

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 14th April, 2020

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

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

PRAYER

PAPERS LAID

The Speaker (Hon. Lusaka): Chairperson of the Committee on Finance and Budget, there will be no physical laying of the Papers, but you will just lay them.

REPORT ON THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILLS NO. 3 OF 2020)

Sen. (Eng.) Mahamud: Mr. Speaker Sir, I beg to lay the following Paper on the Table of the House-

The report of the Committee on Finance and Budget on the Division of Revenue Bill (National Assembly Bills No. 3 of 2020).

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

The Speaker (Hon. Lusaka): Well done, next.
The Senate Majority Leader.

PROGRESS REPORTS OF THE *AD HOC* COMMITTEE ON THE COVID-19 SITUATION IN KENYA

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker Sir, I beg to lay the following Papers on behalf of the Chairperson of the *ad hoc* Committee on the Coronavirus (COVID-19) situation in Kenya-

(1) The First Progress Report of the *Ad hoc* Committee on the COVID -19 situation in Kenya.

(2) The Second Progress Report of the *Ad hoc* Committee on the COVID -19 situation in Kenya

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(Sen. Murkomen laid the documents on the Table)

The Speaker (Hon. Lusaka): Next Order.

NOTICE OF MOTION

ADOPTION OF PROGRESS REPORTS OF THE AD-HOC COMMITTEE ON COVID-19 SITUATION IN KENYA

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

THAT, the Senate adopts the First and Second Progress Reports of the *ad hoc* Committee on the Covid-19 situation in Kenya, laid on the Table of the Senate on Tuesday, 14th April, 2020.

I thank you.

The Speaker (Hon. Lusaka): Next Order.

STATEMENTS

The Speaker (Hon. Lusaka): Can we hear from Sen. Orengo, the Senate Minority Leader?

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

The Speaker (Hon. Lusaka): What is your intervention, Sen. (Dr.) Kabaka?

Sen. (Dr.) Kabaka: Thank you, Mr. Speaker, Sir. I was not supposed to be here today, but I came in because of the things that have happened in Machakos County. I wanted to issue a Statement, which is ready, but I do not know where it is.

The Speaker (Hon. Lusaka): I have not seen any Statement from you.

Sen. (Dr.) Kabaka: Mr. Speaker, Sir, I gave the three hours' notice. I was here by 10.00 a.m.

The Speaker (Hon. Lusaka): Okay, let Sen. Orengo give his Statement as they try to trace your Statement.

Sen. (Dr.) Kabaka: Thank you, Mr. Speaker, Sir.

DEATH AND BURIAL OF JAMES OYUGI ALLEGEDLY DUE TO COVID-19 DISEASE

The Senate Minority Leader (Sen. Orengo): Mr. Speaker Sir, I rise to seek a Statement under Standing Orders No. 47(1).

Mr. Speaker, Sir, pursuant to Standing Orders No. 47(1) I rise to make a Statement on an issue of national concern, namely; the burial of Mr. James Oyugi Onyango, a resident of Siaya County, who reportedly died of the Coronavirus Disease (COVID-19).

COVID-19 is a worldwide pandemic that has brought serious challenges to our normal life and the public health system. The measures the national Government has

taken to contain the spread and impact of the pandemic in the country are commendable. However, we have to prepare for the worst before things can get better.

In the midst of the fight against COVID-19, certain regrettable incidents have occurred which have generated public outcry. In Simur Village, Ukwala Location, Ugenya Constituency in Siaya County, on the night of 12th and 13th April, 2020, James Oyugi Onyango reportedly died from COVID-19 and was buried in the middle of the night in extremely gruesome circumstances.

While we appreciate the circumstances the country is in, and cognisant of the Ministry of Health Guidelines on handling of bodies of persons who have died of COVID-19, the burial of James Oyugi's body elicits serious concerns that I would wish the *Ad-Hoc* Committee on COVID-19 Situation in Kenya to look into and revert to the House with a response.

The Committee should-

(1) State the cause of death of Mr. James Oyugi Onyango. That is because the family is yet to be given a report that explains the cause of his death.

(2) Explain the reason and justification for the burial of the deceased at night and in a shallow grave and without being placed in a coffin as the family had planned.

(3) Explain why there was a complete disregard of the protocols laid out by the Ministry of Health concerning respect for the dignity of the dead, hours of burial and sensitivity to acceptable cultural practices and traditions. This is in line with what the Ministry has put out as guidelines for burial of persons who have purportedly died from this disease.

(4) State why there was no consultation with the family and community before the burial.

Mr. Speaker, Sir, the entire homestead, which has more than 20 people, has been evacuated. There is nobody in that home and anybody who dares to go there has been taken up and quarantined. To that extent, it may be desirous of the authorities to fumigate that homestead for people to later go in to pay their last respect to the departed.

I thank you.

The Speaker (Hon. Lusaka): I will limit the contributions because we have limited time.

Sen. Khaniri: Thank you, Mr. Speaker, Sir. I support the Statement raised by the Senior Counsel, Sen. Orengo. I watched that clip in horror. It was traumatizing and it left me wondering how his family felt about it.

I support Sen. Orengo because I want the Ministry of Health to give a proper explanation as to why that had to happen to that gentleman and his family. That will help us avoid such an occurrence in the future.

I was also disgusted by the way in which the mainstream media kept on repeating the clip. The sight of what happened is not pleasing at all. We appeal to our mainstream media to only show such incidences once, if they have to. I do not know if the Members saw some of our mainstream media repeating that clip even ten times in one bulletin. I can imagine what that did to the family of the deceased. We urge the media, even as the Ministry comes with an explanation, to filter what they give to the public. They should do it for this country and the world at large.

Sen. Wetangula: Thank you, Mr. Speaker, Sir. What happened to our deceased brother in Siaya County is abhorrent and disgusting. In the community where you and I come from, we revere the dead more than the living. We cannot allow this kind of barbaric behavior in sending off our loved ones.

I do not speak for the Ministry, but I want to inform the distinguished Senator for Siaya County that the first victim of COVID-19, Engineer Namiinda, came from our area. When I consulted the Ministry, they gave us clear directions. They quarantined the family until such a time when they tested negative. The Ministry then advised that the body be wrapped in three body bags, put in a casket and sealed with the understanding that there will be no viewing of the body when it gets home for burial. The body of Engineer Namiinda was taken to Kitale and decently laid to rest.

I do not understand the reason as to why they turned around and did that to the gentleman in Siaya County. The only dead body that I have seen being treated like that is of an animal that has died of anthrax. This is detestable and we want the Committee to bring this to the fore for Kenyans not to suffer from trauma when they are already traumatized by the disease and the loss of their loved ones.

The Speaker (Hon. Lusaka): We will hear from Sen. Nyamunga then I will allow three more Members.

Sen. Nyamunga: Thank you, Mr. Speaker, Sir. I also stand to say one or two things on what happened to the late Mr. Onyango. From what I understand, he was a senior member of the Kenya Ports Authority (KPA). From where I sit, I have heard several explanations going round. We do not even know exactly what happened. We are not sure if he died of COVID-19. It was done in an inhumane way, and it was so difficult for us who are not even relatives.

It is important for us, as Kenyans, to know that COVID-19 is with us and it is going to claim many more lives. I pray it does not because Kenya has been doing very well in terms of the management of this disease. Going forward, it is important to know how we treat the dead. We should also have the families at heart.

Mr. Speaker, Sir, I also had an opportunity to listen to a conversation between the wife and one of the members of the public. It was also going round in the media. I do not know why his wife was treated like that. Even if the medical fraternity in that clinic where he was suspected that he could have had the virus and we know it is very dangerous; the way the whole thing was handled is very sad. It is unfortunate. Going forward, it is important for the Ministry of Health to give us a way forward and see how we are going to move.

The Speaker (Hon. Lusaka): Sen. Cheruiyot, then Sen. (Dr.) Ali, and Sen. Kihika.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir for giving me this chance. I share in the concerns of the Senate Minority Leader, Sen. Orengo, on the very unfortunate incident that befell one of his constituents. While I have heard many of my colleagues speak on the need for the Ministry of Health to give us answers on why these things are happening, it is time we also, as Members of Parliament (MPs), got introspective about our conduct during this COVID-19 pandemic.

The truth of the matter is that in so many of the things that are happening, we have allowed them as leaders in this Republic. As MPs, we have abdicated our responsibilities all in the spirit of trying to remain decent and not appear to be questioning what the Government is doing. We are hoping that you extend a hand of goodwill to the Government and expect that they will behave within the confines of the law. Well, the unfortunate thing is that no government anywhere in the world does that. That is why you have a Parliament to check on the excesses of the Government when things are normal. How about a time like now when we are living in abnormal times?

Mr. Speaker, Sir, as a House of Parliament, it is time we begin questioning many of the decisions that the Executive is taking without the approval of Parliament. It is not good enough to just say that because we are in a pandemic, the Government has a free reign to do anything. Even according to Section 58 of our Constitution when you declare a state of emergency, after 21 days, you need to revert to Parliament to get additional time to do that. This curfew that has been going on, for example, it is time that the Government comes back to us and says these are the reasons that we feel as Parliament you need to extend additional time to us.

See what happened the other day where somebody sits at a particular office, gazettes regulations and says if you are a citizen and you are found without a face mask, you will be charged Kshs20,000. The amount of Kshs20,000 is an arm and a leg to the ordinary Kenyan. Some of the people making these resolutions do not know what ordinary Kenyans go through. Therefore, as a House of Parliament, and this is expressly provided under Article 94 (5), no other body apart from Parliament has the authority to give instructions that have the force of law except Parliament.

The Speaker (Hon. Lusaka): You will have to manage your time because we do not have much time.

Sen. Cheruiyot: Mr. Speaker, Sir, I have concluded.

I am calling upon us that let us check on the excesses of the Government during this pandemic as a House of Parliament.

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

Sen. (Dr.) Ali: Thank you, Mr. Speaker, Sir. I send my condolences to the family. I am in support of what the Senate Minority Leader said. Even if these people are sick, these are our people and we have to respect them. They are human beings and human beings are at the top of the stratum. When you misbehave and treat our dead like that, then what do you expect? This is how stigmas arise. The COVID-19 is a disease but if you stigmatize it to that level, then it is going to cause a lot of damage and problems to this country.

It is also going to cause a lot of psychological and mental problems to the families concerned. As we have already been told by Sen. Khaniri and those people who watched the video clip, if the MPs can see it that way, what about the family? This is a serious issue and we should be careful to take care of our people in whichever way possible. Stigma and mental illness can cause more damage than COVID-19 itself.

The Speaker (Hon. Lusaka): Proceed, Sen. Kihika.

Sen. Kihika: Thank you, Mr. Speaker, Sir. I also rise to support the Statement sought by the Senate Leader of Minority.

I am also one of the people who watched the recording that trended a few days ago in social media and it was gut wrenching. I cannot imagine what that family must be going through. It was so inhumane. Within our African cultures, we value and give dignity and respect to the dead. It was completely wrong for what we saw going round, especially also doing it at 2.00 a.m.

I just did not understand why that would even be the case or even with the proper protocols, the family was treated the way that it was. With the proper protocols, this could have been done better and must be done better going forward.

Back in the 1980s, we saw this sort of stuff with those who had died of HIV/AIDS. That is what led to a lot of the stigma that was attached to that disease and continues to be the case even today. We cannot allow this to happen as then the stigma that will be attached and continues to be attached to this COVID-19 will get out of hand.

