

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

**Tuesday, 17<sup>th</sup> September, 2019**

*(Convened via Kenya Gazette Notice  
No.8549 of 10<sup>th</sup> September, 2019)*

*The House met at Kitui County Assembly  
Chamber, Kitui, at 2.30 p.m.*

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

#### PRAYER

#### COMMUNICATION FROM THE CHAIR

SITTING OF THE SENATE IN KITUI  
COUNTY ASSEMBLY

**The Speaker** (Hon. Lusaka): Hon. Senators, I welcome you all to Kitui County for this auspicious sitting of the Senate, which is the second sitting by the Senate outside Nairobi.

I thank the leadership of Kitui County Government, both the Executive and the Assembly, led by Her Excellency, Governor Charity K. Ngilu, EGH, and the Assembly Speaker, the Rt. Hon. George Ndotto, EGH, for the warm welcome since our arrival and for facilitating these sittings. I request them to stand so that they may be acknowledged in the Senate tradition.

*(Hon. Governor Charity Ngilu, and the Assembly Speaker,  
the Rt. Hon. George Ndotto, stood up in their places)*

*(Applause)*

I wish to convey our deep appreciation to the Leadership and Members of the county assembly for hosting us and for adjourning their sittings to allow the Senate to use your magnificent Chamber for this second sitting of the Senate outside the capital city.

I request the Members of the Kitui County Assembly present to stand so that they may be recognized and acknowledged.

*(Several Members of Kitui County Assembly  
stood up in their places)*

(Applause)

Our sincere gratitude also goes to the great people of Kitui County for the friendly welcome and the hospitality extended to us.

Hon. Senators, one of the most fundamental provisions of the 2010 Constitution is the devolved system of government which aims at bringing services closer to the people as a means of accelerating development and enhancing the collective responsibility. A core creation of this Constitution is the Senate whose main function is, *inter-alia*, to represent the counties, and serve to protect the interests of the counties and their governments.

The sittings of the Senate outside its traditional seat at Parliament Buildings in Nairobi is designed as an innovative way of enhancing interaction between the national and county levels of government, which are distinct and interdependent. In this manner, we bring the Senate, and indeed Parliament, closer to the people both symbolically and functionally.

Specifically, these unique sittings are expected to –

(i) promote the work and role of the Senate, and highlight opportunities for greater public engagement;

(ii) give an opportunity to County Assembly Members and staff to interact with and borrow practices from the Senate;

(iii) develop and strengthen partnerships at the county level by creating interest among the public regarding the business and work of the Senate; and

(iv) hold public hearings on key legislative proposals and petitions, particularly on issues relating to the area and region where the sittings are held.

Hon. Senators, following on the success of the inaugural Senate sittings held in Uasin Gishu County in September last year, the sittings of the Senate outside Nairobi open up the scope for the Senate to operate amidst the people, beyond our country's capital. Let us face it; the Senate is all about our people and their needs. This is reflected through our programs this week for both the plenary and Committees.

It is imperative to mention that the national Executive has, since 2016, adopted this concept for the celebration of national holidays every year in various counties and regions of our country. These have since been held in Nyeri County which hosted the Madaraka Day celebrations on 1<sup>st</sup> June, 2016, Machakos County which hosted Mashujaa Day on 20<sup>th</sup> October, 2016, Nakuru County which hosted Madaraka Day on 1<sup>st</sup> June, 2017, Meru County which hosted Madaraka Day on 1<sup>st</sup> June, 2018, Kakamega County which hosted Mashujaa Day on 20<sup>th</sup> October, 2018 and, most recently, in Narok County which hosted Madaraka Day on 1<sup>st</sup> June, 2019. The Mashujaa Day celebrations are scheduled to be held next month in Mombasa County. This outreach endeavour resonates with the evolving practice of the Senate, with plans to hold sittings in each region of the country during the current term of Parliament.

Hon. Senators, through this Senate Mashinani Initiative, the Senate is making its contribution towards nurturing more inclusivity in the management of public affairs in our country.

Beginning yesterday, and over the next four days, there are various activities lined up including plenary and Committee sittings, as well as public participation fora, which

accord the public a special opportunity to actively engage and participate in the Senate legislative business, in line with the letter and spirit of the Constitution.

Let us, therefore, take advantage of this opportunity to engage in open conversations on what needs to be done to achieve prosperity even as we strengthen our institutions of governance.

In holding our sitting at the Kitui County Assembly, the Senate believes that county assemblies can complement good legislative practices, and hold the potential of directly identifying and addressing the people's tribulations, revitalizing hopes and aspirations, as well as deepening a democratic, consultative and participatory governance tradition. I dare add that the county assemblies are at the core of improving governance in our country.

Hon. Senators, I now wish to acknowledge the presence, in the Speaker's Gallery this afternoon, of invited dignitaries who have joined us for this historical and memorable occasion of the Senate sitting in Kitui County. I request each one of them to stand when called out so that they may be acknowledged in the Senate tradition.

They are:-

<b>Governors of Neighbouring Counties</b>		
1.	Gov. (Dr.) Alfred Mutua, EGH	Machakos County
2.	Gov. (Prof.) Kivutha Kibwana, EGH	Makueni County
3.	Gov. Martin Wambora, EGH	Embu County
4.	Gov. Ali Korane, CBS	Garissa County
5.	Gov. Major (Rtd) Dhadho Godhana	Tana River County
6.	Gov. Muthomi Njuki, EGH	Tharaka Nithi County
<b>Members of Parliament from Kitui County</b>		
7.	Hon. (Dr.) Makali Mulu, MP	MP, Kitui Central
8.	Hon. Edith Vethi Nyenze, MP	MP, Kitui West
9.	Hon. Nimrod Mbai, MP	MP, Kitui East
10.	Hon. Racheal Nyamai, MP	MP, Kitui South
11.	Hon. David Mwalika Mboni, MP	MP, Kitui Rural
12.	Hon. Gideon M. Mulyungi, MP	MP, Mwingi Central
13.	Hon. Charles Ngusya Nguna, MP	MP, Mwingi West
14.	Hon. Paul Musyimi Nzengu, MP	MP, Mwingi North
15.	Hon. (Dr.) Irene Kasalu, MP	Women Representative, Kitui County
<b>Speakers of County Assemblies</b>		
16.	Hon. Florence Mwangangi, MCA	Speaker, Machakos County Assembly
17.	Hon. Michael Nkaduda, MCA	Speaker, Tana River County Assembly
18.	Hon. Douglas Mbilu, MCA	Speaker, Makueni County Assembly
19.	Hon. Josiah M. Thiriku, MCA	Speaker, Embu County Assembly
20.	Hon. David Mbaya, MCA	Speaker, Tharaka Nithi County Assembly
21.	Hon. Ahmed Ibrahim Abass, MCA	Speaker, Garissa County Assembly

<b>Clerks of County Assemblies</b>		
22.	Mr. Elijah Mutambuki	Clerk, Kitui County Assembly
23.	Mr. Abdullahi Hussein	Clerk, Tana River County Assembly
24.	Mr. Robert Mwalu	Clerk, Makueni County Assembly
25.	Mr. Jim Kauma	Clerk, Embu County Assembly
26.	Mr. Amos Kiangwe	Clerk, Tharaka Nithi County Assembly
27.	Mr. Mahmoud Santur	Clerk, Garissa County Assembly
<b>Invited Dignitaries</b>		
28.	Hon. David Musila, EGH	Former Senator for Kitui County, and currently Chairman of the National Museums of Kenya
29.	Hon. Nyiva Mwendwa, EGH	Former MP, Kitui West Constituency
30.	Mr. Nzamba Kitonga, SC	Former Chairman, Committee of Experts on constitutional review
31.	Mr. Eric Mutua	Former Chairperson, Law Society of Kenya
32.	Ms. Selessor Odipoh	Westminster Foundation for Democracy (WFD)
33.	Ms. Roselyn Mungai	Ag. Country Director, AHADI
34.	Mr. Japhet Masya	Former Clerk of the National Assembly
35.	Prof. Geoffrey Muluvu	Vice Chancellor, South Eastern University of Kenya

On behalf of the Senate and on my own behalf, I wish to thank our guests for honouring our invitation and joining us on this occasion.

In conclusion, I want to urge all of us to always remember that, we cannot have counties without the Senate. Conversely, we cannot have a Senate without the counties. Ours is a symbiotic relationship, one which requires mutual learning, experience sharing and leadership for it to grow and thrive.

Once again, I thank the leadership of the Kitui County Government and the great people of Kitui for warmly receiving the Senate and facilitating our sittings here. I also thank the leadership of the neighbouring counties and the invited dignitaries who have joined us during this momentous occasion.

I thank you.

*(Sen. Mutula Kilonzo Jnr. Spoke off record)*

Sen. Mutula Kilonzo Jnr., press your microphone and then I will let you speak.

Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Thank you Mr. Speaker Sir. I just wanted directions; but I thought that Sen. Wambua should go first.

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

**Sen. Wambua:** Thank you, Mr. Speaker, Sir, for this opportunity to join you and my colleagues in welcoming the dignitaries that have been invited to attend the Second

Senate *Mashinani* Sitting in Kitui County. When you stand to invite guests who are your seniors in politics, it feels like you are sitting for a “Leadership 101” test, and being marked in real time. I am very sure that if it was Sen. Cheruiyot from Kericho doing this test, he would probably fail.

*(Laughter)*

Mr. Speaker, Sir I am very grateful that the leadership of the Senate unanimously agreed to come to Kitui to sit for the Senate *Mashinani* between yesterday and Friday. On behalf of the great people of Kitui and on my own behalf, I welcome all Senators and guests that have been invited.

Mr. Speaker, Sir, this is the making of history. If each county in this country is going to host the Senate *Mashinani* once a year, it will take the next 46 years before the Senate comes back to Kitui. I, therefore, want to invite the leaders and the people of Kitui to join all of us in witnessing and celebrating the making of history in our county.

Mr. Speaker, Sir, the Senate *Mashinani* Program, as rolled out by the Senate, will ensure that Senators will have access to different parts and institutions of this county. As I welcome the Senators to Kitui, I ask them to take time and visit all the institutions that are listed in the program; interact with the people of Kitui and see how we can join hands to help our people in deepening and widening devolution.

With those remarks, Mr. Speaker, Sir, I welcome all the Senators and guests to Kitui County.

Thank you, Mr. Speaker, Sir.

*(Applause)*

**The Senate Minority Leader** (Sen. Orengo): Thank you very much, Mr. Speaker, Sir, for giving me an opportunity to follow you by thanking the leadership and the people Kitui in facilitating the Senate to have its second sitting outside Nairobi. For everybody who was here from Sunday – although I was not here from Sunday – I think it has been pleasant being here. Some matches were played yesterday. The Senate Majority Leader is not here; it would have been a wonderful thing for him to be here in the very first session, but he got injured. I talked to him a little bit earlier. Somebody was telling me that the people in the county were not happy that the Senate took all the trophies. I do not know whether somebody used *kamute* to ensure that the Senate Majority Leader is not here, but I know that he would have been very happy to be here.

*(Laughter)*

Mr. Speaker, Sir, I am also very delighted to see the Governor of Kitui here. As you know, the Governor of Kitui was at the forefront in fighting for this new Constitution of dispensation. To the ladies who are here today, I have said before in the Senate that I am looking forward to the day when the majority of Senators will be ladies.

*(Applause)*

The gentlemen are not applauding! We should have as many female governors as possible and we thank her for being here.

Secondly, Mr. Speaker, Sir, I would like to thank the Speaker of the County Assembly. Kitui County has a unique leadership, because the Speaker of the County Assembly in Kitui was a Minister in the national Government. He performed wonderfully when he was in the Cabinet. I know that as a matter of fact.

Last but not least, Mr. Speaker, Sir, the former Provincial Commissioner (PC), Sen. Musila, is here. I do not know which title we should use for him in retirement; although politicians never retire. I do not know whether we should call him the PC, the Minister, The Senator, or *Mheshimiwa*, because he was also in the National Assembly. At one time, I was in the presence of the former President Moi with a member of the National Assembly who had lost in the elections. That member had once served as a Minister, and then he became a nominated councillor when he lost his seat in the National Assembly. When there was a function at Parliament, he went to President Moi and said, “Mr. President, can you meet the Assistant Minister, Mheshimiwa Councillor Ocholla-Ogur?”

*(Laughter)*

I, therefore, do not know whether they should keep all those titles.

Even more importantly, Mr. Speaker, Sir, Kitui has produced some of the best brains and leaders in this country. Talking as a lawyer, the first black Chief Justice and Solicitor-General, Kitili Mwendwa, came from this great county. The second Chief Justice under the current Constitution also came from this County. This County has produced one of the Vice Presidents who is my boss in NASA. Therefore, it is a great County. In fact, if I keep on mentioning these dignitaries, I will be on my feet for very long.

I want hon. Senators here to know how familiar I am with Kitui; I used to run an office here in Kitui. I would go to Mwingi, the courts around here and I remember when I first came to Kitui, the roads were not as good so when I crossed in from Machakos, I kept on asking on the way: “Am I about to get to Kitui” and they would tell me: “*novaa, novaa*”

*(Laughter)*

I kept on going, until I almost gave up. Let me not say anything more than that; we are happy to be in Kitui.

Mr. Speaker, Sir, we are glad you are back here in time. I hope we are going to have a very robust debate here in Kitui and I thank the County Assembly also for building and erecting such a magnificent Chamber. I think we also have some business to learn from the way they operate here in Kitui as a County Assembly. I think the Speaker and his team have done a very good job.

Without further ado, I thank the people of Kitui and the leadership. Thank you.

**Sen. (Eng.) Mahamud:** Mr. Speaker Sir---

*(There was a technical hitch)*

**The Speaker** (Hon. Lusaka): I ask the other Senators to turn off your microphones.

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, sorry for that small hitch.

Let us first congratulate ourselves for having been able to move Senate *Mashinani* to Kitui and thank the people of Kitui for welcoming us to this beautiful town of Kitui. I also thank the leadership of Kitui County Assembly, the leadership of Kitui County Executive, led by Gov. Ngilu and the Speaker, Mr. Ndotto; two people who I have known for a long time in my career as a civil servant.

I also thank the other dignitaries who have been able to join us today in this magnificent building; a very beautiful Assembly indeed. As we sit in Kitui County, I, who come from Mandera in the former North Eastern Province--- we are almost nearing Garissa. I think the Senate is going this direction; being in Kitui County, it will be easy to go to Garissa and Mandera in future.

I welcome the opportunity for Kitui County to have hosted us and at least to exchange ideas and work together with the County Assembly. This is a very important session for us today. Today as we sit here, we are going to move the current County Allocation of Revenue Bill, and pass it tonight which will open the gate for funding to the counties. I think it is actually a good opportunity for us to do it in a county and not in Nairobi. It is a good opportunity for us to discuss this Bill and the people of Kitui to take the advantage of us being here and passing it here.

I would like to assure the County Government of Kitui; both the Assembly and the Executive, that the Senate is there to work with you to defend the counties and their governments as stipulated in Article 96 of the Constitution.

With those few remarks, I apologise as my colleague Sen. Orenge has said; we wish the Senate Majority Leader would have been here. Yesterday he played hard and I think the people of Kitui willingly ceded defeat because they did not want to defeat guests in their own home. We congratulate ourselves for winning both the football and the tug of war.

Thank you.

**Sen. Mutula Kilonzo Jr.** Thank you, Mr. Speaker, Sir. I only decided to speak because of what Sen. Orenge said about *kamuti* so that I may explain that while there was *kamuti*, there is also *muti*; a bigger one.

(Laughter)

We have no apologies for beating Kitui County Assembly. I do not think they gave in; they really fought and the ladies can attest to the tug of war.

Other than that, I think it is historic that after the crucial efforts to try and get counties money, through the Division of Revenue Bill, with all the problems we have had, it has been signed into law. Counties can receive funds and possibly today, we will sit here until whatever time it is, so that we can pass the County Allocation of Revenue Bill (CARB). I met a lady when I had occasion to visit my former colleague, hon. Musila, and a lady stopped me and said: "I have not been paid salary for the last three months". I, therefore, think we can remove the burden of the people who we represent, once we finalise this. Other than this, I think we can get over to the business that brought us to Kitui County.

Thank you.

**The Speaker** (Hon. Lusaka): I think those who have spoken, have spoken on behalf of the rest because we have a long programme.

We can go to the next order.

### MESSAGE FROM THE NATIONAL ASSEMBLY

THE DECISION OF THE NATIONAL ASSEMBLY ON THE MEDIATED  
VERSION OF THE DIVISION OF REVENUE (NO.2) BILL  
(NATIONAL ASSEMBLY BILLS NO. 59 OF 2019)

**The Speaker** (Hon. Lusaka): Hon. Senators, I wish to bring to the attention of the Senate that pursuant to Standing Order number 41 (3), the Clerk delivered to me a Message from the National Assembly regarding the decision of the National Assembly on the mediated version of the Division of Revenue (No.2) Bill (National Assembly Bills No.59 of 2019).

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

Pursuant to the provisions of Standing Order 41 (1) and 150 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly.

WHEREAS, the Division of Revenue (No.2) Bill (National Assembly Bills No.59 of 2019) was published *vide* Kenya Gazette supplement No.119 of 16<sup>th</sup> July 2019, to provide for the equitable division of revenue raised nationally between the national and county governments in the 2019/2020 Financial Year, was considered by the National Assembly and passed with amendments on 25<sup>th</sup> July 2019 and, thereafter, referred to the Senate for consideration;

WHEREAS, the Senate considered and passed the Bill with amendments which upon reconsideration by the National Assembly was negated on 8<sup>th</sup> August 2019, consequently committing the Bill to a mediation committee in accordance with Article 112 of the Constitution and Standing Order 148 (b) of the National Assembly;

FURTHER, WHEREAS, on 12<sup>th</sup> of September 2019, the National Assembly considered and approved the version of the Division of Revenue Bill in the form agreed to by the Committee and proposed to the House in accordance to Article 113 of the Constitution;

NOW THEREFORE, in accordance with the provisions of Article 113 of the Constitution and Standing Order No.150 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate.”

Hon. Senators, as you are aware, the Senate on Wednesday, 11<sup>th</sup> September, 2019, debated and adopted the report of the Committee and approved the mediated version of the same Bill. The Bill will now be transmitted to His Excellency the President, for assent, pursuant to Article 113 of the Constitution.

I thank you.

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

**POINT OF ORDER**EFFECTIVE DATE OF THE DORA ASSENTED  
TO BY H.E. THE PRESIDENT

**Sen. M. Kajwang’:** Thank you, Mr. Speaker, Sir. Indeed, it is good news that the Division of Revenue Bill is now being conveyed to the President for assent. May I just inquire the effective date of the Division of Revenue Bill? As far as we are concerned, when we sent a team to mediate, they were going to mediate on three specific issues; the amounts, the conditional allocations and the managed equipment scheme. Just to get your clarification that the effective date of the Bill going for assent is similar to what this Senate passed.

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

**The Speaker** (Hon. Lusaka): What is it, Sen. Wambua?

**Sen. Wambua:** Mr. Speaker, Sir, I also need a clarification. You have communicated that the Bill is going to the President for assent. When Sen. Mutula Kilonzo Jnr. took to the dispatch box, he communicated that the Bill has already been assented to.

Mr. Speaker, Sir, What is the position?

**The Speaker** (Hon. Lusaka): Proceed, Leader of Minority.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, I am aware that the Bill has already been assented to. It is now our duty to proceed with the next step because that Bill was talking about the sharing of revenue between the two levels of Government; that is horizontally. The next step is allocation of revenue horizontally amongst counties.

However, having said that, this Message is coming to you a little bit too late because there should have been additional information to the Senate that the Bill has been assented to. This is because the legal situation is completely different between a Message coming from the National Assembly that the Bill has been passed; in relation to a Bill which has been assented to.

Secondly, we should have assurances from the National Assembly that the Mediated Version of the Bill is the one which they passed. However, it is now public knowledge that the Bill that has been taken to the President for assent is not the version of the Bill that was mediated at least in one very important aspect.

I plead with the Senate that, as Mrs. Obama said during the campaigns; that, “When they go low, we go higher”. The counties have been suffering. We have to go higher to make sure that devolution is not killed. The thing I have a problem with - I must state it despite the fact that I have come to accept the fact that we should go to the next level - that when you allow one illegality to take place, that is the beginning of impunity and we must talk about it.

*(Applause)*

The mediated version that was passed by the National Assembly was in compliance with the Constitution of the Republic of Kenya which relates to when a Bill comes into force. The version that was passed by our mediators and which we passed in this Senate had Clause 1 - which is now Section (1) of the Act – it had a commencement

period where the Bill was coming into force immediately upon gazettment. However, it has now been backdated to 1<sup>st</sup> July. When a law is made to apply retroactively or retrospectively, there is a good reason it is being done and it is normally that somebody wants to validate what has taken place before. I do not know whether we understand each other.

**Hon. Senators:** Yes!

**The Senate Minority Leader** (Sen. Orenge): Something has happened that is wrong and contrary to the law. So making this law apply retrospectively is to correct an illegality which has happened. It is an admission. That is the first point that we must take very seriously that backdating this Bill--- you can backdate the provisions of a Bill in the content of the Bill. You can say that certain sections, for these certain good reasons, will apply retroactively. However, when you backdate a commencement date, it is not in the true spirit of the Constitution.

Mr. Speaker, Sir, in fact, Article 10 of the Constitution in relation to criminal justice system disallows retroactive legislation. There are some events which took place after 1<sup>st</sup> July that if the Bill is not backdated, then some people will become accountable for their misdeeds. Therefore, somebody is trying to address those misdeeds by backdating this Bill.

I plead with everybody here that since the National Assembly may be drunk with its own wine, the Senate should never do the same with power or responsibilities that we have. We will do things in accordance with the law all the time.

*(Applause)*

We will also leave a better legacy by doing things in accordance with the law all the time.

Although this thing has happened, this is not the last you are going to hear about what has been done in terms of backdating this legislation.

We have one of the best Senate Committees on Finance and Budget that I have seen in the recent or even distant past. We have men and women of honour in this Committee. When I saw Sen. (Eng.) Mahamud pained by what has happened to his product--- He was not a very happy man but we have got to live with it. I remind the Senate that if we look at the Lancaster constitution; the way devolution was killed was by little things happening at the beginning and within a year, the Senate was gone. The National Assembly is trying to say that we do not matter; yet they know we cannot have an Appropriation Act before you pass a Division of Revenue Act (DORA). That is a constitutional framework which is written in black and white.

Mr. Speaker, Sir, somebody is trying to validate not only an illegality but an unconstitutional act which is even more serious. Next time, we are impeaching a governor--- you remember we have had impeachment proceedings before this House where governors were being impeached by acting contrary to the Constitution. The National Assembly is able to act contrary to the Constitution and there is nothing we can do about it. I think this is a disgrace and the President should think about this very seriously. We know his legacy is very important but when he puts his hands on something which is invalid constitutionally, I begin to worry about governance in this country.

From now, I am going to speak out very loudly about some of these issues. This is because we better say it now than later when the horse has left the stable.

The consequence of the work of the Committee of Senator. M. Kajwang comes from the very moment we enact DORA and the Appropriation Act. It lays a foundation for his Committee. This is a matter which even his Committee can take up. It can examine the consequences in terms of managing our resources and public revenue when such a foundational illegality is committed.

I thank you, Mr. Speaker, Sir.

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

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, let me also add my voice to the colleagues that have spoken before me.

It could be said that today is a very sad day for this country. We have earlier said that DORA has been assented to and it will open the funding to the counties. Unfortunately, an illegality has been committed. It is very frustrating to sit in a committee for long and work hard and see something sneaked in.

He mentioned that we might have disused the effective date in the Committee. The fact remains that this House passed a Bill with an effective date because it talks about publication on gazette. That is the Senate version. The National Assembly Bill set the date at 1<sup>st</sup> July, 2019. So, there was no mediated version of the Bill that the President assented to.

It is unfortunate that the Message from the President has come to us now and it was signed this morning. An illegality has been committed. Knowing that that has happened, the County Allocation of Revenue Act (CARA) will be enacted because nothing will stop us. The National Assembly and the Executive take the laws of this country for granted.

The Executive and the National Assembly are working in cahoots to frustrate the spirit of our Constitution and the Senate, but we will not accept that. We have fought and reached where we are at today and we will continue fighting. We have not lost the war. The battle on the Bill has been lost because that Bill should have been lost or taken back to mediation.

Sometimes you have to commit an illegality by doing something that affects everybody. Our counties and the people are suffering. The first quarter of the year has ended but no funds have gone to the counties. The Senate has no alternative but to work with CARA. However, going forward, we must be careful with the rogue House, which is the National Assembly, that is behaving like a rogue elephant that wants to kick the whole country left and right but we will not accept that.

I have said this and it is on record. When the Bill was moved last week, I deliberately quoted Clause 1, knowing the mischief that came from our colleagues from the other House. We have Clause 1 but it will not stop us from passing the County Allocation of Revenue Bill. It will not stop us from making any change in the law to make the National Treasury and the Executive to fulfill their obligations to the counties.

I want to go on record by saying that what has happened today, in terms of assenting to the Bill, is actually a flagrant violation of the Constitution but that is something for another day. For now, we will move on with the CARA.

I thank you.

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

**Sen. Wetangula:** Thank you, Mr. Speaker for this opportunity. I join you in thanking the Kitui County Government and its people for the warm welcome.

We should never be complicit to sacrificing the constitutionality and legality at the altar of convenience. It has been very convenient to say that counties and people are suffering but there is no achievement of rights without sacrifice. What is happening in this country is entrenchment of impunity, absolute disregard for the law, absolute disdain for institutions and the Executive has found a bogey boy in the Senate to bully and molest at will.

The National Assembly of this country will today go down in history as the most ignominious institution that this country has had; pandering to the whims of the Executive and doing anything humanly possible to please the Executive. It is a shame! If Sen. Wako were here – I can see Sen. Orendo is here – he would have told you that one time, as the Attorney-General, he tried to doctor a Bill by changing the words; “not more than” and replacing with “not less than”. The High Court had very unkind words about him and struck it out.

We know that there is no way we can have an appropriation without agreeing on how revenue should be divided. Some advisers to the President and some ne’er-do-wells in the National Assembly told the President to ignore everything else and move on. They have even made the President think that the money that goes to the counties is his. You have heard him say that; “I have no money to give you”. Indeed, he has no money to give anybody because resources are collected from the people of Kenya, placed before the constitutional Commission on Revenue Allocation (CRA) and shared between the two levels of government.

Mr. Speaker, Sir, we encourage you to build our case in future. Although Sen. (Eng.) Mahamud who is my good Chairman said that we should move on, the issue of accepting and moving on is what is destroying this country. When elections are rigged or someone cheats on you, you are told to accept and move.

Mr. Speaker, Sir, after this short interlude, I encourage you to write a letter to the Speaker of the National Assembly to protest the content and dishonesty in the letter that he has sent you to build a case for our future. I encourage my colleagues who are lawyers and are involved in changing the Constitution at the legal level that we need to borrow from comparable jurisdictions. For example, in Pakistan, when any Bill is passed by Parliament, before its operationalization, it is placed before a constitutional court as a case stated, to declare if it is constitutional or otherwise. The Appropriation Bill would not have passed that test.

