

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 11th August, 2020

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

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

PRAYER

The Speaker (Hon. Lusaka): Hon. Senators, I will allow one or two Petitions. I also want to announce that for fairness, I will be alternating speakers in this Chamber and the Chamber outside. When we have one Senator speaking from here, the other one will come from the other Chamber so that everybody is given an opportunity.

Sen. Omogeni, proceed. As he comes to present his Petition, we can start with Sen. Sakaja's Papers. Please proceed.

PAPERS LAID

REPORT ON PETITION: CBA NEGOTIATION STALEMATE BY KUCO

Sen. Sakaja: Thank you, Mr. Speaker, Sir. I beg to lay the following Papers on the Table of the Senate, today Tuesday, 11th August, 2020:

The report of the Standing Committee on Labour and Social Welfare on a Petition to the Senate by the Kenya Union of Clinical Officers (KUCO) regarding alleged refusal by the Ministry of Health and County Governments to conclude on the Collective Bargaining Agreement (CBA) negotiations.

REPORT ON PETITION: PLIGHT OF FORMER MACHAKOS COUNTY WARD REPRESENTATIVES STAFF

Sen. Sakaja: Mr. Speaker, Sir, secondly, I beg to lay the following Paper on the Table of the Senate, today Tuesday, 11th August, 2020:

The Report of the Standing Committee on Labour and Social Welfare on a Petition to the Senate by Mr. Patrick Wambua regarding the plight of former Machakos County ward representative staff.

Allow me to comment very briefly on the two reports. The petitioners in the first Petition on the KUCO had a number of issues that the Committee went through. We meet

with them. If you grant me leave I can go through them in two minutes as is the procedure.

The Speaker (Hon. Lusaka): That is okay.

Sen. Sakaja: Thank you, Mr. Speaker, Sir. The salient issues which were emerging from the petitioners are as follows.

That on 5th October, 2017, the KUCO, 47 county governments and the Ministry of Health entered a return to work formula where they were to sign a recognition agreement and commence negotiations on CBA within 60 days.

Then on 10th January, 2018, they agreed on negotiable and non-negotiable items on the proposed CBA which would guide the negotiations going forward. The KUCO agreed on extension of negotiations to April 2018. In April 2018, the Government team indicated that they were no longer willing to negotiate on disputed clauses unless the KUCO ceded its position on internship allowances, contracts and comprehensive medical on behalf of the negotiations. This resulted in a stalemate.

Mr. Speaker, Sir, on 11th April, the Ministry of Labour and Social Protection appointed a conciliator. After three meetings, the counties through the Chief Executive Officer (CEO) to the Council of Governors (CoG) declined further summons. However, after the Cabinet Secretary (CS) intervened, it was agreed that the counties will negotiate with the KUCO, including the disputed clauses that had earlier been declined.

On May 2019, on the first day of the negotiations, the employers reaffirmed their earlier stand of not negotiating on contentious clauses. Despite Kshs2.9 billion allocations and Kshs1.2 billion budgetary allocations for internship programme, the Ministry remained noncommittal on payment of diploma clinical officers leading to a second trade dispute.

Mr. Speaker, Sir, on the 17th after the Alternative Dispute Resolution (ADR) mechanisms failed the KUCO resolved to call for a strike. Thereafter, they came to us as the Senate.

Our recommendations are as follows. Let me go straight to them.

The Committee made recommendations along the petitioners' prayers that the Senate directs the Ministry of Health and all counties to pay clinical officers under internship programme. In their submission, the Ministry of Health stated that it had gotten approval to pay the clinical officer interns diploma holders a stipend of Kshs15,000. The KUCO confirmed that after this intervention by this House, they are now being paid.

Mr. Speaker, Sir, the second issue was to ensure that the Ministry of Health and all counties conclude the CBA negotiations with KUCO, register and implement them within given timelines.

Mr. Speaker, Sir, all parties concerned were part of the process of conciliation being spearheaded by the Ministry. We have recommended that the conciliator hastens the process and resolves the remaining 20 per cent - that is what is left and which is still in contention - within the next two months.

Mr. Speaker, Sir, we recommend that the negotiation process should be completed by the end of September 2020. We have directed that we, as the Senate, get a report on this by September 2020.

Thirdly, on the issue of the Ministry of Health implementing return to work formula of 5th of October, 2017, including matters on promotion and re-designation of

clinical officers, the Ministry confirmed in the submission that this was being worked on and they had already received approval from the National Treasury on funds to implement the promotion and re-designation.

The Committee has recommended that the county governments factor these promotions and re-designations in the current and supplementary budgets to allow for implementation.

Finally, Mr. Speaker, Sir, on the issue of compelling the Ministry of Health to rectify the clinical officers reviewed scheme of service, 2018, as it was agreed on 5th October, 2017, the Ministry of Health schemes of service have been reviewed and have been taken to the Public Service Commission for final approval. We are looking at this and undertake as the Committee to follow up on the schemes of service with the Ministry of Health and the Public Service Commission within the next two weeks.

Mr. Speaker, Sir, the Report has all the minutes of the meetings and all the proceedings. I want to thank the petitioners from seeing it fit to come to the Senate to get their matter resolved and addressed.

Mr. Speaker, Sir, on the second paper with regard to the plight of former Machakos County ward representative staff, I will just go straight to what the issues were. I know that this is of interest to a number of Senators who appeared and spoke to the Committee.

Mr. Speaker, Sir, the emerging issues were that employees of the County Assembly of Machakos with signed contracts surrendered in August, 2017, following the 2017 elections, got an extension of their contracts for two months, September and October, 2017, through text messaging or phone communication. This was terminated on the 23rd October, 2017, through the same mode, that is, Short Message Service (SMS).

Upon termination, the petitioners did not receive their full benefits. That is despite engaging the County Assembly's Public Service Board. They also engaged the Labour Relations Court in Machakos on the matter hence the case is pending. Other efforts have not yielded a favourite outcome.

Mr. Speaker, Sir, we quickly dealt with this matter. There was an illegality that we noticed. I will not go through all our observations because that will take time because Members here look very keen to deal with other issues.

Mr. Speaker, Sir, the Committee recommended that-

- (i) On the petitioners' prayers, the Senate enacts legislation to address any possible legislative gaps.
- (ii) The Machakos County Public Service Board adhere and apply in total the existing laws and regulations guiding employer/employee relationship in general and county ward representatives' staff, the partisan staff in particular to ensure fair administrative action and to safeguard public resources.

Mr. Speaker, Sir, on the second prayer; that the Senate intervenes to ensure that the petitioners are duly compensated. Sadly, and unfortunately, we noted that the aforementioned illegalities outlined in Chapter Three of the Report, any additional compensation to petitioners will result in a further illegality. This is because their contracts end when the Members of County Assembly (MCAs) stop being MCAs, the same way Senators and Members of National Assembly; their contract ends.

On the prayer that the Senate intervenes, we have embarked on a process. We are looking at each and every county assembly to make sure that they all follow the law in respect to compensation of staff of ward representatives, so that they are not being paid arbitrarily and illegally once the Members of County Assembly have ceased to hold office.

The Petition is on the Table of the House for Members to scrutinize.

I thank you.

(Sen. Sakaja laid the documents on the Table)

The Speaker (Hon. Lusaka): Hon. Senators, the Supplementary Order Paper is now uploaded and you can have a look at it. In the meantime, let me allow Sen. Cheruiyot to comment on the Report.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir, for exercising your authority under Standing Order No.232 to allow us to make a few comments with regards to this Petition that this particular Committee has dispensed of expeditiously and returned very reasonable verdict.

It is my sincere hope that once the petitioners receive copies of the response of the Committee to the Petition, they shall be able to use the force that is due to them and ensure those entities comply with requirements.

The issues of public health workers and institutions since devolution have continued to cause challenges. I have not lost count; this House has handled close to 10 Petitions with regard to how healthcare workers are treated in various county governments. There is the issue of Kirinyaga that was here recently before this particular Petition from Machakos County and the rest of the counties.

Had I taken time to present before the Committee - I did not get Sen. Sakaja's presentation quite clearly - I would recommend that the answers that the petitioners will get be applied in a crosscutting manner and be the standard across all the 47 counties. It can be to that the Senate, by way of a response to a Petition, requested the county governments to ensure that issues of human resource of healthcare workers in this country are respected and given the rightful place in our counties.

These particular officers play a critical role, especially in such a time as now, as we are battling COVID-19 pandemic. I spent the last weekend visiting healthcare workers in my county. I could see the struggle and the challenges that they go through on a daily basis, trying to ensure that our citizens receive the healthcare that is steward to them.

I hope this will put the matter to rest and that we shall not be receiving any further requests in terms of Petitions on what is happening to our healthcare system.

Finally, Mr. Speaker, Sir, this is also a challenge to the various County Public Service Boards (CPSB). This problem arises when County Public Service Boards refuse to honour some of these agreements. There is nothing as discouraging as when two parties are warring, especially the employer and the employee. They end up filing an agreement before the CPSB, which then ends up refusing to honour and claim that they are not party to such negotiations. This erodes the confidence of our healthcare workers. In future, when there is a dispute, what will be the trust or the basis that healthcare workers will use to return to work if the agreements they enter into are not honoured?

Mr. Speaker, Sir, I appreciate what this Committee has been able to do and hope that this is the final time that we will get to hear these kinds of disputes.

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

The Speaker (Hon. Lusaka): Sen. Khaniri, what is your intervention?

Sen. Khaniri: Mr. Speaker, Sir, I rise pursuant to the provision of our Standing Orders, in particular, Standing Order No.232 (2). I will be seeking your guidance.

Mr. Speaker, Sir, last week, we adjourned on the Motion on the formula for resource allocation. If I remember very well we were supposed to have broken off last week until September, 2020. The only reason we are here is because we did not complete debate on that particular Motion.

Mr. Speaker, Sir, I, therefore, want us to treat this Session today almost like a Special Sitting. I see there are quite a number of Petitions and Statements listed on the Order Paper.

Mr. Speaker, Sir, Kenyans are now glued to their television sets this afternoon watching the proceedings of the Senate. They want to see if we will get a solution to the stalemate that has been there for the last couple of weeks.

Mr. Speaker, Sir, I know that Standing Order No.232 (2) gives you the discretion. Although, at the beginning of the Standing Order (2), it says:

“Whenever a Petition is committed to a Standing Committee, the Committee shall, in not more than sixty calendar days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate and no debate on or in relation to the report shall be allowed, but the Speaker may, allow comments or observations in relation to the Petition for not more than thirty Minutes.”

It gives you some leeway. I can understand why they made this provision to give you a leeway to exercise the discretion of allowing few comments. In this particular case, as you exercise your discretion; have in mind that all our minds and energies are focused on the formula. We know we are supposed to be on a break not to discuss Petitions. Allow us to go straight to the Motion that brought us here today. We can do this Petitions and Statements when we resume.

The Speaker (Hon. Lusaka): Maybe I did not alert you that they were still uploading the Supplementary Order Paper. I was of the opinion that instead of us sitting here and looking at each other, we can allow one Petition and then we proceed. Let us close the debate on that. Clerk, let us go to the next order.

STATEMENTS

The Speaker (Hon. Lusaka): Statements are deferred to the next sitting

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

BOOSTING OF DOMESTIC TOURISM IN KENYA

ALLEGED APPROVAL OF THE VAGINAL RING TO CURB THE SPREAD OF
HIV/AIDS IN AFRICA

POLLUTION OF THE ENVIRONMENT BY INDUSTRIAL EMISSIONS

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

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

MISAPPROPRIATION OF STAFF EMOLUMENTS, STATUTORY DEDUCTIONS
AND OTHER LABOUR RELATIONS VIOLATIONS

PAYMENT OF ALLOWANCES TO OFFICE ADMINISTRATIVE PERSONNEL
WORKING IN THE HEALTH SECTOR IN COUNTY GOVERNMENTS.

STATE OF AFFAIRS AT THE POSTAL CORPORATION OF KENYA

DESTRUCTION BY FIRES, OF THE CONSERVATION AREA AROUND TSAVO
NATIONAL PARK

ALLEGED ASSAULT AGAINST A RESIDENT OF ISIOLO COUNTY AT
BARAMBATE POLICE POST

STATUS OF DOCK WORK JOB OPPORTUNITIES FOR YOUTHS AT THE LAMU
PORT

HUMAN–WILDLIFE CONFLICT IN ISIOLO COUNTY

STATUS OF PREPAREDNESS FOR COVID-19 BY WAJIR COUNTY
GOVERNMENT

OPERATIONS OF ADAK AND THE RAMPANT DOPING TEST FAILURE BY
KENYAN ATHLETES

STATUS OF GRADUATIONS IN VARIOUS LEARNING INSTITUTIONS THAT ARE
DUE IN 2020

USE OF EXCESSIVE FORCE BY POLICE WHEN ENGAGING WITH CIVILIANS

ALLEGED INDUSTRIAL STRIKE BY HEALTH WORKERS IN HOMA BAY
COUNTY IN THE MIDST OF THE COVID-19 PANDEMIC

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

DEMISE OF RENOWNED ARTIST POPULARLY KNOWN AS PAPA SHIRANDULA

ACTIVITIES OF THE COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES

ACTIVITIES OF THE COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL
RELATIONS

ACTIVITIES OF THE COMMITTEE ON EDUCATION

(Statements deferred)

Sen. Faki: On a point of Order, Mr. Speaker, Sir.

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

Sen. Faki: Mr. Speaker, Sir, I had a condolence Statement to make on behalf of my former Member of Parliament, the late Ramadhan Seif Kajembe, who passed away on Friday last week. If we are to defer it to September, it will be a bit late.

The Speaker (Hon. Lusaka): I will only allow that one and there will be no other comments. I know people would have wanted to contribute, but that is important.

Proceed, Sen. Faki.

Sen. Sakaja: Point of Order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of order, Sen. Sakaja? I still want to encourage that we observe social distancing. Let us avoid groupings.

Sen. Sakaja: Thank you, Mr. Speaker, Sir. I appreciate that you have allowed Sen. Faki to give condolences to a leader we have lost. I will ask that you exercise discretion after we are done with Order No.10. Two or three weeks ago, there was a Statement I brought on the same and the condolences will expire. It was a long tribute from the Committee on Charles Bukeko alias Papa Shirandula as well as Lady Maureen. If we finish with Order No.10, please allow us to go to that. I kindly ask in the same spirit of expiry of condolences.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. I am of the view that due to the exigency of time, on our behalf, you can issue a formal condolence after the Statement by Sen. Faki, to the family of the late Kajembe so that you can accommodate the views of other Members here who worked with this good late gentleman.

The Speaker (Hon. Lusaka): Sen. Faki, proceed. What is your point order, Sen. M. Kajwang'? Let us avoid these groupings and observe social distancing, please.

Sen. M. Kajwang': Mr. Speaker, Sir, I had requested to raise a point of order on the Statements. If you look at the Order Paper, there are 20 Statements out of which 15 have been raised under Standing Order No. 48 (1). These 15 Statements discuss issues that are urgent. I have a Statement talking about a strike by health workers in Homa Bay County, which has been pending since last week.

Mr. Speaker, Sir, by the time Statements under Standing Order No.48 (1) come to the Order Paper, the Speaker has approved, reviewed and decided which Committee it shall be referred to. Just to ensure that these matters are dealt with, with the urgency they deserve, that the 15 Statements under Standing Order No.48 (1) be referred to the relevant Committees. Reading the Statements on the Floor of the House is just a formality. If we go past them, those 15 Statements can take this House close to 3.00 p.m.

May I request that if not all 15, but my Statement on the state of healthcare in Homa Bay County be immediately referred to the Health Committee so that they can look for a solution to the issues raised therein?

The Speaker (Hon. Lusaka): That is okay. As we continue, I will look at those that need to be referred to Committees and refer them, so that they can start to work on them.

Sen. Faki, proceed.

Sen. Faki: Asante Mhe. Spika, kwa kunipa fursa hii kutuma rambirambi zangu, za familia na za watu wa Mombasa.

(Loud consultations)

The Speaker (Hon. Lusaka): Order Senators! Majority Whip and Sen. Wamatangi, I am pleading with you to take COVID-19 seriously. Let us avoid the groupings and moving around.

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

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

Sen. Wetangula: Mr. Speaker, Sir, increasingly, I have been hearing the Chair pleading with Members. There is no provision in the Standing orders for the Speaker to plead. The Speaker directs, rules and orders. If there is any breach of the Standing Orders, I want to encourage and urge you to order and direct, rather than plead. Since, every time you plead, people think it is a child's game.

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

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

Sen. Kang'ata: Thank you, Mr. Speaker, Sir. I seek your indulgence that your rule concerning social distancing be given exemption to whips because they need to go round talking to Members.

The Speaker (Hon. Lusaka): You are out of order. No exemptions. Sen. (Eng.) Maina, what is your point of order?

Sen. (Eng.) Maina: Thank you, Mr. Speaker, Sir. We left this House the other day at 9.00 p.m. We broke the law as it stands. If we start these sideshows which Sen. Khaniri has drawn your attention to, we are likely to be here longer.

Sen. Khaniri said and we all know that this country is in suspense and Kenyans are waiting for a decision from this House. Therefore, I would beseech you; I know you have a kind and wide heart, but for now, narrow your heart to one item - discussing and concluding this matter today.

The Speaker (Hon. Lusaka): I only allowed Sen. Faki time. The more we talk, the more time we are consuming.

DEMISE OF HON. RAMADHAN SEIF KAJEMBE

Sen. Faki: Asante, Bw. Spika, kwa kunipa fursa hii kutuma rambirambi zangu, za familia yangu na watu wa Mombasa kwa familia, marafiki na ndugu wa mwenda zake marehemu Ramadhan Seif Kajembe.

Alizaliwa takriban miaka 76 iliyopita katika Mji wa Mombasa. Baadaye aliajiriwa na Shirika la Kenya Cargo Handling Services, ambapo alihudumu mipaka 1970s na

kuchaguliwa kama diwani katika wadi ya Mikindani katika Baraza la Mji wa Mombasa. Mhe. Kajembe alihudumu kama diwani kwa muda wa miaka 15.

Baadaye, mwaka wa 1997, alichaguliwa kwa mara ya kwanza kama Mbunge wa eneo Bunge la Changamwe katika Mji wa Mombasa. Mwendazake alihudumu kama Mbunge kwa muda wa miaka 15 mpaka mwaka 2013 ambapo alistaafu siasa na kuhudumu kama mwenyekiti wa bodi ya halmashauri ya Kenya Ferry Services.

Ramadhan Seif Kajembe alikuwa mtetezi wa wafanyakazi katika Bandari ya Mombasa. Marehemu Kajembe alikuwa mtetezi wa wafanyikazi katika bandari ya Mombasa. Aliwahi kuhudumu kama mwenyekiti wa chama cha ODM; chama kilicholeta Seneti mwaka wa 2017.

Bw. Spika, marehemu Kajembe alichangia pakubwa maendeleo katika mji wa Mombasa katika eneo bunge la Changamwe ambako alijenga shule nyingi ikiwemo Kajembe Secondary School ambayo aliianzisha mwenyewe binafsi kabla ya kuchukuliwa na CDF ya eneo bunge la Changamwe.

Marehemu Kajembe alipata ugonjwa wiki mbili zilizopita na Ijumaa tarehe 7/8/20200, alipoteza maisha yake jioni alipokuwa anapokea matibabu katika hospitali ya Pandya.

Marehemu Kajembe alisaidia pakubwa kisiasa kwa kuwajenga wanasiasa chipukizi wengi wakiwemo Mhe. Badi ambaye anawakilisha eneo bunge la Jomvu ambako ndiko Mhe. Kajembe alikotoka.

Marehemu Kajembe pia alichangia pakubwa elimu katika eneo bunge la Changamwe na Mombasa kwa jumla. Alihakikisha kwamba watu wanapata elimu. Awali, nilipozungumza na Sen. Wako, alinieleza kwamba alisafiri na marehemu Mhe. Kajembe wakati mmoja wakitoka Geneva kuja Nairobi, na alimuonyesha ari kubwa ya kutaka kusoma ijapokuwa alikuwa mbunge.

Marehemu Mhe. Kajembe aliwahi kuhudumu kama waziri msaidizi katika wizara ya mazingira na mali asili chini ya mwenda zake Mhe. Michuki. Aliwahi pia kuwa mwenyekiti wa kamati ya usalama katika Bunge la Kitaifa.

Sen. Wetangula pia amenieleza kwamba marehemu Mhe. Kajembe alikuwa mteja wake na aliwahi muakilisha katika kesi ya 1993 ambako alikuwa anapinga uamuzi wa kuchaguliwa marehemu Mhe. Kiliku kama mbunge wa Changamwe. Mimi nilikuwa mtetezi wa tatu katika kesi hiyo.

Ningependa kumuambia Sen. Wetangula kwamba alidhulumu haki zangu wakati huo.

Bw. Spika, tunaomboleza kifo cha marehemu Mhe. Ramadhan Seif Kajembe kwa sababu alikuwa kiongozi wa tajriba kubwa. Alikuwa kiongozi ambaye hakuogopa kutetea haki za watu wake. Aliwatetea wananchi wote kwa jumla katika eneo bunge la Changamwe. Sisi kama watu wa kaunti ya Mombasa, hasa eneo la Jomvu na Changamwe, tumepata msiba mkubwa kwa kumpoteza kiongozi tuliyekuwa tunamtegemea kwa mambo mengi.

Twaomba Mwenyezi Mungu ailaze roho yake mahali pema peponi.

The Speaker (Hon. Lusaka): What is your point of intervention Sen. Orenge?

The Senate Minority Leader (Sen. Orenge): Mr. Speaker, Sir, kindly give me two minutes to talk about my brother, the late hon. Ramadhan Seif Kajembe. He was one of the politicians from the Coast who were truly colourful. The Coast region has a history

of very colourful politicians. The politicians come and go, but increasingly you get the type of politicians who make a difference in the politics of the Republic of Kenya.

The late hon. Kajembe was a pillar in the politics of the Coast. I have been in many meetings deciding on how to handle politics in the Coast because it is a very cosmopolitan area. Besides being a quiet principled politician, the late hon. Kajembe was at the core of the activities of the ODM in the Coast. Our strength in the Coast region as the ODM has been because of people like the late hon. Kajembe.

As my colleague Sen. Faki has said, the late hon. Kajembe represented Jomvu and Changamwe constituencies as well as served as an Assistant Minister in the Ministry of Environment and Natural Resources. The late hon. Kajembe worked with former Presidents Moi and Kibaki and the current President, His Excellency Uhuru Kenyatta. We would have mourned the late hon. Kajembe in a bigger way were it not for the COVID-19 pandemic.

The late hon. Kajembe served in the Executive Committee of the ODM. I visited his home many times. I shared grief and happiness with the late hon. Kajembe in the past and of late. The last time I had an engagement with him was when he lost one of his family members. I would like to register my condolence to the people of the Coast, particularly his family. The Coast is a pillar of the politics of this nation and the late hon. Kajembe put the politics of the Coast at the centre of the politics of the nation.

May the Lord rest his soul in peace.

The Speaker (Hon. Lusaka): In the interest of time, I will only give the Senate Majority Leader time to say something. I am aware that many of you worked with the late hon. Kajembe, but there is a lot of anxiety about the Motion on the Third Revenue Sharing Formula.

The Senate Majority Leader (Sen. Poghio): Mr. Speaker, Sir, on behalf of the Senate Majority side and that of my family, I take this opportunity to pass condolences to the family and friends to the late hon. Kajembe. The late hon. Kajembe was a retired politician with a strong spirit. I served with the late hon. Kajembe in the National Assembly and we had a very good working relationship. I take this opportunity to wish the family of the late hon. Kajembe well.

May God rest his soul in eternal peace.

The Speaker (Hon. Lusaka): The Senate Majority Leader, kindly use this opportunity to communicate your weekly statement before we move to the Motion that we are all waiting for.

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 8TH SEPTEMBER, 2020

The Senate Majority Leader (Sen. Poghio): Mr. Speaker, Sir, Pursuant to Standing Order 52(1), I hereby present to the Senate the business of the House for week commencing Tuesday, 8th September, 2020.

Pursuant to the Senate Calendar passed on 27th February, 2020, and as amended by Resolutions made on 17th March, 14th April and 2nd June, 2020, respectively, the Senate is scheduled to proceed on recess at the rise of the Senate, today, 11th August, 2020, until Tuesday, 8th September, 2020.

On Tuesday, 8th September, 2020, the Senate Business Committee (SBC) will meet to schedule the business of the Senate. The Senate will consider Bills scheduled for Second Reading and those at the Committee of the Whole stages on 8th September, 2020. The Senate will also continue with consideration of business that will not be concluded in today's Order Paper, including Motions, Petitions and Statements.

I would like to commend all Senators for the work we have been able to do even under the prevailing COVID-19 pandemic circumstances. I would particularly wish to commend Senators for the work that we have done in this Session so far, including passage and subsequent enactment into law of the following Bills –

A total of 20 Bills are due for Second Reading and a further 17 Bills are at the Committee of the Whole Stage. I am aware that there are more legislative proposals, which are under development by individual Senators and Standing Committees will increase the number of Bills in the Senate and the workload before us on their publication.

