

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 3<sup>rd</sup> July, 2019

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

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

### PRAYER

### PETITION

#### CONSTRUCTION OF THE WESTERN BYPASS-WANGIGE INTERCHANGE

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I hereby report that a petition has been submitted through the Clerk by citizens of the Republic of Kenya and residents of Wangige, Kiambu County, regarding the construction of the Western Bypass, Wangige Interchange.

As you are aware, under Article 119(1) of the Constitution, and I quote-

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

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

(a) THAT, the construction of the Western Bypass Wangige Interchange by the Kenya National Highways Authority (KeNHA) through the MS China Roads and Beijing Corporation (CRBC) is affecting Wangige Primary School; an important institution in the area.

(b) THAT, while the residents welcome the construction of the Western Bypass, Wangige Interchange, they find issue with the revised project designs submitted to them by KeNHA which will impact negatively on Wangige Primary School, Wangige High School, and the St. Peter’s ACK Church, Ndunyu. This differs significantly from the designs presented to them sometime in 2017 which indicated that none of the three institutions would be affected.

(c) THAT, the residents of Wangige have addressed the matter with the KeNHA which has failed to give satisfactory response to their concerns including compensation for the loss of property.

The petitioners pray that the Senate investigates this matter and intervenes with a view to-

(1) Ensuring that the current road designs are revised to reflect the earlier ones of 2017 that did not affect Wangige Primary School, Wangige High School and the ACK St. Peter's Church Ndunyu;

(2) Facilitate in dialogue between KeNHA and the concerned residents at Wangige;

(3) That all stakeholders particularly the residents of Wangige Town are involved in the road development process and apprised accordingly;

(4) Ensuring adequate compensation to the residents in the event that the road designs affect private and or public utility property in the area.

Honourable Senators, pursuant to standing order 225, I shall now allow comments, observations, or clarifications in relation to the Petition for not more than 30 minutes.

Kindly, proceed, Sen. (Dr.) Musuruve, in not more than three minutes.

**Sen. (Dr.) Musuruve:** Mr. Deputy Speaker, Sir, I thank you for giving me this opportunity to make my observations. I support the residents of Wangige because there was an earlier design that did not affect the schools and the church in any way. If the current road is affecting the institutions that you have named, there is need for the KeNHA to bring stakeholders on board.

The KeNHA has refused dialogue yet the stakeholders want to be involved. Therefore, there is need for the Senate to intervene so that the KeNHA listens to the residents of Wangige. Roads are important to local residents for purposes of easing transport. However, there is need for the residents to accept the road project and for them to be compensated where affected.

Mr. Deputy Speaker, Sir, schools are institutions that need to be regarded highly because they mould our children. Therefore, there is need for learning not to be interrupted in any way. I therefore support this Petition and hope that the Committee of this House will address it for the sake of the citizens of this nation and the learners in Wangige.

I thank you.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, the problem that we saw in Ruaraka where the national Government paid Kshs1.5 billion for public land is because of the confusion about titles of land. The President issued an order that all schools must be given titles to land. The biggest problem with compensation of primary schools in the Standard Gauge Railway (SGR), the Kibwezi-Kitui and other projects are because of lack of title deeds. People behave as if schools do not own the land.

The first objective of the Committee to which this Petition will be referred to is to ensure that primary and secondary schools must be given their title deeds. There is also the misconception and misappropriation of Government entities. They have to share designs and plans with primary schools or any other public institutions. I have seen this in the SGR project in Makueni.

There should be proper policy on how to deal with projects that affect school children. Issues such as interference with supply of water to schools or splitting of schools into two like it happened in Makueni need to be addressed very seriously.

Mr. Deputy Speaker, in the absence of the National Land Commission (NLC) which is supposed to do the inquiry, the petitioner is directing this prayer to KeNHA but the people who are supposed to conduct the inquiries and provide this information is the NLC. As bad as the NLC is, another directive should come that this must wait for the commissioners of the NLC to come because KeNHA cannot compensate public land or schools.

Schools must be given alternative land when public projects affect the children. We would like to have the roads in a place like Wangige but the children of this Republic need education.

Mr. Deputy Speaker, Sir, I thank you.

**Sen. Wambua:** Mr. Deputy Speaker, Sir, I thank you for this opportunity. I am a Member of the Senate Standing Committee on Energy, Roads and Transportation. I believe that if this Petition is brought before our Committee, we will deal with it conclusively.

First, even before this Petition was brought to this House, the Committee had undertaken to visit that section of the road. There are many issues on that road beyond what the petitioners have raised.

Secondly, I thank the Chairperson for reading that petition on the Floor of the Senate. This confirms a few things about the mandate of this Committee and the Senate on dealing with issues that are being rumoured to be the preserve of a section of Parliament. Article 119 of the Constitution states that every person has a right to petition Parliament and by that, it means both the Senate and the National Assembly. Therefore, when the Petition is brought before our Committee, we will do justice to it.

I thank you.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, I thank you for reading this Petition. These persons are entitled to seek redress from this House. As we deal with this issue, a similar matter was brought to this House along that area affecting my people in Uthiru and Mountain View on the expansion along Waiyaki Way. There are people who were displaced by the project. The meetings between them and the KeNHA have not borne fruits.

I am grateful that Sen. Wambua has spoken strongly as a Member of the Committee. Since the Committee has not brought a response to the House concerning the previous petition, concerning the many business persons and residents along Waiyaki Way; I urge the Committee to address the other petition. I would like to be invited to join the Committee when they go on the ground because my people are still waiting for a response from the petition that they forwarded to this House on the same matter.

Mr. Deputy Speaker, Sir, citizens come to the Senate because they believe that we are able to resolve these issues. When we sit on issues for a long time, we erode the trust by the people of this country.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, pursuant to Standing Order 226(1), the Petition stands committed to the Standing Committee on Land, Environment and Natural Resources.

In terms of Standing Order No. 226(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.

Next Order.

### PAPERS LAID

#### REPORTS ON FINANCIAL STATEMENTS OF VARIOUS COUNTY AGENCIES/FUNDS

**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, 3<sup>rd</sup> July, 2019-  
Special Report of the Auditor-General on the pending bills of the 47 County Governments as at 30th June 2018;

Report of the Auditor-General on the Financial Statements of Laikipia County Bursary Fund for the Year ended 30th June 2015;

Report of the Auditor-General on the Financial Statements of Laikipia County Bursary Fund for the Year ended 30th June 2016;

Report of the Auditor-General on the Financial Statements of Laikipia County Bursary Fund for the Year ended 30th June 2017;

Report of the Auditor-General on the Financial Statements of Laikipia County Bursary Fund for the Year ended 30th June 2018;

Report of the Auditor-General on the Financial Statements of Laikipia County Enterprise Fund for the Year ended 30th June 2018;

Report of the Auditor-General on the Financial Statements of Laikipia County Co-operative Fund for the Year ended 30th June 2018;

Report of the Auditor-General on the Financial Statements of Samburu County Executive Youth and Women Enterprise Development Fund for the Year ended 30th June 2018;

Report of the Auditor-General on the Financial Statements of Samburu County Executive Bursaries Fund for the Year ended 30th June 2018;

Report of the Auditor-General on the Financial Statements of Samburu County Executive Car Loan and Mortgage Scheme Fund for the Year ended 30th June 2018; and,

Report of the Auditor-General on the financial Statements of Samburu Water and Sanitation Company Limited for the Year ended 30th June 2018.

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

#### REPORT ON THE IRRIGATION BILL, 2017

**Sen. Ndwiga:** Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Wednesday, 3<sup>rd</sup> July, 2019-

Report on the consideration of the Irrigation Bill (National Assembly Bill No.46 of 2017).

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

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

### STATEMENTS

Hon. Senators, this afternoon, I will give priority to two Statements. The other Statements will depend on the progress we make.

Proceed, Senate Majority Leader. After that, I will give a chance to the Chairperson of the Committee on Finance and Budget.

#### THE CONSTITUTIONAL MANDATE OF THE SENATE

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I would like to make a Statement this afternoon under Standing Order No. 52(2), in my official capacity as the Senate Majority Leader, and a person who has been charged with the responsibility to deal with and introduce business in this House particularly if it comes from the counties or the national Government.

This Statement is pursuant to a Motion that was tabled in the National Assembly which purported to lecture the Senate on its responsibilities.

Mr. Deputy Speaker, Sir, as you may be aware, the Senate is established pursuant to Article 96 of the Constitution and its mandate is clearly defined. However, its existence and space in the organisation of Government continues to be challenged by the National Assembly, not for any other reason but political expediency. The existence of the leadership offices in the Senate has similarly been challenged by the same persons.

Mr. Deputy Speaker, Sir, from the onset, I emphasize the fact that this is done for political expediency to confuse the members of the public as to the responsibilities of the Senate and its leadership.

This state of affairs has occasioned a long-standing misunderstanding and inability by the leadership of the Majority side of the two Houses of Parliament to agree on the processing of legislation in Parliament as contemplated in the Constitution.

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Despite the express and clear provisions on the processing of legislation under Part IV of Chapter Eight of the Constitution, the legislative process between the two Houses of Parliament has suffered serious problems that have literally paralyzed the legislative process and which, in my view, paint the legislature in bad light.

The Senate's legislative role continues to be hampered by hurdles that are constantly being set by our sister House, the National Assembly, for instance-

(1) The National Assembly has originated and passed Bills without reference to the Senate despite the Bills being Bills that without doubt concern counties. The examples of such Bills in this and the last Parliament are numerous.

(2) The National Assembly has, for all Bills originating in the National Assembly, totally ignored Article 110(3) of the Constitution. There has been no attempt on the part of the National Assembly in the Twelfth Parliament and hardly any in the Eleventh Parliament to comply with Article 110(3) of the Constitution. National Assembly Bills are therefore published, introduced to the Assembly, and processed to enactment without recourse to Article 110(3) of the Constitution.

(3) In numerous instances where the Senate has published Bills and the Speaker of the Senate has, as required under Article 110(3) of the Constitution, sought concurrence on the nature of the Bills from the National Assembly, the National Assembly has opined that the Bills do concern counties.

(4) Even where the National Assembly has concurred that a Bill originating in the Senate is a Bill that concerns counties, the National Assembly has gone ahead to determine that the Bill is a money Bill and thus one that cannot be processed in the Senate.

(5) Bills passed by the Senate and referred to the National Assembly have eventually been introduced in the National Assembly for consideration and have taken inordinately long periods of time in the National Assembly. In the Eleventh Parliament, for example, at the end of the term of that Parliament, 32 Bills of the Senate lapsed while in the National Assembly

Mr. Deputy Speaker, Sir, it is evident that the situation as reflected by this state of affairs is worrying and requires to be addressed and settled at the earliest possible opportunity.

The leadership of both the Executive and the Legislature, while taking their respective oaths or affirmations before assuming office, undertook to obey, respect, uphold, preserve, protect and defend the Constitution. Having made this undertaking, we gain nothing as Members of Parliament (MPs) by undermining the very Constitution that we swore to defend and its institutions, including the Senate. It behoves us too as MPs, who similarly swore to do so, to remain true to the Constitution.

Mr. Deputy Speaker, Sir, I wish to reiterate that the Senate will not be cowed by attempts to muffle its voice in its mandate of legislating and protecting the interests of the counties.

The Senate continues to perform its rightful role. I appreciate why our colleagues in the National Assembly are shaken by the decision of the Senate to carry out its responsibility diligently and with obeisance and respect of the Constitution.

We have been told that one of the reasons why the National Assembly and its leadership is uncomfortable with the performance of this House is because of the thorough nature of investigation that takes place when we invite Cabinet Secretaries (CS) to this House.

*(Applause)*

I understand that the leadership of the National Assembly, particularly the Majority Leader, was just holding brief for individuals in the national Government, particularly, CSs that want to disobey orders of this House to appear before it.

I thank the Attorney-General because in one of his letters that he wrote to the Senate and copied to the National Assembly---

*(Loud consultations)*

Mr. Deputy Speaker, Sir, I ask for your indulgence. There is a lot of loud consultations.

*(Sen. Kasanga consulted Sen. Mwangi)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Kasanga. You did well recently.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, one of the reasons why we have all the noise that comes from the National Assembly is because this House has summoned CSs and taken them to task on matters security and environment.

I am happy that the Cabinet Secretary for Water and Sanitation today appeared before a Committee of this House to answer questions of oil spillage in Makueni. We have also dealt with the matter of water when it comes to the dam that burst in Nakuru County. We have dealt with the Ruaraka land issue and come up with a serious report. That is public land and it has been confirmed by the High Court. That shows the seriousness and commitment of Members of the Senate who are tasked with the responsibilities at the national level on behalf of the people of Kenya.

However, there are people who use the backdoor to mislead Members of the National Assembly that this House cannot summon people. Let it be known to the people of Kenya that this House can summon anybody at any time under Article 125 of the Constitution. We have the responsibility to do so, so that we interrogate the functions that those people are engaged in.

Secondly, they should know that the Constitution says that in so far as legislation is concerned, the Senate can only deal with Bills that concern counties. According to the Supreme Court, every Bill concerns counties except when you have matters of collection of taxes at the national level.

I would like to remind the people of this Republic that there is nowhere written in the Constitution that the Senate cannot summon or investigate any matter. There is no limitation to the responsibility of the Senate in investigating or inquiring into anything

and everything under the Sun that affects the people of Kenya. Having done that responsibility diligently, we know how many petitions we receive in this House as a result of the faith that people have in this House.

The last thing is that---

*(Loud consultations)*

**Sen. Ndwiga:** On a point of order, Mr. Deputy Speaker, Sir. Given the importance of the Statement being issued by the Senate Majority Leader, I would like you to protect us from the people who are consulting loudly. This matter is important---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): People or Senators? Do they have names?

**Sen. Ndwiga:** Yes, they do. We have Sen. Moi, Sen. Mwangi and others who are consulting loudly. This matter touches on the survival of this House. Since we are under attack, we cannot take it casually. I am surprised that Members are not listening keenly what the Senate Majority Leader is saying.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Senators, this is directed not only to Sen. Moi and Sen. Mwangi because those are the two who were named. All Senators should listen pensively. I know Sen. Moi is in the House today and we appreciate.

**Sen. Mutula Kilonzo Jnr.:** On a point of order, Mr. Deputy Speaker, Sir. I am aware that the Chairman of the Committee on Finance and Budget has another serious Statement which touches on our legislative mandate. Could Sen. Murkomen lay his Statement and then you allow the Chairman of the Committee on Finance and Budget to lay his, so that we combine both and make use of the time in order to “capture the moment”? Capturing the moment means that the matter about division of revenue where counties get stuck is a serious issue.

We are having a crisis in the country---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is noted. Let us make progress. Sen. Murkomen, are you done?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, just to respond to Sen. Mutula Kilonzo Jnr., in my Statement---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You do not have to respond.

**The Senate Majority Leader** (Sen. Murkomen): Just to mention, as the Senate Majority Leader, we are lucky to have Sen. Moi in the House.

Regarding the issue about the limitation of investigation and inquiry by the Senate and the works of committees of the Senate, I want to submit that Article 125 of Constitution provides that the Senate can summon anybody and everybody across the country.

The last thing I would like to say about the point I was making is that I will read Article 94 of the Constitution for purposes of educating those who do not have knowledge about what the Constitution says. Article 94 of the Constitution provides for the roles of Parliament. In Article 93, Parliament has been defined to mean the National Assembly and the Senate. Article 94(1) states as follows:-

“The legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament.”

That emphasis is important because one of the roles of Parliament is to make laws. I have said on the Floor of this House that when you talk about laws being passed by Parliament, they have to be approved by both Speakers that they do not or they concern counties.

