February, 2019 and we are supposed to give our report in two weeks' time. We recommend that Parliament should expedite the amendments of Section 25(7) of the PFM Act 2012 to extend the timelines for the consideration of the Budget Policy Statement by Parliament from 14 days to 28 days. This proposal should extend to the timelines for the consideration of the County Fiscal Strategy Paper by county assemblies.

The Ministry of Agriculture must prioritise and address issues relating to the supply of affordable fertiliser, excess importation of sugar and maize and governance issues that have adversely affected production of staple foods. In addition, the Agriculture Research Fund should receive additional funding because it plays a key role in supporting key areas of production in the agricultural sector.

The two levels of Government should operationalise the framework through which the Big Four Agenda will be achieved as some of the priority areas under the agenda are functions of county governments. Adequate funds should be provided for these areas. In fact, if the national Government wants to implement the Big Four Agenda, they must be prepared to give conditional funding to counties for the programmes to be undertaken. The National Treasury should make realistic projections of revenue so as to reduce supplementary budgets which distort budget implementation.

The Senate in consultation with the Council of Governors (CoG) and the national Government should develop a framework for determining national referral hospitals and the Level 5 hospitals. Currently, it is very arbitrary the way the Level 5 hospitals are identified. We saw in the BPS that the national Government wants to build new referral hospitals but there must be some coordination between the Senate, the CoG and the national Government. We wanted to bring in the Intergovernmental Relations Technical Committee (IRTC) but we are told that it is moribund and it is almost not functioning.

The Senate in consultation with the CoG and the national Government should undertake to determine the meaning and scope of the term 'national interest' to achieve a more effective equitable sharing of revenue between the two levels of government.

The office of the Auditor-General, and this is where the discussion today about the medical equipment comes in, should undertake a performance audit on all health initiatives, including the Managed Equipment Service (MES) project and a report on the same be submitted to the Senate. From the discussion that we had with all the stakeholders, there is a lot of confusion in that programme and we need to get to the root of it.

The Universal Healthcare Coverage (UHC) should be funded through conditional allocations to counties. It cannot be managed from the headquarters here. The financing

of the 6,200 public health facilities, the way we have in MES should be discouraged. We should actually get that money to the counties.

The Committee makes the following financial recommendations-

(a) That the allocation of revenue to county governments for the FY 2019/2020 that is proposed in the 2019 BPS and the draft Division of Revenue Bill, 2019 be as follows—

Total county allocation be Kshs391.07 billion of which County Equitable Share will be Kshs335.67 billion. First, that the equitable share for the FY 2018/2019 of Kshs314 is adjusted by a three-year average inflation of 6.9 per cent, which is 21.67 billion. This is similar to the proposal by the Commission on Revenue Allocation (CRA) and the Council of Governors (CoG).

Secondly, that the County Conditional Grants be Kshs55.40 billion which comprises the following: Kshs0.90 billion for compensation for user fees foregone; Kshs4.326 billion for Level 5 Hospitals; Kshs2.00 billion for rehabilitation of youth polytechnics; Kshs0.485 billion for supplement for construction of county headquarters; Kshs 8.984 billion as allocation for the Road Maintenance Fuel Levy Fund (RMFLF), which is 15 per cent and Kshs38.70 billion from development partners as loans and grants.

At least money has been disbursed to five counties Tharaka-Nithi being one of them for establishment of the county headquarters.

(b) That the fiscal deficit (on commitment basis including grants) be binding at 5.1 per cent of the GDP in FY 2019/20.

(c) That the budget ceiling for the Executive for FY 2019/20 be reduced by Kshs19.47 billion. Since we hope to increase another budget from Kshs310 billion to Kshs335.67 billion, the difference must come from the Executive and not the national Government because that includes Parliament and the Judiciary. This amount is equivalent to an additional of 25.67 billion to the County Equitable Share for the FY 2019/20 from Kshs310 billion as proposed in the 2019 BPS to Kshs335.67 billion, and a reduction of Kshs6.2 billion for conditional allocation for leasing medical equipment. The Kshs6.2 billion must be reduced and that will adjust the budget accordingly.

Mr. Deputy Speaker, Sir, with those many remarks, I beg to move and ask Sen. Wetangula to second. I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Before Sen. Wetangula seconds, I thank you the Mover and also Senators for the patience. Given the importance of this matter, I will request that we continue exercising that patience until we dispose of the matter, considering the timelines and also the Chair who has been patient since 3.30 p.m. or thereabout, all of us should have the patience.

Let us now have Sen. Wetangula.

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, I have always known you to be a person of admirable patience. As I second this Motion, it is a terrible indictment to this Senate that this is a Motion that is the core of our being here. Therefore, every Senator should be concerned about looking at the budget to see what is going to their county and how it will impact on their people. Look at the House; we are indicting ourselves negatively.

Let me start by thanking the Chairperson of the Committee. I must confess that when we started with the distinguished Senator for Mandera County, I had some dim view of his ability to chair our Committee. However, he has risen to a very admirable level.

(*Laughter*)

He has done a fantastic job. We sat in Naivasha, listened to presentations and I could see he has really come of age in chairing this Committee and is doing a fantastic job.

(*Applause*)

Mr. Deputy Speaker, Sir, this Budget Policy Statement (BPS) is the foundation on which the budget will grow to be presented to the House. As a House that protects counties, we must start off by reminding ourselves of Article 6(2) of the Constitution that there are two levels of Government in Kenya, distinct but inter-dependent and must work on the basis of cooperation and consultation. That is key. It is a fundamental of devolution in Kenya, so that even when the national Government wants to do something that affects counties, they must always go back to that Article – distinct and inter-dependent; cooperation and consultation.

Mr. Deputy Speaker, Sir, interestingly, things are happening that are completely impervious to the idea of devolution. If you look at the Big Four Agenda; indeed, those items on the Big Four Agenda, well managed, can be very good for the country. However, we must respect the Constitution. The Council of Governors (CoG) appeared before us and told us that they have never sat down even once with the national Government to discuss the Big Four Agenda. When you look at the Big Four Agenda, whether you are talking about food security, that is completely devolved. Universal healthcare is also devolved.

When the national Government decides in the BPS that it will construct 6,200 health centres or facilities in counties, where do we leave devolution? There is no evidence that there is going to be consultation or that the counties will play a role. So, this House must constantly remind the two levels of Government of their constitutional responsibility to consult and cooperate.

Mr. Deputy Speaker, Sir, equally important, when you go through the BPS, the Ministry of Health, which has been synonymous with scandals in this House for as long as you can remember, is loaded with an inordinate sum of money. It is only responsible for policy and for the referral hospitals which are only five as we know them. Kenyatta National Hospital (KNH) and the Moi Teaching and Referral Hospital (MTRH) are parastatals and they each get direct budgeting. Port Reitz Hospital, a small thing in Mombasa County, is for communicable diseases. There is the Mathari Hospital which we do not know if it still functions and finally the National Spinal Injury Referral Hospital on Lenana Road that at any one time does not have more than 10 patients.

Those are the only hospitals under the care and management of the Ministry. However, we find that the Ministry of Health is being given a dose of Kshs93 billion per

annum. If you go to the Abuja Declaration that required that governments in Africa must spend a minimum of 15 per cent of their national budgets and the Maputo Declaration that requires 10 per cent on agriculture, even if you give the counties what we are giving them of the Kshs310 billion, if you take out 15 percent to put on health, there is no county that will put more than Kshs1 billion or Kshs2 billion on the average on health; and yet we are leaving Kshs93 billion in the Ministry of Health, which now is creating a new happy valley in Kenya, where people just enjoy the money in the way they want.

That is why I salute Sen. (Eng.) Mahamud, the Senator for Mandera County. This Committee took a firm position that the Kshs6.2 billion inexplicable figures on the Medical Equipment Services Scheme, (MESS) must exit the budget. How do you explain the erratic manner in which this figure has been rising from Kshs3 billion, last year, Kshs9.6 billion and now, it is coming down to Kshs6.2 billion?