Mr. Speaker, Sir, I also join my colleagues in saying that, as Parliament, we must do our part. Despite what is going on right now, we must still continue to check the excesses of the Executive.

The Speaker (Hon. Lusaka): The Chairperson of the Ad-Hoc Committee on the COVID-19 Situation in Kenya, I hope you have heard. Take up the matter and report to us next week when we meet on Tuesday.

Sen. (Dr.) Kabaka, proceed with your Statement fast.

Sen. (Dr.) Kabaka: Mr. Speaker, Sir, I have not received that Statement yet.

The Speaker (Hon. Lusaka): I approved it. It was here.

Sen. (Dr.) Kabaka: Mr. Speaker, Sir, I have been told throughout to wait.

The Speaker (Hon. Lusaka): Give him his Statement. I approved it.

Sen. (Dr.) Kabaka: Mr. Speaker, Sir, I have not seen it please. That is why I have been looking around.

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

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, while Sen. (Dr.) Kabaka is looking for his Statement, sorry I forgot to give a Notice of Motion. I am asking for your indulgence because the Motion that is meant to alter our Calendar was skipped because we do not have papers here. With your indulgence, may I give the Notice of Motion.

The Speaker (Hon. Lusaka): Proceed, the Senate Majority Leader as we look for the Statement.

(Interruption of debate on Statements)

NOTICE OF MOTION

ALTERATION OF THE SENATE
CALENDAR FOR THE 2020 SESSION

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

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THAT, pursuant to Standing Orders Nos. 28 and 29, the resolution of the Senate made on 27th February, 2020 and on 7th March, 2020 regarding the Senate Calendar, the Senate now resolves to alter its Calendar further in respect of Part 1 and Part 3 of the Calendar to hold one sitting in each week on Tuesdays beginning on Tuesday, 21st April, 2020 until Tuesday, 2nd June, 2020 and the Senate Calendar regular sessions for the Fourth Session, 2020 be altered accordingly.

(Resumption of debate on Statements)

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

Sen. Wambua: Mr. Speaker, Sir, still on Statements, I have an approved Statement.

The Speaker (Hon. Lusaka): I did not approve yours. I think there was something we were to discuss.

Sen. Wambua: Mr. Speaker, Sir, my Statement is approved.

The Speaker (Hon. Lusaka): Is it approved by me?

Sen. Wambua: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Please, approach the Chair.

Sen. (Dr.) Kabaka, we will discuss with Sen. Wambua next time.

Sen. (Dr.) Kabaka: Mr. Speaker, Sir, my Statement is totally different.

The Speaker (Hon. Lusaka): Sen. (Dr.) Kabaka, proceed with your Statement because I have not yet approved the Statement by Sen. Wambua. There is a comment I made. I approved that Statement; I do not know who took it from here.

The Statement will be sought next week.

Next Order!

BILLS

First Reading

THE COUNTY RESOURCE DEVELOPMENT BILL (SENATE BILLS NO.2 OF 2020)

*(Order for the First Reading read – read the First Time and
ordered to be referred to the relevant Committee)*

The Speaker (Hon. Lusaka): Next Order!

First Reading

THE PROMPT PAYMENT BILL (SENATE BILLS NO.3 OF 2020)

(Order for the First Reading read –read the First Time and ordered to be referred to the relevant Committee)

The Speaker (Hon. Lusaka): Next Order!

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

The Speaker (Hon. Lusaka): Sen. (Dr.) Kabaka, I will give you an opportunity next week. It is so directed because we do not have time.

Sen. (Dr.) Kabaka: Mr. Speaker, Sir, you have discretion because I explained the reason I came here. I was not supposed to be here today. Again, it is the office that has misplaced the Statement, and you had given me the opportunity.

The Speaker (Hon. Lusaka): Please, proceed.

STATEMENT

PLANS BY THE COUNTY GOVERNMENT OF MACHAKOS TO TAKE A CREDIT FACILITY OF KSHS1 BILLION

Sen. (Dr.) Kabaka: Mr. Speaker, Sir, pursuant to Standing Order No.47 (1), I rise to make a Statement on an issue of national concern, namely, plans by the County Government of Machakos to take a credit facility of Kshs1 billion.

Mr. Speaker, Sir, vide a letter dated 8th April, 2020 addressed to the Clerk of the County Assembly of Machakos, Mr. Mbiuki, and copied to the Speaker of the County Assembly, the Governor of Machakos County Government, Dr. Alfred Nganga Mutua, sought approval of the Assembly to borrow an amount of Kshs935,600,000.

The letter invokes Article 212 (b) of the Constitution 2010, read together with Section 142 of the Public Finance Management Act, 2012 and Section 81(d) of the County Governments Act. The Machakos County Treasury has requested the County Assembly of Machakos to approve a short-term cash flow management facility to address the following expenditure-

- (1) Emergency mitigation measures relating to COVID-19 pandemic.
- (2) Salaries and extraneous allowance for health professionals and workers.
- (3) Salaries and allowances for Members of the County Assembly.
- (4) Salaries for county staff.

Mr. Speaker, Sir, from the foregoing facts, the County Government of Machakos should-

(1) Explain why the National Treasury has refused to release the annual equitable share for the county as prescribed in its budget.

(2) Explain if he has complied with the national Government directive to pay all the pending bills amounting Kshs126 billion, inclusive of interest, to enable the National Treasury release its fair share of the equitable share.

(3) Explain how he plans to repay the said huge loan facility with interest that will run to over Kshs1 billion, without interfering with county development plans.

(4) Explain how he has spent Kshs100 million received from donors and allegedly allocated it to the COVID-19 pandemic kitty.

(5) Explain why he has not suspended non-essential expenditure to free more money that he requires before borrowing.

(6) State how own-source revenue funds of Kshs2.2 billion collected by the County Government of Machakos have been spent.

I urge the Standing Committee on Devolution and Intergovernmental Relations to take up this matter with the view of interrogating the matters raised and revert to the House, or all other related committees, even the Committee on Finance and Budget.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): I hope that the Chairperson of the Committee will pick up the matter.

We will have to reorganize the Order Paper since the *Ad hoc* committee is still held up. We will move to Order No.11.

We will spend one hour on The Division of Revenue Bill and another one hour on the *Ad Hoc* Committee Report. We will have the Senate Majority Leader.

Yes, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I thought you would communicate that we had agreed that we will continue with business until 5.30 p.m., so that we can finish both.

The Speaker (Hon. Lusaka): The Senate Business Committee did agree that we will sit up to 5.30 p.m. That is why I am giving one hour for each Order.

Proceed, Sen. Murkomen.

BILL

Second Reading

THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILLS No.3 OF 2020)

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I beg to move that The Division of Revenue Bill (National Assembly Bills No. 3 of 2020) be now read a Second Time.

The Division of Revenue Bill is very important, not just for this House, but this country, our constitutional order and the management of the devolved system of Government. For the last seven years, this Bill has been passed in this House six times out of seven. The reason for that is obvious; that there were attempts in the first instance to deny this House the opportunity to participate in this Bill. Therefore, the Senate takes this Bill extremely seriously because we seized it through a battle, for this House to pass this Bill.

Mr. Speaker, Sir, last year, we had protracted negotiations between us and the National Assembly on the passing of The Division of Revenue Bill that led to various cases; one in the Supreme Court and the other which is ongoing in the National Assembly.

This House has been committed and passionate about giving more money to the counties. The difference between this Bill and the one for last year is that the Council of Governors (CoG), the Intergovernmental Budget and Economic Council (IBEC), which is chaired by the Deputy President and where the governors and the County Executive Committee Members (CECMs) for finance have agreed to the figures with the national Government.

It is unprecedented that we would have a situation where in two successive years, we are giving a similar amount of money to county governments; that is, Kshs316.5 Billion.

Mr. Speaker, Sir, as the national Government's resources and budget go higher, the county governments are being told to budget for similar resources. The challenge with this is that the county governments must reorganize their budgets and be prudent to ensure that the essential services are funded well. I would have wished for further resources to be devolved to the county governments based on the Division of Revenue Bill. I would have wished for equitable resources to go to the counties because it has been a consistent subject. It is an area that I have had interest in since I came to this House.

I came to the Senate to protect and push for more resources to the counties. I still have passion as it was seven years ago. However, considering the circumstances that have been compounded by the COVID-19 pandemic, we do not have the opportunity and luxury to engage in other protracted debates with the national Government and the National Assembly. I, therefore, urge this House to approve the Kshs316.5 billion that is meant to go to the county governments as part of the equitable share.

Mr. Speaker, Sir, this Bill goes ahead to provide for various grants that go to the counties. Some of the grants and additional allocations include the leasing of medical equipment, which resources have been subject of serious and robust investigations by an *Ad hoc* Committee of this House chaired by the Deputy Majority Leader.

The Report by the *Ad hoc* Committee investigating the Managed Equipment Services (MES) has been delayed by the pandemic because they have been unable to meet the stakeholders to complete the process. We have received important information that was publicized in the local dailies about the progress of the leased equipment. The leased equipment will take up Kshs5.6 billion.

The Level 5 hospitals continue to receive funding to a tune of Kshs4.3 billion. The Members of this House, who are serving a second term, will remember how a few worked so hard to ensure that the Level 5 hospitals receive grants from the national Government, because the counties where those hospitals are located were struggling with the management of the Level 5 hospitals. I am glad that one of the people who brought these amendments is the current Cabinet Secretary for Health. That shows that if we do the right thing, history will be very kind to us.

Mr. Speaker, Sir, a little amount of money has been set aside for the construction of county headquarters for a few counties. The rehabilitation of youth polytechnics has been allocated a grant of Kshs2 billion. There is an allocation from the levy fund of 15 per cent, which translates to Kshs9.4 billion. These are the resources that we pushed for, as a Senate, to be transferred to the counties.

Finally, we have conditional allocations, which are loans on grants that include the Kenya Devolution Support Programmes, the Transformed Health Service of Universal Care Project, DANIDA Universal Healthcare for Devolved System of Government, IDA National Agriculture and Rural Inclusive Growth Project, European Union (EU) instruments for devolution advice and support, World Bank – Kenya Urban Support Program (KUSP), IDA –Water and Sanitation Development Project (WSDP), Sweden Agriculture Sector Development Programme II, the EU- Water Tower Protection and Climate f Change Mitigation and Adaptation Programme and the Drought Resilience Programme in Northern Kenya.

I would like to talk about the conditional allocations. Over the years, we have said that this House must find a mechanism of accountability. After the donors have done different projects in the counties, most of the governors do double allocation. For instance, my county headquarters was done by the World Bank, which has also done most of the roads in Nairobi, Kisumu and Mombasa.

However, there have been instances where projects that have been donor-funded are budgeted for by county governments. Contractors are unscrupulously being paid for projects they have not done. There is also political mischief where county governments pretend to take ownership of the donor-funded projects, saying that they budgeted for the projects through the equitable share that is given by the national Government. That is political deceit. There are two kinds of deceits; one, stealing the money and, two, taking credit for resources that come from donors and grants run by an entity of the national Government. A lot of accountability needs to be achieved in this area.

Mr. Speaker, Sir, the last issue that the Chairperson of the Committee will address as he seconds this Motion is the question of the allocation to Nairobi City County. This Bill purports to remove the Kshs15 billion from being allocated to Nairobi City County and take it back to the national Government. We do not know how much Nairobi City County will get until we go to the County Allocation of Revenue Bill. The County Allocation of Revenue Bill will state the figure that Nairobi City County will receive, how it is going to be divided and the agreements that are going to govern. That provision ought not to be in this Bill.