There are many other things including amending the Constitution. It is stated that Parliament shall protect the Constitution and promote the democratic governance of the Republic and no person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by the Constitution or by legislation.

When you read Articles 94, 95 and 96, you will realise that the only responsibility that is limited is law making on Bills concerning counties. In terms of investigating and performing responsibilities, you can look at Article 124 which recognises both Houses of Parliament. Article 124(1) states that:-

“Each House of Parliament may establish committees, and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees.”

That means that committees of Parliament have equal jurisdiction in investigating any matter across the country because there are people who lie to themselves that the Senate should investigate certain issues. We must make it clear that there is no limitation on what the Senate can inquire into, in this great Republic of Kenya. Reports of the Senate, just like reports of the National Assembly and county assemblies, carry the same weight because they capture issues affecting the people of Kenya since all of us represent the people of Kenya.

Lastly, Mr. Deputy Speaker, Sir, I appreciate my friends in the National Assembly who are panicking because I hold the position of the Senate Majority Leader and Sen. Orenge holds the Office of the Senate Minority Leader. I have worked with Sen. Orenge for over six years and we do not suffer from an inferiority complex. In fact, we do not wish to be called “big men”. Our responsibility here is to be servants of the people of Kenya.

They go around saying that their offices in the National Assembly should be recognised and offices of the Senate should not. I would like to tell those suffering from inferiority complex that we are not interested in having a fight with them. We are more interested in what we can deliver as Members of Parliament for the benefit of the people of Kenya. The fact that the Senate Majority Leader is leading a process of going to court to establish the truth on laws of the Republic of Kenya should inform those characters that we are beyond intimidation because we are focused on universal matters and not matters related to small offices.

If someone wants to be called a big man, he can focus on that. For us, whether you are just a Senator, a Member of a committee, a Majority Leader or a Chairperson of a committee, we recognise that we are holding responsibility given by the people for the benefit of the people of Kenya. We will remain focused and our responsibility will not be dissuaded.

There is a Motion in the National Assembly purporting that this House passes laws with less than 24 people. There is no single legislation in this House that has been passed with less than 50 per cent plus one Senators. In the National Assembly, they pass laws by acclamation. You cannot establish if they had 10 or 15 Members in the House. They at times have a quorum of 50 Members in a House that is like a school of three or four streams. We have never made any decision that affects Kenyans in this House with less than 50 per cent plus one Senators. They must respect this House because we make decisions as per the Constitution with the intention of protecting the interest of Kenyans.

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

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

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, the Senate Majority Leader has compared the National Assembly to a high school. Has he done that because of the numbers in the National Assembly, their behaviour or is it both? I would want him to clarify that.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The Senate Majority Leader, please, be guided by the Standing Orders as you clarify that.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I did not say that the National Assembly is a high school. I said that the numbers that they have is like that of a high school. The behaviour of some of their leaders is close to that of the head teachers that I saw when I was in high school. That might be the only comparison. Their behaviour brings the reputation of the House to that of a high school. I have not said that it is a high school but it does look like a high school.

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

**Sen. Ochillo-Ayacko:** On a point of Order Mr. Deputy Speaker, Sir.

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

**Sen. Ochillo-Ayacko:** Thank you, Mr. Deputy Speaker, Sir. I did not want to interrupt the Senate Majority Leader but in responding to the point of order raised by Sen. Sakaja, he seems to portray a high school as a bad place. Is it in order for him to continue portraying a high school as a bad place? We all went through a high school.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Murkomen, what is wrong with high schools?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, a high school is a fantastic place but it is a place for formation. In 1<sup>st</sup> Corinthians 13:11, St. Paul says that, 'when I was a child, I talked like a child, I thought like a child, I reasoned like a child. When I became a man, I put the ways of childhood behind me'. That does not mean the he despised children. It is just a stage in life. By this comparison, we are implying that the National Assembly is still in a certain stage in life. It is not in a negative sense.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is okay, the Senate Majority Leader. You have confirmed that you were once a Sunday school teacher. Please, conclude.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, we should not be distracted from the work that we do. We must remain focussed in protecting the Constitution and the institutional integrity of this House.

I have avoided saying things that are related to the Division of Revenue Bill because the Chairperson of the Committee on Finance and Budget will update this House on a similar issue. It will be good if you can allow him to make the Statement before the Members react to my Statement because we are raising the same issues.

Thank you for this opportunity. My colleagues should know that they are doing a good job and they should continue in the same direction. Mzalendo Trust recently appraised the Members of Parliament and in as much as Sen. Orengo and I were not ranked by virtue of our offices, we are happy that most of the Members who were ranked high are Members of this great House.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. The Senator for Nairobi City County is demanding for specifics.

*(Laughter)*

Thou shall not blow your own trumpet, though Sen. Wetangula will tell you that a president of a foreign country once said that they do not find it wrong for one to blow their own trumpet because it is theirs.

*(Laughter)*

Could we hear from the Chairperson of the Committee on Finance and Budget? I will allow the Members to make a few comments and observations after that.

STATUS OF THE CONSIDERATION OF THE  
DIVISION OF REVENUE BILL, 2019

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker Sir, I rise, pursuant to Standing Order No.51(1) (a) of the Standing Orders of the Senate, to make a Statement concerning the status of the consideration of the Division of Revenue Bill, 2019.

The Division of Revenue Bill (National Assembly Bills No. 11 of 2019) was published on 6<sup>th</sup> March, 2019. The Bill was passed by the National Assembly without amendments on 26<sup>th</sup> March, 2019 and transmitted to the Senate. The Senate passed the Bill with amendments on 30<sup>th</sup> April, 2019. However, the National Assembly rejected the amendments proposed by the Senate and the Bill was referred to a Mediation Committee pursuant to Article 112(2) (b) of the Constitution.

Pursuant to Article 113(1) of the Constitution and Standing Order No. 149 (2) of National Assembly Standing Orders and Standing Order No. 160 (2) of the Senate Standing Orders, the Speakers of both Houses appointed a Mediation Committee to attempt to develop a version of the Bill that both Houses would pass.

Mr. Deputy Speaker Sir, the Mediation Committee held its first meeting on 23<sup>rd</sup> May, 2019 and two other subsequent meetings. The Mediation Committee however was unable to agree on a version of the Bill within the thirty days as contemplated under Article 113(4) of the Constitution and the Bill was defeated.

The main contention was on the county equitable share allocation for the Financial Year 2019/20. The Senate's position was that counties be allocated Kshs327 billion based on increasing the previous year's equitable share allocation by 4 percent (core inflation) while the National Assembly's position was that counties be allocated Kshs316 billion, which would be Kshs2 billion above the previous financial year. The Committee did not agree on this issue. Therefore, the mediation failed and the Division of Revenue Bill, 2019, was defeated.

Mr. Deputy Speaker Sir, Article 218 (1)(a) of the Constitution provides that the Division of Revenue Bill shall divide revenue raised by the national Government among the national and county levels of government in accordance with the Constitution. The Division of Revenue Bill therefore forms the basis upon which the two levels of Government prepare legal instruments for public expenditure. Without the enactment of the Division of Revenue Bill, the consideration and passing of the County Allocation of Revenue Bill, 2019, a Bill that is crucial to the efficient management of county governments, cannot proceed.

Mr. Deputy Speaker Sir, Article 224 of the Constitution provides that: “on the basis of the Division of Revenue Bill approved by Parliament under Article 218, each county government shall prepare and adopt its own annual budget and appropriation Bill in the form, and according to the procedure, prescribed in an Act of Parliament”.

Therefore, the consequence of not passing the Division of Revenue Bill and the County Allocation of Revenue Bill before the beginning of the new financial year is that county governments are precluded from preparing their own annual budgets and appropriation Bills.

Failure to pass the Division of Revenue Bill therefore, has caused uncertainty in the budget process at the county level of government.

The only remedy available to county governments at the moment is set out in Section 134(1) and (2) of the Public Finance Management Act which provides that-

(1) If the County Appropriation Bill for a financial year has not been assented to, or is not likely to be assented to by the beginning of that financial year, a county assembly may authorise the withdrawal of money from the County Revenue Fund.

(2) Money withdrawn under Subsection (1)—

(a) may be used only for the purpose of meeting expenditure necessary to carry on the services of the county government during the financial year concerned until such time as the relevant appropriation law is passed; and,

(b) May not exceed, in total, one-half of the amount included in the estimates of expenditure submitted to the county assembly for that year.

Mr. Deputy Speaker, Sir, however, the provisions of Section 134 of the Public Finance Management Act contemplate that the option of votes on account would arise where the Division of Revenue Bill and the County Allocation of Revenue Bill have been passed and, for whatever reason, a county assembly has not passed an Appropriation Bill. The section does not contemplate the present situation where the Division of Revenue Bill has not been passed and national revenue has not been divided between the two levels of Government. I emphasise that the national revenue has not been divided between the two levels of Government.

The counties have therefore been placed in a precarious position as the option of vote on account can only be exercised with respect to funds already present in the respective County Revenue Funds. As there will be no transfer of any revenue raised nationally to the counties in the absence of a Division of Revenue Act, counties will have to run their affairs with a fraction of the funds they actually require. This will have an adverse impact on the ability of counties to effectively discharge their functions as set out under the Constitution.

It is with great concern that we observe that despite the defeat of the Division of Revenue Bill, 2019, the National Assembly proceeded to introduce, consider and pass the Appropriation Bill, 2019. The Bill was assented to by the President on Friday 28<sup>th</sup> June, 2019.

Article 221(3) of the Constitution provides that the Appropriation Bill is passed on the estimates approved by the National Assembly. Further, Section 39 of the Public Finance Management (PFM) Act provides that the National Assembly shall consider the national budget estimates in accordance with the Division of Revenue Act and the resolutions adopted with regard to the Budget Policy Statement (BPS).

Mr. Deputy Speaker Sir, the Division of Revenue Bill is the foundation upon which the budgeting process, including the determination of expenditure of public funds both at the national and county governments level, is premised. Both levels of Government are therefore precluded from considering and approving any legislation dependent upon the division of national revenue between the national Government and the county government, including the County Allocation of Revenue Bill, the Appropriation Bill and the respective County Appropriation Bills.

The passage and assent to the Appropriation Bill in the absence of a Division of Revenue Act, is a flagrant contravention of the provisions of the law. This unlawful action not only puts to question the legal veracity of any action done under the Appropriation Act, 2019, but also undermines the national values set out under the Constitution and especially the duty to uphold the rule of law and good governance.

Further, the enactment of the Appropriation Bill, 2019, contravenes the public finance principles espoused under Article 201(1) of the Constitution and, in particular, the duty to ensure that revenue raised nationally shall be shared equitably among national and county governments.

By enacting the Appropriation Bill, 2019, there has been a purported allocation of revenue to the national Government without a similar allocation to county governments. The national Government will therefore continue to discharge its functions at an optimal level while counties will be hard pressed to provide even the most basic services.

This contravenes the objects and principles of devolution and, in particular, Article 174(g) which provides that one of the objects of devolution is to ensure equitable sharing of national and local resources throughout Kenya and, Article 175(b) which requires county governments to have reliable sources of revenue to enable them govern and deliver services effectively.

Mr. Deputy Speaker Sir, in light of the foregoing, the Senate must caution any State organ charged with the implementation of the Appropriation Act, 2019 including the National Treasury and the Controller of Budget (CoB), that any action taken under

the Act may be unlawful as it would be “fruit of the poisoned tree” as we say in law. The Act was enacted unlawfully and in contravention of the provisions of the law, and any action taken or purported to be done under it would be illegal.

However, notwithstanding the illegality of any actions taken either by the National Assembly or the Executive, the two Houses of Parliament must prioritize the re-introduction, consideration and passage of the Division of Revenue Bill, 2019, in order to enable counties to prepare their annual budgets in accordance with Article 224 of the Constitution.

Mr. Deputy Speaker Sir, regrettably, this is not the first time the Division of Revenue Bill has been steeped in controversy. It behoves both Houses of Parliament to recall that in 2013, the Senate instituted a suit at the Supreme Court to determine the role of the Senate in the process of division of national revenue. In Advisory Opinion No.2 of 2013, which ruled in favour of the Senate, the court made the following observation on the role of devolution in our country’s governance structure –

The Kenyan people, by the Constitution of Kenya, 2010 chose to de-concentrate State power, rights, duties and competencies – shifting substantial aspects to county government, to be exercised in the county units, for better and more equitable delivery of the goods of the political order.

The dominant perception at the time of constitution-making was that such a de-concentration of power would not only give greater access to the social goods previously regulated centrally, but would also open up the scope for political self-fulfilment, through an enlarged scheme of actual participation in governance mechanisms by the people thus giving more fulfilment to the concept of democracy.

Mr. Deputy Speaker, Sir, by passing the Appropriation Bill, 2019, and ensuring that the national Government continues to operate while counties are unable to deliver services to the people is a direct attack on our democracy and a clawing back on the will of the people of Kenya for greater participation in public affairs and the efficient delivery of public services.

The Senate must stand on the right side of history during this dark time and ensure that the promise of devolution as espoused in our Constitution is realized at any cost.

Thank you, Mr. Deputy Speaker, Sir.

*(Interruption of debate on Statement)*

## COMMUNICIATION FROM THE CHAIR

VISITING DELEGATION FROM MARY LEAKEY  
GIRLS’ SCHOOL, KIAMBU COUNTY

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, allow me to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from The Mary Leakey Girls’ School in Kiambu County.

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In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and on behalf of the Senate and on my own behalf, wish them a fruitful visit. The visiting students and teachers are welcome.

Thank you.

*(Applause)*

*(Resumption of debate on Statement)*

Let us now have any observations or comments on the Statement by the Senate Majority Leader and the Statement by the Chairperson of the Senate Committee on Finance and Budget.

Proceed, Senate Minority Leader.

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, both Statements that have been made by the Senate Majority Leader and the Chairperson of the Senate Committee on Finance and Budget are very important.

In fact, I think in another 10 or 20 years when we look back at the Statements which have been made in this House today by the two distinguished Senators, we will know the importance of these two Statements because they go to the core of our constitutional dispensation and structure of Government.

Mr. Deputy Speaker, Sir, let me speak generally because there are those two statements that have been made but speak to the point. I urge my brothers and sisters; distinguished Senators, to remember the words of Mrs. Michelle Obama, that when they go low, we go high. I urge you that let us not look like we are discussing the National Assembly. The issue that we are discussing is a matter that goes to the core of the Constitution. This Constitution was enacted in order to avoid concentration of power in any one institution. In fact, sometimes some people believe that there is a lot of power in the presidency under this Constitution. Even under this Constitution, those powers were distributed to independent offices and commissions which are set out in Chapter 15.

Under the old Constitution, the legislative authority of the Republic was only in the National Assembly. However, that power has now been distributed between the legislators at the national level and at the county level. At the national level, it must be shared between the Senate and the National Assembly.

Therefore, I feel very sad having heard some of the comments that were made in the National Assembly. There is a famous play by Shakespeare called Hamlet. It is not without significance that Shakespeare chose one of the characters who was just a palace guard, to comment on what was happening in the Kingdom of Denmark at that time. He said words to this effect: "There is something rotten in the State of Denmark". I am beginning to believe that there is something rotten in Kenya because when we are trying to make things work, some people do not want institutions to work.

Mr. Deputy Speaker, Sir, I am happy that the Chairperson of the Building Bridges Initiative (BBI) is here in an effort to try and make things work. There is a mechanism for Parliament – the Senate and the National Assembly – to make sure that we work as an institution. There is no law that is made in the Republic of Kenya which is titled "law or a statute enacted by the National Assembly". If you go to the statute books and the

Constitution itself, the National Assembly has no capacity to make any law under the Constitution of Kenya. Laws in Kenya are made by Parliament. That is why it is important that in every Bill – leave alone the Division of Revenue Bill – that they must seek the concurrence of the Speaker of the Senate. That is the only route under which you can have an enactment that becomes the law of Kenya.