The explanation for the drop is because of the position that this House took. We believe, and rightly so, that this figure should only find its way to the budget after thorough investigations to find out how these contracts were negotiated, how they were executed, how they have been funded and the beneficiaries of this. You saw the scandals of supplying hand gloves, hand towels, trays, plastic needles and disposable items as leased. How do you lease something disposable? It is against even common sense.

Mr. Deputy Speaker, Sir, we will urge this House that when the actual Budget statement gets here, that figure should not be in the budget. Let us precipitate a crisis that will bring people to their senses to answer questions because every time, we have even invited the Ministry they have come here and engaged in very condescending attitude towards the Senate, making it appear as if the Senate does not know what it is doing or saying when public resources are being squandered.

Equally important, Mr. Deputy Speaker, Sir, is the issue of agriculture. Agriculture is again close to 95 to 96 percent devolved. We have just finished the debate on maize. Like Sen. Halake said; the Report on maize can pass for the report on any other agriculture sector; whether it is sugar, rice, coffee or tea. The programmes are in a serious problem and yet the national Government is declaring to all and sundry, that they are committed to food security. That is all that they can do. Declaration!

There is no overt act to demonstrate that there is a commitment to food security. How do you talk about food security when you are financing a farmer in Mexico and frustrating a farmer in Nandi, Uasin Gishu or Makueni? Food security is not about a supermarket economy. It is about enabling Kenyans to have that grain in their home that even in the absence of earning – and there are families in this country that do not earn Kshs1,000 in a year. They are many in the areas that we represent. However, if they have got food in their homes, which they have grown and stored, they have security.

A Maasai family would drain milk from their cows and make *ugali* from the maize that they are keeping, eat and sleep. That is food security. However, now when you cannot enable the farmer even grow the food, what food security are we talking about? I just hope that the President in these very good ideas knows that there are people sitting in public offices that are busy engaging a reverse gear on virtually everything that he wants to do.

If he does not know, then we are in a very sorry state, because everybody is crying. Every day you open a television, sugar farmers are looking hungry, maize farmers are even hungrier, rice farmers are shouting, tea farmers are complaining and everybody is hungry. As we do that; we are just busy borrowing. Only two weeks ago, the Government syndicated US\$1 billion loan to pay debt. That is what you would call digging a hole to fill a hole. At the end of the day, you have a hole. How do you borrow from John to pay Tom and think that you are free of debt? It does not work. This is the problem we have. The Ministry of Finance appeared before us in Naivasha and we interrogated them for two hours. They agreed that our debt level is now not sustainable. Moody, one of the most prestigious institutions, has raised a red flag on Kenyan debt. Likewise, the World Bank and the International Monetary Fund (IMF) have raised a red flag on Kenyan debt.

(*Sen. Wetangula spoke off record*)

The people who are still excited about lending money to Kenya are the Chinese. However, they are lending money to Kenya and causing us to mortgage our country. In all the stories about the corruption that we are seeing, if it is not a European involved, it is a Chinese. This is where our country is. As we look at this Budget Policy Statement (BPS), we must ask ourselves serious questions. Where are we headed to?

The Council of Governors (CoG) appeared before us and we also put them through very hard questions. Why is there so much corruption in the counties? We even gave the example of the Samburu saga. Samburu is a very small county, getting an average of Kshs4 billion a year. How do you explain the governor building mansions worth Kshs2 billion in Karen, Nairobi? In fact, if you know Karen, there is a restaurant on Lang'ata road called Tiwi, after the Total petrol station. If you look across the late John Keen's land, you will see huge monstrous mansions. That is a governor's residence for his two wives and an extra structure for his meetings, yet this is a person who did not even have a one bedroom apartment before he became governor.

Mr. Deputy Speaker, Sir, where is this country headed? He is busy saying that he is ready to answer all the questions. Which questions are these? He should be a guest of the state in Kamiti. This is true of all of them without exception. Even the good ones, as soon as they get into office, they transmorphosise themselves into thieves. As we fight to take money to the counties, we told the CoG that we want to serious positive development of even peer review among themselves. Why is everybody talking so good of Gov. (Prof.) Kibwana and nobody is saying anything good about someone else? Why can we not sit down and look at these things? Why is now being a county chief executive synonymous with theft?

I know a governor who has built a palace for his first wife, a palace for his second wife, and he is now constructing another one for his third wife. This is a man who did not have a lot of money before. I join those who spoke earlier like, the Senator for Kericho in saying that we want to see the Director of Public Prosecution (DPP) and the Director of Criminal Investigations (DCI) stop the shenanigans of playing to the gallery and the media. Forewarned is forearmed. You cannot investigate cases through the media and

*Twitter.* We want to see people prosecuted and convicted. If you issue extravagant statements about what we are doing today and a month down the line take somebody to court and bring evidence that does not tally, a good lawyer like Sen. Mutula Kilonzo Jnr., will just ask you: “Were you lying then or you are lying now?” That will be the end of the case.

We urge these people that whatever they are doing, they are not short of precedent.

People did not like a man called Bernard Chunga in this country. However, you know that when we were working together, you disliked him because he acted with absolute malice in everything he did; but he did his job so well that you could never slight him on professionalism. When he took his case to court – and we used to defend cases – when Chunga is prosecuting, you came with your entire encyclopedia of law and your Constitution.

Chunga was not even a graduate, but he did the job. That is why we said here that we do not want to see the Chief Justice parading on television clapping; we do not want to see the Director of Public Prosecution (DPP) on *Twitter* every morning; we do not want to see the Director of Criminal Investigations (DCI) making conclusions on cases he is investigating, saying “I am shocked to see this.” You are not appointed to be shocked, but to do your job! Leave the shock to the public. We must be accountable.

Mr. Deputy Speaker, Sir, I must conclude my contribution so that I give room to my colleagues to speak; but I want to urge this House to make a difference. Let the County Public Accounts and Investments Committee (CPAIC) do its job well. Even if the institutions that are supposed to capture criminals and prosecute them do not do their work, let us do our work. Posterity will judge us differently, and since there are no time limits or a time bar in criminal responsibility, even those who may not be prosecuted today because they are on the right side of politics will be prosecuted in the future. You will remember the case of Eichmann, who was captured by the Israelis in the Argentina 50 years after the holocaust, and who is now serving a life sentence at the age of 89. He is enjoying the facilities of the State or suffering under the weight of the State.

Mr. Deputy Speaker, Sir, we must make corruption painful. When you go to Korea, a former president had to drive up to a cliff, leap into the sea and die because they were about to catch up with him. That young Korean girl, the daughter of Park Chun Hee – who was here, looking very good and pretending to be like a gift to humanity - is in jail for 24 years for corruption.

We must destroy the sanctuaries of corruption in this country. The fact that this country is still standing means that this country is rich; and is amazing, as Sen. Mutula Kilonzo Jnr. says. This is because people come walking with their hands in the pocket and walk away with tonnes of money. How do we have a country like that where people have stopped worshiping God and worship money? If you do not have money, you are a nobody!

As I conclude, I want to repeat that I once saw a Standard Eight pupil on television, and he was asked: “What do you want to be in life?” He replied: “I want to be like Kamlesh Patni.” That was a Standard Eight pupil! That tells a big story, and we must reform this country. I want to salute my Chairperson for a job well done; keep it up. I now understand very clearly why you were my good officer as an Ambassador.

Thank you, Mr. Deputy Speaker, Sir. I beg to second.

**The Deputy Speaker** (Sen. (Prof) Kindiki): Very well. I hope you are not saying that you appointed him an Ambassador without looking at his Curriculum Vitae (CV).

(*Laughter*)

Thank you very much, Sen. Wetangula.

Before I propose the Question, as you can remember, we had a made a decision earlier on that every other speaker will have five minutes after we propose the Question. You are free, of course, to vary that decision and the cooperation of the Chair is assured.

Sen. Wetangula said co-operation and collaboration. I feared that he might add connivance.

(*Laughter*)

Hon. Senators, I will now propose the question.

(*Question proposed*)

Before I call the next speaker, let us agree on whether to stick with the five minutes of talking time or make it ten minutes.

**Hon. Senators:** Ten minutes!

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Is that the mood of the House? As many as of that opinion say Aye?