The SBC will continue to prioritize these Bills accordingly. In this respect, I urge the relevant Movers to be available in the House when they are scheduled. I also urge the respective Standing Committees to use the opportunity during the coming recess to expeditiously conclude consideration of these Bills and table reports pursuant to the Standing Orders. Likewise, I urge Standing Committees to also conclude consideration of Petitions and Statements referred to them and table reports pursuant to the Standing Orders.

Mr. Speaker, Sir, a total of 35 Bills have been passed by the Senate and referred to the National Assembly for consideration.

These Bills are still pending in the National Assembly, some of which were passed during the first two sessions of the term of the Senate.

Through the SBC, the Senate leadership will pursue this matter with the new leadership of the National Assembly with the view to having them prioritized in the National Assembly and referred back to the Senate with or without amendments. It is important for the Senate to note that of the 25 Bills referred to the Senate by the National Assembly, only nine Bills are pending consideration.

Finally, Mr. Speaker, Sir, as we resume debate on the third basis formula of Revenue allocation among county governments, I continue to urge that we proceed with patience, understanding and objectivity. A speedy resolution on this matter will then pave way for consideration of the County Allocation of Revenue Bill.

I thank you and hereby lay the Statement on the Table of the House.

(Sen. Poghiso laid the document on the Table)

The Speaker (Hon. Lusaka): Next Order.

MOTION

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

(Sen. Kibiru on 28.7.2020)

(Resumption of debate interrupted on 4.8.2020)

The Speaker (Hon. Lusaka): Hon Senators, it is resumption of debate, and Sen. Mwaura had 18 minutes to go.

Sen. Mwaura, proceed.

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

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

Sen. Linturi: Mr. Speaker, Sir, I rise on a point of order to propose an amendment to Sen. Sakaja's---

The Speaker (Hon. Lusaka): Not now. You are out of order! Let us be a bit neat in what we are doing. We are still discussing Sen. Sakaja's amendment, please. Let Sen. Mwaura continue because it is a resumption of debate.

Sen. (Dr.) Mwaura, continue.

Sen. Linturi: When am I supposed to raise my amendment to Sen. Sakaja's amendment?

The Speaker (Hon. Lusaka): It is on the Order Paper, just approach the Chair.

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

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

Sen. Cheruiyot: Thank you, Mr. Speaker Sir. At any point in the procedures of our debate, when a matter is live before the House, amendments are allowed. I would understand the reason why you want us to proceed in that way, but for the comfort of the whole House, it would be good if you gave guidance on what time Sen. Linturi will be allowed to move his amendment. This is especially in light of the fact that his is a further amendment to the proposal by Sen. Sakaja, and it appears to have the consensus of most of the Members. It would be good if you granted us direction.

The Speaker (Hon. Lusaka): Hon. Senators, I propose that Sen. Mwaura continues in the meantime. I will give guidance on when the amendment by Sen. Linturi will be moved.

Sen. (Dr.) Mwaura: Thank you, Mr. Speaker, Sir. As I had said two Tuesdays ago, I rise to oppose this amendment Motion.

(Loud consultations)

Kindly, allow me to prosecute my case.

Mr. Speaker, Sir, if you look at this country, it is true that we have inherited a colonial state that is extractive in nature. The first extraction was to the crown in London. When you look at where we are today, you will see that the same arguments that were there in 1963-1965 are prevailing between a central government and devolution, and between the people and the land mass.

If you refer to the 1965 Sessional Paper No. 10 on African Socialism and its application in the planning of Kenya, you will clearly see a contestation between a government that wanted to concentrate its resources so as to govern the country. The failure of the *majimbo* system and the advice that was given to the Kenyan National Democratic Union (KADU) through its lawyer who was hired from Switzerland, where they have cantons--- It is divided into seven cantons and the cantons produce a rotating president every year for seven years.

Coming back to this same idea of a Sessional Paper, it is very interesting to note that there was also another Sessional Paper in 2012 that was extensively put in place to “slow down the horse for the donkey to catch up”. This Sessional paper, championed by *Waziri* Mohammed Elmi is not being flagged out as a key determinant of the current Second Generation Formula, and has caused an illegality and injustice to many Kenyans who deserve to be properly resourced in terms of the money that is going to counties.

I am saying so because if you look at Sen. Sakaja’s amendment, it seeks to freeze the population of this country to the 2009 census. I beg to disagree with him because we have new data from 2019. Let me give an example. In the county of Mandera, the 2019 census has demonstrated that the population reduced by 15 per cent. In the 2009 census, the same population had more males than females within the same variance, yet right now there are more females than males.

If you combine the population of Wajir, Mandera and Garissa, you get a total population of 2,490,000 people. If you compare the same to the population of Kiambu, we have 2,417,735 persons. The cumulative allocation of those three counties is a record Kshs25 billion, and yet the allocation of Kiambu County is Kshs9.4 billion, with a wage bill of Kshs8 billion. Is that really fair?

Sen. Madzayo: Jambo la nidhamu, Bw. Spika.

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

Sen. Mwaura: That a county with the same number of people gets less Kshs16 billion?

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

Sen. Madzayo: Asante, Bw. Spika. Jambo langu la nidhamu ni kuwa tunaongea kuhusu ugavi wa pesa inayoendelea katika kaunti. Ndugu yangu, Sen. (Dr.) Mwaura, ambaye ninamheshimu sana, anasema kuwa kule Mandera, wanaume ni wengi kuliko wanawake. Anasema kuwa maeneo ya Mandera ni makubwa na hayana watu.

Tungemhisi atoe maoni yake kuhusu Hoja iliyowasilishwa na Seneta Sakaja badala ya kutupeleka katika njia nyingi huku akisema kwamba watu wa Kiambu wanazaa wanawake wengi kuliko wanaume. Je, anamaanisha nini? Ingekuwa vyema umwambie Sen. Mwaura aendeleo na Hoja hii badala ya kusema akina mama kutoka Mandera, Garissa au sehemu yeyote anayotaka kutaja hawazai watoto wengi kama akina mama wa Kiambu anakotoka.

The Speaker (Hon. Lusaka): Sen. (Dr.) Mwaura, chungu usiende kwa mambo mengine ambayo yanaweza kuleta taharuki.

Sen. (Dr.) Mwaura: Bw. Spika, niwie radhi lakini lazima niseme ukweli uliopo kwa sababu kila mama katika nchi hii ana uwezo wa kuzaa watoto wengi kama akina mama wa Kiambu. Kwa ivyo, ni lazima niongee kuhusu takwimu ambazo ni rasmi. Hili si jambo la kufikiria.

Sidhani hilo lilikuwa jambo la nidhamu, lakini njia moja ya kuchangia Hoja hii. Nakuomba unikinge kutokana na jambo la nidhamu kutoka kwa Sen. Madzayo. Kuna watu wanafikiria ya kwamba ni lazima wao wazungumze na wengine wasizungumze katika Seneti hii lakini mimi nitazungumza hadi mwisho wa muda wangu.

The Speaker (Hon. Lusaka): Now continue in the English language because you started with it.

Sen. (Dr.) Mwaura: Mr. Speaker, Sir, I was speaking in the Kiswahili language because you understand it. Let me proceed.

Kilifi County, for example, has 1.4 million people with a current allocation of Kshs10 billion while Kiambu County which has 2.4 million people is getting Kshs9 billion. This is the injustice that we are talking about when it comes to debating about the revenue formula.

There has been an argument that the formula proposed by the Committee which Sen. Sakaja wants to amend---

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

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

Sen. Olekina: Mr. Speaker, Sir, I am baffled by your directives in this House. You have directed that we comply with the Ministry of Health's guidelines on this COVID-19 pandemic.

Sen. (Dr.) Mwaura, you can be as emotive as you want, but we must protect the other people who are here. When you speak without a mask from the Dispatch Table, which is what our colleagues from the other Chamber will be using, it will be putting their lives at risk.

Secondly, I plead with you that we focus and remain relevant on the issues. There is no point of being emotive on this matter. Let us follow the guidelines of the Ministry of Health.

Let us not point at our colleagues from Kilifi County. When Sen. Madzayo spoke and then Sen. (Dr.) Mwaura goes directly--- There is no point of antagonising one another.

The Speaker (Hon. Lusaka): Hon. Senators, I am directing that if you will speak without a mask, I will ask you to sit down.

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

The Speaker (Hon. Lusaka): There is a point of order from Sen. (Eng.) Mahamud.

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, is Sen. (Dr.) Mwaura in order to talk about Kiambu, Kilifi and Mandera counties while he represents special interests? He does not represent Kiambu County.

Sen. (Dr.) Mwaura: Thank you, Mr. Speaker, Sir. That is the most frivolous statement from my former Chairperson. I was born and bred in Kiambu. I represent the people of Kiambu here. I am in the Kiambu Delegation and I vote for them on many occasions. In Kiambu County, there are many people with disabilities. Therefore, I will not allow to be pigeon-holed because of this debate.

Let me proceed, Mr. Speaker, Sir.

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Senators! I want to ask you that we need to debate soberly. Those who watch the media saw the Senate being discussed last week; about being rowdy and that we are degenerating.

Please, let us not get there. Let us debate soberly. I know this is an emotive matter, but let us maintain our cool.

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

As I was saying, it is true that when you looked at the formula proposed by the Committee and that is why I am opposing Sen. Sakaja's proposal, the argument that this

formula is only population based is not true. If we were to go the population way alone, Turkana County would only get Kshs6 billion. The proposal now is for it to get Kshs10 billion. That means that they have Kshs4 million more as a headroom for marginalisation.

If we go by the population, Makueni County will get an extra Kshs254 million while Marsabit County and Mandera will get Kshs800 million and Kshs2.3 billion, respectively.

Sen. Kinyua: Jambo la nidhamu, Bw. Spika.

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

Sen. Kinyua: Asante sana, Bw. Spika. Nimemsikiliza kwa makini Sen. Madzayo akisema kwamba Sen. (Dr.) Mwaura anakosea kulinganisha idadi ya watu katika kaunti zetu. Mimi sioni makosa yoyote ya kulinganisha idadi ya watu katika kaunti zetu. Kwa mfano, sioni kosa la kulinganisha watu wa Kiambu na watu wa Mandera. Hakika huduma hupelekewa wananchi lakini si ukubwa wa msitu au maeneo.

Kwa hivyo, ukweli usemwe kama vile Sen. (Dr.) Mwaura anavyosema.

The Speaker (Hon. Lusaka): Sen. Kinyua, jambo lako la nidhamu ni lipi?

Sen. Kinyua: Bw. Spika, nasema kuwa Sen. (Dr.) Mwaura alipokuwa akiongea, alikua analinganisha idadi ya watu katika kaunti zetu. Sen. (Dr.) Mwaura ni Seneta wa Kenya na yuko huru kusema anayoyasema. Haya maneno anayoyesema yako katika hesabu ya idadi ya watu nchini. Si makosa kusema watu wa kaunti fulani ni wachache au ni wengi kwa sababu huo ni ukweli mtupu.

The Speaker (Hon. Lusaka): Sen. Kinyua, jambo la nidhamu ni lipi?

Sen. Kinyua: Sen. (Dr.) Mwaura hajafanya makosa yoyote kwa kulinganisha idadi ya watu wa Kiambu na Mandera.

Sen. Wario: Kwa jambo la nidhamu, Bw. Spika.

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

Sen. Wario: Bw. Spika, nimesimama hapa kama milingoti kwa jambo la nidhamu juu ya mtazamo wa Sen. Mwaura kuhusu swala hili la ugavi wa rasilimali za nchi. Yeye amelinganisha idadi ya watu wa Garissa, Wajir, Mandela na Kiambu. Amedai kuwa kaunti hizo zina idadi ya chini ya watu na hivyo rasilimali chache zipelekwe huko.

Je, Sen. (Dr.) Mwaura anafuata utaratibu upi wa kugawa pesa na kusema kaunti hizo hazitahili mgao wa juu? Sisi tunajua Kaunti ya Kiambu imeendelea sana kwa sababu imekuwa na viongozi wa taifa tangu Uhuru. Pesa nyingi hupelekwa huko na Kiambu inaendelea kuwa na maendeleo mengi kuliko kaunti zingine. Sisi tuleta mambo ya ugatuzi na pesa za kujumisha au *equalization funds* ili kaunti za Mandera, Wajir na Garissa zipate maendeleo. Sen. (Dr.) Mwaura hafuati utaratibu wowote kwa sababu pesa zinaenda kujenga kaunti ambazo hazijawahi kuendelea kwa miaka mingi. Pendekezo langu ni kuwa pesa chache zipelekwe Kiambu na kaunti zingine zipate pesa nyingi ili ziendeleo.

The Speaker (Hon. Lusaka): Those who will stand on points of order should be careful not to debate.

The Senate Majority Leader (Sen. Poghishio): Mr. Speaker, Sir, mine is just to help with that matter. Once a point of order goes beyond one or two minutes; it is no longer a point of order.

A point of order should be in the form of a, for example, is so and so in order to do such and such? If it is not there, there is no need for that person to proceed because we

are trying to find out what is out of order in the House. I would like to ask Senators not to use the pretext of points of orders to debate or to argue.

Sen. (Dr.) Mwaura: Thank you, Mr. Speaker, Sir. Those were points of arguments, not points of orders.

I am glad that Sen. Wario has confirmed what I have been saying; that the whole idea of the second generation formula was to punish certain counties because of their population, ostensibly, because they have produced presidents and they have developed.

Sen. Wario, I would like to invite you to come with me to Kiambu County and see the kind of squalor and poverty because land has been divided to a point that it is not viable anymore. When you see people, like where I come from, Ruiru Constituency, with a population of 490,120 people getting the same National Government Constituencies Development Fund (NG-CDF) as you, you can sympathize. Actually, one constituency has more people than even some counties. Even when we are getting bursary, we only get Kshs2,000, while your counties are giving over Kshs100,000 or Kshs30,000. This is the inequality that we are talking about.

We cannot engage in some form of tortuous, convoluted and retributive justice, where you want to cure one form of marginalization by creating another. I do not believe in that Kenya. I believe in a Kenya that is fair; that says, yes, there could be some historical injustices, but they can be addressed through the proper operationalization of Article 204 of the Constitution under the Equalization Fund.

I believe in a Kenya where there is equality of vote, so that one Senator does not represent 2.4 million people and another Senator is representing 143,000 people. I believe in a country where everybody has got equal opportunity and that those who come to equity must do so with clean hands; that they may not want to perpetuate the very barriers that kept them at the margins.

This formula is not about torturing others because of perceived historical injustices. Let me put it very clearly. If the chairman of a cattle dip in your area comes from your village, does that mean that all your cows do not have ticks, that they are all healthy?

Mr. Speaker, Sir, I also want to give another example. When you share food, do you do so according to the number of people or the size of the dinner plate? I think that we share food according to the number of people.

We have an ideological underpinning that is fomenting this debate. This debate is being fomented on the basis of either nationalism or cantonism. We must ask ourselves what is exactly the design of our devolution. When I look at the Bomas draft, it had proposed to have 14 regions and 74 districts. However, the current formula divided further to 47 districts in 1991, which became the counties. That way, it has not been able to resolve the issue of the allure of the presidency.

That is why you heard my good brother, Sen. Wario, saying that it is because we have had the presidency. We, in Central Kenya, would want to tell you here and now, that having the presidency is not a panacea of the common problems of Wanjiku, Mwaura, Otieno and Kalekye. We still need a better Kenya where equal opportunity is not about a tribe, but the population.

When we talk about the people of Kiambu, we are not talking about the Kikuyu. In actual sense, 7 out of 10 people in Kiambu are Kikuyu, but three are not. My neighbour, hon. Cyrus Omondi, who died in mysterious circumstances, was our Member

of County Assembly (MCA) representing Kahawa Wendani. Hon. Kalpash, an Asian, is an MCA in Juja.

So, when you are talking about this formula, I would want us to disabuse the notion that we are giving money to certain tribes. This is because even in Turkana and Mombasa, there are Kikuyus. We are talking about one nation on the basis of fairness and equity.

The journey that we have started, we must always remember that no matter how antagonistic we are, this Senate is required to rise above parochial tendencies because of the nature of politics being local, to come up with a solution that will benefit this country.

Mr. Speaker, Sir, let us just face the truth. If the National Treasury had increased the allocation to about Kshs350 billion, we would not be here. We are here because the governors decided to join hands with their counterparts in the Executive and refused to stand with us. The National Assembly was actually used, and my good brother, my senior, Sen. Mahamud was there - I was his Vice Chairman - was used to countermand our demand for more resources that were scientific and rational.

I want to say without fear or doubt that this Senate cannot, therefore, support the formula of Sen. Johnson Arthur Sakaja who was voted overwhelmingly by the people of Nairobi - majority of them from Mt. Kenya region. He came up with an arbitrary figure of Kshs270 billion which will deny our people roads, water, health and electricity.

As I conclude---

The Speaker (Hon. Lusaka): Your time is up.

Sen. Cheruiyot: On a point of order, Mr. Speaker, Sir. I just want to remind you that you had earlier given directions that in the course of Sen. (Dr.) Mwaura's contribution, you will guide us as to what time Sen. Linturi will present his amendment.

The Speaker (Hon. Lusaka): Yes, I will still guide; I have not forgotten. I just want people to have a feel of what Sen. Sakaja's amendment was all about, and then I will be allowing, at an appropriate time, the amendment by Sen. Linturi.

Sen. (Dr.) Kabaka.

Sen. (Dr.) Kabaka: Thank you, Mr. Speaker, Sir, for giving me this opportunity to also support Sen. Sakaja's amendment. Having said that, I believe that you will rule after I speak on Sen. Linturi's amendment which I have seen. I will not debate it until it is formally introduced to us.

I thank Sen. Sakaja and pray to God that he protects him, as a young man, for trying to bring sanity to this country since Independence. I do not want to repeat what has been said here, but it is very sad that Senators who are entitled to their views and opinion want to mislead the country that there are certain parts of this country that are not needed.

We want the Government of Kenya, this afternoon, to come out very clearly and loudly to the international community and tell us which part of Kenya is not needed in Kenya, so that those people can exercise their International Law, what we call, self-determination. I can see Sen. Wako very keen on matters of International Law, which he is an expert in.

Any Kenyan who is oppressed or any tribe that is oppressed have a right to secede. These are not the old dark days when anybody who would bring a view to an extent of trying to move or say "*Pwani si Kenya*" would be threatened with arrest. Those days are gone.

Hon. Senators, I know that we have a global or corporate role of visiting our regions. It is time for this Senate to have a programme where we would visit the so-called bushy and sandy non-productive areas to see the reality on the ground. People have suffered for many years. Expectant mothers and children walk long distances to get their daily endowment.

I thank all the Senators in this House, especially the female Senators, for having worked so hard and gone to school to attain the level of leadership that they have here. Some had to compete with children from Kiambu or Nyeri or other parts that are well endowed with the natural resources.

What am I saying? This is a question I am going to put before I rest. I wish it was possible to exchange the population of Kiambu, for example, which gets a lot of money, with the population of Mandera, so that the citizens of Kiambu can go and live, for just one and not two days, in Mandera where there is no water and infrastructure. In fact, it is a big shame.

Some of these counties are overdeveloped. How many times are they going to do roads after roads? Why can they not be patriotic Kenyans and bequeath those funds to areas which have no resources such as water, infrastructure and so on and so forth? It is very sad!

Sen. Wamatangi: Mr. Speaker, Sir, I seek your guidance. The Senator for Machakos is a renowned lawyer and a very knowledgeable man. I remember the day Sen. (Dr.) Kabaka was telling this House how qualified he is. I remember he stopped short of saying that he could bring his certificates for people in this House to know that he is not just a nobody because he has got a PhD and other qualifications. Is he in order to make that kind of remarks on the Floor of this House?

The Speaker (Hon. Lusaka): What is out of order?

Sen. Wamatangi: Mr. Speaker, Sir, Sen. (Dr.) Kabaka referred to the people of Kiambu as overdeveloped and over-endowed.

An hon. Senator: Point of order!

The Speaker (Hon. Lusaka): No, he is on a point of order.

Sen. Wamatangi: Mr. Speaker, Sir, it is high time Senators learnt not only to be patient, but also courteous. I am on a point of order. At any time any Senator can raise their matter. I am the Senator for Kiambu, elected by the people of Kiambu. I know the realities of the people of Kiambu. So, I have a right to correct any Senator who puts facts wrongly. The people of Kiambu are equally needy like others.

The Speaker (Hon. Lusaka): I will repeat. When you place a request, tell me what is out of order. You will get an opportunity to put your case across. Everybody has an opinion which should be respected. You may differ with the opinion, but I will give you the opportunity to disagree on the Floor of the House. When you come, tell me what is out of order.

Let us proceed.

Sen. Wamatangi: Mr. Speaker, Sir, I had sat down to give you time because you ordered me.

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

Sen. Wamatangi: My point of order was simple, that the Senator for Machakos is misleading the House. He is giving information that he is not privy to. He is just making

insinuations and innuendos to hype emotions. He must be factual. When he says that the people are over-endowed, the least he should do is to substantiate.

The Speaker (Hon. Lusaka): Let us listen to Sen. Murkomen then I will come to you.

Sen. Murkomen: Mr. Speaker, Sir, I do not know whether I am in order to request you to regulate the debate in the House from turning into a tribal conversation. The rest of the country is watching. We are beginning to talk about our tribes; where they live and what they will get. We are contributing to the polarisation of the nation.

Mr. Speaker, am I in order to request you, from your Chair, to give firm and clear directions and stop a Senator who may want to direct us to this conversation about Giriamas, Somalis, Kalenjins, Luos, Kikuyus and all that? We should speak about devolution and what it means to our counties. We want to carry everybody along as a country, in order to become the sober House we have always argued we want to be.

Sen. Olekina: Mr. Speaker, Sir, mine is to try and assist the House to move forward. I rise on a point of order under Standing Order No.93 on the procedure of a point of order.

Mr. Speaker, Sir, I beseech you that whenever any Senator rises, they should point out the point of order they are standing on as stipulated by Standing Order No.93(1) which I will read, if you allow me.

“Any Senator may raise a point of order at any time during the speech of another Senator stating that the Senator raises a point of order and that Senator shall be required to indicate the Standing Order, upon which the point of order is based.”

Mr. Speaker, Sir, once we follow that, we will stop all these shenanigans or interruptions and gagging people from saying what they want to say. If we do that, we can conclude the debate today.

The Speaker (Hon. Lusaka): That is what I have said. Sen. (Dr.) Kabaka, please finish.

Sen. (Dr.) Kabaka: Mr. Speaker, Sir, let me finish. I did not get where I was out of order other than that I have a lot of academic papers. I have seen no correlation, coefficient to that extent.

Mr. Speaker, Sir, I want to state my opinion which is a fact. Whatever permutation of the formulas we have seen, Kiambu gains a lot of money all the times. However, in my opinion, that county is overdeveloped. It does not need all this money.

There is the issue of Equalisation Fund pursuant to Article 204 which everyone keeps saying that the losing counties will be cushioned. Everyone knows that. There is no law which has operationalised the provisions on Equalisation Fund.

We know that the lifespan of the Equalisation Fund is 20 years. However, since the inception of devolution in 2010, it is now about 10 years down the line, the Government has done nothing.

(Sen. Cherargei crossed the Floor without bowing to the Chair)

Sen. Dullo: On a point of order, Mr. Speaker, Sir. Did you notice that Sen. Cherargei just walked to the other side and back? Is that in order?

The Speaker (Hon. Lusaka): I did not see that, but he is out of order. If you did so, go back and do what you are supposed to do.

(Sen. Cherargei bowed to the Chair)

Sen. (Dr.) Kabaka: Mr. Speaker, Sir, to summarize, it is not only Kiambu that I am talking about. I am talking about all the counties that will gain and they are many. We have 28 at the expense of the 18.

It is high time we visited our morals and pushed this nation together. There is no way we can talk of devolution when some of our counties are losing. So, let us see whether the amendment by Sen. Linturi is reasonable to the circumstances of other counties, so that we do not mind when some counties lose a little to share with other brothers, so that we move.

Remember it is not the intention of the Executive to support devolution in this Republic. All the time, the Executive wants to kill devolution for whatever reason. Remember we are only fighting for 15 per cent of the Kshs3 trillion. Nobody questions the 85 per cent. What is the criterion for sharing the 85 per cent development funds? We do not know. That is left at the discretion of the Executive.

That is why the issue of the presidency in this country attracts a lot of attention. If we have variables on development equivalent to the ones we have here, then it will be easy to demystify the presidency.

Mr. Speaker, Sir, I support Sen. Sakaja's amendments.

The Speaker (Hon. Lusaka): Let us listen to Sen. (Prof.) Kamar then we will have Sen. Wako who is in the extended Chamber.

Sen. (Prof.) Kamar: Thank you, Mr. Speaker, Sir, for giving me this opportunity to also contribute to this Motion. I have listened very carefully to what my colleagues have said. I have taken time to study and look at why we had devolution in the first place. It looks like after these seven times of failing to pass the Motion, we have opened up other issues.