There are arguments which have been brought out in the National Assembly. For example, they are saying that we cannot summon Cabinet Secretaries (CSs). Sen. Murkomen talked about the general section - Article 125 - which allows us to summon everybody. However, when it comes to CSs under Article 153(3), it says that Cabinet Secretaries shall present themselves both to the National Assembly and the Senate when they are required. There is no distinction. All CSs are required to appear before the Senate when they are required. If there is anybody who is in doubt, read that particular section. Each CS is actually supposed to give quarterly reports not just to the National Assembly but also to the Senate.

Mr. Deputy Speaker, Sir, I urge the leadership in the National Assembly to read the Constitution holistically. The Constitution is not supposed to be read like some people who read the Bible and can only memorize one verse. I remind them that if you want to apply the Constitution properly, understand it from Article 1 to the last, then you will know how to apply it.

If you read the provisions that deal with national security, the appointment of the Inspector-General, the reporting under the security organs of the State, the central place of the Senate is not recognised because this Constitution wants a devolved system of Government. Therefore, the Division of Revenue Bill which has not been enacted with the concurrence of the Senate – the mediation Committee having not agreed – cannot create a basis for unilateral enactment of an Appropriations Act.

In the United States of America (USA), we see quite often, the entire Federal Government is sent off because Parliament has not passed an Appropriations Act. The whole Government goes in respect of the Constitution. Here, we pass an Appropriations Act which is contrary to the Constitution and the Public Finance Management Act and we are supposed just to laugh.

I advise my friends in the other House; we have seen many people talk the way they are talking for many years. The person who said power corrupts and absolute power corrupts absolutely is damn right because the language they are speaking is that of autocrats and not democrats who know why parliaments are established.

*(Applause)*

The way they speak about the Senate is so demeaning. I will never speak about an institution of Government in such terms; be it the Judiciary or the presidency. I would speak about it with respect. For somebody to say that the Senate is an idle institution, that kind of person did not take a proper oath because that oath requires him to defend and protect the Constitution. That Constitution protects the Senate and counties. If they continue with that language, it means that they want to kill devolution.

Mr. Deputy Speaker, Sir, Article 10 of the Constitution says that one of the principles of governance is the devolution of power. The late Kajwang' used to talk every time about devolution dispersal or division of power and now we have a National Assembly that does not see the role of the Senate. The role of the Senate was seen by those who made this Constitution, knowing that there are times when the participation of the two Houses would be very important.

In fact, the participation of the Senate is a quality control because in the other House, Bills are sometimes passed without having a constitutional threshold. Our Bills are passed through a constitutional threshold. They are also accountable to the counties because how every Member of this Senate votes is a matter of public notoriety. Somebody can go to the record to determine how you voted. So, being accountable, we are very careful on the way we vote. This is the House where there must be some level of quality control.

If you go to France, the role of the Senate--- In fact, when we visited France at one time and were taken through the motions, they said that the most intricate legislation must go through the Senate because they say that is the House where many hours can be spent with the amount of detail that they will require before a complicated legislation can be passed. You can see how the two Houses relate in the USA and the Philippines to build a better country and a better republic.

Mr. Deputy Speaker, Sir, I do not want to take a lot of time because many Senators want to speak to the point. However, there are some people who are forgetting about this new environment that we have, so that we are able to resolve things in accordance with the law and the Constitution. Name calling will not help. The solution to this matter is to bring back an Act or legislation to cure what has already been done.

I support those that have now shown us the knife. We have no alternative but to go to court and have this matter determined once and for all. I hope that every Member of this Senate will not hesitate in a week or 10 days' time, when this matter is taken to court. We need to be together in this, otherwise, they will kill this Senate like they did many years ago. That Senate used to sit here. It will be a great tragedy that those who fought for this Constitution would see the Senate and devolution die because if you deny counties funds, the resultant effect is that you do not want those counties to operate.

Mr. Deputy Speaker, Sir, I appreciate the Statement made by the Chairperson of the Committee on Finance and Budget. It is a well-considered Statement and should be attached to the pleadings that we are going to file in court. I think that Statement will be cited in the judgment because it is a well thought out. It sets out the law as to how to handle the Division of Revenue before the proper budget process begins.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I thank you, the Senate Minority Leader. The Senate Majority and Minority leaders as well as the Chairperson of the Committee on Finance and Budget have set a good tone. As a way of general guidance, I would like to clarify issues so that we do not end up with so many points of orders.

Standing Order 96 on contents of speeches prohibits discussing proceedings in the National Assembly. However, there is a proviso. It is not supposed to be a gag.

Standing Order 96(5) on context of speeches states: -

“It shall be out of order for a Senator to criticize or call to question, the proceedings in the National Assembly, a County Assembly or the Speaker’s Ruling in the National Assembly but any debate may be allowed on the structures and roles of County Assemblies or the National Assembly.”

Hon. Senators, you are only allowed to speak on the structures and roles of the county assemblies or the National Assembly. It is out of order to call into question or criticize the proceedings in the National Assembly. With that guidance, I will now allow a few Senators to make a few comments.

The level of interest on this matter is extremely high; each speaker will have not more than five minutes.

Kindly, proceed, Sen. Cheruiyot.

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, I thank you for that guidance. We will try to obey your guidance.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Do not just try. Just follow the guidance.

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, it is said that all is fair in love and war. We are at war. We will try and deploy all the resources available.

We need to start by reflecting how much the Standing Orders in the National Assembly allow certain things. Central to this debate is the permission on which Bills should go to the Senate and which ones can be assented to directly. Cheekily, the National Assembly included in their Standing Order a provision that allows them to bypass the Constitution and determine by themselves what laws the Senate can consider and those that we cannot.

Mr. Deputy Speaker, Sir, as we debate this, we should consider that part of what the leadership of the Senate needs to do is to consider and look into all the provisions of the Standing Orders in the ‘Lower House’ that fall afoul of the Constitution and allows them to do the kind of things that they are doing which are completely illegal and should not be allowed anywhere else.

It is really unfortunate that it has come to this. All of us come from an understanding of knowing the price that Kenyans had to pay to achieve the Constitution of Kenya 2010. It is a Constitution that devolved powers, resources and all that is central to making the lives of Kenyans better. As a Member of the Committee on Finance and Budget both in the last and current Parliament, we have always tried to be rational in balancing knowing that there is no bottomless pit of resources in this country. Therefore, it is not that the Senate comes out of a perception knowing that we must continually send as much resources to the counties as possible.

Mr. Deputy Speaker, Sir, the figures that we have always arrived at are guided empirically by things that we consider being central when we are determining how to divide revenue between the counties and National Government. The agreement on provisions that have been given by constitutionally mandated bodies like the Commission on Revenue Allocation (CRA). It will be worth noting that in this particular Statement,

the CRA agreed with what the Committee on Finance and Budget proposed as the correct figure to be sent to the counties taking into consideration issues like inflation. It is not just a figure that the Committee on Finance and Budget plucked out of the sky and said that we need to send Kshs335 billion to the counties. These are figures that we know are workable.

If you read the report that was done by the Committee on Finance and Budget during the consideration of the Budget Policy Statement (BPS), one of the key highlights and the things that we said must be considered before we go to the next division of revenue is determination of what is considered to be national interest. This is an avenue that the national Government has continued to exploit for many years to ensure that the counties are underfunded.

Mr. Deputy Speaker, Sir, in my opinion and that of many of my colleagues whom I sit with in the Committee on Finance and Budget, national interest varies from one year to the other. Therefore, it cannot be a constant that in each and every particular year, they want to insist on a particular amount or figure as a determination between the national security and all the many things that the national Government continues to use in the determination of this particular issue.

I therefore urge and encourage my colleagues that if there has been a moment that we are being called out to stand up for devolution; it is this particular moment. It has got absolutely nothing to do with political parties. It has got absolutely nothing to do with whether we like the Government in power or not but it goes to the very core of whether we believe in devolution or not. Should we back down as warned by so prophetically by the Senate Minority Leader, Sen. Orenge, then we can as well kiss devolution goodbye and be prepared to feature so boldly but in a terrible manner in the annals of history as the House that watched as devolution sank and disappeared out of this Republic.

Mr. Deputy Speaker, Sir, in the interest of time and knowing that many of my colleagues want to contribute, I rest my case with those many remarks and ask my colleagues to stand and stand firm.

Thank you.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I am told that a lot of the people who are looking for change, are saying that this House should be made the 'Upper House' by law.

*(Applause)*

That means that when you find children quarrelling, you do not start to quarrel with them. I believe that the National Assembly is ignorant of the law and we should ignore them. Just for the record, Article 110(1) of the Constitution states that-

“(1) In this Constitution — a Bill concerning county government means—

- (a) a Bill containing provisions affecting the functions and powers of the county governments set out in the Fourth Schedule;
- (b) a Bill relating to the election of members of a county assembly or a county executive; and

(c) a Bill referred to in Chapter Twelve affecting the finances of county governments.”

Mr. Deputy Speaker, Sir, there is nothing that the National Assembly is doing whether it is debt or borrowing that does not concern counties. What bothers me is the fact that it appears that the division of revenue is becoming a matter that should be given attention by county assemblies.

We had debate with colleagues from the National Assembly during the mediation. As far as they are concerned, when it comes to the division of revenue, the only figure that we should look at is the figure called equitable share. That is why the suit prepared by the Senate must be filed. The affidavit to be signed by the Speaker of the Senate, hon. Lusaka, must be signed. It is not optional. If we do not get an interpretation of matters affecting counties and matters concerning counties, we might as well fold up and go home.

Mr. Deputy Speaker, Sir, we invited a consultant on this issue who had a lot to say that concerns us. I was hoping that the Chairman of the Building Bridges Initiative (BBI) would be here. He said, “The thing that will kill county governments is the allocation of revenue and budgets.” The conspirators of 1966 have cloned themselves, come back to sit in the National Assembly, and are killing devolution through the budget.

Mr. Deputy Speaker, Sir, when we went to the Supreme Court, the allocation of county governments had declined from 4.3 per cent to 3 per cent of Gross Domestic Product (GDP). They do this very slowly; and soon enough, we are only going to pay salaries. Members of the Senate who are here, some of you who want to be governors, you will be governors just to pay salaries. At the current rate, you will not be able to make any move.

Mr. Deputy Speaker, Sir, the same people have gone and interfered with our mandate in the ruling of Court of Appeal that says that the Senate has no role on own-source revenue. Meanwhile, the Commission on Revenue Allocation (CRA) has brought a formula here which we are trying to interrogate for purposes of increasing the revenue of counties in terms of their collections.

The solution is not even this debate; it is a day, next week, when we shall walk to the High Court with a suit, in the name of the Speaker of the Senate against the Speaker of the National Assembly. Let us give it to the Court and tell Justice Maraga that a constitutional moment has come for him to interpret what Article 110(3) means; an Act of Parliament, where Speaker Muturi decides on his own that a Bill does not concern county governments.

Thank you, Mr. Deputy Speaker, Sir.

**Sen. (Rev.) Waqo:** Thank you, Mr. Deputy Speaker, Sir, for allowing me to add my voice to this very important Statement.

Mr. Deputy Speaker, Sir, as the Senate, we should all be concerned with what is happening. We are here representing the entire nation on behalf of devolution. Therefore, when the Senate is under attack, we know very well that devolution is also under attack. Most of the time when we discuss these things, I wonder the intention of all this. It seems as if there is a hidden agenda in what is currently happening in the National Assembly. The National Assembly and the Senate are supposed to serve the common wananchi.

*(Loud consultations)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, the two Whips! I do not know what you are whipping. That is not how to do it, and this is not where to do it.

You may now proceed, Sen. Waqo.

**Sen. (Rev.) Waqo:** Thank you, Mr. Deputy Speaker, Sir, for your intervention, because the noise is so loud.

I was saying that if there is a time we need to unite, stand up and fight for the right of this House, this is the time because what we are doing is not for ourselves, but the entire nation. It is even good for the National Assembly to know that fighting the Senate openly is not good at all because we are here to serve Kenyans. Therefore, they should discuss matters that affect our nation, but not the role of the Senate, which is properly defined in the Constitution.

With that, I beg to support. Let us all be together so that we can fight for the rights of this House.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. That was very brief and to the point.

Proceed, Sen. Wetangula.

**Sen. Wetangula:** Thank you, Mr. Deputy Speaker, Sir. You read to us the provisions of Standing Order 96(5). How I wish you would remind your counterpart in the National Assembly that they also have an equivalent Standing Order in 87(5), which stipulates that they are not supposed to do what they did this morning; but they did it, anyway. As a liberal Speaker, I think you should allow us to pay them back by the same coin.

*(Laughter)*

Mr. Deputy Speaker, Sir, I have a feeling that the National Assembly is suffering from what is commonly called the “Emperor Nero Syndrome.”

*(Laughter)*

Persons who suffer from this syndrome will start calling names to innocent, intended victims and then turn on them to harm them. In Nikolai Gogol’s book called “The Government Inspector,” an erratic Mayor tells his *askaris*, “Arrest that man and lock him up for theft.” The *askaris* say, “But he has not stolen, Sir.” Then the Mayor says, “Just arrest him; he will steal one day anyway.” That is what the National Assembly is doing to this House.

Mr. Deputy Speaker, Sir, we must stand up to be counted. The Constitution is so clear, and like those who have spoken before me have said, that all Bills passed are Acts of Parliament. If you look at Article 102, it describes the term of Parliament; not the term of the Senate and the term of the National Assembly.

Looking at the petitions that wananchi bring to these Houses, one would expect that more petitions will be going to the National Assembly. However, the number of petitions wananchi bring to this Houses are more than five times higher than those that go to the National Assembly. This is because wananchi out there believe that this is the House of reason and justice. I agree with those who have spoken before me, and said that we should not descend to that level. We must stand by the law and the Constitution.

Mr. Deputy Speaker, Sir, the Statement made by the Chairman of the Committee on Finance and Budget, the distinguished Senator of Mandera County, represents our views in the Committee. I am a member of that Committee, where we discussed it and agreed. It is regrettable that somebody has caused the President to assent to the Appropriation Bill that has been passed unconstitutionally. Without the Division of Revenue Act (DORA), no other legislative process on financing and management of the budget can follow. It is very clear, yet the National Assembly has gone ahead and passed the Bill. I do not know what the advisers have done, but they should have told the President, "Let this impasse between the two Houses be sorted out first."

Mr. Deputy Speaker, Sir, now is the constitutional moment for this country. Members of this House, regardless of where we come from or our political affiliations, looking at comparable jurisdictions like Australia, Canada, India, the United Kingdom (UK), *et cetera*, the Senate is always the Upper House. It is the House of revision and an appellate structure for the National Assembly. I have been seeing Bills coming from the National Assembly, and sometimes you wonder whether much thinking was put in them.

Mr. Deputy Speaker, Sir, you will remember, in the last Parliament, that the National Assembly even mischievously passed a law that intended and purported to exclude this House from making any approval of treaties, yet the Constitution says that all treaties signed by the Government must be approved by Parliament. Consequently, we had to come here to change the law to protect the interests of this House.

Mr. Deputy Speaker, Sir, because every success must come with sacrifices and pain, Members of this House, led by yourself, must stand up and be counted.

In the last Parliament, Hon. Ekwe Ethuro as our Speaker---

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

*(Loud consultations)*

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

**Sen. Wambua:** Mr. Deputy Speaker, Sir, could you kindly direct that the Senator for Bungoma be heard in silence. We are trying to hear him, but we cannot because of loud consultations.