**Hon. Senators:** Aye.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The Ayes have it.

The next speaker will be Sen. Halake.

**Sen. Halake:** Mr. Deputy Speaker, Sir, thank you. I am lucky to be the first to contribute this time. I stand to support this Motion. However, today we have discussed quite a bit about corruption. In my view, corruption starts at this stage; budget making.

The budget making process has four stages; formulation and adoption, which is why we are here very late in the night. There is also the implementation and finally, control. Formulation happens with the line Ministries and the National Treasury before coming to us is where it all begins. In my view, that is the place that we need to be very careful not to be part of allocating resources to corruption. We abet and predetermine corruption outcomes then we later on make noise in this House as to how certain corrupt practices happened, when, in fact, people are implementing approved budgets that we ourselves oversaw and adopted.

Mr. Deputy Speaker, Sir, the actual money is, of course, used at the execution and control bit; what is also referred to as *kutenda* phase of the budget. However, most corrupt practices sometimes happen at the stage of formulation and adoption. I know that this House has the opportunity to change some of the propositions. As I was reading this BPS, I wondered if our committees had actually proposed any changes to the budget that

was presented to us by the Commission on Revenue Allocation (CRA) and the national Treasury.

From what I have heard the Chairperson saying, it looks like we went with the recommendations of the CRA and the Council of Governors (CoG) which is all good. However, as this House and as parliamentarians, we should make sure that we exercise our oversight role. I was looking for our oversight role in this process of formulation or at least at this stage of adoption.

Mr. Deputy Speaker, Sir, in the past, the one thing that I have noticed in the budgeting process is the little time that is given. Perhaps the Committee had more time than what we did as legislators. Let me speak for myself; I feel like this process is so rushed that not enough time is given for us to scrutinize the budget formulation process and for us to play our role of oversight at the adoption stage. I hope that the Committee had more time than the rest of us because there are certain emerging issues that are really critical and that we must make sure we look out for as this budget is implemented.

There are a lot of issues, but I know that this budget is geared to the Big Four Agenda of manufacturing, universal health care, food security and affordable housing.

Mr. Deputy Speaker, Sir, what is worrying me is the fact that we have become a net importer of everything. At which point will we spur production and manufacturing in this budget or at the implementation stage when we are importing everything? We have talked about importation of maize which killed our local production. What has been proposed as a way of making sure that manufacturing is supported in exactly what was proposed in the previous five or six BPS. So, what is different now and why would our manufacturing sector thrive based on this budget? I do not see anything different. Therefore, I hope that at the execution or control stage, this House will look at what is different? I do not see any policy or direction that will bring a consequential change to unleash the manufacturing capacity of this country.

For instance, as net importers, it is a way of abetting corruption. When a person imports, it is easier for them to get their cut and move on as opposed to the painful process of making sure that there is local production of everything. I had a Motion in this House where the local production of sanitary towels is taxed. How is such a basic need for a woman, who does not choose to bleed, taxed? Therefore, we have killed the cotton industry and the entire value chain of that small but very important manufacturing area and imports are preferred.

I have issues on how we will spur growth in terms of manufacturing and other service sectors. This is because I do not see robust or tangible policy direction in terms of taxation to support local production or replace the skewed importation over local production.

Mr. Deputy Speaker, Sir, almost 80 per cent of our projects have collapsed. I know we call them delays but frankly, I have never seen any that has been resuscitated afterwards. In transportation infrastructure, we have ghost roads and airports. A case in point is the Isiolo International Airport that has 1.4 kilometer of runway. We spent Kshs2.7 billion but nobody flies there. When I go home, I have to fly to a small air strip in Lewa which is apparently safer but it is not tarmacked. We then give huge budgetary allocation to development of infrastructure yet 78.7 per cent have all stalled or collapsed,

what are we doing? Is our budgeting process part of the problem of grand corruption? We literally allocate to the corruption downstream at the *kutenda* stage of it.

I hope that this House will look out for these things. It will be sad if the budgeting process becomes part of the corruption facilitation process. We need to look at this and make sure that as people who oversight, we are not part of the problem.

Mr. Deputy Speaker, Sir, as I listened to the Chairperson talk about the role of county governments in the BPS, it is not clear how county governments will implement the Big Four Agenda. This is because the county governments' development budgets have been reducing. Sometimes, there is also the transfer of funds between development and recurrent expenditure. There is also delayed disbursement that causes absorption problems. Therefore, I hope that through this process, we will not come up with duplications that will become part of the problem that we have discussed the whole afternoon.

Mr. Deputy Speaker, Sir, I have a bit of a problem with the budget ceilings. However, that said, we have not had enough time, as people who are interested in finances, to interrogate the budget ceilings.

Sen. Wetangula has spoken to the fact the national Government, especially in the sectors that have been devolved, is still getting a lion share at the expense of the devolved units. Later on, we start calling the devolved units a bad name and killing them by asking what they have done when we have not given any funds.

We need to look at these kinds of things whereby then it does not become a strategic plan or a game plan for killing devolution. Looking at the budget for the national Government amounting to Kshs1.766 trillion and the reduction in the amounts of the shared revenue both in terms of the actual sums as well as the percentages as shared by the Chairperson, it was at 19 per cent, then it kept going down and we are now at four per cent as percentage of the GDP. Therefore, that should worry us.

Mr. Deputy Speaker, Sir, there is increase in expenditure for the national Government by Kshs99 billion and a reduction of the expenditure for development of Kshs26 billion. Even in terms of realising economic growth, we are not basing the economic growth on any tangible and fundamentals of economics but on good weather and things like that. How then will we make sure that we achieve our revenue projections? In the past, the Kenya Revenue Authority (KRA) has told us that they will collect a certain amount. Not once have they ever been able to collect the projections. Why should then this be different?

What are we saying if we continue like this? I do not know why, but in the last budget, I saw---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): One minute to conclude.

**Sen. Halake:** Mr. Deputy Speaker, Sir, in the Financial Year 2018/2018 there were three different versions of the total expenditure for the country. The amount that was gazetted was different from the amount in the BPS. I am keenly going to watch what the gazetted amounts are going to be.

Mr. Deputy Speaker, Sir, I know I have a lot of input into many areas. I urge this House to make sure we do not become part of the people who did not play their role in the budgeting process, especially of this adoption stage. Later on, we should not start

questioning things that are in budgets that we are part of, but did not play our role very well.

I have quite a bit but we will be looking and exercising oversight role at the execution and the control stages to ensure that some of these things that perhaps we did not get enough time to execute at the formulation and adoption stage, are keenly followed. We will then be sure that we have played our role.

I thank you, Mr. Deputy Speaker, Sir.

I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Senator Abshiro. Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Deputy Speaker, Sir. I will be brief since most of the issues have been spoken about.

First, I am happy that part of the recommendations we made in the *Kamukunji* about dealing with the BPS have been carried on board by the Committee which I sit in. I think for the last four or five years, we have sat in the Senate Finance and budget Committee, we have been getting into the wrong things. That means that we have been getting into the sectors of Information Communication Technology (ICT) and agriculture without interrogating the policy.

I have also been wondering throughout this sitting how we can plug into the budget-making process. Therefore, I have proposed one of the solutions: One, this BPS deals with the budget policy issues whether it is debt, financing, borrowing or other issues that are captured in Section 25 of the PFM Act. However, the only question that still remains is the implementation. How do we check that the things that we have proposed here become decisions of Parliament?

Mr. Deputy Speaker, Sir, perhaps, in the course of this financial year or next maybe, we should have a joint committee to ensure that we participate in this process. When the Supreme Court said that the Senate must have a voice on budgets, this is what they meant. This is a very important process and we should enlighten our colleagues. This is the time to deal with the questions that affect this country.

Sen. Halake talks about budget collections and our revenue. This is a contradiction because progressively, if you read the Budget Policy Statement (BPS), the country's economy has been improving. It says that we are moving from 5.3, 6.1 and we are going up though the figure on revenue collection has been going down. Therefore, one of the two is incorrect. It is either the projection on the growth or the projection on collection.