As I finish, in doing what they are doing, truth be said, the illegality and unconstitutionality they are trying to cover is the massive resources from the people of Kenya that they have used to pay foreign debts that they have borrowed recklessly, knowing that people are bound to ask. We will encourage everybody, including Mr. Okiya Omtatah, to be on the route to court to challenge it. Even if judges are intimidated to do the opposite, one day, there will be a good judge to do the right thing.

If this country is not ruled by the rule of law, then God help us. Like Wole Soyinka said, if the man dies in all who keep silent in the face of tyranny, I believe a woman equally dies in all who keep silent in the face of tyranny.

**Sen. (Eng.) Hargura:** Mr. Speaker, I would like to seek clarification on the issue of the mediated version of the Division of Revenue Bill. Yesterday the Supreme Court

heard the case by the Council of Governors (CoG) seeking opinion on the same. The Chief Justice instructed that the mediated version of the Bill be deposited in the Supreme Court. Which version will be deposited in this case?

**Sen. Malalah:** Mr. Speaker, Sir, I have pensively listened to my colleagues and you must give direction today. We have witnessed an illegality with the assenting of the Division of Revenue Bill. In a few minutes from, now, we are going to cement that illegality. I have heard Sen. Wetangula encouraging Mr. Okiya Omtatah to go to court and challenge that decision.

Mr. Speaker, Sir, I think the Senate has got the powers to contest that illegality on the Floor of this House. Why should we pass the County Allocation of Revenue Bill when the Division of Revenue Act is an illegality? It is paradoxical. We are behaving like the proverbial ostrich.

If we are serious with what we are saying here, then we should not pass the County Allocation of Revenue Bill. Let us sacrifice for a moment, so that we can teach the Executive--- I think we must state in no uncertain terms that the Jubilee Government has failed. That is what we are trying to cushion. I am alive to the fact that we exist in the “handshake” environment. However, I want to state here and challenge---

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

**The Speaker** (Hon. Lusaka): Sen. Omanga, what is your point of intervention?

Sen. Malalah, do you want to be informed?

**Sen. Malalah:** Thank you, Mr. Speaker, Sir. As the Senator for Kakamega County, I am well informed. I do not think that I am ready to be informed right now.

*(Laughter)*

Allow me to continue. I was saying that I am alive to the fact that we exist in the “handshake” environment. However, this should not compromise our legislative stand in this House.

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

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

**Sen. Omanga:** Is it in order for Sen. Malalah to blame the Jubilee Government yet we know that we have the “handshake” government?

**The Speaker** (Hon. Lusaka): Sen. Malalah, Continue.

**Sen. Malalah:** Thank you, Mr. Speaker, Sir. I choose to ignore and continue. We need to appreciate the establishment of the different arms of government in the Constitution. The Legislature is an arm that is supposed to be independent. What I am seeing in the legislative arm is a compromised lot of leadership.

The National Assembly is behaving like schoolboys. It is sad that the National Assembly and its leadership can be coerced to amend a mediated version of the Division of Revenue Bill. Therefore, my point is, let the “handshake” be out of the Chambers of this House. Let us perform our constitutionally mandated role as the Senate, but we shall not be compromised.

I urge the Minority Leader, and as the Deputy Minority Leader, that from today, we will perform the role of the opposition in this House. We shall continue with the “handshake” when we step outside this House because our country is being---

**The Speaker** (Hon. Lusaka): Sen. Malalah, are you directing your leader?

(Laughter)

I thought you should observe protocol as you make your contribution.

**Sen. Malalah:** Mr. Speaker, Sir, we have consulted as the Minority side and that is our position. When Sen. Malalah speaks, he speaks on behalf of the Minority side. Therefore, that is the position of our side; that we will perform our role as the opposition as we move forward.

**Sen. Farhiya:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I wish to join my colleagues in thanking the Kitui Executive and the County Assembly for welcoming us here. We are honoured to be in their Chambers today.

What puzzles me is that Members make laws – I am talking about our brother or sister House or whatever you want to call it – when they make laws, they expect people to follow those laws; the same laws that they blatantly continue breaking. In this House, we have always spoken what we thought was right for this country. I do not think we have done it in terms of opposition or government.

As I was coming from Nairobi to this place in the morning, the towns that I passed a year ago on my way to Garissa now look different. That shows that devolution is working and it is making a difference in people's lives. If blatant breaking of the laws results in devolution, which Kenyans voted for in their numbers, going down the drain, this will be uncalled for.

Mr. Speaker, Sir, I also wish to speak to the public out there. I am sure every Member of Parliament who sits in the other House comes from a county. Are they speaking their language? They are representatives of the people and the people should do something about it. I urge that they should start marking them and deal with them.

We have an illegality that was passed because the Appropriation Bill was passed illegally. Then we have another illegality to correct an illegality that is already there. Therefore, where is the legality in that process? What makes it legal? As much as we feel that our counties are suffering and are starved of cash, all this is a culmination of wanting devolution to die a natural death. If we do not protect devolution because we are in the opposition, "handshake" or the Government, then there is a big problem in terms of how we are constituted in this House.

In terms of the Division of Revenue Bill that we passed, we all know that it was based on economic parameters that were very sound. Without any justification this House passed another law as if our hands were tied. The other issue is the fact that there is a lot of discussion around corruption in the counties. If we all want to protect devolution, let us protect it from all corners. Regarding the Appropriation Bill and in terms of how that money is spent, I think all that needs to be in sync so that Kenyans get the services they deserve and the devolution they voted for.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Hon. Members, I am just going to allow one Member because we are repeating ourselves. We have a lot of business to do.

Sen. Mutula Kilonzo Jnr. Please proceed.

Order, hon. Senators! Please, switch off your phones.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I will be brief. I was just wondering out loud. The Constitution requires one Speaker to forward the mediated version. I was expecting that in your Communication you will tell us which version you forwarded to

your colleague, Speaker of the National Assembly. I have also learned that there is a practice where your signature is required in the vellum that goes to the President. It would have been nice if you could tell us whether your signature was appended to that document, so that we can solve some of the issues that are bothering us.

Dear colleagues, this matter cannot be solved without a judicial interpretation. Similarly, you cannot correct an illegality in the manner that the National Assembly has attempted to do. It reminds me of a song, “you can fool some people some time, but you cannot fool all the people all the time.” The only people who now must stand up to be counted is the Judiciary.

I am disappointed that in all our cases, including the one of the Council of Governors, they keep giving us dates that appear to be going into the month of December. We will ask the Council of Governors, and I am happy that the Governor of Kitui is here, to remain firm; not to become weak-kneed in this process. This is because we get the impression and feeling that you are pulling us back when we are fighting for you as your clients. This is because we are aware that the deal about the Kshs316 billion *et cetera*---

The most fundamental thing is that with a proper judicial system, and the case that we have filed in court, which in anticipation, we included the appropriation, there is no way a Bill that was signed today, 17<sup>th</sup> September, 2019, into law can become retrospective to 1<sup>st</sup> July. It is nursery school stuff; it is like One, Two, and Three for a four-year-old. Therefore, I am confident by the fact that I believe that you did not append your signature to the Vellum of a document that was not passed by this Plenary. If that was passed, that would also be a violation of our decision as the Senate. Two, it would be a violation of very fundamental principles.

Mr. Speaker, Sir, I have sat in many mediations, and there was no issue about a date. In law we call it *obiter dicta*; something that is almost nearly irrelevant that was introduced casually by one of the workers or member of staff, not even a Member of the Mediation Committee. I repeat what I have said; that even though we have a problem with the National Assembly, we still have a problem with support staff. This is because this matter has come from the Committee on Justice, Legal Affairs, which is supposed to be the support staff of Parliament; similarly, to the Parliamentary Budget Office. I speak this because I am aware that it is the Parliamentary Budget Office that looks at our Bills that we pass here to determine whether they are Money Bills.

In the next reform, we will reform even the people who work with us. I say this because I will not draft any other Bill until we resolve those issues. This is because we have passed so many Bills, and they are going back into small cocoons and Committees somewhere in Parliament, where these people are violating the jurisdiction given to us by the people of Kenya. We should stand up to be counted, and I want to tell the President that he has committed a breach of the Constitution, together with everybody in the chain of command. We must tell them that what they have done is wrong, but we will not play their dirty game.

I would propose, unlike the proposal by Sen. Malalah, that we do our County Allocation of Revenue Act (CARA), because we have given this particular question to the court to determine. This is because there are two versions of the mediated Bill; that should tell them that somebody has violated the law.

Thank you, Mr. Speaker, Sir.

**Sen. Kibiru:** On a point of order, Mr. Speaker, Sir. I heard your ruling that there should be no more debate on this, but before we proceed, my point is: the Chairman of the Committee on Mediation, to which I was a Member, did write a letter to you, Mr. Speaker and the Speaker of the National Assembly protesting about what was about to happen in the National Assembly. It is important that this House is informed whether that letter was treated in contempt or what happened to it. As Members, we need to know whether our Chairperson's letter was treated with the contempt that it did not deserve.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): For the Members I am giving an opportunity, please, keep it brief. Like I have said, we have a lot of work ahead.

Sen. Olekina.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. I am quite happy that the Senate in totality has rejected what was signed today because Article 113 of the Constitution is very clear in terms of each House debating the mediated version of the Bill. So, it will be very important for us to know which version of the Bill was forwarded to the President.

Mr. Speaker, Sir, I would also like to request that the HANSARD of these proceedings today be submitted to our Legal Counsel, so that it can be presented in our matter. This is because what we are trying to avoid is something that in Law is called *ex turpi causa non oritur actio*, which means that if we agree today, then, we will not have any case tomorrow in arguing as to why the law was settled very clearly; that there cannot be an Appropriation Act before the Division of Revenue Act (DORA).

Mr. Speaker, Sir, this is a matter that is very important for the history of this country. I am quite happy that the distinguished Senators are all standing up with Kenyans; that we cannot continue allowing an Executive to act as if we are back to an era of dictatorship.

My dear colleagues, if we sit and let the Executive run the way it is running today with the National Assembly, then we will be back to an era where the dictator will always have his way. It is sad that in this era, when this House does its work as provided for by the Constitution, it is ignored. So, for me to sit, it will be imperative that you tell us which version of the Bill you signed on this issue called Vellum for it to be sent to the President. That will ensure that at least we can also be assured that when we come here and spend our time in terms of representing those people who have elected us, and have a lot of faith in us, we are not doing it in vain.

Thank you, Mr. Speaker, Sir.

**Sen. Cheruiyot:** Thank you, Mr. Speaker, Sir. I will try to be extremely brief in this very difficult moment for the Senate.

I am a worried Senator this afternoon, because, for the last two or three weeks, we have groped around this particular issue and do not seem to be making proper headway. I think it is time that the leadership of Senate takes time to educate us, first, as their Members, on how they want us to approach this particular issue of obvious disregard of the rule of law by the National Assembly and the President as well. I want to believe that the President that was elected by millions of Kenyans, having been a legislator before, is not so innocent of the doings that the National Assembly is engaging itself in. I want to believe that he is properly briefed.

For example, when he receives a Vellum, like what he received today, of a Bill that has been considered by two Houses, is it not so obvious that he would want to

familiarize himself with what the contributions are from the two Houses of Parliament? It would be important for this House to know whether what was presented to him today had your signature. If it was forged, it would be important for Kenyans to know who this is that is misleading the entire country and helping to kill devolution. This is because what is happening is that we are denying devolution oxygen in small bits, and before we know it, it will just collapse and die.

Mr. Speaker, Sir, you will remember that already, there are reports of counties where certain hospitals have been shut, The obvious propaganda that will be run on county governments is that they are unable to perform, and therefore, what we need to do is to return the health function to the national Government. In counties like where some of us come from, you will find that no functions of county governments have taken place for the last three or four months. Therefore, the citizens will soon be informed that it is thanks to the inability of county governments to perform their duties that we are experiencing this kind of delay.

As a House, what is our strategy? I have also seen leadership join us in bemoaning the inglorious activities of the National Assembly. I listened to what my colleague, Sen. Malalah said, but he sits in the Senate Business Committee together with my Chairman, Sen. (Eng.) Mahamud.

Mr. Speaker, Sir, it is you guys in the Senate Business Committee (SBC) who proposed that the County Allocation of Revenue Bill be brought to the House this afternoon. If the SBC decided that this Order be brought to the House then you come to mourn with us, surely, you guys are part of the problem. You are the people who are misleading us and taking this---

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

**Sen. Malalah:** On a point of order, Mr. Speaker, Sir. In as much as I would like to agree with my colleagues, the Senator for Kericho County, by the time we passed the inclusion of the County Allocation of Revenue Bill on the Order Paper, the Bill had not been assented to. Therefore, we cannot fully put the blame on the SBC.

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

**Sen. Wambua:** On a point of order, Mr. Speaker, Sir. This is a House of record. I have listened to my friend and Senator for Kericho County refer to the SBC as some guys who sat somewhere. Is he in order to refer to the hon. Senators who sit in the SBC as some guys?

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

**Sen. Cheruiyot:** Mr. Speaker, Sir, the Senator seated next to me was my lecturer at the university. He has informed me that when you sit in a committee and fail to do the right thing, you are no longer a Senator but a guy.

*(Laughter)*

This is one of the days that I do not want to follow my lecturer's advice.

**The Speaker** (Hon. Lusaka): Order, Sen. Cheruiyot! You have a problem if the person seated next to you was your lecturer.

*(Laughter)*

Kindly proceed, Sen. Cheruiyot.

**Sen. Cheruiyot:** Mr. Speaker, Sir, I sympathise with my lecturer this afternoon.

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

**Sen. (Dr.) Lang'at:** On a point of order, Mr. Speaker, Sir. I would like to state that I was Sen. Cheruiyot's lecturer for three years. However, I did not teach him what he is purporting.

*(Laughter)*

**Sen. Cheruiyot:** Mr. Speaker, Sir, it appears that I am on my own. I will proceed nonetheless.

In conclusion, I would like to state that I agree with the sentiments of our colleagues who have stated that it is how we approach this issue that will determine whether we will have a job to do for the next three years while we are still Members of this House or we will have none at all.

If we continue to tolerate the kind of things that the National Assembly is doing and continue to give it casual approach, we will lose. I would like to state that even the Judiciary to some extent does not understand the procedures of Parliament. Two weeks ago, a senior counsel in this country, wrote to the Speaker of Parliament to stop the National Assembly from considering a particular Bill that would touch on the operations of law firms. I concluded that if somebody at the level of a senior counsel does not understand that Parliament is not just the National Assembly, then we do not expect the judges in the Judiciary to understand some of the issues that the Senate continues to raise on this particular matter.

Mr. Speaker, Sir, our position remains firm that we cannot have an Appropriation Bill without the Division of Revenue Bill. What I know about communication is that sometimes we say so many things to the point that people end up not understanding what exactly we are saying. That ought to be our point for the day. The whole country should know that in as far as the Senate is concerned; we contest the Appropriation Bill that was signed by the President, Uhuru Muigai Kenyatta. It is illegal, null and void.

I thank you, Mr. Speaker, Sir.

**Sen. (Prof.) Ongeri:** Mr. Speaker, Sir, this is a House of record. In the language of mediation, there are always two opposite views of issues. I remember Sen. Wetangula, Sen. Orenge, the late Sen. Mutula Kilonzo Snr. and I were in the mediation team in Serena. There were two completely divergent sides of a problem. When the mediation was done, we agreed on the script that we would roll out as the outcome of that mediation process which begot the 2010 Constitution.

I remember very well that the most cardinal rules in the Constitution 2010 were the rule of law and impunity. The two cardinal rules were addressed by the Constitution of 2010. We have had an issue in the Senate about the Division of Revenue Bill. We could not agree on the Division of Revenue Bill between ourselves and the National Assembly. The Bill was therefore referred to mediation. However, before the outcome of the mediation was known, there is already an assent to the Appropriation Bill by the President. It is now an Appropriation Act. It is an action of one House.

Mr. Speaker, Sir, we must be transparent on the Floor on this House. Did you sign the second mediation agreement that was presented for assent by the President? If you signed, we should not be arguing here because we are done. If the Speaker did not sign,

the issue being canvassed in court is whether the Appropriation Act that was signed was legal or unconstitutional. Our contention is that it was unconstitutional and that is our basis.

I must vent my views. What bothers me is that after the mediation, somebody went and changed the script of the product of mediation to read something else other than what had been agreed upon. If that is the case, I do not see why we should sit here to discuss the County Allocation of Revenue Bill. If that is what happened, it is itself a very dangerous precedence that we are creating. I am a strong proponent that counties should get more money regardless of what the National Assembly thinks about the counties. The issues of corruption should not be used to stop the counties from getting more money because we shall deal with it in a different format.

Mr. Speaker, Sir, the issue of revenue division to counties is paramount to the existence of the county governments and devolution as a whole. If we make the first mistake, we are likely to derail the Senate. I will not be counted as one of the people who derailed the Senate. I would like to know what version the Speaker signed, if he signed any at all.

I thank you, Mr. Speaker, Sir.

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

**Sen. Khaniri:** On a point of order, Mr. Speaker, Sir. We are belabouring the point yet we want to make progress. The Members are very clear. Three or four cardinal things have come out clearly. First and foremost, the President has assented to the Division of Revenue Bill and it is the opinion of this House that the Bill that was assented to is not the product of the mediation that we agreed on. Whatever was assented to today is not a product of the mediation that we agreed on as the Senate and the National Assembly.

Secondly, a question has been posed to the Speaker as the head of this House that before a version of a Bill that has been mediated is ascended to, it must contain your signature. The House would therefore like to know which version you signed? That is the second cardinal issue. Thirdly, how do we proceed from here as a House?

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

**Sen. Khaniri:** My point of order is that you made a Communication from the National Assembly. Members have expressed themselves here and I think we must take a decision on this matter as a House. We cannot continue debating and repeating ourselves. So, my point of order is that we must make progress because we might make this point in so many words as Sen. Cheruiyot has said until we lose---

*(Loud Consultations)*

**The Speaker** (Hon. Lusaka): Order, hon. Members!

*(Sen. (Dr.) Ali held loud consultations)*

Order, Sen. (Dr.) Ali!

**Sen. Khaniri:** Mr. Speaker Sir, am I not entitled to my opinion?

**Sen. Khaniri:** You are entitled to.

**Sen. Khaniri:** Yes. I am raising a point of order, why is Sen. (Dr.) Ali protesting?

*(Loud Consultations)*

**The Speaker** (Hon. Lusaka): Order. Sen. (Dr.) Ali, kindly sit down.

**Sen. Khaniri:** Mr. Speaker Sir, my last point is that we must take a decision. Are we as a House ready to proceed with the County Allocation of Revenue Act (CARA) given the circumstance that you have raised? That is the question.

**The Speaker** (Hon. Lusaka): Hon. Members, I am noting all the sentiments that are being aired here. At the end of it, I am going to give a ruling and a comprehensive report in a short while.

**Sen. (Dr.) Ali:** Thank you, Mr. Speaker Sir. First and foremost, I want to state that some of us are not very happy about the way things are being done here. When somebody stands on a point order, it should be a point of order. When somebody talks for 20 minutes, it is not a point of order. Everybody including Sen. Khaniri who is my senior knows the rules very well, with all due respect.

A lot has been stated here but the fact of the matter is that this House talks on double standards. We do not need to talk with one side of the mouth facing this side and the other side.

*(Laughter)*

This is what always happens in this House. Last time, when we were discussing Division of Revenue Act (DORA), we knew there was an illegality but we decided to continue. We accepted the Kshs 316 billion. Now, the date has been changed and we have said we continue. The Committee on Finance was in a meeting this afternoon and we decided to bring CARA, which came to the Senate Business Committee (SBC), to the plenary. We do not know anything about it. Everything from CARA came from Commission on Revenue Allocation (CRA) a few minutes ago. We have not even discussed about it as a committee. We have agreed that we will pass it because people and counties are complaining. People are suffering. While we agree with that, are we doing the right thing? No. We are not doing the right thing.

Mr. Speaker, I do not want to take a lot of time but the issue here is that the Senate is not being serious and as my teacher Sen. Prof) Ongeru said, we are taking ourselves home. This will be 1966 again and we are the cause of this problem.

Thank you, Mr. Speaker, Sir.

**Sen. Shiyonga:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I would like to thank you and the County Assembly of Kitui for giving us this comfort zone for us to argue or debate our Motions here. I would like to say that DORA has really opened a Pandora's Box. The National Assembly---

**The Speaker** (Hon. Lusaka): Sen. Shiyonga, be careful, you may wade into---

**Sen. Shiyonga:** Thank you, Mr. Speaker, Sir; I want to be very brief. We know very well that this Bill has gone through mediation and the process that it deserves. When it comes to the National Assembly, as I sit here as a legislator in the Senate, I no longer have the appetite to be regarded as a Member of the Parliament because the National Assembly has compromised our country, laws and Constitution.

No one can become a hero by compromising their Constitution. Regarding the date that my colleagues are talking about and what we have discussed here, when you are

giving your sentiments, I will open my eyes, ears, mouth and every organ on my body just to listen to the ruling that you are going to give.

*(Laughter)*

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

**Sen. Shiyonga:** I am not going to scoop but I am going to listen.

**The Speaker** (Hon. Lusaka): Order, Senator. Let us be serious. The whole world is watching us. Let us not become comedians. Let us be a bit serious.

*(Laughter)*

Sen. Mwaura, switch off your microphone.

**Sen. Shiyonga:** Thank you, Mr. Speaker Sir. I want to finish by saying that everyone was watching the process of mediation. Our counties need money. The Senate has gone low by accepting what they have discussed and we have passed the money that needs to go to the counties. We are here to support devolution and we are waiting for devolution.

Just to finish, let us be calm and wait for the ruling and we shall support what you will have for us.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Finally, Sen. Mwaura. Sen. Halake, Kindly sit down. I will give you an opportunity. Senators, let us wind up so that we can make progress. What is your point of order Sen. Ochillo-Ayacko?

**Sen. Ochillo-Ayacko:** Mr. Speaker Sir, I have been trying to catch your eyes. I do not know whether I am visible from here or should I move there?

**The Speaker** (Hon. Lusaka): I will give you an opportunity.

**Sen. Mwaura:** Thank you, Mr. Speaker Sir. The last time we were discussing this issue, I remember a Senator saying that they were persuaded to turn away. I would like to say very clearly; there is a certain person who thought that because he is a prophet of the word of God, he can as well walk into the lion's den and he will be saved like Daniel. When he did so, he was actually eaten up. As the Senate, we must be serious for once. You cannot have a situation where we match all the way to the Supreme Court and do all the theatrics. It is like saying in Kiswahili, *kuja utaniona*, then *ukifanyiwa "maa", unatoroka. Ama unasema: Nishike nitauwa mtu!*

*(Laughter)*

This is serious! It is a shame! Let us be serious. The fear we have here is fear of the appointing authority. I speak without fear of doubt. It is because of the appointing authority that comes from the Executive. This Senate is allowing the Executive to sit on Parliament. This Parliament is divided into two; one has been bribed by the Constituency Development Fund CDF to do the bidding for the National Government.

As we speak today, we have no face in the eyes of Kenyans. People are asking: Who are these big men with big titles, respectable but who are scared because of one or two phone calls? It is not acceptable. I am saying so because we had a very cogent

argument. Our argument for DORA is scientific. It was based on some precedent. In the year 2015, this same House forced the Division of Revenue to pass through the National Assembly. In that same spirit, we knew our base was Kshs 314 billion, and our inflation 6.9 per cent. We even became more scientific by saying let us make inflation at 4 per cent. What is this that we backed out for other than looking like we are sharing a carcass on a butcher's table?

Mr Speaker, Sir, even on the illegality of changing the commencement date, how do laws apply retroactively? How can we say that we are in this House defending devolution? How will Kenyans take us seriously? When we go to court, it looks very ridiculous because it is one Speaker suing the other. At some point, we must have this idea of stopping being stupid by being magnanimous. We also have to rise to the occasion and stamp the authority of the Senate as an equal and the upper House of Parliament. That is not going to come from legal jargon, *hii ni siasa bwana; lazima tupigane mundu khumundu*.

*(Laughter)*

**The Speaker** (Hon. Lusaka): Order! Order, Sen. Mwaura! You are out of order. You must finish in the language you started with.

*(Sen. Halake stood up in her place)*

Proceed, Sen. Halake, and then finally Sen. Ochillo-Ayacko.

**Sen. Halake:** Thank you, Mr Speaker, Sir, for giving me this opportunity. I will not even speak about the Division of Revenue Act (DORA); I think we should move on from DORA, the County Allocation of Revenue Act (CARA), the Appropriation Bill to the integrity of this House, devolution and the constitution that we are supposed to be defending. This is because it is no longer about DORA. I know that at the end of this, once this debate is closed, we will sit back, give ourselves the excuse that counties need money; we will pass CARA and we will move on.

Last year when some of us were new to this House, the same scenario unfolded. We were then told that because counties were starved of resources and services have been strangled, we must act and pass CARA. We were new and we did not want to go down in history as having gotten in the way of counties not having money. Later on, we realised that this year, it is same thing. Some of us actually walked out and tried to picket a little bit and said, "Shame on them for duping us last year; shame on us this years for doing the same thing over and over again."

Mr Speaker, Sir, what are we saying as defenders of the Constitution? That every year, this drama is going to unfold and that this House will be the one giving the excuse of being magnanimous, which is not true? This is basically being on standby. In any situation, there is a victim, an aggressor, and the people who stand by. This House is getting a distinction as being a standby House, because we are not the victims.

Mr Speaker, Sir, the rights of Kenyans to the services at the county level is not granted in by the state; it is our right. Nobody should tell us that they are giving us any of these things. Under no circumstance should this House be told that we are being done a favour.

Mr Speaker, Sir, therefore, there are two things here; the integrity of the Senate is under threat, and if we don't do something, let us move on. I know that we are going to give in, because we will tell ourselves that counties need money. However, immediately we do that, this House should embark on reclaiming the integrity of this House and ensuring that the existential issues about counties being there in the next few years will be dealt with. This is because we will be presiding over a dying, lone buffalo, which are the counties.

Thank you, Mr Speaker, Sir.

**Sen. Ochillo-Ayacko:** Thank you, Mr Speaker, Sir, for giving me an opportunity to make a few remarks on this topic. There is a book in the Bible called Lamentations, which was written by Prophet Jeremiah. You can see Senators lamenting. Before I read that book, I also read somewhere that you are the leader of this Chamber. You are our Speaker, and we are truly behind you. I also read in the---

**The Speaker** (Hon. Lusaka): Order! Order, Senator! Did you read, or I am the Leader of the Senate?

*(Laughter)*

Can you be clear?

**Sen. Ochillo-Ayacko:** Thank you, Mr Speaker, Sir. I read in the Constitution of Kenya 2010 that the Leader of the Senate is the Speaker.

Mr Speaker, Sir, I believe that the Leader of the Senate is the one seated before us, and that we are addressing the House through the Leader. I also read in the Standing Orders that, that leader is assisted by the Majority Leader, Minority Leader and various Whips. That is the team which leads this Senate. You have the lamentations from hon. Members, meaning that your followership are lamenting that this House is being rendered irrelevant. Now, if you read the book of Lamentations in the Bible, you will find out that Jeremiah provided hope. Today you have no choice, but to give us hope.