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

**Sen. Wetangula:** Thank you, Mr. Deputy Speaker, Sir. My distinguished nephew was rowdy.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Who is your distinguished nephew?

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, my distinguished nephew, is the Senator for Nairobi. He was engaged in a rowdy manner.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I thought you had brought relatives here.

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, now that we are in a constitutional moment and the Chairmen of the Building Bridges Initiatives (BBI), that is Sen. Wako and Sen. Haji, are from this House, we must aggressively pursue a constitutional change to restore the position of the Senate as to what the Senates are worldwide.

Mr. Deputy Speaker, Sir, we have agreed that we are going to court. We already are embolden by the advisory of the Supreme Court which we all went to court, including yourself. The Supreme Court said that it is an unimaginable to think of any legislation that does not touch on counties. If you talk of security, the theatre of security is in the county. If you talk of education, schools are found in the county. If you talk of any matter under Schedule Four, they are all in the counties.

I urge the leadership of this country, both the Executive and the Legislature not to precipitate unnecessary political crisis in the country because Kenyans will go to court. Probably, Okiya Omtata is already in court to challenge the constitutionality and legality of the Appropriation Bill that has now been assented to. A good court addressing its mind properly to the law and the Constitution will annul that Act. We do not want this country to have this kind of legal ping pong. Every time we move forward, we have to move backward. Therefore, Senators, next week is the week for the Senate. Next week is the day when you must remember a movie called the *Verdict* where the lawyer says that 'there is no other case, this is the case'. We must do so.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): This is the case. Thank you, Sen. Wetangula.

**Sen. Dullo:** Thank you, Mr. Deputy Speaker, Sir---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sorry, Sen. Dullo. I give you strictly five minutes. The Clerk should assist us.

**Sen. Dullo:** Thank you, Mr. Deputy Speaker, Sir. I will use less because most of the points have been raised by the previous speakers.

The Statements made by both the Senate Majority Leader and the Chairperson of the Committee on Finance, Commerce and Budget is a matter that touches the mandate of this House. We, as a House, cannot fight with the National Assembly for the last six and a half years. We did that in the last Senate and we are still doing it. This is the moment to release ourselves from these shenanigans every year where we look at which House is more superior to the other. We are not here for that purpose.

It is the right time for us to call for the amendment of the Constitution. It will clearly sort out these issues that we always have with the National Assembly. It is clear that every time the National Assembly has issues, it says that the Senate has done a, b, c, d, or something that is not right. We cannot keep on doing that. We are always hearing stories where they say a particular matter does not affect the Senate. I do not see anything under the sun that is before the National Assembly that does not affect county governments or the Senate.

Mr. Deputy Speaker, Sir, Article 114 of the Constitution talks about money Bill. However, in their interpretation, it means that they are the only ones who have a right to look at a money Bill. This is one of the provisions that we must amend. For example, if it is a road budget or taxes that are discussed in the National Assembly, they affect the county. They have also usurped our roles.

For example, the amendment to the Health Bill clearly touched on the mandate of the Senate. However, they sneaked it to State House for it to be signed without consulting the Senate. This is wrong. If they say the Senate is an idle House, they are the ones who are idle. This is because if you look at the National Assembly Chamber, you will only see 10 Members out of 349. None of them are in the House one hour after the House resumes.

Mr. Deputy Speaker, Sir, we need to put our acts together. The Senate Committee on Justice and Legal Affairs has put all its facts together. Therefore, we, as a House, must do what we have done in the last Senate to make sure that we protect our right as a Senate. If we do not do that, we should close our doors, go back home and do what we are required to do in our homes. We cannot be crying always about what the National Assembly has done.

I support this two these two Statements. I feel that we have to come out clearly and strongly to ensure that we are here to stay. We should not back off.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, we have not more than 30 minutes left. However, the interest level is extremely high on this issue. The House has to make a decision on one or two proposals from the Chair. One is we stick with the five minutes and not more six other speakers will talk, or reduce it to three minutes, in which case, we will have 10 speakers. Are we for five or three minutes?

*(Loud consultations)*

Order! Let us take a vote. I do not know how we will place this. If we reduce time, there will be more speakers. If we keep the five minutes, there will be less speakers. We have to get the mood of the House. How many are for the reduction of time? Let me put the question.

*(Question that Member's contribution time be reduced to three minutes put and agreed to)*

You have three minutes starting now.

Proceed, Sen. (Prof.) Onger.

**Sen. (Prof.) Onger:** Thank you, Mr. Deputy Speaker, Sir---

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Linturi? I hope you are not going back to the decision which has been taken.

**Sen. Linturi:** Mr. Deputy Speaker, Sir, let us invoke the provisions of the Standing Orders to increase the time because of the tremendous interest that this matter has generated. I feel constrained when we want to convert ourselves to the level---

**The Deputy Speaker Sen. (Prof.) Kindiki:** Order! The decision has already been made, Sen. Linturi.

**Sen. Linturi:** Is there no room for a review, Mr. Deputy Speaker, Sir?

*(Laughter)*

**The Deputy Speaker Sen. (Prof.) Kindiki:** Next time. Proceed, Sen. Onger.

**Sen. (Prof.) Onger:** Thank you, Mr. Deputy Speaker Sir. Could you, please, adjust my time because it has been eaten up by this point of order?

I want to draw my inspiration from Article (1) of our Constitution about the sovereignty of the people. All sovereign power belongs to the people of Kenya. It clearly stipulates how this sovereign power will be delegated to Parliament and county assemblies; that is to the national Executive and the county executives. This devolution was intended to ensure that all the services whether they are normal functions that are exercised under Schedule (1) by the county governments, Schedule 4 or the national Government---

*(Sen. Ochillo-Ayako stood up in his place)*

**The Deputy Speaker Sen. (Prof.) Kindiki:** Sen. Ochillo-Ayako, are you on a point of order?

**Sen. Ochillo-Ayako:** Yes, Mr. Deputy Speaker, Sir. It relates to what Sen. Linturi had said.

**The Deputy Speaker Sen. (Prof.) Kindiki:** That matter is closed.

**Sen. Ochillo-Ayako:** Mr. Deputy Speaker, Sir, with due respect, I have not said it yet. I am apprehensive of the fact that even if you allow 10 people to speak, all of us will not speak. We will become irrelevant and this is a matter that is affecting everybody. We are fearful that our work here will be wasted. I was pleading with you under any Standing Order that you were referring---

*(Laughter)*

Yes, it is Standing Order No.1. Use it to allow every Senator who is interested to ventilate on this matter. If we do not go on record regarding this matter, we will leave this place constrained. So, allow Sen. (Prof.) Onger to speak and allow as many Senators as are interested to express their feelings on this matter because otherwise the rest of the work we are postponing is irrelevant if we do not protect our mandate.

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

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

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, I know the authority of the Chair is not in question and can never be challenged. With utmost respect, I want to plead that you may find it in your heart to listen to the request by Sen. Linturi and Sen. Ochillo-Ayako because this matter is so weighty. Understanding Order No.1, you have the discretion to allow additional time. I humbly plead.

**The Deputy Speaker** Sen. (Prof.) Kindiki: Order! I have heard all of you: Sen. Linturi, Sen. Ochillo-Ayako and Sen. Cheruiyot. We can still retain the three minutes and maybe everyone will have spoken. Let us see how we perform.

Proceed, Sen. (Prof.) Ongeru.

**Sen. (Prof.) Ongeru:** Thank you, Mr. Deputy Speaker, Sir. I hope you take into account what has happened.

This sovereign power is delegated to Parliament. It does not say the National Assembly; it is delegated to Parliament. In my understanding of the Constitution, Parliament is both the Senate and the National Assembly. The functions have been defined under the two intergovernmental settings; the National Assembly and the county governments. Under the county governments, there are those functions that are fully exercised by the county governments like agriculture, health and many other services.

**The Deputy Speaker** Sen. (Prof.) Kindiki: Order! Senate Majority Whip, this afternoon you have been consistently creating disorder. Whatever you are doing, even if you are whipping, this is not a party caucus meeting. This is the plenary of the Senate. So, you cannot whip here in the Chamber. I, therefore, call you to order.

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

Order, Sen. Moi! You seem to be running a KANU meeting in the Chamber.

*(Laughter)*

I can see you talking with Members of your party there. We cannot allow you to run the affairs of your political party in the Chamber of Senate.

Proceed Sen. (Prof.) Ongeru. I hope you have held his time.

**Sen. (Prof.) Ongeru:** Thank you, Mr. Deputy Speaker, Sir. In that vein, what are we saying as Senate? We represent the counties which have the county executive and the county assemblies. The people from the county come from wards. The MCAs represent the sovereignty of the people at the ward level. The Constitution guarantees that there shall be equity in the distribution of power and resources. The Constitution also says that the resources must follow function. The major argument in this debate is we now realize that the devolved functions are majorly at the county level.

This Senate has an obligation under the Constitution to defend those functions that have been placed under the county level. You cannot defend the functions without the resources flowing into the county. When the Chairperson of the Committee on Finance and Budget comes here with the Division of Revenue Statement we should support him because that tells the story. The amount of Kshs335 billion was not arrived at, out of nothingness. It was on the basis of inflation and many other issues.

More than 96 per cent of the resources of the Health Sector are retained in the national Government and yet almost 94 per cent of the resources of the functions of the health sector are retained by the county governments. What business does the national Government have to delay or keep any extra resources where they do not have functions that must be accounted for through the resources allocated to them?

That is all we are saying. It does not matter how much noise the National Assembly may make; the fact remains that these resources must go to the people. Unbeknownst to them, these people that are said to be represented by the National Assembly are also represented by the MCAs. We are also representing the county assembly as Senate Members.

They cannot be more claimant of that position than us who are in Senate. The message should be that this is a matter than now needs to be decided upon. It must be decided upon by a Court of Law because that is the only avenue available to us.

*(Interruption of Debate on Statement)*

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

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM AIC CHORWO MISSION  
SCHOOL, ELGEYO-MARAKWET COUNTY

Hon. Senators, I want to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from AIC Chorwo Mission School, Elgeyo-Marakwet County.

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

We are receiving so many visitors this means we are doing a very good job.

*(Resumption of Debate on Statement)*

**Sen. Ndwiga:** Thank you, Mr. Deputy Speaker, Sir, for this opportunity to add my voice to this very important discussion.

The main reason that drove us to fight for the new Constitution was devolution. With this devolution, Kenyans are now beginning to see resources being devolved down to where they live. We are now noticing something very strange happening. There is a group of people whose champions are in the National Assembly who want to reverse the gains made by Kenyans in this respect.

When you go to any county today, you will realise that money has not been disbursed because of the problems we have with Members of the National Assembly. Businessmen and women in the counties are being auctioned. Therefore, there is no development at all in the counties. Sometimes I wonder where Members of the National

Assembly come from. Sometimes you may think they come from the moon. When people are opposed to resources being taken to the counties, you are left to wonder where they come from. Do they come from the counties?

Mr. Deputy Speaker, Sir, we should go out there and tell Kenyans the type of Members of the National Assembly we have. Kenyans should know where the problem is. There is not much to be done at the national level because all functions were devolved to the counties where people live. Why should the national Government retain a chunk of the national resources when counties are suffering?

Mr. Deputy Speaker, Sir, I want my colleagues to hear this. In 1966 when then Senate was killed, the first strategy was to deny regions funding. You may recall that Ronald Ngala from the Coast---

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Ndwiga, your time is up, but I will allow you 30 seconds so that you explain the murder of the Senate in 1966.

**Sen. Ndwiga:** Mr. Deputy Speaker, Sir, the first Senate was strategically murdered by refusing resources to go to the *majimbo*. Again, this time round, there is a strategy to kill the Senate and devolution.

I thank you.

**Sen. Ochillo-Ayacko:** Thank you, Mr. Deputy Speaker, Sir, for allowing me to make my remarks on this matter. It is true that if you want to kill a dog, you give it a bad name. If you want to give devolution and counties a bad name, you deny them finances, so that they default in their commitments and fail to perform services to ensure disaffection and dissatisfaction. There is a strategy by unknown characters being fronted by the National Assembly to make sure that counties are dysfunctional.

When we talk with our colleagues in the National Assembly, they say that corruption is prevalent in the counties. That is not true. Corruption is more prevalent at the national level yet we continue allocating resources to the national Government. Corruption can be dealt with differently without necessarily depriving institutions of resources to execute their mandate. So, that is an argument that does not hold water.

I believe all colleagues here consider themselves representatives or agents who exercise delegated sovereignty from the people pursuant to Article 1 of our Constitution because we are all MPs. If you look at the definition of "Parliament" it captures clearly that it is made of the Senate and the National Assembly. The sovereignty given to each and every one of us here is given to Parliament. We cannot be here as a Senate and allow that sovereignty to slip away and be exercised by an institution that does not represent Parliament in entirety. This is a matter that we should take up. We should ensure that the Constitution is protected by taking this matter to wherever it must be taken to.

Since I believe we will go to court sooner than later because I have been participating in some meetings, I would like to conclude by asking all of us to extract the proceedings that took place today in the National Assembly. Those proceedings are evidence of the venom, vitriol and contempt with which we are being treated as MPs by Members of the National Assembly. If we get a good adjudicator in this matter, the

venom, contempt and vitriol will serve as information that another House is treating a national institution whose mandate is to exercise sovereignty.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Be guided accordingly by Standing Order No.115 on irrelevance or repetition.

**Sen. Kinyua:** Asante, Bw. Naibu Spika, kwa kunipa fursa hii. Nampongeza Mwenyekiti wa Kamati ya Fedha na Bajeti na Kiongozi wa Wengi katika Seneti kuleta *Statement* hii. Ni jambo la kuhuzunisha muno kwa sababu ni kama tuko hapa kujadili tabia za “Jopo ama Kongamano la Kitaifa” ukifafanua *the National Assembly. Parliament* inamaanisha Bunge na sitaki kuongea kuhusu hilo.

Ikiwa mapato ya nchi yanaongezeka, basi mgao wa pesa za kaunti unapaswa kuongezeka kwa asilimia hiyo. Kazi yetu kama Maseneta ni kutetea na kuhakikisha kaunti zetu zinapata pesa. Ningependa kuwaambia ndugu zetu walioteuliwa kwenye jopo la kushughulikia jinsi pesa zitatumwa wasimame kidete ili kuhakikisha kaunti zinapata Kshs335 billion. Tusilegeze kamba kwa sababu tukifanya hivyo, tutakuwa tunaleta mfano usiofaa. Wao wameongeza pesa zao hadi Kshs100 million. Tukisema pesa za kaunti ziongezwe, wanaanza kutoa vijisababu ambavyo havina msingi.

Tutatetea kaunti zetu kwa hali na mali na kwa damu na jasho. Hatutakubali mtu yeyote alete vijisababu na kupinga kuongezwa kwa pesa za kaunti kwa sababu ya ufisadi. Pia kuna ufisadi katika *the National Government Constituencies Development Fund (NG-CDF)*. Hatujawahi kuwaambia kuwa wanatumia pesa vibaya na hawawezi kuongezewa kwa sababu kuna ufisadi. Kutokana na vijisababu hivyo, wana nia na mpango wa kupigana na ugatuzi. Mtu yeyote anayegusa ugatuzi anagusa Seneti na ukiguza Seneti unagusa Wakenya.

Watu husema kuwa kabla ya mbwa kufa, hupata kichaa. Akipata kichaa, hubweka na kuanza kula miti. Sitaki kusema mengi. Kuna watu katika nchi yetu wanaoonyesha mtindo wa mbwa anapotaka kufa kwa sababu wameshikwa na kichaa. Hiyo inamaanisha wanakaribia kufa.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to add my voice to this Statement. I support the Senate Majority Leader for this Statement because of the Constitution. The Constitution is clear that power belongs to the people of this nation. Since power belongs to the people, there is need for services to be delivered to them. The role of the Senate is clear in the Constitution. The Senate represents and protects the interests of the county governments.