However, somebody whispered that this over projection on revenue collection and budget is what is creating the avenue for borrowing and that is where the gap comes in. Sen. Olekina whispered to me that this bad habit has now been copied by our counties where they over project on everything so as to create pending bills and opportunities for borrowing. The gaps that you see here are the ones that have led to the Chinese debts.

Somebody told me yesterday that the World Bank is wondering why nobody is going for their cheap loans. The reason is that the Chinese loans are sweet because they have a 2.5 per cent incentive for any person who negotiates. It is called official corruption. The Chinese are so corrupt. They are going to destroy this country so badly

that by the time we realise, we will have old Shanghai and China town and everything will belong to them. That is why we are even importing Chinese fish.

What is the solution? Going into the next BPS, I will propose that we find another method. I still do not know how the Senate is going to ensure that this resolution is with Rotich and that he follows it. I also do not know what the Senate will do if he does not follow it. We must find that solution.

In the last BPS, we never made any comment on the division of revenue. We assumed that when it comes and it is tabled here, we would have an opportunity of amending it but we got stuck. I am glad that we have told the National Treasury that they have no room to negotiate or move downwards on the base allocation to counties without amending division of revenue. Senators, you might not be aware of this. The Kshs9 billion that was in the controversial financial amendment is what has been imported quietly into the amendment and reduction of Kshs9 billion in the proposed BPS. It is a back door way of amending the Division of Revenue Act.

However, Sen. Halake is right to say that all corruption deals including the National Youth Service (NYS) started from the BPS. This is because where the policy on NYS is not supported by figures or a correct policy in BPS, we have passed it without interrogating and that includes the medical equipment which has also been in the BPS. Therefore, are we agents and aiders of corruption? This is because we are providing a formula for people to steal on dams, roads and anything. It comes from these documents.

In the future, we should perhaps get more details. We should ask for financial estimates and possibly as Sen. (Eng.) Mahamud has said, speak to the cabinet secretaries in advance for us not to look as if we are doing something very academic. We must do something different from what the National Assembly is doing for we will look like we are just a talk shop from what I can see.

I am happy with the Council of Governors (CoG), led by Wycliffe Ambetsa Oparanya. They have said no to reduction. Governor Nanok let us down and we must tell him because he is the one who allowed some of the things that have led to the reductions. The CoG has said no. I know there was an impasse at the Intergovernmental Budget and Economic Council (IBEC) and I am happy about that impasse. Senators, we might suffer because we are going to say no.

I hope that the Senate Majority side that I am facing will not turn into what they have been doing when it comes to matters that are very serious. We are not going to have either walkouts or “yes” for no reason because without a crisis, we will not make progress. If we agree with the proposed Division of Revenue, we might as well sign our seats out because we are not going to protect counties.

Lastly, I am also happy the former Chair of the Commission on Revenue Allocation (CRA) – Mr. Micah Cheserem was not as strong as the current Chair - The current chair of the CRA is a hard nut to crack and it is a lady.

(Applause)

I knew you would clap. She has refused saying that the figure allocated to counties in comparison to the national Government revenue has reduced by over three per

cent and we must say no to it. The budgets and projections for the national Government have gone up but those of counties have reduced and the excuse is something happening in East Africa that we must reduce fiscal deficits by three per cent by 2020. Therefore, the figures for counties must reduce.

Secondly, they have said they will reduce their borrowing from 56 to 49 per cent to comply with the Public Finance Management (PFM) Act and therefore counties must suffer.

We were discussing with the Chair and the Speaker, that if there is shortfall in revenue collection, it must be borne by the national Government. This is the time to say *kieleweke ama kiumane* and Sen. Cherargei knows what I mean. We should protect counties not for now but for posterity.

I have sat in three mediation committees on the Division of Revenue Bill. Had we not set that precedent early in the day, then devolution would have begun to suffer.

Mr. Deputy Speaker, Sir, I beg to support this Report in its entirety. My happiest moment is the exclusion of leasing of medical equipment from conditional grants. We have proposed to exclude it in its entirety. Let them know that if the Cabinet Secretary for National Treasury, Mr. Rotich, brings the Division of Revenue Bill to the Senate of the Republic of Kenya with 6.2 billion shillings for leasing of medical equipment, we will exclude it from the table and vote “no.”

I thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Mutula Kilonzo Jnr. Next is Sen. Cherargei.

**Sen. Cherargei:** Mr. Deputy Speaker, Sir, I thank the distinguished Chair for the good work done. We have gone through the BPS and I would not want to take much time because most of the things have been said.

The key issues that I would like to highlight are about agriculture. The Maputo Declaration is very clear when it comes to allocation of revenue, that 10 per cent of the budget should go to agriculture. However, as a country, we have allocated only four per cent to agriculture. It is shocking that the national Government will take a huge chunk of the budget for functions that have been devolved as provided in the Fourth Schedule of the Constitution, which is explicit on some of the issues that have already been raised. I would have expected the national Government to ensure that we put more money in agriculture.

There is a bad culture which is cropping back in this country. As the Senate, we must stand our ground. The national Government is mischievously clawing back the functions that have been devolved. When you look at some of these allocations, as Sen. Wetangula has said, they are now creating a happy valley of plundering and looting through such processes. Cartels are very sharp. They are now targeting the Ministries, Government agencies or state departments that have been allocated a lot of money. That is where corruption is. As the Senate, we must stand up and go through these issues in a very keen way.

Mr. Deputy Speaker, Sir, we have just concluded debate on the issues of maize. We pride ourselves in the North Rift as the food basket of this country. Even to provide Kshs10 million to the national fertilizer subsidy programme that has been running since

the time of time of President Mwai Kibaki is a problem. This is despite the fact that The Big Four Agenda of the President includes food security. If we do not subsidize farm inputs and other farm implements that we need to ensure we improve in production in agricultural areas, how will we sustain the food security that is one of the Big Four Agenda of the President?

This figure of Kshs10 million is a small amount that farmers should not be begging in terms of the national fertilizer subsidy programme. We request that this issue must be factored. I am happy for Busia and Bungoma counties, where I saw that they have allocated some money to buy subsidised fertilizer for some of the farmers in those regions. I hope the counties of Nandi, Uasin Gishu, Elgeyo Marakwet and Trans Nzoia counties will follow the cue in their county governments and allocate money to ensure that we produce food.

If we have to protect food security in this country, we must be serious in terms of subsidy programmes so that our farmers--- It was shocking that we charge Value Added Tax (VAT) on pesticides that we use in our farms and yet, there are armyworms that attack maize. There are other diseases that affect tea, sugarcane and coffee. We need to zero-rate pesticides or pest control products that come into this country, so that we can ensure food security.

Mr. Deputy Speaker, Sir, I think there is Advisory No.3 of 2013, but I stand corrected. The Senate should have a greater role in determining such issues that we are talking about. The Kenyan farmer should be held in high esteem because if they do not till their land, produce milk and maize, there will be insecurity in terms of food. In turn, that will be a threat to national security. If we are not food secure, people will not have energy to reproduce or even sit and have a serious discourse in terms of where this country is going. If we are not secure in terms of food, how will some people have energy to make threats on *Twitter* and hold press conferences to address corruption? They will not have energy.

We must relook at how we are handling agriculture in this country. As the Maputo Declaration said, 10 per cent should go to agriculture. This should not be negotiable. I thank the Commission on Revenue Allocation (CRA), chaired by Dr. Kiringai, for doing a lot of work. That is why we need consultation in terms of going forward.

Finally, I want to talk about health. I am happy that the issue of medical equipment supplies is not part of this. It is so sad that there has been monumental and supersonic increment since this programme was started, and people have been misappropriating funds. The people of Kapedo and Trans Nzoia, Nandi and Mombasa have not fully utilized the same.

It is shocking. I have seen somewhere that says that the Government wants to build 6,200 health facilities. These people are forgetting that at the National Youth Service (NYS) in Miritini, there are mobile clinics that are still being held up there. Is this not another scandal; that the Ministry of Health wants to create 6,200 facilities, yet those mobile clinics are still lying at the NYS in Miritini? This is where corruption starts.