I looked back at the different formulas that have been used. I was in the Tenth Parliament in November, 2012 when we came up with a formula. In the first formula, we got a report from the CRA. We are all aware of the role of the CRA according to Article 20(15) of the Constitution, which says that it makes recommendations to us. The recommendations we received in the Tenth Parliament gave us only six parameters.

We had a population parameter of 45 per cent, an equalization share of 25 per cent, a poverty index of 20 per cent, land area was 8 per cent and fiscal effort was 2 per cent. In 2016, the first Senate did nothing in the second formula, except changing the equal share by increasing it by 1 per cent.

For population, it remained 45 per cent, the equal share increase by 1 per cent to 26 per cent. They also reduced poverty by 2 to two areas that they touched. They reduced it from 20 to 18 per cent. In their own wisdom, poverty seemed to have been going down. Land area remained at 8 per cent and fiscal effort remained at 2 per cent. They introduced an element called development at 1 per cent.

Mr. Speaker Sir, what happened last year was that we received a recommendation from the CRA on time. On the 30th of April, 2019, the Report was laid in the House and stood committed to the Committee. When it came, CRA had made

changes. They crashed population to 18 per cent. For that reason, I keep wondering why we are talking about population when it has been reduced by half in the formula that came. It is very important that we understand where all this is coming from, so that we are able to cure it. They say unless you know what the disease is, you will not be able to treat it.

The equal share was reduced from 26 to 20, poverty was reduced from 18 to 14 while land area remained at 8 per cent. Fiscal effort remained at 2 per cent divided into prudence and effort at 1 per cent each. Development was knocked out.

There was something new that CRA brought in which is very important for us to look at. They went to the Constitution; looked at Schedule Four and introduced what population is all about. They broke the population of 45 million, which was in the first and second formula and reduced it, to 18 per cent and gave 17 per cent to health because health is almost 90 per cent, devolved. Agriculture was given 10 per cent; the same that is internationally acclaimed. They introduced something for urban areas which is 5 per cent.

The Committee has then varied. They did not vary anything on population. They started varying from population. They did not touch equal share and poverty. They did not touch the area as it remained at 8 per cent. They did not touch the fiscal responsibility. They varied the figures of health, agriculture and urban.

I strongly support what the CRA proposed. Why? It is because when devolution took place, this was discussed all the way from the Bomas of Kenya for those of us who attended. We wanted functions and resources to go to the people. In calling it population of 45 million, it had blinded all of us so that we are worried about population. The CRA broke this down and told us that the devolved functions and resources must follow the functions. They started analyzing each of the items that were released, which to me was a first step.

I think this will be the first Senate to give a formula that has a relationship with devolution. This was because the first one we gave was only a proposal so that the first Senate could look at it, but the first Senate did not do anything. They only changed a small area. For the first time, CRA is reminding us that there were items that were devolved and that those items must be followed with resources.

We have had very painful discussions among ourselves. We have even almost hurt ourselves. I like the idea that was raised that we do not need to talk about tribes. I come from Uasin Gishu. My population is 1.163 million. Of that, only 40 per cent are in the dominant community where I come from. The others are from completely different communities. I have everybody in Uasin Gishu from all corners of the country. When we talk of money going to Uasin Gishu, it is not going to the Kalenjin, but to the people.

(Applause)

I support that statement that came from Sen. Murkomen that we need to run away from mentioning tribes.

When we look at Uasin Gishu, one square kilometre has 381 people. For us to run a dispensary, we would need dispensaries in almost five square kilometres. The area of Uasin Gishu is 3,399 square kilometres. The number of dispensaries we need will definitely be higher than any other place that does not have that kind of population density. These are the figures that the CRA used.

Mr. Speaker Sir, I want to persuade my colleagues that we refrain from tearing the country apart. It is not somebody from outside, but this Senate that is giving the wrong information and miscalculating what was calculated. The role of the CRA is very important. It was supposed to have given us advice and we needed to have interrogated what they gave us. Instead of interrogating what they gave us, we seem to have been swayed by something called 'gainers' and 'losers' which is the thing that is hurting all of us.

It reaches a point where we are saying that when I am talking on behalf of the people of Uasin Gishu - a population I would not like to call Kalenjin because they are not - I am trying to rob somebody else to give the money to them. That is not true. We are looking at resources following functions and these functions are outlined in the Constitution.

Mr. Speaker, Sir, there is something else we need to note. It had been raised and we know very well that in Article 203 of the Constitution, there was a limitation that the amount of money to be devolved should not be less than 15 per cent. Why? Because a minimum of 15 per cent of the functions were devolved and we are looking for resources to take care of that area.

If this Senate does not recognize the fact that we are fighting over 15 per cent instead of 85 per cent, then we are going to go wrong. For the first time, I told myself that if the Building Brides Initiative (BBI) is going to give us this 35 per cent, then it should be the route because we need to have more money devolved.

I remember the late hon. Ole Ntimama articulating the reason for us having devolution. He said that we were not going to go to Nairobi to look for roads, water and schools. We needed everything to be devolved. We want everything to be devolved, and for us to do well in devolution, we must start recognizing what resources exactly we have devolved.

Mr. Speaker, Sir, it is for that reason that I strongly support what was raised by the Commission on Revenue Allocation (CRA). I still support the modifications of the Committee to some extent. I will not support a new formula that says Formula No. 2 which was actually Formula No.1 of the Tenth Parliament, that I belonged to, except for one point plus another formula.

We need to rise to the occasion as the Senate and look at the functions and tell ourselves as Kenyans--- I am very glad because about seven Senators here have property in Eldoret, and they are not from Uasin Gishu County. They are Senators from various corners of the country and have their property in Uasin Gishu. We need to start being Kenyan ourselves from inside here. If we do not become patriotic from inside this Chamber, then we will not be able to do so elsewhere.

Mr. Speaker, Sir, I rest my case. I oppose any amendment that changes and deviates very strongly from the CRA proposal because the CRA is recognizing the functions that must be devolved.

Thank you.

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

Sen. Olekina: Mr. Speaker, Sir, is it in order for the Deputy Speaker to misinform this House because we all know very well that the Committee's proposal is not the CRA proposal? Her submissions have been that she is opposing every other proposal that

deviates from the CRA. What is on the paper was tabled by the Committee and it is not the CRA proposal.

The Speaker (Hon. Lusaka): Proceed, Sen. (Prof.) Kamar.

Sen. (Prof.) Kamar: Mr. Speaker, Sir, I said that I will only support the amendments of the Committee to the CRA proposal, but I will not support the new amendment by Sen. Sakaja.

I think I am clear now. Thank you.

The Speaker (Hon. Lusaka): Sen. (Rev.) Waqo, proceed.

Sen. (Rev.) Waqo: Mr. Speaker, Sir, thank you for allowing me to come from the extended Chamber. For quite some time now, Sen. (Rev.) Waqo has not been heard because we have been marginalized in a way. However, today you are really putting that into consideration.

I stand to support Sen. Sakaja's amendment because it is the only one that I have seen so far that---

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

Sen. Cherargei: Mr. Speaker, Sir, I would not want to interrupt Sen. (Rev.) Waqo. However, did you hear what she said; that it is as if you are marginalizing other Senators? That is the narrative that I have seen in the mainstream media, and it is important that it is corrected. What she said looked like it has been long since we heard from her. It is in the HANSARD that they have been marginalized.

It is important that we do not allow this to spill into the public domain; that there is marginalization. This is because there are other Senators in the extended Chamber, and I have seen you have been giving fair chance to all of us. We cannot allow that perception to go out to the public.

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

Sen. Sakaja: Mr. Speaker, Sir, I want to raise a point of order from Standing Order No.93 again. This is in congruence with what my distinguished uncle, Sen. Wetangula, said. I urge that as you guide the House, because this Standing Order was used on me only last week, but it is okay.

Standing Order No. 93 (2) says that a person who was speaking resumes their seat. Then, the Senator shall do likewise. Standing Order No. 93 (3) says the Speaker then shall give direction on a decision on the point of order or announce that the decision is deferred for consideration.

Mr. Speaker, Sir, these rules are here for orderly conduct of this House that has existed since before Independence. I urge you because this is a very important debate, and we want to hear everyone. In fact, many of us have not stood on points of order where people are mentioning our names.

Kindly, just guide us in this manner to give that face that you are saying yourself that the country needs to see. Whoever stands again on a point of order, let them say which one it is, and then you rule. Do not just let it go when they have finished speaking. I urge you kindly.

The Speaker (Hon. Lusaka): You know that I am not the only one hearing. I hope that I am presiding over a House of people who are intelligent, have read the Standing Orders and will be able to follow them. It is unfortunate if I have to keep repeating or reminding people, and yet, everyone has Standing Orders before them. Why do you not look at what it says and follow? Let us observe our Standing Orders.

Sen. (Rev.) Waqo, proceed.

Sen. (Rev.) Waqo: Thank you, Mr. Speaker, Sir. As I said, I support Sen. Sakaja's amendment because it carries the spirit of the Constitution of Kenya, 2010. Some of the counties that we feel are losing are those that for many years have been left behind in terms of development.

It is unfortunate that today when we stand as Senators, and the Senate is supposed to support devolution, it is like each one of us supports the county he or she comes from. The 67 of us are supposed to support devolution and see how we can grow it.

Many have criticized some of the counties that are losing because they have less population. They have said that those counties have less people and so, much of the finance needs to go to where we have high population. This will still take me back to the words that I have always avoided to use in my life.

Mr. Speaker, Sir, those words are 'marginalization' and 'discrimination.' I am saying this because if you look at these counties, service delivery is something that is just too hard for the county executive to think about. A good example is Marsabit County, where I come from where---

The Speaker (Hon. Lusaka): What is your point of order, Sen. (Dr.) Ali? You are not on microphone.

Sen. (Dr.) Ali: Mr. Speaker, Sir, I am standing on a point of order through Standing Order No.113. They are running away now. It states that-

"Except when passing to and from his or her seat or when speaking, every Senator when in the Chamber shall be seated, and shall not at any time stand in any of the passages and gangways."

We can see Sen. (Dr.) Mwaura and the Majority Whip standing and moving everywhere. This is not right.

The Speaker (Hon. Lusaka): That is exactly what I was saying.

Proceed.

Sen. (Rev.) Waqo: Thank you, Mr. Speaker, Sir. As I said, service delivery in most of these counties is a nightmare. A good example is my own county, where the headquarters is in Marsabit. For a woman in Illiret, which is about 700 kilometers from Marsabit Town, to receive her service, we need to travel for almost 12 hours or more on rough roads with all the challenges.

When people stand here and kind of mock the places we come from, it is unacceptable because it is like others have never seen and had experience in some of those places. When they say that we cannot serve food on the plate because of the vastness of the area, it is very unfortunate.

Mr. Speaker, Sir, God created and gave us different places to occupy. Even if you are in Kiambu, Machakos or Nairobi County, you have no right to accuse others who have been put there by the God who created them.

Mr. Speaker, Sir, as I said, counties use a lot of money. Many people have criticized us because we have not developed our areas for the last seven years. You cannot compare the development of devolution in the last seven years with 55 years of growth in many counties. Other counties have been developing and growing. The leaders have been growing and developing their areas for the last over 50 years.

Through devolution, counties have been receiving 15 per cent of what the country gets. People already feel that we are overfeeding or oversupplying, and some of us do not

deserve what we are getting. That is a very wrong notion, which I believe as the Senate we should overcome.

My good friend, Sen. (Dr.) Mwaura, spoke passionately about Kiambu and some of the places we come from. I have always supported him because we are good friends, and he has always stood with the people who are marginalized in a way. However, when he stands and speaks in that manner, it touches some of us. This is because we always support one another in different areas. So, it is time for Kenyans to stand with one another and be our brother's keeper.

Mr. Speaker, Sir, in this debate, we have lacked oneness and unity. This is because everybody stands to defend where they come from. Let us look at every part of this country as one country. We are one people, one nation. That is the spirit we are lacking.

(Applause)

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

Sen. (Dr.) Mwaura: Thank you, Mr. Speaker, Sir. I rise under Standing Order No.115 on irrelevance or repetition. It says:

“The Speaker or the Chairperson of the Committee, after having called attention to the conduct of a Senator who persists in irrelevance or tedious repetition either of the Senator's own arguments or the arguments used by other Senators in debate may, after having first warned him or her direct that the Senator discontinue in his or her speech.”

Mr. Speaker, Sir, I have listened to my good sister, Sen. (Rev.) Waqo, whom we fellowship together in the Bunge Fellowship and share a lot. When she says that because I stand for marginalization and have talked a lot about Kiambu, she may think otherwise. Yes, the irrelevance is that we cannot clear one form of marginalization by creating another one. I do not think those are the Christian principles that Sen. (Rev.) Waqo stands for.

The Speaker (Hon. Lusaka): You are out of order! She was just expressing her opinion.

Kindly, Proceed, Sen. (Rev.) Waqo. I think you should pray more.

(Laughter)

Sen. (Rev.) Waqo: Thank you, Mr. Speaker, Sir. When we argue and debate, we are here to enhance oneness and unity in this country. When people feel that some areas do not need to grow and whatever little money they have been getting needs to be reduced, so that other areas can grow, that is very wrong. We have leaders who have struggled to be here.

Mr. Speaker, Sir, in Marsabit County, for example, to date, women trek for over 10 kilometres to fetch 20 litres of water. That is unfortunate in our today's world. We have students who study under trees. It is not that we have not been planning and do not want to develop our areas. It is because we have lacked resources. That is why we are fighting for resources now, so that we can also catch up with the rest of the country.

Mr. Speaker, Sir, when the Senate stands here and everybody supports where he or she comes from, what will happen to the areas that we come from that have only the

county governments to support them? Others can brag and say they have Cabinet Secretaries (CSs), Chief Administrative Secretaries (CASs) and well-educated people. However, in some of these areas, we cannot talk of those things.

Mr. Speaker, Sir, I support Sen. Sakaja's amendment simply because it carries the spirit of the 2010 Constitution. Additionally, it is the only amendment that I have so far seen that carries the entire nation on the same level. I support it and want all Kenyans to feel that we are united and are part of this country.

Mr. Speaker, Sir, sometimes when we talk of the Equalization Fund, some people say it is there to support us. Unfortunately, we have never tasted that because it has never been effected. Therefore, we cannot grow or build our hope on what we have not seen. That is why I support Sen. Sakaja's amendment and say that reason needs to guide us. Reason is the only thing that can help this country and support the people who cannot be here today.

Mr. Speaker, Sir, we cannot use the population parameter against others simply because some of us are less populated today. Who knows; five years from today, things may be different. God is the only one who knows what will happen in future. We should not base so much on population. Let us put all the other parameters into consideration and see how best the whole country will benefit.

Mr. Speaker, Sir, I support Sen. Sakaja's amendment and stand with that, so that our country can be united.

The Speaker (Hon. Lusaka): Hon. Senators, I think we have had a discussion on Sen. Sakaja's amendment. Now I call upon Sen. Linturi to move his amendment. You know the process. We will discuss and then take a vote.

Sen. Linturi: Mr. Speaker, Sir, in the interest of time, I beg you to allow me to move this amendment by deleting part (a) and replacing it with my proposals captured on pages 703, 704, 705 and 706 of today's Order Paper, so that we do not waste a lot of time because it is a five or six pages. Every Senator has the opportunity to check on the Order Paper, may be able to follow clearly the proposals I am making.

Mr. Speaker, Sir, I beg to move an amendment to the amendment by Sen. Johnson Sakaja, MP, on the Report of the Standing Committee on Finance and Budget on the Third Basis/Criteria for allocating among the counties the share of national revenue for Financial Years 2020/2021 to 2024/2025-

THAT the amendment be amended by –

i) deleting part (a) and replacing it with the following-

a) Equitable share not exceeding Kshs. 270 billion

The following formula shall apply

$$CA_i1 = 0.45PN_i + 0.26ES_i + 0.18PI_i + 0.08LA_i + 0.02FE_i^1 + 0.01DF_i^2$$

Where,

CA_i1 is revenue allocation of the i^{th} County; PN_i is Population Factor (Population of i^{th} County/total population); ES_i is Basic Equal Share Factor (Total Equal share/47); PI_i is Poverty Gap (Poverty Resources of i^{th}

¹ Fiscal Effort Index used in the FY 2019/20

² The formula will use the 2009 population & poverty statistics

County/total poverty Resources); LA_i Land Area Factor (Land Area (Sq. Kms.) of i^{th} County/Total Land area); FE_i is Fiscal Effort Factor (County’s own revenue increment/2009 population of the i^{th} County); and DF_i is Development Factor=

$$\frac{1}{3} \left(\frac{E_i * N_i}{\sum_i (E_i * N_i)} + \frac{W_i * N_i}{\sum_i (W_i * N_i)} + \left(\frac{URN_i}{\sum_i URN_i} \right) \right)$$

Where E_i is proportion of household with access to electricity of the i^{th} County
 W_i is proportion of household without access to improved water of the i^{th} County
 URN_i is Un-paved road network of class D, E, F, G, H, J, K, M, N & P of the i^{th} County.

ii) deleting part (b) and replacing it with the following-

b) Equitable share over and above Kshs. 270 billion

The following formula shall apply

$$CA_i = 0.16 * Population Index_i + 0.19 * Health Index_i + 0.11 * Agriculture Index_i + 0.05 * Urban Index_i + 0.14 * Poverty Index_i + 0.08 * Land Area Index_i + 0.01 * Fiscal Effort_i + 0.06 * Roads Index_i + 0.20 * Basic Share Index_i^3$$

Where,

Parameter	Indicator of Expenditure Need
Health services	Health index- health facility-gaps (20%), three years average number of primary health care visits to levels 2 and 3 health facilities (60%) and three years average in-patient days in levels 4 and 5 hospitals (20%) Facility gap factor $_i = \frac{\text{Facility gap funding in county } i}{\sum_{i=1}^{47} \text{facility gap funding in county } i}$ Primary health care factor $_i = \frac{\text{No. of primary health care visits in county } i}{\sum_{i=1}^{47} \text{No. of primary health care visits in county } i}$ In – patient days factor $_i = \frac{\text{No. of in – patient days in county } i}{\sum_{i=1}^{47} \text{No. of in – patient days in county } i}$
Agriculture services	Agriculture Index $_i = 0.005 * \text{Minimum Share index} + 0.095 * \frac{\text{Rural households in county } i}{\sum_{i=1}^{47} \text{Rural households in county } i}$
Other county services	Population index $_i = \frac{\text{Population in county } i}{\sum_{i=1}^{47} \text{Population in county } i}$
Minimum share	Basic share index $= 0.19 * \text{Equal Share index} + 0.01 * \frac{\text{inverse of population in county } i}{\sum_{i=1}^{47} \text{inverse of population in county } i}$
Land	Land area index $_i = \frac{\text{Land area in county } i}{\sum_{i=1}^{47} \text{Land area in county } i}$

³ The formula will use the 2019 population and 2015/16 KIHBS poverty statistics

Roads	Roads index _i = $\frac{\text{Rural access index in county } i}{\sum_{i=1}^{47} \text{Rural access index in county } i}$
Poverty level	Poverty index _i = $\frac{\text{No. of poor people in county } i}{\sum_{i=1}^{47} \text{No. of poor people in county } i}$
Urban service	<i>Urban Index i</i> = $\frac{\text{urban household in county } i}{\sum_{i=1}^{47} \text{Urban Household in County } i}$
Fiscal effort	Fiscal effort index _i = $\frac{\text{OSR collections of county } i}{\text{GCP of county } i}$

The basis used is as shown

No.	Parameter	Weight
1	Population	16%
2	Health	19%
3	Agriculture	11%
4	Urban	5%
5	Roads	6%
6	Poverty	14%
7	Land	8% capped
8	Basic Share	20%
9	Fiscal Effort	1%
10	Fiscal Prudence	0%

iii) deleting part (c) and replacing it with the following-

c) Total Equitable share of a County

The following formula shall apply

$$\text{TES}_i = \text{CA}_i1 + \text{CA}_i2$$

Whereas;

TES_i = Total Equitable share of County _i

CA_{i1} = Equitable share not exceeding Kshs. 270 billion

CA_{i2} = Equitable share over and above Kshs. 270 billion

SIMULATION FOR ILLUSTRATION ONLY

Simulation using Equitable share of Kshs. 316.5 billion for FY 2020/2021 applying the proposed amendment to Sen. Sakaja's amendment-

No	County	Actual Allocations 2019/20	Equitable share of Kshs. 270 billion using 2nd generation formula	Application of Remaining Kshs. 46.5 billion using Sen. Linturi Amendment	New Allocation Ksh (316,500)	Net Change between FY19/20 Allocation & Proposed FY 2020/21 Allocation
1	Mandera	10,222.95	8,721.00	1,256.69	9,977.69	(245.26)
2	Kwale	7,785.90	6,642.00	966.00	7,608.00	(177.90)
3	Wajir	8,545.50	7,290.00	1,079.88	8,369.88	(175.62)
4	Marsabit	6,773.10	5,778.00	838.16	6,616.16	(156.94)
5	Kilifi	10,444.50	8,910.00	1,381.08	10,291.08	(153.42)
6	Mombasa	7,057.95	6,021.00	901.77	6,922.77	(135.18)
7	Narok	8,039.10	6,858.00	1,050.68	7,908.68	(130.42)
8	Makueni	7,406.10	6,318.00	980.91	7,298.91	(107.19)
9	Nyamira	4,810.80	4,104.00	608.86	4,712.86	(97.94)
10	Tana-River	5,855.25	4,995.00	780.53	5,775.53	(79.72)
11	Tharaka-Nithi	3,924.60	3,348.00	500.42	3,848.42	(76.18)
12	Garissa	7,026.30	5,994.00	957.15	6,951.15	(75.15)
13	Vihiga	4,652.55	3,969.00	615.47	4,584.47	(68.08)
14	Isiolo	4,241.10	3,618.00	581.37	4,199.37	(41.73)
15	Homa-Bay	6,741.45	5,751.00	961.31	6,712.31	(29.14)
16	Kisii	7,785.90	6,642.00	1,119.16	7,761.16	(24.74)
17	Taita-Taveta	4,241.10	3,618.00	606.96	4,224.96	(16.14)
18	Murang'a	6,298.35	5,373.00	909.37	6,282.37	(15.98)
19	Samburu	4,620.90	3,942.00	675.42	4,617.42	(3.48)
	Total Loss	126,473.40	107,892.00	16,771.20	124,663.20	(1,810.20)
1	Kitui	8,830.35	7,533.00	1,303.12	8,836.12	5.77
2	Nyandarua	4,874.10	4,158.00	722.01	4,880.01	5.91
3	Nyeri	5,412.15	4,617.00	801.39	5,418.39	6.24
4	Turkana	10,539.45	8,991.00	1,557.89	10,548.89	9.44
5	Lamu	2,595.30	2,214.00	398.51	2,612.51	17.21
6	Elgeyo-Marakwet	3,861.30	3,294.00	586.50	3,880.50	19.20
7	Kisumu	6,836.40	5,832.00	1,031.70	6,863.70	27.30
8	Meru	8,039.10	6,858.00	1,209.33	8,067.33	28.23
9	Migori	6,773.10	5,778.00	1,026.69	6,804.69	31.59
10	Embu	4,304.40	3,672.00	672.60	4,344.60	40.20
11	Siaya	5,791.95	4,941.00	893.94	5,834.94	42.99
12	Busia	6,013.50	5,130.00	928.49	6,058.49	44.99
13	Kericho	5,380.50	4,590.00	836.15	5,426.15	45.65
14	Machakos	7,754.25	6,615.00	1,188.13	7,803.13	48.88
15	Kakamega	10,412.85	8,883.00	1,598.86	10,481.86	69.01
16	Bomet	5,507.10	4,698.00	878.79	5,576.79	69.69
17	Bungoma	8,893.65	7,587.00	1,379.02	8,966.02	72.37
18	Laikipia	4,177.80	3,564.00	689.37	4,253.37	75.57
19	Kirinyaga	4,241.10	3,618.00	702.66	4,320.66	79.56
20	Baringo	5,095.65	4,347.00	831.86	5,178.86	83.21
21	West Pokot	5,000.70	4,266.00	818.24	5,084.24	83.54
22	Kajiado	6,424.95	5,481.00	1,031.13	6,512.13	87.18
23	Trans-Nzoia	5,760.30	4,914.00	940.48	5,854.48	94.18
24	Nairobi City	15,919.95	13,581.00	2,459.53	16,040.53	120.58
25	Uasin-Gishu	6,330.00	5,400.00	1,072.56	6,472.56	142.56
26	Nakuru	10,476.15	8,937.00	1,688.21	10,625.21	149.06
27	Nandi	5,348.85	4,563.00	935.14	5,498.14	149.29
28	Kiambu	9,431.70	8,046.00	1,546.50	9,592.50	160.80
	Total	190,026.60	162,108.00	29,728.80	191,836.80	1,810.20

Mr. Speaker, Sir, allow me to state that today is the eighth time we are trying to unlock the stalemate around the basis of allocating resources among counties. We have a big challenge in that resources are always limited and there is no free lunch anywhere

when it comes to public resources. Hence, the difficulties in resource sharing will always involve tradeoffs in the sense that when a county gains, another one must lose.