It is unfortunate that sometimes Kenyans are not aware of their rights, they have powers and that devolution seeks to protect them and ensure that services reach them. Therefore, there is need for capacity building for people in the counties to know exactly what the Senate does. Once people know the role of the Senate, they will support us and avoid listening to issues due to ignorance. Sometimes people perish because of lack of knowledge. Therefore, there is need for capacity building in the counties for the purpose of ensuring that Kenyans know what they should know.

It is also clear in the Constitution that the Senate is core in coming up with Bills which constitute the laws of the land that help Kenyans.

Bills should never lapse. Instead, they should be concluded within the lifespan of a Parliament and in accordance to the Constitution. The Constitution states how a Bill is

to become law. Kenyans should know that we can summon the Cabinet Secretaries (CS) on issues that are affecting them. For example, we recently summoned the Teachers Service Commission (TSC) to interrogate them on teenage pregnancies and dismissal of teachers because we are concerned about our children in schools. Our people will suffer if we do not interrogate the CSs and the systems. We are here constitutionally to serve Kenyans.

Killing the Senate is killing devolution.

*(The red timer was switched on)*

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

**Sen. (Dr.) Musuruve:** Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity.

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

**Sen. Sakaja:** Thank you, Mr. Deputy Speaker, Sir. I am impressed that this House has decided to take the higher ground by not responding in the same tone to the juvenile rants that we earlier had. It would be *infra dig* for this House to sound like the other House on this matter.

This House has distinguished itself as a House of sobriety and reason. That is why this country has a lot of confidence and faith in the quality of our discussions. The quality of debate in the other House is low because they only speak for two or three minutes. A Member of that House can request to speak on a particular Motion just for the Speaker to get to them when they are on a different Motion that they were not prepared to speak on. Let us remain to be the House that has seasoned arguments and proper debate.

The assertion that CSs should not come to the Senate is nonsensical. On behalf of the other Chairpersons, I want to say that we will continue inviting the CSs. Article 152 of the Constitution is clear. The CSs are supposed to appear before select Committees of this House on matters that concern this country. A CS friend of mine told me that it is easy for them to appear before the National Assembly Committees, but they have to do a lot of preparation before facing a Committee of this House because the Senators ask serious questions. They know that our secretariat does proper research and they also have to prepare. We will continue calling them for discussions. We will continue playing our role as Senators.

The National Assembly has become an appendage of the Executive. There is no oversight being done in this country. In this House, we do agree on issues on a bipartisan nature and play our oversight role without fear or favour. I always tell my colleagues in Jubilee that I was the Chairman of the ruling party and a Member of Parliament when I was in the National Assembly, but still played the oversight role. If you do love your party, you will be the first person to point out a mistake and you will also be the one blowing the trumpet at the mountain tops when your party do well. We should go to court to get the clarifications. We shall protect devolution.

I sat in the Mediation Committee that looked at the Division of Revenue Bill and the patronising attitude of the National Assembly that came out clearly was unfortunate. The thinking that one is doing a favour by sending money to counties is false. The

thinking that the counties are being given revenue by the national Government is false. Division of Revenue Bill divides revenue between both levels of Government. It is not the Government giving money to the counties.

The money going to counties is given to them by right and that is provided for by the Constitution. You cannot say that you are giving the counties Kshs10 billion extra because there is corruption in the counties yet corruption is also there in the national Government. That is cutting off your nose to spite your face. You cannot tell us that you cannot increase the money going to the counties yet you have increased the NG-CDF by Kshs6 billion and you are---

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

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, allow me to finish that point. I know that my time is up.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Please, finalise.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, when we talk about fiscal consolidation, we have to know that what is good for the goose is good for the gander. The Kshs327 billion that we are proposing is the smallest level of growth. From the Kshs314 billion, we have only added core inflation of four per cent to the counties. We cannot give them what they got last year yet the national budget has gone up by 14 per cent. We are talking of less than 10 per cent. We will have failed as a Senate if we cannot stand for this.

**Sen. Omogeni:** Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to make my contribution to this Statement.

I want to state to the people of Nyamira County that I took an oath to defend and protect the Constitution that was enacted by the people of Kenya in 2010. It is shocking that people who have been elected to the prestigious Houses that we call Parliament, can question the right of any Kenyan to seek a constitutional interpretation on a constitutional issue where there is a clear dispute.

Article 165(3)(d)(i) of the Constitution states that:-

‘(3) Subject to clause (5), the High Court shall have—

(d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—

(i) the question whether any law is inconsistent with or in contravention of this Constitution.’

Mr. Deputy Speaker, Sir, the Senate will move to the High Court because it wants the court to determine if we have Standing Orders that are in contravention of the Constitution that was enacted by the people of Kenya. The Senate would also want the court to determine if the action that has been consistently taken by the National Assembly is in contravention of this Constitution. That is the power that has been donated to the High Court. Article 165 says that one can present a petition to the High Court for it to determine if anything said to be done under the authority of this Constitution is in contravention or is inconsistent with the Constitution.

As a Senior Counsel, I am inspired and ready to appear in court to protect the constitutional mandate that has been donated to this House under Article 96 without any

fear or favour. When this matter goes to the High Court, nobody should fear because the High Court will interpret the questions that will be placed before them in line with what is stated in the Constitution. Those who have contravened this Constitution fear that the interpretation of the High Court will agree with the views that have been expressed by the Senate.

**Sen. Kibiru:** Thank you, Mr. Deputy Speaker, Sir. I rise to associate myself with the Statements. I listened to the debate of the National Assembly when I was in the car. In the spirit of the people from the mountain, I felt like jumping out and going to fight them. We have a saying in Mount Kenya region that says; when a night arrow is thrown at you and it is dark, you must throw it back to the same direction because that is where the target is.

I want to also associate myself with what my colleagues have said. I do not want to overemphasise what the Constitution says.

I just want to quote the late J.J. Kamotho and say:

“The Constitution is very clear.”

I think the National Assembly Members need to acquaint themselves more with the Constitution. Maybe we need to throw the arrow back to them in the same direction it has come. The way they are saying that their mandate is to oversight the national Government, we should tell them that they have failed miserably. If you look at the debt issue - if that is what they want us to talk about - they have failed miserably. They need to tell Kenyans what they are doing in relation to the debt issue.

When you look at issues of corruption, why are they not telling us what happened with the issue of laptops if they are oversighting the national Government? Why are they not telling us about the corruption issues about dams? I think Members of the National Assembly need to do their work and remove the log in their eye before they start to look at the Senate.

With those few remarks, I would like to donate my time to Sen. Linturi.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Do you want to get the one minute left?

Sen. Linturi, you either take the one minute left or wait for your opportunity.

**Sen. Linturi:** Mr. Deputy Speaker, Sir, I will wait for my turn.

**The Deputy Speaker** (Sen. (Prof. Kindiki): That is a wise decision, because what the Senator for Kirinyaga was trying to do is a local arrangement.

**Sen. Were:** Thank you, Mr. Deputy Speaker, Sir, for the opportunity to join my colleagues in responding to the Statement by the Senate Majority Leader. So much has been said, but the bottom line when all is said and done is that devolution is under attack. That is the bottom line of what is going on and it should not just be an issue of the Senate. Anybody who loves and supports devolution should condemn what happened today in the National Assembly.

The push and pull between centralization and decentralization is not without precedence. Sen. Ndwiga has just told us what happened in 1966 and even with mature democracies, there is always that push and pull between decentralizing and centralizing power. So mine is to urge my colleagues not to give up on this war. We remain steadfast and make sure that we fight and continue to strengthen devolution.

*(Interruption of Debate on Statement)*

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

### COMMUNICATIONS FROM THE CHAIR

#### VISITING DELEGATION FROM KARANGI PRIMARY SCHOOL, MURANG'A COUNTY

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from Karangi Primary School, Murang'a County.

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

I thank you.

#### VISITING DELEGATION FROM PAUL MBIU PRIMARY SCHOOL, MURANG'A COUNTY

Hon. Senators, I would like also to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from Paul Mbiu Primary School, Murang'a County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them.

On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

I thank you.

*(Resumption of Debate on Statement)*

**Sen. (Dr.) Ali:** Thank you, Mr. Deputy Speaker, Sir. I want to associate myself with the two Statements which I support.

It has been said by many, but I want to ask one thing as Sen. Ndwiga said; did the National Assembly Members come from the sky? Do they live in another world or they live in Kenya and in counties? What I know is that there are six constituencies in Wajir and there is only one Senator. As everybody has said, they were elected from their constituencies, but they are not serving the people of Wajir County if they are fighting devolution.

I will urge every one of us to come out with our guns blazing and tell these people what should be done to them.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I hope you are referring to political guns.

*(Laughter)*

**Sen. (Dr.) Ali:** Mr. Deputy Speaker, Sir, the most unfortunate thing is that if there is no Division of Revenue Act (DORA) and County Allocation of Revenue Act (CARA) for the counties, what we are told is that they will only get money for recurrent expenditure. That means there is no development expenditure. If there is no development expenditure, then what are we doing in these counties? What are the National Assembly Members going to tell their people if there is no development in those counties?

Bills which are passed from this House and send to the National Assembly are referred to the Appropriation Budget Committee. That is very wrong and it should not happen. If that is what they do there, I think we should find a way of taking to two or three different committees when they bring their Bills here and deposit them in the store until they conclude with the ones we send to their side.

Mr. Deputy Speaker, Sir, we have been in both Houses and we have been serving Kenyans of all walks of life and so, what is happening in the National Assembly is unfortunate. This is not the way to go. This is not what should be done. They should go back and realize that what they are doing is not right. We are doing everything for Kenya and we will not allow devolution to die. We want funds meant for devolution to be increased from 10 per cent to 45 per cent.

I think this House should go out and start asking Kenyans to accept the referendum and the BBI, so that we enhance the powers of the Senate, because that is the only way devolution will stand on its feet.

The Public Accounts Committee (PAC) in the National Assembly has failed to perform their duty and that is why the money that we are being allocated - now we are talking about money being allocated in the Division of Revenue Bill - based on the 2015 Budget and not the 2019 Budget. This already indicates that they are not performing. That is the idle House and they should perform their duties better.

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

**Sen. Wambua:** Thank you, Mr. Deputy Speaker, Sir, for this opportunity. I also want to associate myself with the two Statements; one from the Senate Majority Leader and the other one from the Chairman of the Committee on Finance and Budget.

Mr. Deputy Speaker, Sir, I want to begin by giving an assurance to the people of Kitui County that when they elected me as their Senator, I took an oath of office to defend the Constitution and advance good governance. I will remain truthful to that oath. I want to go on record saying the Appropriation Bill that was passed by the National Assembly and later assented to by the President contravenes the provisions of the Constitution. It will remain a nullity and an exercise in futility.

What they have done as leadership is to throw counties in disarray. They have created a theatre of the absurd in counties. The Constitution is very clear in Article 224 and I want to read it out:

“On the basis of Division of Revenue Bill passed by Parliament”

To me here, the emphasis is on Parliament. Article 93 defines Parliament as both the National Assembly and the Senate.

Article 224 states that:

“On the basis of the Division of Revenue Bill passed by Parliament under Article 218, each county government shall prepare and adopt its own annual budget and Appropriation Bill in the form and in accordance to the procedure prescribed in an Act of Parliament.”

Mr. Deputy Speaker, Sir, we are witnessing counties making budgets and we are left wondering which are those budgets. The Division of Revenue Act (DORA) for this year has not been agreed on by the two Houses of Parliament. So, any move by any county to pass budgets, be it on figures that have not been agreed on by the Houses, is in itself an act in futility.

On the matter of the Statement raised by the Senate Majority Leader, I thank you for giving us guidance that we should not behave in a manner---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You have one minute to conclude.

**Sen. Wambua:** Mr. Deputy Speaker, Sir, we should not behave in a manner likely to confuse Kenyans, that we are playing in the same league with the Members of the National Assembly. We will not do that, because this must remain the House of reason. Six years into devolved governments and bicameral legislature, it may appear as if there is a section of leadership that does not appreciate the role they are supposed to play and that the Senate is supposed to play. Therefore, the only arbiter will be the courts in this country.

Mr. Deputy Speaker, Sir, I urge us, as Senators, to move with speed, go to court and get it to settle this matter, once and for all.

Thank you, Mr. Deputy Speaker, Sir.

**Sen. Linturi:** Thank you, Mr. Deputy Speaker, Sir. Let me associate myself with the sentiments that have been made by these great, wise men in this country. When the people of Kenya gave themselves this Constitution, and through Article 96, spelt out one of the roles of the Senate which is very important, to protect the interests of counties and their governments, they knew very well what they were doing. When any busybody anywhere wakes up and imagines that a Bill that touches on counties can be passed without passing through this House, it is a serious violation of this Constitution.

Mr. Deputy Speaker, Sir, some people require to be taken to class to understand some very basic ideas on how to interpret the document that is before us. I say this will all humility and a lot of respect because the definition of a money Bill is made in the Constitution. We all understand what it means. Some people do not know that when public monies are being set out so that we go to the level of determining how much goes to the counties, one of the key issues whose provisions have to be made is the national debt.

Mr. Deputy Speaker, Sir, our intervention and why we say that we must be concerned is because the National Assembly can easily overcommit this country. They can do this to the extent that by the time we are try to come up with a formula for dividing money that is supposed to go to counties, we will realise that there is no money, because the country is overcommitted and, hence, there will be no money to send to the counties. That is our concern.

Therefore, when we say that we must take this through, it is after recognising that, that House of Parliament may become rogue and mess us completely. It is a very sad

moment for this country that we sit here this afternoon, trying to explain ourselves. This should not be happening and it is sad. For those men who are polygamous, when one is in such a relationship, they must take up that serious responsibility as a parent.

*(The red timer went off)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Linturi, I will add you two more minutes, not because you are discussing polygamy, but because you are the one who initially canvassed this matter of time.

*(Laughter)*

**Sen. Linturi:** Mr. Deputy Speaker, Sir, I am bringing the aspect of polygamy so that the basic understanding can be understood by the people I am trying to address. I am saying this because when you pick up that responsibility, as a parent; you have children from different mothers who are quarrelling, you must come in say, “You girls and boys are my children, and this is the direction I want you to follow.” We are, therefore, in a situation whereby our parents have become irresponsible. This is because they sit and watch us, as one House is trying to tear up the other. However, being the old “boys” and the heirs apparent; and to the extent that we must not behave like the others, I am happy that we are able to speak about this better. We are telling our fathers to listen, wherever they are, because this should not be happening if they are responsible parents enough to be called fathers. It is sad.

In conclusion, allow me to say what many Members have said. The only document that we must safeguard jealously, for purposes of bringing order in this country, is this Constitution. Since there are provisions under Article 165, where one is aggrieved by whatever law, and the only area one can go to is the High Court of Kenya, let us prepare ourselves.

Mr. Deputy Speaker, Sir, coming from the Meru Community, you know we say: “Any circumcision has pus.” For you to get there, you must pass through that. If we have to succeed, we must be willing to go for the long haul.

**Sen. Shiyonga:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to support the Statements by our Senate Majority Leader and the Chairperson Senate Committee on Finance and Budget. I stand here with a heart full of sorrow because of the issues we are discussing.

Mr. Deputy Speaker, Sir, looking at the role of the Senate, and I quote where it says that the Senate represents and protects the interests of counties through law making and oversight. Therefore, we are playing very important functions or roles in this country. When we establish this thing we are calling “sibling rivalry,” something that is supposed to happen in the village and polygamous families down there, it is a shame.