Even as we reconsider Level 5 hospitals on the issue of Universal Health Care (UHC), I saw governors saying that they have not been consulted on the Big Four

Agenda. We support the President almost 80 to 90 percent to build on his legacy. We do not know the fate of the handshake, because it is not legally provided for. There are some people out there doing a handshake, but we want to see handcuffs in terms of the fight against corruption.

However, Mr. Deputy Speaker, Sir, as much as we want to go forward even in terms of Level 4 Hospitals and in terms of the UHC programme, I have talked to healthcare experts and they are saying that this programme is not sustainable. Therefore, it cannot work, as they are saying, by July 2019. The UHC programme should be rolled out in all the 47 counties in this entire Republic, and that is not a possibility.

Therefore, Mr. Deputy Speaker, Sir, even as we discuss on ensuring that we build on our health sector, which is fully devolved, my worry is that there is new song of claw-back of functions that have already been devolved. That is why you see people saying: "Let us return the health function to the national Government." It is because the cartels are not happy that we now want to ensure that we have a fully devolved health system in our counties.

Mr. Deputy Speaker, Sir, I agree with Sen. Wetangula when he says: "Even governors should do a peer review of what they are doing." For example, in my county, the biggest project that the County Government of Nandi and Governor Sang is undertaking is the construction of an ultra-modern mortuary in Nandi Sub-County in Nandi County. A mortuary! He has decided that he is not able to buy drugs and he cannot provide health care. So, he has decided that you only need proper dignity when you die. That is what is giving a bad name to devolution.

This is because if I ask him--- We thought that when we devolved health, there will be free drugs; it will not be a favour but a right. We thought that we would have a proper pediatric wing, Intensive Care Unit (ICU), High Dependency Unit (HDU); male and female wards that will provide health care to the people. However, he has decided that the best thing to construct is an ultra-modern mortuary so that before we meet our maker, you should be sent away in a dignified manner. These are the things that give a bad name to devolution in this country.

That is why, Mr. Deputy Speaker, Sir, we challenge our governors, through the Council of Governors, (CoGs), that they must do peer review and appraise themselves. This is so that they give a good name to devolution and so that the main players of devolution will not even have room to discuss on clawing back of these functions.

Mr. Deputy Speaker, Sir, I think I can go on---

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I will add you one minute to conclude.

**Sen. Cherargei:** Mr. Deputy Speaker, Sir, I can go on and on, but this is where it stops.

Thank you, Mr. Deputy Speaker, Sir.

**Sen. Olekina:** Mr. Deputy Speaker, Sir, I thank you. I am one of those few people who believe that, for you to be able to know what your worth is, just like the former Vice

President of the USA said: “Do not tell what you value, show me your budget and I will tell you what you value”.

I have read the Budget Policy Statement (BPS) and from the onset, I have to congratulate the Committee on Finance and Budget for being diligent in making sure that they protect devolution. One of the things that worried me most is that I have seen a lot of money being increased in healthcare and agriculture yet these services are devolved. The first question I ask is: Why do you increase so much? Why do you want to maintain money in Afya House and in the Ministry of Agriculture here in Nairobi while at the same time you are reducing the money which you are allocating to the county governments?

I commend the Committee led by the distinguished Sen. (Eng.) Mahamud for having recommended an increase in the revenue which will be sent to county governments. My biggest worry - we have canvassed on this issue quite often in the County Public Accounts and Investments Committee (CPAIC) - is where county governments and now the national Government are overestimating their budgets which cause a big problem when it comes to maintaining and following the budget through. This, I agree with the distinguished Senator of Bungoma; they are doing so deliberately. You want to show that you can collect a lot of money yet you cannot. The problem has been in on-source revenue. There has never been a solution on how to increase on-source revenue.

Earlier on we talked about how we can use technology to map up our sources of income to be able to state accurately how much we can be able to collect. The appetite for borrowing by this country and particularly by this administration is what worries me. When you look at the 2019 Budget Policy Statement (BPS), increase recourse to external commercial debt is what seems to be driving it and this causes a significant challenge.

Many people have spoken on issues corruption and I agree with the Senators who clearly stated that, this is where corruption begins. Corruption begins here; where you project and you say you are going to raise, for example, “X” amount of money, you allocate and you end up spending what you do not have.

I disagree with the distinguished Senator for Nandi when he says that sometimes we should not use social media to prosecute matters. My view is that currently, the power of social media is what will put this Government to check. Everyone who has a Face book page or who has looked at WhatsApp groups, today there was a billboard which was made by very interesting Kenyans of all the corruption scandals. I wonder where they got it from. I am sure whoever did that looked at the origin of these corruption scandals. It is where we allocate.

This is why sometimes it worries me, when we draft legislations, rush them through and then when wisdom prevails and we slow, at the passage of those legislations, all of a sudden, the media comes out with a scandal. A very good example is the irrigation Bill which we killed in this House but then, it came back from the National Assembly and then now look at it. The media is awash with scandals of dams which we have built and nothing ever happened yet most of the money should be devolved to the county government so that we can improve the agricultural sector.

Mr. Deputy Speaker, Sir, the Budget Policy Statement (BPS) states that our economy is growing because of improved weather conditions, business activities, and political calmness. If we do not support these improvements with resources, how then are we going to sustain them? If we are saying our weather patterns have improved and yet we are retaining all the money in the national Government - in fact, and I thank the distinguished Senator for Bungoma County for pointing this out, that whenever there is a shortfall, the law is very clear, it is not the county governments that should absorb it, but the national Government. We have to be very clear. I was expecting all Senators to be here tonight because this is when we are supposed to shine. I am so proud of all the Senators - including yourself, Mr. Deputy Speaker, Sir. You have been very patient.

I am so proud of Sen. (Prof.) Kamar for staying here and fighting to ensure that the people of Uasin Gishu County can get their share of the national cake. I am so proud of the Chairman for having done a fantastic job in making sure that they scrutinized this BPS which the National Treasury cleverly sent us without a matrix on how they are going to fund the Big Four Agenda. Where is that money going to come from? I am also very proud of the distinguished Senator for Bungoma County, because the two of them have really looked at this BPS. I am also very proud of the distinguished Senator, Sen. Halake, very eloquent, who has clearly indicated to us that, the budget making process is defined. This is when all Senators should be looking at it and saying, "How do we ensure that our counties continue to improve and get more money?"

A lot has been discussed but we need now to focus on how we should improve on Own Source Revenue. We need to be able to tighten legislation, even if it compels us to amend the Public Finance Management (PFM) Act, so that even during the time when we are considering this BPS, we have more time to examine it. Fourteen days is a very short time and that is why we are here right now at 8:43 p.m. when other people are at home enjoying dinner and resting with their families. If we had more time, for instance, a month, we would have been able to scrutinize this document.

This is the same country where people become overnight millionaires because of corruption and where cartels enjoy confusing people, coming up with policies to flood the market with imported sugar and maize, yet the farmers who they believe in – this is an economy which thrives through agriculture. We are still crawling slowly by slowly to get into the manufacturing sector. So, instead of killing the farmers, the Government should come up with policies that encourage the mopping up of all locally produced products to ensure that when the Ministry of Finance and National Treasury comes up with any policy that allows people to import food so as to ensure food security, they are doing so without creating a food insecure economy.

Today, in Trans Mara, Narok County, Mr. Deputy Speaker, Sir---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Time up!

**Sen. Olekina:** I will request for just one more minute ---

**The Deputy Speaker** (Sen. (Prof) Kindiki): I will add you two minutes.

**Sen. Olekina:** Thank you Mr. Temporary Speaker, Sir, for being gracious.

Today in Narok County, the farmers were protesting in Trans Mara because the one manufacturing company they have, which has been buying sugarcane at Kshs4,410 per tonne has decided to reduce it to Kshs3,900 per tonne because they can no longer

compete with the illegally imported sugar. So, the farmers are up in arms fighting the wrong person. The people who ought to pay this are the people who allowed this illegal importation of sugar.

(*Sen. Olekina spoke of the record*)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I do not think the two minutes are over.