Hon. Senators, allow me to bring a very important aspect in horizontal resource sharing. Global experience indicates that in any resource sharing sphere, there is need to hold harmless.

Mr. Speaker, Sir, this approach of determining revenue allocation assures that the existing level of service delivery is not disrupted. Indeed, there should be no drastic reduction of revenue to county governments in order to hold them harmless, in respect of their mandate to deliver their assigned functions. This will ensure that the county governments will have the ability to restructure and rationalize their budgets and operations, while at the same time, have the requisite resources to perform their assigned functions.

Mr. Speaker, Sir, developing a formula for sharing resources must be guided by equity, which is not about equal portions for everyone, but getting what you deserve. There is need to remove ambiguity and complexity when developing a formula, and most importantly, there is need to address the political realities of the day. In as much as formulas have the advantage of being transparent and consistent, they can also have disadvantages because they are based on a small set of factors, which may not take into consideration all the reasons counties are different.

There has been the notion that there are some disadvantaged counties and they need more funding, while there are some advantaged counties and, therefore, need less revenue. This is not the case because a county may have fairly good roads or access to water, but very poor health services. On the debate of 'one man, one shilling', I want to acknowledge that population and land area are both measures of fiscal need. The more population a county has, the higher the service cost. Equally, counties with larger areas have higher costs occasioned by the vast landmass.

In trying to address the county sharing resource stalemate in the country as well as ensuring that the existing level of service delivery is not disrupted at county levels is the reason I seek to amend the Motion by Sen. Sakaja. With my proposal, the loss and gains nearly balance out, since there is no drastic reduction in the county allocation from the baseline of 2019/2020. For instance, the highest loss which is for Mandera County, stands at Kshs245.26 million, while the highest gain for Kiambu County stands at Kshs160.8 million.

I would like to inform the House that currently there is no provision for the involvement of the Senate in evaluating the indicators used in the parameters. To avoid the stalemate and divisiveness experienced over the past couple of months, the Senate should be involved in the selection of indicators when coming up with a formula; and evaluation of the same should be approved by the Senate to capture the developmental changes happening in the counties.

Mr. Speaker, Sir, as I conclude, I want to imagine that as we sit here as leaders, we must not forget that we all belong to one indivisible nation called Kenya. Time has come when we must speak as Kenyans and patriots, like the fighters for Independence - the *Mau Mau* - did. I cannot fathom a situation where a county that I represent namely, Meru County, my nearest neighbours are Isiolo and Tharaka-Nithi--- If Tharaka-Nithi is not comfortable and there are no resources there or in Isiolo, I must always remember in my mind that I have people from Meru living in Isiolo and Tharaka-Nithi counties.

With all the money I may get, it means that the number of people moving to Meru County to get medical services in our Level Five Hospital will continually increase because such facilities will not be found in Tharaka-Nithi or Isiolo, just because we were not able to agree by ceding some ground for them to have adequate facilities or maintain them at a place where they can support themselves and cater for their own needs.

It is on this basis that made me think twice. When I remember the pain that I also had at one time as a legislator in this country--- I remember vividly what happened in January 2008, immediately after the post-election violence. We had to sit very late in the night to prepare an accord to accommodate the opposition or people that had lost in an election that time, for us to bring Kenya together and ensure that there would be no more fighting and have sobriety in Kenya. We had to do it for the greater interest of the country.

Similarly, I feel that those Members or counties that by application of this formula, if Senators agree to bring it on board, must be willing to give something small to their own brothers. The others who have lost so much must be willing to cede ground, so that we have a compromise. It is on this basis that I plead with the House that we rise to the occasion today, since the constitutional responsibility of determining this aspect of sharing revenue is on the Senators.

I do not want to take too much time. I beg to move and ask my great brother from Narok, Sen. Olekina, to second.

Sen. Olekina: Mr. Speaker, Sir, I thank you. I rise to second the proposed further amendment to Sen. Sakaja's proposal.

Sen. Wamatangi: On a point of order, Mr. Speaker, Sir. I rise under Standing Order 63 and also pursuant to the provisions of Article 217 (2) of the Constitution.

A few weeks ago, you gave directions that any Senator who is willing or wants to bring any amendment to the Committee's report, which is a derivative of the report submitted by the Commission on Revenue Allocation to this House---. You ordered that any Senator who wants to make amendments should make available permutations for perusal by Senators, so that we can be well attuned and informed on the amendments.

My first point of order is whether the amendments being sought have been circulated. Secondly, I will be seeking your direction and determination because under Article 217 (2) of the Constitution, the Senate is not allowed to come up with a resolution as a basis for sharing revenue anyhow. It says clearly that-

“In determining the basis of revenue sharing under Clause (1), the Senate shall request and consider recommendations from the Commission on Revenue Allocation.”

The word is “shall”.

The direction and determination I seek is: when the Commission on Revenue Allocation made its recommendations to this House via the report that was brought here, they based their report on the latest data available on the population, poverty level and in compliance with the Statistics Act.

Mr. Speaker, Sir, the permutations that have been brought to this House and the amendments are under Standing Order 63. Have you determined or would you direct the House if those amendments should comply with the requirement that the data used to play the different permutations must be what the Commission on Revenue Allocation

(CRA) has done; that is the latest data available and usable by the Government, in compliance with the Statistics Act.

If we are going to admit any amendments, I seek your direction that would allow or disallow that to the inconsistency of the Constitution, any Senator can bring any permutation using any data or information other than the Government's own data that is available. The latest data we can use is the 2019 population census and the 2016 data on poverty levels. I would need a clarification on whether the permutations should be in compliance or non-compliant with the law.

The Speaker (Hon. Lusaka): Order, hon. Senators! Before the amendment was brought to the House, it was brought to my office and taken before the Senate Business Committee, who approved it. That means that the amendment went through the procedures that we are talking about. The amendment was also taken to the Parliamentary Budget Office for consideration.

What is your point of order, Sen. Linturi?

Sen. Linturi: On a point of order, Mr. Speaker, Sir. With a lot of respect to the Chairperson of the Committee on Roads and Transportation, Sen. Wamatangi, I ask you to request the secretariat of this honourable House to assist Sen. Wamatangi in going through the e-Order Paper, to check if the simulations he is talking about are captured on Page 706 of today's Order Paper.

On the aspect of recommendations of the CRA, it is true that the Constitution talks about considered recommendations. The recommendations have been taken into account. What we have done in this formula is vary. Where the CRA had recommended 20 per cent, we have varied by one per cent to accommodate the political realities in the country. We do not live in a vacuum. We are leaders who hear the people and that is why this House is called the House of representatives of the people. It has the sovereign will and the power of the people, which we must exercise for the good.

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

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, my good friend, Sen. Wamatangi, referred to Article 217 (2). However, the word used in Articles 96(3) and 217(2) is that 'the Senate determines'. The Senate is supposed to determine the allocation between counties.

When I was the Chairperson of the Committee on Finance and Budget, I shared some of the proposals that came from the CRA, which were subjected to public participation. We are at the point of determining the basis of allocation among counties. I beg my friends not to derail and delay us.

(Sen. Wamatangi spoke off the record)

The Speaker (Hon. Lusaka): Order, Sen. Wamatangi! You also have an amendment in the Order Paper. The Senate Minority Leader also has an amendment on the Order Paper. Let us proceed; you will have an opportunity at the end of it to take a vote.

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

(Loud Consultations)

The Speaker (Hon. Lusaka): What is it, Sen. Wamatangi? I hope your point of order is not on the same issue that I have given a ruling on.

Sen. Wamatangi: Mr. Speaker, Sir, with tremendous respect, a few minutes ago, you said that every Senator given permission by you has a right to speak. There is absolutely no reason Sen. Murkomen and others should be moping when you have given me the opportunity to stand.

All I sought from the Chair was clarification on what you said that Senators must provide simulations in advance. We are required to do our simulations around what the CRA has made. The question I posed to you, Mr. Speaker, was simple. If a Senator gets figures from anywhere, are those allowed to be permutations or should we all be in compliance with the law? If we are not in compliance with the law, we will come up with illegal permutations that are unlawful.

The Speaker (Hon. Lusaka): Order, Sen. Wamatangi! You will have an opportunity to take a vote on this matter.

Kindly proceed, Sen. Olekina.

Sen. Olekina: Mr. Speaker, Sir, I rise to second the further amendment to Sen. Sakaja's proposal. As I agreed to second this proposal by my friend, the Senator for Meru, I did so because I would like us to have a way forward.

In Sen. Sakaja's proposal, we had a formula; $y=a+b$.

(Loud consultations)

Kindly, protect me from the loud consultations.

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

Sen. Olekina: Mr. Speaker, Sir, I have looked at the proposals that have been suggested by my good friend, Sen. Linturi, which give us a way forward. If you look at the proposals by the Committee, they were creating a huge disparity in this country. When some of us were bringing our own amendments, we wanted a situation where we could minimize the losses. What Sen. Linturi has done is to try and bring sanity, and ensure that we are one nation.

I have a lot of respect for Sen. Wamatangi, whom I heard quoting the Constitution while looking at the parameters. What we are doing in this House is taking into consideration the proposals given to us by the CRA and making the necessary changes to them. I feel greatly honoured to further second the amendments brought by Sen. Linturi because they have reduced the disparity. In cases where a county was going to lose Kshs2 billion, they will now lose Kshs177 million. If a county loses such an amount, they will continue with their services uninterrupted. A county like Narok was going to lose Kshs853 million, but with the proposal brought by Sen. Linturi, we will lose only Kshs130 million.

Mr. Speaker, Sir, Article 217 talks of a basis. It does not talk of formula. That is why we came up with the base. What Sen. Linturi is proposing is a base of Kshs270 billion, which should be shared with all the counties. The remaining Kshs41.6 billion will be applied using the following parameters.

Where the Committee on Finance and Budget had proposed that we consider the population with 16 per cent, Sen. Linturi has maintained that parameter. Where they said health at 20 per cent, Sen. Linturi has gone down by one per cent to 19 per cent. Sen.

Linturi's proposal has helped us a lot on the question of land parameter. Where the Committee was bringing it down to five per cent and introducing a square root, Sen. Linturi has proposed that we maintain what the CRA recommended.

When we talk about the issue of data and statistics, I wonder which country in the world that promotes devolution reduces a county into a circle. That kind of data does not exist. When my friend, Sen. Wamatangi, talks about data, I will be very happy to see data brought to this House that says we should reduce the size of Narok County from 17,000 square kilometers to 146 square root. This proposal by Sen. Linturi is giving us a way out. One of the reasons I agreed to support Sen. Linturi is because, when I looked at the recommendations by the CRA, they had a rider. They said that the Government should apply another 15 per cent to cushion counties.

Mr. Speaker, Sir, the amendments that are still on the Order Paper, which I may consider once we are done with this, took about 10 per cent of that to cushion counties losing. Sen. Linturi did not want people to say that there are losers and winners. Let us use this base of Kshs270 billion, so that those ones who are gaining so much, gain just a little and those who are losing, lose just a little. Those numbers are here. The county that loses the most is Mandera; Kshs245 million. The county that gains the most is Kiambu, where my good friend, Sen. Wamatangi, comes from. It gains Kshs160 million.

I have listened to various arguments on population, and it begs the question: if population equals the amount of revenue that a county generates, why is it that only five counties out of the 47 counties raise revenue above Kshs1 billion? This is an issue that we must be willing to lose some and win some. This is the way forward. This is a position for us to relax our position.

The best option was Sen. Sakaja's option, where no county was losing. Every county was gaining, but now when they bring in the other issues of population increase, we said: "Okay, it is fair enough." We are willing to cede our ground and say, let us now admit what my dear brother, Sen. Linturi, has proposed. I want to tell the people of Meru that they have a Senator who clearly reads Article 96 of the Constitution. He is here to protect the interests of counties and their governments.

(Applause)

Mr. Speaker, Sir, when I came to this House, the first thing that I said is that, this is, indeed, the House of union, because it does not matter how many you are, we have only one delegation, one vote. What Sen. Linturi is doing to this country is giving us a way forward. Those who are supporting the Committee's Report are doing so knowing that they will create a huge disparity in this country.

What Sen. Linturi has done is something honourable, and that is why I stand here proudly today to say that I second his further amendments to our position, because it unites this country. A child in Mandera, whose governor has already made a budget to ensure that the child in the farthest part of Mandera---

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

The Speaker (Hon. Lusaka): Sen. Orenge, what is your intervention?

Sen. Orenge: Mr. Speaker, Sir, I will raise my point of order after he finishes. I do not want to interfere.

Sen. Olekina: Mr. Speaker, Sir, a child in Mandera deserves every opportunity that a child in Kiambu has. It saddens me when I hear debates where people keep on forgetting about them. If we are, indeed, genuine, what we should be doing is making sure that a child in Mandera can say that they have a brother in Meru or Narok. That brother in Narok or Meru can get access to the same services that they have.

Mr. Speaker, Sir, I want to tell Kenyans that Sen. Linturi's proposal softens our ground. We were of the opinion that since there is no more revenue being collected because of COVID-19 and other circumstances, which also includes corruption--- Since we cannot continue getting the same amount of money that we were getting in the last financial year---

Since that is making other people think that, that is the way to go or there are people who are more Kenyans than others, those who are gaining, to gain a little, and those who are losing to lose a little.

Mr. Speaker, Sir, my proposal was only going to cushion counties that were losing, but when I saw Sen. Linturi's proposal, I said that it is a win-win situation for everyone. That is what other leaders outside there have been talking about. Everybody should be happy and we all go home.

I beseech my dear colleagues from both sides of the House to think about this country as one, not as those who have and those who have none, but as a country that is able to accept that change is the only constant. Since we are not able to raise more revenue, let us go with this further amendment brought by Sen. Linturi, who is from Meru, so that the people of Meru who are in Narok and are doing great business there can be welcomed. It will not appear as if they are only coming in to make money from us, but when we generate more revenue, they do not want to support us.

Mr. Speaker, Sir, as I finalize, I want to remind all Kenyans and particularly the representatives in this House, that unless we be sober and agree to respect the doctrine of separation of powers, as leaders, we will not be doing anything. It is about time that this House stood as the Senate of the Republic of Kenya and made decisions, which are sound and supported by facts.

I second.

The Speaker (Sen. Orengo): What is your point of order, Sen. Orengo.

(Loud consultations)

Order, Senators! You will have an opportunity.

(Question of the further amendment proposed)

Sen. Orengo.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I am grateful for being given this chance. On the Floor is the Motion by Sen. Sakaja to amend the Motion from the Committee on Finance and Budget. Right now, we are debating an amendment to that amendment. I beseech you to give some directions about time, so that we limit debate on the Motion on amendment to the amendment. The business that is before the House is the substantive Motion. We may think that we are doing some business, but the serious business before the House has not been touched.

Although I would want to say some things about the particular amendment to the amendment, I think that you need to give us three minutes each---

(Loud consultations)

No, three minutes each, because there is an amendment to the amendment, and then the amendment itself, and then the Motion itself. I think three minutes is sufficient.

The Speaker (Hon. Lusaka): I will give three minutes, because there are many interests and like you have said, we are debating this amendment and then there is an amendment to Sen. Sakaja's amendment, then there is the Motion. We will then need to vote and we are all saying the same things. I will give you three minutes.

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

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

Sen. Wamatangi: Mr. Speaker, Sir, you may rule me out of order or whichever way. My question is on your direction because it has now been clarified by the Seconder of the amendment that what Sen. Linturi seeks to do is to create that base as Kshs270 billion to divide the revenue using the old formula and the old data. Is that what the Speaker of the Senate sought when he told Members to bring simulations and their own ideas of how the formula should be made?

My problem, if you understand me, is because I believe that I cannot just go and fish figures from anywhere and say this should be the formula. So, we need directions from you. Is this what you wanted when you invited permutations?

The Speaker (Hon. Lusaka): Order, Sen. Wamatangi.

Sen. Dullo: Mr. Speaker, Sir, Sen. Wamatangi is out of order because he is challenging your ruling and decision.

That is my position.

The Speaker (Hon. Lusaka): I think I gave a direction on that matter.

I propose that we proceed, and I will give each one of you five minutes. You can condense what you want to say and finish in five minutes.

Sen. Malalah: Thank you, Mr. Speaker, Sir. I stand to support the amendment by Sen. Sakaja and Sen. Linturi. My support is premised on the following arguments.

When we promulgated the new Constitution in 2010, we celebrated Article 174 on the objects of devolution. Part Article 174(g) addressed the issue of ensuring equitable sharing of national and local resources throughout Kenya. Today, the Senate is at a stalemate because of 15 per cent of the national resources.

The big question should be; where is the 85 per cent? Some people here are advocating for 'One Vote, One Man, One Shilling'. I wish they transferred the same spirit to the 85 per cent that is remaining at the national Government. In 2013, I was the writer of a play called '*Shackles of Doom*'. *Shackles of Doom* addressed issues of unequal distribution of resources in this country.

When you go to Turkana County, they have immense minerals. However, the people who are benefitting from Turkana minerals are not the Turkanas. When you go to Taita-Taveta, they have immense resources in terms of gemstone, but the people benefitting from Taita-Taveta are not the locals.

When you go to Ikolomani and Roasterman in Kakamega County, we have immense gold. However, the people benefitting from the gold from Kakamega are not the

Luhyas of Kakamega. Therefore, the spirit that you are pushing of ‘One Vote, One Man, One Shilling’ should be translated to the 85 per cent that remains at the national level.

It is sad because Kakamega County is being dangled with a carrot of Kshs400 million, yet the Kakamega-Lurambi-Navakholo Road, C41, has taken seven years to be completed. We have a road from Ibokholo-Shianda-Malaha, which has taken six years.

Recently, we saw a project in one constituency in Kiambu costing Kshs11 billion taking only one year. There comes a time when the real people of Kenya must rise to the occasion and defend this country.

Mr. Speaker, Sir, as we speak now, in Western region, Bungoma, Busia, Kakamega and Vihiga counties have no flagship project that has been initiated and finished within 10 years.

Our industries are on their knees and we only accept---

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

Sen. Wamatangi: Mr. Speaker, Sir, according to our Standing Orders, it behoves a Senator to substantiate if he makes allegations or claims.

When Sen. Malalah claims that he has seen a project in Kiambu worth Kshs11 billion taking one year, it is the responsibility of the Senator, according to our Standing Orders, to substantiate. He should be able to substantiate, otherwise, withdraw because there is no such project.

Secondly, we have the Standing Orders on relevance. Is Sen. Malalah in order because he is trying to whip emotions, look political and suave in speaking? He should speak to issues. Most of all, he should pinpoint the project that he saw in Kiambu that took one year.

I want to inform him because he came to this House the other day that as the Chairman of the Standing Committee on Roads and Transportation, I inspected the project in Kakamega of the road starting from Kisumu to his County, which was finished in less than two years.

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

Sen. Wamatangi: Mr. Speaker, Sir, Sen. Malalah should substantiate the project worth Kshs11 billion that he saw taking one year.

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

Sen. Murkomen: Mr. Speaker, Sir, you have been very strict with points of order, especially when I raise them. You have seen that I have been careful not to raise any point of order.

Sen. Orengo has even reprimanded me in this House by saying that when people are making these kinds of debate, we should not entertain many points of order.

Sen. Wamatangi has taken over 20 minutes since the beginning of this debate on points of order, yet all of them are not points of order, but points of debate. Since we are operating within five minutes, can we give a chance to every Senator who will have an opportunity to speak without unnecessary interruptions?

The Speaker (Hon. Lusaka): Order, Senators. I am happy that, that observation is coming from Sen. Murkomen.

Please, take your seats.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I just want to take up from where Sen. Murkomen has left. According to general conventions of

Parliaments, a point of order that takes more than 30 seconds to prosecute is not a point of order. It should be short and precise.

Having said that, I think it is important that the rules apply universally, so that when somebody stands on a point of order, he should be like a missile. Otherwise, the debate will not be a debate. It will be points of order.

Therefore, I seek your indulgence, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): That is going to apply from now.

Sen. Malalah: Thank you, Mr. Speaker, Sir. I am sure they wanted to derail my thought process, but I am steady on this matter.

I said that I will not take a mere Kshs405 million for Kakamega, yet our sugarcane farmers in Kakamega, Bungoma and Busia have not been paid. We want to think nationalistic. It is high time that we derive our arguments from our National Anthem. The first three lines of National Anthem say-

“O God of all creation

Bless this our land and nation

Justice be our shield and defender”

I want to remind our colleagues that leadership comes from God.

The Bible says in Proverbs 31:9:

“Open your mouth, judge righteously and defend the rights of the poor and needy.”

Mr. Speaker, Sir, it will be immoral and ungodly for me, the Senator of Kakamega, who got my leadership from God, to take away money from Turkana and bring it to Kakamega; take food from a hungry child of Marsabit and give it to child in Bungoma County, or take medicine from a patient from Tana River and take it to a patient in Kiambu County.

(Applause)

Mr. Speaker, Sir, as I finish, I want to remind---

The Speaker (Hon. Lusaka): Your time is up!

Sen. Malalah: Mr. Speaker, Sir, just give me 30 seconds.

The Speaker (Hon. Lusaka): No, your time is up!

Sen. Malalah: I am in the leadership; I wish---

The Speaker (Hon. Lusaka): Order, Senator! Sen. Malalah, I am on the Floor. I do not think that you will say what you have not said in a few seconds or one minute. So, take your seat. I want to be fair to all Senators and I am going to be strict.

Sen. M. Kajwang’: Mr. Speaker, Sir, I rise to oppose this amendment because there are many Kenyans who do not understand where we are and what we are dealing with. I am opposing Sen. Linturi’s, Sen. Sakaja’s and Sen. Kibiru’s amendment.

Mr. Speaker, Sir, we have confused this nation. At some time, Sen. Kibiru’s formula was referred to as Sen. Linturi’s formula because it is Sen. Linturi who introduced the square root, which had an adverse effect on numbers for certain counties. The parent Motion that these amendments seek to amend was done by Sen. Linturi. Now, he has brought in a further amendment, bringing a different basis for consideration.

Sen. Olekina, my friend who has seconded this amendment, has an amendment on the Order Paper. He wants to amend Sen. Kibiru’s Report. Now, he supports Sen. Linturi’s amendment to Sakaja’s amendment of Sen. Kibiru’s Report. This is not the

manner in which you are supposed to do a formula that is supposed to drive this country into the next five years.

(Applause)

If you ask people how we ended up with 47 county governments in this Republic, no one will give you the basis. People sat in a smoke-filled room and started haggling, trying to find out how they were going to balance interests. So, we said: let us have 47 counties instead of 9 or 30 counties. This is the same method that we are using to determine a formula for allocation of revenue.

Mr. Speaker, Sir, I oppose this amendment because Homa Bay County is bound to lose Kshs29.14 million under it. A conversation where there are winners and losers is a conversation that is not healthy for this country.

I want to disagree with those who believe that the Senate determines the formula of the basis at the exclusion of the public. There is no decision that we are mandated to make without reference to the public who gave us the opportunity to sit in this House. That is why the first Article in our Constitution talks about “We, the people.”

How can people go and sit under a tree and come up with a formula? This is the tenth formula and this is the eighth meeting. How do you sit under a tree and bring an amendment to this House that will determine how money is shared without subjecting it to a process? Why did we establish the CRA? If Sen. Linturi is the expert in these matters, let us abolish the CRA and have him run the CRA.

Mr. Speaker, Sir, this is the tenth formula. I want to assure you that if we continue this way, I will also come up with a formula. They have said, ‘one man, one shilling.’ I am going to say ‘one fish, one shilling’ because this Kibiru formula does not take into account the interests of the fisher-folk. That is why Mombasa County gets only Kshs40 million on agriculture and yet, the people of Mombasa are fishers. Homa Bay has the largest share of Lake Victoria. The fishing community has not been taken into account under this formula.

Let us sober up; otherwise, I will be talking of ‘one fish, one shilling,’ so that we have one formula that will take care of the fishing community.

Sen. Cheragei: Thank you, Mr. Speaker, Sir. From the outset, I want to oppose the amendment by Sen. Linturi’s to Sen. Sakaja’s amendment because there are two things that are not right. One, there was no public participation. These were numbers that were done through *mandazimonics* discussion somewhere; they have no basis.

Secondly, I have heard many people misleading the country that Marsabit, Turkana and Wajir counties form 33 per cent of the landmass of this Republic. Therefore, a third of Kshs25.3, which amounts to Kshs8 billion, be allocated to Marsabit, Turkana and Wajir, while Kshs16 billion be shared among 44 counties.

Mr. Speaker, Sir, we will be lying to the country. We have said that money must follow functions. That is why some of us prefer the population parameter. In Nandi, for example, per square kilometre is 310, while in Marsabit which is the largest, has 6 kilometre per square. So, what do you do when you have more people needed in Nandi?

As I speak today, the 2015/2016 poverty index in Rift Valley, especially in North Rift, has gone up because agriculture is in the Intensive Care Unit (ICU). When we talk about agriculture, it is about livestock and fisheries. Fishery is part of the Blue Economy.