Nairobi City County will know its resources when we pass this Bill and when County Allocation of Revenue Bill is brought to this House. The formula for allocation is still under debate. We may succeed in getting the new formula to be used, or may use the old formula. After we have a formula, we can have a discussion as to how the resources of Nairobi City County will be apportioned between the entity that they transfer their functions to and the remaining functions for Nairobi City County.

This is an important Bill. I, therefore, urge this House that on matters of strategy, they should swim with the current. However, on matters of principle, they should stand firm. This House has faced numerous challenges. I am informed that the Supreme Court is to issue its ruling today on the advisory opinion that was sought by the Council of Governors (CoG) on the division of revenues. I do not know what the ruling by the Supreme Court will be, but we are in court over more than 30 Bills that have been passed unconstitutionally.

Mr. Speaker, Sir, sometimes the journey becomes so difficult. I have faced personal problem because of standing with this House. However, we cannot waiver. As the Senate, we must decide not to use the mandate of this House to do our day-to-day politics. We must continue standing firm.

In 2013, we stood so firm on the division of revenue; that there was no Majority or Minority side. There was no Jubilee Party or Coalition for Reforms and Democracy (CORD). That was because we had the interest of the people at heart. Sometimes one can get tired because of being beaten, harassed or called names. However, we must exercise patience and commitment. If you trip towards the end of the race, you will not get a medal. We should not wash away the hard work that we have done for the last seven years by falling in to the trap of our political parties, factions of our political parties or our interests for the 2022 General Elections.

I pray that we may remain firm as a Senate. I said something on my social media accounts, and I would like to repeat it in this House. Maybe people like Sen. Orenge have seen better days before. However, in my short time of seven years in politics, I feel that the independence and usefulness of Parliament as a House that negotiates on behalf of the people have been watered down.

I watch countries such as the United Kingdom (UK), the United States of America (USA) and others that we admire, and see how the legislature is involved in the national conversation and negotiation on behalf of the people, whether it is on the COVID-19 or any other budget. You will see that The Congress is involved in the USA. The Government of the USA always wants to reach out to the chairpersons of the various committees of the Congress, be it the majority or the minority side. The Congress is consulted in the USA because it has protected its usefulness and mandate.

I keep emphasizing that even for us in the Jubilee Party, our usefulness can only be achieved if we still have anything left of us as a mandate, as a Parliament. However, if Parliament is reduced to a rubberstamp, where we only come to vote here and go because few belong to different parties, we will fall into the trap of the old Parliament, where Members of Parliament (MPs) had to pass through State House to go home. This House more than ever – we do not know how long we will be here or hold these positions – must continue fighting for the independence of Parliament in everything we do.

Mr. Speaker, Sir, I beg to move and invite the Chairperson of the Senate Committee on Finance and Budget to second.

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, this Bill was read a First Time in the House on Tuesday, 31st March, 2020, and thereafter, committed to the Senate Committee on Finance and Budget, pursuant to the Section 8(1)(b) of the Public Finance Management (PFM) Act and Standing Order No.140(1).

Pursuant to Article 118(1) (b) of the Constitution and Standing Order No.140(5) of the Senate Standing Orders, the Committee in its consideration of the Bill, invited key stakeholders, including the National Treasury, the Attorney-General, the Ministry of Devolution and ASALS, Council of Governors (CoG), donors, Commission on Revenue Allocation (CRA) and the County Assembly Forum, to submit their views on the Bill. The Committee also invited other non-State actors to give their views and the general public, who similarly participated and submitted their contributions.

We invited the Attorney-General and the Ministry of Devolution and ASALS because of the transfer of some functions from the Nairobi City County Government to the national Government.

Mr. Speaker, Sir, the Bill as earlier mentioned, provides for the division of nationally raised revenue between the two levels of government as well as sets out specific resources to be provided to counties, such as-

- (a) conditional grants from the national Government level share of revenue;
- (b) conditional grants from proceeds of grants and loans from development partners; and,
- (c) allocation from the Fuel Levy Fund (FLF).

The Bill is accompanied by an explanatory memorandum as required in Article 218 (2) of the Constitution. I will not go into details of the memorandum.

The Bill proposes as follows-

Shareable revenue estimated to be Kshs1,856.7 trillion is proposed to be shared as follows-

(i) National Government, KShs1.533.1 trillion, of which, Kshs13.7 billion is given to counties as conditional allocations as shown below:

- (a) leasing of equipment - Kshs6.205 billion;
 - (b) compensation for user-fees forgone - Kshs900 million;
 - (c) Level 5 hospitals - Kshs4.326 million;
 - (d) supplement for construction of county headquarters - Kshs300 million; and,
 - (e) rehabilitation of youth polytechnics - Kshs2 billion.
- (ii) County Equitable Share - Kshs3.165 billion
- (iii) Equalization Fund - Kshs6.78 billion.
- (iv) Road Maintenance Fuel Levy Fund - Kshs9.43 billion.

(v) Additional Conditional allocations (loans and grants from development partners) - Kshs30.2 billion.

Aware of the prevailing economic conditions arising from the impact of the COVID-19 pandemic, it is predictable that the performance of the national revenue may be poor. Cognizant of that, the Financial Year 2020/21 Equitable Share may not grow from the previous year's allocation. The Committee's proposal for Equitable Share for the Financial Year 2020/21 is Kshs316.5 billion as provided in the Bill by the National Assembly.

Mr. Speaker, Sir, aware that the guidelines for the implementation of the Equalization Fund were quashed by the High Court of Kenya, the National Treasury should expeditiously establish a framework through which the fund can be disbursed in the counties as conditional grants. We can sustain it in that direction because funds from the fund have not been utilized for a long time. The National Assembly has its own ideas, but I think the court quashed that proposal. We need the National Treasury to move forward, so that a framework can be established

Clause 4(2) and 3 of the Bill introduces a new dimension on sharing revenue between the two layers of government. As the Senate is aware, Nairobi City County Government, pursuant to Article 187(2) of the Constitution, transferred four of its

functions as contained in the Deed of Transfer, Kenya Gazette Notice No.1609 of 25th February, 2020, to the national Government. The functions transferred are-

- (i) County health services;
- (ii) County transport services;
- (iii) County planning and development services; and,
- (iv) County public works, utilities and ancillary services

Mr. Speaker, Sir, the two sub-clauses mentioned above propose that Equitable Share Allocation for Nairobi City County Government be retained in the Consolidated Fund. Secondly, the Bill has proceeded to allocate Nairobi City County Government Kshs15.95 billion even before the County Allocation of Revenue Act (CARA) is in place. It is indicated that this allocation will be used to fund the functions that Nairobi City County Government has transferred to the national Government. This Kshs15.95 billion is the total allocation for Nairobi City County Government from sharable revenue for this financial year. Nobody knows what will happen to the County Assembly and the remaining ten functions.

Most of the stakeholders who submitted memoranda on the Bill took great exception to the provisions of these two sub-clauses in the Bill. The provisions were termed as unconstitutional and also going against the spirit of devolution.

The stakeholders cognizant of the Deed of Transfer of Functions recommended that-

(1) The Nairobi City County Government Equitable Share of allocation should directly be disbursed to the County Revenue Fund Account without any reductions as mandated by the Constitution under Article 219.

(2) Appropriation for the transfer of functions to be done through the County Budget and Appropriation Act passed by the County Assembly as mandated by the Constitution and PFM Act 2012.

(3) Allocations for the implementation of the transfer of functions should be directly disbursed through the County Revenue Fund Account to the Nairobi Metropolitan Services in an arrangement to be agreed on.

The Committee made several observations in relation to the provisions of sub-clauses 2 and 3. Cognizant of the provisions of the Deed of Transfer of Functions of Nairobi City County Government to the national Government, in particular Article 5 on the financing the delivery of the transferred functions, the Committee noted the provisions of Article 5(2) of the Deed of Transfer by the Nairobi City County Government---

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Members! I said it is against the rules to move from your seat.

Proceed, Sen. (Eng.) Mahamud. Do not also take a lot of time.

Sen. (Eng.) Mahamud: It is important that is mentioned because---

(An hon. Member spoke off record)

Sen. (Eng.) Mahamud: I have not even taken three minutes, my friend.

Mr. Speaker, Sir, cognizant of the provisions of the Deed of Transfer of Function of Nairobi City County Government to the national Government, and in particular Article 5 on financing the delivery of the transferred functions, the Committee noted the provisions in Article 5 of the Deed that “the Nairobi City County Government shall ensure that transferred functions are fully funded from the County Revenue Fund.”

This will, therefore, simply imply that appropriation shall be made from the County Revenue Fund to cater for the transferred functions.

Article 187 of the Constitution provides that if a function or a power is transferred from a government at one level to a government at the other level, constitutional responsibility for the performance of the function or exercise of the power shall remain with the government to which it is assigned by the Fourth Schedule.

It is, therefore, important to note that constitutional responsibility intends the preparation of budget and accountability for your expenditure of funds as contemplated in Article 226 of the Constitution.

Retention of equitable share of nationally raised revenue for Nairobi City County Government at national level will amount to usurpation of the constitutional mandate of the County Government to prepare its own budget and power of the county assembly to approve the said budget and exercise oversight over the expenditure.

Article 202 of the Constitution provides that revenue raised national shall be shared equitably among the national Government and county governments. There is no way in the Division of Revenue Bill that we are sharing money between two levels; the county governments and national Government, but a single county such as Nairobi City should come in.

Mr. Speaker, Sir, the Constitution, therefore, does not contemplate a situation where funds, which are supposed to go to the county, will be held at the national level.

Article 218 sets out a two-tier system for the division of revenue. That is what I have already said.

Clause 4(2) and (3) of the Bill as reads together with the Schedule proposes to retain this Kshs15.59 billion, which is the total allocation of the Nairobi City County Government. As I said earlier, we do not know how they intend to fund the other functions that are being retained by the county government, including the county assembly. Even though Nairobi City County Government has transferred four of its constitutionally bestowed 14 functions, existence of the county did not cease.

Following the various observations, the Committee recommends that the Bill be approved with amendments to Clause 4. The Amendment proposes deletion of sub-clauses (2) and (3).

(Applause)

Consequently, the Schedule to the Bill is proposed to be amended by deleting the purported equitable share allocation to the Nairobi City County, which was proposed to be retained in the Consolidated Fund.

The equitable share of Nairobi City County - this is our suggestion - should be provided for under County Allocation of Revenue Bill, upon which the Nairobi City County Government will under the County Appropriation Act, budget for all its functions, including the transferred functions.

The sum in respect to the health functions so appropriated should be transferred from the County Revenue Fund to a special purpose account opened at the Central Bank of Kenya for the purpose, in line with Article 207(2) of the Constitution. These details will come under County Allocation of Revenue Act (CARA) on how that will be done; the details will be provided for in CARA.

Mr. Speaker, Sir, the amendments we are proposing are, one, in a narrow sense, geared towards safeguarding the constitutional budgetary framework that seeks to ensure that devolved functions are adequately funded and that the county government structures discharge their roles as contemplated in Article 187(2) (b) of the Constitution.

In the broader sense, however, the recommendations to the Committee are underpinned by the duty incumbent upon the Senate to protect the interests of the county as set out in Article 96 of the Constitution.