*(Applause)*

Mr Speaker, Sir, tell us how we are going to deal with the rogue Executive; tell us how we are going to deal with the National Assembly. If you do not tell us that, then you are likely to end up with the followership who have given up, and you are likely to end up without followership. I don't envy the position in which you find yourself, but as a leader, you must find a way forward. You must lead us to freedom, justice and fairness. The whole nation is looking up to us.

Individually, I do not like losing things; and I also do not like losing my head. I, therefore, want to promise you one thing, as my leader; I know that you have anxiety for counties, just like we do, that they must have money. They will have money, but there is a big trap that is being set up by the Executive to finish devolution. As we give them money through CARA, what are we going to do to safeguard devolution? Are we going to continue with the lamentations? Are we going to talk and cry the way we are crying? I am not used to crying; I am used to swinging. I, therefore, need someone to beat up.

Mr Speaker, can you show me who to beat up in this matter?

Thank you, Mr Speaker, Sir.

*(Laughter and loud consultations)*

**The Speaker** (Hon. Lusaka): Order, hon. Members! I have sat here and listened to all the points that you have raised, which are very important. I want to say the following before I make a final ruling. One, I am a servant of this House, and I want to assure you that at no point will I betray this House.

*(Applause)*

To answer what Sen. Ongeru asked, the version that I signed is what was passed by this House, because I belong to this House. That is the assurance I can give you. However, we must also note that once a Bill has been assented to by the President, it becomes law and neither House can invalidate that on the Floor of this House because of the principle of separation of power. Therefore, the matter goes to the Judiciary, and you know that the Appropriation Bill is one of the bills that have been listed for hearing. We will, therefore, wait to see what the Judiciary will say about all this. This is because we need to find a lasting solution to this problem, otherwise this will keep on coming every year, and we shall be here lamenting, like Sen. Ochillo-Ayacko said.

I will give a comprehensive response next week on all the activities that have happened leading to where we are today. However, as a House, remember that it is our responsibility to also ensure that our counties are functional. Let us also not fall into a trap where we find that when everything collapses, it collapses on the Senate. They then turn around to say that the Senate is the one that has made sure that everything has collapsed in the counties and, therefore, we have been part of those who have killed devolution.

We must, therefore, retreat and re-strategize so as to find out how, going forward, we are not going to get to where we are today. This strategy is to help us to get a better way of how this Senate can be strong, and how we can also be respected as an Upper House that makes decisions that affect this country. Like I have said, I will give a comprehensive report next week on Tuesday.

Next Order.

*(Senator Orengo stood up in his place)*

Proceed, Senator Orengo; give him one minute.

**The Senate Minority Leader** (Sen. Orengo): Mr Speaker, Sir, I want to agree with your ruling, that you will give a comprehensive Statement on this next week. The reason why I would plead with the Senators to agree with the position that the Speaker has taken, is that although the President has signed DORA, the President, the Executive and the National Assembly are still in a legal and constitutional quagmire.

This is because they had already passed an Appropriations Act, which is inconsistent with the Division of Revenue Act (DORA). The Appropriations Act gave only Kshs310 billion to counties. Now, through DORA, we are giving the counties Kshs316 billion which is inconsistent with the Appropriations Act. Now, they have backdated DORA because they know that without doing that, they will have problems with the Appropriations Act which was already passed and enacted.

Mr. Speaker, Sir, under the Constitution, there is also an opportunity to come out with a supplementary Appropriations Act. I hope in the fullness of time, they may try to use that route to correct the errors they have already committed.

Having said that, I plead with this House, that this matter is before the courts and that is where we can address it. I agree with the disappointments that Sen. Mwaura has with what is going on and what he has said makes a lot of sense. However, other than hitting ourselves on the chest and heads on the wall, what else can we do? I believe that this discussion we are having in this Senate today, will be material which we will use in the court to show the position that the Senate took.

Mr. Speaker, Sir, that is what happened the last time when we were in the Supreme Court. The discussions that took place in the Senate were part of the material that was given to the Supreme Court in considering whether or not the Senate cannot be involved in the process of enacting the Division of Revenue Act.

Therefore, I think we are on the right path. Other than now taking this fight to the streets, the only place we can go for now, is the courts and the material is there. The Chairperson of the Committee on Finance and Budget knows that we have on record that forgery that took place. We have it on record, the amendment to the commencement date was done by hand by the Chairperson of the Committee on Budget and Appropriations Committee in the National Assembly. It did not have the hand of our Chairperson like in the other documents where they have all signed. In this particular question of the commencement date, it is always signed by hon. Ichung'wa.

Mr. Speaker, Sir, I encourage all the lawyers in this House, particularly Sen. Wetangula, that when these things come up in court, all of us should be there. I think we have a good legal case. It is even better than the last time. The other time the material was difficult to come by, but now we have the conduct of the National Assembly all written out. We also have the communication between the two Houses.

The only thing I would want to repeat is what Sen. Mutula Kilonzo Jnr., said, that the courts are beginning to get intimidated. The courts are going to be the weakest link in the fight towards retaining constitutionalism in this country. Last week in the United Kingdom (UK) when there was a difference between the Executive and Parliament, within two days, there was a decision from a court in Scotland and this week, the matter is before the Supreme Court.

Now, we have a problem among more than four institutions of Government and, the Supreme Court and the High Court cannot get seized of that matter and make a decision. The courts are feeling intimidated and we should stand up and tell the Executive to stop this habit of intimidating the courts so that we can have these decisions made in good time.

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

## PETITION

### REPORT ON PETITION: THE CHALLENGES FACING SMALL-SCALE TEA FARMERS IN KTDA

**Sen. (Rev.) Waqo:** Mr. Speaker, Sir, I beg to lay the following Paper on the table of the Senate---

*(Loud consultations)*

There is a lot of noise.

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

What is your point of order Sen. Olekina?

**Sen. Olekina:** On a point of order, Mr. Speaker, Sir. I heard very clearly and I think the next order is supposed to be a Petition.

**The Speaker** (Hon. Lusaka): It is a Petition.

**Sen. Olekina:** Mr. Speaker, Sir, I have heard my sister say she wants to lay a Paper, and so, I am a bit confused.

**The Speaker** (Hon. Lusaka): Maybe it is just a mix up but it is a Petition.

**Sen. (Rev.) Waqo:** Mr. Speaker, Sir, I beg to lay the following Paper on the table of the Senate today, Tuesday, 17<sup>th</sup> September, 2019:

Report of the Standing Committee on Agriculture---

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Sen. (Rev.) Waqo! It is supposed to be a Petition.

**Sen. (Rev.) Waqo:** Mr. Speaker, Sir, I am concerned with the---

**The Speaker** (Hon. Lusaka): Okay, I am told she is laying the report of a Petition.

**Sen. (Rev.) Waqo:** Yes, Mr. Speaker, Sir.

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

*(Loud consultations)*

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

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

**Sen. (Rev.) Waqo:** Mr. Speaker, Sir, there is need for this honorable House to always consult and behave in a manner that is---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator. What is the matter?

**Sen. (Rev.) Waqo:** Mr. Deputy Speaker, Sir, I came forward to lay the Petition.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Then, do it.

*(Laughter)*

Order, Members! Allow Sen. (Rev.) Waqo to go on.

**Sen. (Rev.) Waqo:** Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, Tuesday, 17<sup>th</sup> September, 2019:

Report of the Standing Committee on Agriculture, Livestock and Fisheries on the Petition concerning challenges facing small-scale tea growers in the Kenya Tea Development Agency (KTDA).

The Petition dated 23<sup>rd</sup> May, 2019 by Mr. Isaack Mwangi Mugo, was reported in the Senate and referred to the Committee on Agriculture, Livestock and Fisheries on 18<sup>th</sup> June, 2019. Pursuant to Standing Order 232(2), the Committee was required to respond to

the Petitioner by way of a report addressed to the Petitioner or petitioners and laid on the Table of the Senate not more than 60 calendar days from the time of reading the prayer.

The Petitioner stated that small-scale tea growers in Kenya are calling for the review of election laws for directorship and committee members for KTDA in factories in the country as well as a more gender balanced approach. The Petitioner also stated that KTDA laws provide that voting in election is based on shareholding rather than one man, one vote, thus disadvantaging the peasant farmers, yet the issues deliberated on affect farmers.

Mr. Deputy Speaker, Sir, in addition, KTDA directors have ensured that power remains with the few large scale farmers completely sidelining small scale farmers. He further stated that the cost of fertilizer is high, yet the quality is low, lowering the tea produce per stem and that the tea payment is too low due to bad management from the directors.

In light of the above, the Petitioner prays that the Senate comes up with legislation on how KTDA should conduct its affairs and protect the tea farmers from poor payments. The Petitioner further prays that the Senate---

*(Sen. Mutula Kilonzo Jnr. and Sen. Malalah  
stood in their places)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Mutula Kilonzo Jnr. and Sen. Malalah.

*(Sen. Malalah spoke off record)*

Okay.

*(Laughter)*

**Sen. (Rev.) Waqo:** Mr. Deputy Speaker, Sir, the Petitioner further prays that the Senate directs the Ministry of Agriculture, Livestock, Fisheries and Irrigation to review the prices and quality of fertilizer and direct the office of the Auditor-General to conduct a lifestyle audit exercise on the present directors.

Regarding Submissions from the Kenya Tea Development Agency (KTDA), I wish to state as follows:-

- (1) Through a letter dated 18<sup>th</sup> July, 2019, the Kenya Tea Development Agency Holdings Limited informed the committee that the issues raised in the petition as tabulated were pending in Kericho High Court Petition No. 18 of 2014, *The Governor, Kericho County Vs KTDA, CTCL, KTDA MS, MIB, KETEPA, GLF, KTC, AFFA and Office of the Attorney General and others.*
- (2) In the letter, KTDA alleges that the Petitioner in the above-mentioned High Court petition made the following allegations which are similar to those before the Committee—
  - (a) KTDA's procurement system is not transparent, particularly on fertilizer sourcing with farmers buying the same from KTDA factories at exorbitant prices compared to prevailing market rates. In addition, the amount of fertilizer supplied to each farmer is usually not

commensurate with his agronomic needs with most receiving excess supplies and the cost is forcefully deducted from their annual payments.

- (b) In 2008, a new voting system for election of directors of KTDA managed factories was introduced thereby giving large scale farmers with more shares more say in control and management of tea factories in their areas. The move cripples efforts by small scale tea farmers who wanted to retain the traditional one man one vote pattern that saw directors elected on the strength of individual votes than the number of shares held.
- (c) As a result of the KTDA takeover, small scale farmers have lost control over the very institutions that they own, the tea factories. The local directors, having been co-opted with unbelievably large salaries have become mere rubber stamps in the fleecing of poor farmers.
- (3) KTDA further claims in the letter that the following prayers in the above-mentioned petition to the High Court are similar to those presented to the Committee—  
a declaration that acts of price fixing and manipulation of prices perpetrated by the 27<sup>th</sup> respondents—

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. (Rev.) Waqo. When you lay a report, you lay it and say one or two things then you end it there. We do not have much time. We have a lot of businesses in the afternoon, time is of the essence. How many more minutes do you need?

**Sen. (Rev) Waqo:** Three more minutes.

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

**Sen. (Rev) Waqo:** An order directing the Competition Authority of Kenya and the 28<sup>th</sup> Respondent to investigate the price fixing and manipulation at the Mombasa Tea Auction from year 2001-2015 and avail reports to this Honorable Court.

Mr. Deputy Speaker, Sir, from the letter received from KTDA, we observed that the matter was scheduled for hearing of the main petition on 21<sup>st</sup> May 2019. However, as one of the judges of the bench was disciplinary proceedings, the matter could not proceed. The Chief Justice is to empanel another bench, and the matter shall be mentioned on 29<sup>th</sup> July, 2019.

As such, the Committee observed that the matter is still active within the meaning of Standing Order 98(2) (3). The Committee notes that the issues raised in the petition are *subjudice* and therefore the Senate may not consider the matters rose therein.

I therefore lay the report.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen.(Rev.)Waqo. Well done. I will allow very few comments. I will start with the Senator for Kericho, Sen. Cheruiyot.

**Sen. Cheruiyot:** Thank you, Mr. Deputy Speaker, Sir, for recognizing the apex representative of tea farmers in this House.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Cheruiyot. That was not the criteria.

*(Laughter)*

If that was the criteria I might review my decision. Nevertheless, proceed Senator.

**Sen. Cheruiyot:** I am duly guided Mr. Deputy Speaker Sir. The matters being canvassed by that particular report, you do recall that about six months ago that this House via a Motion that it had initiated set up an *ad hoc* Committee to look into the challenges faced by small holder tea farmers.

We did our work, responded to all those issues being brought to this House by this petitioner. That report was adopted by our Committee, but it has been lying at Senate Business Committee awaiting—

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order. The Senators who are retreating, kindly note that we have a lot of voting to do this afternoon.

**Sen. Cheruiyot:** Mr. Speaker, Sir, that report has been lying before the Senate Business Committee awaiting to be allocated time where this House can debate and pass that report. If that was to happen, those farmers will actually find reprieve.

This is because part of the things we have requested in that report, and my colleagues can bear me witness is for the President to set up a Commission of enquiry to look into the issues of KTDA and how they continue to impoverish our farmers.

All those issues cannot be properly sorted out by any other action of this House other than the passing of that particular report. Therefore, I request your indulgence in giving directions that this House considers that report that we tabled.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Sen. Cheruiyot, what are you asking the Chair to do?

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, I requested that the Committee that I Chaired, formed by a resolution of this House, an *ad hoc* Committee, to look into the challenges including the ones that are listed in that particular petition.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What prevents it from doing so?

**Sen. Cheruiyot:** We have brought that petition to this House. It has been before Senate Business Committee for the last three months. It has never been allocated time. It is therefore my humble request that you do allocate time and it will sort those issues.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I see no other remark. Do you have anything to say, Sen. (Prof.) Ongeru?

**Sen. (Prof.) Ongeru:** Yes, indeed. I confirm I was a member of that *ad hoc* Committee. We addressed this issue of tea farmers plight extensively and particularly as it relates to the role of KTDA in managing the small scale growers of tea.

Through the process of gathering information and being able to write the full report, it came to our attention that there are more than 42 taxes that are being levied on a poor small scale farmer as a tea grower.

Therefore, they are just there for mere subsistence and can hardly be able to make their ends meet. I will passionately request this house that that report contains a lot of details and materials that need now to be debated on the floor of the House so that we can find solutions to the small scale farmer in tea who has been so impoverished through this other unorthodox method.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon Senators, the matter now stands concluded. Before I conclude it, I take note of the sentiments that have been made by both Sen. Cheruiyot and Sen. (Prof.) Ongeru.

I request that Senate Business Committee to allocate time to the matter that was tackled by the ad hoc Committee on the same subject matter so that we can dispose of it. I am aware that matter has been before us for a very long time.

Therefore, the SBC is requested to expedite and possibly process that matter for next week's business.

Pursuant to Standing Order No.233, the Clerk of the Senate shall proceed to transmit a copy of the report to the petitioners. Thank you.

Next Order.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let us have Sen. (Eng.) Mahamud who is the Chairperson of the Committee on Finance and Budget.

### PAPER LAID

#### REPORT ON THE COUNTY ALLOCATION OF REVENUE BILL, 2019

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, I beg to lay the following paper on the table of the Senate today, Tuesday, 17<sup>th</sup> September, 2019: Report of the Standing Committee on Finance and Budget on the County Allocation of Revenue Bill (Senate Bills No.8 of 2019).

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let us move on to the next Order.

### NOTICES OF MOTIONS

#### ADMINISTRATION OF SNAKE BITES ANTI-VENOM IN PUBLIC HEALTH FACILITIES

**Sen. Kwamboka:** Mr. Deputy Speaker, Sir, I rise to give notice of the following Motion:

THAT, AWARE THAT, there is an abundance of snakes in various parts of the country namely; Kitui, Baringo, Wajir, Kajiado, Embu and Tana River counties among others, which poses a high mortality rate of snake bites across these counties;

FURTHER AWARE THAT, all patients bitten by snakes should be assessed by medically-trained staff to determine the species responsible, the amount of venom injected and the variable time course for development of signs, requiring that patients be kept under observation for at least 24 hours;

CONCERNED THAT, these incidences of snake bites are a neglected emergency in Kenya owing to the low awareness of snake bites as a public health problem in the country resulting to victims being maimed and even losing lives;

FURTHER CONCERNED THAT, poor infrastructure and poverty contribute to delays in seeking and receiving treatment for snake bites, including the high cost of acquiring and storing the anti-venom;

RECOGNIZING THAT, it is essential for snakebite victims to get supportive care followed by the administration of the anti-venom as soon as possible following a snake bite;

NOTING THAT, Article 43(1)(a) of the Constitution provides that every person has the right to the highest attainable standard of health;

NOW THEREFORE, the Senate urges the Ministry of Health in collaboration with the county governments to establish programmes to sensitise people on the management of snakebites and to ensure timely supply and free administration of the anti-venom in public health facilities, concentrating on sub county health facilities in the affected counties and further ensure that these facilities are equipped with the necessary infrastructure for the storage of the anti-venom.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let us have the Senate Minority Leader to issue notice of the other Motion.

ESTABLISHMENT OF *AD HOC* COMMITTEE  
TO INVESTIGATE MES

**The Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, I beg to give notice to the following Motion:

THAT, AWARE THAT while health is a devolved function, Article 4(3) of the Constitution states that ‘the Governments at the National and County levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation’;

FURTHER AWARE THAT, there is no existing comprehensive legal framework to guide the consultative and collaborative process between the Ministry of Health (MoH) and county governments;

COGNIZANT THAT, when the Managed Equipment Services (MES) project was launched on 6<sup>th</sup> February, 2015, the Ministry of Health entered into arrangements with five foreign firms for the provision of specialized medical equipment worth Kshs38 billion;

NOTING THAT, according to the Ministry of Health, the project is aimed at improving health infrastructure and enhancing the capacity of counties to provide specialized health care targeting non-communicable conditions such as cancer and renal conditions, as well as to promote diagnostic, radiological and critical care services;

CONCERNED THAT, the Council of Governors (CoG) has voiced opposition to the project on the grounds that county governments were not involved in the tender-procurement process, the monies are debited annually from the accounts of the counties directly by the Treasury, there was lack of proper consultation between the Ministry of

Health and county governments, and, that leasing the medical equipment was ultimately more expensive than direct purchase;

CONCERNED FURTHER THAT, the extent to which county government structures or institutions were involved in the project has remained unclear, and the opposition raised by the CoG reveals serious gaps in the consultative process between the MoH and county governments, including the terms of the contracts which end in 2022;

NOW THEREFORE in exercise of its oversight function, the Senate resolves to establish an *ad hoc* Committee to investigate and establish the facts surrounding the leasing of the medical equipment, in the now 119 beneficiary hospitals country wide, including-

- (i) whether county governments were involved in prioritizing the medical equipment in accordance with their needs;
- (ii) the details of the company from which the equipment was leased;
- (iii) the viability and benefit of leasing versus outright purchase;
- (iv) the availability of adequate numbers of health human resource to provide specialized health services as envisaged in this project;
- (v) the operation, training and maintenance facilities in place for the equipment;
- (vi) the terms and period of the lease of each piece of equipment, where the equipment was supplied, the lease amount, and who bears the cost of the residual value of the equipment at the end of the lease term;
- (vii) the schedule of equipment supplied to each hospital, and the cost thereof, including proof that the monies disbursed were utilized for the intended purpose; and,
- (viii) the results of the exercise, considering the terms of the contract end in 2022, when equipment has remained unused in some counties despite the county having paid annually for the installation, maintenance and utilization of the same since 2015; and submit a report to the House within 90 days;

AND FURTHER THAT, the following Senators be appointed to serve in the committee –

- |    |                                  |   |              |
|----|----------------------------------|---|--------------|
| 1. | Sen. Mbito Michael, MP           | - | Member;      |
| 2. | Sen. Abdullahi Ali, MP           | - | Member;      |
| 3. | Sen. Seneta Mary, MP             | - | Member;      |
| 4. | Sen. Kinyua John Nderitu, MP     | - | Member;      |
| 5. | Sen. Ali Farhiya, MP             | - | Member;      |
| 6. | Sen. Wetangula Moses Masika, MP  | - | Member;      |
| 7. | Sen. Lokorio Petronilla Were, MP | - | Member;      |
| 8. | Sen. Masitsa Naomi Shiyonga, MP  | - | Member; and, |
| 9. | Sen. Outa Frederick Otieno, MP   | - | Member       |

I thank you.

**COMMUNICATION FROM THE CHAIR**VISITING DELEGATION FROM KITUI INSTITUTE OF  
DEVELOPMENT STUDIES, KITUI COUNTY

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, we are using the Supplementary Order Paper. I want to make two announcements. The first one is to appreciate the presence of visitors in the Public Gallery of visiting students and teachers of Kitui Institute of Development Studies.

I take this opportunity to welcome them to Parliament. On behalf of the Senate and my own behalf, I extend a warm welcome to them.

*(Applause)*

## REARRANGEMENT OF BUSINESS ON ORDER PAPER

Hon. Senators, the second communication is that I will invoke Standing Order No.40 which will allow us to expedite the most urgent business for the convenience of the House. Therefore, we shall briefly go to Order Nos.8 and 9 which are First Readings. From there, we will go straight to Order No.10.

For the time being, we will stand down Order No.7 on Statements and see how much progress we make. It is so ordered.

**STATEMENTS**

## STATUS OF INCLUSION OF PWDs IN THE LABOUR MARKET

ISSUES AND STATUS OF OPERATIONALIZATION OF  
IFMIS IN THE 47 COUNTIES

## RAPID COLLAPSE OF KENYA'S HEALTHCARE SYSTEM

## UNREST AT KISUMU COUNTY ASSEMBLY

*(Statements deferred)*

Next Order.

**BILLS***First Reading*THE CONSTITUTION OF KENYA (AMENDMENT) BILL  
(SENATE BILLS NO. 16 OF 2019)

*(Order for the First Reading Read-Read the First time and  
committed to the relevant Senate Committee)*

*First Reading*THE COUNTY LICENSING (UNIFORM PROCEDURES) BILL  
(SENATE BILLS NO. 17 OF 2019)

*(Order for the First Reading Read-Read the First time and  
committed to the relevant Senate Committee)*

*Second Reading*THE COUNTY ALLOCATION OF REVENUE BILL  
(SENATE BILLS NO.8 OF 2019)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Before I call the Mover---

*(Sen. (Eng.) Mahamud consulted loudly)*

Order, Sen. (Eng.) Sen. (Eng.) Mahamud! That is not how to transact your business.

I am advised by the Whips that there is consensus that we allow the Chairperson to move the Bill for Second Reading. Once it is seconded, I am advised that the House has largely agreed that we limit debate so that we transact this item until the last stage. Is that the mood of the House? The Whips have said to process this Bill to the end, we will not debate extensively as would be the case. So, we just allow a few interventions and move on, especially for those who have not spoken before.

**Sen. M. Sen. Kajwang':** On a point of order, Mr. Deputy Speaker, Sir. With a lot of respect, when we were passing the Division of Revenue Bill, there was some heated debate in the House where Members were made to debate after the vote. I believe that this time, we can do it right. If Members agree that they do not have to speak for 15 minutes, they can shorten their submissions. However, let us not stifle and truncate debate on this very important Bill.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Members, we need to build consensus because this is our Bill. We have to agree how to dispose of it. One way of doing this is by limiting how much time is available to Senators who want to speak. Should it be three or five minutes?

**Several Senators:** Five minutes!

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I will now put the question.

*(Question, that Members' contributions on the Bill  
be limited to five minutes, put and agreed to)*

Hon. Members, we will have five minutes each. The Whips will be responsible to help the House so that we do not overshoot ourselves and lose the threshold for voting. Proceed, Sen. (Eng.) Mahamud.

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

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

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I am concerned that the extensive report of the Committee is not here.

*(Sen. (Eng.) Mahamud stood up in his place)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Sen. (Eng.) Mahamud, you cannot be on your feet when another Member is on his feet. Please, resume your seat. I thought you are a veteran Member of this House.

*(Laughter)*

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, the clerks can assist by making sure that we have as many copies as possible.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Do you mean copies of the Bill?

**Sen. Mutula Kilonzo Jnr.:** No, Mr. Deputy Speaker, Sir. Copies of the Report so that Members can---

*(Sen. M. Sen. Kajwang' consulted loudly)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. M. Sen. Kajwang'! If you want to assist Sen. Mutula Kilonzo Jnr., you know what to do. So, I direct that copies be availed to Members. Ordinarily, they would be on the iPads.

Chairperson, it is now your turn.

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, I beg to move that The County Allocation of Revenue Bill (Senate Bills No.8 of 2019) be read a Second Time. Mr. Deputy Speaker, Sir, as the House is aware the County Allocation of Revenue Bill (Senate Bills No.8 of 2019) was published on 24<sup>th</sup> April, 2019 pursuant to provisions of Article 218(b) of the Constitution. However the introduction of it was parallel to an introduction and the consideration of Division of Revenue Bill which had been a protracted process.

The House may remember that the Division of Revenue Bill (National Assembly Bill No. 11 of 2019) was published on 6<sup>th</sup> March, 2019 and transmitted to the Senate. The Bill was passed to the National Assembly without amendments on 26<sup>th</sup> March, 2019 and transmitted to the Senate. The Senate passed it 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(b) of the Constitution which failed to agree.

Mr. Deputy Speaker, Sir, both the Senate and the National Assembly published a second Division of Revenue Bill. While the National Assembly was unwilling to consider the Division of Revenue Bill published by the Senate which was constitutionally published both under Article 218 and 110 of the Constitution, the Senate, in its usual version of magnanimity and in the spirit of cooperation contemplated under Article 6(2) of the Constitution, proceeded to consider the Division of Revenue Bill introduced by the National Assembly. The Senate proposed amendments to the Bill which was rejected by

the National Assembly and led to the formation of a second mediation pursuant to Article 113 of the Constitution.

Mr. Deputy Speaker, Sir, the Senate steadfastly maintained that counties must, at least, receive Kshs335 billion of the nationally raised revenue. The Senate further steadfastly maintained that the allocation proposed by the National Assembly for counties was not an equitable allocation as contemplated in Article 202(1) of the Constitution. It represented a negligible increase in the allocation to counties while the national Government will enjoy a substantial increase in the share of nationally raised revenue.

However, the Senate was alive to the dire situation that counties found themselves in as they were precluded from passing their budgets and annual Appropriation Act under Article 224 of the Constitution. The counties were, therefore, unable to discharge their functions under the Constitution and deliver vital public services, for example, healthcare, education and agriculture.

In the light of these circumstances, the Senate agreed to the allocation of Kshs316.5 billion to counties. It will be recalled that the first Bill published by the National Assembly had a figure of Kshs310 billion. In the first mediation, this figure was pushed to Kshs316.5 billion when we argued that it is impossible for counties to get less than what they were allocated in last financial year. So, in the light of these circumstances, the Senate agreed to an allocation of Kshs316.5 billion to the counties.