(Loud consultations)

Finally, they want to intimidate some of us---

(Loud consultations)

The Speaker (Hon. Lusaka): His time is not yet up. Please, let him finish.

Sen. Cherargei: As I said, tea, coffee, maize and dairy sectors are in ICU. That is why poverty is very high in Nandi. That is why as the Senator of Nandi, I will not sit back and cede ground for Kshs1.4 billion that will be taken away from us. That is our rightful share.

The reason I was elected is to push for the interest and cushion farmers. However, the farming business in North Rift is in the ICU. The poverty index is very high.

Finally, Sen. Linturi and Sen. Sakaja want us to use the 2009 poverty index for resource allocation in this country, yet we have the 2019 census. The results for 2019 census confirmed that Mandera and Turkana counties do not have as many poor or marginalized people as the fraudulent census of 2009 had shown. The same results also showed that poverty and marginalization oscillate in areas around Bungoma, Busia, Kisumu and Migori.

Tragically, despite all these statistics our colleagues have managed to establish a 'Team Kenya' outside the Senate to do its bidding for more resources for it at the expense of the truly poor people of Kenya.

I want the Senators of Bungoma and Busia to listen very carefully. Poverty and marginalization is more in western than it is in North Eastern. Let us stop this lies of misleading Kenyans.

I oppose.

The Speaker (Hon. Lusaka): Your time is up!

Sen. Wambua: Thank you, Mr. Speaker, Sir. I thank you for the opportunity to make a contribution to this debate----

(Loud consultations)

I am asking that the Senator of Kitui be heard in silence.

From the word go, I want to thank the Senator of Meru, Sen. Linturi for coming up with a Motion on a further amendment to the amendment by Sen. Sakaja.

Mr. Speaker, Sir, I want to state very clearly that I am in full support of the further amendments. Before these amendments came to the Floor, the Committee Motion was inviting the Senator for Kitui to pass a formula or a basis for sharing revenue, which will occasion a loss of Kshs432 million. That is not even the problem. The problem is a comparison that I want to give on the Floor of this House, so that we disabuse this narrative about 'one man, one vote, one shilling.'

Kitui County has a land size of 30,496 square kilometres. Compare that size to the size of Kirinyaga County with an area of 1,400 square kilometres. In terms of land size, Kitui County is more than 20 times bigger than Kirinyaga County.

When it comes to the population, I have a population of 1.14 million people. Kirinyaga County has a population of slightly above 800,000 people. So, my county is almost double in terms of the population compared to Kirinyaga. However, you can never explain the formula that the Committee brought here that tells me that with that land size and the population compared to Kirinyaga, I am supposed to lose Kshs432 million, but Kirinyaga gains Kshs762 million. It is a fallacy.

I want to restate what Sen. Sakaja said when he was moving the Motion. Perhaps, if there was a Motion on the Floor of this House on 'one man one vote, one shilling,' I would have brought an amendment to that Motion to be 'one man, one vote, one shilling, one kilometre,' so that what counties lose on population, they gain on land size and what counties lose on land size, they gain on population. However, there was never that proposal on the Floor of this House.

The drafters of the 2010 Constitution were inspired by a deep desire to correct the mistakes that were visited on the people of this country by Sessional Paper No.10 of 1965 by the late Minister, Tom Mboya, on issues to do with development.

It is not the mistake of the people of Marsabit that the colonial railway line does not pass through their land. It is not the mistake of the people of Kitui that we receive erratic rainfall. You cannot make a decision on development and allocation of resources based on parameters that people have no control over.

Mr. Speaker, Sir, Article 61(1) of the Constitution states very clearly that all the land in Kenya belongs to the people of Kenya as a nation, as communities and as private individuals. The people of Marsabit are Kenyans, just like the people of Nairobi. We can never elevate the issue of population over and above other parameters to the extent that the people who have suffered marginalisation over the years continue to suffer.

Lastly, I want to thank the Senators who have stood for Kenya. We have Senators who have said that although they will gain money, they will make sure that no county will lose any money.

Mr. Speaker, Sir---

The Speaker (Hon. Lusaka): Your time is up. Let us listen to Sen. Kang'ata.

Sen. Kang'ata: Mr. Speaker, Sir, I am opposing this Motion for only one reason, and not two, which is, once we pass this amendment, Mandera County will lose today Kshs245 million; Kwale County, Kshs177 million; Wajir County, Kshs175 million; Marsabit, Kshs156 million; Kilifi County, Kshs153 million; Mombasa County, Kshs135 million; and, Narok County, Kshs130 million.

The Seconder of this Motion is telling the people of Narok that he wants them lose Kshs130 million today and not tomorrow. Makueni County will lose Kshs107 million today and not tomorrow. They want Murang'a County to lose Kshs15 million today and not tomorrow.

I wish you agreed to my Motion that proposed at least two years. I am sure the people of Makueni want money to build hospitals. Your budget is going to be disrupted if this Motion passes today. The people of Narok are going to lose---

The Speaker (Hon. Lusaka): Sen. Kang'ata, there is a point of order. Let it be a point of order.

Sen. Dullo: On a point of order, Mr. Speaker, Sir. Is Sen. Kang'ata right to mislead Kenyans? When he talks of losing, in comparison to what? He needs to explain that.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, Sen. Dullo is the Deputy Senate Majority Leader. She has stood on a point of order. What was the basis of that point of order? It was an argument. That is why I am pleading that we allow everybody to say what they have to say and then we proceed.

Sen. Kang'ata: Mr. Speaker, Sir, we have had many amendments to this Motion. This is the only amendment that will make counties lose money today after we pass it. I wish you passed my Motion, which gave a two years grace period.

If this one passes, Narok County whose Senator is the Secunder of the Motion, will lose money today and not tomorrow or next year. I do not understand. Makueni will lose money immediately we pass this one. It means that the people of Makueni will lose resources that would have been used to build hospitals.

I prefer Sen. Sakaja's Motion to this one. This is because for the first time, Murang'a County is going to lose. The Mover of this Motion wants to make the people of Murang'a lose Kshs15 million today and not tomorrow. If I were to choose between this one and Sen. Sakaja's, I would choose Sen. Sakaja's. This one will make Makueni lose money today. Vote for this one if you want the people of the counties listed here to lose money today and not tomorrow.

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

The Speaker (Hon. Lusaka): What is your point of order? We said we should minimise points of order, so that we can contribute.

Sen. Sakaja: Mr. Speaker, Sir, you know that I rarely stand on frivolous points of order. Part XVII of our Standing Orders is about Rules of Debate. I have heard three Senators; Sen. Kang'ata, Sen. Cherargei and others shouting when making their points. I know that it is an emotive issue.

Mr. Speaker, Sir, you should advise Members because many times, your volume is conversely proportional to the point you are making.

The Speaker (Hon. Lusaka): Order, Senator!

(Loud consultations)

Sen. Sakaja: Mr. Speaker, Sir, they are just raising emotions for no reason. We have rules of decorum.

The Speaker (Hon. Lusaka): Order, Sen. Sakaja. What is your point or order?

(Loud consultations)

Sen. Sakaja: Of course, you know the point. Volume and sense do not many times go together. Add the strength of your debate.

Mr. Speaker, Sir, kindly moderate the House because Kenyans are watching. It is an emotive issue and people are raising emotions for no reason. I agree with many points that Sen. Kang'ata said. I do not agree with some, but that does not mean that I need to shout him down. We need decorum in this House because it is a House that Kenyans are looking up to.

The Speaker (Hon. Lusaka): Order! You cannot control somebody's volume. People are different; some will whisper and others talk differently. Those are personal human attributes.

Continue, Sen. Murkomen. Next, we shall have Sen. (Dr.) Ochillo- Ayacko from the extended Chamber.

Sen. Murkomen: Mr. Speaker, Sir, from the outset, I support the amendment of Sen. Linturi. My support is necessitated by the spirit of give and take. The ideal position would have been to go with the amendment of Sen. Sakaja as it is, but because some counties wanted to start earning higher allocation based on the new formula and we needed to mitigate the losses that the other counties were getting, I support this amendment.

The promise of developmental devolution in our Constitution is based on equitable distribution of resources. Devolution was to bring the areas that were called Arid and Semi-Arid areas (ASALs) back to the center. It was supposed to stop the idea that when one left Lodwar to come to Nairobi, they would say that they were coming to Kenya.

The Constitution wanted to create an environment where someone in Wajir County, Hola in Tana-River, Mwambingu in Taita-Taveta or in Tot in Elgeyo-Marakwet County would feel they were part and parcel of the country called Kenya. I wish the debate about allocation of resources was being done somewhere in Wajir County, Garissa, Tana River or somewhere in Samburu County.

It is unfortunate we are doing it in Nairobi and its environs. There is a reason Nairobi, Kiambu, Uasin Gishu and Mombasa have the highest population. It is that these are areas that have greater promise because the Government from colonial times invested in them.

The Constitution through devolution wanted to open up new areas of development, so that in future, the population of Isiolo would grow because opportunities have been created there.

Mr. Speaker Sir, I have been asked many questions about why I support this Motion, yet Elgeyo-Marakwet is gaining money. I am opposed to a formula that makes other counties lose Kshs2 billion. To reiterate what I already said to the public, the people of Elgeyo-Marakwet sent me to the Senate not to fight for resources with my fellow counties. It was not so that I could go back to them and tell them: 'Behold, I have brought you money that was meant for Tana River County, Taita-Taveta County or Isiolo County'. The primary responsibility of this House under Article 96 of the Constitution should be to fight for greater allocation to the county governments, so that the cake that goes there is bigger.

There has also been the argument that has been presented that in so far as devolution is concerned, the people who are in highly populated areas are the ones who raise more money. That is not true. Mombasa County perhaps generates higher revenue to this country than many of those counties that are boasting of higher population. Narok County which was supposed to lose almost Kshs1 billion under the Sen. Kibiru's Committee formula generates more money through the Maasai Mara Game Reserve. We want to sit here and say that we want to deprive the people of Taita-Taveta County despite the fact that the Tsavo National Park feeds the National Treasury a lot of resources.

Since injustice anywhere is injustice everywhere, it is my responsibility to exercise my duty as a national patriot. If more money has to go to Elgeyo-Marakwet

County, it should not be at the expense of our sister counties that are missing development.

If the national Government loves Elgeyo-Marakwet County, why give us Kshs300 million and steal from us Aror and Kimwarer dams of Kshs63 billion? Why marginalize that county because the argument has always been that since it is small, it should not be given bigger development. If the national Government wants to show their love for Elgeyo-Marakwet county, let them implement Aror and Kimwarer dams.

I support.

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

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

The Temporary Speaker (Sen. Nyamunga): Sen. (Dr.) Ochillo-Ayacko, just hold on a bit.

I give this opportunity to Sen. Khaniri.

(Interruption of debate on the Motion)

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

Sen. Khaniri: Madam Temporary Speaker, I would like to move a Procedural Motion. We realize that we have amendments on top of amendments, even before we get to the main Motion. We anticipate that we may not be able to conclude debate at the rise of the House at 6.30p.m.

I beg to move the following Procedural Motion: -

THAT pursuant to provisions of standing order No. 31(3) (a) the Senate resolves to extend its Sitting until conclusion of business listed as Order No.8 in the Order Paper of today.

My intention is that I believe that we have to conclude this matter today. We have procrastinated on it for far too long. In the meantime, counties are suffering. We have to conclude this matter either way. Let the majority have their way and the minority have their say, but somehow, we have to conclude the matter.

Last time I moved this kind of Motion, it was approved by the House, but the Speaker who was in the Chair adjourned before we concluded the matter and before even putting the question to the House, whether they wanted it to adjourn.

My understanding is that if the House resolves and passes my Motion, we have to sit until conclusion. If not, then the House, and not the Speaker, has to resolve again that we adjourn. I stand to be corrected.

I beg to move.

The Senate Minority Leader (Sen. Orengo): I wish to second the Motion, but add that we should conclude the business in Order No.8 on the formula. If you look at the Order Paper, the business is expansive.

Madam Temporary Speaker, because of the Ministry of Health regulations, let us to finish before the curfew. Anybody who is contributing including me should be aware of those guidelines.

I am not saying this because I do not want the business to be completed, but I think it is a good example that we can do this business and finish it. I am also tired and want this matter to be over today.

(Question proposed)

(Question put and agreed to)

The Temporary Speaker (Sen. Nyamunga): Sen. (Dr.) Ochillo-Ayacko, proceed.

Sen. (Dr.) Ochillo-Ayacko: Thank you, Madam Temporary Speaker, for giving me an opportunity to oppose the Motion that has been brought by Sen. Linturi. I oppose it on the basis that if you look at the Constitution of Kenya, it is very clear at Article 201, that it is important to have public participation. It is also important to have many activities under that particular provision as it relates to matters public finance. I am in doubt whether Sen. Linturi's formula had the benefit of public participation.

Having said that, I want to go on record that what we are debating here is false, mischaracterized and a fallacy. This is the fallacy: We are debating a decision that the Senate must make under Article 217 of the Constitution. The formula or the basis upon which revenue which is collected nationally and shared between the national and county governments; should be shared among counties.

Madam Temporary Speaker, my County of Migori is seven years old, the same applies to Mandera, Busia and Nairobi counties. I have heard words and phrases being bandied around here that one county has marginalized the other. We are age mates, we have been given birth to, and made effective by the Constitution of 2010.

The marginalization that is being talked about here is an issue that is older than counties. It cannot be addressed in this formula. This formula must be fair, equitable and one that addresses our ages, populace and levels of development. However, we cannot introduce issues of marginalization that were started by the colonialists and national governments of times before us and convolute this debate and make it a fallacy.

Madam Temporary Speaker, the counties here have no capacity. Kiambu County has no capacity to marginalize Migori County. Mandera and Mombasa counties cannot marginalize Migori County. I am deeply saddened when I am accused of marginalizing any county. How do I do it? I just want a simple formula where each county would get something that under that formula is the basis upon which they should be having their money. When we introduce marginalization, we are talking a fallacy and distorting facts and so many things.

Just to talk about marginalization, Migori County has a place called Kuria that only recently received the first kilometer of tarmac road. Nyatike in Migori County has never had tarmac since the advent of this country. In Migori County, we have only one tarmac road from Rongo to Isebania. However, that is not blamable on any county here.

Madam Temporary Speaker, this fallacy that we keep on talking about one county marginalizing another is wrong. The right thing is that we have a numerator that

has not changed. The money sharable has not changed but we are being asked to change the denominator. Once we do that, and the numerator does not change, then monies allocated to counties are going to change whether we like it or we do not.

I invite my colleagues to come back to realities. Let us restrict our debate to counties and what is available for sharing. If national Government has been taking money from our counties, after passing this formula in the manner the Committee proposed, let us collectively approach the national Government to help us change the numerator. Let us not fight among ourselves.

Thank you.

The Temporary Speaker (Sen. Nyamunga): The Senator for Tharaka-Nithi County, Sen. (Prof.) Kindiki, proceed.

Sen. (Prof.) Kindiki: Thank you, Madam Temporary Speaker. I support the amendments brought by the Senator for Meru County who is my neighbor or the amendments brought by Sen. Sakaja, my friend. Both Senators and other colleagues have shown that the future of this country is bright. These are fairly young Members of this House but looking at the future of the country very carefully.

The reason why I support this amendment and not the previous ones is because all the previous proposals were based on a wrong principle. The principle was that you must remove money from County A to benefit County B. That principle is wrong and we will continue preaching this until they hear. That is the wrong principle.

Madam Temporary Speaker, in the Bible, a man called Nathan the prophet gave David a story about a man who had 100 sheep. When this man who had 100 sheep received a visitor, instead of slaughtering one sheep out of the 100, he went to his neighbor who was a poor man who had one sheep. He took away the one sheep forcefully and slaughtered it for the visitor. That is the principle we are trying to introduce today, that you must rob one county to benefit another county.

What the counties of Kenya should be doing is to gang up as a block and negotiate and deal directly with the national Government to release more monies to the counties. Going forward, the battle should never be about County A versus County B. It should be the counties of Kenya versus the national Government.

A lot has been said about the Equalization Fund. How I wish the Equalization Fund was Kshs100 billion because that is the kind of money that would see highways, electricity and water to the marginalized areas.

Madam Temporary Speaker, as I end, the future of this country lies in developing the untapped expansive counties of this country. That is where the future of Kenya lies. Tomorrow, we will solve the developmental problems of this country if we develop Mandera, Marsabit, the coast region and other marginalized counties.

I want to exemplify my point as I end. After the Second World War, the Americans decided to put a bit more money for infrastructure, electricity, transport system in the hitherto called the Wild West. For that reason, today California, which is in the middle of a desert is the fifth largest economy in the world. Today, Las Vegas which is the headquarters of the entertainment industry is in the middle of the desert.

Madam Temporary Speaker, another example is in Australia. Much of western and northern Australia is desert, but because of roads, railways, power and water, it is a very developed area in spite of the climate. Even for security reasons, we need to develop Mandera, Moyale and these other places the way the Israelis have developed the City of

Eilat at the southern border because it provides them with the security of the nation. This is so that such a city is tax free.

There are so many incentives. Housing is free, *et cetera*.

I support.

The Temporary Speaker (Sen. Nyamunga): What is your point of order, Sen. (Eng.) Mahamud?

Sen. (Eng.) Mahamud: I rise on a point order under Standing Order No.104, that the question be put. This is because the Members are repetitive. The question should be put because we have other amendments. Put the question now and move to the next step since the process is very long.

The Temporary Speaker (Sen. Nyamunga): Hon. Senator, we are just in the process of doing that. Reading the mood of the House, I would like to call upon the Senate Majority Leader to comment on this.

Kindly, proceed.

The Senate Majority Leader (Sen. Poghio): Madam Temporary Speaker, there is a time when ideas converge.

(Loud consolations)

Madam Temporary Speaker, protect me from interruption.

The Temporary Speaker (Sen. Nyamunga): The Senate Majority Leader, kindly, continue. Sen. Khaniri, can you just hold your cool?

The Senate Majority Leader (Sen. Phogio): Madam Temporary Speaker, this is simply to say that---. This is about extending time. Which we have agreed. We are back on Sen. Lintrui's amendment.

I oppose this for several reasons. One reason is that we have used the opportunity badly.

Madam Temporary Speaker, when we adjourned last week, we agreed that we were going to build consensus. This is a unilateral move. There is no consensus that was built. Then we are told; bingo, we have a solution. It is a bingo. It is a Eureka moment for some people, but only one side of the House decides that they have a solution. The idea was we go and build that consensus.

Secondly, everybody has a chance to speak their mind. I think the language used around this formula and the language that we design around this whole thing---. It is very unfair when Members claim that money is being stolen and such language.

Madam Temporary Speaker, there is no county which intentionally gets money from another county. It is a formula that does that. When we tell our people in Kenya that we should not steal or remove money from one county or one county removing money from the other, we are just misleading them. I just hope that we come to see sense. Let us put this to a vote and agree that we are all looking for resources for our counties. We should not bring about emotional instability in our country by saying all sorts of things and yet, we know we are Senators seeking resources for our counties.

I oppose.

Madam Temporary Speaker, I just want to say, we better put this issue to the test of a vote and move on. We have another amendment still waiting. We have other amendments. Let us take the shortest time in all these amendments, so that we can finish.

I thank you.

The Temporary Speaker (Sen. Nyamunga): Finally, Sen. Orengo, kindly, proceed.

The Senate Minority Leader (Sen. Orengo): Madam Temporary Speaker, I am perturbed. We are engaging in a cold civil war between counties. That war is taking place in the Senate. I would have been happier if that war was taking place in another forum. However, we are here fighting with each other on which county gets more money and which county gets less money; the fight for resources.

As I said 10 days ago, if you are not very careful, what Sessional Paper No.10 did to this country in trying to ensure that development followed the railway line, we are doing it here today by having formulas coming in; all sorts of formulation of winners and losers.

If you read Article 96 (1) of the Constitution, the Senate represents counties. I am not here to represent Siaya. I am here as a Senator representing counties. We lost the war when we allowed the national Government to take all the money. In a Kshs3 trillion Budget, we ended up with Kshs300 billion. What a shame to this House! The war was between us and the national Government; to make sure that the counties got at least half of that Kshs3 trillion. Now we are fighting each other over Kshs300 billion. What type of people are we?

Madam Temporary Speaker, with respect, the way we should have been looking at this Constitution, we should have made sure---. I can tell you, if you had made sure that we had more, think about Kshs400 billion going to the counties, we would not have this argument today.

We have been sent by our counties to hunt for big game. We were sent for elephants and we ended up trapping a squirrel and now we are fighting over a squirrel. What a shame to us! We are fighting over a rabbit!

(Laughter)

Sen. Khaniri, we are fighting over a rabbit between Siaya and Vihiga counties, when we should have been fighting about the elephant. I am telling you! At the beginning, I had said that we needed to sober up and reason together. This is because even now, the language of saying that we are removing money from one county to another; going by the Commission of Revenue Allocation (CRA) formula, they did say we need cushioning because the national Government refused to give the money that we had proposed of Kshs346 billion. They said that the only answer was now to find money to cushion. Cushioning was to take it from Kiambu County to Mandera County.

I want to put this proposal: As the Senate, we have got a bigger war. Take a county like Lamu with a LAPSSET project. What is going to Lamu in LAPSSET project is 100 tonnes bigger than what they are getting from the allocation of Kshs2 billion. That LAPSSET project is moving from Lamu to Tana River County to Isiolo to Marsabit. You are asking when? You do not know that there is an international airport in Isiolo? There is an international airport in Isiolo, if we did not know. You are asleep!

I am telling you our fight is not between us counties; our fight is with the national Government to make sure more resources go to the counties. One of the biggest mistakes we made is that we allowed the national Government to take all the functions like in

agriculture. A lot of the money which should be going to the counties in health is remaining at the national Government. They are remaining here to be looted and be taken away. Now we are fighting over peanuts.

Madam Temporary Speaker, in conclusion, this Motion is to be rejected and we go back to the original Motion. On the original Motion, I am coming up with an amendment to make sure that we consider pastoralism, the blue economy, the extractive industry and the tea farms in Kericho. This is because there are people there who do not know what these tea farms are doing. I am talking about Narok, where they have game reserves and conservation. We want them to become part of the parameters.

Madam Temporary Speaker, I am asking this Senate to wake up and that our fight should not be between counties, but between us and the national Government.

I oppose.

(Applause)

(Question, that the amendment by Sen. Sakaja be further amended as proposed by Sen. Linturi, put)

The Temporary Speaker (Sen. Nyamunga): I now order Division Bell be rung for one minute.

(The Division Bell was rung)

(Loud consultations)

Order! Hon. Senators, kindly take your seats. We are going to vote by Roll Call. We have a long night ahead of us. We will vote from our seats. Can we call out the names? Hon. Senators who are in the extended Chamber, please start moving towards the main Chamber.

Kindly keep observing social distance.

(Loud consultations)

Can you keep your cool? Let us be orderly and organized. We have to finish this business as soon as possible.

(Roll Call voting in progress)

The question has already been put. Kindly do not repeat the question. Just vote.

(Voting in progress)

Sen. Wamatangi: Madam Temporary Speaker, because the proposal brought by Sen. Linturi is anti-policy and seeks to entrench a position that we do not use the correct census number and the right data---

(Loud Consultations)

Temporary Speaker (Sen. Nyamunga): Order Sen. Wamatangi! Just vote!

(Voting in progress)

Temporary Speaker (Sen. Nyamunga): Hon. Senators, let us carry ourselves here as senior citizens of this country. Standing Order No.83(5) states that when called, each Senator shall rise in his or her place to declare ascent or dissent to the question in the following manner: ‘I vote, yes’, ‘I vote no’, ‘I abstain’ or use appropriate Kenyan sign language and nothing else.

Hon. Members, if you are within the Chambers, just vote from wherever you are. Kindly do not move to the Dispatch Box

(Roll Call voting in progress)

Sen. Wako: Madam Temporary Speaker, I wish it was only Sen. Sakaja’s Motion because I knew him before he was born.

(Voting in progress)

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, we may have a repeat for Sen. Loiptip and Sen. Mpaayei.

Under Standing Order No.84, it says:

“If, after an Electronic Vote or a Roll Call vote has been made, it is discovered that the number has been inaccurately reported or that an error has occurred in the names on the Division lists, the fact shall be reported to the Senate and the Speaker shall direct that the necessary corrections be made.”

Based on that, I would like to give Sen. Cherargei an opportunity to vote the way he would want to vote.