**Sen. Olekina:** Mr. Deputy Speaker, Sir, the microphone had a problem.

The illegal importation of maize is a big issue. I did not have a lot of time earlier on to comment heavily on that issue, but hope that this House will not embarrass itself again, like we did during the Ruaraka Report. I hope that this Report will be passed and ensure that those people pay because, if we do not, what Sen. Mutula Kilonzo Jnr. said will be a reality. Most of us, Senators, will be afraid of going home. We will be afraid of going to our houses because we enjoy the lavish life. We can afford to have a driver to take us there, but we no longer look at the interests of the people who send us here to represent them. What we are looking after is self-interest.

Mr. Deputy Speaker, Sir, I hope that this time around, we will put our foot down and ensure that all the recommendations by the good Committee will be followed through by the National Treasury. I would like to state categorically that if the National Treasury does not take into consideration the recommendation by the Senate of the Republic of Kenya, I will be the first one to vote 'No' to the Division of Revenue Bill. Why would I allow money to be reduced, yet people in Narok County are suffering? They are not getting support in terms of healthcare. The trend we are setting now with this appetite of borrowing will make it very difficult for us.

Mr. Deputy Speaker, Sir, based on that BPS, by 2020 the exchange rate of the United States of America Dollar to Kenya Shillings will be almost Kshs150. The Dollar will continue growing and even the interest rate of the external debts will go higher. We will be reduced to a country where 60 per cent or even more of our Gross Domestic Product (GDP) will be towards paying the debt.

I would like to conclude by saying that we must remember that when we decided to devolve health care services, we did so because we wanted the services to reach the people. We did not do that because we wanted money to remain in Afya House. We devolved agriculture because we knew that it is the backbone of this economy. The day that we separate special interests from the interests of the nation, is the day that we will move forward.

I beg to support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Olekina.

Proceed, Sen. (Prof.) Kamar.

**Sen. (Prof.) Kamar:** Mr. Deputy Speaker, Sir, I will be very brief because my colleagues have contributed very well to the BPS. First, I congratulate the Chairperson, Sen. (Eng.) Mahamud and his team for doing a thorough job for us.

I agree with Sen. Abshiro that this is the beginning of everything. We either gain from the Budget Policy Statement (BPS) or mess at this point. If we do not deal with the

BPS properly, we can be part of the cause of the problems and can only blame ourselves later.

Mr. Deputy Speaker, Sir, I would like to concentrate on the division of resources; the area of vertical allocation between national and county governments in as far as the resources of this country are concerned. We need to know whether or not we really believe in devolution. Have we accepted to go the devolution way or not? The Transition Authority, at that time, was supposed to ensure that functions must be followed by resources. Therefore, we should be seeing resources that are equivalent to the functions that were devolved. However, we have problems up to now. We are seeing a struggle and reduction of funding instead of an increase. The amount of money that remains in the national Government is still much higher than we had hoped. The ratio of Government is still much higher than we had hoped would be by year seven of devolution.

Mr. Deputy Speaker, Sir, I am extremely surprised by the fact that the national Government would like to equip over 6,200 health centres. For the last seven years, health centres have been under the county governments. If it is true that there are resources for equipping, what is the problem with releasing the funding to the county governments for the same equipment?

Mr. Deputy Speaker, Sir, I say this because when I went around our health centres in Uasin Gishu County, I discovered idle equipment that was released by the national Government. So, what exactly are we doing as a country? Why do we want to take more equipment to the counties when the first equipment released has not been utilised? We are a little disadvantaged in Uasin Gishu County because we do not have a Level 5 hospital. We have had double suffering because we cannot get the Conditional Grant that is given to counties that have a Level 5 hospital but further still, it means we have more equipment that is idle.

When I went to Ziwa Sub-District Hospital which we are proposing to be our Level 5, I wondered if the Ministry came to analyse and inspect it, why we would not spend the money that they would have given us to upgrade it and make it a worthy project? It may be true for us and two or so other counties that do not have a Level 5 hospital that if we truly want to support our counties, then we should use the conditional grant rather than stop the grant from reaching the counties and use it to elevate the facilities that we have.

Mr. Deputy Speaker, Sir, I agree with the Council of Governors (CoGs) that there are unfunded transfer functions. The work of the Transitional Authority (TA) would have been to inform us, at that time, what the cost of the transfer functions were. This is because if we had known the cost as of 2012, we would have been talking of figures. I found that although counties have raised this issue, they have not quantified it to tell us how much difference there is between what was transferred and what they should be having as funding. Therefore, we need to relook that.

Mr. Deputy Speaker, Sir, my only urge to this House is that, as we congratulate the Committee for raising the equitable county allocation to Kshs391 billion and recommending the equitable share to be 335 billion, we need to find out whether we believe in devolution so that we increase funding in the devolved units. This is because,

currently, as we speak, it is going down yet we are talking of economic growth. So, where is the money going to?

Mr. Deputy Speaker, Sir, I will not take much time. Agriculture and health are fully devolved. These are the areas that this House must watch. We have just talked about farmers and the 10 per cent that Kenya signs to. Why sign 10 per cent and we are still at four per cent? We have also signed something for science and technology which is seven per cent. We have also signed something for health and education and we do not even obey it. Then, where are we going as a country? Where are our standards? Who are we benchmarking with? Unless we benchmark with countries that we believe in and with treaties and agreements that we are signatories to, then we are not benchmarking. We are just signing to show that we are part of the international community, and moving out and doing whatever we feel like doing.

Mr. Deputy Speaker, Sir, I beg to support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you.

Proceed, Sen. Ochillo-Ayacko.

**Sen. Ochillo-Ayacko:** Thank you, Mr. Deputy Speaker, Sir, for the opportunity to make my remarks on this issue. Budget making is a very important function and a constitutional responsibility of Parliament. It is the basis of the modern Parliamentary System.

Those who started this system of Government knew that there can never be taxation without representation. They ensured that there is a Parliament, which is able to look into the interest of the taxpayers so that the Executive could get the approval of the taxpayers' representatives in order that the expenditure is aligned to the needs of the people.

Mr. Deputy Speaker, Sir, I take this opportunity to thank the Committee for doing a good job. It has dug out, fought and pitched for devolution; and that is commendable. The recommendation that the Committee has made is geared towards ensuring that devolution is not overtaken by the appetite and needs that are euphemistically called, "the needs of the national Government." Therefore, it is very commendable that issues of devolution have been looked at by the Committee.

Mr. Deputy Speaker, Sir, I have also been listening to our leader, the President of the Republic of Kenya, and his friend, the Peoples' President – Raila Amolo Odinga. They have continuously talked about the issue of corruption and other issues that many of us have bought into that narrative that, corruption is a threat to this nation; corruption is a threat to development and to a lot the gains that we have made. In fact, remarks have been made by other people that corruption has been devolved, and it is one of the biggest threat that is visiting or threatening devolution.

Mr. Deputy Speaker, Sir, amidst all these positive things that are being recommended by our good Committee, for which we are lending tremendous support, there is very little in this Statement to indicate that we want to walk the talk in terms of fighting corruption by budgeting for it and supporting it materially and financially. It is a good thing to allocate a lot of money for national and devolved functions; that is a wonderful thing. It is also a good dream to hope that governors, in their magnanimity, will expend that money in the best interest of the public.

I believe that even if the governors were angels, they will still not expend that money in the best interest of the public. Therefore, I would have wanted to see, in the BPS, what is being allocated towards the issue of corruption and governance. I would also have wanted to see what has been allocated towards the issues that strengthen institutions that we have put in place in our Constitution to fight matters corruption and poor governance.

If you take, for instance, the institution of the Senate, the National Assembly and our committees that are supposed to be specialised in those areas, there is no mention and indication that resources are being availed to ensure that we are able to match the pace at which corruption is rising. Corruption in this country is rising at a meteoric pace, and is likely to consume all of us. If you want to know if that is true and that it is on-going, look at how it is hitting headlines everywhere. In fact, offices that are intended or are supposed to fight it have chosen to use twitter and other media outlets because they have not been sufficiently funded.

It is my wish and it was my hope that this budget would make sufficient provision for resources that would strengthen institutions like Parliament, the Auditor-General's office, the Controller of Budget's office, the Ethics and Anti-Corruption Authority (EACC), the Judiciary and other institutions so that corruption is not just hot air.