Mr. Deputy Speaker, Sir, it behooves me to mention at this stage that I am deeply concerned by the manner in which the two attempts at mediation were conducted. In its most basic form, mediation is a form of alternative dispute resolution aimed at amicably resolving a disagreement or an impasse between two parties in a manner that ensures relationships are maintained and the interests of the parties are taken into consideration. With respect to Article 113 of the Constitution, it must have been the intention of the drafters of the Constitution that mediation should be underpinned by the recognition of the continuing legislative relationship between the two Houses and public interest.

The mediation on the Division of Revenue Bill, 2019, was flawed with antagonism and a failure at the very least to honour each other's word as legislators. In light of these circumstances, it is useful to remember that the power exercised by the three arms of Government is exercised on behalf of the people. It is a power that must be exercised in good faith and in the best interests of the people and not individual interests.

Mr. Deputy Speaker Sir, the people of the counties are the people of Kenya. All of us are interested in the economic development and prosperity of counties. This is not mutually exclusive to the national development agenda. Therefore, going forward, that requires a revival and reconciliation of the central role that devolution plays in the transformation agenda of the Constitution and an acceptable link between the objects and principles of devolution and the sovereign power of the people as contemplated in Article One of the Constitution.

The County Allocation of Revenue Bill, which I am moving today, shall divide among the counties the revenue allocated to the county level of government on the basis of determining and in accordance with the resolution in force under Article 217. Article 217 speaks to the formula. The formula that we are using today is the third generation formula because the one that had been tabled by the Commission on Revenue Allocation (CRA) has not been determined and resolved by this House.

Mr. Deputy Speaker, Sir, we have come from very far. In fact, Article 96 of the Constitution says that the Senate will protect the interests of counties and their governments. You cannot protect the interests of counties if you cannot determine how much you allocate to them. Attempt by the National Assembly or anyone else, to say that our role is only on the County Allocation of Revenue Bill is futile. We will continue fighting as we go ahead. This particular battle has not been the best. However, going forward and together with the matters that we forgo today, we are in for a long haul.

What has happened in the legislative agenda these few weeks is very disturbing. I said earlier that we cannot pretend to be following the Constitution and, on the other hand, violate it in a single day. It is unfortunate that we have a Bill before us today that has been assented to and is not a representative of the mediated version of the Bill between the two Houses, on the basis of which we will pass the County Allocation of Revenue Bill. The only consoling factor is that the figures in the Bill that was assented to is what we are passing. In fact, there is no disagreement on the figure. The figure of Kshs316.5 billion is what we agreed on in mediation.

The other item that was introduced through the backdoor was the effective date. For our purpose now, the issue of effective date can be a matter for another day because our colleagues in the National Assembly were trying to sanitize the illegality they have committed by enacting the Appropriation Act, 2019. The minutes of the meeting and the report of the Committee should be deposited at the Supreme Court or with the court in future. They cannot cheat anybody that this Bill was enacted by 1<sup>st</sup> July, 2019.

Mr. Deputy Speaker, Sir, as I said earlier, we have to move forward and deal with other matters. We will introduce some amendments to the Bill that we have in the clauses and the schedules to the Bill. There are four Schedules. The First Schedule deals with equitable share to the counties. The Second Schedule deals with the conditional grants from the national Government portion of revenue and the Third Schedule deals with conditional grants from development partners and donors. The fourth is a new Schedule which was introduced last year and sets the ceilings for recurrent expenditure for county assemblies and county executives.

**The Deputy Speaker** (Sen. (Prof.) Kindiki: Hon. Chairperson, please, summarize because we are all constrained for time. If you could kindly wind up.

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, those are all appended to the Bill. We have amended the Bill to be consistent with the figure of Kshs316.5 billion as opposed to the earlier figure of Kshs335 billion.

Learning from what our colleagues have done today to the other Bill, we have also tried to put an effective date in the Bill. In fact, the standard way is that it will be effective on publication and gazettelement.

Mr. Deputy Speaker Sir, in order to take care of the interests of the counties, my Committee has deliberated and come up with a plan. Today, we are three months into the first quarter of the financial year. However, this Bill states that the National Treasury shall transfer the total disbursement due to the counties in the first quarter of the Financial Year 2019 within seven days upon the approval of the Disbursement Schedule by the Senate.

Mr. Deputy Speaker, Sir, the Bill is straight forward. I would like to appeal to Members to pass it notwithstanding the controversy and confusion behind the Division of Revenue Bill. This is because it deals with the effective date which will not affect us in

any way. It will be dealt with in another matter. For purposes of the counties, once the Bill and the Schedule are passed, the Bill will go to the National Assembly and they cannot dare change it because they need a two-thirds majority to change any letter of this Bill.

I appeal to my colleagues by saying this. The Senate has fought on this matter for too long. They thought that we were a walk over on this matter. Despite the fact that we have not fully won this battle, gains have been made. If you remember, they wanted to reallocate money from counties under the supplementary estimates. We argued that it is not possible because the two levels of government are distinct. Once money is allocated under the Division of Revenue Act, no supplementary of whatever nature can change the allocation. Article 219 of the Constitution guarantees that all monies that are allocated to the counties will be disbursed in full without deduction.

With those many remarks, I beg to move and ask Sen. Mutula Kilonzo Jnr. to second.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Mutula Kilonzo Jnr., will you be able to take five minutes or there about?

**Sen. Mutula Kilonzo Jnr.:** Yes, Mr. Deputy Speaker, Sir, I will.

I rise to second the report, the moving of the County Allocation of Revenue Bill and the amendment thereof. I must say that we found ourselves in a very unenviable circumstance in terms of the Bill and the memorandum we received from Makueni, Eleyo-Marakwet, Kisumu, Uasin Gishu and Nairobi counties as far as the recurrent expense in concerned.

Two, as we pass this Bill, we must make statements about own source revenue because the own source revenue portfolio has affected several counties because the list we have has benefited very few counties in terms of the fiscal effort. Very few counties have received this money. Hon. Senators, if you check, some counties will have some differences, which is as a result of money that they received last year for fiscal effort. However, because they did not do the same this financial year, the money reduced.

As Sen. (Eng.) Mahamud has mentioned, we have innovatively found a method of ensuring that counties receive the bulk of the funding that they should have received this quarter.

As I finish, the elephant in the room, and your attention would be necessary at some point---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): At all points, Sen. Mutula Kilonzo Jnr.

*(Laughter)*

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, this Senate must address the mischief in the Bill by Hon. Kimani Ichungw'a on 15 per cent under the Public Finance Act (PFM) and what appears to be a communication from State House today that they have remitted money to counties although I do not know in what form and from where. The fact is that since we anticipate that there will be another impasse on the formula of what will happen midstream, particularly in so far as counties are concerned, this is a matter we cannot shy away from. This is because we will not agree to this sort of method, where we are hamstrung by the national Government, the President and Members of National Assembly, so that we pass this county revenue allocation.

Mr. Deputy Speaker, Sir, it bothers me because I have sat in this Mediation. In the past, Members of the Minority side of the National Assembly have assisted the Senate. I do not know what has caused the change of heart in the National Assembly. However, in the past, the people who have agreed for us to move from Kshs226 billion in 2013 to Kshs314 billion in 2017 are Members of the Minority side of the National Assembly. I do not know whether there has been a change of heart or the “handshake,” but something has gone terribly wrong with our colleagues---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You should be telling us since you are the Minority Whip.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I sit here and not there. I do not know what is happening there. In the past, we have found some comfort in the fact that the Members of the Minority side have managed to agree with us; not to mention one very able Member, Hon. T. J. Kajwang’ who agreed with us, even though Members of his Committee did not approve. We managed to move this progressively. Eventually, all the complaints we have are centred on bad law and a Constitution, which puts Division of Revenue and appropriation law at the same platform, where the salaries of Parliament, Executive and Judiciary are passed at the same time as the Division of Revenue. Finally, the Constitution must be amended.

Mr. Deputy Speaker, Sir, under the Chapter on Public Finance, if you are serious, we do not need a referendum to amend Article 203 of the Constitution, or the portion of the 15 per cent, under Article 202 or 203 of the Constitution. If you are serious, 45 of us--

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You should be saying: “We are serious.” Are you trying to insinuate that the House is not serious?

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, as serious as we are---

*(Laughter)*

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

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, sometimes I find that we move five steps forwards and two steps backwards like the proverbial Mussolini tank--- Sen. (Eng.) Mahamud, let us move a Constitutional Amendment on Article 203 of the Constitution to say that 40 per cent will go to counties using the most recently audited revenue, and not the National Assembly as it is worded in Article 203. We will then not need a referendum. We only need 45 of us, seriously, red-eyed Senators voting to change the Constitution.

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

*(Applause)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I am not so sure about that legal position, but I take note of your views.

*(Question Proposed)*

**Sen. Khaniri:** Thank you, Mr. Deputy Speaker, Sir, for the opportunity. Although we have agreed on five minutes, it is a very short time to discuss county allocation of revenue. However, be that as it may, I will debate this Bill and, of course, will vote for it having been convinced by my good friend, the Chairman, with a very heart. This is because what we are set to share to the counties today is not what they deserve.

I know that no money can be enough for the counties, but at least, there is a formula and scientific way of dividing the resources of this country between the national Government and county governments that is justifiable. There is the constitutional body, which is the Commission on Revenue Allocation (CRA), that has been mandated to advise on this matter. We are sharing out amounts to the counties that were not generated by CRA. The input of this House was totally ignored, and what we are now going to share is what I believe was proposed by the Executive through the National Assembly.

Mr. Deputy Speaker, Sir, as we pass this Bill, I wish to make it very loud and clear to all those who care to listen that the mandate of dividing revenue between the two levels of Government lies squarely with the House of Parliament. The Executive has absolutely nothing and no responsibility in this matter. I also wish to remind the Council of Governors (CoG) that it has absolutely no role to play in this matter. This is a preserve of the House of Parliament, which is, the National Assembly and the Senate of the Republic of Kenya.

We will console ourselves that we did not lose completely because what had been proposed earlier was Kshs310 billion and we managed to push it to Kshs316 billion. However, that consolation to me is not enough. As I said, we have the CRA that has been given the mandate in the Constitution. They made their proposal, but they were ignored. Therefore, we should not take a consolation in saying we managed to push this from Kshs310 billion to Kshs316 billion as I heard my good friend, the Chairman of the Committee on Finance and Budget saying.

Mr. Deputy Speaker, Sir, lastly, because I know that my five minutes are almost over, even as we push to increase the allocation to the counties, my only demand that I make to the governors is that we want to see proper usage of these monies we are sending to the counties. We want them to prioritise projects that will benefit the people in the counties. We want to see these monies go towards education of our children in terms of bursary and provision of clean water. Health facilities should be well equipped and manned by trained personnel. We also want improvement of our infrastructure.

Mr. Deputy Speaker, Sir, there is a trend in the counties, my county being one of them, where priorities that have no significance to the people are funded. For example, in my county, in the last financial year, they allocated over Kshs100 million to build houses for the governor and his deputy.

Vihiga is such a small county that it does not matter where you come from---

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

**Sen. Khaniri:** Mr. Deputy Speaker, Sir, you can commute from your house to the county headquarters and back in the evening. If this was done in a vast county like Turkana, one would understand. However, building a house for a governor and his deputy in a county as small as Vihiga is misplaced. We should discourage this and ensure that the projects that are done are those that will benefit the *mwananchi*.

Mr. Deputy Speaker, Sir, thank you for your indulgence.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Khaniri for such a well-structured presentation. Let us have the Sen. Kibiru.

**Sen. Kibiru:** Thank you, Mr. Deputy Speaker. I stand to support the Bill. As a Member of the mediation team, I want to say that we agreed to live to fight another day. As the Japanese were told by Mark Arthur; we shall revisit.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Do not militarize the legislative process. You are using very military terms.

*(Laughter)*

**Sen. Kibiru:** Mr. Deputy Speaker, Sir, having said that, I want to emphasize and ask the county governments to give priority to various issues. One, as we went about our duty in the County Public Account Committee (CPAIC), we found that the county financial statements have a very low absorption rates.

At the close of the financial years, there is a lot of money left. We were in Mombasa and Kwale and the coast had in excess of Kshs2 billion that was not absorbed within the financial year. Fine, we understood that there were late disbursements from the National government. That is something that we need to emphasize and ask the National Government that once the money is allocated, it is their duty to disburse the amounts to the county governments, so that they can absorb the money within the specified period.

This is because our friends in the National Assembly would tell us that we are negotiating or asking for money for counties and yet they are not using it. I brought a Motion to this Senate. It was adopted by the Senate that we give first charge to the stalled projects. I hope as the counties receive the money, they will be able to implement that and that they do not undertake new projects before they complete the stalled projects. An amount of Kshs363 billion is being held in the stalled projects.

Mr. Deputy Speaker, Sir, finally, I have heard that as a Senate we have formed an *ad hoc* Committee on medical equipment. In the report of the mediation committee, one of the recommendations that must be executed before the end of the session is that both Houses must come up with an *ad hoc* Committee to look at this issue of medical equipment services.

Mr. Deputy Speaker, Sir, I want to end there. As I said from the beginning, I support the Bill.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. I rise to support the report on the County Government Allocation of Revenue Bill, 2019. I will be very brief and to the point. When I was seated there, I was listening to my colleague Sen. Kibiru talking about counties having a challenge in terms of absorbing what is allocated to them. I hold a contrary view. I believe that the accounting system used by the county governments and also in this country is what leads to that. We operate on a cash basis yet most projects span different years. In essence, it might appear as if there is a lot of money which is held by the county governments, but the reality is that that money is not there.

The biggest challenge that we found is that we have been fighting for more money to go to counties. We relied solely on the recommendation given by the Commission of Revenue Allocation (CRA) which the National Assembly and the Executive trashed. This is a very dangerous trend which I hope that this House and Kenyans out there can actually speak against. There is no point as to why we should spend taxpayers' money in

constituting constitutional bodies yet when they give recommendations we do not give a hoot in hell about them.

Mr. Deputy Speaker, Sir, counties have received about Kshs50 billion. That is the information that we received today. I hope that the recommendation which was made by this Committee - which has done a very fantastic job - is that the National Treasury will release the entire first quota allocation into the counties.

My message is to the governors. This House fought day and night and worked hard to ensure that you are at least able to get money. There are so many stalled projects. It would be wrong for counties to continue having bloated budgets that they cannot fund. My plea to the governors is to have realistic budgets. The first charge on your budgets should be on pending bills. There is no reason as to why counties should have pending bills yet you have budgeted for programmes. Do not budget for what you do not have. You have very little money and you should use wisely the money which is allocated to you. Let us give services to the people.

On the conditional grants, one of my biggest pet peeves is the issue of the medical equipment scheme. It is wrong as a governor for you to sit out there and allow the National Government or the Executive to control you and say that you have this memorandum and they are carrying out a function which you are responsible for constitutionally, yet you do not know what has been spent out in terms of leasing. I want to appeal to the CoG to go and relook at that memorandum. Look at this money which is being spent on your behalf by the National Government. Ask yourselves whether you really want them to use it.

When we went to Samburu County, we found that a lot of that medical equipment was still in there in nice boxes. They were not being used. It is imperative that we carry out an audit and find out whether we really need this equipment. You will find a CT scan machine in Samburu and yet there is no three-phase electricity. Kenyans are paying for nothing. It is imperative that as county governments are receiving this money, whatever is advanced and is being expended by the National Government, county governments should hire auditors to go through it.

Finally, on the issue of ceilings to county assemblies, let us be realistic. There is very little money. I have seen that a lot of counties submitted their requests for their ceilings to be increased yet the money allocated is very little. It is about time now that county governments should come up with better ways of raising own-source revenue and better ways coming up with budgets. It was ridiculous for county governments to come up with budgets yet we had not even divided the money.

I am happy that we will get about Kshs8 billion in Narok County. I hope that this money will be used to provide water and health services to the people of Narok. I am happy to be a Member of this Senate because we have showed the Executive that we will do our job without being intimidated.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let us have the Senator for Uasin Gishu County.

**Sen. (Prof.) Kamar:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to support, but in a sad way. This is because I went to one of the mediation meetings and I learned, for the first time, what mediation is not during mediation. We went to this mediation believing that everybody had come for mediation. However, we

could not proceed because we felt that the people had prepared themselves to come and fight and not to mediate. Those are lessons for the future.

Mr. Deputy Speaker, Sir, in supporting this Bill, it is just a slight retreat so that we re-plan ourselves on how we are going forward. We need to plan on how the budgeting process is done and how the sharing is done in the future. We hope that not only will the court process give us the right procedure of doing it, but that we shall also institute ways, in this Senate, in which this country can obey the Constitution that it passed.

Mr. Deputy Speaker, Sir, I continue to insist that this country does not live in isolation; it lives in a region, in a continent and in an international community. In 2001, the Heads of State of Africa met in Abuja and made a declaration and a commitment. Kenya was part of this commitment, because it came to Parliament and it was passed. We approved that we should allocate 15 per cent of the budget – not audited accounts, but the budget – to health. By the year 2014 to 2015, when a review was done, it was shocking because Kenya was at 4 per cent, while our neighbours, Uganda, were at 8 per cent. We, therefore, ask ourselves when the rain started beating Kenyans.

Mr. Deputy Speaker, Sir, at the same time in Maputo in 2003, Kenya was part of a huge delegation there. The President led a delegation and there was a commitment by the Assembly of African Union leaders, our Head of State included. Another commitment for food security purposes was made; that the African States were going to commit themselves that 10 per cent of their budget again – not of the audited accounts, but of their budget – would go to agriculture.

I am picking these two because agriculture and health are devolved in our Constitution. If we were able to budget 10 per cent for agriculture and 15 per cent for health, the budgeted amount that we are looking at would almost be double. This is because this budget that we have, of over Kshs 3 trillion, 25 per cent alone would have covered something more than what we are talking about. Therefore, even the arguments and discussions that we are having with the National Assembly is nothing compared to the commitments that we have made nationally, regionally, continentally and internationally.

Mr. Deputy Speaker, Sir, we need to start asking ourselves the big questions; where are we going as a country? We need to start this conversation; even the conversation between us, as the Senate, and the National Assembly. We cannot continue going for mediation, where there is no mediation because there are quarrels and shouting. This is because some people think that they have already made up their minds about what they are going to tell the Senate, and want to dictate to the Senate.

Mr. Deputy Speaker, Sir, we are the custodians and protectors of the counties. This country chose to go for a devolved system of government, and we are going to stand by this. I, therefore, urge this House to stand and be counted. Let this term, the second term of Senators, be the term that will define how devolution is going to be, how we will implement it, and what we are going to do because we cannot wait for the third Senate to come and do this. We, as a Senate, must do it.

I am so proud to be part of this Senate, because nobody wavered in this group. We are only doing this for the good of the counties. We came to Kitui and we were told that all hospitals are closed. It is for that reason when yesterday I heard that there is no functional hospital, I said that we need to pass this thing so that we work on it in future.

With those remarks, I beg to support.

**Sen. Wetangula:** Thank you, Mr. Deputy Speaker, Sir. I will be very brief. This Bill has been ably moved by my Chairman in the Finance Committee. As we pass it in the manner that we are going to do, I want to start where Sen. (Prof.) Kamar has left. The commitments by the Kenya and other African governments in Abuja and Maputo touch on the most devolved functions. Agriculture is wholly devolved, while health is 95 per cent devolved. Yet they are the functions that the national Government least want to support the counties to achieve.

Mr. Deputy Speaker, Sir, there is nothing more important than food security and health for our people. This is what this House must continue agitating for. More importantly is to point out that if you look at the allocations of resources this year to both levels of government, it is a shame that the allocation of resources in the budget of the national Government has grown by 13 per cent from last year. Comparatively, the allocation to the counties has grown by 0.6 per cent. Compare that; 13 per cent versus 0.6 per cent. In fact, that is no growth for the counties, not even taking in to account the inflation. This is, therefore, a deliberate effort by the national Government, with their accomplices in the National Assembly, to claw back and eventually kill devolution.

Mr. Deputy Speaker, Sir, I have no doubt in my mind – like many of us do – that the rogue behavior of the National Assembly is not their own. They definitely have somebody backing their bad behaviour. They are voicing what their master is telling them to do. How do you explain the level of arrogance and display of ignorance that we have been seeing from the Members of the National Assembly on devolution, yet they come and live in the counties? The people they represent are the ones who deserve food security and better healthcare. However, they are so blinded with the provision of National Government-Constituency Development Fund (NG-CDF) that they cannot see or say anything else about the people of Kenya.

Mr. Deputy Speaker, Sir, as we pass this Bill, I want to enjoin what Sen. Mutula Kilonzo Jnr. said, that there are certain provisions of the Constitution that, as a House – not as individuals in this House--- We need responsible Committees – I do not know where the Committee on Justice, Legal Affairs and Human Rights is. We must move in tandem with comparable jurisdictions like Nigeria where they do not share revenue on the basis of audited accounts. Nigeria shares revenues on the basis of annual budgets. That is what we should do.

Mr. Deputy Speaker, Sir, how do you explain, in a budget of Kshs3.2 trillion, that you are stepping down to share slightly over Kshs1 trillion? Consequently, the rest is insulated on the basis of a ridiculous provision in the Constitution about auditing accounts, yet it is the same national Government that makes it impossible for the office of the Auditor-General to act efficiently and be in tandem with budgets in terms of audit.

Mr. Deputy Speaker, Sir, I want to urge Sen. Orengo that he should lead the pack of leadership and bring a Bill to this House. Let us share revenue on the basis of annual budgets. There is no greater evolution in this country than devolution.

Mr. Deputy Speaker, Sir, I drove through Kitui County yesterday and this afternoon. If you came to Kitui six or seven years ago, there is a big difference. The entire small Kitui Town used to be a slum. Now they have very good paved roads and you can see that there is change. This can be said of many other towns of similar sizes, except where governors, of course, are developing faster than the counties.

*Laughter*

I want to urge that we remain eternally vigilant to make sure that devolution is not killed the way *Majimbo* was killed in 1965. This House will go in history as standing up with the bully-boys who do not want devolution and standing up to defend devolution.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. Hon. Members, let us try and redeem time. We are not doing very well.

Sen. Mwaura, if you can take less than five minutes, the better, especially if you speak to issues that have not been spoken to by the previous speakers.

*(Loud consultations)*

Order! Sen. Wambua, put on the microphone.

**Sen. Mwaura:** Thank you, Mr. Deputy Speaker, Sir. If we needed to see the success of devolution, we just need to look around at where we are seated. If it was not for devolution, there would not be such a facility, conceptualized for a far flung county as Kitui. Devolution has actually played a very critical role; it is like the advertisement of Tusker, it has no equal, it has made us equal. This is because, now, each county has some kitty that they can run to in order to ensure that they have services for their people.

Mr. Deputy Speaker, Sir, having said that, we need to look at what is at play here. We have an Executive that does not appreciate the role of Parliament within the ambit of the new Constitution. I would hasten to add that until we have a former Senator occupying State House, we may still have problems.

*(Laughter)*

It is important to say that---

*(Loud Consultations)*

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

**Sen. Mwaura:** Mr. Deputy Speaker, Sir, those who occupy the Executive seem to have the hangovers of the National Assembly under the old Constitution.

**Hon. Senators:** Yes, absolutely.

**Sen. Mwaura:** It is good to say the truth.

**Sen. Orengo:** Especially the one who---

*(Sen. Orengo spoke off record)*

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

**Sen. Mwaura:** Mr. Deputy Speaker, Sir, if they did so, they would understand that under this new Constitution, the power of the purse is resident within the Legislature. It is no longer a preserve of the National Treasury.

Mr. Deputy Speaker, Sir, if you look at our physical architecture, there is a misnomer, because the National Treasury is supposed to be independent of any national government. I think the Public Finance Management Act (PFM) needs to be amendment as such.

Mr. Deputy Speaker, Sir, the argument against allocation to counties, for me, is more of a power-play; it is not a matter of reason. How do you explain, that in a Kshs3 trillion Budget, only Kshs316 billion will go to counties. How can we say there is no money, which it is less than 10 per cent to be allocated to counties in such a huge budget? In fact, to be precise, it is 9 per cent. It is below the threshold that is envisaged in the Constitution under Article 203.

We live in very interesting times where people receive phone calls and instead of applying reason, they must now look like bouncers in Parliament---

*(Laughter)*

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

**Sen. Mwaura:** Okay, Mr. Deputy Speaker, Sir. I stand guided, but I want to say that they look like muscle men whose role---

*(Laughter)*

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

**Sen. Mwaura:** They look like beach boys waiting for the next catch.

*(Laughter)*

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

**Sen. Mwaura:** Okay, Mr. Deputy Speaker, Sir, they look like men who would otherwise not use their reasoning.

*(Laughter)*

Mr. Deputy Speaker, Sir, I was very hesitant to us agreeing to pass the County Allocation of Revenue Act (CARA) because I did not know whether we are derogating the Constitution; as is the case with Division of Revenue Act (DORA). Nevertheless, I am persuaded that it is for the interest of counties. However, we have had very good precedence created by this crisis, in that, like my County of Kiambu, it has been able to pay salaries for July and August using its own source revenue.

Mr. Deputy Speaker, Sir, may be, this cash crunch has also exposed the kind of wanton wastage around own source revenue and collection of taxes within the counties. However, there is risk because even that means that because of the fiscal space being very small and now that even the development budget is yet to be loaded into the system, then the same Executive may use this opportunity to further shrink allocations to counties.

I, therefore, think that it is important as my Chairman has said - I am the Vice Chairman of that Committee - that we must of essence allocate all the monies for the first quota within seven days after the passage of this CARA, so that then we protect counties from being denied their right to source.

Finally, Mr. Deputy Speaker, Sir, I know that we expect the courts to pronounce themselves on this matter. Indeed, I thank God that we have courts that are empowered to

come and mediate or make rulings when it comes to the issues between the Executive and the Legislature. We have a very good President in terms of the Supreme Court Judicial review or process. I think the law is on our side. However, I still insist that the law is never enough and we need to go further to protect MCAs so that they know how to do oversight without being intimidated by governors.

I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well said. Yes, Senator for Kitui County.

### PROCEDURAL MOTION

#### EXTENSION OF SITTING UNTIL CONCLUSION OF BUSINESS LISTED ON THE ORDER PAPER

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is your point of order, Sen. Mutula Kilonzo Jnr? The problem is next to you.

**Sen. Mutula Kilonzo Jnr:** The problem is my neighbor.

In view of the time, I am persuaded that we will not conclude debate and, therefore, pursuant to Standing Order No.31 (3)(a), I am moving that we extend our Sitting until conclusion of the Business listed in Order No.10 and 11 in today's Supplementary Order Paper.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Is that the mood?

*(Question Proposed)*

*(Question put and agreed to)*

With a proviso from the Chair, which is, you do not contribute and leave because of voting, kindly, even if you do not contribute, you do not leave. However, the chances of departures are more on those who have contributed because those who have not are still hopeful that they will.

Very well, I think that sets us free from the shackles of time and that, of course, does not give us a blank cheque to talk endlessly. From the Chair's side, I can assure that the Chair is available to the House until when he is not required any further.