Senator, just wait for your name to be called. Senators, we are going to follow the procedure---

DIVISION

ROLL CALL VOTING

(Question, that Sen. Sakaja’s amendment on the Motion be further amended as proposed by Sen. Linturi put, and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. Iman, Garissa County; Sen. (Dr.) Kabaka, Machakos County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Dr.) Lang’at, Bomet County ; Sen. (Dr.) Lelegwe, Samburu County; Sen. Linturi, Meru County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County;

Sen. Malalah, Kakamega County; Sen. Omogeni, Nyamira County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwaruma, Taita Taveta County; Sen. Olekina, Narok County; Sen. Sakaja, Nairobi City County; Sen. Wambua, Kitui County; Sen. (Rev.) Waqo, Marsabit County; Sen. Wario, Tana River County;

NOES: Sen. Cherargei, Nandi County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Ochillo-Ayacko, Migori County; Sen. Moi, Baringo County; Sen. Mwangi, Nyandarua County; Sen. Kinyua, Laikipia County; Sen. Ndwiga, Embu County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghisi, West Pokot County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; Sen. Wetangula, Bungoma County

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, the results are as follows.

AYES: 25

NOES: 20

ABSTENTIONS: Nil

The Ayes have it.

(Question carried by 25 votes to 20)

The Temporary Speaker (Sen. Nyamunga): Senators, we will now go to the Motion as amended.

Sen. Cheruiyot: Madam Temporary Speaker, I will pass up this chance so that I may contribute in the main debate.

Sen. Mutula Kilonzo, Jnr: Madam Temporary Speaker, judging from the mood of the House, I propose that you put the question and the Mover be called upon to reply and then we vote. We are ready to vote.

The Temporary Speaker (Sen. Nyamunga): Is that the mood of the House?

Hon. Senators: Yes!

The Temporary Speaker (Sen. Nyamunga): I call upon the Mover to reply.

(Loud consultations)

Let us have some order please. We will have the debate on the amendments by Sen. Sakaja. We will have the debate on the Motion as amended.

Sen. Sakaja: Madam Temporary Speaker, you are very clear that now we go back to the Motion as amended by the further amendment to my amendment. That is the Motion that was brought by Sen. Kibiru. Therefore, he is the one to reply because amendments are not replied to.

The mood of the House is that, we do not seek to debate any more but vote, unless we invoke the Standing Orders not to ask for that. Since Members have been saying the same things throughout, the Mover should reply and then we vote.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, from what I can get, there are Senators who want to speak to the Motion as amended. Let us listen to Sen. M. Kajwang’.

(Loud consultations)

(Sen. Olekina spoke off record)

Sen. M. Kajwang’: Madam Temporary Speaker, I beg that you protect me from the Senator for Narok. I beg your protection and indulgence. I have been given the Floor.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, this is a House of Order. I will propose the question.

*(Question of the Motion as amended by Sen. Sakaja,
and as further amended by Sen. Linturi, proposed)*

The Temporary Speaker (Sen. Nyamunga): Proceed, Sen. Cheruiyot.

Sen. Cheruiyot: Thank Madam Temporary Speaker. I support this Motion as now presented before this House. We have been---

The Temporary Speaker (Sen. Nyamunga): Hon. Senator, you may need some guidance. We had already agreed on the limit of five minutes. So, we go by that, please.

Sen. Cheruiyot: Five minutes is enough. This House has been through a very difficult journey in the last seven or eight weeks. I thank Sen. Linturi for guiding this House---

(Several Senators stood in their places)

The Temporary Speaker (Sen. Nyamunga): Take your seats, hon. Senators’ and observe some social distancing please.

Sen. Cheruiyot: I support this Motion because it has been a very difficult eight weeks for us.

Hon. Madzayo: Jambo la nidhamu, Bi. Spika wa Muda.

The Temporary Speaker (Sen. Nyamunga): Hon. Madzayo, what is your point of order.

Sen. Madzayo: Asante Bi. Spika wa Muda. Kuna Maseneta ambao walikuwa wamepewa nafasi ya kuongea juu ya Hoja hii. Wengine wetu hatujapewa nafasi ya kuongea hata kidogo. Nakuomba uwe na usawa kwa sababu sisi sote tuna haki ya kuongea.

The Temporary Speaker (Sen. Nyamunga): Hon. Senator, I have noted your concern. I am giving you the next chance.

Sen. Madzayo: Asante, Bi. Spika wa Muda.

The Temporary Speaker (Sen. Nyamunga): It can also be of help if we removed our cards and logged in again. May all Members remove their cards. I can see some names are still listed. It is now fine. Continue, Senator.

Sen. Cheruiyot: Madam Temporary Speaker, the premise of this debate is about fairness and the desire to have a united country. As a Senate, we are being called upon to shepherd this nation to unity and all of us remain celebrating.

In my honest opinion, I think we are back to Naivasha all over again in 2010. Colleagues who were Members of Parliament back then will reveal to you that this is not the first time Kenya is having this debate between land and population; one man, one shilling or one kilometer, one shilling.

It was the wisdom of the leaders who were present in Naivasha that time, that to strike a compromise, those who were strongly tilted towards a parliamentary system were granted devolution and those who were heavily leaning towards a presidential system were granted the same. Thus they saved this country from dividing right in the middle.

That is the difficult question that has been before us. I am so proud of my colleague, Sen. Linturi for giving us a resolution, which I feel if we support, it will unite this nation. This is because we will no longer have a situation where a particular county is losing more than Kshs1 billion and others are gaining a similar amount.

Sen. Linturi's proposal has 29 counties gaining, but not much has been proposed by CRA. The 18 counties that are losing, it is a figure that is manageable. It is close to Kshs100 million. I feel this is an extremely fair proposal. I plead and urge my colleagues to support this particular Motion in the format that has been brought before us by Sen. Linturi. This is about justice.

Every time we sing the National Anthem, we pray to God that justice be our shield and defender. It is not an idle song that we present as a people. How can you say that you stand for justice, yet as a Senator, you want to celebrate while your colleagues are losing close to Kshs2 billion? That is not fairness. That is not equity. That is not what is demanded of us as leaders before this House.

Madam Temporary Speaker, the last two years have taught me great lessons on justice and fairness. You know what is happening in this country. In the last term when we used to come to this House and our colleagues from the then National Super Alliance (NASA) coalition would come before us in the House on afternoons after they have been teargassed, we kept quite because we thought that with the comfort of Government, why should we be worried about colleagues who were being teargassed. Little did I know that in two years' time, roles would be reversed and I would be the one who was being teargassed.

I plead with my colleagues that if you are supporting injustice today, you never know when the pendulum of power will switch and you will be on the receiving end. Today you are celebrating because you are receiving extra money, but you do not know about tomorrow. It might be a different thing that your county will not be favoured.

Madam Temporary Speaker, the Bible says that all it takes for evil to prosper is for good men to do nothing. All it will take for devolution to die in this country is when we stand here and celebrate as 18 counties are being skinned alive without us uttering a single word. There is no county that can survive when its allocation is reduced by more than Kshs200 million or Kshs300 million in a year.

Sen. Linturi has granted us a perfect proposal. If you look at the parameters that he had considered, they are very little variations from what the Committee had proposed. That is why as a Member of the Committee on Finance and Budget, I support it. I have been in that Committee since the last term. This is not the first formula that we are

handling. We handled the Second Generation Formula in 2016. We followed the same parameters as being proposed this afternoon. Sen. Linturi does not deviate further from them.

Madam Temporary Speaker, the country has been looking up to us to offer leadership. Finally, I am happy we have a resolution before us. If we agree with it, all counties will feel satisfied and we remain a united country. I have heard some Senators asking why should I change my position and move away from your Committee's proposal. It is a plain and simple question---

(Loud consultations)

The Temporary Speaker (Sen. Nyamunga): Order, Senators. The way we are conducting ourselves in this House is very shameful. Hon. Senators are walking up and down as if we are not in the Chamber.

Conclude, Senator.

Sen. Cheruiyot: Madam Temporary Speaker, I propose that all funds that are sent to our counties be subjected to this particular proposal. If we are speaking about the gains that are made to different counties, we are forgetting that even in this current financial year, there is close to Kshs70 billion in Conditional Grants that will go to counties without following any formula.

As a House, we have abdicated our responsibilities. Therefore, from today, because we have sent a signal to the national Government that we want justice and equity, even on conditional grants, we need to sit down and see the criteria that the national Government follows in grants to the various counties.

With those very many remarks, I support.

Sen. Madzayo: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Sen. Madzayo, proceed.

What is your point of order, Sen. Olekina?

Sen. Olekina: I stand on a point of order pursuant to Standing Order No. 105 on Closure to Debate. I would like to beseech you that the Mover be called upon to reply. Looking at the time, it is going to 7.00 p.m. It will be a shame if we now start mobilizing people to seek an adjournment. That was the intended outcome or strategy later this afternoon.

Madam Temporary Speaker, I would like to request, under Standing Order No.104, that we now call upon the Mover to reply, so that we can end this and give counties money.

The Temporary Speaker (Sen. Nyamunga): Hon. Senator, your point is noted. We extended the time and have up to 8.30 p.m. to debate on this. I will allow a few Members. I cannot just call upon the Mover to reply yet I have so many Members who would like to contribute.

Sen. Madzayo, kindly, proceed.

Please, Senators, let us give it some time.

Sen. Madzayo: Asante, Bi. Spika wa Muda. Nashukuru kuwa umeweza kunipatia nafasi ili niweze kutoa fasaha zangu kwa Hoja ilioko hapa leo.

Mimi ninataka kusema kwamba, magaeuzi haya---. Hapo awali, kaunti nyingi sana zilikuwa zinapoteza pesa nyingi, lakini kwa sasa, kuna afueni katika kaunti nyingi katika zile ambazo zinapoteza.

Bi. Spika wa Muda, hakuna mashindano kwamba wengi watapata na wengine watapoteza.

(Loud consultations)

The Temporary Speaker (Sen. Nyamunga): Sen. Omogeni, I have not given you an opportunity to raise a point of order.

Sen. Madzayo was on the Floor.

(Sen. Omogeni spoke off record)

Sen. Omogeni, you should request to be given an opportunity to debate. The Senator for Kilifi County is on the Floor. Are you on a point of order or what is it?

Sen. Madzayo, please, continue.

Sen. Madzayo: Asante, Bi. Spika wa Muda. Jambo muhimu ambalo ninataka kusema ni kwamba, katika haya majadiliano, kila mtu ataweza kufaidika.

(Loud consultations)

Bi. Spika wa Muda, hapa kumejaa hoja za nidhamu. Nataka pia mimi uweze kunisaidia.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, just continue, you are on the Floor. Just continue and conclude your---

Sen. Madzayo: Bi. Spika wa Muda, kwa sababu ya wengi, wengi wape. Mimi nakubaliana ya kwamba tupige kura sasa hivi ili haya majadiliano yamalizike.

Asante, Bi. Spika wa Muda.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, it is important for us to go by the rules of the House. It is very clear that after a Senator has already made a contribution on a particular matter, the same Senator cannot move for a closure of debate under Standing Order No.104 (2) and (3). It can only be moved by a Senator who has not spoken to the Motion under consideration.

We have Senators who would want to make contributions.

(Loud consultations)

Sen. Sakaja, what is your point of order? Please, let us be brief with our points of order, so that we can move forward.

Sen. Sakaja: Very briefly, Madam Temporary Speaker. Number one, I have not spoken to the Motion.

I spoke on an amendment and the Standing Orders say you can speak to an amendment. Number two, Standing Order No.104 says that:

“After the question on a Motion the Mover of which has a right of reply has been proposed, a Senator rising in his or her place may claim to move: “That, the Mover be now called upon to reply.”

It goes on:

“---the question “That, the Mover be now called upon to reply”, shall be put forthwith---“

Madam Temporary Speaker, when that request is made under Standing Order No.104, it is not an open discretion for the Speaker. You are supposed to put the question for Senators to decide whether the mover should be called to reply. If that question passes, then the question is put on the Motion.

As you have said - which I agree 100 per cent - that we go by the rules, that is what Standing Order No.104 (1), (2) and (3) provide for under our Standing orders.

The Temporary Speaker (Sen. Nyamunga): Sen. (Prof.) Kindiki, what is your point of order?

Sen. (Prof.) Kindiki: It is the same point raised by Sen. Sakaja.

The Temporary Speaker (Sen. Nyamunga): Okay. Sen. (Dr.) Ali.

Sen. (Dr.) Ali: Madam Temporary Speaker, it is on the same. We just want you to put the question for the mover to reply under Standing Order No.104. It will be for the House to decide whether it is time for the mover to reply or not.

The Temporary Speaker (Sen. Nyamunga): Sen. (Dr.) Ochillo-Ayacko, what do you have to say?

Sen. (Dr.) Ochillo-Ayacko: Madam Temporary Speaker, in response to that point of order, you had allowed Members to record their sentiments regarding the amendment. I have been sitting here, for my own sake, the people of Migori and those with alternative feelings, I would like to request you to treat us equally and allow some of us to say what we must say. We cannot be locked out. It is very important for me to record my feeling.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, we will use Standing Order No.104 and put the question. Sen. M. Kajwang’ what is your point of order?

Sen. M. Kajwang’: Madam Temporary Speaker, nobody has a monopoly of ideas in this House. When you read *Desidarata*, it tells you:

“Listen to everyone, even the dull and ignorant, they too have their story.”

I may be dull and ignorant but I represent the people of Homa Bay. We are discussing the Motion that has taken us eight adjournments and 10 various permutations of formulae. It should not be rushed because every Senator here has a right to go on record so that his people---

(Loud consultations)

Madam Temporary Speaker, please protect me from the heckling. This House is becoming a Tower of Babel. Every Senator has a right to go on record. We have already passed a Motion to extend time.

The Temporary Speaker (Sen. Nyamunga): Senator, your point is noted. I will now put the question that the Mover be called upon to reply.

*(Question, that the Mover be now called upon to reply,
put and agreed to)*

The Temporary Speaker (Sen. Nyamunga): I would like to call the Chairperson of the Committee, Sen. Kibiru or the Vice Chairperson, Sen. (Dr.) Ochillo-Ayacko to reply.

Sen. (Dr.) Ochillo-Ayacko in your capacity as the Vice Chairperson of the Committee on Finance and Budget, kindly make a reply.

(Loud Consultations)

Sen. (Dr.) Ochillo-Ayacko: Madam Temporary Speaker, kindly ask my colleagues to listen in silence as I talk.

Temporary Speaker (Sen. Nyamunga): Hon. Senators, let us have some order.

(Loud Consultations)

Sen. (Dr.) Ochillo-Ayacko: Madam Temporary Speaker, kindly ask my fellow Senators to be quiet as I speak.

(Loud Consultations)

Sen. Olekina, kindly be quiet for the Senator for Migori County to speak.

(Loud Consultations)

The Senate Minority Leader (Sen. Orenge): On a point of order, Madam Temporary Speaker.

(Loud Consultations)

Temporary Speaker (Sen. Nyamunga): Hon. Senators, let us have some order.

The Senate Minority Leader (Sen. Orenge): On a point of order, Madam Temporary Speaker. On the Order Paper, it is the substantive Motion by the Committee on Finance and Budget that is before the House. There are several proposed amendments to the substantive Motion.

One of the proposed amendment is by the Sen. Wamatangi. There are also amendments by Sen. Were and myself. I do not know how the Mover can be called upon to reply when there are substantive amendments before the House. I have an amendment to the Motion that is listed on the Order Paper. I do not know what the Clerks-at-the-Table are doing. We are going to question the Clerks-at-the-Table. There are amendments to the substantive Motion.

I appreciate the fact that Sen. Linturi's amendment to the proposed amendment to the Motion by Sakaja Motion has been passed. However, there is an amendment by Sen. Sakaja that has not been voted on. The Motion by Sen. Sakaja is a matter concerning counties, therefore, it cannot be voted on a voice vote. There must be a Roll Call vote.

(Loud Consultations)

I am on the Floor!

Temporary Speaker (Sen. Nyamunga): Hon. Senators, let us have some decorum.

The Senate Minority Leader (Sen. Orengo): Madam Temporary Speaker, the Senators of Murang'a and Kiambu counties should not approach you. This is a matter of procedure. We should go by the Order Paper. This is not a Kangaroo Senate.

I have a substantive amendment, which has not been called upon. Sen. Olekina also has an amendment that should be called. Let us go by the Order Paper. The Clerks-at-the-Table should advise the Temporary Speaker accordingly.

(Loud consultations)

The Temporary Speaker (Sen. Nyamunga): Order, Senators! You cannot be attracting my attention and you are on your feet. Can we have some order, please?

Sen. Kang'ata: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Sen. Kang'ata.

Sen. Kang'ata: Madam Temporary Speaker, I rise to support the Senate Minority Leader. The contention is, if the Chair or the Vice Chair of the Committee was called upon to respond, the effect of that will be that you have closed debate, whereas we have several amendments that exist seeking to amend the Committee Report.

Sen. Were and Sen. Wamatangi have amendments that had not been debated. I urge that you uphold the point of order that has been raised by the Senate Minority Leader and allow Members to canvass.

I make reference to the ruling that was made by the Chair the last time we were here. It was agreed that you give each and every Senator who has an amendment, at least about three hours to discuss each and every amendment on the Motion. Otherwise, that will be unfair. My amendment was debated for three hours and Sen. Sakaja's amendment was also debated for a long time. It is only fair that you allow all Senators to prosecute their amendments.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, we are not going to get anywhere by shouting. We must find a middle ground. Let us listen to a few people, but I can also give direction that going by what has happened, I think it was an oversight--

(Loud consultations)

You have to listen. What I am saying is that, we can give ourselves ten minutes so that we agree on a way forward. Let us give ourselves a ten-minute adjournment so that we get---

Sen. Linturi: Madam Temporary Speaker---

The Temporary Speaker (Sen. Nyamunga): Sen. Linturi, I have not given you---

(Loud consultations)

Sen. Linturi: Hon. Senators, kindly, let me be heard in silence.

Madam Temporary Speaker, I am pleading that I be heard in silence.

The Temporary Speaker (Sen. Nyamunga): Please, can we have silence? Shouting at each other and standing will not move us forward.

Sen. Linturi: My dear colleagues, I have listened to the directions made by the Chair and I have no doubt that we are headed the right way. However, it should not be forgotten that some of us have been in the corridors of Parliament for quite a long time, and we know the tricks of trying to suspend debates or making decisions on matters that are so important by applying tricks that are probably meant to defeat the whole purpose of the debate.

Madam Temporary Speaker, if you do not put your foot down and give direction, in another hour, we will be told that there is a curfew. For that reason, there will be need for us to adjourn without determining the matter that is before us.

I ask that you use your wisdom---

The Temporary Speaker (Sen. Nyamunga): Your point is made.

Sen. Linturi: Seeing that this is the mood of the House and since these are the hon. Senators that will debate and make a decision on the matter, their mood is that we proceed---

The Temporary Speaker (Sen. Nyamunga): Your point is made.

Sen. Linturi: Madam Temporary Speaker, anybody that has an amendment to bring it, then it will be voted on by hon. Senators on its own merit.

The Temporary Speaker (Sen. Nyamunga): Sen. Wambua is on the Floor. Hon. Senators, let us give him our attention.

Sen. Wambua: Madam Temporary Speaker, more than once---. I will wait until there is change of guard, then I will prosecute my point of order.

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

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

Sen. Wambua: Mr. Speaker, Sir, in the last 10 minutes and the HANSARD can bear me out, the Chair asked us to debate in decorum. She called the Mover to reply before you took the Chair. Is it in order that once a Mover has been called to reply and moved to the Dispatch Box to do so, we can entertain further debate on this Motion?

Please guide this House.

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

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

Sen. (Dr.) Ochillo-Ayacko: Mr. Speaker, Sir, inadvertently or erroneously, I had been called upon to reply. I would like to listen to other proposed amendments so that I would properly and articulately reply.

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

Sen. Were: Thank you, Mr. Speaker, Sir.

I have an amendment to Sen. Kibiru's proposal; the Chairperson of the Standing Committee of Finance and Budget. I brought it here and I have not been given an opportunity to execute it and yet the Mover of the main Motion has been called upon to reply. So, it is like you have ignored my amendment.

(Loud consultations)

The Speaker (Hon. Lusaka): Order Senators. This House is guided by our Standing Orders and the Order Paper. The House Business schedules what is to be discussed in this House.

We started with the amendment by Sen. Linturi, which has been properly prosecuted to the end. Everybody has been given a fair hearing. We have amendments by Sen. Orengo, Sen. Were and Sen. Wamatangi. We need to give them an opportunity to present, so that we are fair. I want to assure this House that whichever decision we make; it will be for the interest of Kenyans. Let us be patient with each other and respect each other so that we are able to progress.

I have directed.

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

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

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, you have made a ruling and I do not want to challenge it, but in matters of procedure, the Motion as moved by the Committee was amended by Sen. Sakaja and Sen. Linturi. It is no longer the Motion that was there. What Sen. Wamatangi, Sen. Were and others are amending is the main Motion. The Motion that we have now---

The Speaker (Hon. Lusaka): No.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, we are prepared to lose Motions and I have to live with that. I was in this House when I lost alone a Motion to change Kenya into a one-party State. It was passed and I did not have a problem with it. Therefore, we are prepared to live by the results of whatever decision that is made.

I think that it will be wrong for anybody to assume that the Senate will make a decision and then we decide to go against it. However, what is important is that the due process must be followed. That due process requires, and you know, before the Senate Business Committee (SBC), if I may talk to the Members of what happened, there was doubt as to whether Sen. Linturi's Motion could be moved. This is because notice had not been given and it came in late; it was not in the Order Paper as was posted in the platforms that we normally use. The Senate Business Committee decided that his Motion must be in the Order Paper.

The Senate Business Committee also interrogated Sen. Olekina's amendments. I talked only once in that meeting. Sen. Olekina had two Motions and he insisted that those two Motions must be in the Order Paper, and everybody agreed to it.

Sen. Wamatangi also had an amendment to Sen. Sakaja's Motion. That amendment to that Motion has not been withdrawn. If any other Member has withdrawn a Motion, that is their problem.

Sen. Petronilla Were, I looked at---

(Loud consultations)

No, you are not going to stop me!

(Sen. Murkomen stood up in his place)

The Speaker (Hon. Lusaka): Order, Sen. Murkomen.

(Loud Consultations)

The Speaker (Hon. Lusaka): Order, Members! I sit here as your Speaker and some of you who are very anxious have also been talking so much, and I have given you latitude. Let us respect each other. The whole world is watching. Let us give everybody an opportunity to say what they want to say.

Conclude, Sen. Orengo.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, you know, when many Members speak, I do not intervene, even on points of order. I have a lot of respect for Sen. Murkomen. In fact, when he speaks, I keep quiet, and he was here speaking a lot this afternoon. I would not even mention or utter a word like he is uttering. I keep completely quiet because I do not want to be misunderstood.

I urge you, and the respect is mutual, that we need to have a sober debate. In another 100 years, people will sit down and see how we handled this issue. It is not just for now; it is going to be for the future.

Sen. Wamatangi's Motion preceded mine and Sen. Petronila Were's Motion came after mine. So, let us have Sen. Wamatangi move his Motion on amendment, then I can move mine and then Sen. Peteronila Were can move hers. That is the order.

Thank you, Mr. Speaker, Sir.

Sen. Wetangula: On a point of order, Mr. Speaker, Sir. Mine is a question of record and procedure. The Speaker who was on the Chair, the distinguished Nominated Senator, pronounced herself by calling the Mover to reply. Now that you have come and it appears that the direction is to rescind that decision, then, you also have to make a pronouncement on it for the record.

The Chair is not about you, Sen. Nyamunga or Sen. (Prof.) Kamar; it is the Chair; that the decision to call the Mover to reply is now hereby rescinded for the record. This is because, tomorrow, somebody will read the HANSARD and find out why we went the way we are going. So, if there is a rescinding of that order, have a communication, then give us direction. Otherwise, we should not leave a murky record in the HANSARD of this Senate.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir. Now that we have accepted the proposed process of how we are going to dispense of all these Motions that are before us, I want to invite you to look at Standing Order No.106 (1); that you make a determination on the limitation of debate that is before this House. Set a specific time, maybe, 10 minutes for the Mover, three minutes for the seconder and two minutes for anyone who wants to contribute.

Mr. Speaker, Sir, you need to rule what will happen in case we take a vote midway on any of those debates like the previous one where Members - and it is within their right - you asked that the Mover be called to reply even if other Senators wanted to speak about it. We call upon you to make a decision on those two issues.

Sen. Mwaura: On a point of order, Mr. Speaker, Sir. I rise again on the Standing Order on repetitions and irrelevancies. Honestly, this is a House of order and decorum.

Last week, we were profiled as being unruly. I am ashamed to see almost direct altercations between Sen. Murkomen and Sen. Orengo---

Sen. Olekina: You are wasting time!

Sen. Mwaura: I am not wasting time, I am debating. Sen. Olekina, you also had the same right like me.

Let me say this. We, as the Senate, need to retreat. I am saying so because this is just political episodic. We are going to resolve this issue and we must continue to debate as a House.

(Loud consultations)

Please, let us be tolerant. Shouting like you are in a market does not make you a better Senator.

An hon. Senator: Moderate your language.

Sen. Mwaura: You also moderate. Be still.

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

Sen. Mwaura: Senators are not known to heckle one another in this august House. Let me prosecute my point and then, you will also have your time.

(Loud consultations)

Mr. Speaker, Sir, I need your guidance. This heckling must be tamed.

