

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 25th February, 2021

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

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

PRAYER

PAPERS LAID

REPORTS ON THE FINANCIAL STATEMENTS OF KISII COUNTY EXECUTIVE AND ASSEMBLY

Sen. Dullo: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate, today Thursday 25th February, 2021-

Report of the Auditor-General on the financial statements of Kisii County Assembly for the year ended 30th June, 2019; and,

Report of the Auditor-General on the financial statements of Kisii County Executive for the financial year ended 30th June, 2019.

(Sen. Dullo laid the documents on the Table)

The Speaker (Hon. Lusaka): Next Order.

STATEMENTS

THE ARREST OF SEN. SUSAN KIHKA AND OTHERS IN NAKURU COUNTY

DREDGING AND SAND HARVESTING ACTIVITIES AROUND TAKAWIRI ISLAND IN LAKE VICTORIA

UBORESHAJI WA BARABARA YA MSHOMORONI-MWAKIRUNGE

STATUS OF ACCESS TO INFORMATION REGULATIONS IN
THE ACCESS TO INFORMATION ACT, 2016

OPERATIONALIZATION OF THE PROPOSED LEGAL AID
FUND IN THE LEGAL AID ACT, 2016

NATIONAL GOVERNMENT INTERVENTIONS TO CUSHION
PERSONS WITH DEVELOPMENTAL DISABILITIES
IN LINE WITH UHC

IMPLEMENTATION OF THE GUIDELINES ON RETIREMENT
AGE OF PUBLIC SERVANTS WITH DISABILITIES

Sen. Kang'ata, Sen. M. Kajwang', Sen. Faki, Sen. Cherargei and Sen. Mwaura, are not here. Therefore, the Statements are deferred.

(Statements deferred)

Proceed, Senate Majority Leader.

BUSINESS FOR THE WEEK COMMENCING
TUESDAY 2ND MARCH, 2021

The Senate Majority Leader (Sen. Poghisio): Thank you, Mr. Speaker, Sir.

Pursuant to Standing Order No.52 (1), I hereby present to the Senate the business of the House for the week commencing Tuesday 2nd March, 2021.

On Tuesday 2nd March, 2021, the Senate Business Committee (SBC) will meet to schedule the business of the Senate. On that day, the Senate will consider Bills scheduled for Second Reading and Committee of the Whole stages.

The Senate will also continue with consideration of business that will not be concluded in today's Order Paper including Motions, Petitions and Statements.

On Wednesday 3rd March, 2021, the Senate will continue with business that will not be concluded on Tuesday 2nd March, 2021 and any other business scheduled by the SBC.

On Thursday 4th March, 2021, the Senate will continue with business that will not be concluded on Wednesday 3rd March, 2021, and any other business.

Mr. Speaker, Sir, I wish to inform the House that the Office of the Speaker and that of the Senate Leadership has continued to engage our counterparts in the National Assembly to fast track the process of regularizing Bills affected by the judgement of the High Court on constitutional Petition No.284 of 2019. As at today, 20 Bills have been approved for republication and have been transmitted to the Government Printer for the same. A total of 15 Bills are undergoing concurrence process pursuant to Article 110(3) of the Constitution.

The SBC will provide a framework for fast-tracking, consideration and passage of the Bills upon conclusion of these processes and subsequent introduction in the Senate by way of First Reading.

Mr. Speaker Sir, the Motion for adoption of the Report of the Standing Committee on Finance and Budget on the 2021 Budget Policy Statement (BPS) is scheduled in today's Order Paper at Order No.8. It is important for Senators to know that the deadline for consideration of this report is fast approaching. Therefore, I take this opportunity to urge all hon. Senators to avail themselves for debate on this important matter until a decision is taken.

In conclusion, pursuant to the resolution of the Senate on the Calendar for the Fifth Session made on Tuesday, 16th February, 2021, the Senate is scheduled to proceed for a short recess at the rise of the House on Thursday, 4th March, 2021 to 22nd March, 2021. A Motion for Adjournment of the Senate will be scheduled in the Order Paper accordingly.

Given so, I urge all Standing Committees to expedite consideration of pending Petitions, Statements and table reports thereon pursuant to the Standing Orders.