**Sen. Wambua:** Mr. Deputy Speaker, Sir, I support the County Allocation of Revenue Bill (Senate Bills No.8 of 2019) with a heavy heart. It will be remembered that this House went to the mediation table seeking Kshs335 billion to be allocated to the counties. We came up with a formula that was scientific on the sharing of the revenue between the national Government and county Governments.

The amount of Kshs316.5 billion that has been suggested for sharing among counties is not based on any formula. It is a figure that was thrown at us. We stood out ground for some time. However, for reasons that are not known to me, we ceded ground and agreed to share a figure of Kshs316.5 billion among counties. I would like to go on record that there is a lame argument that has been proffered by the proponents of the

Kshs316.5 billion. They have argued that if more money is taken to counties, it is stolen and misused. Fingers have been pointed at governors for misuse of funds.

Mr. Deputy Speaker, Sir, the Senate's core mandate is to protect the interest of counties not the interest of Governors. If money is allocated to counties, and ends up being misused, it is the responsibility of the other agencies of Government to deal with the thieves. The decision by both Houses of Parliament on how much money should be allocated to counties can never and should never be based on the face, name and character of Governors. We will end up losing if we take that route.

It has been repeated by the Members of the Mediation Committee that we have lost the battle, but not the war. I would like to state that by the time we will go back to the war, there will be no battle field to fight or wedge that war. I see signs of a very spirited attempt and determination by the Executive to infiltrate and control the process and procedures of Parliament. My former teacher, the Senator for Uasin Gishu County, stated that the Maputo Declaration and the Abuja Declaration talk of the amounts of money that the national governments of member states should allocate to health and agriculture. Looking at the amount of money that we are allocating to all the devolved function, it is not even half of the allocations that should go to the two functions; health and agriculture.

Mr. Deputy Speaker, Sir, I would like to suggest a cure to this problem. A decision should be taken by the Senate to cost all the devolved functions so that when we allocate money to counties for agriculture, health or water, we will be sure how much it will cost the Exchequer to roll out the functions in the counties. That is the only way that we will get a cure.

Lastly, I would like to go on record that---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Wambua, you time is up.

**Sen. Wambua**: Mr. Deputy Speaker, Sir, kindly give me one minute.

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

**Sen. Wambua**: Mr. Deputy Speaker, Sir, the Executive must never lie to this country that they have the money to allocate the counties. The money that is allocated rightfully belongs to the counties and it should, therefore, go to them.

I thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I should have given chance to a Member from the coastal region. However, I will allow Sen. (Dr.) Musuruve to make her remarks first.

**Sen. (Dr.) Musuruve**: Mr. Deputy Speaker, Sir, I thank you for giving me this opportunity to add my voice. I stand to second this Bill.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. (Dr.) Musuruve. You are supposed to support this Bill not to second it.

**Sen. (Dr.) Musuruve**: Mr. Deputy Speaker, Sir, I beg to support this report with some reservations. When this Bill went for mediation, it was supposed to create a win-win situation. Mediation was not supposed to benefit one 'winner'. Going forward, I would like to state that we represent the counties and their interest. Therefore, for the purpose of the citizens of this country and the counties that we represent, I would like to state that there is need for it to be enshrined in the Constitution so that the amount of money that is supposed to be taken to counties be stated clearly. This will help sort out the issues that are there.

The amount of Kshs316.5 billion may not be enough for the counties because there are some projects that are stalled in the counties. One is sometimes left to wonder if the projects stalled as a result of lack of funds or the money meant for projects was misappropriated or misused. There are some issues in the counties that are deplorable.

Mr. Deputy Speaker, Sir, last week, Sen. Mwaura highlighted the issue of stalled construction of Thogoto Level 4 Hospital in Kiambu County. That is uncalled for. The county governments should understand that they can get the money through various sources. The county can benefit from the money issued by the national Government to all counties or generate their own money. There is need for the county government to look out for mechanisms of generating their own money to ensure that projects are not stalled and that service delivery to people in all the counties.

If countries can generate their own money, they can budget for upcoming issues such as workers' strikes. The counties can make use of the revenue that they collect from their counties. There is need for transparent mechanism to ensure that the money collected in the counties goes to the Kenya Revenue Authority (KRA) while the remainder is utilised in the counties.

I support this Bill for the purpose of ensuring that services reach the *mwananchi*.

Mr. Deputy Speaker, Sir, accepting the figure of Kshs316.5 billion was a bitter pill to swallow. However, we sometimes have to swallow a bitter pill to ensure that devolution works.

I thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done, Sen. (Dr.) Musuruve. We are trying our best to save on time. If you can save one or two minutes the better.

Kindly proceed the Senator for Kwale County.

**Sen. Boy:** Asante sana, mhe. Naibu Spika, kwa kunipa fursa hii ili niweze kuchangia na pia kuunga mkono huu Mswada wa County Revenue Bill. Kusema ukweli, siku zilizopita, kaunti zetu 47 zilikuwa zimesimama zote. Hakuna huduma yeyote inayofanyika, wafanyikazi wanalia na hakuna jambo lolote katika kaunti linaendelea isipokuwa ni kungojea pesa hizi zitoke. Kenya nzima inatutazama katika runinga siku ya leo. Sisi kama maseneta katika hizi kaunti 47, Kwale ikiwa mojawapo, mimi naunga mkono Mswada huu lakini pesa hizi si za kuwafaidisha magavana.

Mhe. Naibu Spika, pesa hizi ni za umma na zinapofika katika kaunti zetu, ni lazima zikuhakikisha wananchi wanapata huduma. Ni jambo la kusikitisha sana kwamba pesa hizi zinapofika, baada ya muda fulani, unasikia kuna mambo mengi ambayo yanafanyika katika kaunti hizo; mojawapo ikiwa Kaunti ya Kwale. Kwa hivyo, kama Seneta wa Kwale, naunga mkono Mswada huu. Tutapitisha Mswada huu lakini magavana wetu wajue kwamba pesa hizi zikifika zitatumwiwa kutoa huduma kwa wananchi.

Asante sana kwa kunipa fursa hii.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you for being brief. Senator for Wajir County, you may now proceed. Kindly, switch off your microphones once a Member has been given the Floor.

**Sen. (Dr.) Ali:** As a member of the Committee on Finance and Budget, I support CARA but as others have said, there are a lot of issues here. We are talking of magnanimous. Why should we be magnanimous? We should do our job. If we fail to do our duties, we will allow the National Assembly and the Executive to trample on us. If we continue this way, last it was the same; this year is the same, if we continue with trend, next year you

will have nothing to say. I will urge this House that if we have to be magnanimous, let this be the last time. We should become magnanimous with Kenya, counties and not with the National Assembly. Next time, we say no, until the end, let them continue with the illegality, we will not be part of it.

The Executive should also stop misleading Kenyans. I saw a statement which stated that Kshs316.5 billion of this year is equivalent to 36 per cent of the annual budget. That is a false narrative. As it has been stated here by other Members, it is less than 9 per cent. This is the audited account for the Financial Year 2014/2015 all the way down. If we talk about it now, then you know what it is. I urge the Executive not to lie, to mislead or falsify statements.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is a better term, parliamentary speaking.

**Sen. (Dr.) Ali:** Mr. Deputy Speaker, Sir, I urge the Executive not to falsify or mislead the public who elected them and who brought them to where they are. They will need their support again.

The other issue I want to mention is the issue of pending bills, like Wajir is getting over Kshs600 million more. If they can get Kshs600 million more, this is a better deal than the first deal. Even if we have been trampled on by the National Assembly and the Executive, we have at least done something. If Wajir is getting Kshs600 million more, that is a good start and we shall continue doing that and helping our people to get more money.

As many Senators have said, I saw in social media, in some forum saying that Senators are fighting for more money so that they can get some for themselves. No. We are not fighting for governors to get more money. Neither are we fighting for ourselves to get more money. We are fighting for the people of Kenya to get more money. That is why we support devolution.

I thank you.

**Sen. Poghiso:** Thank you, Mr. Deputy Speaker, Sir, from the very onset; I will support the County Allocation of Revenue Bill. If you look at this House and the way that Members of this House are contributing to this Bill, you will notice that there is an overhand about the Division of Revenue Act (DORA) every time we are dealing with CARA. People have not moved on. We are still focused on DORA the reason being that we were preparing to fight to the very end. When we gave in, it is still a psychological problem in the House trying to bring us out to a place of acceptance.

The CARA is necessary for it to pass.

*(Loud consultations)*

Please, protect me from our own Members?

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

**Sen. Poghiso:** Mr. Deputy Speaker, Sir, it is imperative that we pass this on account of our own climbing down. We should no longer lament about our previous position. It is about time we moved on. Fortunately, this is an annual event. If we did not do very well this year, we have a chance to do better next year. Hopefully, supporting some of what my colleagues have said; let it be the last time that we are being asked to

turn down from a position that we have taken so that we can actually prove that we defend counties.

The tendency is to think that CARA is a panacea. Passing the CARA alone and having money in the counties is not necessarily the end of our struggles about how monies are spent. It is common knowledge that while we are waiting eagerly for this money to go down and the executives in the counties are waiting; it is not all for the good cause. There is a kind of an unwritten code that you become a governor so that you can become rich. I do not know where that came from. I do not understand why all of a sudden, from the lifestyle of these people we elected to these positions that monies must be pilfered. Where did that code come from? I do not understand which school teaches people that you must benefit from the resources given to your county.

While we agree that monies go to the counties, we still have to keep an eye on those monies as they go to the counties so that they do what they need to do. Development is lacking. If we look at the allocation that we are giving now, very soon county governments will have supplementary budgets just to change things around for their own use. Very soon people will be hired and employed at will and increasing the wage bill so that development suffers. While I support that we do this, we will vote for it. It is also in our interest that we protect our counties and people, by watching very keenly how the monies are spent.

Mr. Deputy Speaker, Sir, let me just end by saying that for counties that are far from the center, the counties where the poverty index is very high, I know the money they are receiving is not sufficient, but we would like to ask county governments to prioritize the things that mean so much to the people when they receive this money; water, food security and make sure that our people realize or recognize that they are being provided for.

With those remarks, I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. I now give the Floor to the distinguished Senator for Homa Bay County.

*(Sen. Halake stood in her place)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Halake, I hope you are not on strike and that is not an act of protest.

**Sen. M. Kajwang'**: Mr. Deputy Speaker, Sir, I rise to support this Bill with the reservations that I have already stated that have been on record since last week when we were discussing the Division of Revenue Bill and also with the amendments that I am sure will follow when we go for the Third Reading.

I will address certain specific issues that are contained in the Bill. What about Homa Bay County? The county that I represent will get Kshs6.74 billion as a result of the Bill that we are considering. The Bill that we are debating before the amendments are effected indicate that Homa Bay County will get Kshs7.14 billion. However, in reality, if we look at Kshs316 billion as the sharable revenue, then Homa Bay County will get Kshs6.74 billion which is 0.2 per cent of the national budget.

There has been a smokescreen that has been put out there that counties are getting so much money. However, if I contextualise the percentage that will go to Homa Bay County out of the budget for the Republic of Kenya for the year, it is only 0.2 per cent.

Secondly, there are certain counties that have lost. I would like the Senator for Mombasa County to take a deep interest in that Schedule on Equitable Share. Mombasa County has lost Kshs1 billion while Nakuru County has gained more than Kshs1 billion. Narok County has gained about Kshs1.3 billion. This is because of the fiscal responsibility measure that is based on own source revenue. It is a good thing that in considering the next revenue sharing formula, we said that fiscal responsibility shall go beyond own source revenue.

The third one is on conditional allocations. It is unfortunate that the managed equipment scheme will get Kshs6.2 billion for the financial year. Even though I have listened to the Notice of Motion by the Senate Minority Leader, we will set up a select committee to look into this matter. Let us remember that the managed equipment scheme was a seven year programme. By the time we will be done with our enquiries and adopting reports, the seven years will be gone. Those shadowy people will already have been paid and we will be fishing for people to take action upon in a postmortem rather than proactive manner.

The national Government has six grants while development partners have 13 grants and we have no framework for oversight of those grants. As the Chairperson of the County Public Accounts and Investments Committee (CPAIC), the Auditor-General will focus on equitable share and own source revenue. We have never seen an audit report on conditional grants and we need to come up with a framework for that. In the CARA, I believe we need to have a monitoring and evaluation framework for every conditional grant.

Mr. Deputy Speaker, Sir, allow me to talk about the issue of ceilings that has been introduced in the CARA. In the Public Finance Management (PFM) Act, county assemblies should get 7 per cent of sharable revenue or twice the emoluments. Looking at the percentages in the ceilings in this Act, for example, the ceiling for Homa Bay County Assembly is 12.6 per cent of the revenue from the national Government. It means that 12 per cent of the money from the national Government will go to the county assembly. How much will remain for development?

If you look at Mombasa County, it is 9 per cent, 8.7 per cent for Nairobi City County, and 11.5 per cent of revenue for Kiambu County. We want to strengthen county assemblies, but we should not give them blank cheques. This is because from my experience in the CPAIC, we have seen a lot of rot coming from county assemblies that have surplus money. Just this morning in this Chamber with Members of the CPAIC, we established that they have taken trips to Singapore, Malaysia and the United Arab Emirates (UAE) and yet they have not considered and adopted reports for three financial years. We must look at the ceilings. If we depart from the 7 per cent that is in the PFM Act, let us adopt another percentage. It cannot be elastic because it brings a lot of mischief.

The Road Maintenance Levy Fund (RMLF) is a conditional grant that goes to the counties. I urge the Committee on Roads and Transportation to conclude their consideration of the Roads Bill. The assumption of the national Government is that when they send Kshs8.9 billion to counties, then counties have enough money to do roads and infrastructure. That is far from the truth because we come from the counties. You will find that chief officers for public works and finance embezzle money because there are no mechanisms for oversight by county assemblies and at the national level.

Finally, the county assemblies and county executives have an opportunity to recast their budgets to reflect that which shall come from the Senate.

I support subject to the amendments that shall come.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. Hon. Members, I would like to communicate two issues of procedural nature. The first one is to make a quick turn around on speakers. Please, do not press the microphone, but instead use your hands. When you press the microphone, that interface wastes a bit of time. Kindly, raise hands.

*(Several Senators raised their hands)*

Not now!

*(Laughter)*

The second issue is that we would like everyone to contribute on this important annual Bill. However, for purposes of making headway and maximizing on our time, I suggest as follows for your consideration. I have 12 pending requests of Members who have not spoken. I would like each Member to express themselves even if by way of few comments.

I suggest that out of those 12, I will allow the Senate Minority Leader to make his comments on this Floor. We will then go to Division and have the Committee of the Whole. Just before the Division on Third Reading, the other Members will have an opportunity to make a few comments before we vote. Does that sound like a good way?

**Hon. Senators:** No!

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You can see today the Chair is quire magnanimous for obvious reasons. I think this is the most important legislation that we normally process each year. So, it is important for every Senator to say something. That being the case, the other suggestion is that we go on with the 12 who have not spoken with each taking about three minutes. The last one to speak will be the Senate Minority Leader who will have a few more minutes to make some final remarks. Is that agreeable?

**Hon. Senators:** Yes!

**The Deputy Speaker** (Sen. (Prof.) Kindiki): This time the “Ayes” have it.

*(An hon. Member spoke off record)*

It is okay. We can do the same on the other side.

Sen. Were, proceed.

**Sen. Were:** Thank you, Mr. Deputy Speaker, Sir, for this opportunity. Much has been said about the process and how we have reached here. My hope is that we have taken lessons on what should not to be done next time.

The County Allocation of Revenue Bill allocates monies to the counties because it is the essence of devolution. As we take monies to the counties, my prayer is that the county governments will spend it for the benefit of the public and not themselves. I also hope that in a few years’ time, we shall not have certain counties still considering themselves historically marginalised because these monies are supposed to bridge the gaps of

development that we have had over time. I hope that in a few years, we will reach a point where counties will be getting almost equal amounts.

Mr. Deputy Speaker, Sir, I am also drawn to the conditional grants in the Third Schedule. For example, the conditional grant on transforming--- I ask for protection –

*(Loud consultations)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator for Embu County and your Kitui counterpart!

**Sen. Were:** Thank you, Mr. Deputy Speaker, Sir, for that protection. My attention is also drawn to the conditional grants in the Third Schedule, for example, the one on transforming health systems for universal care, a project by the World Bank and another by the Danish International Development Agency (DANIDA) on the universal healthcare in the devolved system programme.

Mr. Deputy Speaker, Sir, this adds to the amount of money that is allocated directly to counties on health. I ask that counties ring fence health funds so that the monies for health are not available for anything else other than health.

The practice has been that monies for health are the ones that are played around with. We, therefore, ask that counties find a way of ring fencing health funds.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Senator for Kericho County, you have three minutes.

**Sen. Cheruiyot:** Thank you, Mr. Deputy Speaker, Sir. Allow me to commend you because today you are very democratic.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, the Chair is always democratic! The Chair has no option, but to be democratic all the time.

**Sen. Cheruiyot:** The qualification of “very” means that today you are doing better.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well noted.

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, I will try and be extremely brief to the three minutes. I have gone full circle. I have been dejected, angry, disappointed, but eventually I have come to realize that as a Senate, this is the best we could do.

I have come to live within the possibilities of what was available to us as a House. Given the constitutional architecture, the kind of challenges that this House was up against, I do not think we should be berating ourselves the way I hear some of my colleagues doing and saying we have sold our souls and we have done things that are not right.

I want to believe that because of the failure of leadership at the Executive level, we were stuck against our odds. It did not matter how long we were going to hold so hard against, I do not think we were going to figure out a solution.

Mr. Deputy Speaker, Sir, this is my proposal. I have heard good proposals from colleagues saying, perhaps, we should move a constitutional amendment in this House. However, the unfortunate thing that we need to question is what will happen to it once it gets to the National assembly.

I have seen the CoG has come up with something called the *Ugatuza* initiative, a proposal to amend the Constitution purely to safeguard devolution in this country. We

may not agree on who should be the next President or the Prime Minister of this country, but surely as a House we do agree that we must guard devolution by all means that are possible to us.

I want to propose that the leadership guides us on all the grey areas. From the determination of what is the proper amount of shareable revenue, the issues of ceilings to our county assemblies and even this particular issue of having to close down our county governments almost every three or four months at the beginning of a financial year awaiting the Government to open its book. How do we seal that gap because staff in the county assemblies continue to suffer? I have just shared in the Senate *WhatsApp* group a letter from a local bank that is demanding extra interest from employees of county governments who have taken loans from the banks, but because there has not been revenue in the county governments the last three months the bank does not care.

It is not their concern that we had not passed the Division of Revenue Bill. Therefore, as a House, it would be more prudent if we added our voice and work together with the CoG in ensuring that the other people outside Parliament can do their own *Punguza Mzigo* or whatever they want to do. However, for us, as the Senate, let us ensure that we sponsor a Bill that will go to the public that ensures we safeguard the interests of devolution.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Senator for Marsabit County.

**Sen. (Eng.) Hargura:** Thank you, Mr. Deputy Speaker, Sir. I would like to support the County Allocation of Revenue Bill. First, I would like to bring to the attention of the House on what Sen. M. Kajwang' said on the issue of the Roads Bill.

I would like to update the House that the Bill failed at the mediation level. So we do not have a Roads Bill. On the issue of the County Allocation of Revenue Bill, the reason as Senators we have been insisting that the allocation to the counties should be increased can now be seen clearly in this Bill. Out of the 47 counties, 13 are getting less than what they got last year. The worst is Mombasa County which is getting Kshs1.2 billion less and a small county like Lamu which is getting Kshs1 billion less, from Kshs3.5 billion to Kshs2.5 billion.

It is very bad because the county establishment is still there. The recurrent expenditure will increase because naturally each year the staff expect an increase of their salaries based on their contracts. Even the cost of operations will increase because of the population. Therefore, basically development will have to suffer because of that. When we were fighting for Kshs335 billion, it was supposed to be taking care of all that. However, we are now getting to that. Just to be very clear there are many counties out there like Bomet, Bungoma, Embu all the way to Turkana, including my county, which are getting less by Kshs230 million.

Mr. Speaker, Sir, it is said that this is because of the on source revenue which the counties are not generating as required. I find that to be very punitive because if a county increased its allocation to Kshs1 million, it may get to Kshs1 billion like last Lamu last time. It loses that Kshs1 billion. We have to check the Third Generation Formula so that we guard against this kind of arbitrary additions which are not objective.

I support, but I would like to say that some counties are going to suffer. However, next time we have to make sure that we put down the Division of Revenue so that we do not get to this situation where counties are suffering because the Senate did not play its role.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Distinguished Senator for Kisii County.

**Sen. (Prof.) Onger**: Thank you, Mr. Deputy Speaker, Sir. On matters of principle, the Constitution spells out 15 per cent of the most recent audited accounts. That is the area we must amend. This is because it should be based on the annual budget rather than on the last audited accounts. If we have anything to go by, that is the first assault we must make.

On the second assault, let us look at the PFM and operational Act and be able to realign it with the mother constitutional Clause 203(3). That is the first approach as the Senate that we must do in order to save all this headaches. What we can do as the Senate is to focus our mind and amend that piece by saying, once and for all, let us have budget allocation to county governments on the basis of the last annual budget like now, the annual budget for the Government is Kshs3.2 trillion. If we say 35 to 40 per cent of that, we will have no quarrels or shows between the Senate and the National Assembly.

Three, I hope that my county that has got only a nominal Kshs80 million increase will be able to use this money transparently. There is a lot of this money being wasted on recurrent expenditure, on the wage bill.

We, as the Senate, now must strive in order to deal with ceilings. One of these ceilings is to fall within the law, that counties should not have more than 30 or 35 per cent of their expenditure on salaries. We should put a cap on that. The development budget must at all times, in any given venture, be 30 per cent minimum so that we are able to effect development in our counties. If we live these counties on free parole then the kind of corruption and wastages we will see will be very high.

Fourthly, the issue of pending bills must be dispensed with because it is a rolling stock, and they have found a way of riding on it. Sen. M. Kajwang' will tell you that in the CPAIC, when we were looking at the last audited accounts by the Auditor-General, counties increased their pending bills beyond what they had submitted in their financial statements. We must be very wary on how they are treating this matter.

With those few remarks, I support.

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

The distinguished Senator for Mombasa County.

**Sen. Faki**: Asante Bw. Naibu Spika kwa kunipa fursa kuchangia Mswada wa ugavi wa rasilimali kwa kaunti zetu. Kwanza ningependa kupongeza Kaunti ya Kitui na Seneta wao, Sen. Sen. Wambua, kwa makaribisho mazuri ambayo tumepewa.

Jambo la pili ni kwamba sisi katika Kenya tuna Katiba lakini hatuna ukatiba. Hatuna ukatiba kwa sababu hatuheshimu sheria na utengamano katika nchi yetu. Ndio unaona kwamba katika kila sehemu kuna matatizo kadha wa kadha. Tunalalamika lakini Bunge bado linafanya yale amabayo linafanya.

Tunalalamika kuwa bado Magavana wanawaibia wananchi pesa zao. Vile vile tunalamika kwamba hatuna usawa katika ugawaji wa rasilimali za nchi hii. Nikikupa mfano wa Mombasa, mwaka jana tulipewa Kshs8.2 billioni. Mwaka huu tunapewa Kshs7,025 billioni, upungufu wa zaidi ya Kshs1.2 billioni. Hiyo inamaana kwamba ile mipango iliofanyika mwaka jana haitaweza kufanyika katika mwaka unaofuata.

Pia ina maana kwamba maendeleo yatarudi nyuma katika Kaunti ya Mombasa. Sasa hivi, uchumi wa Mombasa umeathiriwa pakubwa na reli ya Standard Gauge

Railway (SGR) ambapo Serikali imetoa maagizo kwamba mizigo yote ibebwe na reli kutoka Mombasa mpaka Nairobi na baadaye hadi Naivasha.

Katika Kaunti ambazo zinazalisha rasilimali zaidi katika nchi ya Kenya ni Nairobi, Kiambu, Nakuru na Mombasa. Tukiangalia zingine zote tatu zimeweza kupata ongezeko katika rasilimali ambazo zinapelekwa na Serikali Kuu katika kaunti hizo. Hatujui ni dhambi gani Mombasa ilifanya isiweze kupata rasilimali kama wanavyopata wengine.

Nikiangazia swala la *revenue*, juzi tulipokua Mombasa tulielezwa na Kaunti kwamba wameweza kupata *revenue* kupita kiasi ambacho walipata mwaka uliokwisha. Kwa hivyo maswala ya revenue sio kigezo peke yake cha kuhakikisha kwamba pesa zinakwenda sawa sawa.

Kama hali hii haitaweza kudhibitiwa, miaka mitano ijayo, mji wa Mombasa utakua umekufa na Kaunti hio itakua imekufa. Mombasa ikifa, kaunti za Kilifi, Lamu, Kwale, Taita-Taveta na Tana River zote zitaathirika. Hospitali kuu ambayo inatumika Pwani nzima iko katika Kaunti ya Mombasa. Kwa hivyo, kama tunafuata Katiba lazima ugavi wa rasilimali uwe sawa.

Kama Mombasa huikuweza kupata zile pesa ambazo walipaswa kukusanya, wangepewa zile ambazo walipewa mwaka jana, si wapunguziwe kwa kiwango cha Kshs1 billion katika ugavi wa mwaka huu.

Bw. Naibu Spika kumekuwa na manung'uniko kwamba Seneti haichukui hatua dhidi kwa Magavana wanaofanya uharibifu wa---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Time is up, Sen. Faki.

**Sen. Faki:** Bw. Naibu Spika, sijaongea leo na mara ya kwanza kuka---

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

**Sen. Faki:** Naomba uniruhusu dakika moja nimalize pointi yangu.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Okay, I will give you one minute.

**Sen. Faki:** Bw. Naibu Spika, tumeambiwa kwamba Seneti haiumi katika maswala ya magavana wanaoiba rasilimali. Tulipoenda Samburu, siku ya pili Gavana alishikwa. Kwa hivyo, tunataka viungo vingine vya Serikali kama Ethics Anti-Corruption Commission (EACC) na Directorate of Criminal Investigations (DCI) viwe macho zaidi, kwa sababu wao ndio wana uwezo wa kuchunguza na kushika watu wanaohusika katika maswala kama haya. Hata Seneti ikimpata Gavana wa hapa akiwa na hatia, hatuna nguvu ya kumshika na kuhakikisha kwamba amepolekwa katika kituo cha polisi na ashitakiwe.

Mwisho, mahakama lazima iwe imara. Juzi Uingereza kulikua na tatizo la Bunge kuhairishwa. Mmoja wa Wabunge alienda kortini; korti ya kwanza ikakataa na ya pili ikakubali kwamba Waziri Mkuu alikuwa amefanya makosa.

Sisi tulipeleka kesi miezi miwili iliopita na bado korti haijaamua ni nani atakaye sikiza kesi hiyo, na tunapaswa kuheshimu mahakama. Tutaheshimu vipi mahakama wakati inafanya ulegevu kama huo?

Asante, Bw. Naibu Spika.