The principles of devolution are anchored in Article 174 of the Constitution and for our purpose, Article 174 sets out that the objective of devolution are *inter alia*-

(a) to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them; and,

(b) to recognise the right of communities to manage their own affairs and to further their development.

It is on this basis that the Committee rejects the proposal that purports to take away the rights of the people of the County Government of Nairobi to determine their priorities in terms of development and funding of public services. This will set a dangerous precedent and result in a claw-back on the gains this country has made in ensuring greater participatory governance.

Mr. Speaker, Sir, with those few remarks, I beg to second.

Thank you.

(Question proposed)

The Speaker (Hon. Lusaka): Sen. Orengo, Sen. Wetangula, Sen. Mutula Kilonzo Jr. and Sen. Sakaja.

We do not have a lot of time.

The Senate Minority Leader (Sen. Orengo): Thank you very much, Mr. Speaker, Sir. I speak to this Bill with the remarks made by the Chair of the Committee on Finance and Budget at the forefront.

If there is anything that would be in the purview of the Senate to demonstrate why so many times people do not like things coming to the Senate, this is one of the issues that we must demonstrate; that it does not matter how many times the Senate is regarded in lower terms, so to speak. Anytime anything is brought here that does not comply with

the Constitution and the law of the land, I will always not be supportive of, for respect for the Constitution and the law of the land.

There is a reason accountability is a very important principle in our Constitution. I would dare say that it is not just accountability, but more accountability is what will bring good governance to this country. The prevailing view with a lot of leadership that exercises executive power, is the tendency to reject or be very weary of accountability. The most powerful people in the world, in very powerful offices, are subject to accountability. I do not know what is wrong in this country on issues to do with accountability.

The day the Senate will be given its respectable place in the governance of this nation is when I will know that democracy has really come to this country. For now, there are things that happen, but we cannot ignore or disregard, and what is being proposed in this Bill is really to kill devolution as we know it. It will begin with Nairobi since it is the county where most of the devolved funds go to in terms of the counties. If it can happen to Nairobi, it will happen to any county.

I speak very openly on this issue, and say that the Constitution is very clear. The Chairman of the Committee on Finance and Budget has referred to those provisions in the Constitution; that even if you transfer functions, the authority still remains with the institution, which is recognized under the Constitution. These funds are allocated to the people of Nairobi and to the County of Nairobi City. Therefore, the institutions of Nairobi City County must be responsible in overseeing these funds and knowing how they will be spent. It must not only be just overlooked, but also appropriated by the Nairobi City County.

Sen. Sakaja knows where my views were in terms of the way Nairobi was being run in so far as the transfer of these functions. However, we were not opening a Pandora's Box to enable these functions to be taken to the national Government. In fact, the Committee under the Gen. (Maj.) Mohammed Badi is not part of the national Government, although the functions are being performed under the direction of the national Government. That particular body, in essence, is still part of the governance structure within the Nairobi City County.

Mr. Speaker, Sir, I would clearly say that it does not matter, so long as what is being proposed is against the law of the land, we will stand counted and say that you cannot do that. That does not mean that we oppose the allocation of these funds to the counties.

For the counties, I would want to tell the governors that they become part of the problem. This is because if you compare how governors in Kenya hold themselves compared to a governor in the United States of America, those people know what power means; that power that is more moderated is the better functioning power than power that you build around images of greatness.

If you see the rostrums that these governors speak from, you cannot even see some of their faces. The letters "Governor" are so huge. If you look at the British Prime Minister or the American President, you can barely read the word 'president', but here there is "Governor," and if you try to look at the face, you cannot see it.

(Laughter)

You begin to ask yourself who is there. You begin to recognize the capacity only when you hear the things that I hear are happening in Bungoma.

I think we should start to humanize power and the authority that we are given under the Constitution. Therefore, I want to thank this Committee because this is not the first time; I think, many times. Even in the earlier Senate, and in this Senate, this particular Committee, is making us proud every time. When they come with their reports, it makes me proud every time.

(Applause)

If you hear a person saying that we are working with or supporting the Government, supporting the Government does not mean that you are cheering it into a hole. Part of it is to show the Government how to do things the right way. That is how you support a government. You do not support the Government by being told what to do, otherwise, you should not be here; you should be a youth winger somewhere.

(Applause)

The Speaker (Hon. Lusaka): Senate Minority Leader, please, manage your time.

The Senate Minority Leader (Sen. Orenge): So long as you wanted to be a Senator, and you are a Senator, please let us continue to lead by Article 10 of the Constitution on National Values and Principles of Governance, which include, among others, the rule of law, transparency and accountability. That is what will make Kenya great.

To the Senate Majority leader, please, never give up. This is the time for vigilance. Even in the United States of America (USA), it has been a time of vigilance. This institution will fight, but it is the one which is most vigilant that will always win.

I thank you.

The Speaker (Hon. Lusaka): Hon. Senators, after Sen. Wetangula, I will give each Member five minutes, so that we manage time.

Sen. M. Kajwang': On a point order, Mr. Speaker, Sir.

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

Sen. M. Kajwang': Mr. Speaker, Sir, I did not want to interrupt the distinguished Senator for Bungoma County. However, I note that the Report brought to this House by the Committee on Finance and Budget has been signed by all the Members. For the first time, nine out of nine! So, for rules of debate, could the Members of the Committee on Finance and Budget allow other Members to contribute because they have all fully adopted the Report?

The Speaker (Hon. Lusaka): Since Sen. Wetangula is already on the Floor, what you are saying makes sense, but let---

Sen. Wetangula: Mr. Speaker, Sir, we are speaking as Senators representing our counties and not as Members of committees. I want to support the views of my Chairperson of the Committee on Finance and Budget, the distinguished Senator for Mandera County. I will be very brief.

Mr. Speaker, Sir, the Division of Revenue Act (DORA) and the County Allocation of Revenue Act (CARA) are very distinct in law and under the Constitution. I do not understand how anybody can purport to allocate money to a county and take it away in the Division of Revenue Bill. That is only in the County Allocation of Revenue Bill. That is why the Chairperson of the Committee on Finance and Budget has said that we recommend that this House passes this Bill and that at the next stage, we must amend to remove this misguided removal of money from Nairobi City County.

Mr. Speaker, Sir, only four of Nairobi City County functions have been moved to the Nairobi Metropolitan Services. How on earth do you even take away the entire 100 per cent allocation from Nairobi City County? What happens to the other 10 functions? What happens to the County Assembly of Nairobi? What happens to all the issues that go on in Nairobi? This is called impunity, disrespect for the law and the Constitution.

Nobody in his right frame of mind, at whatever level, whether it is National Assembly or in the Executive, should embark on such a misadventure. This will kill devolution. In fact, popular as it appears, the assault on Nairobi City County is actually unconstitutional. It is a clawback on devolution that this House has sworn to defend. We must tirelessly defend that.

Secondly, Mr. Speaker, Sir, there is an allocation of money for planting trees in water towers; Kshs80 million every year for three years from the European Union (EU). If you go around the water towers in the counties, not a single tree has been planted in the first one year. The money has already been used. This money is most likely being misappropriated. I would like to urge the distinguished Senator for Homa Bay County, I do not know if he is still the Chairman of the County Public Accounts and Investment Committee (CPAIC) in this House, to zero down on these allocations of Kshs80 million to 11 counties for reforestation of our water towers. All this money will not go to do the right things. This is taxpayer's money from Europe for heaven sake! We must learn how to respect what we are being given by others. I want to urge the Committee to look at that.

Thirdly, what is happening to my county is very disgusting. I got a statement from the Kenya Commercial Bank (KCB), Bungoma Branch. On the 18th of March, 2020, Kshs776,223 was withdrawn nine times from the same account at the same time. This money was ostensibly to go and buy jerricans to put at market places for people to wash hands. This is reckless spending of public resources. The law is very clear. If you are spending more than Kshs10,000, you must tender. If you are spending a huge sum of money in millions, there is electronic transfer of money. Why would nine people, each carrying a cheque leaf of Kshs776,223, walk into the bank together, withdraw cash and hand over to an individual, ostensibly for fighting COVID-19. COVID-19 cannot be an excuse for misuse of public resources.

(Applause)

We want to urge that accountability should be heightened at this time. This is the time when people take leave of their senses, think nobody is watching them and start spending money recklessly.

Lastly, Mr. Speaker, Sir, I want to support the Senate Majority Leader in his cry about the castration of the Houses of Parliament.

(Laughter)

Mr. Speaker, Sir, when Martin Shikuku once said exactly what Sen. Murkomen said, he was taken to Kamiti Maximum Security Prison and kept there until he came out crippled. Today, things are different. I want to urge you not to just speak. Since you hold a position of responsibility, show the way. Parliament is now an ox; it has been castrated. You are the people who always bring Bills here to force everybody to rubberstamp decisions of the Executive. We want to see change that makes sense, which restore Kenya to its constitutional responsibility, its constitutionalism and the right of people to decide the right things for this country.

I thank you.

The Speaker (Hon. Lusaka): I notice that there is a lot of interest. I will reduce the time to three minutes, so that we have more Members contributing.

Let us have Sen. Sakaja followed by Sen. Dullo.

Just before Sen. Sakaja takes the Floor, part of the advisory from the Ministry of Health was that you keep your masks on. Cover the nose and the mouth all the time. I know it is a bit uncomfortable, but that is the advice.

Sen. Sakaja: Mr. Speaker, Sir, with these masks on, breathing is difficult. However, it is the crisis of Coronavirus Disease (COVID-19).

Mr. Speaker, Sir, I want to join colleagues in commending this Committee, which is ably led by the Senator for Mandera County, for this Report on the Division of Revenue Bill. Since I have very few minutes, I will go straight to the point.

Mr. Speaker, Sir, this has been a battleground. For long a time, I was fortunate to sit in the last mediation where Sen. Mutula Kilonzo Jnr. had promised bloody red eyes. We had a tough time. Even then, it became apparent that many sections of this House, meaning both Houses of Parliament, have become an appendage of the Executive.

Mr. Speaker, Sir, I must say without fear that I have been a party leader within the ruling party. I was the Chairperson of the National Alliance (TNA). Even here, as Jubilee, we stand and support the Government. However, support to the Government does not mean keeping quiet when there is nakedness in the palace.

Mr. Speaker, Sir, support for the national Government is giving them proper advice, saying that we do not agree with this, but this is what we want. This is because all of us were elected. For those who have come for their first term, or maybe, have not been in any echelon of leadership within a political party, the more you parrot and praise, the less relevant and less serious you are taken. I assure you, I have seen it.

(Applause)

Mr. Speaker, Sir, the President, on the issue of Nairobi City County, had and still has the best intentions for service delivery. Unfortunately, sometimes, within the

Government, there are those who are more zealous than the top leadership. When you give them an inch, they want to take a mile.

Mr. Speaker, Sir, it is completely unconstitutional to try and appropriate for any county. In fact, if you read the deed of transfer which Sen. Orengo has alluded to, we spoke about it at length during that time; it says that Nairobi City County shall ensure that those functions that are sourced and the money appropriated shall not be less than the amount appropriated in the last appropriation, subsequent to the current appropriation.

Mr. Speaker, Sir, thereafter, we had discussions with the Controller of Budget (CoB) as to how, once the appropriation is done in the county assembly, then those specific amounts on the deed of transfer or any other instrument--- because according to the other memoranda of service level agreements on health, transport or all of the transferred functions, that money is then sent to that entity that is supposed to play those roles.