Mr. Speaker, Sir, I seek your guidance because we have already discussed Sen. Kang'ata's and Sen. Linturi's amendments. We may discuss Sen. Wamatangi's or Sen. Were's amendments. What will be the next recourse after we have discussed all these amendments?

I seek your guidance because my understanding on the Motion on the Floor of the House is that if one is amended, the other one subsides.

The Speaker (Hon. Lusaka): Let us listen to the point of order by the Senate Majority Leader.

The Senate Majority Leader (Sen. Poghio): Mr. Speaker, Sir, Standing Order No.1 states that the Speaker has powers when we all seem not to understand what is going on.

(Loud consultations)

The Speaker (Hon. Lusaka): Senate Majority Leader, I can hardly hear what you are saying. Order, Members! Let us consult in low tones.

The Senate Majority Leader (Sen. Poghio): Mr. Speaker, Sir, there are people in this House who think that they are entitled to disrupt anybody and everybody. Even when I am speaking, I can hear in the background people talking. That is very wrong. That entitlement should not be there.

Mr. Speaker, Sir, you have ruled. From where you sit, Standing Order No.1 gives you the opportunity. Secondly, the Chair who was there before you said that there was an oversight and that we were going to adjourn for 10 minutes to consult. Now that you are here, whether you pronounce that we withdraw what was there before, it was already said by the Chair who was there.

So, Mr. Speaker, Sir, you should proceed because you have already said it. You should give an opportunity to everybody. Just like we had one or two hours for Sen. Linturi's amendments, everybody has a right. I just want you to proceed.

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

Sen. Sakaja: Mr. Speaker, Sir, in the same spirit, this matter has taken us time and Members have processed their proposed amendments. I think it will be fair to listen to them but in accordance to the Standing Orders.

Standing Order No. 62(11) says as follows-

“When every amendment to an amendment has been disposed of, the Speaker shall either again propose the question upon the original amendment or propose the question upon the original amendment as amended, as the case may require.”

As you consult your technical team, the question on my amendment was put as amended by Sen. Linturi and it passed by 25 delegations. That means that, as it is, the report of the Committee has been amended by my amendment. Following that---

(Loud consultations)

Pole pole. You will consult the HANSARD as well. There is even *YouTube* these days. You can go and watch. That means that because the Senate has passed my amendment as amended and has amended the Report of the Committee, to that extent, one amendment can be entertained; that is the one by Sen. Orengo as well as the amendment by Sen. Were.

The amendment by Sen. Wamatangi that was to amend my amendment is null and void because, already, that has been disposed of and the Motion has been amended.

Mr. Speaker Sir, I am using the Standing Orders. Sen. Khaniri has been here from 1992 and he will tell you.

I can see we are making progress and moving in the right direction. At this point even as they consult; because we know the rules do not change, Sen. Orengo should be allowed to move his amendment to the Report. Remembering as well that the body of the Report has changed by dint of my amendment. What you may be referring to as (B) and (C) in your amendment does not exist.

That is the only way forward technically and following our rules. I would ask anyone to challenge that, based on the rules.

(Applause)

(Sen. Mutula Kilonzo Jnr. Spoke off record)

Sen. (Dr.) Ochillo- Ayacko: Mr. Speaker, Sir, protect me from Sen. Mutula Kilonzo Jnr.

The Speaker (Hon. Lusaka): Order, Sen. Mutula Kilonzo Jnr. Do you have a point of order? I am going to give you an opportunity.

(Loud consultations)

Sen.(Dr.) Ochillo-Ayacko: Mr. Speaker Sir, they cannot know my mind. I rise on a point of order.

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

The Speaker (Hon. Lusaka): Let us give him an opportunity. Just relax. I will give you time. He is also on a point of order.

Sen.(Dr.) Ochillo-Ayacko: Mr. Speaker, Sir, I rise on Standing Order No.104 specifically to the point of order that was raised by my dear friend, Sen. Cheruiyot, that you restrict debate and that immediately after moving and responding, you call upon the Mover to reply.

Standing Order No.104 (1) says-

“After the question on a Motion, the Mover of which has a right of reply has been proposed, a Senator rising in his or her place may claim to move “That, the Mover be now called upon to reply”, and, unless the Speaker is of the opinion that such Motion is an abuse of the proceedings of the Senate, or an infringement of the rights of Senators, the question “That, the Mover be now called upon to reply”, shall be put forthwith, and decided without amendment or debate and if that question is agreed to, the Mover may immediately reply to the debate, and as soon as the Mover has concluded or, if the Mover does not wish to reply, the Speaker shall put the question, subject to Standing Order No.61 (3) (Speaker may defer putting of a question).”

I rise on a point of order to have you know that some of us want to contribute to this debate. Any attempt at shutting us off, will be an infringement on our rights to speak and equality of treatment. I request you to rule that the desire by Members to lock out other Members from making their presentations is totally out of order.

The Speaker (Hon. Lusaka): Order Members. You have amended the time to 8.00 p.m. Is it 9.00 p.m. or 8.00 p.m.?

(Several hon. Members spoke off record)

Sen. Khaniri: It was until the conclusion of debate.

The Speaker (Hon. Lusaka): Okay. I will consult. The more you raise points order, the more you are eating into the time when you are supposed to be debating this.

Proceed, Sen. Madzayo.

Sen. Madzayo: Bw. Spika, kila mtu aliye hapa ni Seneta na akisema kwamba ana Hoja ya Nidhamu ana haki kupewa nafasi hiyo. Hoja ya nidhamu ya kwanza Sen. (Dr.) Ochillo-Ayacko ameitoa. Akarudi tena akaongea katika hoja ya nidhamu ya pili. Umempa nafasi kwa mara ya tatu atoe hoja ya nidhamu ilhali wengine unawakataza kabisa hata kuinuka katika hoja ya nidhamu. Ni kwa sababu gani?

The Speaker (Hon. Lusaka): There is nobody I have denied a point of order. Sen. M. Kajwang', proceed.

Sen. M. Kajwang': Mr. Speaker, Sir, I agree with Sen. Sakaja on the point he has raised. I agree with Sen. Sakaja that Sen. Orenge and Sen. Were must be allowed to prosecute their amendments. However, I disagree with Sen, Sakaja on Sen. Wamatangi's proposed amendment because the question was not put. The amendment was not moved.

If it had been put and moved and defeated in a vote, then it would be *otiose*. I strongly believe that it would be in order that Sen. Wamatangi be allowed to move his

amendment. If there was an error in judgement or resolution, it is the opportunity of the Chair and this House to resolve whatever missteps we have made in the process.

The Speaker (Hon. Lusaka): Order, Members! I want to call upon Sen. Were---

(Loud consultations)

(Several Senators remained standing)

Let us take our seats.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, there is a point which Sen. M. Kajwang' is making. Sen. Wamatangi's amendment was an amendment to Sen. Sakaja's amendment. It was not an amendment to Sen. Linturi's amendment. That distinction must be drawn. We cannot ride roughshod because the Senator for Nairobi County has said that, that amendment is *otiose*.

The fact of the matter is that Sen. Wamatangi's amendment was an amendment to Sen. Sakaja's amendment. It was not an amendment to Sen. Linturi's amendment. As a matter of procedure, we cannot run away from it. In fact, when that amendment was being made, we were quiet. It would be wrong for the Senator for Kiambu County not to be allowed to move his amendment which is an amendment to Sen. Sakaja's amendment.

The Speaker (Hon. Lusaka): Sen. Wamatangi, proceed finally.

Sen. Wamatangi: Mr. Speaker, Sir, my point of order was very similar. When we quote Standing Orders exclusively to what you want, then, eventually it may confuse members of the public and make others, for example like me when I have an amendment to this Motion to look like I am not protected by the law.

I rise on Standing Order No. 11. We could start with the same Standing Order that Sen. Sakaja had quoted. It is very express. If you go even to Standing Order 63 (2), it is very clear. It says-

“Despite Paragraph (1), the Speaker may, in exceptional circumstances, allow a Senator to move an amendment to a Motion before the Senate at any time during consideration of that Motion”

There is nothing out of order at all. I was just reading that Standing Order so that Sen. Sakaja may not feel so entitled to prove or say that it is wrong for me to move my Motion.

The Speaker (Hon. Lusaka): Order, Senators! I want to call Sen. Were to move her amendment. Sen. Mutula Kilonzo Jnr., what is the problem? Kindly, proceed.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I have sat here patiently since 2.30 p.m. All my buttons have been on and off. There are Members who are getting preference today. It appears to be discriminatory. Rarely do I complain. I hate complaining, but today you have mistreated us. In the process of mistreating us, the Members who are raising these points of orders are doing what is commonly known as filibuster. In the process, they are thinking we are going to change our minds or lobby us.

Mr. Speaker, Sir, I am proposing that since we have debated, those of us who have not debated, Sen. Sakaja has spoken on our behalf. The Movers should move and the Seconders to second, then we vote. It is that simple. This is because what is Sen. Kang'ata going to say that he has not said the four times he has been here. Please guide us.

(Sen. Murkomen stood up in his place)

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

Let us make progress. I want to call upon Sen. Were to move her amendment. Please take 10 minutes to move it and then it will be seconded. The Seconder will have five minutes to do so.

Sen. Were: Thank you, Mr. Speaker, Sir. I know that we have had a lot of discussion on this issue of county revenue allocation and the various formulas. I will not take a lot of time. In fact, 10 minutes is a lot for me.

Mr. Speaker, Sir, the principle behind my amendment to the Report of the Standing Committee on Finance and Budget is that we continue with the second generation formula as it was---

(Loud consultations)

Please could you protect me from the loud consultations behind me?

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

Sen. Were: Mr. Speaker, Sir, I rise to move the Motion on the Report of the Standing Committee on Finance and Budget on the third basis for allocating among the counties the share of national revenue, for the financial years 2020/2021 to 2024/2025.

Mr. Speaker, Sir, I beg to move the following Motion:

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

“subject to the deletion of recommendation appearing at paragraph 26 of the Report and substituting therefore the following new recommendation-

26. The proposed third basis or criteria for allocating among the counties the share of national revenue for financial years 2020/2021 to 2024/2025 be as follows-

(a) Allocation for FY 2020/21

Maintain the Financial Year 2019/2020 allocation per County.

(b) Equitable share not exceeding Kshs. 348 billion

The following formula shall apply

$$CA_{i1} = 0.45PN_i + 0.26ES_i + 0.18PI_i + 0.08LA_i + 0.02FE_i + 0.01DF_i^9$$

Where,

CA_{i1} is revenue allocation of the i^{th} County; PN_i is Population Factor (Population of i^{th} County/total population); ES_i is Basic Equal Share Factor (Total Equal share/47); PI_i is Poverty Gap (Poverty Resources of i^{th} County/total poverty Resources); LA_i Land Area Factor (Land Area (Sq. Kms.) of i^{th} County/Total Land area); FE_i is Fiscal Effort Factor (County's own revenue increment/2009 population of the i^{th} County); and DF_i is Development Factor=

$$\frac{1}{3} \left(\frac{E_i * N_i}{\sum N_i (E_i * N_i)} + \frac{W_i * N_i}{\sum N_i (W_i * N_i)} + \left(\frac{URN_i}{\sum URN_i} \right) \right)$$

Where E_i is proportion of household with access to electricity of the i^{th} County

W_i is proportion of household without access to improved water of the i^{th} County

URN_i is Un-paved road network of class D, E, F, G, H, J, K, M, N & P of the i^{th} County.

(c) Equitable share over and above Kshs. 348 billion

The formula will use the 2009 population & poverty statistics. The following formula shall apply:

$$CA_i = 0.18 * \text{Population Index}_i + 0.17 * \text{Health Index}_i + 0.10 * \text{Agriculture Index}_i + 0.05 * \text{Urban Index}_i + 0.14 * \text{Poverty Index}_i + 0.08 * \text{Land Area Index}_i + 0.02 * \text{Fiscal Effort}_i + 0.04 * \text{Roads Index}_i + 0.02 * \text{Prudence Index}_i + 0.20 * \text{Basic Share Index}_i^{10}$$

Where,

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

Other county services	$\text{Population index}_i = \frac{\text{Population in county } i}{\sum_{i=1}^{47} \text{Population in county } i}$					
Minimum share	Basic share index $= 0.19 * \text{Equal Share index} + 0.01 * \frac{\text{inverse of population in county } i}{\sum_{i=1}^{47} \text{inverse of population in county } i}$					
Land	$\text{Land area index}_i = \frac{\text{Land area in county } i}{\sum_i^{47} \text{Land area in county } i}$					
Roads	$\text{Roads index}_i = \frac{\text{Rural access index in county } i}{\sum_{i=1}^{47} \text{Rural access index in county } i}$					
Poverty level	$\text{Poverty index}_i = \frac{\text{No. of poor people in county } i}{\sum_{i=1}^{47} \text{No. of poor people in county } i}$					
Urban service	$\text{Urban Index } i = \frac{\text{urban household in county } i}{\sum_{i=1}^{47} \text{Urban Household in County } i}$					
Fiscal prudence	No. Variable	Indicator	Score	Responsible	Weighting	

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

	1	Audit Reports	Non-Qualified	4	County Executive Assembly	CE=90% CA=10%
			Qualified	2		
			Adverse	0		
			Disclaimer	0		
	2	Development Expenditure	At least 30%	1	County Government	100%
			Below 30%	0		
	4	Internal Audit Committee	In place	1	County Executive Assembly	CE=90% CA=10%
	4	County	In place	1	County	100%

		Budget and Economic Forum			Government	
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SIMULATION FOR ILLUSTRATION ONLY

SIMULATION USING EQUITABLE SHARE OVER AND ABOVE KSHS. 348 BILLION
USING THE PROPOSED AMENDMENT BY SENATOR KANGATA-

No	County	Allocation 2019/20	FY	Allocations when Equitable share Hits Kshs. 348 billion	Net Change from the Baseline of 2019/20
1	Mandera	10,222.95		8,946.67	(1,276)
2	Wajir	8,545.50		7,813.54	(732)
3	Kwale	7,785.90		7,227.18	(559)
4	Marsabit	6,773.10		6,358.76	(414)
5	Kilifi	10,444.50		10,260.63	(184)
6	Narok	8,039.10		7,888.39	(151)
7	Tharaka-Nithi	3,924.60		3,781.58	(143)
8	Nyamira	4,810.80		4,690.32	(120)
9	Mombasa	7,057.95		7,010.21	(48)
10	Tana-River	5,855.25		5,884.65	29
11	Makueni	7,406.10		7,503.22	97
12	Vihiga	4,652.55		4,767.77	115
13	Garissa	7,026.30		7,189.49	163
14	Homa-Bay	6,741.45		7,072.92	331
15	Taita-Taveta	4,241.10		4,586.61	346
16	Isiolo	4,241.10		4,609.89	369
17	Elgeyo- Marakwet	3,861.30		4,317.65	456
18	Lamu	2,595.30		3,093.81	499
19	Samburu	4,620.90		5,130.86	510

20	Kisii	7,785.90	8,312.28	526
21	Nyeri	5,412.15	5,958.74	547
22	Murang'a	6,298.35	6,856.69	558
23	Nyandarua	4,874.10	5,506.60	632
24	Turkana	10,539.45	11,232.13	693
25	Siaya	5,791.95	6,590.16	798
26	Embu	4,304.40	5,118.58	814
No	County	Allocation 2019/20	FY Allocations when Equitable share Hits Kshs. 348 billion	Net Change from the Baseline of 2019/20
27	Meru	8,039.10	8,876.27	837
28	Kisumu	6,836.40	7,687.11	851
29	Kericho	5,380.50	6,236.26	856
30	Kitui	8,830.35	9,754.29	924
31	Busia	6,013.50	6,956.83	943
32	West Pokot	5,000.70	5,972.45	972
33	Migori	6,773.10	7,774.54	1,001
34	Kirinyaga	4,241.10	5,268.65	1,028
35	Bomet	5,507.10	6,548.36	1,041
36	Baringo	5,095.65	6,194.56	1,099
37	Laikipia	4,177.80	5,305.73	1,128
38	Machakos	7,754.25	8,928.67	1,174
39	Trans-Nzoia	5,760.30	7,012.06	1,252
40	Bungoma	8,893.65	10,225.50	1,332
41	Nandi	5,348.85	6,760.87	1,412
42	Kajiado	6,424.95	7,899.10	1,474
43	Kakamega	10,412.85	11,896.16	1,483
44	Uasin-Gishu	6,330.00	7,980.33	1,650

45	Nakuru	10,476.15	12,333.57	1,857
46	Kiambu	9,431.70	11,821.97	2,390
47	Nairobi City	15,919.95	18,857.41	2,937
	Total	316,500	348,000	31,500

Mr. Speaker, Sir, I will summarize what my amendment is talking about. I urge that we continue with the second generation formula until the Government, through the Executive, is able to increase the amount of allocation to counties to Kshs348 billion.

Mr. Speaker, Sir, if we had Kshs348 billion, we would not be here. It would mean that no county is losing. However, there will be counties that will get more money than others and none will lose. That provides a win-win formula that we all have been looking at and that helps to move the country forward.

Mr. Speaker, Sir, we are here fighting for 15 per cent, when there is 85 per cent at the national level.

We have been fighting to have a reduction of the 85 per cent, so that it is added to the 15 percent, which gives us more money that gives us 35 per cent and is equal to the Kshs348 billion that I am proposing. As we continue with this debate, we should be looking at reducing the amount that remains at the national level and have more funds follow the functions that were devolved to the counties. This is what is envisaged in the Constitution.

Mr. Speaker, Sir, there are those who have said that the argument about Kshs348 billion is equal to amending the Division of Revenue Act (DORA), which we cannot do right now because it is a money Bill. However, the National Assembly that is concerned with Money Bills does not operate in a vacuum and is also listening to this debate. The whole country is listening to this debate. As we look at the amendment of the DORA, we shall consider the Kshs348 billion that helps to move this country forward and does not produce losers or gainers.

I brought this amendment as a Nominated Member of the Senate. As Nominated Members, we do not necessarily represent a particular county. The entitlement of representing a particular county is what has divided the Senate now. People's minds are closed and are not thinking about anything else other than what they had been canvassed. As a representative of the whole country and a nationalist, I bring this formula that has a transition, which gives us progress on this issue.

Mr. Speaker, Sir, I beg to move this amendment that gives a win-win formula that is crucial to moving the country forward.

I call upon Sen. (Dr.) Mwaura to second.

The Speaker (Hon. Lusaka): Those of you who have logged in your cards, kindly remove them, so that I am able to know who would want to contribute. What I have here is the old list. What is your point of order, Sen. Ndwiga?

Sen. Ndwiga: Mr. Speaker, Sir, from your direction, there are so many of us who were in 'Siberia,' that is, the other side, and do not have our cards in here. Perhaps, you may want to notice our hands.

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

Sen. (Dr.) Mwaura: Thank you, Mr. Speaker, Sir. I rise to second this Motion. I want to ask this august House, the House of reason, wisdom, revision and one that does not engage in frivolous and capricious debates, that we look at what we are facing as a country.

Mr. Speaker, Sir, this elongated form of debate has revealed the soft underbelly that is the nation called Kenya. We are at crossroads, a critical juncture, asking ourselves whether to move to the left or right. At the heart of the debate is whether we should devolve more resources to counties or maintain certain resources to the center. Further to that whether—

The Speaker (Hon. Lusaka): Let us observe social distancing.

Proceed.

Sen. (Dr.) Mwaura: It is also about whether we have an ideology that governs the planning and development of this county. One may argue that distributing money from the periphery to the center is a debate left or center. It is deconstructionist in nature because it seeks to disassemble the barriers against inclusion. On the other hand is the right of center where the debate is about who bakes the cake. These are some of the things we are discussing as a nation.

Interestingly, we have a great challenge as a country because we need to review the devolution design.

As much as devolution devolves resources and power to the people, it is not supposed to make us disintegrate. My candid observation is that the way we have devolved to the 47 counties; it is going to lead to the disaggregation of Kenyans from tribes into counties. We are seeing the emergence of what I call 'countyism'. We are at a critical juncture because we are dealing with a situation where this Senate pronounced itself on the need to have more resources devolved to counties. When I was the Vice Chairperson of the Committee on Finance and Budget, we were countermanded even when we had a scientific formula by the National Assembly. People used the power of the thorax and intimidation and that is why we are in this quagmire.

Mr. Speaker, Sir, it has been alluded that going forward, we seek to devolve 35 per cent of all our resources to the counties; that is futuristic. I am in cognizant and in agreement of the debate that we have Kshs2.7 trillion that is resident at the national Government. It is therefore imperative in the spirit of the BBI that we get more money to the counties now. I say that because many of the functions of the Government have been slowed down by the COVID-19 Pandemic. That is to mean that there are so many savings that can be redirected to the counties. Our own initial estimate is that even if we had Kshs9 billion or Kshs10 billion, we would resolve this stalemate so that Kenyans do not go at each other simply because monies have not been adequately devolved to counties.

I am aware of the report in the public domain that counties misappropriate funds. I am also aware that there are weak oversights in the counties like what we saw in Kiambu County yesterday. However, it is incumbent upon the Senate with the two key roles of ensuring that monies go to counties and oversight even through legislation so that we cover new ground and strengthen our counties. The counties are not expected to run immediately after birth. The counties will have to crawl before they develop into something that is greater and better. That is the role of the Senate.

For the last so many weeks, we have been going at each other simply because there are not enough resources to counties and that is a fact. This Motion by Sen. Were seeks to postpone the new formula until such a time that we have Kshs348 billion to share comfortably to all the counties to this Republic. When the funds will be increased, no county will lose. I have heard some Senators argue that DORA has been passed---

The Speaker (Hon. Lusaka): Your time is up, Sen. (Dr.) Mwaura.

I said that I will be fair to everyone. We will apply rules across the board.

(Question of the amendment proposed)

Sen. Omogeni: On a point of order, Mr. Speaker, Sir. I rise under Standing Order 106 taking into account that we have debated this issue for close to four hours. I propose that you limit the time of debate to two minutes per person who wants to contribute.

The Speaker (Hon. Lusaka): Every Senator will have three minutes to make their contribution.

Sen. (Dr.) Ochillo-Ayacko: Mr. Speaker, Sir, this is a good Motion. I would like to invite my colleagues who have been apprehensive and fearful that some counties should benefit at the expense of others. In my contribution regarding a different set of Motion, I indicated that we were debating a fallacy and a mischaracterization of the situation. This is the amendment that brings the right situation to be debated.

Mr. Speaker, Sir, it is our duty, as a Senate, to come up with a methodology of sharing revenue every five years. In very simple arithmetic, we are being called upon to change the denominator and the manner in which the numerator is set. The numerator has stuck at Kshs316.5 billion last year and this year, and we are all apprehensive that it will not change.

That is why every Member is talking about injustice. This Motion seeks to allow the formula to kick in when the numerator has changed to Kshs348 billion. When that happens, each county will not lose a cent and any sleep. Some of us who are gaining temporarily now will not lose friends, families and coalitions.

Mr. Speaker, Sir, those who love this country on the basis that one section of the country should not benefit at the expense of another section of the country, should now show their magnanimity by supporting this very patriotic amendment that is only promising application of the formula when we have Kshs348 billion.

In conclusion, now is the time for all of us to unite and tie the hands of the national Government. Since they are the ones with the cake and the knife, we should allow this formula to only apply when that knife is cutting a cake that is Kshs348 billion, not when we are sharing a paltry cake that is not enough for Migori or any county. That is what the Senate should do. It should not be confined and pushed into a corner, to fight over monies that are insufficient, to raise marginalization that any county has not done against another county.

Mr. Speaker, Sir, I would be very happy in a situation---

(Sen. (Dr.) Ochillo-Ayacko's microphone went off)

The Speaker (Hon. Lusaka): You are out of time. Hon. Senators, we have a timer. Allow the person who is doing the time keeping to do their work.

Sen. Ndwiga: Mr. Speaker, Sir. I thank you for the opportunity. Since there are only three minutes, I wish to be very fast in what I want to say. I want to appreciate this House. Whichever way this goes, at least, we have come to the conclusion of this issue today. Some of us have been saying that there will be no other way of getting a solution to this issue apart from voting. We vote and decide whichever way. Today, we have behaved like a Senate.

Mr. Speaker, Sir, where there is an issue of money, agreements outside the vote will not be possible. You have seen that some good friends have been torn apart by this issue. Embu County is in between two counties that were losing. We are in between Tharaka-Nithi and Kitui counties. Those are good friends of ours. We have coexisted peacefully with those counties.

This Senate has missed one point, and that is the point to bring---

(Loud consultations)

I want the Senators to listen to me carefully.

Last year, we were here on the division of revenue; and we fought between ourselves, the Senate, the National Assembly and the national Government. For as long as what we are dividing is not enough, this is small change, this problem will continue to exist in this Senate.

It behooves all of us to start campaigning and ask the national Government to allocate more funds to our counties. I see that most of us have missed that point, all of us are talking about their counties; I am winning or we are losing, that is not the point. The point is that the cake which we have on the table is so tiny.