**Sen. Halake:** Thank you, Mr. Deputy Speaker, Sir. I was beginning to wonder if Senators of nowhere were ever going to get a chance.

(Laughter)

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Sen. Halake! What is your point of order, Sen. Mwaura?

**Sen. Mwaura:** Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.1. Is it in order for the Senator to allude that in this House there are Senators for nowhere?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Halake, what did you say?

**Sen. Halake:** Mr. Deputy Speaker, Sir, I withdraw and apologize.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What did you say?

**Sen. Halake:** I had said that Senators of nowhere are getting a chance now.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That was out of order!

**Sen. Halake:** My apologies, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! It is completely out of order to try and use demeaning language on any Member of this House.

**Sen. Halake:** It referring to myself.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is does not matter whoever it is. You can do it elsewhere, but not in this Chamber. You have three minutes to contribute.

**Sen. Halake:** Thank you, Mr. Deputy Speaker. I apologize, those were not my words though. An ancient Roman thinker, I think Cicero, said that national budgets must be balanced, public debt reduced and arrogance of the authorities controlled for a country not to fall.

When we look at what is going on now, and we are discussing CARA which ideally should have been determined on the basis of Article 217, which is the Division of Revenue Bill--- As it is, we have belaboured that and I would not go back. We must continue with these discussions in a flawed process.

One of the things I have seen happening here is that we will sit here, vote and make sure that our counties do not come to a standstill. However, the issues that have bedeviled us with the DORA must be looked at. We must moderate the arrogance and the impunity that continues to dog us, as we go along.

As I speak, the interest alone on the public debt is Kshs800 billion. What we collect is exactly that amount. How will we ever find money to give to the counties? One of the things I have said before in this House is that counties should not behave as though they are departments of national Governments.

In the own right, counties are governments. They must, therefore, be able to look at issues of their own-source revenue, so that they are able to at least go for a few months as we fight for them. They are sitting here. I am very happy today that in this county, for instance, we have met very good Members of County Assembly (MCAs) and people from Executive, who are able to articulate some of these issues.

Mr. Deputy Speaker, Sir, in my county, close to 20 per cent goes to the executive while all the line ministries in the counties, do not get Kshs10 million to do development work. So, as we allocate revenue to counties, I am saddened to see that some of the counties that receive the least amounts have the most wastage, for example, my county. People must learn to work and stop relying on public assistance. What is happening in our counties is that people who have a government to run, collect taxes and own source revenue---

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

**Sen. Halake:** Mr. Deputy Speaker, Sir, add me on minute.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Wide up.

**Sen. Halake:** Thank you, Mr. Deputy Speaker, Sir. I am just finishing. Our counties must learn to work for themselves and stop relying wholly on the collections by the national Government. As much as we will fight for them, they should behave as a government which collects revenue and stand up for themselves for a short period of time.

I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, we are making good progress but it is not easy. We have to balance many things.

Proceed, Senator for Nyandarua County.

**Sen. Mwangi:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. We are going round in vicious circles. I would rather go straight to what is ailing us. Our main problem is the National Assembly which has been compromised, subdued and become part of the Executive. So, we have a Parliament that is not whole because we have the Senate on one side and the National Assembly that has joined the Executive. These problems will be there for a long time.

Mr. Deputy Speaker, Sir, Kenyans fought to delink Parliament from the Executive. Years ago, the National Assembly was a branch of the Office of the President. Parliament had to fight to get independence through the Parliamentary Service Commission (PSC). Now, we have gone back to where we started. The National Assembly is now a branch of the Executive. So, it will be difficult for us to solve most of our problems.

Parliament is supposed to be independent. That is the only way the people of Kenya will feel represented. However, when it comes to a situation where the Executive has bought and subdued the National Assembly, we will have many problems. The solution will be found in the amendment of the Constitution. We should be specific when we are amending the Constitution so that the Senate is given its roles.

Every Bill that comes from the National Assembly should pass through the Senate before it goes to the President. It does not matter whether it is a money Bill. This is because the Senate is a constitutional institution in Kenya. We are elected across the counties while Members of the National Assembly are elected with few votes by single constituencies. So, if the votes of Kenyans are the ones to decide who will do what, then the Senate should be superior to the National Assembly. We have gone to many countries and out there the Senate is a powerful House. It is either we have the Senate or we have no Senate.

*(Applause)*

If we will have the Senate, we must make it stronger and give it powers to represent the people of Kenya.

Mr. Deputy Speaker, Sir, can you add me one minute just like you have added others?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I will give you 30 seconds. One last point.

**Sen. Mwangi:** The Senate should be seen to truly control the presidency. We should be controlling the president when he goes to excess. However, we should we should be seen to survive as a Senate without actual powers.

Thank you, Mr. Deputy Speaker, Sir.

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

**Sen. Outa:** Thank you, Mr. Deputy Speaker, Sir. I would to take this opportunity to thank the people of Kitui and their leaders, led by our host Sen. Wambua for your hospitality. We have not been disappointed since we came here on Sunday. I want you to know that.

I also rise to support this Bill, but with reservations. There is a lot of lamentation in this House. We, Senators, who are given the mandate to protect the counties have turned to be wimps when the county is looking at us to stand up and provide the funding for devolved government. However, here we are. Every now and then we are pushed to the wall, and we are ready to accept any heat from the National Assembly. Today, we are here lamenting, and yet there is nothing we are doing.

I thought that today the House would stand up and tell the Executive that we are not going to be used as wimps or a House that does not have powers or teeth to bite by passing a Bill which has a lot of illegalities. If we really want to be counted in the future as a Senate which is given the mandate by the same Constitution, we should not be crying fault to the National Assembly. Every now and then we say that the National Assembly has powers and when they push bills to us, we somehow melt. Like my senior says, we now want to blame them over our own mandate that we have been asked to protect.

I thought this House will stand and do what we call tit for tat today. We should have refused the Bill and sent it back to the Executive to tell the world that we are in charge and the Constitution has given power to protect the counties. If you look at some of our counties, for example, in Kisumu County---

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

**Sen. Outa:** Mr. Speaker Sir, even as we are looking for more money to go to the counties today, we have seen the governors are mismanaging these funds. For example, in Kisumu when we talk about own source revenue, Kisumu is supposed to be collecting about Kshs1.9 billion. However, if you look at what the county is reporting today, it is only about Kshs600 million yet they are looking for us to give them more money. However, Kshs1.9 billion can pay some our county employees who have not received salaries for the last three months.

If you go our hospitals---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Outa, your time is up.

**Sen. Outa:** Jaramogi Oginga Odinga Russia Hospital is now like a ghost hospital.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Outa. Let us have the distinguished Senator, Sen. Pareno.

**Sen. Pareno:** Asante, Bw. Naibu Spika, kwa kunipa nafasi hii ili nichangie Mswada huu wa mgao wa pesa za kaunti. Tumechoshwa sana; na mimi naona kama Serikali kuu pamoja na Bunge letu la Kitaifa---

*(Loud consultations)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator of Wajir! Whatever you are transacting there is not part of our Business.

**Sen. Pareno:** Asante, Bw. Naibu Spika. Nilikuwa nasema kwamba naona kana kwamba kuna mchezo wa paka na panya hapa, kwa sababu ukiangalia---

*(Loud consultations)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! You are being asked *ni nani panya, na ni nani paka?*

*(Laughter)*

**Sen. Pareno:** Bw. Naibu Spika, nalinganisha ule mchezo tunaona katika Bunge letu la Kitaifa na Serikli kuu na ule mchezo wa paka na panya. Naona kana kwamba wanachezea wananchi shere. Hatuwezi kuyarudia mambo haya siku nenda, siku rudi tukiwaeleza wasome sheria vizuri. Ndio maana hivi leo nimeamua niongee Kiswahili; labda wataelewa Kiswahili kwa sababu inaonekana imekuwa vigumu kwao kusoma Katiba yetu kwa lugha ya Kiingereza.

Bw. Naibu Spika, leo tunagawa Kshs316.5 bilioni kwa kaunti. Kama alivyosema Sen. Ochillo-Ayacko, naona kwamba tunahitaji kuwapa kichapo cha mbwa. Kichapo hiki sio kile cha fimbo, kwa sababu sisi Wamaasai tunajua sana kuchapana kwa fimbo. Kichapo ninachoongelea sio kama hicho, lakini ni kupitia kwa njia ya sheria.

Bw. Naibu Spika, naona kwamba Seneti hii itasikika zaidi na tutafanya haki zaidi kwa wananchi iwapo tarehe nane na tarehe kumi na nane mwezi wa Kumi kule kortini, tutaongea zaidi kuhusu yale ambayo ni ya halali na yale ambayo sio halali. Yale halali ni yale tunayoypitisha leo; yaani kupitisha mgao wa pesa kwa kaunti. Yale ambayo sio halali ni yale ambayo yalifanywa kabla hatujapitisha sheria hii.

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

**Sen. Pareno:** Bw. Naibu Spika, nitakuwa nimeridhika zaidi kama nitaongea kuhusu kaunti ya Kajiado, kama mfano.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): In less than one minute.

**Sen. Pareno:** Bw. Naibu Spika, Kaunti ya Kajiado imetengewa Kajiado kima cha Kshs7,050,983,282. Wito wangu ni kwamba tunazipa kaunti hela hizi; ndio, tumeng'ang' ania na tuko kortini kwa sababu ya peza hizi. Kwa hivyo, hatungetaka kusikia tena kwamba hakuna maji, hospitali au basari. Kwa hivyo, tunaomba kwamba ili tuweze kugawa pesa hizi vizuri, tungependa kuona kwamba wamefanya kazi vizuri.

Jambo la mwisho, Bw. Naibu Spika, naipongeza Kamati iliyofanya kazi hii kwa kutupatia Ripoti---

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

**Sen. Pareno:** Niinawapongeza wanakamati kwa kupendekeza kwamba pesa hizi zitolewe kwa wingi katika siku saba zijazo.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Asante sana.

Let us have the distinguished Senator of Embu County.

**Sen. Ndwiga:** Thank you, Mr. Deputy Speaker, Sir. From the outset, I support this Bill but very reluctantly. I am ashamed that the Embu Delegation, which I am leading, is going to support this Bill.

My colleagues, the moment we start to give in to the whims of the Executive--- Right now we know that the National Assembly is an appendage of the Executive.

Mr. Speaker, Sir, those of us who have read some little history will know. You can go back to 1966 and see how the *majimbo* were killed in this country. What we are doing today is the first step towards killing devolution. Unless we stand up to the Executive - we are not begging - because Kenyans gave themselves this Constitution that clearly says that revenue will be allocated in a particular manner.

Now we are in a situation where I heard my President says: "I have no money to give to counties."

**An hon. Senator:** *Bure kabisa!*

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

**Sen. Ndwiga:** Mr. Speaker, Sir, the President does not have money to give to counties, which I agree because it is not his money; it is the money that has been collected from the people of this Republic.

The moment - again, this Constitution clearly established some institutions - you get a country that creates institutions which it does not respect, that is a primitive country. I do not think we want to go that direction. There is no country that will move forward without respecting the institutions it has established. The other day we were in Malaysia and our colleagues were saying that these people were at par at one point. Yes, we were. We were even ahead of them. How comes they are where they are today? It is discipline.

Until and unless we instill discipline in our governance, starting from the top, this country will not go anywhere. From now on, even if I am the lone voice, I will not be voting for this kind of things.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well spoken, Sen. Ndwiga. Proceed, Sen. Wario.

Order, Senators. Let us be patient. We cannot all speak at the same time. We will all have time. That was our resolution without exception.

**Sen. Wario:** Asante, Bw. Naibu Spika, kwa kunipa nafsi hii nami niweze kuongeza sauti yangu. Nami pia naunga mkono katika hali ya kujivuta, kwa Mswada huu ambao tunaka kupitisha.

Sisi kama Seneti tuliandamana na tukatembea huko Nairobi tukienda kortini ili kupigania haki ya waliotuchagua. Katika ile hali ambayo sisi tulikuwa tunapigania - kama vile Sen. Pareno alivyosema- tulikwa tunafanya kichapo cha mbwa kuingia msikitini, kupitia hali ya kisheria na sio hali ya nguvu wala mabavu.

Bw. Naibu Spika, rasilmali ambazo tunapeleka katika maeneo yetu zinaendelea kudorora kwa sabbau, kutoka mwaka jana, pesa zinazidi kuwa kidogo tunavyosonga. Ukitaka kupima ili ujue kuwa kitu fulani kinaelekea kufifia, utaona ya kwamba, rasilmali hiyo, haiongezeki, ila inazidi kupungua. Rasilmali hii tunapelekea wananchi waliotuchagua na ambao wanazihitaji zaidi huko mashinani kwenye kaunti, Hatupeleki rasilmali kwa wahuni na magavana ili waende kuitumia vibaya. Hii ni mali ya watu maskini ambao wametuchagua walioko kule mashinani.

Mengi yamezungumziwa, lakini ningependa kuwapongeza watu wa Kaunti ya Kitui pamoja na Seneta wao ambaye ni rafiki yangu. Ukitembea kidogo tu kutoka hapa, utafika Kaunti ya Tana River. Sisi ni majirani na ingekuwa vizuri tunapotoka hapa tuende

Tana River, kwa sababu, tumeanzia katika kaunti ambazo zimeendelea sana. Ningependelea mje Tana River pia muone vile kunakaa.

Kama hamtashindwa kukaa katika hoteli zetu, tutawapeleka Mombasa. Lakini mimi nina imani kwamba mnaweza kuja kukaa na sisi huko Tana River na tuendelee. Sisi ni marafiki wa watu wa Kitui na nimeongea na Seneta kuhusu mambo kidogo kidogo yaliyo pale na tutayatatia na kila kitu kitakuwa sawa. Ninajua sehemu ya Tana River iko na watu wengi wa Kitui kuliko watu wa Tana River.

Asante, Bw. Naiba Spika. Naunga mkono Mswada huu.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well spoken. Distinguished Sen. Chebeni.

*(Applause)*

Order, Members. She has not started making her contribution.

**Sen. Chebeni:** Thank you, Mr. Deputy Speaker, Sir, for giving me this chance. I want to say that I support this Bill with a very heavy heart. It is disheartening that we keep repeating the same things over and over again.

I would like to draw the attention of the House to the grants that are set out in the Third Schedule on conditional allocations as loans and grants from development partners amounting to Kshs39 billion. I think we need to have an audit on the grants just as Sen. M. Kajwang' had mentioned. We also need to have monitoring and evaluation.

The last thing is on accountability. We cannot be giving or allocating counties funds and yet they are not used for the right reasons. I think going forward, governors who are CEO's of the counties should be accountable for these funds because as the Senate we cannot protect the counties yet that protection is not done well with by the CEOs. Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done Sen. Chebeni. Distinguished Senator for Migori County.

**Sen. Ochillo-Ayacko:** Thank you Mr. Deputy Speaker, Sir. I want to sincerely thank you for this opportunity for making the people of Migori know that I am in Kitui. If I did not speak to this Motion, it would not be on record that I was here and working for them. Thank you very much. I doubt whether I will around 47 years from today to come back to Kitui and speak the same, I am really excited.

We cannot do the same thing the same way and expect different results. It was illegal and unconstitutional for the National Assembly to dump our Division of Revenue Bill. You persuaded us though it was illegal but we agreed. It was clearly illegal for the National Assembly to scuttle the mediation and come up with a figure of Kshs316.5 billion that was not supported by any constitutional entity. However, we were persuaded by your senior brother and we supported. What they did was a clear illegality. Ours was very legal.

Today, it is quite clear that they have amended what was mediated and came up with something illegal. However, we have been persuaded to support this Bill. It is obvious that the strategy of the National Assembly is to bring illegalities and they know that we are very kind people that we play moral politics and we are going to let them get away with it. Therefore, we must think of a strategy to deal with these manifest illegalities. If we do not think about them we will be accomplices on the face of this

illegality. Suggestions have been made that we should amend the Constitution, and I think so.

The suggestion made by Sen. Mutula Kilonzo Jnr. will not fly because we cannot amend it here. There is a constitutional moment that counties *na watu wa "Punguza Mizigo"* are also talking about.

We must go the popular way. We should meet the CoG and amend a few things that will help the counties and also the Senate because we have to do the job of Senators. None of us would like to be president and if we would like to be, it seems to be farfetched. So, if in future---

*(Loud consultations)*

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

**Sen. Cheruiyot:** On a point of order, Mr. Deputy Speaker, Sir. I do not know if I heard the Senator for Migori County right. He is pouring cold water on the ambitions of many Senators who want to be president of this country. After listening to some of them today, I am convinced that they can make better presidents than have ever been.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Members! Senator for Migori County, be informed accordingly.

**Sen. Ochillo-Ayacko:** Mr. Deputy Speaker, Sir, any Senator who wishes to be president must lead the charge towards strengthening the Senate. I encourage all of us to desire to be president, starting with my senior brother, Sen. Wetangula, but this is the test. You must talk to the CoG so that we add the money. You must also talk to us so that we wrestle this "*Ndombolo*" dance from the National Assembly.

If we continue, you know the ping pong we have between us and the National Assembly--

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I will give you one more minute because of interruption.

**Sen. Ochillo-Ayacko:** Thank you, Mr. Deputy Speaker, Sir. We should think of a popular initiative that will bypass the National Assembly. Therefore we must sit with the CoG and agree on a popular initiative.

I am ready to bring a million signatures from Migori County and I am sure all of us can bring signatures, so that we go to the people and take the entire budget to the counties and leave the President with nothing.

With all those many remarks, I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon Members, the Chair has noticed that the quality of debate is extremely high today. He commends every Senator who has spoken and urges those who have not spoken to keep the quality at that level.

Let us have the distinguished Senator for Bomet County.

*(Hon. Senators spoke off record)*

Order, Members! Stop adding other prefixes on the name of Sen. (Dr.) Langat.

**Sen. (Dr.) Langat:** Thank you very much, Mr. Deputy Speaker, Sir, for giving me this opportunity to make my contribution.

I support this particular Bill because it is our duty and call and Kenyans have known that the Senate has stood with them. I do not want to lament because of the fact that there is so much opposition right from the Executive and even in the National Assembly.

It is known that Members of the National Assembly have their own fights. They want to reduce what is happening in the counties so that what is seen is what they do using the National Government Constituencies Development Fund (NG-CDF). It is shameful for them that we still do a lot of fundraisings for both primary and secondary schools since they are unable to manage the NG-CDF to cater for them.

What is happening in our country concerning this particular Bill is a clear indication that Kenyans have known their enemies and enemies of devolution. It is clear that there are people who hate devolution and what is happening because of devolution.

As Sen. Wetangula said, if you go round, you will see achievements that have come as a result of devolution. The greatest challenge that we have is our brothers in the county assemblies. They should do their oversight role.

As we went round today, there is a polytechnic, which is a vocational training centre, which has never been allocated any funding for a long time. It was started in 1973. The MCAs told us that they have been allocating money to such projects but the governors claim that that is the mandate of the national Government. It is a great shame because we are supporting our enemies.

It is high time the governors concentrated on their mandate, so that it can be visible to the common people that the Senate is supporting them. We must work with our MCAs though it is unfortunate that some fear their governors.

Mr. Deputy Speaker, Sir, some of the Members of the County Assemblies (MCAs) have been compromised to the extent that they can only tell you what is happening in their county governments while under the chairs. What can redeem such MCAs is the ability to assess what is happening and expose the corrupt governors in their counties. That will make sure that we achieve our goals as the Senate and the county assemblies.

The fight must continue for us to make sure that our counties receive money. People should understand that the allocation of revenue does not come from the pockets of Senators and Governors. It comes from the taxes that are collected.

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

Kindly, proceed, Sen. (Rev) Waqo.

**Sen. (Rev) Waqo:** Mr. Deputy Speaker, Sir, I almost gave up.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. (Rev) Waqo! I thought that you are a Canon of the Anglican Church of Kenya (ACK) who teaches people to be patient on earth and to never give up.

*(Laughter)*

**Sen. (Rev) Waqo:** Mr. Deputy Speaker, Sir, I teach on patience. However, sometimes, I also give up.

I thank you for allowing me to add my voice to the County Allocation of Revenue Bill.

As I have said before, our duty is to protect devolution and stand with the citizens of Kenya. It is unfortunate that we have gone through a tough experience as Senators. However, experience is a good teacher. We have picked some few lessons that when the going gets tough, it is only the tough who can get going. It has taught us that we, Senators, can stand together, tolerate one another and stand with the truth.

Mr. Deputy Speaker, Sir, it is unfortunate that the first quarter of the 2019/2020 Financial Year is gone without much activity happening in the counties. Most of our counties have been hit hard with drought. Many of the counties are suffering as a result of hunger and many other different challenges on the ground. There have been unending ethnic clashes and people have been dying. People suffer when the allocations do not go to the counties. It was good of us to cede ground for the counties to benefit. However, it is a high time for us to sit, reason and strategize so that next year, we will not fall into the same problem. We have had enough. We now need to have a stand and be principled enough so as to support the citizens and not the wishes of the Executive. We should also not be influenced by the National Assembly.

Mr. Deputy Speaker, Sir, with those few remarks, I beg to support this Bill. It is my prayer that the counties will be supported soon.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Kindly proceed, the Senator for Taita Taveta County.

**Sen. Mwaruma:** Asante, Bw. Naibu Spika, kwa kunipa fursa hii ili nchangie Mswada huu ama sheria hii ya kugawa pesa kwa serikali za kaunti. Kwanza, ningependa kutumia fursa hii kukemea ile mbinu ambayo ilikuwa inatumiwa na Serikali ya Kitaifa kupimia hewa ugatuzi kwa kupunguza ule mgao wa pesa zinazoenda kwa ugatuzi. Wenye Serikali kuu walisema kwamba ndio wenye pesa na wataamua ni pesa ngapi zitaenda kwa serikali za kaunti.

Kwa kweli wahenga hawakukosea waliposema ya kwamba, aliye nacho ni adui wa asiye nacho. Pia, ningependa kushukuru Serikali ya Kaunti ya Taita Taveta kwa sababu ya bidii waliyotia ya kukusanya pesa ama ushuru kutoka kwa gatuzi, kwa kizungu hali maarufu, *Own-source revenue* na kufanya gatuzi la Taita Taveta kupata mgao mwaka huu ukazidi Kshs400 milioni. Jukumu letu sasa ni kufaya bidii na kujifunga kibwebwe, kuangalia kwamba huu ugatuzi haujapimiwa hewa na haujaisha vile ilivyo kuwa katika serikali za majimbo za miaka ya 1966.

Bw. Naibu Spika, sisi tuliitoka katika makabila madogo madogo, tulipigana kwa sababu tuliachwa nyuma kimaendeleo tulipokuwa tunaulizwa kwamba: “Ninyi ni wachache sana, mnaleta kura ngapi katika meza?” Kwa hivyo, tukafinywa kwa upande wa kuletewa maendeleo. Nikiwa Seneta wa Taita Taveta, ninaunga mkono ugatuzi. Mbinu yeyote ambayo ni ya kuu ama kupimia pumzi ugatuzi ni kitu ambacho kinatajikana kukemewa sana.

La pili, namuunga mkono Seneta wa Homa Bay, Mhe. M. Kajwang’, aliposema ya kwamba kuna umuhimu wa kufanya *costing* ama kuangalia ile sheria ya *Public Finance Management (PFM) Act* kando ya ile sheria ya *County Allocation of Revenue Act (CARA)* katika kuweka *ceilings* za pesa zinazoenda kwa *assemblies*. Kwa hakika, kuna *assemblies* zingine ambazo zinapata pesa wasizohitaji. Na pale ndipo kuna kupoteza pesa nyingi sana zinazoenda kwa ugatuzi. Inatajikana kufanywe *valuation* ama

kuangaliwe mahitaji ya *assemblies* ili wasije wakapewa pesa zinazozidi mahitaji yao. Seneti inafaa iangalie utumiaji wa pesa katika ugatuzi ili baada ya miakia 10 ama 20, yale maeneo yaliyoachwa nyuma kimaendeleo wasije kuachwa nyuma tena kwa sababu ya utumizi mbaya wa pesa zinazoenda kwa ugatuzi.

Asante.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Mwaruma. Distinguished Sen. Nyamunga, you may now proceed.

**Sen. Nyamunga:** Thank you, Mr. Deputy Speaker Sir, for giving me this opportunity. First of all, I want to take this opportunity to congratulate and also thank the County Assembly and the Members of the County Assembly of Kitui County.

I had an opportunity to have a session from the Committee on Finance and Budget with our counterparts from the County Assembly of Kitui. We had a very good debate. They gave me a lot of courage about the type and calibre of people that are being elected in the county assemblies. It is very encouraging.

Mine is just to say that we should support this Bill. Not that we want it, but it is because of the betterment of the people of Kenya. First of all, mine is so simple. If there is a couple or a husband and wife and one is relying or depending on the other, definitely, there will be a lot of noise in that home. My take has already been mentioned by Sen. Halake. I am bringing a Bill in Parliament, and this Bill must compel the county governments to think outside the box. The moment we are going to fight every year about the allocation that we are getting from the National Government, we are not going to move. At this rate where counties are pleading for money, we will not move.

Mr. Deputy Speaker, Sir, the most important thing that we can do, as leaders and for Kenyans, is to think outside the box. We must look for resources from other avenues. In my view, we must look at the natural resources that we have and develop them. I believe that every county is blessed with some form of resources. For example, in Kisumu County, we have Lake Victoria. What are the five counties doing about it? We have rice but what is the Kisumu County Government doing about it? What is Busia County doing about the rice paddies? Why are we begging under the whims of the national Government who think that the money is theirs?

Look at the way they are doing the Estimates. Last year, the Estimates were Kshs1.6 trillion, but they managed to get only Kshs1.4 trillion. This year, they want to give us Estimates of Kshs1.9 trillion. If we are working with those same Estimates, they are crying foul that they cannot manage to collect such monies. So, it means we are cheating ourselves. Our budgeting process and everything else we are doing is not real. We are not being honest with Kenyans. We are only talking about corruption, which is at the national Government.

Let the county governments look for their own money and streamline the way they collect the taxes. It is not good to keep taxing people, and yet we have resources. In my view, we must think outside the box and ensure we have enough resources for Kenyans.

I support the Bill.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Nyamunga. Sen. Farhiya, proceed.

**Sen. Farhiya:** Thank you, Mr. Deputy Speaker, Sir. I have a few comments in terms of the Bill.

During the public hearings, Makueni County Assembly is one of the county assemblies that gave their submission. In their submission, they said that from the last Financial Year they have lost about Kshs43 million. If the county generally lost money because of lack of fiscal responsibility, the punishment should not be to the county assembly but the executive. So, the funds that go to the county assembly should not have been reduced. This is because we always talk about inflation and other factors that affect expenditure, and yet we now give them less money for a mistake that is not theirs.

Let me also comment a little bit about overestimation of own source revenue. That is also a problem in the national Government. It is my take that, that process is being used to inflate the budget, so that there is space to steal. As a result of all that, we have pending bills, and no money to pay. All these issues are related.