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

(Sen. Poghio laid the document on the Table)

MOTION

ADOPTION OF REPORT ON THE 2021 BPS AND MEDIUM-TERM DEBT MANAGEMENT STRATEGY

Sen. Kibiru: Thank you, Mr. Speaker, Sir. I beg to move the following Motion -
THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the 2021 Budget Policy Statement and Medium Term Debt Management Strategy, laid on the Table of the Senate on Wednesday, 24th February, 2021, and pursuant to Section 25(7) of the Public Finance Management Act and Standing Order No.180(7) of the Senate, approves the 2021 Budget Policy Statement.

Mr. Speaker, Sir, as it is the tradition, every other year before the budget is read, we go through this process. From the onset, I thank Members of my Committee for coming up with this report within a short time. I also extend my thanks to Members of other committees who made submissions of their feelings, objectives and likings of the BPS.

I have a document with moving notes, which is about 200 pages. I wonder whether I should read it word by word or do the usual, reading it horizontally and then give Members time to debate this important Motion. Having mentioned the Articles that mandates us to do what we are doing, I will move ahead and make an observation that the Committee made. The House will agree with us that the time given for us to go through this important function is not enough. From the onset, the Committee recommends that the 12 days are not enough for us to carry out thorough deliberations of the BPS.

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It came out from various Senators that sometimes our recommendations are not taken seriously. Therefore, it is important we do something that goes into history that we made serious insights or comments into the way we would want the budget of the economy of this country to run.

As a Committee, we are proposing an amendment to Public Finance Management Act, 2012, with a view of increasing the days given to this process from 14 to 28 days. It is very important we start from the onset declaring that.

Mr. Speaker, Sir, having gone through the BPS and the Debt Management Strategies that had been provided and presented to us by the National Treasury, we can clearly summarize and say that the interest of the Senate on the two issues can be categorized as follows-

(1) National policies and programmes that had a direct impact on economic performance of counties; and,

(2) Proposals on division of revenue between the two levels of Government and among counties for the Financial Year 2020/2021.

Mr. Speaker, Sir, in carrying out the exercise and the duty we were given by the Senate to compile the report, we met the following entities and stakeholders to prepare this report-

- (i) The National Treasury;
- (ii) The Commission on Revenue Allocation (CRA);
- (iii) The Council of Governors (CoG);
- (iv) The Institute of Certified Public Accountants of Kenya (ICPAK);
- (v) The International Budget Partnership (IBP-Kenya Chapter);
- (vi) The Kenya Pediatric Research Consortium (KEPRECON);
- (vii) The Institute for Public Finance – Kenya (IPFK) together with Oxfam in Kenya; and,
- (viii) The Senate Standing Committees.

Mr. Speaker, Sir, the people who prepared the BPS came up with a dicey - a bloody name for the BPS. They are calling it ‘Building Back Better- Strategy for Resilient and Sustainable Economic Recovery.’

Mr. Speaker, Sir, as I mentioned, I do not want to dwell on issues that Senators can read. In the preamble pages of the BPS, the National Treasury with the team that prepared the BPS looked at both macro and micro economy, compared contemporary economies and the global economy and formed a basis on their proposals.

Mr. Speaker, Sir, one issue that we all know is that due to COVID-19 and other extraneous economic factors, the economy did not perform well. Estimated growth is 0.6 per cent. This is from a growth of about 5.4 per cent in 2019. However, using a base, the National Treasury is projecting that the economy will grow at about seven per cent.

Mr. Speaker, Sir, everybody and every stakeholder that we met, including the Senators who are here, because we live in this country, we all think that is a very ambitious projection. We are trying to ask the National Treasury to come clean on how the country or the economy will grow by seven per cent.

The BPS has indicated that growth will be supported by stable microeconomic environment, favourable post COVID-19 global economic environment, expected

favourable weather and on-going investment in strategic priorities of the Government under the Big Four Agenda.

One of the issues that came up when the Big Four Agenda is mentioned is that every other stakeholder, other than the National Treasury, were asking what are the milestones that have been made so far on the Big Four Agenda. What is it that we can say, feel and touch as a result of the Big Four Agenda?

It is not Sen. Charles Kibiru, the Chairman, who is asking that, but it is the stakeholders who are casting doubt that the National Treasury was not clear in the BPS and illustrate whether there are milestones that are tangible and have touched many people when it comes to issues of the Big Four Agenda. Maybe they are there, but on the BPS, we could not put a finger to the milestones.