Mr. Speaker, Sir, Kshs316 billion is what we have been dividing and the Commission of Revenue Authority (CRA) has taken us through. If you look at the amount of taxpayers' money which has spent on this formula, from last year, the CRA has taken the Senate through on the modalities of how they achieved this, yet, we came here and could not agree and it is not easy to agree. We will not agree until what we did today that we come and vote and decide whichever way.

Mr. Speaker, Sir, I am happy today that the nation will say tomorrow that the Senate agreed. The responsibility is now ours as the Senate. As we move forward, can we start pushing the National Government to allocate more funding to our counties?

We have had issues of Building Bridges Initiative (BBI) and so forth and we are happy. When that happens and if it happens, I can see Sen. Wako here, this debate will not arise and these divisions will no longer be with us.

Thank you, Mr. Speaker, Sir.

Sen. M. Kajwang': Mr. Speaker, Sir, I rise to support this amendment. It is a sensible amendment that has taken into account the various efforts we have brought to this House to solve this impasse.

Mr. Speaker, Sir, you recall Sen. Kang'ata brought an amendment to this House seeking a moratorium of two years before this formula could kick in. Sen. Sakaja has brought an excellent proposal that the formula be applied on amounts above Kshs316.5 billion. However, Sen. Were's proposal is more pragmatic of all of them.

Sen. Were says that this formula should apply on amounts above Kshs348 billion. If you look at Kshs.316 billion versus Kshs.348 billion; all that is needed in the Division

of Revenue conversation is to increase equitable share by 10 per cent so that if this formula is applied on a 10 per cent or on 110 per cent of the existing Division of Revenue Act, then no county is going to lose and no county is going to gain at the expense of another county.

It has been said before that what we are dealing with is a drop in the ocean. This country has a budget of Kshs3 trillion. We are a Kshs10 trillion economy, yet Kshs.6 trillion is debt. That debt does not go to counties.

County governors have been saying that the national Government takes debts on behalf of Kenyans and that debt does not find its way in development of counties. To fight over Kshs316.5 billion for the long period that we have been fighting over it is missing the point.

I want to urge Senators because we have said *leo ni leo* and we have to make a decision. I want to urge the Presidency that the brinkmanship and the position taken from the hill is not going to help this country. We must be ready to come together and find a common ground.

I thought Sen. Kang'ata proposed a wonderful amendment one or two weeks ago, and that is why I seconded it. I want to urge Senators to look at the merits of this amendment by Sen. Were. This could perhaps be the right solution for this country.

I am aware that there are other amendments that will be coming from Sen. Wamatangi and Sen. Orenge. However, I see no contradiction in supporting this amendment and supporting other subsequent amendments that will come.

Finally, the National Executive should remember that there is no county called Kenya. The money the national Government remains with has to be invested in one county or another. There should be no contradiction in the National Executive accepting that money should go directly to counties because there is no other place the executive will---

Sen. Wako: Thank you, Mr. Speaker, Sir, for giving me this opportunity. This is the first time that I am speaking. It was deliberately so because I was really getting embarrassed that here we are, elders quarrelling over 10 per cent of the budget. I do not see similar quarrels over the 85 per cent of the budget that remains at the national level.

Sometimes quarrels are good. However, they are only good when they are focused on achieving a particular aim and when they are not detrimental to the unity of the nation.

Mr. Speaker, Sir, with your permission, I will be speaking on all the amendments that are now coming. Sen. Petronila's amendment, in particular for me, is an amendment that should have come first even before Sen. Linturi's because it is simple and straightforward. It says that it is below Kshs348 billion, the existing formula and it is above the new formula by Sen. Linturi. However, it has a weakness which I will address later on. All these amendments are based on the existing formula.

I take this opportunity to thank Dr. Jane Kiringai and her team in CRA. They are very professional. For the real first time, they waded into the issues of division of revenue. The division of revenue between the national and the county governments is supposed to address the issues of services to the people. The national Government and the county governments perform the functions which they have been given by the people of this county.

They gave population 45 per cent. They also gave some percentage to health, agriculture and so on guided by the Fourth Schedule of the Constitution, which talks

about the functions of the county governments. To me, addressing that particular issue, they came out quite well. In other words, the approach is the correct one, but as somebody says the devil is in the details at times. It is those details, I hope, Sen. Orengo--

The Speaker (Hon. Lusaka): Your time is up.

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

The Speaker (Hon. Lusaka): What is your point of order, Mr. Speaker, Sir.

Sen. Murkomen: Mr. Speaker, Sir, I stand under Standing Order 104 to move that the Mover be now called upon to reply. I ask Sen. Mutula Kilonzo to second.

(Loud Consultations)

The Speaker (Hon. Lusaka): Order! We have a few Members who want to contribute. Let us allow them and let us be fair to each other. Sen. Murkomen, let us give each other an opportunity to contribute. We are not going anywhere.

Sen. Murkomen: Mr. Speaker, Sir, you know, we have been debating here about the Rules of the House. The Standing Orders are very clear. A Senator can stand at any time in the middle of the debate to move that the Mover be now called to reply. If the Senators do not want it, they will defeat that Motion.

Mr. Speaker, Sir, you cannot change; you said earlier that we will be consistent on the rules. If I lose that Motion of Standing Order 104, then the House will continue debating. That is the rule. Unless, you want to apply it differently because today it is me and tomorrow, it will be someone else.

I ask Sen. Mutula Kilonzo to second.

Sen. Omogeni: Mr. Speaker, Sir, I want to address you with humility, knowing that this is a House of record and your children are watching you and your grand children will read the records of the proceedings of this House.

If you read Standing Order No.104, the only discretion that it gives you--- I am speaking as a Senior Counsel. Fidelity to the law is what has prompted me to stand up and address you.

The only discretion you are given is to put the question. Once you put the question, we abide by the majority. If the proposal by Sen. Murkomen is defeated, then the debate will go on. I do not think you have discretion not to put the question.

Mr. Speaker, Sir, we went through this Motion when Sen. Nyamunga was on that Chair and she did the same thing. So, I beg you to respect our Standing Orders and put the question.

The Speaker (Hon. Lusaka): There are a few points of order.

Sen. Wetangula: On a point of order, Mr. Speaker, Sir. With the greatest respect to my distinguished learned friend, Senior Counsel, Sen. Omogeni, the rules are not as strictly as what he has said. The House is also guided by usages, forms, precedents, customs, procedures and traditions.

I want to bring to the attention of the Chair and the House that I have been in Parliament for a very long time. Many times, when a Motion is moved legitimately, as Sen. Murkomen has done, quite often, the Speaker says; I have heard you, let me hear two or three others before I put the question.

It happens all the time. So, it is not a question of lock, stock and barrel. Once you move, the Speaker is obligated to put the question because we have usages and precedents that the House must follow. So, it is up to you, Mr. Speaker, Sir.

Many of us are queuing to speak because we did not speak on the other Motions. This House passed a resolution earlier that we will go on with this issue until the end of time, which is supposed to be about 8.30 or 9.00 p.m. I urge that you give us time.

A Motion was moved by Sen. Khaniri---

An hon. Senator: Until the business is finished.

Sen. Wetangula: Fine, you are making it even better.

The Senate Majority Leader (Sen. Poghiso): Mr. Speaker, Sir, as you consider the time, ensure you follow precedents, rulings and so on. It has been ruled before that as Senators, we cannot break COVID-19 rules in regard to time.

(Loud consultations)

It was ruled from that Chair that we cannot go beyond 9.00 p.m. We still have a few minutes before 9.00 p.m. We are not going to proceed beyond what we have said before.

Mr. Speaker, Sir, there was a ruling about the 9.00 p.m. time. Maybe you need to give directions on that.

The Speaker (Hon. Lusaka): Let us listen to Sen. (Dr.) Ochillo-Ayacko.

Sen. (Dr.) Ochillo-Ayacko: Mr. Speaker, Sir, I am not a designated senior counsel but I am senior by virtue of longevity of practice of nearly 30 years.

Look at Standing Order No.104 (1). I will quickly read it. It says-

“After the question on a Motion the Mover of which has a right of reply has been proposed, a Senator rising in his or her place may claim to move “That, the Mover be now called upon to reply”, and, unless the Speaker is of the opinion that such Motion is an abuse of the proceedings of the Senate, or an infringement of the rights of Senators---

Mr. Speaker, Sir---

An. hon. Senator: Proceed!

Sen. (Dr.) Ochillo-Ayacko: Let me prosecute it the way I want.

Mr. Speaker, Sir, it is at your discretion because there are Members here who are begging to be heard. Members must be heard. Particularly for me, I would be very happy to listen to all Members here. When I will be called upon to reply to the original Motion, I want to know the thinking of Sen. Wetangula and all Members.

Mr. Speaker Sir, I plead with you that as you make a decision on this, remember that it is also one protecting the rights of Members to be heard.

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

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

Sen. (Dr.) Ali: The lawyers here want to change the rules the way they are. If you just proceed with the same Standing Order No. 104(2), it states-

“After the question on a Motion the Mover of which has no right of reply has been proposed, a Senator rising in his or her place may claim to move “That, the question be now put”, and, unless the Speaker is of the opinion that such a Motion is an abuse of the proceedings of the Senate, or an infringement of the

rights of Senators, the question “That, the question be now put”, shall be put forthwith and decided without amendment or debate and, if that question is agreed to, the Speaker shall immediately put the question accordingly.”

The issue is “shall;” there are no options. You put the question.

Sen. Olekina: I rise under Standing Order No.31 - I just want clarity. Earlier on, Sen. Khaniri stood on that Standing Order to extend the time of business of this House. The way the Senator read the Standing Order was that “until the conclusion of the business”.

I want your assurance. My colleagues have risen on Standing Order No.104 and called for the Mover to reply. I now want clarity and assurance from you that despite the COVID -19 rules and all that is happening, this House requires an assurance that we will conclude this business today.

When we voted to extend the sitting time, it was until the business is done.

Mr. Speaker Sir, I need your attention on this matter because it is a very important one and history will judge this House. Let us not appear as if we are compromised or selective on what business to conclude and what not to conclude. This is a very important matter.

You ruled that this business would continue until we conclude Order No. 8. Give us your assurance, so that whatever happens, at least I will have put my point across clearly.

There are several different interpretations of Standing Order No.104. I leave it up to you to interpret it. Maybe we will be rewriting Standing Orders today. Standing Order No.31 that was voted on by this House was very clear that the business on Order No.8 will be concluded.

The Speaker (Hon. Lusaka): Sen.(Prof.) Ongeru had come to contribute. Maybe he can---

He has been standing there for a long time. Sen. (Prof.) Ongeru proceed.

(Loud consultations)

I will rule on that.

Sen. (Prof.) Ongeru: Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): There is a point of order, but let us give Sen. (Prof.) Ongeru an opportunity.

Sen. (Prof.) Ongeru: Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your Point of Order, Sen. Orengo?

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I am one of the persons who would never allow a situation where the rules are changed midstream. I cannot live with that. You have been referred to Standing Order No. 31. That is an anticipation because we have not gotten there yet.

However, in relation to Standing Order No. 104, it will be a travesty of justice. That is why you are put on notice that you have a discretion, but it is dependent upon the fact that you can determine that there is an abuse. If there is an abuse, your opinion and ruling is absolute. You have to determine whether there is an abuse. That is very important.

Mr. Speaker, Sir, I want to tell you about a situation in South Africa where a Member of the minority party in the Parliament of South Africa was refused a right of hearing. He stood up the way several people are standing up in this House to be heard. People were standing up on points of order and saying the mover be called upon to reply.

He went to the High Court in South Africa and they said the most serious violation of the right of expression is to deny a Member of a national institution, more so the Parliament. That he can stand up and he has a point to be made but because of procedural issues he is not heard. I want to take you back to Article 1 on representative democracy.

Sen. Murkomen: On a Point of Order, Mr. Speaker, Sir.

The Senate Minority Leader (Sen. Orengo): Sen. Murkomen, you have been talking and I never uttered a word. I would never! If you want to make this a *baraza* or a Kangaroo court, I will keep quiet.

Mr. Speaker, Sir, I was in this House when the President of the Republic of Kenya would be sitting next to you there and I would be heard until conclusion. I was never stopped.

Mr. Speaker, Sir, what I am saying is this: In that case of South Africa, the Member of the Democratic Party went to the High Court in South Africa and said that he was not allowed as an elected representative to air his views in the National Assembly in South Africa. I am drawing your attention to this issue because the second component is an infringement of the right of the Senator. That is very important.

I have been in this House when some people were in the opposite party. Today, I am in the minority but they want to be heard and because people are shouting, that person is not heard.

Mr. Speaker, Sir, you will go down in history. I have been in this House with Hon. (Sir.) Humphrey Slade, Hon. Gideon Mati, Hon. Arap Ng'eno, and so many other Speakers including Hon. Ole Kaparo and the great Hon. Kenneth Marende.

In fact, Hon. Marende would call you. He used to call Sen. (Dr.) Khalwale and tell him: 'I want you to speak on this point before I make a decision'. Sen. Wetangula would remember this; he would want to hear Sen. (Dr.) Khalwale on a point of procedure.

Mr. Speaker, Sir, today, we are becoming a Kangaroo Senate because only the majority can be heard. I know when the vote comes, they will carry their day. I agree. Sen. Wambua, you will carry the day. I do not mind, but I am telling you, for those who stood to bring democracy to this country in the words of Voltaire, that great French man of the French revolution; he said: "I may disagree with what you say, but I will fight unto death to protect your right to say what you want to say". So, today, in this Parliament, where there are Senior Counsels and statesmen, you are stopping somebody to speak on an important issue like division of revenue.

Mr. Speaker, Sir, I would appreciate if you stop me from speaking on a Statement or a Petition, but this is a constitutional duty that we have. Article 217 says; the Senate shall determine - and you do not want to hear. Even the voiceless and the people who are quiet, today, you must hear them. Unless we become a Kangaroo Senate.

I lived in this Parliament when we were only seven, but we could be heard. Today, we are in a free democratic country under the Constitution of Kenya 2010.

Imagine in a baraza out there, somebody is being told that in the Senate, you cannot speak.

That cannot be.

Mr. Speaker, Sir, allow everybody to speak.

(Applause)

The Speaker (Hon. Lusaka): Order, Members! Sen. (Prof.) Ongeru, kindly, proceed.

Let him finish, I am going to give a ruling on that.

(Loud consultations)

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

Sen. (Prof.) Ongeru: Mr. Speaker, Sir, I want to speak. It looks like some of us who are staying in the annex have no opportunity to come to this august House and speak our mind.

The Speaker (Hon. Lusaka): Sen. (Prof.) Ongeru, there is a point of order from Sen. Cheruiyot.

(Loud consultations)

Sen. Cheruiyot: Mr. Speaker, Sir, I need your attention. I will wait for the Senator for Nyeri to finish first.

Mr. Speaker, Sir, for Sen. Orengo's long speech to make sense in this House, then we must draw a concession from you that the Motion that was moved Sen. Khaniri be respected as it was moved at that particular time. That Motion stated clearly that we shall only rise upon the completion of Order No. 8. Therefore, we are not opposed to anyone speaking. Balance it within the probabilities of time. However, assure us that we shall be here until we complete Order No. 8.

If we get that assurance, then we can allow Members to speak as much as they can. Otherwise---

(Sen. (Dr.) Mwaura spoke off-record)

Sen. Mwaura, please---

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

Sen. Cheruiyot: Mr. Speaker, Sir, we know this track because we have been down this journey. Two weeks ago, this House was made to rise unceremoniously or unprocedurally in a way that has never been done before. Therefore, before we proceed, can you assure the Senators that Sen. Khaniri's Motion stands as it was resolved by this House?

The Speaker (Hon. Lusaka): Order, Members! I do not know who has contradicted that Motion. Why are you raising issues that nobody has contradicted?

Why do we not allow Sen. (Prof.) Ongeru to finish his contribution? Sen. Murkomen is on a point of order.

Sen. Murkomen: Mr. Speaker, Sir, I have tremendous respect for Sen. Orengo and you know that he is a person I looked up to even if he has left the chambers. I also do have respect for the Speaker.

Mr. Speaker, Sir, the country is watching. Consistency in your decisions is extremely important. There was a time we wanted to have more time to speak, but you cut us short. Depending on who raises the Motion for the Mover to reply, you would allow. If we are going to be a House that respects its rules, we must accept when we are losing or winning. We cannot allow some Members to filibuster on the Floor with the hope that when it reaches 9.00 p.m. they will say there are some rules and we must adjourn.

Secondly, following what Sen. Cheruiyot said, there was a time we rose from this House without following the Standing Orders. Today, Sen. Khaniri has moved a Motion for extension of time to 9.00 p.m.

(Loud consultations)

Can I finish what I saying? Sen. Khaniri moved a Motion that we must extend the sitting of the House until we finish the business on Order No.8, That is what was captured by the HANSARD.

As I conclude, I hope like two weeks ago, a situation will not arise where at 9.00 p.m. the Speaker will say we adjourn without anybody moving a Motion to vote to adjourn at that particular time. If you assure us that the Motion will be moved according to Standing Order 104, then we will continue filibustering. I am waiting your ruling on Standing Order 104.

The Speaker (Hon. Lusaka): Order, Members! I will make that ruling. Sen. (Prof.) Onger, proceed.

Sen. (Prof.) Onger: Mr. Speaker, Sir, I have patiently waited the whole day to get a chance. It would appear those---

(Loud Consultations)

The Speaker (Hon. Lusaka): Let us consult in low tones so that we can hear Sen. Onger.

Sen. (Prof.) Onger: Mr. Speaker, Sir, it would appear that those of us in the extension Chamber have no opportunity to raise our voices like others in the main plenary. I have a right as a leader of the Kisii Delegation to make my comments sound right. What we have seen today is a high degree of impatience and intolerance. We cannot afford to accept that kind of behaviour because it impinges on our right to speak on behalf of our people who have elected us to this House.

Secondly, in this formula we are scrambling for a very small vote of Kshs316.5 billion. We should have set our minds to reflect on what happens in the national vote instead of causing unnecessary acrimony on Kshs316.5 billion. When Sen. Were moved this Motion it gave some rare hope and time to reflect, seriously think on whether we should preoccupy our minds on Kshs316.5 billion or go beyond? The best way out is having a deep reflection on what we should want as a Senate to go to the future. Going to the future is what that matters.

Mr. Speaker, Sir, we can remain static for the rest of the period of time arguing whether it should be 10 per cent, 11 per cent or otherwise. We do not guarantee the

counties their future. We are here to not only maintain the current situation. We must give hope to the counties for the future.

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

Sen. (Prof.) Kindiki: On a point of order, Mr. Speaker Sir. A little earlier, you ruled that each speaker would have three minutes to speak. I am not sure that we are observing your direction. Because of the dignity that the people of Kenya place in this House and your office, I plead with you to give us a ruling on the issue of time before we proceed.

The Speaker (Hon. Lusaka): Clerks-at-Table, kindly make sure that you observe time. I will give a ruling later.

Sen. (Prof.) Ongeri: Mr. Speaker, Sir, I have a lot of respect for Sen. (Prof.) Kindiki. However, he should have appreciated that I have not had a chance to speak on this matter. My way forward is that time heals. If we rush this matter, we put this country on a collision course. My experience tells me that we should hold our horses. Let us see what is futuristic and what works. Let us see what can help this nation to come together. Earlier on, I wanted to say that the most important thing to do is look at the national kitty and how we can leverage the huge sums of money that are at the national level to help us move forward.

I thank you.

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

Sen. Kihika: On a point of order, Mr. Speaker, Sir. Precedence was set in this House about two weeks ago that we must be home by 9.00 p.m. We are law makers and not law breakers. A few weeks ago, the same people who are trying to rush us now were of the opinion that Senators should not be given two to three minutes to make their points but instead be allowed a lot of time to debate. Since the world is not ending today at 9.00 p.m. it is my submission that we adjourn at 8.30 p.m. so that those of us who live far can get home by 9.00 p.m.

The Senate Minority Leader (Sen. Orengo): On a point of order, Mr. Speaker, Sir. There is an issue we are being intimidated about. Some people are saying that we are filibustering. Filibustering is an action such as a prolonged speaking which obstructs progress in legislative assembly in a way that does not technically contravene the required procedures. I would like to state that filibustering is a legislative tool. You cannot stop someone from making a long speech. I am so disappointed today. There was a time when the former President, Kibaki, would stand in the National Assembly when he was a Member and speak for a week. We have a Professor of Law, known as Sen. Murkomen, whom we do not--- I do not want to speak for just a minute or three. I would like him to speak for one hour.

(Applause)

Article 217 of the Constitution, which has several sub-articles, paragraphs and sub-paragraphs, because I know that he is a great intellectual---

Mr. Speaker, Sir, Article 10 of the Constitution requires every person to comply by the rule of law, be it the President or Senators. I can tell you that if you try to go to the State House now, you cannot get there, because of rules on the Coronavirus Disease (COVID-19). You should be very cautious.

I am a Senior Counsel, and Sen Omogeni is here---

(An hon. Senator spoke off record)

The Speaker (Hon. Lusaka): He is on a point of order.

The Senate Minority Leader (Sen Orengo): I cannot access the courts now because of the COVID-19 rules. Look at the way we are sitting; It is a big shame. Look at how people are sitting on this row, with no masks and so on. It is a danger even to you. You cannot be allowed to break the law. The Senate cannot be allowed to break the law. We are going on until Nine o'clock. When the curfew comes, we can come back at 4.00 a.m.

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Members! Order, Members! Order! I am going to give direction in short while.

Sen. Dullo.

Sen. Dullo: Mr. Speaker, Sir, this is a House of records. There are so many points of order that you have not given a ruling on, especially the one by Sen. Wetangula.

Secondly, it is on record that the Senate is unable to make a decision, and the public is watching. Kenyans are anxious to get a decision from this House. Clearly, from the way the debate is going, with all these points of order, this is a way of defeating time to this particular Motion.

(Loud consultations)

You have had your time. Can you listen to me?

Mr. Speaker, Sir, clearly, the way the debate is going, its aim is to defeat the Motion and make sure that we do not make a decision today. I want to be on record that there is a certain way the decision of this House is expected. That is the reason this Motion is delaying.

(Loud consultations)

Mr. Speaker, Sir, can you make a ruling, because---

(Loud consultations)

The Speaker (Hon. Lusaka): Order! She is on a point of order. Order, Senators! Order! I am on my feet. Can you allow Sen. Dullo to finish?

Sen. Dullo: Mr. Speaker, Sir, I do not see why people are making noise here. We have given an opportunity to each and every Senator in this House. There are no Senators who are more special than others, and there is no county that is more special than others. We must make a decision today, because that is the only way that Kenyans are going to trust this House.

I thank you.

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

Sen. Sakaja: Thank you, Mr. Speaker, Sir.

(Loud consultations)

Sen. Sakaja: Mr. Speaker, Sir, we listened to Sen. Orengo. I think it would be good for him to listen to us.

Sen. Kwamboka, you are in my delegation, *nyenyekela Mungu akutumie*.

The Constitution of the Republic of Kenya is the supreme law of this land. There is no other law, statute or precedence that goes or that can override the authority of the Constitution. Anyone who has done law will tell you about the hierarchy of laws.

Even within the laws, there is order of precedence of how the Constitution is written.

Article No. 1(1) says-

“All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.”

Article No. 1(2) says-

“The people may exercise their sovereign power either directly or through their democratically elected representatives.”

Mr. Speaker, Sir, sovereign power is delegated to the following state organs: Parliament and the legislative assemblies, then the others follow.

Article 126(1) of the Constitution says-

“A sitting of either House may be held at any place within Kenya and may commence at any time that the House appoints.”

What we are doing here is exercising sovereignty of the people of Kenya. The exercise---

(Loud consultations)

The Speaker (Hon. Lusaka): Order Senators.

Sen. Sakaja, you are reading the mood of the House. Please, conclude.

Sen. Sakaja: Mr. Speaker, Sir, I will also be heard. The same way Sen. Orengo said; the worst thing you will do is not to hear. I will be heard! When people like Sen. Cherargei and Sen. Kang'ata raise their voices, I will keep quiet and continue with the point I am making.

This House has passed a Motion by Sen. Khaniri, which is part of the law saying until what time we shall sit. We have seen even as late as 2.30 a.m., the Nairobi Metropolitan Services (NMS) Director-General inspecting projects. We are performing an essential service and let it be known.

Even when they make noise, it is heard out there. Let it be known that when some of us used to play football and sensed that we were being defeated, we would run away with the ball.

The Speaker (Hon. Lusaka): Order Senators.

(Loud consultations)

Hon. Senators: Curfew! Curfew! Curfew!

The Speaker (Hon. Lusaka): Order, Senators! Sen. Sakaja, take your seat.

Hon. Senators, we have before us a very important Debate. Looking at the requests here and given that we have two more amendments to go and given the ruling that I gave two weeks ago; it is not practical that we can be able to conclude this matter.

Hon. Senators: No! No! Put the question.

(Loud Consultations)

The Speaker (Hon. Lusaka): Order, Members! I want to direct---

ADJOURNMENT

The Speaker (Hon. Lusaka): I have ordered that we reconvene on Thursday to look at the two amendments and to make a voting on the main Motion.

The Senate rose at 8.33p.m.