There is another issue that the Senators have dispensed with, but I just want them to visualise. For example, we said that we consider 25 per cent of the Kshs316 billion budget should go to agriculture and health in counties. That is a small amount of Kshs79 billion, yet the total budget for this country is Kshs750 billion. Even the total amount allocated to counties is not even half of the amount of money that we should have allocated for health and agriculture, if we were to follow the international agreements.

Out of that small amount, a lot of money still remains at the centre. For example, when we were looking at the Budget Policy Statement, Kshs 99 billion was allocated to the national Government for health. Even if counties try and give them 10 per cent, that is only Kshs31 billion. That means that counties are short of 300 per cent of what they were entitled to in order to deliver that service.

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

**Sen. Farhiya:** Thank you, Mr. Deputy Speaker, Sir. No wonder services in the health sector are deplorable. Three hundred per cent of the amount that should have been set aside for health is still left at the center,

Mr. Deputy Speaker, Sir, let this not be a bubble that we talk about this issue now, but in terms of Appropriation Bill being passed after the DORA, even if we follow up through the courts, let us have that. If everybody was stuck including this House by not receiving salaries for three months, I think a resolution should have been found.

Mr. Deputy Speaker, Sir, for indulging me as well.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Distinguished Sen. Iman.

**Sen. Iman:** Thank you, Mr. Deputy Speaker Sir. I am nominated Senator and acting---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! This is not the place to introduce the other titles that you enjoy elsewhere. You are here as I have cited you.

*(Laughter)*

Proceed.

**Sen. Iman:** Thank you Mr. Deputy Speaker, Sir, for giving me this opportunity to add on my views regarding allocation of money. I am going to speak on behalf of all the counties especially my county.

Garissa County should use this money wisely and prioritize where to allocate the money. Last time when my Governor appeared before the County Public Accounts and

Investments Committee, it was painful to watch because he could not account for what he was using---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! What do you mean by being painful to watch? What form of pain?

*(Laughter)*

**Sen. Iman:** The pain was that, he could not account for the money that had been allocated to the county. That is the pain I am talking about.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Was the pain caused by the Governor or what the Governor was talking about?

*(Laughter)*

**Sen. Iman:** I am going to withdraw that statement.

*(Laughter)*

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

**Sen. Iman:** Mr. Deputy Speaker, Sir, counties that are marginalized should step up the mark and use their money wisely.

Thank you, Mr. Deputy Speaker, Sir.

*(Applause)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done. Proceed, distinguished Sen. Shiyonga.

**Sen. Shiyonga:** Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to contribute to the County Allocation Revenue Bill. It is very unfortunate that we are discussing about this Bill when we have already allowed ourselves to vote towards the Bill.

We did this because we were thinking about how our people are suffering, how they will be miserable, and how the facilities are going to be deplorable.

*(Loud consultations)*

Mr. Deputy Speaker, Sir, would you mind protecting me from consultations by the host Senator?

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

**Sen. Shiyonga:** Mr. Deputy Speaker, Sir, the systems that have been put in place by the current Constitution are weak; they are not giving us much to yield from this particular Bill.

If you look at the Senators, we are worried because devolution might die in our hands. We should not allow devolution to perish in our hands. It is for this reason that I say all the illegalities that have been witnessed in the past few days regarding the National Assembly and this Bill should be condemned.

After five years from now, all of us here will go back to ask for votes from the electorate and those votes are going to be found in devolved units. These devolved units are the ones that we are supposed to empower. There are some people right now who are enjoying the comfort zone of dividing the money meant for the people that are supposed to be facilitated; they are enjoying frustrating the people.

They are enjoying frustrating devolution plus the people who voted for them. It is in this regard that I dare say that anybody who will be found misusing this money – including governors or anybody who is responsible of the money – needs to be arrested, made answerable and be jailed. I will say that for sure---

*(Sen. Mutula Kilonzo Jnr. laughed loudly)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Mutula Kilonzo Jnr.!

**Sen. Shiyonga:** Mr. Deputy Speaker, Sir, I say this with pain. When we celebrated this Constitution, we did so saying that we were achieving, whereas we were losing. We shall not allow that, as a House. Let us vote for this Bill, but with a coma saying that, “Next time, we shall not be the same;” because financial Bills are passed every year. We are going to stand with our heads tall. If you come home and you are in the National Assembly, and you killed this Bill, the same shall happen to you.

Thank you very much, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done. Thank you, Sen. Shiyonga of the “scooping” fame.

*(Loud consultations)*

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

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

**Sen. Seneta:** Thank you, Mr. Deputy Speaker, Sir, for giving me a chance to also add my voice on this important Bill. First allow me to congratulate and appreciate the County Government of Kitui, the Senator of Kitui, the County Assembly and the People of Kitui for the good reception.

Mr. Deputy Speaker, Sir, when the people of Kenya chose the Constitution of Kenya 2010, it was because we wished all parts of this country to get development. That was the good intention of those who sacrificed to get us the Constitution of Kenya 2010. It is, therefore, saddening that there are some people with powers in this country who would want to kill devolution and take us back to the old Constitution.

Mr. Deputy Speaker, Sir, I want to support this Bill with only three comments. First, it is important that as we pass this Bill, we urge county governments to look at the issue of corruption and misappropriation of funds. We are allocating a little money already and, therefore, they should look at misappropriation of funds and also find ways on how to seal loopholes for corruption.

Second is the allocation of money to projects that are not devolved. We see many county governments giving bursaries to secondary schools, leaving those deserving village polytechnics and vocational training colleges, which are under their mandate.

Mr. Deputy Speaker, Sir, when we were going round this county with my Chairperson today, we went to a vocational training college that has never been allocated

money. Even if it was allocated, then the money was very little. The college has very few instructors who have been employed by the county government. Therefore, counties need to give priority to devolved functions.

Lastly, Mr. Deputy Speaker, Sir, we also wish to urge county governments to allocate money and implement standard projects. They should also do quality work and give value to their money that they collect from Kenyans through revenue.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Senators. I now give the floor to the Deputy Minority Leader, who is Senator for Kakamega County.

**Sen. Malalah:** Thank you, Mr. Deputy Speaker, Sir. I have been arm-twisted to support this Bill. Never the less---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Did you say you have been arm-twisted?

**Sen. Malalah:** Mr. Deputy Speaker, Sir, I have been forced to support this Bill. Nevertheless, allow me to have my focal attention on the general public of the citizenry of Kakamega and more specifically the Governor of Kakamega County. Let it be known that today through my vote as the Senator for Kakamega, I have given Gov. Oparanya Kshs10,412,850,000 as the equitable share. Further, through my vote today, I have given a Kshs737,368,864 as conditional grant. As Gov. Oparanya receives this money, I want him to put this money into proper use. When I go to Kakamega, I want to see the less fortunate children being given bursaries and the vulnerable families being enrolled into National Hospital Insurance Fund (NHIF).

Mr. Governor, when I come to Kakamega, I want to see you complete the flagships projects that were stalled. Just to mention but a few, I want the governor to complete the Malava Milk Processing Plant that he has wanted to initiate for a long time. Secondly, I urge him to complete and operationalize the Mumias Level 4 Hospital that he launched four years ago.

Hon. Governor, when you receive this money, I do not want you to use it for flamboyantly. I have seen situations in my county whereby monies have been allocated to certain officers to be carrying an executive chair from one funeral to another. Mr. Governor, I want you to stop that.

*(Laughter)*

**Sen. (Eng.) Mahamud:** On a point of order, Mr. Deputy Speaker, Sir.

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

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, is the hon. Senator for Kakamega in order to turn the podium to a debate on Kakamega?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is out of order about that?

**Sen. (Eng.) Mahamud:** Is he in order?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): He is talking about the County Allocation of Revenue Bill which will take money to Kakamega County. The distinguished Senator for Kakamega is entirely, squarely and perfectly in order.

**Sen. Malalah:** Thank you, Mr. Deputy Speaker, Sir. Let it be known without any iota of doubt that when I give Gov. Oparanya this money, he should prioritize his

projects. It is absurd that in the 2018/2019 Financial Year, he prioritized to tarmac roads at a cost of Kshs70 million per kilometre yet we have rural roads which are impassible.

Mr. Governor, the Malava-Samitsi Road is impassible yet it---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Your time is up. The governor has heard. I will add you one minute.

**Sen. Malalah:** Mr. Deputy Speaker, Sir, you introduced me as the Deputy Minority Leader. Therefore, it is good enough if you give me enough time. I request for two more minutes.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Malalah. I will grant you two minutes. However, you cannot exhaust your communication with the governor. So, you can send him a short message on all the other issues.

*(Laughter)*

**Sen. Malalah:** Mr. Deputy Speaker, Sir, as I was saying, the Malaba-Samitsi Road is impassible. The Matunda-Kona Mbaya Road in Likuyani Constituency is impassible. In Lugari, the Lumakanda-Marakusi, the Manyuki-Land Nyuki Roads are impassible. It is sad that the Kakamega County Government prioritized to do a house for the governor at a cost of Kshs76 million yet my friend, Mr. Benson Khahere, from Shamberere Village lives in a shanty grass thatched House.

Mr. Deputy Speaker, Sir, I give Gov. Oparanya a cheque although not a blank one.

Mr. Deputy Speaker, Sir, I will continue doing my oversight role on the same funds. To the lords of impunity, I want to tell you here in no uncertain terms, to use your time well. A sage once said that time is like a river, you cannot touch the same water twice because the floor that has passed will never pass again.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done, Senator of Kakamega County. Sen. Malalah, you remind me of your predecessor Sen. (Dr.) Boni Khalwale. Well said.

At this stage, almost everyone has spoken except the Senate Minority Leader. Therefore, I will give this chance to the Senate Minority Leader to contribute. By virtue of his office, I will add him a few minutes; up to a maximum of 10 minutes, then after that, the Mover will reply in the shortest time possible.

**The Senate Minority Leader** (Sen. Orengo): Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity because we have been here for long and we anticipate to be here longer. I will try to make it in less than 10 minutes and follow the cue from the other Members.

If you look at this report, particularly, on Page 41, there are counties that normally get a lot of money and are still getting a lot of money, but because of their own performance, they have falling revenue allocation. I think that the parameters that are there are clear and we have been addressed on this before.

Therefore, I urge the Senate that, next time when we are going through this allocation process, the counties that consistently under-perform, including in generating own resource revenue, should be exposed. Sometimes the Governors do not appreciate

the amount of work that we do for them. When we have passed the money, even getting to a governor's office becomes extremely difficult.

You will see some big counties like Bungoma, Nairobi and Mombasa, which I cannot explain why they fail to get own source revenue, in order to enhance their allocation and that is why their allocations are going down, purely on that parameter. If you look at this report, that is consistent throughout the report, including my own county of Siaya. The Governor should wake up because he is persistently scoring very badly on this account and all other accounts.

Secondly, although we are punishing counties because of these financial indicators and parameters, including own resource revenue generation, if you judge the national Government on the same parameters, they will perform very badly. In fact, they will not get even 60 per cent of what we give to them. They only compensate with that through borrowing, whenever there are revenue shortfalls, and you know, the counties cannot borrow as much as the national Government. They do that through grants and they get more grants than the county governments can ever get.

Therefore, we should show and demonstrate this to the national Government; that the parameters we use against the counties, if those same parameters were used against the national Government, they would come out with a shortfall of revenue. I think there is some sense in what has been said before, that we need to work towards an amendment to make sure that if there is an increase of revenue, all the levels of government should benefit. It should not be on the last audited accounts, the previous year's accounts or Budget. It should be on the Budget for that particular year. I am persuaded by Sen. Wetangula who spoke before me, and Sen. Mutula Kilonzo Jnr., that we can come up with such amendments.

As you know, we are alone. We have been looking for an oversight fund and, therefore, you can understand why people are against you getting those oversight funds. This is because you are the only House working effectively.

In fact, I am one of the persons who are saying that we should have another amendment to the Constitution; that although we have a presidential system, the President once or twice a year should appear before the Senate or the National Assembly so that he can be asked some questions. For example, it is not good enough when the President himself says out there in the public and not through institutions of governance, that he has no money.

You have seen in South Africa - although that is a parliamentary system - that President Ramaphosa appears before Parliament and he has an engagement with it. The system we have now where the Executive is in total control, sending even Cabinet Secretaries, is not good enough. Those people have very little power and authority. In fact, we should not be talking to them as equals. They are people that survive through the goodwill of Parliament, including the Senate.

Mr. Deputy Speaker, Sir, I hope that, instead of talking about a lot of constitutional amendments, one of the amendments - I think for jurisprudence in order to enable me to argue why it is necessary for the President to appear before Parliament once or twice in a year - I would ask the Deputy Speaker, being a law expert to give me all the arguments and comparative jurisprudence. This is because the President in a democracy, cannot just be an imperial power out there. He should have a body where he can appear and be accountable to.

*(Applause)*

Shamelessly, today when the DORA Bill was being signed, it is not by accident that our Speaker and the leadership of this House was not there. We found the leadership in the other House, from the Speaker to the Majority Leader were all trooping there. I think, probably after they had signed, they had a cup of tea or something better.

*(Laughter)*

They were saying how they have managed the Senate. That one, we are going to demand---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Leader of Minority, I hope you are not pushing for the tea but presence involvement.

**The Senate Minority Leader** (Sen. Orengo): In fact, Mr. Deputy Speaker, Sir, the County Assembly here is going even well with the Senate because behind the Chair there, I have been able to have a cup of coffee which has given me a little bit of energy. However, I think it was not tea. It could have been something better which the Senator of Embu would be better placed to tell the House.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well said.

*(Laughter)*

**The Senate Minority Leader** (Sen. Orengo): Finally, Mr. Deputy Speaker, Sir, the bad manners of governance---. Sometimes we are having a lot of difficulties because of the bad manner of governance. That is why this job is so difficult. In fact, Sen. Wetangula said the principle is that, some counties are growing at a slower rate than the governors. He said some counties, but I think it is a general principle.

If we took an analysis of how every governor is in every county in comparison to the county, we will find that the governor is growing faster. For example, if someone was a driving a Probox Car---. Some of them became governors through their political parties. I know for Bungoma and even in my county, without the political parties, they would not have managed to be in those positions.

For example, now we are governors' best friends. They are asking for Senators all the time. However, when they are asked to appear before Committees of the House, they are dodging and disappearing. This they must be told. I have even seen it in public meetings. Of course, here, we use the same public address systems.

However, when you appear in a public meeting with a governor, especially when he is the resident governor and you are given a microphone, as soon the governor is about to speak, they change it. Even for the President of the United States of America, if you appear with him in the same meeting, you use the same platform, microphone and sit on almost similar chairs. However, these governors have attracted some imperial behaviour which is making our job so difficult.

Yesterday, I saw some governors who are not from Nairobi flying flags in Nairobi. As I was walking in the streets, I remembered that, it is only in Kenya where thieves have flags on their limousines.

(Laughter)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Be careful.

**The Senate Minority Leader** (Sen. Orenge): Mr. Deputy Speaker, Sir, I tried to have an argument with them but it was a difficult conversation. Governors should help us to help them because we are protectors of counties and not of governors. Their bad behaviour should not make our job difficult.

Finally, I urge Members not to regret because of what we have done. This is like Solomonic jurisprudence. That is a study in law where you go for substantial justice. We are looking at the counties and their needs and the people. For example, this morning, we were told about a hospital that was closed. It is about 90 miles away. The committee had to go there in the morning because the hospital is closed. We have also been told about institutions in this area which are not functioning and people not getting their salaries because of lack of funds.

We are exercising a Solomonic kind of jurisprudence, because Members of the National Assembly do not care if the baby is killed. They do not really care if the counties die but we must save the counties. Irrespective of which government is in power, it is our duty to make sure that we save the counties. It is not for nothing because it is clearly stated in the Constitution that part of our duty is to protect the counties. You remarked that a lot of people do not know why the provision of protecting counties is there.

My friend, Sen. Kibiru who went for mediation knows why he is needed by the people of Kirinyaga County, irrespective of who the governor is. Next time, when I go to Siaya County, I hope my governor will realise that I am a very important man in his life. I would have addressed him the way Sen. Malalah---. Even Kitui and every other county should have this kind of realisation. This should not just be for the elected Senators because the specially elected Members of this House also protect this jewel when making their contributions.

If you ask why these provisions are in the Constitution, it may not extend to protecting the counties the way they are doing. Let us fight this together. Whether the Executive, the National Assembly or the national Treasury stand on the way, we are going to win. In the eyes of history, we are going to win.

If you read what the late hon. Seroney used to say in the Kenya National Assembly, going by what is happening, I think he is happier in the grave than a lot of people who are in positions of responsibility. Do not count for nothing what you are saying in this House.

I thank you and I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done, Sen. Orenge. What a wonderful way to conclude.

Hon. Members, without further ado, I now give the Mover the Floor to reply in the shortest time possible.

**Sen. (Eng.) Mahamud**: Mr. Deputy Speaker, Sir, I thank Members for the contributions. Over 30 of them have contributed to this.

With those remarks, I beg to reply.

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

**Sen. (Dr.) Ali:** On a point of order, Mr. Deputy Speaker, Sir. I just want to make a correction on my contribution. I talked of Kshs600 million. That is not the correct amount. It is supposed to be Kshs60 million.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is Kshs60 million?

**Sen. (Dr.) Ali:** Mr. Deputy Speaker, Sir, it is Kshs60 million on top of what we got in the last financial year. It is Kshs60 million extra and not Kshs600 million.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The variation has been noted.

*(Sen. Wetangula spoke off record)*

Sen. Wetangula, are you on a point of order?

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, I have been in this House for a very long time. I do not know of any Standing Order under which a Member after conclusion of debate and the Mover has been called upon to reply stands up and purports to correct his speech. Is he in order?

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

**Sen. (Dr. Ali):** I was given permission by the Speaker.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator for Wajir. I understood the Senator for Wajir to have stood on a point of order to bring to the attention of the Chair for the record that the variation of the money between last year's allocation and this year's in Wajir County, is Kshs60 million and not Kshs600 million as he had announced to the world.

I think that is a legitimate correction to make so that word does not go out there that there is a variation of Kshs600 million when it is Kshs60 million. Therefore, that is a legitimate correction. He is not debating. What you cannot do twice in the same Motion is to debate, he was just correcting. I think the rules are there to allow us to transact business efficiently.

To answer you, Sen. Wetangula, that falls under Standing Order No.1, which allows the House to move without the shackles of the nuts and bolts of the Standing Orders.

Thank you Members.

*(Sen. Wetangula spoke off record)*

Order. Order, Sen. Wetangula. Do I have an alternative? I have no alternative. I am bound to be held accountable by the rules of this House. I am a servant of the House and its rules. On the other hand, I feel that where possible, a significant point of information or correction which does not necessarily involve debate is acceptable in the circumstances. Of course, I am entitled to change my mind if I have reasons to do so.

Sen. Wetangula, besides Standing Order No.1 which I insist, and I gave a very detailed ruling on, it allows among other things where possible, for the House to be flexible enough to accommodate important issues. You know the Speaker does not move then they are moved. You may have abandoned the points, but I am already seized of the matter.

For the benefit of the House, in fact, it has been brought to my attention that there is also Standing Order No.92, which says two things; one is that no Senator shall speak

more than once to a question. Then 92(2)(a) says a Senator who has spoken on a question may again be heard to offer explanation of some material parts of the Senator's speech which has been misunderstood, but must not introduce a new matter. I think the Senator for Wajir has been vindicated entirely and expressly by Standing Order No. 92(2)(a).

It is so ordered and that is the end of that matter now.

*(Laughter)*

Thank you, Sen. Wetangula, for reminding the House that we must always be guided by our own rules.

Order, Senators. I want to communicate as follows: One, we have come to the end of the Second Reading debate on the Bill. We shall be moving to Division on this particular Second Reading. Since we have been here for a very long time, I wanted to suggest that the bell be rang for a few more minutes to allow us freshen up because the voting will be a bit extended. We are voting manually by Roll Call.

Could you suggest how many minutes you want the bell rung? Is it two, three or five minutes maybe, in case somebody wants to use the washrooms or wash their hands? How many; five or two? Let us take a vote.

The Whip advises me that we ring it for five minutes, so that he can also get his mathematics in order.

It is so ordered.

*(The Division Bell was rung)*

Order Senators. The Division Bell has stopped ringing. Kindly take your seats. I now order that the Doors be closed and the Bars drawn.

*(Doors were closed and the Bars drawn)*

**Sen. Mutula Kilonzo Jrn.** Mr. Deputy Speaker Sir, there are no Bars. There is a chain instead.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Sen. Mutula Kilonzo Jrn. The consequence is the same whether the Bars or the chain is drawn. Perhaps the Speaker should have said draw whatever is there.

*(Laughter)*

Hon. Senators, I would like to bring to your attention the provision of Standing Order 83(2). I am advised by the Whips that the teller for the Ayes is the distinguished Sen. Halake whom I request to come forward to the Table. Accordingly, I am advised that the teller for the Noes is the distinguished Sen. Were whom I also request to come forward.

Hon. Members, I would like to draw to your attention that the Division is going to proceed by way of Roll Call. For that reason, when the name of a Senator is called out, he

or she shall rise in his or her place to declare assent or dissent to the question in the following manner. Senators will vote; Ayes, Noes or Abstain.

Fourthly, you are free to use appropriate Kenyan sign language.

*(Laughter)*

You cannot manufacture your own sign language.

*(Question, that the County Allocation of Revenue Bill be now Read a Second Time proposed)*

Start the Division.

Order. Sen. Halake, you have already violated Standing Order 83(2). You should rise in your place.

*(Voting in progress)*

**Sen. Malalah:** Mr. Deputy Speaker, Sir, on behalf of the people of Kakamega County, Sen. Shiyonga and Sen. (Dr.) Musuruve, I vote, "Yes."

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Members! In fact, even those Senators who are making references to counties are contravening the Standing Orders. I read out Standing Order 83(5), which says that the Senator stands in his or her place, and says: "I vote yes, I vote no, I abstain" or use the appropriate Kenyan Sign Language (KSL).

Therefore, Sen. Malalah, spare us the speeches.

*(Laughter)*

Today, you are in a mood of addressing people left, right and centre. Can you vote?

**Sen. Malalah:** I vote "Yes."

*(Roll call voting)*

**Sen. (Dr.) Mbiti:** I vote "Yes."

**Sen. Ochillo-Ayacko:** Mr. Deputy Speaker, Sir, I vote in the affirmative.

*(Loud consultations)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Ochillo-Ayacko, the options are as I have said before.

*(Sen. Ochillo-Ayacko gave the thumbs up gesture)*

*(Laughter)*

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

**Sen. Mutula Kilonzo Jnr.:** Is that appropriate?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Ochillo-Ayacko. I saw you gesturing and I assumed that you were using the appropriate KSL.

**Sen. Ochillo-Ayacko:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator for Migori County! The KSL has been put there for obvious reasons. So, please, let us not try to diminish why that provision is there. Do not make fun about it. I am sure, the Senator for Migori, you are not entitled to use the KSL. That option is there, but it is not meant for you for the time being.

**Sen. Mutula Kilonzo Jnr.:** Unless otherwise!

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Can you vote?

**Sen. Ochillo-Ayacko:** Mr. Deputy Speaker, Sir, I stand guided and vote "Yes."

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

*(Voting in Progress)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Sen. Wetangula. You have been understood.

As the tallying is being done, you are being reminded to do it faster when we go to the other stage. This one was the easier one. For the Third Reading, we will have several votes.

In the meantime, I thank you for your patience. I have seen extraordinary commitment.

*Second Reading*

THE COUNTY ALLOCATION OF REVENUE BILL  
(SENATE BILL NO.8 OF 2019)

**DIVISION**

**ROLL CALL VOTING**

*(Question that the County Allocation of Revenue Bill  
(Senate Bills No.8 of 2019) be now read a Second Time,  
put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cheruiyot, Kericho County; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi City County; Sen. Halake, Isiolo County; Sen. (Eng.) Hargura, Marsabit; Sen. Iman, Garissa County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga

County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Dr.) Langat, Bomet County; Sen. M. Kajwang', Homa Bay County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Mpaayei, Kajiado County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Mwaura, Kiambu County; Sen. Ndwiga Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghisi, West Pokot County; Sen. Wambua, Kitui County; Sen. Wario, Tana River County; Sen. Wetangula, Bungoma County; and, Sen. Zawadi, Kilifi County.

**Teller of the Ayes:** Sen. Halake.

**NOES:** Nil

**Teller of the Noes:** Sen. Were.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, the results of the Division are as follows:

**AYES:** 33

**NOES:** Nil

**ABSTENTIONS:** Nil

The "Ayes" have it.

*(Applause)*

*(Question carried by 33 votes to Nil)*

*(The Bill was accordingly read the Second Time and committed to a Committee of the Whole today by leave of the House)*

## COMMITTEE OF THE WHOLE

*(Order for Committee read)*

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

### IN THE COMMITTEE

*[The Temporary Chairperson (Sen. (Prof.) Kamar) in the Chair]*

#### THE COUNTY ALLOCATION OF REVENUE BILL (SENATE BILLS NO.8 OF 2019)

**The Temporary Chairperson** (Sen. (Prof.) Kamar): Hon. Senators, we are going to the Committee Stage. Please, let everybody stay on their seats. Remember the room is still chained. We are going to proceed. We have a few amendments to go through and we will call out the clauses and vote on them as we go.

The Division will be at the end.

*Clauses 3-10*

*(Question, that Clauses 3-10 be part of the Bill proposed)*

Division will be at the end.

*New Clause 11*

**Sen. (Eng.) Mahamud:** Madam Temporary Chairperson, I beg to move:

THAT, the Bill be amended by inserting the following New Clause immediately after Clause 10-

- (1) The schedule prepared under section 17(7) of the Public Finance Management Act shall reflect that the disbursement of monies allocated to counties in financial year 2019/2020 is effective from 1<sup>st</sup> July, 2019.
- (2) Notwithstanding the provisions of subsection (1), the National Treasury shall transfer to the counties the total disbursement due in the first quarter of financial year 2019/2020 within days of the approval of the schedule by the Senate.

*(Question of the New Clause 11 proposed)*

*(The New Clause 11 was read a First Time)*

**The Temporary Chairperson** (Sen. (Prof.) Kamar): Mr. Chairman, Sir, can you move that the new Bill be read a second time so that it is seconded.

**Sen. (Eng.) Mahamud:** I beg to move:

THAT, the Bill be amended by inserting the New Clause 11 and be read a Second Time.