Mr. Speaker, Sir, I just want to assume in good faith, that it was an oversight, but we must play our role. We must amend that. Nairobi City County should get its full complement based on division of revenue and the County Allocation of Revenue Act (CARA). I want to tell the Members of County Assembly (MCAs) of the County Assembly of Nairobi City - and I have spoken to them repeatedly - that they have not also abrogated their oversight responsibility. The constitutional responsibility remains the same. Their constitutional responsibility, apart from appropriation, includes also oversight. That oversight role must continue.

Mr. Speaker, Sir, I want to thank the Committee. Let me not go into other issues because it is very disheartening. I think that now Coronavirus has also come as an additional excuse that counties are not getting more money. This was part of the plan even before this pandemic, but it is sad that counties are getting the same amount of money. We cannot have money going up in the national Government and then in the counties, it remains the same. We want to see reduction, especially this fiscal consolidation that the Ministry is saying they are doing on both levels of government.

Today, we have seen that there are non-essential expenditures that can be re-appropriated - and it will be coming in our report - that certain expenditure now needs to be changed from what has been previously appropriated to now focusing on strengthening health care in this country and in our counties.

Thank you, Mr. Speaker, Sir.

Sen. Dullo: Mr. Speaker, Sir, I wish to join my colleagues in congratulating the work of this Committee on Finance and Budget which was chaired by the Senator for Mandera.

The purpose of the Senate in this country and for what we do in this House is to hold counties accountable when money is allocated to them. That has been our primary responsibility even though we have had issues between ourselves and the county assemblies where the county assemblies usually say that they have the responsibility of oversight and not the Senate. I think that for the last seven years that I have been in this House, we have managed to hold our counties accountable in terms of the money allocated to them.

Mr. Speaker, Sir, there is a lot that is going on in the counties, especially now that COVID-19 disease has come in. It looks like people are now avoiding procedures in the name of emergency. I wish that we had contributed to the Statement brought by Sen. (Dr.) Kabaka because that is happening in most of the counties.

This morning I was called by members of staff from my county informing me that up to date, they have not received their salaries. Today is 14th February, 2020. They have rent to pay, food to buy for their families and you can imagine, I was informed that the County Executive Officer has not requisitioned the money from the National Treasury.

I think it is high time that the institutions that are mandated to oversee and to hold counties accountable, especially, the Ethics and Anti-Corruption Commission (EACC) and others should be more alert now than ever before because this is very serious. This morning I was listening to a radio station in my county where people were questioning the Governor, asking him where is the Kshs40 million that was allocated for COVID-19. The Governor told them: "Wait for the Auditor -General's Report; do not ask me about this." It is really saddening.

Secondly, many donors are giving donations. The Ministry of Health and the National Treasury are also receiving a lot of money from donors. I have raised this matter this morning in the Senate Business Committee (SBC). This House must be on top of things in terms of what is going to the counties from the National Treasury.

In most of the counties - and especially in my county - you will find that there are donations from the national Government, but the Governor is claiming that he is the one actually buying that equipment. This is really wrong; money is being allocated by donors for roads and many other things. There is also the allocation from the county government, but that money does not even help the people on the ground.

Mr. Speaker, Sir, we cannot relent in our efforts. We will continue fighting for this. The Committee on Health should be more active now to make sure that whatever is allocated to the counties is actually accounted for to the last penny.

Thank you, Mr. Speaker, Sir.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. There is a phrase that we used to learn during the first term in Law School that is: *ignorantia juris non excusant*: ignorance of the law is not an excuse. Sometimes when I see the clauses drafted in some of these Bills, it makes me wonder whether there are people who deliberately want us to fight amongst ourselves. This is because the proposal in the Division of Revenue to put all the money of Nairobi City County in the Consolidated Fund is not only unconstitutional but also illegal. It also smacks bad faith on the part of the people who are attempting to take away the role of the Nairobi City County Assembly and the role of the Governor in terms of the functions that are left with them.

Increasingly, it looks like the people who are doing some of these things are playing a game that is done in nursery school called *pinky pinky ponky* with division of revenue and counties. However, this has revealed the folly of county governments. The things that are happening in Bungoma and Machakos counties are also happening in Makueni County. Our Executive put a budget when he was called to come and explain why he set aside some money, he refused to come. The Governor decided that he is the one to answer the questions. It is the same folly that I have seen in Kisumu where the

Governor has appointed himself the County Executive Committee (CEC) Member for Health.

We must continue to fight for devolution. I am not afraid to say that the headlines that I saw last week about Members of Parliament suffering from COVID-19 disease is one of the reasons that are being used by the people who are fighting Parliament so that we do not ask the several questions about the billions of shillings that are being set aside to fight COVID-19.

(Applause)

People want to spend the money the way that they want. People want to make Gazette Notices the way they feel like so that sooner or later we become irrelevant.

Mr. Speaker, Sir, as I support the amendment, Sen. Orendo is right. People consoling Sen. Murkomen are also right, if he needs to be consoled. It seems he does not need to be consoled. In law, this is called *volenti non fit injuria*, he did put himself in that position. We must continue speaking to devolution.

We cannot continue associating devolution with governors because devolution is not about governors. If the Governor of Nairobi has a problem, it does not mean that Nairobi County or the people of Nairobi have a problem. If the Governors of Bungoma, Machakos and Makueni have issues, other people do not have those issues.

In defending what the Committee on Finance and Budget has done, even though we have agreed that Kshs316.5 billion is the same amount that we allocated last year. However, we want to see a little more emphasis on things that matter, including health.

Thank you, Mr. Speaker, Sir.

Sen. (Prof.) Onger: Thank you, Mr. Speaker, Sir. I have very few words. First, I support the amendment because there is no way that you can circumvent the division of revenue at the national level and then allocate yourself the Kshs15 billion from Nairobi City County for your purposes.

I was just wondering aloud; we have the Coronavirus pandemic at this stage; where is Nairobi City County going to get emergency money if the entire budget of Kshs15 billion has been allocated to go to the Consolidated Fund, *ipso facto*, the national Government? Where are they going to get the emergency funds to cater for anything that happens in this City? Is that an equivalent that the City has been taken over? I do not think so; I think that there are functions that must be carried out in this City. Therefore, we need to look very carefully and say “No” to that kind of blanket transfer. Let it go through the normal process after the Division of Revenue Bill, it goes to CARRA and then when the Nairobi City County Government gets its resources, they can then allocate them appropriately.

After the Division of Revenue Bill, it goes to County Allocation of Revenue Act then when the County Government of Nairobi gets its resources, it can allocate appropriately through the normal budgeting process for that purpose.

Mr. Speaker, Sir, secondly, Coronavirus has shown a lot of interesting features. We now must start to think seriously as legislators. With regard to leasing of medical

equipment, I expect that some of this equipment will bolster and create capacity for Intensive Care Unit (ICU) and other facilities, which will then cope with the pandemic.

When you do a wider survey, it is clear that this money has not gone to the right use. After this pandemic, we need to focus on how any equipment that goes to county governments is utilized to benefit Kenyans. This pandemic has not yet spread to the county level. However, it is clear that if it does, we will have a disaster in our hands. We will not handle it in a much more effective manner.

Thirdly, I would like to see a much more robust approach by the county governments, including my county. They should utilize some of these resources that are under the conditional grants, for example, health, roads, urban support programme, afforestation and others. In areas where we have one headquarter, for instance, in Kisii County, I expect that by now Kisii Town should have fully completed various infrastructure development. Unfortunately, that is not the case. We keep on sinking money in and out. It is time we started to look at devolution, not only at the county headquarters alone, but also at other sub-county levels that require some of these resources to grow so that people can feel the effect of devolution.

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

Sen. (Eng.) Hargura: Thank you, Mr. Speaker Sir. I would like to support this Bill with amendments made by the Chairperson of the Committee on Finance, Commerce and Budget and because of reasons which have already been elucidated by my colleagues. So, I will not repeat them. Also, I take into account the information given by Sen. Orenge on the status of Nairobi Metropolitan Service (NMS). It is not a function of the national Government so there will be no need to transfer the money back to the national Government.

Last year, we passed the equitable share after a lot of struggle. I would like to report that by now, most of the monies have been channeled to pay debts and to the issue of COVID-19. So, development has not been achieved at the county level because of this kind of unnecessary supplementary. So, we also need to look at what is going on in the counties. We do not have a say on how conditional grants are to be shared. When they go to county governments, county assemblies pass them the same way. So, there is no clear framework to oversight these funds.

The Road Maintenance Levy Fund, for example, is to be shared equally among constituencies. However, when it goes to the county, the governor has a say on where it goes. We need to check on Kenya Roads Board (KRB) because they are the ones who oversight that money. Do they give them instructions that at that level, the money should be shared equally among the constituencies so that roads are maintained everywhere?

On the issue of some of the conditional grants, for example, Drought Resilience Programme (DRP) in Northern Kenya, there is a lot of bureaucracy between the national Treasury the Auditor-General. Up to now, my county has not utilized what they have been given. The other day the Auditor-General signed for it to be utilized, but it was the end of the financial year. So, we need to have mechanisms of checking this money. Is it assisting our people, is it misappropriated along the way or it is returned because it is not utilized and the infrastructure is not there?

Lastly, on the issue of Equalization Fund, it is the 10th year while it had a time period of 20 years. We have already lost 10 years and that money has not been used. Where is that money? Is it being kept somewhere or misappropriated and allocated to coronavirus?

The other day I heard the President instruct the Cabinet Secretary (CS) for National Treasury to appropriate the monies for counties meant for transport. The CS has no authority to go to the budget of counties.

The Speaker (Hon. Lusaka): Proceed, Sen. Cheruiyot, followed by Sen. Wambua then Sen. M. Kajwang'. I am giving a chance to those who have not spoken at all.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir. I will try and be extremely brief. I am a Member of this Committee. Therefore, I have had my opportunity to give my thoughts on this particular Bill.

I have two issues that I wish to bring to the attention of the House. One is on conditional grants; year in, year out, these continue to increase. The trend is that since they begun in 2015, there has been an increase of huge amounts on each and every financial year. This is an avenue which, if we do not check as Parliament, we could be passing the buck to the Executive to apportion money to counties that they feel that for one reason or the other, are more deserving than others.

All processes of distribution and sharing of nationally raised revenue is a preserve of Parliament. The exercise of the discretionally power that was handed on conditional grant continues to be abused. It is my hope, and we will put it as part of our report, that this should be the last time we will allow the National Treasury to give us proposals for conditional grants without giving a formula as to how they arrive at the decision on which amount goes to which county and for what reasons.

Finally, on the issue of Nairobi City County, many of my colleagues have canvassed on the proposals that have been made. The most important thing is that we, as a Committee, while reaching this decision, were guided by regulations that were put by the people who gave out this proposal.

Clause 5.2 of the transition deed insist that county resources shall be maintained and managed by the County Government of Nairobi. Therefore, I do not understand the hurry. Before we sit as a House to determine how much will go to each county, they have already set aside KShs15 billion. It goes on to the side debate that is going on of how the Executive continues to view this Parliament. We can blame each other and say that the Senate Majority Leader is responsible, but the most important aspect is how much as individuals, have exercised the vote that the people we represent in this House have given to us and what our contribution has been. It is time to have sober reflection and not just blame each other for what has been our contribution.