My good friend, the Senator of Nandi County, has been chiding the Director of Criminal Investigation (DCI) and the EACC for doing it on *Twitter*. The question is: What money have we given the EACC and the DCI for them to quit doing it on *Twitter* and to actually do it properly as we expect them to do it? What amount of money have we given the office of the Auditor-General for his office to keep pace with the runaway corruption when it comes to auditing matters that are current?

What have we done to the institution of Senate in terms of resourcing it? What have we done for the good Senators, including our Mr. Deputy Speaker, for them to get prompt briefs on the happenings in the counties? We want to give them more money, and that is attractive, but what are we doing to ensure that there is no temptation to pocket the lots of money that we want to give to them? What have we done to ensure that the monies are properly utilised for our benefit? That is what has been glaringly left out of this BPS.

I come from Migori County where we farm things such as sugarcane, tobacco, maize and many other crops and we also fish. The Committee on Agriculture, Livestock and Fisheries made an observation that there is very little money allocated for research. We cannot handle agriculture casually as it is being handled in this BPS. In agriculture, there are two areas that we must keep sight of. First, we must ensure that our farmers have a guaranteed market and price for the crops that they grow or whatever they produce. Otherwise, agriculture degenerates into peasantry and becomes a way of devolving poverty and misery.

It is important for us to ensure and this budget captures a system that has a guaranteed market for the produce of our people. When that is done, we will avoid scenarios where sugarcane farmers cry to the national Government, visit politicians home or put pressure on politicians to talk to the national Government to get money to pay for sugarcane that was collected by the factories or for maize that was delivered to the

National Cereals and Produce Board (NCPB) but was never paid for. We want that market.

The second thing that is important to look into in matters agriculture is production. Production is founded on research and other aspects of infrastructure and subsidies for our farmers to produce. Without them in the BPS, I can assure you that all the good intentions and the beautiful speeches that the President has made in terms of the Big Four Agenda will unlikely see the light of day and misery will continue being spread from county to county. All the Senators here, including my good friend, Sen. Olekina and I, will come to shed tears for our people but do nothing. I do hope that we will continue exhibiting the energy and zeal that we have exhibited here, by sitting until this hour, to ensure that what we have said is implemented and captured by the National Treasury.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I will add you two minutes for you to wind up. Give him the microphone.

**Sen. Ochillo-Ayacko:** Mr. Deputy Speaker, Sir, thank you very much for that kindness. I hope that the energy and commitment that we have seen here will be exhibited. As the Senate, we are putting our foot down to ensure that we are not marginalised. The remarks we make, the long hours we sit here and the days and nights that we spend campaigning should not be taken for granted.

I just want to plead with the leadership of the Senate to ensure that these remarks are given the force of policy and the force of law. We will show the same commitment, strength and sense of direction more particularly on resources that are required for oversight and the war against corruption.

With those many remarks, Mr. Deputy Speaker, Sir, I thank you for the time and congratulate the Committee and all the Members who have contributed to this good debate. I beg to support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): So far, so good. We are almost there. We shall now listen to Sen. (Prof.) Ongeri and thank you for coming back.

**Sen. (Prof.) Ongeri:** Thank you, Mr. Deputy Speaker, Sir, you know where I went. I felt that I must come back to lend my voice on this very important BPS.

I have gone through the BPS by the national Government and there are many interesting observations that one would make. First, when you look at the overall performance of the economy, there is a trend that the growth rate has been consistent. In 2007/20008, it was at 4.7 per cent. Last financial year, it was at the average of 5.6 per cent and it is projected in the ensuing financial year to grow at 6.2 per cent.

When you are given this kind of scenario in any development agenda, there is a presumption that when it comes to sharing that revenue, then there should never be even an iota of thinking of reducing the revenue to the level that I have seen proposed by the BPS. That in itself is on a wrong premise.

Secondly, when you look at the deficits, which have been contained at around six per cent, it means that if you have been able to contain that deficit at that level, you should give more resources both to the national and the county governments.

There is the third element. When you survey on taxation measures, you will realise that some of them were brought here belatedly, particularly the Value Added Tax (VAT), which we reluctantly agreed to support. It was geared towards increasing the

revenue base for the national Government so that resources can be availed to give to the rest of the county governments and also share it with the national Government.

Mr. Deputy Speaker, Sir, one dominant factor that stands out quite clearly is that although there has been revenue generation – not to the extent expected – one clear message coming out is that there is a lot of squandering of resources that have been obtained to the kitty. Therefore, no wonder that the money is being spent on items that have no direct bearing to growing this economy. It is going to the pockets of people in companies which have gone bankrupt.

When you read the sad story of the dams that have been built and billions of shillings squandered to the tune of Kshs30 billion or so and then you want to make a bold step of reducing the county sharing revenue by Kshs9 billion, I think that is the biggest joke that I have ever known in the history of this Parliament. On one hand, you are squandering such a colossal amount of money to unprofitable ventures that will have no effect on the Gross Domestic Product (GDP) of this country.

That money has been stolen and you now want to come back and say that in order for us to make a balanced budget, we now need to cut down by Kshs9 billion so that instead of Kshs310 billion, we will now be at Kshs304 billion. Then you come with the sweet message, for adjustment purposes, you add Kshs5 billion to make it Kshs310 billion.

Mr. Deputy Speaker, Sir, there is something that the national Government is forgetting that when the Division of Revenue is done by this Senate and also in concurrence with the National Assembly, that county governments make commitments made on that division of revenue that has already been allocated in the books. How are you going to tell them to adjust their books in this belated hour, if you are going to reduce that budget by Kshs9 billion?

That is why I want to persuade my colleague in the Senate, if there is one thing that we must resist with both sides and in one voice, it is any attempt to reduce the revenue allocated to county governments. If they want to reduce, let them reduce it at the national or Executive level but never to touch on the revenue which has already been allocated to county governments. It is on the basis of that revenue that they have made commitments. We do not want to have another story of pending bills developing later because of our own mistakes by passing a faulty BPS.

Mr. Deputy Speaker, Sir, my serious recommendation to the national Government is to adjust the national Executive expenditure and bring it in line so that the county revenue allocation should never, I repeat, should never be touched. If anything else, it should be increased from the regional one. I like the way and the process that has been taken by the Committee on Finance and Budget, that we must take into account the inflationary trends. Without taking into account the inflationary trends, then even if we were to give Kshs310 billion, it is peanuts.

I sit in the County Public Accounts and Investment Committee (CPAIC). Unfortunately, when you look at the way resources flow to the county governments and study it carefully, it will hit you very hard that, in fact, there has never been any single increase in the resource allocation in the counties. They started with 15 per cent and came down to 10 per cent. What are we doing here? Are we not saying, “yes, we accept this

scenario?" Instead of upward trend and mobility, do we now want to accommodate the incompetencies through corruption and non-collection of revenue? We have given them tools of revenue collection, there is a Bill and an Act of Parliament that came through here – through the Public Finance Management Act (PFM) on how to collect revenue. We even went ahead and enhanced revenue collection by increasing the Value Added Tax, (VAT) on fuel to eight percent. If the policy mechanisms that they ought to have put in place to redress this non-revenue collection has failed, they should not visit that failure on revenue to counties.

I will vehemently oppose, even if it is me alone, any attempt to reduce the revenue allocation to counties. I will go further and say that whereas we are fighting very hard for these counties to receive this kind of money, in my opinion, we should be basing the revenue allocation on the last audited accounts of the Financial Year, 2017/2018. We are not there yet; we are still on the Financial Year, 2013/2014.

**Sen. Wetangula:** On a point of information, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. (Prof.) Ongeri, would you like to be informed by Sen. Wetangula?

**Sen. (Prof.) Ongeri:** Yes, Mr. Deputy Speaker, Sir, and as long as I get my minutes.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Yes, you will get your time. Sen. Wetangula, proceed.

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, I want to inform the distinguished professor and my good friend that, in fact, as the referendum talk picks up, this House has a singular and unique opportunity to take what other jurisdictions like Nigeria have. Shared resources are based on annual budgets and not on audited accounts.