**Sen. Hargura** seconded.

*(Question, that the New Clause 11 be read a Second Time proposed)*

*(Question, that the New Clause 11 be part of the Bill proposed)*

Division at the end

*The First Schedule*

**The Temporary Chairperson** (Sen. (Prof.) Kamar): I call on the Chairperson of the Committee.

**Sen. (Eng.) Mahamud:** Madam Temporary Chairperson, I beg to move:-

THAT, the Bill be amended by deleting the First Schedule and substituting therefor the following new Schedule-

Allocation of each County Government's Equitable Share of Revenue  
Raised Nationally in the Financial Year 2019/2020

No	County	2018/2019		2019/2020	
		Allocation ratio	Equitable Share	Allocation ratio	Equitable Share
		Column A	Column B	Column C	Column D
1	Baringo	1.62	5,086,800,000	1.61	5,095,650,000
2	Bomet	1.89	5,934,600,000	1.74	5,507,100,000
3	Bungoma	2.85	8,949,000,000	2.81	8,893,650,000
4	Busia	1.90	5,966,000,000	1.90	6,013,500,000
5	Elgeyo Marakwet	1.20	3,768,000,000	1.22	3,861,300,000
6	Embu	1.42	4,458,800,000	1.36	4,304,400,000
7	Garissa	2.21	6,939,400,000	2.22	7,026,300,000
8	Homa bay	2.13	6,688,200,000	2.13	6,741,450,000
9	Isiolo	1.25	3,925,000,000	1.34	4,241,100,000
10	Kajiado	1.91	5,997,400,000	2.03	6,424,950,000
11	Kakamega	3.29	10,330,600,000	3.29	10,412,850,000
12	Kericho	1.82	5,714,800,000	1.70	5,380,500,000
13	Kiambu	2.98	9,357,200,000	2.98	9,431,700,000
14	Kilifi	3.45	10,833,000,000	3.30	10,444,500,000
15	Kirinyaga	1.31	4,113,400,000	1.34	4,241,100,000
16	Kisii	2.45	7,693,000,000	2.46	7,785,900,000
17	Kisumu	2.20	6,908,000,000	2.16	6,836,400,000

No	County	2018/2019		2019/2020	
		Allocation ratio	Equitable Share	Allocation ratio	Equitable Share
18	Kitui	2.78	8,729,200,000	2.79	8,830,350,000
19	Kwale	2.40	7,536,000,000	2.46	7,785,900,000
20	Laikipia	1.31	4,113,400,000	1.32	4,177,800,000
21	Lamu	1.13	3,548,200,000	0.82	2,595,300,000
22	Machakos	2.65	8,321,000,000	2.45	7,754,250,000
23	Makueni	2.27	7,127,800,000	2.34	7,406,100,000
24	Mandera	3.23	10,142,200,000	3.23	10,222,950,000
25	Marsabit	2.23	7,002,200,000	2.14	6,773,100,000
26	Meru	2.55	8,007,000,000	2.54	8,039,100,000
27	Migori	2.14	6,719,600,000	2.14	6,773,100,000
28	Mombasa	2.62	8,226,800,000	2.23	7,057,950,000
29	Murang'a	1.99	6,248,600,000	1.99	6,298,350,000
30	Nairobi	5.03	15,794,200,000	5.03	15,919,950,000
31	Nakuru	3.01	9,451,400,000	3.31	10,476,150,000
32	Nandi	1.71	5,369,400,000	1.69	5,348,850,000
33	Narok	2.03	6,374,200,000	2.54	8,039,100,000
34	Nyamira	1.52	4,772,800,000	1.52	4,810,800,000
35	Nyandarua	1.57	4,929,800,000	1.54	4,874,100,000
36	Nyeri	1.60	5,024,000,000	1.71	5,412,150,000
37	Samburu	1.41	4,427,400,000	1.46	4,620,900,000
38	Siaya	1.92	6,028,800,000	1.83	5,791,950,000
39	Taita Taveta	1.29	4,050,600,000	1.34	4,241,100,000

No	County	2018/2019		2019/2020	
		Allocation ratio	Equitable Share	Allocation ratio	Equitable Share
40	Tana River	1.77	5,557,800,000	1.85	5,855,250,000
41	Tharaka Nithi	1.16	3,642,400,000	1.24	3,924,600,000
42	Trans Nzoia	1.79	5,620,600,000	1.82	5,760,300,000
43	Turkana	3.43	10,770,200,000	3.33	10,539,450,000
44	Uasin Gishu	1.89	5,934,600,000	2.00	6,330,000,000
45	Vihiga	1.42	4,458,800,000	1.47	4,652,550,000
46	Wajir	2.70	8,478,000,000	2.70	8,545,500,000
47	West Pokot	1.57	4,929,800,000	1.58	5,000,700,000
	<b>Total</b>	<b>100</b>	<b>314,000,000,000</b>	<b>100</b>	<b>316,500,000,000</b>

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. (Prof.) Kamar): Division at the end.

*Third Schedule*

**Sen. (Eng.) Mahamud:** Madam Temporary Chairperson, I beg to move:

THAT the third Schedule of the Bill be deleted and substituted therefor with the following New Third Schedule-

**THIRD SCHEDULE (s. 5(2))**

**Conditional allocations to County Governments from Loans and Grants from Development Partners in Financial Year 2019/2020 (Figures are in Kenya Shillings)**

County	FY 2018/19	FY 2019/20													
	Total Loans and Grants	Transforming Health Systems for Universal Care Project (WEB)	IDA (World Bank) credit (National Agricultural and Rural Inclusive Growth Project (NARIGP))	IDA (World Bank) - Kenya Climate Smart Agriculture Project (KCSAP)	IDA (World Bank) credit: Kenya Devolution Support Project (KDSP) " Level 1 grant"	IDA (World Bank) credit: Kenya Urban Support Project (KUSP) - Urban Development Grant (UDG)	DANIDA Grant (Universal Healthcare in Devolved System Program)*	EU Grant (Instruments for Devolution Advice and Support IDEAS)	IDA (World Bank) credit: Water & Sanitation Development Project (WSDP)	IDA (World Bank) credit: Kenya Devolution Support Project (KDSP) " Level 2 grant"	Sweden- Agricultural Sector Development Support Programme (ASDSP II)	Change Mitigation and Adaptation Programme (WaTER)	Project (KUSP)- Urban Institutional Grants (UIG)	Urban Development Programme in Northern Kenya (DRPNK)	Total Loans and Grants
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J	Column K	Column L	Column M	Column N	Column O
Baringo	455,614,301	39,175,834	-	141,097,380	30,000,000	52,360,500	15,187,500	21,118,210	-	-	17,586,468	-	8,800,000	-	325,325,892
Bomet	495,931,469	35,000,000	-	180,000,000	30,000,000	168,334,800	17,718,750	-	-	-	17,416,549	-	8,800,000	-	457,270,099
Bungoma	772,708,758	143,042,792	350,000,000	-	30,000,000	300,977,100	26,718,750	-	-	-	18,814,092	80,000,000	8,800,000	-	958,352,734
Busia	514,468,709	81,106,071	-	116,993,505	30,000,000	101,071,500	17,812,500	-	-	-	18,257,455	80,000,000	8,800,000	-	454,041,031
Elgeyo/Marakwet	448,113,957	35,000,000	-	118,422,545	30,000,000	89,802,100	11,250,000	-	-	-	16,632,723	80,000,000	8,800,000	-	389,907,368
Embu	423,634,353	44,569,827	350,000,000	-	30,000,000	119,892,100	13,312,500	-	-	-	15,418,468	-	8,800,000	-	581,992,895
Garissa	1,619,534,869	47,421,765	-	157,422,850	30,000,000	233,506,000	20,718,750	-	400,000,000	-	20,520,018	-	8,800,000	-	918,389,383
Homa Bay	479,279,189	53,812,849	350,000,000	-	30,000,000	119,361,500	19,968,750	-	-	-	17,858,004	-	8,800,000	-	599,801,103
Isiolo	424,751,976	64,373,437	-	170,794,330	30,000,000	93,968,100	16,572,474	-	-	-	18,540,513	-	8,800,000	-	403,048,854
Kajiado	572,134,165	135,621,176	-	143,531,050	30,000,000	265,950,300	24,844,848	-	-	-	17,285,908	-	8,800,000	-	626,033,282
Kakamega	847,913,637	61,794,598	-	117,000,000	30,000,000	389,118,800	30,843,750	-	-	-	19,811,716	80,000,000	8,800,000	-	737,368,864
Kericho	557,172,175	71,544,247	-	199,459,400	30,000,000	256,299,000	17,062,500	-	-	-	16,415,491	-	8,800,000	-	599,580,638
Kiambu	2,230,951,780	80,079,440	331,195,210	-	30,000,000	1,885,993,000	27,937,500	-	-	-	17,404,219	-	8,800,000	-	2,381,409,369
Kilifi	1,130,33	129,11	350,00		30,000,	330,534,	32,343		600,00		19,723		8,800,		1,500,51

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	3,518	4,721	0,000	-	000	500	,750	-	0,000		,695	-	000	-	6,666
Kirinyan ga	375,297, 242	35,000, 000	350,00 0,000	-	30,000, 000	71,302,2 00	12,281 ,250	-	-		14,513 ,506	-	8,800, 000	-	521,896, 956
Kisii	590,705, 381	44,696, 901	350,00 0,000	-	30,000, 000	164,053, 800	22,968 ,750	45,697 ,438	-		18,527 ,653	-	8,800, 000	-	684,744, 542
Kisumu	1,260,70 5,051	35,000, 000	-	118,48 2,110	30,000, 000	773,573, 300	20,625 ,000	36,068 ,231	-		17,029 ,227	80,000 ,000	8,800, 000	-	1,119,57 7,868
Kitui	625,053, 090	129,88 6,088	350,00 0,000	-	30,000, 000	232,374, 200	26,062 ,500	-	-		20,392 ,968	-	8,800, 000	-	797,515, 756
Kwale	872,997, 000	157,70 6,559	350,00 0,000	-	30,000, 000	50,000,0 00	22,500 ,000	44,360 ,883	300,00 0,000		19,348 ,633	-	8,800, 000	-	982,716, 075
Laikipia	440,883, 643	35,000, 000	-	131,02 7,150	30,000, 000	50,000,0 00	12,281 ,250	21,345 ,341	-		16,625 ,223	-	8,800, 000	-	305,078, 964
Lamu	349,454, 694	35,000, 000	-	157,50 7,010	30,000, 000	50,000,0 00	10,593 ,750	-	-		14,265 ,997	-	8,800, 000	-	306,166, 757
Machako s	1,371,26 0,080	129,85 8,778	-	150,15 6,390	30,000, 000	1,018,32 0,500	24,843 ,750	-	-		17,869 ,663	-	8,800, 000	-	1,379,84 9,081
Makueni	559,260, 092	89,179, 782	350,00 0,000	-	30,000, 000	136,261, 600	21,281 ,250	50,180 ,747	-		19,051 ,135	-	8,800, 000	-	704,754, 514
Mandera	586,255, 092	125,79 1,038	-	200,00 0,000	30,000, 000	175,819, 500	30,281 ,250	-	-		22,822 ,072	-	8,800, 000	-	593,513, 860
Marsabit	519,678, 603	57,240, 000	-	156,11 4,090	30,000, 000	50,000,0 00	29,133 ,697	23,851 ,133	-		22,466 ,188	-	8,800, 000	150,00 0,000	527,605, 108
Meru	448,987, 235	35,000, 000	299,97 1,780	-	30,000, 000	116,890, 200	23,906 ,250	-	-		17,575 ,209	-	8,800, 000	-	532,143, 439
Migori	982,299, 570	76,811, 165	350,00 0,000	-	30,000, 000	518,367, 800	20,062 ,500	43,668 ,076	-		17,805 ,472	-	8,800, 000	-	1,065,51 5,013
Mombasa	749,726, 174	37,921, 806	-	-	30,000, 000	-	24,562 500	-	1,550,0 00,000		16,374 963	-	-	-	1,658,85 9,269
Murang'a	382,120, 438	76,894, 209	307,62 3,650	-	30,000, 000	62,437,6 00	18,656 ,250	-	-		16,369 ,053	-	8,800, 000	-	520,780, 762
Nairobi City	215,149, 968	96,359, 510	-	-	30,000, 000	-	47,156 250	-	-		21,183 840	-	-	-	194,699, 600
Nakuru	1,474,86 5,158	58,346, 857	350,00 0,000	-	30,000, 000	1,084,84 3,300	41,107 ,213	-	-		18,507 ,501	-	88000 00	-	1,591,60 4,871
Nandi	616,995, 189	46,342, 186	343,92 9,300	-	30,000, 000	177,231, 700	16,031 ,250	-	-		16,507 ,185	80,000 ,000	8,800, 000	-	718,841, 621

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Narok	448,450,203	38,282,966	350,000,000	-	30,000,000	74,905,300	19,031,250	-	-	-	17,793,235	-	8,800,000	-	538,812,751
Nyamira	424,043,052	35,000,000	350,000,000	-	30,000,000	114,705,300	14,250,000	-	-	-	16,937,554	-	8,800,000	-	569,692,854
Nyandarua	466,332,856	35,000,000	-	117,268,690	30,000,000	135,543,400	14,718,750	20,223,224	-	-	15,987,360	-	8,800,000	-	377,541,424
Nyeri	522,609,757	50,181,184	-	186,033,960	30,000,000	236,639,100	15,000,000	-	-	-	15,187,858	-	8,800,000	-	541,842,102
Samburu	473,519,323	35,000,000	350,000,000	-	30,000,000	50,000,000	13,218,750	32,159,348	-	-	18,994,320	-	8,800,000	-	538,172,418
Siaya	428,874,926	42,327,625	-	142,126,290	30,000,000	50,000,000	25,932,368	-	-	-	16,561,840	80,000,000	8,800,000	-	395,748,123
Taita Taveta	820,585,453	56,942,903	-	117,024,000	30,000,000	50,000,000	12,093,750	42,394,162	400,000,000	-	17,060,386	-	8,800,000	-	734,315,201
Tana River	507,651,269	50,849,353	-	200,000,000	30,000,000	50,000,000	16,593,750	15,431,865	-	-	20,358,867	-	8,800,000	-	392,033,835
TharakaNithi	326,966,757	40,049,752	-	152,374,180	30,000,000	50,000,000	10,875,000	-	-	-	15,518,089	-	8,800,000	-	307,617,021
Trans Nzoia	745,728,311	36,686,728	350,000,000	-	30,000,000	299,106,900	16,781,250	-	-	-	16,768,813	80,000,000	8,800,000	-	838,143,691
Turkana	507,247,478	84,141,376	350,000,000	-	30,000,000	95,023,200	32,156,250	-	-	-	25,346,766	-	8,800,000	200,000,000	825,467,592
UasinGishu	1,080,111,632	40,028,573	-	200,000,000	30,000,000	630,147,800	25,961,694	50,223,504	-	-	16,331,289	80,000,000	8,800,000	-	1,081,492,860
Vihiga	661,090,578	56,065,640	350,000,000	-	30,000,000	250,950,700	13,312,500	-	-	-	15,724,263	80,000,000	8,800,000	-	804,853,103
Wajir	1,611,438,084	35,000,000	-	153,172,330	30,000,000	165,643,500	25,312,500	24,481,325	250,000,000	-	23,548,494	-	8,800,000	-	715,958,149
West Pokot	562,497,958	35,000,000	-	117,291,410	30,000,000	73,392,300	14,718,750	21,495,096	-	-	18,586,308	80,000,000	8,800,000	-	399,283,864
<b>Total</b>	<b>36,981,384,138</b>	<b>2,994,247,736</b>	<b>7,232,719,940</b>	<b>3,643,298,670</b>	<b>1,410,000,000</b>	<b>11,464,702,500</b>	<b>986,583,544</b>	<b>492,698,583</b>	<b>3,500,000,000</b>	<b>4,890,000,000</b>	<b>849,626,237</b>	<b>880,000,000</b>	<b>396,000,000</b>	<b>350,000,000</b>	<b>39,089,877,210</b>

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. (Prof.) Kamar): Division will be at the end.

*Forth Schedule*

*(Question, that the Fourth Schedule be part of the Bill proposed)*

**The Temporary Chairperson** (Sen. (Prof.) Kamar): Division will be at the end.

*Clause 2*

*(Question that Clause 2 be part of the Bill proposed)*

*The Title*

*(Question that the Title be part of the Bill proposed)*

**Sen. (Eng.) Mahamud:** On a point of order, Madam Temporary Chairperson---

**The Temporary Chairperson** (Sen. (Prof.) Kamar): What is your point of order?

*(Sen. (Eng.) Mahamud spoke off record)*

**The Temporary Chairperson** (Sen. (Prof.) Kamar): We are not yet there. We are in the Title itself.

*Clause 1*

*(Question that Clause 1 be part of the Bill proposed)*

*Short Title*

**Sen. (Dr.) Mahamud:** Madam Temporary Chairperson, I beg to move:

THAT the short title of the Bill be deleted and substituted therefor with the following new clause-

Short title and commencement

1. This Act may be cited as the County Allocation of Revenue Act, 2019, and shall come into force upon publication in the Gazette.

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Chairperson, I feel duty bound to say something about the amendment of the Short Title.

**The Temporary Chairperson** (Sen. (Prof.) Kamar): May I propose so that you can contribute?

*(Question of the amendment proposed)*

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Chairperson, I just want to go on record on this particular amendment. If you remember in the Division of Revenue Bill, the National Assembly has played mischief to say that the Act will be deemed to come into force on 1<sup>st</sup> of July. This is a contradiction of what has been done in the Division of Revenue Act.

In this amendment, what is contained in the Bill is that this Act may be cited as the County Allocation of Revenue Act, 2019. However, it does not have provisions as to

when the Act comes into force. Without the amendment, it could have come into force by virtue of the Constitution after 14 days. It has been specified as to when it comes into force.

If you read that together with what we are doing with the amendment that was read earlier and Article 11, it comes into force retroactively. This is something which is in the Act; it is not the Bill whose commencement date was backdated. This is a normal way of dealing with Bills instead of saying that the commencement date be backdated.

I wanted that to go on record, because somebody may use the proceedings of this Committee of the Whole in the case in court and say that we have shifted our position in the consideration of the DORA. We have not shifted ground; in fact we are doing what the Constitution requires of us.

**The Temporary Chairperson** (Sen. Prof. Kamar): Thank you, Sen. Orengo. Let us now proceed.

*Clause 1*

*(Question, that Clause 1 be part of the Bill, proposed)*

**The Temporary Chairperson** (Sen. Prof. Kamar): Hon. Senators, before we go to Division, I would like to request the Tellers that we had before to come forward. They did an excellent job and they will continue to serve as Tellers.

The next one is New Clause 11.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Chairperson, I propose that the three questions be posed and Senators answer either in the affirmative or negative on different questions. We are in Kitui and I am sure we can balance this thing.

*(Loud consultations)*

**The Temporary Chairperson** (Sen. Prof. Kamar): Hon. Senators, the Senator for Makueni has made a request that we read all the three questions and you answer “Yes” or “No” for each one of them.

*(An hon. Senator spoke off record)*

I need your concurrence.

**Hon. Senators:** Yes!

**The Temporary Chairperson** (Sen. Prof. Kamar): I know the Speaker’s dinner is waiting. Therefore, the first one is on New Clause 11.

*(Roll Call voting in progress)*

*(Sen. Ochillo-Ayacko voted in sign language)*

**The Temporary Chairperson** (Sen. (Prof.) Kamar): Senator, I do not seem to have heard you. You are talking in a different language from the usual one that you always use. Please, come out clearly.

**Sen. Ochillo-Ayacko:** Madam Temporary Chairperson, on ‘Thing’ One, I vote “Yes---”

**The Temporary Chairperson** (Sen. (Prof.) Kamar): For?

**Sen. Ochillo-Ayacko:** On Question One, I vote “Yes;” on Question Two, I vote “Yes;” and on Question Three, I vote “Yes.”

**The Temporary Chairperson** (Sen. (Prof.) Kamar): Yes, that is English. Thank you.

What is your point of Order, Sen. Orengo?

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Chairperson, the Speaker gave us direction on how to vote. Once that direction is given – considering that we are being watched by the public – and then we bring all sorts of versions, we are a House of record, and that is why we go through this process meticulously. Otherwise, even in a *baraza*, they do things better. For the authority and decorum of the House, let us stick to what the Standing Orders say. The Speaker was not playing theatrics when he was telling us how to vote. If we follow those guidelines, we will then take a shorter time voting.

**The Temporary Chairperson** (Sen. (Prof.) Kamar): Thank you, Senator. It was for that reason that I had to ask the Senator to repeat, and we managed to pronounce “question” properly.

*(The Senators proceeded with roll call voting)*

*(Voting in Progress)*

**The Temporary Chairperson** (Sen. Prof.) Kamar): Thank you very much. That brings us to the end and the results shall be announced shortly.

## DIVISION

### ROLL CALL VOTING

*(Question, that New Clause 11 be now read a Second Time, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cheruiyot, Kericho County; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi County; Sen. Halake, Isiolo County; Sen. (Eng.) Hargura, Marsabit County; Sen. Iman, Garissa County; Sen. M. Kajwang’, Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Dr.) Langat, Bomet County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Mpaayei, Kajiado County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghishio, West Pokot County; Sen. Wambua, Kitui County; Sen. Wario, Tana River County and Sen. Wetangula Bungoma County.

**NOES:** Nil

**Teller of the Ayes:** Sen. Halake

**Teller of the Noes:** Sen. Were

**The Temporary Chairperson** (Sen. (Prof.) Kamar): Hon Senators, the results are as follows.

**AYES:** 32

**NOES:** Nil

**ABSENTIONS:** Nil

*(Question carried by 32 votes to Nil)*

### **DIVISION**

#### **ROLL CALL VOTING**

*(Question, that the First Schedule, The Third Schedule and Clause 1 be amended as proposed, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cheruiyot, Kericho County; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi County; Sen. Halake, Isiolo County; Sen. (Eng.) Hargura, Marsabit County; Sen. Iman, Garissa County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Dr.) Langat, Bomet County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Mpaayei, Kajiado County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghio, West Pokot County; Sen. Wambua, Kitui County; Sen. Wario, Tana River County and Sen. Wetangula Bungoma County.

**Teller of the Ayes:** Sen. Halake

**NOES:** Nil.

**Teller of the Noes:** Sen. Were

**The Temporary Chairperson** (Sen. (Prof.) Kamar): Hon Senators, the results are as follows.

**AYES:** 32

**NOES:** Nil

**ABSENTIONS:** Nil

*(Question carried by 32 votes to Nil)*

## DIVISION

### ROLL CALL VOTING

*(Question, that Clauses 3, 4, 5, 6, 7, 8, 9, 10, New Clause 11, the First Schedule (as amended) the Second Schedule, the Third Schedule (as amended), the Fourth Schedule, Clause 2 the Title and Clause 1 (as amended), be part of the Bill, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cheruiyot, Kericho County; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi County; Sen. Halake, Isiolo County; Sen. (Eng.) Hargura, Marsabit County; Sen. Iman, Garissa County; Sen. M. Kajwang, Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Dr.) Langat, Bomet County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Mpaayei, Kajiado County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orenge, Siaya County; Sen. Outa, Kisumu County; Sen. Poghiso, West Pokot County; Sen. Wambua, Kitui County; Sen. Wario, Tana River County and Sen. Wetangula Bungoma County.

**Teller of the Ayes:** Sen. Halake

**NOES:** Nil

**Teller of the Noes:** Sen. Were

**The Temporary Chairperson** (Sen. (Prof.) Kamar): Hon Senators, the results are as follows.

**AYES:** 32

**NOES:** Nil

**ABSENTIONS:** Nil

*(Question carried by 32 votes to Nil)*

**The Temporary Chairperson** (Sen. (Prof.) Kamar): Where is the Mover of the County Allocation of Revenue Bill (Senate Bills No 8 of 2019)?

**Sen. (Eng.) Mahamud:** Madam Temporary Chairperson, I beg to move that the Committee of the Whole reports progress to the Senate its consideration of the County Allocation of Revenue Bill (Senate Bills No 8 of 2019) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## REPORT AND CONSIDERATION OF REPORT

THE COUNTY ALLOCATION OF REVENUE BILL  
(SENATE BILLS NO 8 OF 2019).

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Chairperson, you have the Floor.

**Sen. (Prof.) Kamar:** Mr. Deputy Speaker, Sir, I beg to report that the Committee of the Whole has considered the County Allocation of Revenue Bill (Senate Bills No 8 of 2019) and its approval thereof with Amendments.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Mover?

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee on the said report and request Sen. Wetangula to second.

**Sen. Wetangula:** I second.

*(Question proposed)*

*(Question put and agreed to)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Mover?

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, I beg to move that the County Allocation of Revenue Bill (Senate Bills No. 8 of 2019) be now read a third time, and I ask Sen. Mutula Kilonzo Jnr. to second.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I second.

*(Question proposed)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I now direct that the doors be locked and the bars or its equivalent be drawn.

*(The doors were closed and the Bar drawn)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Senators, the Tellers who have been of help to the House this afternoon have done a good job. They are, therefore, asked to resume duty. Let us proceed to vote.

*(The Senators proceeded to vote by roll call)*

Order, hon. Members. For the future, Senator for Tana River County, *ukisema naunga mkono*, meaning that you support, you are not supporting; you are voting either “Yes, No or Abstaining.” Although you are ahead of many of us in the language, be careful not to go outside the exact intended meaning of the voting process.

**Sen. Wario:** Mr. Deputy Speaker, Sir, point taken.

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

**THIRD READING****DIVISION****ROLL CALL VOTING****THE COUNTY ALLOCATION OF REVENUE BILL  
(SENATE BILLS NO. 8 OF 2019)**

*(Question, that the County Allocation of Revenue Bill  
(Senate Bills No. 8 of 2019) be read a Third Time,  
put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi County; Sen. Hargura, Marsabit County; Sen. Iman, Garissa County; Sen. (Prof.) Kamar; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Dr.) Langat, Bomet County; Sen. M. Kajwang', Homa Bay County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Mpaayei, Kajiado County; Sen. Mutula Kilonzo Jr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Homa Bay County; Sen. Olekina, Narok County; Sen. (Prof.) Ongeru, Kisii County; Sen. Outa, Kisumu County; Sen. Poghisio, West Pokot County; Sen. Wambua, Kitui County; Sen. Wario, Tana River County and Sen. Wetangula, Bungoma County

**Teller of the Ayes:** Sen. Halake

**NOES:** Nil

**Teller of the Noes:** Sen. Were

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, we now have the results. They are as follows:

**AYES:** 32

**NOES:** Nil

**ABSTENTIONS:** Nil

The "Ayes" have it.

*(The question was carried by 32 votes to Nil)*

*(The Bill was accordingly read the Third Time and passed)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I would like to thank you for the excellent discharge of this important national duty this afternoon. I do note that it is nine o'clock in the night. I thought I should thank you for doing this for our country.

That brings us to the end of the Business today. With the guidance, support and directions of our host, Sen. Wambua, you can enjoy Kitui Town.

Let me also remark that this is a very important Bill which should be transmitted to the National Assembly in the fastest means possible. If possible, overnight with the expedition that it deserves.

Finally, colleagues, I am reminded that the Speaker of the Senate is hosting a dinner for all of us tonight after this sitting.

Open the doors first so that we can do the next thing. I direct the doors be opened and the rope be removed.

*(The Door was opened and the rope removed)*

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

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

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, we thought that for good order and courtesy that the Speaker and the Members of County Assembly (MCAs) be with us through out. In terms of benchmarking, we thank them for being with us throughout the night.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. On behalf of the Senate, I thank the Speaker of the Kitui County Assembly and the MCAs present for sitting throughout this afternoon. Thank you for your dedication to duty. We appreciate you.

*(Applause)*

### ADJOURNMENT

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, it is now 9.03 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Wednesday 18<sup>th</sup> September, 2019 at 2.30 p.m.

The Senate rose at 9.03 p.m.