Sen. Wambua: Thank you, Mr. Speaker, Sir, for giving me this opportunity. I thank the Committee on Finance and Budget led by Senator for Mandera for the proposed amendments, especially on sharing of the Kshs316.5 billion among counties.

I will speak to two issues. One, is the issue of Deed of Transfer of functions from Nairobi City County to the national Government. I ask the Senator for Nairobi City County to say what he has said on this Floor many times out there and we will support him as colleagues.

The constitutional responsibility for appropriation and oversight of functions of County Government of Nairobi resides within the County Assembly of Nairobi. If we allow somebody else or another body to appropriate and oversight the four functions transferred from the County Government of Nairobi, we will not know where this will end.

Mr. Speaker, Sir, the other day, I consulted Sen. Sakaja on the so-called new boss in the Nairobi Metropolitan Services (NMS) who purported to issue new letters of appointment to staff who have letters of permanent appointment from the Nairobi City County Government. I told him we must put a stop to some of these manoeuvres.

Secondly, the issue of monies allocated to the Managed Equipment Service (MES) is a matter that is under very active and serious investigation by this House. One of the components that that money was to fund was equipment of Intensive Care Units (ICUs) across the country. The number of ICU beds we have in this country is appalling. In fact, we are operating Level 5 hospitals in this country without a single ICU bed. No wonder the other day I heard my Governor say we do not have a single ICU bed at Kitui Level 5 Hospital and that she does not even know the cost of an ICU bed.

As we allocate this money to counties, we must follow up with proper oversight to make sure it is put to proper use.

Sen. M. Kajwang: Mr. Speaker, Sir, I also rise to support the Report of the Committee on Finance and Budget on the amendments to the Division of Revenue Bill.

The question we should perhaps ask ourselves is, when this Bill was first published, we did not have coronavirus situation in the country. When you look at the numbers, we have been told by none other than the Parliamentary Budget Office that the Kenya Revenue Authority (KRA) is set to lose about Kshs1 billion in tax collections per day. Ordinarily, KRA collects Kshs5 billion in a day. That means its revenues is about Kshs1.8 trillion. A loss of Kshs1 billion a day means that this country will not have the Kshs1.8 billion to share. Which means there is going to be a significant drop in ordinary revenue collection.

I would be interested to know what the National Treasury said about the Division of Revenue Act (DORA). This is because Section 5(1) of the Bill says that the National Treasury or national Government shall bear the burden if there is a shortfall in revenue. We are going to have a serious crisis. We might find ourselves in the near future coming back to revise the division of revenue and supplementary adjustments to respond to the reality that this country finds itself in.

The issue of Nairobi City County has been well prosecuted. The only thing I want to add is that we still have not given this country any direction or clarity when it comes to issues to do with policy and legislation. The other day, we saw people being transferred from the national Government to Nairobi City County Government as County Executive Committee (CEC) members and Chief Officers (COs). What is the role of the county assembly in their oversight and approval?

Despite the tough times that we find ourselves in, the Committee on Devolution and Intergovernmental Relations should be allowed to find an agile framework to consult and give direction to this country. As Sen. Orengo said, it has started with Nairobi City County and it will move to other counties. Many of us here are even wishing that the

national Government would take over functions in our counties because of the incompetence of those who are running it.

Finally, MES has got Kshs9.62 billion. Sen. Dullo has done an excellent job. How I wish that Report could be fast-tracked so that it can inform our decision. We cannot continue complaining about this money and continue to allocate it. We will not have the moral authority. How I wish the Kshs6.2 billion could be directed towards ensuring the country has ICU beds, testing facilities and the capacity to deal with a pandemic which we do not know when it will end.

With those remarks, I support.

The Speaker (Hon. Lusaka): I now call upon the Mover to reply. In the interest of time, we are already several minutes ahead of our time.

The Senate Majority Leader (Sen. Murkomen): Thank you, Mr. Speaker, Sir, I will be very brief.

I appreciate my colleagues who have made great contributions. Unfortunately, I know so many of them here, including those who did not make it to this Chamber, who would have wanted to say something about this important Bill. Sadly, time is what it is. I thank you, Mr. Speaker, for managing this session.

Second is to insist that we, as the Senate, will continue to do our job. I have seen some misguided personalities elsewhere assert that because money Bills are tabled in the National Assembly; or that they have contributed in subverting Article 110 of the Constitution by denying this House its constitutional responsibility to process certain Bills, they have suddenly become the big men.

That is an inferiority complex syndrome that people must be told as it is because we have been called upon to serve. That is what we are doing. We came here to serve. We did not come here to ask ourselves who is greater than the other among us. The Bible says the one who serves the least of this is the greatest of them all. I am glad that from 2013, we set the right tone. We came to this House and decided to be servants of the people. We have gone through so many Bills because of our faithfulness to service. Sen. (Dr.) Zani had a fantastic Bill here and over 100 other Bills that went to sleep in the National Assembly. However, it never deterred us from doing the job we need to do.

I am glad the comments that came from Sen. Sakaja, Sen. Orengo, Sen. Cheruiyot, Sen. Wetangula and both sides of the political divide, demonstrate a House that is ready to carry on the journey for the remaining two years and ensure they remain faithful to their calling. We have achieved a lot qualitatively. If all the necessary Bills came to this House, this country would be better than the disservice the National Assembly has caused, by going to rubberstamp decisions that come from the Executive as they are. They are a total disservice.

(Applause)

Mr. Speaker, Sir, you cannot tell me that as a Parliament, we will be happy clapping in our houses when independent institutions are dead, the Judiciary is intimidated, Parliament is being turned into a rubberstamp and the Executive is not meeting. Do you want to tell us the decisions we do not know where they were made can

only be rubberstamped by this House anyhow? We must rise to the occasion. As Sen. Orengo said, we must consistently continue to do the right thing.

I am glad Sen. Wetangula told me the late Hon. Shikuku said what I have been saying. He was incarcerated in prison and came back limping. I thank him and all the Senators like Sen. Orengo, Sen. Wetangula and others who went before us and fought for the Independence of this country. They particularly fought for the independence of Parliament and separation of powers. I thank them for what they did so that people like us can enjoy the platform to say the truth without being intimidated and to fight for what is right for this country and for devolution without being intimidated. If that be the case, I am ready to do so.

I thank my colleagues on the Jubilee Party side because they have given me unwavering support, amidst intimidation when we rise up to say the right things. We must protect devolution. As I do so, I want to give voice to what the Senators for Machakos and Bungoma counties said earlier; let us not abdicate our responsibility for national and for county governments, to steal money meant for health in the name of a pandemic. We know there will come a time we will name names.

Mr. Speaker, Sir, we know people who made huge amounts of money and bought large tracts of land in Karen through the HIV/AIDS campaign.

Sen. Mutula Kilonzo Jnr.: I tell you.

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, they stole public money yet their constituents were dying of HIV/AIDS. We do not want to enrich other cartels in the name of COVID-19. Instead of using the right interventions that will help them get to the people, they want to make money and they do not want accountability. This House will stand firm.

I request the governors not to steal the Kshs316.5 billion. They may survive COVID-19, but they will not stand the rule of law.

I beg to reply.

(There was a technical hitch)

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

(The Speaker instructed the Serjeant-at-Arms to cause the Division Bell to be rung for one minute)

(The Division Bell was rung)

(The Speaker instructed the Serjeant-at-Arms to close the doors and draw the bar)

(The doors were closed and the bar drawn)

DIVISION

ROLL CALL VOTING

*(Question, that the Division of Revenue Bill
(National Assembly Bills No. 3 of 2020)
be now read a Second Time put and the Senate
proceeded to vote by County Delegations)*

AYES: Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. (Eng.) Hargura, Marsabit County; Sen. Iman, Garissa County; Sen. (Dr.) Kabaka, Machakos County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. (Dr.) Lang'at, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. M. Kajwang', Homa Bay County; Sen. (Eng.) Mahamud, Mandera County; Sen. Murkomen; Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. (Dr.) Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Nyamunga, Kisumu County; Sen. Ochillo-Ayacko, Migori County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orenge, Siaya County; Sen. Sakaja, Nairobi County; Sen. Shiyonga; Kakamega County; Sen. Wambua, Kitui County; Sen. Wetangula, Bungoma County; and, Sen. (Dr.) Zani, Kwale County.

NOES: Nil

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

The Speaker (Hon. Lusaka): Order, Members! The results of the voting are as follows:

AYES: 27

NOES: 0

ABSTENTIONS: Nil.

The "Ayes" have it.

(Question carried to by 27 votes to nil)

*(The Bill was read a Second Time and committed
to a Committee of the Whole today by leave of the House)*

The Speaker (Hon. Lusaka): Hon. Senators, I am reorganizing the Order Paper. We will now go to Order No. 14, Committee of the Whole.

COMMITTEE OF THE WHOLE

(Order for Committee read)

[The Speaker (Hon Lusaka) left the Chair]

IN THE COMMITTEE

*[The Temporary Chairperson (Sen. (Dr.) Lelegwe)
in the Chair]*

THE DIVISION OF REVENUE BILL
(NATIONAL ASSEMBLY BILLS NO. 3 OF 2020)

The Temporary Chairperson (Sen. (Dr.) Lelegwe): Order, hon. Senators! We are now in the Committee of the Whole to consider The Division of Revenue Bill (National Assembly Bill No. 3 of 2020).

Clause 3

(Question that Clause 3 be part of the Bill, proposed)

The Temporary Chairperson (Sen. (Dr.) Lelegwe): The Division will be at the end.

Clause 4

The Temporary Chairperson (Sen. (Dr.) Lelegwe): The Mover to move an amendment.

Proceed, Chairperson of the Committee on Finance and Budget.

Sen. (Eng.) Mahamud: Mr. Temporary Chairman, Sir, I beg to move-

THAT, Clause 4 of the Bill be amended by-

- (a) deleting sub-clause (2); and
- (b) deleting sub-clause (3).

(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Lelegwe): The Division will be at the end.

Clause 5

(Question that Clause 5 be part of the Bill, proposed)

The Temporary Chairperson (Sen. (Dr.) Lelegwe): The Division will be at the end.