Mr. Deputy Speaker, Sir, we are a civilised institution in which the people of Kenya have invested and continue to invest a lot in us. Ours is a House of respect that has been mandated and prescribed in the Constitution. We are here by law and by virtue

of our responsibilities. Therefore, if you find Houses divided, and talking about the issues that are well known, then it becomes a state of jeopardy.

Mr. Deputy Speaker, Sir, I will follow structures and functions the way you said. The Members of the National Assembly need to be given a chance, God forbid, to pass through the Senate so that they can learn and be cleared to be the representatives of the people. I think when they are down there, they do not know their mandate. They need to be taught and sensitized, so that they can understand very well what the Constitution is all about and what it needs from them.

Mr. Deputy Speaker, Sir, there are so many Bills that we pass here which when they reach the National Assembly, they stick there. They are even being given an opportunity of going for Mediation. What is it all about? It is because of the rivalry we are creating. It is high time that the National Assembly needs to be ‘scooped.’ I repeat this National Assembly thing is a House that needs to be taught some lessons.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Shiyonga! What is this ‘scooping’ business? We are talking about Division of Revenue Bill and the Statements of the Senate Majority Leader and the Chairperson of Senate Committee on Finance and Budget.

**Sen. Shiyonga:** Thank you, Mr. Deputy Speaker, Sir, ---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is the ‘scooping’ business?

**Sen. Shiyonga:** The ‘scooping’ again comes; here it comes---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is being ‘scooped?’

**Sen. Shiyonga:** All of the National Assembly needs to be ‘scooped’---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is that?

**Sen. Shiyonga:** It is because they do not know their mandate---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is scooping?

**Sen. Shiyonga:** It is removing them without any consent. They do not have a responsibility---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! You can conclude.

**Sen. Shiyonga:** Mr. Deputy Speaker, Sir, I conclude by saying that there are more Petitions that come to this House. This is an indication that Kenyan citizens have a lot of trust in us. Therefore, the House of Senate needs to remain and the National Assembly needs to go home.

**Sen. Halake:** Thank you Mr. Deputy Speaker, Sir, for giving me this opportunity. I rise to support the Statement by our Senate Majority Leader and the Chairperson of the Senate Committee on Finance and Budget. I want to state categorically that the National Assembly is on a mission to create a very toxic environment in which they want to grab power. The power is given by the Constitution. By rubbishing the sovereignty of the people that have given us the power and the supremacy of this Constitution in Article 2, we must then go to the Article 3 to defend this Constitution.

Every Senator has said here, that we are very conscious that devolution is definitely under attack. People at the National Assembly are misleading. They are not an

extension of the Executive. In fact, they are misleading the Executive. History will judge them harshly if they continue on that trajectory.

Mr. Deputy Speaker, Sir, the country needs to decide what their attitude towards devolution is. Do they want devolution or not? It is not the National Assembly to decide, but the people of Kenya who have given us the mandate. Kenyans by virtue of Article 1 of the Constitution have given us the sovereign power and delegated to us the powers, as Parliament, the National Executive and the Judiciary.

The Supremacy of the Constitution of Kenya is also under attack. How is it that a House of Parliament that has been given the sovereign power by the people, can rubbish the supremacy of this Constitution by attacking it and a House of Parliament? Under Article 3 of every person has an obligation to respect, uphold and defend this Constitution. This House is best placed to do so.

Mr. Deputy Speaker, Sir, it is difficult to make any progress in this House. Our colleagues have talked about our Bills that are stuck in the National Assembly; the constant undermining that goes on, the deceit and double dealing by colleagues at the National Assembly, which has rendered any progress impossible; be it disbursement to counties and Bills.

This Senate must stand up, go to court, and defend devolution. We must do so with this Constitution with all that we have as the Senate. Devolution is not just about counties, but the national Government and our Parliament changing its behaviour.

**Sen. Outa:** Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to add my voice to the Statement of the Senate Majority Leader and the Chairperson of the Committee on Finance and Budget. It has been said over and over again that an empty mind is the devil's workshop. That is what I am seeing in the National Assembly when they have no other important duties to perform for this Republic of Kenya, now they have narrowed it down to bring competition between the two Houses of Parliament. It has already spelt out in our Constitution that Parliament consists of the Senate and the National Assembly. The Constitution is also very clear of our roles as the Senate.

Article 96 (3) of the Constitution gives us the powers to allocate revenues for our counties. It is our duty as the Senate to allocate these revenues. Even despite this being spelled out in simple English language, the National Assembly cannot interpret that it is the duty of the Senate to allocate revenue. Why do they want to deny us that mandate?

This is an issue we could not be able to discuss here today, but because they have nothing to do, they have brought us this far to discuss about who is supreme in Parliament. These Members were given powers by the Constitution to represent their people. The Members of Parliament represent people in sub-counties which are within the counties. When they want to prevent money to go to their counties which is meant to develop projects within their sub-counties, we fail to understand what reasoning they have.

Mr. Deputy Speaker, Sir, we want to encourage the Senate not be intimidated. We need a referendum right now to be able to define how the country will move forward. If we continue to have bickering between who is supreme between the National Assembly and the Senate, we lose focus of what people wants us to do at the national level. I concur with all the Members that this matter must end up in the High Court.

**Sen. Farhiya:** Thank you, Mr. Deputy Speaker, Sir, for finally, giving me an opportunity to contribute.

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

**Sen. Farhiya:** I noticed that there are people who walked in after I pressed the intervention button. They were given the opportunity and I was not.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! Pressing is not the only criteria for a Member to catch Speaker's eye. We have a lot of criteria, including a gender, political parties and region. So, it is not just about pressing the intervention button.

Proceed.

**Sen. Farhiya:** Thank you, Mr. Deputy Speaker, Sir. I want those people who will represent us in court to note the provision of Article 203 (1) (a) and (b) of the Constitution. It states as follows:

“The following criteria shall be taken account in determining the equitable shares provided for under Article 202 and in all national legislation concerning county government enacted in terms of this Chapter-

- (a) the national interest
- (b) any provision that must be made in respect of the public debt and other national obligations”

Those people who will be representing us in court must request for an interpretation of those two. What constitutes national interest? What is the ceiling for debt? Unless we are able to establish that, what the National Treasury does every year is to increase the size of the cake of the national interest and also the public debt repayment. Whatever balance is left is shared between the national Government and the counties.

We need to get an interpretation of those two by the court because at the Intergovernmental and Budget and Economic Council (IBEC) they tried to get an interpretation of those two, but they have failed to agree. That is one thing we cannot afford to miss. Unless these things are interpreted, the amount of national interest and that of debt repayment will keep increasing and there will be nothing left for counties. That is one of the ways, as my colleagues have said, of killing counties. We have crusaders whose aim is to kill counties and we will not allow them to do so.

In my language, we say that if somebody hits you wherever, you are supposed to hit them where the leg bends, so that they cannot move at all. So, we should also ask the court to declare NG-CDG illegal. The court already declared---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): One minute to conclude.

**Sen. Farhiya:** Thank you, Mr. Deputy Speaker, Sir. We have seen consistent reduction of funds to counties. Last year, Kshs9 billion was reduced. The allocation was also initially reduced from Kshs314 to Kshs310. The list goes on. If this Senate does not stand by counties, counties will cease to exist. I understand that the National Assembly has no interest with the very existence of counties or obeying this Constitution.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well.

**Sen. (Eng.) Maina:** Thank you, Mr. Deputy Speaker, Sir. I rise to support this Statement and to ask this House for once to stand up firmly and defend the owner of this House.

Some of the things that the National Assembly has talked about are unimaginable. In fact, when we go to the referendum, a system should be recommended where NG-CDF should be audited. These people are misguided. They think they should have the preserve of public resources; they should decide what is to be done.

I wish this House could stick together and come up with a move during the referendum that will come to make it the real House that was envisaged in the Constitution. It was watered down somewhere in Naivasha. I wish we can retrace that and bring it back to where it was. Anywhere in the world, the Senate is known to be the Upper House which should be the regulator of all kinds of mischief that happen. Bills should be regulated here. That was the original intention of the Constitution.

Mr. Deputy Speaker, Sir, these people should even be more concerned with trying to enforce oversight. What do they do? They go stripping the budget of the Auditor-General. How on earth can they claim they have any moral element to talk about oversight?

Mr. Deputy Speaker, sir, we may go to court, but the final solution is for us to prepare for the coming referendum. We should also tell the people of Kenya what we feel about the people who want to kill devolution. Even before we go to court, we should go around this country, hold a couple of meetings and tell Kenyans that there is a move to weaken the Senate because people want to have the freedom to be gluttonous without any interference.

**Sen. Boy:** Asante, Bw. Naibu Spika, kwa fursa hii. Nimengoja sana kwa hamu.

Kama Maseneta wenzangu walivyochangia, yangu ni kusisitiza tu tukae ngangari sisi sote. Kama ni kuenda kortini kama walivyosema Maseneta wenzangu, tuungane pamoja, tusimame imara na tuone Seneti imepewa heshima yake. Kama unavyojua, sisi Maseneta ndio jicho katika kaunti zetu humu nchini. Kuna watu fulani ambao wanaipinga hii Seneti. Hata hivyo, Waswahili walisema kwamba kila jambo lina mwanzo na mwisho wake.

Ninawasihi Maseneta wenzangu tuungane, tuwe kitu kimoja. Tusimame tuhakikishe kwamba Seneti yetu inaheshimiwa. Si kila mara tunaambiwa hivi, kesho hivi, mara *oversight* na sisi wenyewe ndio tunafanya kazi kubwa sana katika kaunti zetu.

Bw. Naibu Spika, sitaki kuchukua muda mwingi kwa sababu kuna wawili au watatu ambao lazima wachangie.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done, Sen. Boy. Very fluent and impressive.

**Sen. Nyamunga:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity just to add my voice to what my colleagues have already said.

First of all, Kenyans or leaders in this country are very vindictive in the way they make laws. You remember when we were fighting for the Kenya Constitution. It was a push and pull for a very long time because some people were looking at the new law with individuals in their mind; that if I make this law this way, it will benefit an individual. That gave us many problems and we did not even get the actual Constitution that we needed for Kenya.

If you now look at the way the National Assembly is going around the rules, it is very vindictive. For example, they interfered with the budget of the Auditor-General for

one simple reason that the Auditor-General raised many queries about NG-CDF and other monies. Even at the national level, I can say that the Auditor-General has many problems and that led to the reduction of the budget for the Auditor-General's office.

Secondly, look at the Salaries and Remuneration Commission (SRC). They are currently grappling with the issue of wage bill. As much as we need the house allowance and at the same time know very well that the wage bill has to be controlled, the National Assembly went ahead and cut the budget for SRC to the extent of paralysing its operations.

Mr. Deputy Speaker, Sir, as leaders of this nation, given an opportunity to sit in this Parliament to administer or make rules and laws, we should not make rules with individuals in mind. I believe some of the National Assembly Members are looking at some people in the Senate and saying that if it is for the benefit of so and so, we will cut it. If it is for the benefit of so and so, we will not allow it. We are not supposed to be vindictive. We should make laws and rules that will last or pass the test of time.

Again, for example, we are now faced with the issue of a referendum. This referendum is supposed to make our laws better. Even when we were passing Constitution in 2010, it was so clear that there was a percentage that needed correction. This is the time that we need to make those corrections. Some people are already looking at individuals. If we change it to be like this, we will benefit so and so, or some leaders. We must run away from that line of thinking.

I wish to support the two statements. We must stand out and be counted as leaders of this nation.

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

**Sen. Wario:** Thank you, Mr. Deputy Speaker, Sir, for finally allowing me to have a say on this Statement. I tender my---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What do you mean by "finally"?

**Sen. Wario:** Mr. Deputy Speaker, Sir, I requested long time ago. Sen. (Eng.) Maina just came in now and you gave him a chance to contribute.

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

Sen. Wario, that direction you are trying to go is a dangerous one. You can proceed, explain yourself, but do not go that direction.

**Sen. (Eng.) Maina:** On a point of order, Mr. Deputy Speaker, Sir. Maybe I have misunderstood my neighbour and friend all this time. He has done a very serious misnomer to question the order or even imagine it. It is a very serious matter, and I would request you to take the Standing Orders and apply recourse on him, like being sent out of this House for a couple of days.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Wario, I think Sen. (Eng.) Maina is helping you.

**Sen. Wario:** Thank you, Mr. Deputy Speaker, Sir. The point is taken.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very good.

**Sen. Wario:** Could I continue?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You can continue, and stay guided for the future.

**Sen. Wario:** Thank you, Mr. Deputy Speaker, Sir, for allowing me. I tender my support to the two Statements by the Chairman of the Committee on Finance and Budget and the Senate Majority Leader.

Mr. Deputy Speaker, Sir, if anybody fights the Senate, that person is fighting devolution. We are here to guide and represent our counties. Wherever Members of the National Assembly sit, whether in their Chamber or outside, even in Mombasa, they fight the Senate. It is as though there is nothing happening in the National Assembly. We were elected by our people to represent the whole country, and we are doing a very good job. Senators are Members of high caliber, with a lot of integrity. We are doing---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I will add you one more minute.

**Sen. Wario:** Thank you, Mr. Deputy Speaker, Sir. Sometime back, it was said that these Members are behaving like high school students. High school students are between childhood and adulthood, and that is a dangerous stage. That is how they are behaving.

Mr. Deputy Speaker, Sir, I beg to support.

**Sen. (Dr.) Milgo:** Thank you, Mr. Deputy Speaker, Sir, for giving me this chance to also add my voice. I also wish to support the two Statements from the Senate Majority Leader and the Chairman of the Committee on Finance and Budget.

Mr. Deputy Speaker, Sir, it is a very sad day, particularly when we have a House with people who were elected by the people of this country to represent them discussing another House and imagining that they will be able to disband the Senate. It took us very many years to put in place the Constitution 2010. Everywhere we go in the world, people feel that Kenya has got the most progressive Constitution. This is particularly so because of the fact that, that Constitution created a bicameral Parliament.

Mr. Deputy Speaker, Sir, as my colleagues have said, when the time for the referendum comes, we should ensure that this Senate is empowered, just like in other countries. I was recently in France, where we were told that the Senate is the Upper House, just like in the United States of America (USA). Through the referendum, we will be able to separate the powers and sort out this sibling rivalry.

Mr. Deputy Speaker, Sir, in terms of the Appropriation Bill, the counties are suffering right now. You and I come from the counties, and realize that there is no activity or development going on there of late. All that is happening is just paying salaries. Devolution was put in place to ensure that development is distributed all over the country. However, as it is right now, there will be a challenge in the coming future. Counties will only be criticized for being corrupt. The imagination that counties are corrupt comes as a result of shortage of finances.

For instance, if you look at the development of roads and other infrastructure, very little money has been allocated to these functions. In any case, looking at what the National Assembly has done – with due respect to them – many functions that are in the National Assembly, which are supposed to be devolved---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You should conclude; you have one minute.

**Sen. (Dr.) Milgo:** Thank you, Mr. Deputy Speaker, Sir. For a long time, many functions have not been devolved. Even those that have been devolved, money has not followed those functions. Therefore, the counties have not been able to implement those particular functions as expected. That is why if you go to the health and agriculture units, there is a challenge because of shortage of finances in those counties.

It is high time that we supported these Statements. When it comes to going to court, we should all go and stamp our authority. We support the referendum so that during that process, we will go round the country and inform the people that the Senate is actually speaking for the counties.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Thank you, Senators; it has been a long afternoon. The last contributor will be the Chairperson of the Committee on Justice, Legal affairs, and Human Rights, Sen. Cherargei. Many of the issues that have been raised here are legal in nature. I will, therefore, give you a few more minutes to perhaps put everything into perspective, as we conclude our comments.