**Sen. (Prof.) Ongeri:** In fact, thank you for that information. I was going to come to that level but when you look at the history of revenue generation, it has risen from Kshs1 trillion to Kshs1.7 trillion and Kshs2.7 trillion respectively. However, when you look at the allocation to counties, it is on the retrogressive path and as I have told you, from 15 percent to current level of four percent. This is why we fight for these resources to be allocated to the county governments.

I also want to sound a very serious warning to the County Executive Committee members (CECs) that the manner in which they handle their budgets and expenditures is wanting. We cannot on one hand fight for their resources and ignore the rules of procedure that have been laid down through the PFM Act and the Public Audit Act. Therefore, they must be subject to both the PFM Act and the Public Audit Act, so that the resources that are given out to these counties can now be spread out equitably and reach every corner.

Secondly, just like we are fighting at the national level, there is a mismatch of resources being availed to the county governments; only going to certain sections of that county instead of being spread out evenly, equitably and in accordance with the formula. That is why we have been insisting the issue of the oversight fund is critical in ensuring that this area is touched and oversighted carefully, so that we get value for money. All we are looking for is value for money that has been given to the county governments.

Finally, we cannot wish away the issue of corruption. It is here with us; it is rampant, on the increase and we can no longer pretend about it. Either we wake up and do the right thing or sink. I have seen countries like South Sudan, where, unfortunately, we now have an emergency declaration for one year, being harassed by the citizenry of that country about the pricing of food. We almost got to that level. Therefore, when discussing the Report on the maize scandal, it has a lot of meaning that we need to give effect in this budget. We cannot leave the farmer languishing without being cushioned against the adverse effects of what has happened by our own generated activities that are inimical to the interests of the farmer.

Mr. Deputy Speaker, Sir, I thank you for giving me this opportunity because as the Senator for Kisii County I want to pronounce myself on the issue of the revenue allocation. I, therefore, support the Report; that not only should it be increased from Ksh310 billion to Ksh335 billion, but the conditional grants must also be increased. Instead of tying these conditional grants and being detected at source through the Medical Equipment Scheme, we should have a better approach as to how these conditional grants can be utilized in order to alleviate the problems that we see every day in our respective counties. We cannot rest until this aspect of it is cleared.

The other element is that we must cut down on our borrowing. We have gone beyond the level that it will become---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I will give you two minutes to wind up.

**Sen. (Prof.) Ongeri:** Thank you, Mr. Deputy Speaker, Sir. We have gone beyond the level where sooner or later, we will collapse, even with the best flowery language that we are being told; that it is manageable. When you get to a situation where the borrowing escalates to higher levels, the level of corruption continues going up and the resource flow to the county governments is diminishing, it is a recipe for chaos. We must arrest that situation before long.

I thank you for your attention, Mr. Deputy Speaker.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. (Prof.) Ongeri. It is always a pleasure to listen to you contributing to the debates in this House, just like every other Senator.

There being no further interest in this Motion, I now call upon the Mover to reply.

**Sen. (Eng.) Mahamud:** Thank you, Mr. Deputy Speaker, Sir. Let me thank the Members for the very good contributions and support they have given to this Budget Policy Statement (BPS) Report. Let me also thank the team from the Speaker's Office and the Clerk's Office who were with us during the preparation of this Report.

I also thank the very able Members of my Committee who are very experienced. Two of them were in the last Senate and served in the same Committee, that is, Sen. Wetangula and Sen. Mutula Kilonzo Jnr. I must say that all the nine Members, including myself, are very competent.

Mr. Deputy Speaker, Sir, going forward, this Senate must take its space on what the laws in this country provide for. I have realized from even the Standing Orders, there are some things that we do not do as a Senate. For example, we were supposed to report on allocations to constitutional Commissions and independent offices. The Standing

Orders say our Committee must deal with the budget for the Constitutional Commissions and independent offices.

We are also supposed to consider matters concerning the national budget, including public finance and monetary policies and public debts, planning and developments policy. Our job is not only confined to allocations to counties.

That is why our Committee took time to actually address all the issues that are in that BPS, which is the beginning of the budget process. In fact, we have pronounced ourselves on them and, going forward, the product of this now will be vertical allocation of revenue between the two levels of Government. Ordinary revenues are expected to increase by Kshs200 billion from the current Kshs1.65 billion to about Kshs1.8 billion. However, the National Treasury is saying that they want to reduce the allocation to counties because the ordinary revenue is not performing. That is actually not correct. We will, therefore, stand our ground and say that this must not happen.

Mr. Temporary Speaker Sir, on the Division of Revenue Act, Section 5(1) of the Act currently says that any shortfall will be taken by the national Government, together with any increase. If an attempt is made to change that, then we open a pandoras box, and we will lose control. Therefore we, as the Senate, will say the way Section 5(1) of the Division of Revenue Act must remain as it is. In fact, even the draft that we have in the BPS proposes to change that both levels of Government will take up the shortfalls. Let us be on the watch out. Counties depend a lot on sharable revenue, one because the role of collecting national revenue is on the national Government. Counties do not share that role with the national Government.

What is being shared is the national revenue and, therefore, you cannot expect shortfalls to be borne by county governments. However, having said that, county governments must also be obligated to collect Own Source Revenue, where it is possible. They should not just sleep and wait for monies to come from the national Government. To that end, a policy document has been discussed between the Council of Governors (CoG), the National Treasury and our Parliamentary Budget Office (PBO). In fact, the policy is supposed to be submitted to us. I am being told that it is now at the Government Printer, being printed. This policy document looks at the capacity of counties to raise revenue, what areas they should collect this revenue and how best they can do it. We are waiting on that and when it comes, we will table it.

Currently, Mr. Temporary Speaker Sir, there is a Bill before the National Assembly – I do not know how it went there - also on Own Source Revenue collection. I think they are trying to operationalize some part of Article 209 of the Constitution, for counties to collect Own Source Revenue. However, the National Treasury wants to control them so that anybody who wants proposes to levy some taxes or rates must give a 10 month's notice to the National Treasury. That is also absurd, but when the Bill comes before this House, we will look at it.

Thank you, Members of the Senate for your support. We want to make sure that the way the allocation to counties is done, and we are in agreement with the CoG, we will not agree with the National Treasury to reduce that figure. I commend the Commissioners of the CRA for a job well done. We will, therefore, stand our ground and, as a Committee, lead in that.

Thank you for the support. I beg to move.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done, Chairperson.

Order, Senators! It has been a long afternoon, but before I make the closing remarks for adjournment, I want to first determine whether this is a matter concerning counties. I will, therefore, invite the Chairperson to request for adjournment of division.

**Sen. (Eng.) Mahamud:** Mr. Temporary Speaker, Sir, pursuant to Standing Order No.61(3), I request that you defer the putting of the question to a later date.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Chairperson. Colleagues, as I had said earlier, I am grateful to all of you for the great sacrifice you have done on behalf of our people and for our country. I take a lot of pride in having been your Chair this afternoon. The debate has also been very productive; although the Chair does not participate in debate, the Chair follows debate so that he or she can guide it. Also being a Senator, we know that this debate is entirely relevant to me and the county I represent.

There is one administrative issue that I want to dispense with, and this is the issue of division.

Hon. Senators, I direct that the Division be carried out tomorrow without fail because of Section 25(7) of the Public Finance Management (PFM) Act of 2012 which says that within two weeks which end tomorrow, the two Houses of Parliament must adopt and pass the BPS. Therefore, we must dispense with the Division by midnight tomorrow.

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

Likewise, I would like to give the following directive to the Senate Majority and Minority Whips. If need be, the assistants of the respective leaders to mobilize Members and ensure that these statutory and constitutional national duty we have tomorrow is realized without fail. That communication should be relayed to all those that I have already mentioned.

## ADJOURNMENT

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, it is now 9.31 p.m., time to adjourn the business of the Senate. The Senate, therefore, stands adjourned to tomorrow, Thursday, 28th February, 2019 at 2.30 p.m.

The Senate rose at 9.31 p.m.