Schedule

Sen. (Eng.) Mahamud: Mr. Temporary Chairman, Sir, I beg to move-
THAT the Bill be amended by deleting the Schedule and substituting therefor the following new Schedule-

SCHEDULE

ALLOCATION OF REVENUE RAISED NATIONALLY AMONG THE NATIONAL AND COUNTY GOVERNMENTS FOR THE FINANCIAL YEAR 2020/21

Type/level of allocation	Amount in Kshs	Percentage (%) of 2016/17 audited and approved revenue i.e. Kshs 1,357,698
A. Total Sharable Revenue	1,856,700,000,000	
B. National Government*	1,533,411,510,000	
Of which:		
1. <i>Leasing of Medical Equipment</i>	6,205,000,000	
2. <i>Compensation for user fees forgone</i>	900,000,000	
3. <i>Level 5 hospitals</i>	4,326,000,000	
4. <i>Supplement for construction of county headquarters</i>	300,000,000	
5. <i>Rehabilitation of Youth Polytechnics</i>	2,000,000,000	
C. Equalization Fund	6,788,490,000	0.50%
D. County equitable share	316,500,000,000	23.31%
Memo items		

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1. County equitable share	316,500,000,000	
2. Additional conditional allocations (National Government share of Revenue) of which;	13,731,000,000	
2.1. Leasing of Medical Equipment	6,205,000,000	
2.2 Compensation for user fees forgone	900,000,000	
2.3 Level 5 hospitals	4,326,000,000	
2.4 Supplement for construction of county headquarters	300,000,000	
2.5 Rehabilitation of Youth Polytechnics	2,000,000,000	
3. Allocation from Fuel Levy Fund (15%)	9,433,265,625	
4. Conditional allocations (Loans & grants) of which:	30,204,347,510	
4.1 IDA-Kenya Devolution Support Program (KDSP) (Level 1)	2,115,000,000	
4.2 IDA-Transforming Health Systems for Universal Care Project	4,345,375,741	
4.3 DANIDA-Universal Healthcare For Devolved System Program	900,000,000	
4.4 IDA-National Agriculture & Rural Inclusive Growth Project (NARIGP)	4,261,646,438	
4.5 EU-Instruments for Devolution Advice and Support (IDEAS)	216,014,391	
4.6 IDA (World Bank) - Kenya Climate Smart Agriculture Project (KCSAP)	7,119,726,782	
4.7 World Bank- Kenya Urban Support Program (KUSP)-UDG	6,366,000,000	
4.8 IDA- Water and Sanitation Development Project (WSDP)	3,400,000,000	
4.9 Sweden Agriculture Sector Development Programme II (ASDP II)	652,584,158	
4.10 EU- Water Tower Protection and Climate Change Mitigation and Adaptation Programme (WaTER)	528,000,000	
4.11 Drought Resilience Programme in Northern Kenya	300,000,000	
Total County Allocations= (1+2+3+4)	369,868,613,135	

(Question of the amendment proposed)

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The Temporary Chairperson (Sen. (Dr.) Lelegwe): The Division will be at the end.

Clause 2, Title and Clause 1

*(Question, that Clause 2, the Title and Clause 1
be part of the Bill, proposed)*

Hon. Senators, we will now go to Roll Call voting. Each Senator will be called to give a 'YES' or 'NO' on two votes.

I now order that the Division Bell be rung for one minute.

(The Division Bell was rung)

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

(The Bar was drawn and the Doors closed)

THE DIVISION OF REVENUE BILL
(NATIONAL ASSEMBLY BILLS NO. 3 OF 2020)

The Temporary Chairperson (Sen. (Dr.) Lelegwe): Hon. Senators, we are now in the Committee of the Whole to consider The Division of Revenue Bill (National Assembly Bill No. 3 of 2020). We are going for Division. Let us proceed to the first Division on the clauses with amendments.

DIVISION

ROLL CALL VOTING

*(Question, that Clause 4 and the Schedule be amended as proposed, put and the Senate
proceeded to vote by County Delegations)*

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Iman, Garissa County; Sen. (Dr.) Kabaka, Machokos County; Sen. M. Kajwang', Homa Bay County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. (Dr.) Langat, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. (Eng.) Mahamud, Mandera County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Nyamunga, Kisumu County; Sen. Ochillo-Ayacko, Migori County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya

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County; Sen. Sakaja, Nairobi County; Sen. Shiyonga, Kakamega County; Sen. Wambua, Kitui County; Sen. Wetang'ula, Bungoma County; and Sen. (Dr.) Zani, Kwale County.

NOES: Nil.

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

The Temporary Chairperson (Sen. (Dr.) Lelegwe): Hon. Senators, the results are as follows -

AYES: 27

NOES: Nil

ABSTENTIONS: Nil

The "Ayes" have it.

(Question carried by 27 votes to nil)

The Temporary Chairperson (Sen. (Dr.) Lelegwe): Hon. Senators, let us proceed to the second Division on the Clauses without amendments.

DIVISION

ROLL CALL VOTING

(Question, that Clauses 3, 4(as amended), 5, the Schedule (as amended), Clause 2, the Title and Clause1 be part of the Bill, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Iman, Garissa County; Sen. (Dr.) Kabaka, Machokos County; Sen. M. Kajwang', Homa Bay County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. (Dr.) Langat, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. (Eng.) Mahamud, Mandera County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Nyamunga, Kisumu County; Sen. Ochillo-Ayacko, Migori County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Sakaja, Nairobi County; Sen. Shiyonga, Kakamega County; Sen. Wambua, Kitui County; Sen. Wetang'ula, Bungoma County; and Sen. (Dr.) Zani, Kwale County.

NOES: Nil.

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

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The Temporary Chairperson (Sen. (Dr.) Lelegwe): Hon. Senators, the results are as follows-

AYES: 27

NOES: Nil

ABSTENTIONS: Nil

The “Ayes” have it.

(Question carried by 27 votes to nil)

We are now going to report to the House. Sen. (Eng.) Mahamud, proceed.

Sen. (Eng.) Mahamud: Mr. Temporary Chairperson, I beg to move that the Committee do report to the Senate its consideration of the Division of Revenue Bill (National Assembly Bill No. 3 of 2020) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

The Speaker (Hon. Lusaka): Hon. Members, I call upon the Chairperson to report progress.

REPORT AND CONSIDERATION OF REPORT

THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILLS NO. 3 OF 2020)

Sen. (Dr.) Lelegwe: Mr. Speaker, Sir, I beg to report that the Committee of the Whole has considered The Division of Revenue Bill (National Assembly Bills No. 3 of 2020) and its approval thereof with amendments.

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

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, I beg to move that the House do agree with the Committee on the said report. I request Sen. Cheruiyot to second.

Sen. Cheruiyot seconded.

(Question proposed)

(Question put and agreed to)

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, I beg to move that the Division of Revenue Bill (National Assembly Bills No. 3 of 2020) be now be read a Third Time. I request Sen. Mwaura to second.

Sen. Mwaura seconded.

(Question proposed)

The Speaker (Hon. Lusaka): Hon. Members, I will put the question before we proceed to vote.

I put the question that the Division of Revenue Bill (National Assembly Bill No. 3 of 2020) be now be read a Third Time.

Let the Division Bell be rung for one minute.

(The Division Bell was rung)

I direct that the Doors be locked and the Bars drawn.

(The Doors were locked and the Bars drawn)

Vote now.

THIRD READING

THE DIVISION OF REVENUE BILL
(NATIONAL ASSEMBLY BILLS NO. 3 OF 2020)

DIVISION

ROLL CALL VOTING

(Question that the Division of Revenue Bill (National Assembly Bills No. 3 of 2020) be now read a Third Time put, and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Chebeni, Uasin Gishu County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen.(Eng.) Hargura, Marsabit County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang', Homa Bay County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. (Dr.) Langat, Bomet County; Sen.(Dr.) Lelegwe, Samburu County; Sen. (Eng.) Mahamud, Mandera County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Mutula Kilonzo Jnr, Makueni County; Sen. Mwangi, Nyandarua County; Sen.(Dr.) Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Nyamunga, Kisumu County; Sen. Ochillo-Ayacko, Migori County; Sen. Omogeni, Nyamira County; Sen.(Prof.) Ongeru, Kisii County; Sen. Orenge, Siaya County; Sen. Sakaja, Nairobi

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County; Sen. Shiyonga, Kakamega County; Sen. Wambua, Kitui County; Sen. Wetangula, Bungoma County; and Sen. (Dr.) Zani, Kilifi County.

NOES: Nil

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

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

AYES: 28

NOES: Nil.

ABSTENTIONS: Nil.

The “Ayes” have it.

(The Bill was carried by 28 votes to Nil)

(The Bill was accordingly read a Third Time and passed)

The Speaker (Hon. Lusaka): We now move to Order No. 15

MOTION

ALTERATION OF THE SENATE CALENDAR FOR THE 2020 SESSION

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

THAT, pursuant to Standing Order Nos. 28 and 29, and the resolution of the Senate made February, 27th 2020 and on March, 17th, 2020 regarding the Senate Calendar; the Senate now resolves to alter its calendar further in respect of part one and two of the calendar to hold one Sitting in each week on Tuesdays, beginning on Tuesday, 21st April, 2020 until Tuesday, 2nd June, 2020 and that the Senate Calendar Regular Session for the Fourth Session 2020 be altered accordingly.

This is straightforward. The uptake for this is that we were supposed to have gone for Recess but in the circumstances, we have not been able to work as we should then the Recess has been stood over generally to enable us to then continue working at least one day per week.

This House will be convened every Tuesday from next week up to 2nd June, 2020. That will enable us to attend to business as we should. If need be, we will vary the calendar as time goes, if we need to sit more or when we come to June 2nd the situation will have changed for us to sit everyday.

In the circumstances, there is no time. I will request the House that in this situation the Senate Minority Leader seconds and we vote so that we can go to the next Motion.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I second.

(Question proposed)

(Question put and agreed to)

The Speaker (Hon. Lusaka): Let us move on to the next Order.

MOTION

NOTING OF FIRST AND SECOND PROGRESS REPORTS OF THE AD-HOC COMMITTEE ON COVID-19 SITUATION IN KENYA

Sen. Sakaja: Mr. Speaker, Sir, I beg to move the following Motion in an amended form-

THAT, the Senate notes the first and second progress reports of the *Ad hoc* Committee on COVID-19 situation in Kenya laid on the Table of the Senate on Tuesday, 14th April 14, 2020.

I will ask the Vice-Chairperson, Sen. Kasanga, to second the Motion once I am done.

Mr. Speaker, Sir, at its sitting held on Tuesday, 31st March 2020, the Senate, by resolution, established an *Ad hoc* Committee on the COVID-19 situation. The Committee is mandated to oversight actions and measures taken by the national and county governments in addressing the spread and effects of COVID-19 in Kenya.

The areas that the Committee is addressing were in the Motion passed, and I do not need to read all of them. I will go straight to what we have been able to do. The Committee is comprised of seven very able Senators from both sides of the House who have been doing a marvelous job. The Committee is deputized by Sen. Kasanga, who was elected unopposed during our first sitting on 1st April, 2020 and chaired by yours truly, Sen. Sakaja, who was also elected unopposed to Chair this Committee.

(Laughter)

Mr. Speaker, Sir, that is part of the progress! It is very progressive, is it not?

Further to that, Members of this House gave many good comments when that Motion was moved. We looked at the HANSARD. We thank Members for their contributions. We saw that, indeed, Coronavirus is affecting very many aspects of society and affecting us, as a country. What the Committee went on to do is that we clustered emerging issues into five thematic areas.

The first area was on the health issues. We isolated the health issues, which include community health testing, quarantine, isolation centers, ICU facilities, human

resources for health, drugs and supplies, role and engagement of county governments and mental health.

The second thematic area is economic and financial issues, which covers the macro-economic effects of the Coronavirus impact on businesses, trade facilitation and measures to cushion borrowers and financial institutions.

The third issue is social public order and human rights, including protection for vulnerable persons and groups, and protection of women and girls at risk of domestic abuse. This is very important to us. We have witnessed cases of domestic violence going up. Others include measures to enable learners to continue with their studies, enforcement of the nationwide curfew, restriction of movement, access to justice and the decongestion of prisons and remand facilities.

The fourth area is access to food, water and basic commodities, including measures to ensure the continuous production and supply of food; that the food supply chain, water and other essential commodities continues.

Finally, is support services and cross cutting issues, including awareness creation and measures to prevent infection; that is media campaigns - I saw Sen. Mutula Kilonzo Jr. doing one in Kikamba to combat stigmatization - and the role of ICT in combating the COVID-19 pandemic.