I will give you a maximum of ten minutes.

**Sen. Cherargei:** Thank you, Mr. Deputy Speaker, Sir, for this opportunity. I have heard my colleague Senators speak with passion this afternoon on the Statements that were made by the Chairman of the Committee on Finance and Budget and also the Senate Majority Leader. It is very important that people understand that the National Assembly and the Senate were a creation of the Constitution. Therefore, the validity, presence or creation followed a process.

It is unfortunate that the National Assembly, which has its own structures, including a Legal Department, would not advise their leadership, so that they make informed decisions. When you look at Article 93, the Constitution defines Parliament to mean the National Assembly and The Senate. Therefore, questioning the Senate is just shadowboxing.

The National Assembly is trying to shadow-box and make the Senate appear in bad light because they have failed in allocating more funds to the counties. The argument, which my colleagues have alluded to, is that counties are losing money; they are lethargic, there is corruption, and are ethnic Balkans. However, on the tools that the National Assembly have been given; the sacrosanct and divine role to develop the Budget for the national Government---

The Ambassador of the USA was quoted saying that out of the Kshs3 trillion every financial year, the National Government loses up to Kshs800 billion. Therefore, if the National Assembly wants to be fair with everybody, if the argument is about wastage of resources, lethargy, inefficient, ineffective and moribund running of the counties, they should have used the same argument to deny the national Government resources.

Mr. Deputy Speaker, Sir, we want to tell the country the enemies of devolution – the people who want to claw back clauses and ensure that devolution does not work – is unfortunately our colleagues in the National Assembly. This is because they came down, even after the County Allocation of Revenue Act Regulations, which stipulate that you should not come down before the baseline. They even wanted to allocate Kshs310 billion, yet in the last Financial Year, which we just concluded the other day, the baseline was

Kshs314 billion. When the CARA and the Senate had made a position that we give counties Kshs335 billion, they decided that since the baseline was Kshs314 billion, they add Kshs2 billion.

Most of the departments within the national Government were given more than Kshs10 billion. The Senate was gracious enough and decided to bring it down to around Kshs327 billion, but they have refused. Therefore, in short, they are undermining devolution. I tell our colleagues, with all due respect, that the money they allocate does not go to the pockets of Senators. It goes to *mashinani*, for example, Tharaka-Nithi County, Kapsabet in Nandi County or Kisumu County. It is helping the people directly. What is the big deal if money goes to *mashinani*? These are the same representatives who when we go back to the people, are told to add more resources to come to the ground so that people can be worked for.

Mr. Deputy Speaker, Sir, this is the reason we are having so many claw-back clauses by the enemies of devolution who have conspired. They have realised that they have a friend in killing devolution. That is why there are many claw-back clauses that are assented to by the President. The advisors of the President have slept on their duty, and are not advising him. The classical example is the recent Appropriation Bill that was signed into an Act without allocation of resources to the counties. Why are we reducing counties to beggars, yet it is their constitutional right that they should be given money? They should not beg because they have a right just like every Kenyan.

Mr. Deputy Speaker, Sir, I have heard some tired argument by some Government entities, agencies and Cabinet Secretaries (CSs) who argue that what they are doing does not imply anything to the counties. An example is the issue of security. If there is no security in Tana River County, how will devolution work? The CSs should be told that anything that is done nationally has direct implication to the functioning of the counties. For example, if Nairobi is insecure, devolution will not work.

Some of the CSs have refused to appear in my Committee. For example, the Cabinet Secretary in charge of Foreign Affairs and International Trade, Madam Monica Juma, has said that the issue of treaties and relationship between countries does not affect counties. So, you wonder where counties are.

I have been quoted elsewhere saying that in future, we will strongly advise the counties to disobey any laws that have been passed without the concurrence of the Senate. If you say it does not affect counties, why should you force the counties to follow the same laws that do not concern them? The protector of the counties is the Senate.

Mr. Deputy Speaker, Sir, I personally invited you to come to Villa Rosa Kempinski to look at the draft proposal that you generated while you were the Senate Majority Leader. You are making tremendous progress in leadership. In the last Parliament, you were the Senate Majority Leader; you are now the Deputy Speaker, and God's know the future is luminous.

The draft of 2015 was on constitutional review. The Senate seeks to be the upper House with the veto power to check and condemn some issues. You had advised us not to question. However, I have seen that they are discussing the handbags that women carry to the Chamber. It means they are idle in their business. Therefore, as the referendum comes, we must take a position as the Senate.

Finally, I assure the House on the issue of moving to court. I will bring a proper Statement on Tuesday next week. We are ready to rock and roll on this issue. We are headed to court. I would like to tell my colleagues that this is the right time. If they are fainthearted or have blood pressure issues, they should keep off and watch the television or *Viusasa* because we are headed to the real battle.

As we move on to court, my colleagues should know that what we are doing is not for our benefit, as Senators, but for now and posterity. We need to strengthen this institution. You never know where you will land after this. If we do not strengthen this institution, it means that we will be doing badly. Therefore, I urge my colleagues as we move forward to a legal battle and open our political gun blazing, as my colleague Senator as said, to stand to shelter and protect the integrity of this House, devolution and Kenyans from people who want to destroy us and ensure that devolution does not work.

Mr. Deputy Speaker, Sir, they say that before you kill a dog, you give it a bad name. That is what the National Assembly is trying to do to the Senate. Therefore, as colleagues, we must stand together and ensure that we protect this House. As we move forward, the money that is allocated to the counties should go to them. Let us not relent from Kshs335 billion that is meant for counties. We must hold our grounds.

The Appropriation Bill that was signed into law is illegal. The Government should be advised that this thing needs to be sorted, so that we do not perpetuate illegality. As a professor of law, you know very well that illegality does not pay.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It does not. That brings us to the end of comments and observations on the two Statements. The other Statements which appear on today's Order Paper are deferred.

## STATEMENTS

ACTIVITIES OF THE COMMITTEE ON AGRICULTURE,  
LIVESTOCK AND FISHERIES

ACTIVITIES OF THE COMMITTEE ON DEVOLUTION AND  
INTERGOVERNMENTAL AFFAIRS

ACTIVITIES OF THE COMMITTEE ON EDUCATION

*(Statements deferred)*

Subsequently, in exercise of the powers under Standing Order No.40 (2), I direct that we go straight to Order No.21. Thereafter, we will see how things turn out.

Next Order.

## MOTION

WAIVER OF INTEREST ON HELB  
LOANS FOR GRADUATES

**Sen. (Dr.) Ali:** Mr. Deputy Speaker, Sir, I beg to move the following Motion-

THAT, AWARE THAT the Higher Education Loans Board (HELB) has, for over the last two decades, become the leading financier of higher education in Kenya whose mandate is to source funds and lend them as affordable loans, bursaries and scholarship to students pursuing higher education in recognized institution;

COGNIZANT THAT, the Ministry of Education announced that the government has lost Kshs. 7.2b through people defaulting payment on loans issued by HELB translating to 74,692 graduates who have defaulted the loans payment;

NOTING THAT, measures were taken to enhance the HELB loan recovery process which included a six month waiver of accumulated interest and penalties, and working with law enforcement officers to make sure the defaulters who are employed payback the loans;

CONCERNED THAT, there are graduates from institutions of higher learning who have not been gainfully employed for many years after graduation, and are therefore burdened with loans that have accumulated interest and penalties that they have no means to repay;

FURTHER CONCERNED THAT, when beneficiaries fail to remit their monthly installments for more than three months, HELB reports them to the Credit Reference Bureaus (CRB) preventing them from accessing loan facilities with any financial institution in Kenya, accessing employment opportunities in the government and major private and publicly listed companies and the loan guarantors are pursued and forced to service the HELB loan;

NOW THEREFORE, the Senate recommends that the Ministry of Education and HELB –

1. institutes a six (6) month full waiver of all the interest and penalties accrued, including the lifting of Credit Reference Bureau blacklisting, for defaulters who are willing to repay their loans in entirety, within the six (6) month period; and

2. embarks on a forty-five (45) day sensitization exercise preceding the waiver, no later than ninety (90) days after the passage of this Motion.

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

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

Madam Temporary Speaker, essentially, the formation of the HELB was a noble idea meant to help students from poor backgrounds access education. Subjecting beneficiaries to start repaying loans almost immediately after they graduate is unfair and causes a lot of problems to the graduates.

Let us have a look at the journey of the HELB loan to beneficiaries. Students start getting the HELB loan straight from the first year. A student can get a loan of about Kshs60,000 per year. If you multiply that amount by four years, which is the least period a person can be in a university, one will have a debt of Kshs240,000 by the time of graduation. That is without any accrued interest. There are chances of some missing out university education for lack of finances. That is where the easy part ends and potential nightmares start. A student is given a grace period of one year from the date of university completion, and not graduation, after which they are expected to start repaying.

According to a report by the Association for the Development of Education in Africa (ADEA), one million young Kenyans join the workforce every year. Only one in five of them gets a formal job. The rest join the informal sectors or engage in occupations that do not earn them enough wages. That means that the majority of the HELB loans beneficiaries are less likely to get formal jobs within the first year of completing university education.

For those who get formal jobs, the situation is not that easy. Almost everyone who works in Kenya is a beneficiary of the HELB loan. There are those lucky ones who get jobs at the entry levels or internships that pay them only Kshs15,000. Some of them have to commute from areas like Eastlands. If they have to pay bus fares and eat, what is Kshs15,000?

The same situation applies even to those in formal employment, who fails to remit monthly repayments to the HELB. Additionally, employers are also fined. When someone fails to pay every month, they are charged extra penalties of Kshs5,000. For those who have formal jobs but fail to pay every month, their employers are also charged 5 per cent of the amount payable.

Currently, if a HELB loan beneficiary fails to remit payments to the HELB for more than three months, they are immediately listed in the Credit Reference Bureau (CRB). If the CRB blacklists anyone, it hampers their ability to access loans from other institutions, yet that is what many people depend on to further their education. On the other hand, those who have never applied for a HELB loan are required to get a clearance certificate from the HELB that costs Kshs1,000, which they have to pay every time they apply. The worst thing is that we do not know how that money is accounted for.

They charge a graduate Kshs5,000 every month as penalty, if they do not remit the money on a monthly basis. Every other Kenyan who applies for a job is charged Kshs1,000. Why can they not use some of the monies to reduce the debt of the poor students, who do not have any alternatives but to go for the HELB loans?

You cannot apply for any Government job without a clearance certificate. That cost is in bad faith, considering that a person who is unemployed has to give Kshs1,000 in order to get the clearance certificate. That is something that should not be paid for. That is a public service which should be free.

Recently, the HELB Board announced that the Government has lost over Kshs7.2 billion because about 74,692 graduates have defaulted the study loan. What are the reasons for defaulting? Loan repayment rate of former loanees and beneficiaries is low due to two main reasons. The first one is because of the accumulated interest on the loans. As I said earlier, interest starts accruing one year after completion of studies.

In some cases people get employment after three years, yet they are supposed to start repaying the loans. At times, employers may find it hard to remit the money, but sometimes people get out of employment for various reasons. The main challenge in repayment of loans is the high interest accumulates over the years. As I said earlier, there is a penalty of Kshs5,000. If somebody is without employment for five years, you can do the mathematics of Kshs5,000 times 12 months for five years. How can such a person clear the loan when they still have to clear the principal sum of Kshs240,000 that they got?

Unemployment is the second reason HELB loan repayment rate is low among graduates. While a few people get formal jobs, others enter into the informal sector. As I have stated, once you are blacklisted by the CRB, you cannot apply for a job anywhere in Kenya. You can also not get loans from other institutions, even when you have title deeds or anything from your family as security because of being blacklisted. That has created a dilemma to graduates because they cannot survive or do anything because of lack of jobs. This is some sort of exploitation of the worst kind.

The management of the HELB needs to talk to its stakeholders, including former students, to find a way forward because what they are doing is not right. The Senate Committee on Education needs to review the repayment terms because the fines are making things even worse for the youth who are struggling to put food on the table.

Some of the heavy penalty provisions are charged as a result of lack of communication with the HELB. For instance, when a student takes a break, such as an academic leave, without informing the HELB, the HELB expects them to have graduated at the date stated in their loan application form. Therefore they start charging penalties for every month they do not receive the money owed to them when the student has not completed their studies. This can be avoided by visiting the HELB offices with deferment of studies letters or academic leaves, which are issued by institutions of learning, and state new graduation dates.

On the way forward, I propose that the Ministry and the HELB be compelled to institute a six-month full waiver period for interests and penalties, as well as the lifting of blacklisting by the CRB. However, the six months period should be extended only to defaulters willing to repay their loans in full within the same period.

The Ministry and the HELB should embark on a 45-day sensitisation exercise preceding the waiver, not later than 90 days after the passage of the Motion. The sensitisation exercise should not only create a period for both the HELB and the defaulters to prepare for debt settlement, but also allow the loanees to organise their resources, so that they fully settle their outstanding loans. This is not applicable to those who have not gotten employment or had jobs for one year and lost them.

We wrote to the HELB to inquire about what happens thereafter. Mr. Ringera, who is the Chief Executive Officer (CEO), promised to reply in good time. However, there is no communication from that office up to date.

Section 15 of the Higher Education Loans Board (HELB) Act stipulates that a loanee who defaults loan repayment, including those who are employed, shall be guilty of an offence and liable to a fine penalty not less than Kshs5,000 per month in respect of each loan deduction that remains unpaid. This Act should only apply to employed beneficiaries.

We all have a right to information. A Senator wrote to HELB and did not get any reply three or four months later. You can imagine what the loanees undergo.

Madam Temporary Speaker, I beg to move and ask Sen. (Dr.) Musuruve to second my Motion.

**Sen. (Dr.) Musuruve:** Thank you, Madam Temporary Speaker, for giving me the opportunity to second this Motion. I want to thank Sen. (Dr.) Ali for coming up with this Motion.

This Motion speaks to all the stakeholders in the education sector and needs to be considered with the seriousness it deserves, because it speaks on education. The Constitution speaks of the right to education. Article 43(f) says that everyone has a right to education. Education is a socioeconomic right. Every child, even those born on the streets, has a right to optimal education. That optimal education can be high school, college or university level. The Government must help all the children reach their full potential. According to Maslow's hierarchy of needs, education helps one achieve self-actualisation. It will be good for us, as a nation, to help our children achieve self-actualisation.

The main objective of HELB was to help the poor intelligent children, with no financial ability, to achieve education. Children come from different families. You can get a gifted child who is unable to afford college or university fees because they come from a disadvantaged family. However, that does not mean they should be disadvantaged. Those children can add value to this country.

I come from a humble background and my parents were unable to take me to college, but the Government took it upon itself to educate me at diploma level. Diploma education was free at that time. I would walk from Eastlands to Statehouse because my parents could not afford my fare. They did not have money, but I had the desire for education, and that is why I am here; giving back to this country. If children from poor families are given an opportunity to access education, they can add value to this country and lead us to greater heights. Education is an equaliser.

No child decides where they should be born. There are those who are born with a silver spoon in their mouths, but there are also those who have to struggle. Those bright children who come from disadvantaged families should be educated by the Government. Educated children can kill the cyclic nature of poverty in a family.

This Motion also seeks to eradicate all forms of poverty, which is Sustainable Development Goal Number One. The core mandate of HELB is to give an opportunity for education to the poor students and with the purpose of ensuring that the vulnerable of this country are not left to the dogs. Nobody knows what the children from poor families

can end up to be. We all have hidden potential. We do not know how somebody will be in the next five or ten years from now. When these children are given an opportunity, they can become leaders and bring changes in this country. Some of the great leaders in this country came from poor backgrounds, but were given an opportunity to access education.