Mr. Speaker, Sir, please note that I am moving one Motion on two reports, so, I will go to the second one as we proceed. In the first report, we detailed the work that was undertaken by the Committee since we have seen sections of the media saying that the Houses have run away and Parliament is not working. I would like to note and to let the country know that this Committee has held 13 sittings. This Committee is using technology, the sittings are online and it is very convenient because we have 100 per cent attendance by Members. Maybe this is what we need to do going forward. We have Sen. Faki logging in from Mombasa, Sen. Linturi logging in from Meru, Sen. Kasanga logging in from Machakos and the rest of us doing the same, and we make progress.

In the first meeting, we held elections. We have had a number of meetings virtually. We came up with a work plan, adopted it and invited submissions from key stakeholders and the public. I would like to report that we received a total of 146 submissions from individuals, organizations, the Council of Governors (CoG) and from various different quarters addressing the five thematic areas in detail.

The Members and the Secretariat have not slept. We have gone through each submission from whichever person who sent the submissions. Some of them include the CoG, the Kenya Human Rights Commission (KHRC), healthcare workers led by the Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU), the Pharmaceutical Association of Kenya (PAK), the Kenya Healthcare Foundation (KHF), the Kenya Council of Emergency Medical Technicians (KCEMT), the Kenya Health Information Association (KHIA), Samburu Health Workers Union (SHWU) *et cetera*.

Mr. Speaker, Sir, others are business and traders' organizations such as the Kenya National Chamber of Commerce and Industry (KNCCI), tour operators, Micro and Small Enterprises Foundation, Civil Society and Non-Governmental Organizations (NGOs), including the Kenya Human Rights Commission (KHRC), the International Commission

of Jurists (ICJ), the International Budget Partnership (IBP), the Institute for Social Accountability (TISA) and health NGOs that are spread across the country.

Also, among these submissions are Kenyans who had travelled to India for medical treatment and have been stuck there due to restrictions. Some took their families; they have been stuck there and cannot afford to come back. There are also Kenyan students in universities abroad who were scheduled to graduate in summer, but their studies have since been disrupted. Additionally, are also Kenyans who had travelled to attend to family matters. I would like to report that the Committee has written to and is engaging the Ministry of Foreign Affairs to ensure that these categories of Kenyans are urgently attended to.

I want to thank Kenyans because it is in a crisis like this that we realise that Kenyans of all walks of life; from the private sector, in business, those doing their own things, indeed, take these invitations seriously. They have a lot to say and contribute. We have received tremendous submissions from the people of this country. I want to thank them and tell them that their submissions have been taken into consideration.

Mr. Speaker, Sir, after that we went through an in depth analysis and we have reviewed the best practice from comparative jurisdictions and considered those submissions. We have analyzed what more than 20 different countries and their Parliaments have been able to do during this time.

I am glad to report that we have already come up with a Bill, the Pandemic Response and Management Bill, which is annexed to this report. It has gone for publishing, but we want to give it to the people of Kenya to look at it. The Bill addresses, among others, the declaration of a pandemic, the roles of national and county governments, the establishment, composition and functions of a national and county response committee, reporting by the said committees to Parliament and county assemblies, establishment and management of a pandemic fund among others.

Notably, the Bill proposes measures to be taken in cushioning the public from the adverse effects of a pandemic, including granting of relief on the cost of food, water and basic commodities as well as provisions that speak to tenancy agreements. We have many issues on rent and landlord agreements and contracts that cushions both the landlord and the tenant.

The Committee wants to invite submissions and comments from Senators. Once you have seen the reports, we invite you to give us views on the Bill and our Report; as well as the stakeholders and members of the public. We will be publishing the Bill on the Parliament website so that stakeholders can enrich this process and we can move on together.

Mr. Speaker, Sir, we are now scheduled, as a Committee, to hold meetings with key organs and ministries of the national and county governments. This afternoon, we were scheduled to hold a meeting with the Cabinet Secretary for Health and the Chairperson of the National Emergency Response Committee on Coronavirus. Unfortunately, the meeting that was at 2.00 p.m. could not take off because the Cabinet Secretary said he was held up in State House. He had sent his Chief Administrative Secretary (CAS) and the Permanent Secretary (PS). However, we told him that Article

153 of the Constitution says that it is the Cabinet Secretary (CS) who is accountable to Parliament, especially during this pandemic.

Mr. Speaker, Sir, I have spoken to the CS. We have told him that we will reschedule where he will come in person, virtually, so that we can rate responses on the issues raised. We note that today he has announced that we have 126 cases of Coronavirus Disease (COVID-19).

Mr. Speaker, Sir, we just want to note and stress that a pandemic being declared, is not a suspension of the Constitution. This is the time for Parliament to continue playing its oversight role. Parliament remains the one institution mandated to oversight, appropriate, legislate and play its role. No entity will escape any oversight. At this time, the Executive needs to know that we are not coming in an antagonistic manner. We want to support the good work they are doing.

We are very proud of Sen. Mutahi Kagwe. He is still a Senator, even as a CS. He is Senator, CS, Hon. Mutahi Kagwe. We are proud of his work and our interventions are to support and to give fresh ideas, to legislate because he cannot legislate from his Ministry, and to help him in dealing with county governments. We want him to know that the stand that is being taken by the Senate is very pragmatic, but in full fidelity to our oath of office, which is to represent the people of the republic of Kenya, 47 million of them.

Mr. Speaker, Sir, we are also scheduled to meet other organizations including, trade and workers unions, youth organizations, digital transport forum *et cetera*.

Mr. Speaker, Sir, I want to quickly finish so that Sen. Kasanga can second. The other stakeholders like the Law Society of Kenya (LSK) have requested for additional time to submit memoranda. We have told them it is okay because they have asked the Members, many of whom are in this House, to give them submissions.

Mr. Speaker, Sir, on behalf of this Committee and on my own behalf, I wish to sincerely thank all the individuals, groups and organizations that responded to a call for public submissions on this important matter. We wish to assure them that we have reviewed all those submissions and we have taken their views into account.

We have also received representations from Kenyans undergoing stress globally. That will be contained in the report. We will still interact with different ministries. Senators have asked about money going to counites. There has been a circular by the Controller of Budget (CoB) that is not clear about whether counties are still receiving money. In as much we want to support the counties and even help them access, some of the submissions from the Council of Governors (CoG) were that counties are asking for things they should ordinarily be doing. When a governor asks to be given money to buy chemicals for fumigation, you query the billions we have been appropriating, what are they being used for? So, we are balancing that. However, we hope that the COVID-19 pandemic does not become an avenue for public maleficence or for misuse of funds as we unfortunately begun to see in some counties.

Mr. Speaker, Sir, we will continue to submit progress reports. We will invite Senators. Those who wish to join our online meeting, once they express interest, we will give a few of you the code time at a time, whichever way technology will allow, so that from wherever you are, you can follow the Committee and give us your contributions.

Mr. Speaker, Sir, in conclusion, we just want to assure the public, I do not know why we let it escape. The person who wrote that story in the *Standard Newspaper* has been attending our briefings. When they say Parliament has been doing nothing, it is unfair. It is not right to cast Members of Parliament (MPS) of both Houses in bad light during such a pandemic. This is time for all of us to come together as Kenyans, for us to play our role. We assure them that the Senate of the Republic of Kenya - I would like to tell the Senate Majority Leader - we might be scarred, but we are not dead. We might be down, but we are not out. We will continue to do our work. Our House and the Committee are alive.

Finally, through you, Mr. Speaker, Sir, I want to thank the Office of the Clerk and the members of the Secretariat. They have done an amazing job in such a short time and in difficult circumstances. Please, express the thanks of the Committee to the members of the Secretariat who have been very professional and at hand to support us at every minute.

I thank you.

I ask Sen. Kasanga to second.

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

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. Maybe I ought to have risen before Sen. Sakaja moved the Report.

The matter that I am rising on is pertinent to what we are discussing now. I want to state that the resolutions made by this House, the Rulings made and the directions given by the Speaker cannot be in vain. For us to succeed in the fight against this pandemic, of course, we must all come together and fight as one.

Sen. Cheruiyot raised a matter here when you sat on that Chair two weeks ago. I was not here, but I was following the proceedings from home. You gave very clear directions. Your instructions were that the Ministry of Health and the Ministry of Interior and Coordination of National Government should write to you or to the Senate through you in two days. That has not been reported to the House. We want to hear your pronouncement on this. Did they oblige? Your ruling cannot be in vain. If we go that path, then we will be taking the wrong path.

The Speaker (Hon. Lusaka): Maybe it is me who has not communicated to the House, but they actually responded within the given time. I can bring the House to speed on what they said on Tuesday.

Proceed, Sen. Kasanga.

Sen. Kasanga: Thank you, Mr. Speaker, Sir, for giving me this opportunity.

As I rise to second my Chair on the two Reports that we have tabled today, first is to profusely thank you for both the Secretariat and the Clerk to the Secretariat that you gave us. They have been absolutely wonderful, putting their best foot forward. We have received a lot of help, commitment and research towards this Report.

Without belaboring since I do not want to repeat most of what the Chair has said, I want to draw to the attention of the Senators to the matrix that you will find annexed in these Reports. There is a matrix that has the five thematic areas. I want to let you know, as you have heard, a lot of good recommendations have come in from different stakeholders, people, organizations, individuals and many of them, professionals. We

appreciate this because we may not be fully conversant with some of the areas and we are happy to be guided by the public.

I want to let you know that in each of the five thematic areas, the Secretariat and ourselves, were able to further segment those areas. Therefore, there is need that you, as Senators, to be seized of each one of them. For example, under the health thematic area, we have information and data, universal access, issues of community health and testing, which has been a very big issue that we need a lot of clarity on. We have infection, prevention, control and personal protective equipment, which is another area where many people are raising very good ideas on how to deal with these issues over and above the fact that we already have local manufacturing going on.

As a House and for posterity, how then will we make sure that we put some of these efforts for posterity? We secure our people who are able to do some of these things now and for the future. No doubt, from our research, we have seen that the pandemic is a global issue that all countries are grappling with and our underbellies globally are being exposed for lack of preparedness when it comes to pandemics.

Of course, for us in this country, considering economic issues, the country was already struggling with many Kenyans struggling economically even before the COVID-19. With the COVID-19, we have to look very critically into the proposals that the public has given us on how to deal with the economic issues facing Kenyans. How will we rise above this pandemic considering that even before that we were grappling with ourselves?

Senators, I am drawing your attention to that. There are a number of issues such as taxation with many good ideas coming up from different stakeholders and individuals who have knowledge on how to deal with such issues. They have come up with very good recommendations. As a Committee, we shall isolate some of these recommendations and put the questions to the Cabinet Secretary (CS) and the National Emergency

There is a lot of debate going on regarding economic issues, for example, if there is a lockdown, how will it be dealt with? We want to partner with the Executive on some of the issues. That is why today, we were disappointed when the CS did not come. We wanted to address the health issues and then move on to the economic issues which are quite substantive.

The Speaker (Hon. Lusaka): Sen. Kasanga, I do not want to hurry you because you are making good points. I will give you an opportunity to continue next Tuesday, so that you can exhaustively cover those areas. I have realized that it is already time.

ADJOURNMENT

The Speaker (Hon. Lusaka): Hon. Senators, it is now 5.30 p.m, time interrupt the business of the Senate. The House, therefore, stands adjourned until Tuesday 21st April, 2020 at 2.30 p.m.

The House rose at 5.30 p.m.