What is happening in HELB should never have happened. HELB has sort of become a business. It is wrong that a bright student from a poor background has to go to the HELB offices to ask for loan, and when they are given that loan, it starts accruing interest immediately. How can you start accruing interest on a loan given to a student who has not even started first year? How can you start accruing interest on a loan given to a student who comes from a poor family and cannot meet the basic needs?

Children from humble backgrounds do have challenges in colleges. The HELB money is never enough and those children have to do part-time work and undeserving things to make ends meet. This should not happen in a country that is concerned about children's right and education.

The HELB should not ask for interest from students when they are still in college. These students do not have a guarantee of getting a job after college. Some of them get jobs immediately after college, while others look for jobs for ten or 15 years.

These are individuals who are already frustrated. They do not have a job or source of income, yet the HELB has already doubled the interest. The HELB should stop being cunning. We cannot take Kenyans for a ride. We cannot decide that university education loan shall be a shylock business. They should come here and tell us whether HELB has become a shylock, such that if you do not pay for a month you are told the interest is accruing.

It will come a time when some students will give up and say: "I come from a poor family, do not have a job; my parents do not have land and I have to build a house for them; I cannot even be married." Some children will take away their lives. We should not allow manmade deaths to happen.

The HELB should hear this, and I hope the CEO of HELB is listening. We should not allow manmade stress and death to happen simply because we are being cunning. There is need for the Government to put mechanisms in place to ensure that children of this nation yearn to have free education. We should have free university education.

There is need for a waiver of interest and to ensure that HELB does not even look at the Act. The Act needs to be revised so that there is waiver of the interest because it is painful, a big let-down and a shame. We need to see how we can stand with our students because, eventually, these children are the same people that will lead this country. They will leave a legacy and say that they made it because HELB helped them to reach where they are.

As it stands, graduates on the ground are crying and pained because of what is happening at the HELB. The CEO should come here and stop telling people that he will take them to court. What crime have they done? If you are poor and were afforded an education, you should be given a job, so that you can repay all the money that HELB is asking for. There is need for the Ministry of Education in conjunction with HELB to ensure they address this issue.

Madam Temporary Speaker, there is need for sensitization on this HELB loan because parents and guardians are not aware that it is a trap for their children who have borrowed these loans. This is because at the end of the day, the same parents will be approached and they will have to sell their land to pay the loan, since they are the guarantors. Some of the parents to these children who have accessed HELB loans could only be having a quarter an acre of family land. If that piece of land is sold to pay off the loan, where will the entire family go to?

This is a valid Motion and I want to encourage Sen. (Dr.) Ali to ensure it becomes a Bill. As the Senate, we must go on record that we are supporting higher education, and do not also want our students to be frustrated. We must support higher education in whatever corners because if it was not for education our nation would not be where it is. This is because education is an equaliser and creates an all-round person. It is through education that people are able to mingle with others, interact universally and give back to their nation meaningfully.

Madam Temporary Speaker, I second.

*(Question proposed)*

**The Temporary Speaker** (Sen. Nyamunga): Proceed, Sen. (Dr.) Milgo.

**Sen. (Dr.) Milgo:** Thank you, Madam Temporary Speaker, for giving me a chance to also support this Motion. I want to begin by thanking Sen. (Dr.) Ali for bringing to the House such a very special issue of concern in our country.

When HELB was coined it was supposed to help the needy students. Maybe I would not even be in the Senate if it were not for a HELB loan. However, the issue of HELB loans of late is raising big questions. As my colleague Sen. (Dr.) Musuruve has already said, it is acting like a shylock.

Every country must ensure that its citizens get quality education. Our country Kenya has Vision 2030. That cannot be achieved without having its citizens being educated, in order to provide the right skills to work in the manufacturing and production industries and spur growth that will make this country a middle income earner. However, it becomes a challenge when students, particularly those accessing higher education, are subjected to such very harsh conditions.

Madam Temporary Speaker, in the villages, you come across parents crying because they are wondering how they are going to clear the Higher Education Loans Board (HELB) loans that have accrued against the names of their children. In my county, some parents work hard - plucking tea, doing manual and casual jobs like selling vegetables - in order to take their children through secondary education. Once they excel and go to the university, the Government is supposed to assist them and give them HELB loans. However, this is the beginning of the nightmare. In future, these are the students who shall face threats of being followed by policemen or blacklisted by the Credit Reference Bureau (CRB), which makes it impossible for them to access jobs.

It is high time HELB came to this House to answer certain questions. Here, we are being told of a number of defaulters. The worst is that immediately a student is given

money, interest is charged. At the end of it, that candidate does not get any gainful employment. As we speak, there are few graduates who are employed out there.

I come from the education sector and the Teachers Service Commission (TSC) in the recent past has become a better employer. However, the TSC has a backlog of up to even 12 years. There are students who graduated 12 years ago, but have not been employed. These are the same graduates who went through HELB and interest of Kshs5,000 has been accruing since that time.

Madam Temporary Speaker, recently when I went home, I met a very poor parent who is a tea plucker. Her son was given only Kshs90,000 after he was lucky to get money through a fundraiser. Later on, it took time to access this loan, but he eventually got Kshs90,000. Right now, he has to repay Kshs500,000 and yet, the same boy has not been employed.

Our Government should know what is going on at the HELB. In addition to that, the Government, through the Ministry of Education, should know that come the future, HELB will no longer be useful to students because of the fact that rather than helping them, it is become a nightmare.

I looked at the Auditor-General's Statement where he said that HELB may never recover over Kshs24.6 billion because about 70,000 of the defaulters that are known are in Kenya. When we talk about those defaulters, I wish we had a critical analysis to be able to know why they have defaulted. Do they have any employment?

Recently, we were told that the Public Service jobs will be on contract basis. We were also told that if they do not start repaying their loans within only three months, they will be listed with CRB. This will make it even difficult for them to borrow in order to clear the same loans.

Madam Temporary Speaker, it is high time the Committee on Education, Committee on Information and Technology or any other Committee looks into this. There must be a thorough dissection to have a paradigm shift in this institution, if it is going to serve the purpose for which it was established. Otherwise, we will talk about what is happening in HELB and create problems for our children. Like my colleague said, some of them will even commit suicide because they have no jobs and, therefore, no money to repay the loans. When some of our children owe institutions as little as Kshs3,000, they commit suicide. Recently, one committed suicide in Nyeri County because he owed a loan of only Kshs3,000, which was borrowed through the mobile phone. What about the Kshs90,000 loan which a graduate is now supposed to pay Kshs500,000?

I do not know whether we shall achieve the Sustainable Development Goals (SDGs) in our country. This is because part of the SDGs is that we are supposed to create and ensure equity. We have been complaining about issues of not having certain groups of people in employment, for example, the female gender. Some of them may not be able to get there because of lack of funds to access education.

Another major problem with the HELB is the management of these funds. What are the structures in place in HELB to identify the beneficiaries? I read somewhere that there are over 25,000 beneficiaries whose identification was not very clear. That means, in the first place, the issue of identification was not taken very seriously, because of lack of a clear management or structural system in HELB.

Madam Temporary Speaker, we are told that about Kshs2.5 billion is lost through those who acquire employment in the diaspora. I wonder how they will get this money from people in the diaspora, unless a very serious policy of recovering this is put in place, but not to the extent of hurting the very beneficiaries who are our children. There are other culprits as well who got employment but have defaulted. We may have to waive the starting date to about six months. According to me, it is high time that if education is supposed to be free, we are supposed to just simply give capital funding, and later on, the same student repays the same amount. In this case, we shall be providing the particular help those students need.

In the case of affirmative action, women and youth are given capital, and they repay the same. If HELB is subjected to similar treatment – unless for those who have really defaulted – we can now apply some interest. However, if interest will be applied in this case, it should be looked into as well. Interest is so high to the extent that one questions where the people who are being slapped with these sums of money are employed, or if they are just students who are at our mercy.

This is an important Motion that should not just stop at being contributed to on this Floor; something else should be done. This matter should be taken to a higher level. We need to meet the HELB management to explain their major challenges that make them charge very high interest, which they cannot recover. It is pointless to charge very high interest and yet somebody has already lost to the tune of Kshs24.6 billion. What does that mean? These people need to go back to the drawing board, restructure and find a better method to recover these loans.

Madam Temporary Speaker, in addition, they also need to be aggressive and even get employment for their beneficiaries. They can approach the private sector when the Government cannot employ. If they were aggressive, that is the avenue through which they could recover some money.

I support this important Motion by Sen. (Dr.) Ali.

**Sen. Halake:** Thank you, Madam Temporary Speaker, for giving me the opportunity. I rise to support this important Motion. Listening to Sen. (Dr.) Ali whom I congratulate for this timely Motion, I was reminded of the fact that our priorities as a country are somewhat warped. Since when has investment in our human capital become a commodity on which we attach interest? It is about time we rethought how we look at our investments. This is not a loss.

How does the Ministry of Education put Kshs7.2 billion loss on the book of HELB for something as important as an investment in the human capital for this country? Why did it fail to connect what that investment is doing in other sectors and not quantify the contribution of that education in health and economy of the country, which is a drop in the ocean? The Kshs7.2 billion would have been a drop in the ocean if we thought of it on those terms.

I congratulate Sen. (Dr.) Ali for bringing this Motion. However, I urge him that the request by the Senate to the Ministry for the six months is not doing justice to this issue. It needs to be a permanent waiver. I am for people paying back. I know there are people who can and should pay back. However, we should not look at our investment in our human capital as a loan that is taken from the bank. It is different. It is an investment

that has returns in many different ways. It makes sure that educated people contribute to the socio-economic wellbeing of this country. Therefore, looking at this in the narrow presume of interest is missing the point.

I urge our Government to zero-rate the taxation of an investment of this nature. We have seen that investment to housing gets a rebate for saving and creating wealth. Why not get a rebate for investment into education? We are getting it wrong as a nation if we start to look and punish our students for their loans and the interest charged.

I am for HELB to be a sustainable organisation, so that it can lend to other students. However, there needs to be a difference between students who can pay and those that cannot pay. We should not give blanket loans. When we were in the university, and even now, students are charged for loans that they are unaware of. I do not remember signing for a loan. It came automatically. What if I did not need the loan and could actually pay for it?

We need to change the entire system and structure of loaning students, so that the most deserving students get the support they need, and those that can afford it pay for it. That way, we will be fair and equitable in our investment into our human capital.

Madam Temporary Speaker, I was looking at the issue around defaulters being blacklisted by the Credit Reference Bureau (CRB). Again, it is punitive to blacklist our students for defaulting and punish them with non-employment or access to any loans. This becomes a vicious cycle of abuse of their rights to education.

While we support the issues around the waivers for six months, which were done before, it does not solve the problem. Therefore, we need to rethink about what we need to do about this. From my point of view, we should look at this as an investment which has immense returns. In terms of law enforcement, there are cases where we should have law enforcers to arrest or enforce this.

We need to look at the underlying issues of unemployment. We should create job opportunities for our youth and make sure that our economy, which is said to be growing at about 6 per cent works for everybody and not just the people at the top. Where is the economic growth? Has it translated into jobs for the millions of students that are churned out of the universities and institutions of higher learning? We should avoid talking of waivers and free things because we are a capitalistic nation. Therefore, we should think of how to create employment.

Beyond all these underlying issues of unemployment, poverty and others that cause students to default we need to come up with other ways of finding solutions, as opposed to policing and having laws that lead to arrests, blacklisting or punishing of people who are victims of a system that is not working for them. We should think of how to accommodate them in the socioeconomic space of the country.

Madam Temporary Speaker, the importance of education and other sectors cannot be overemphasized. It is time this country prioritised things. In this country, a lot of money has gone to corrupt deals. The Kshs7.2 billion that makes our students to be blacklisted is nothing compared to the first National Youth Service (NYS) scandal or even others like the maize, health equipment and dams scandals. I do not know where our priorities are as a country if we cannot zero-rate investment into our human capital for our needy students.

I do not wish to speak too much on this issue, because it is about the inequalities in our country. The system seems to be leaving the most deserving behind because that borders abuse of rights. As it has been said before, the right to education is guaranteed in Article 43(f) of the Constitution. Therefore, every child born in this country has a right to education. Therefore, they do not have to be punished for the rest of their lives because there are no jobs.

This is an emotional issue for some of us because we know that we cannot play lip-service to the issue of socioeconomic rights, such as education and its impact on other sectors of the economy. We have many corruption cases that rob the country of a lot of resources that could go to the education sector.

Madam Temporary Speaker, I thank you for giving me the opportunity. Again, I congratulate the Senator of Wajir County, Sen. (Dr.) Ali, for bringing this Motion. I urge him to look at the prayer he made to this House because it is something that has been tried. In his own Motion, it is stated that measures were taken to enhance the HELB loan recovery process, which included a six months waiver of accumulated interest and penalties. It also states that there is need to work with law enforcement officers to make sure that the defaulters who are employed pay back the loans, but we still have the same situation. We cannot do the same thing through this Motion and expect a different result.

I hope that this House will enhance this and consider zero-rating this for a longer term or permanently, or use a differentiated calculation where the more needy students pay less or do not pay at all. It should be looked at as an investment that is zero-rated because the issue of our human capital is existential for our country because we depend on it for different sectors. I suggest that we do not propose six months because if it did not work then, it may not work now.

Madam Temporary Speaker, as I support the Motion, I look forward to its implementation and enhancement to make it more robust.

I thank you.

**Sen. Wetangula:** Thank you, Madam Temporary Speaker. You are right. *Musa* is the Kiswahili version of Moses.

I support this Motion and thank Sen. (Dr.) Ali for thinking this way. I have limited time and so, I will give a few points. I want to encourage Sen (Dr.) Ali that this Motion is good and has overwhelming support. We can join hands and draft an amendment to the Higher Education Loans Board Act so as to make what he is seeking in this Motion part of the law.

The Government has repeatedly pronounced itself that it is committed to providing universal education to all Kenyans through bursaries, which are unconditional. If we give loans to a certain category of students, they must be interest-free. They should never attract interest in whatever circumstances under whatever situations. Therefore, those loans must be interest-free.

When someone who was given a loan gets employment, they should pay it back because it is a revolving fund. Some of us have paid back the loans that educated us at the university, and have certificates of completion and clearance. However, you cannot obligate persons who are unemployed to pay loans, especially educational loans which were not business loans.

Sen. (Dr.) Ali should bring regulations that will obligate employers by the law, to inform the HELB that so-and-so, who was a student at a particular time in an institution and benefited from the loans, has been employed by them. The employer will then be obligated to repay the loan on a check-off system, on their behalf, like other institutions have done.

In those amendments, the employers of fresh graduates must also be obligated not to seek CRB recommendations because those fellows just go to the computer and look at who has a loan where; who has paid and who has not paid. One cannot pay a loan if they do not have a job. Therefore, that condition should not be applied to a graduate who has never been employed. The CRB should be penalised for blacklisting graduates who have never been employed because they are doing something that is a disservice to the population.

This is unrelated to loans. One cannot ask for ten or five years' experience, yet they want to employ fresh graduates. Where will they get that experience? We need to streamline that. I believe that Sen. (Dr.) Ali was prompted by the misguided statement by the Ministry of Education that they will use the police, Directorate of Criminal Investigation (DCI) and the law enforcement agencies to arrest loan defaulters.

**The Temporary Speaker** (Sen. Nyamunga): Sorry, Senator. You will have a balance of ten minutes, and I request that the same Motion be listed for tomorrow.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the House. The Senate, therefore, stands adjourned until tomorrow, Thursday, 4<sup>th</sup> July, 2019, at 2:30 p.m.

The Senate rose at 6.30 p.m.