Mr. Speaker, Sir, progressing, I just want to mention that I will be looking at subtopics, just to mention one or two issues in the interest of time. I will start with the fiscal policy. For those who have looked at the report, the 2021 BPS projects revenue, including Appropriation-in-Aid in the Financial Year 2021/2022 to be Kshs2 billion, which is about 16.4 per cent of Gross Domestic Product (GDP) as compared to Kshs1.8 billion, which is about 16.6 per cent of GDP in the current financial year.

The Committee, however, noted that the revenue measures proposed are similar to what had been proposed in the previous year. The National Treasury personnel are not innovative and thinking widely. It was the feeling of the Committee that there was nothing new in the proposals that they have put in terms of making sure that we realize the targets that they had put.

The Committee further observed that the total revenue by the end of January, 2021 was Kshs937 billion against a target of Kshs1 trillion. This represents a short fall of about Kshs122 billion.

Going by the reported shortfall, it is the view of the Committee that the projections may not be achieved. It came out that more often than not, we are only able to achieve what is readjusted after the budget in the supplementary budget.

The Committee observed that the fiscal deficit target set for the Financial year 2021/2022 and the medium term is unrealistic. It is projected that the fiscal deficit, including grants as a share of GDP, will decline from -9 per cent in 2021 to -3.9 per cent in 2024. However, given the public expenditure pressures, recurrent in nature, especially from the wage bill and security sector related and collection of lower than targeted revenue, the projected fiscal deficit path is unlikely to be achieved. That is an observation we made. Most of the stakeholders, including committees of the Senate, concurred with that observation.

Mr. Speaker, Sir, on inflation rate, the National Treasury is promising that we will remain within the target which is between 2.5 per cent and 7.5 per cent in 2021. We have seen an increase in the prices of fuel and cereals. We pray that this does not push the inflation rate beyond the National Treasury's proposals in the BPS.

Mr. Speaker, Sir, on interest rates, the Committee notes that monetary policy measures adopted by the Central Bank of Kenya (CBK) during the pandemic such as the reduction in the cash reserve requirement from 5.25 to 4.25 and reduction of the CBK

rate from 8.25 per cent to seven per cent did not meet the objective of lowering the cost of borrowing for the private sector.

Mr. Speaker, Sir, for some of us who talk to the business community, including the people in the banks, the banks still feel constrained by some of the administrative rules by the CBK because they are unable to lend to the business community, so that the business community can inject the same into their businesses, and consequently get the economy moving forward or growing. Therefore, there is something there that we need to look at. Having said that, the weighted average lending rate remained stable at around 12 per cent.

Mr. Speaker, Sir, looking at the external sector, like we mentioned, in 2020 there was some improvement in the current account deficit, from -5 per cent to -4 per cent as a share of Gross Domestic Product (GDP). The Kenya Shilling, unfortunately, depreciated significantly relative to other major currencies in 2020. It depreciated by nine per cent, 14 per cent and 21 per cent against the Dollar, Sterling Pound and the Euro respectively, between February, 2020 and January, 2021.

The Committee observed that the 2021 Medium Term Budget Framework following a fiscal consolidation policy to strengthen the debt sustainability position in the 2021 budget framework indicates a higher allocation Kshs3 trillion than the overall total budget for the 2021, which is Kshs2.775 billion. The major increase is in the Consolidated Fund Services, which has a positive change of 19 per cent due to mainly public debt service expenses.

Mr. Speaker, Sir, revenue projection, as earlier stated, including Appropriation-in-Aid in the Financial Year 2021 is expected to be about Kshs2 trillion, that is, 16.4 per cent of GDP *vis-à-vis* Kshs1.8 trillion, which is about 16.6 per cent of the GDP last year. The revenue is further expected to improve in the medium term to Kshs3 trillion. We are talking about a US\$300 million economy.

The expected increase in revenue collection will be aided by measures such as revamping the audit function, which needs surgery and an enhanced debt programme. This is according to the National Treasury, which some of us could not touch and feel--- We have started to hear word that we heard many years back, that is, 'conditionalities.' We need to see the effects and how the debt programme will move. There is also implementing initiatives to boost customs revenue, robust intelligence collection - whatever that means - utilization and collection, as well as engaging the Tax Appeals Tribunal and the Judiciary to fast-track conclusion of the Kenya Revenue Authority (KRA) cases, among others.

Mr. Speaker, Sir, across the body, everybody from the Institute of Certified Public Accountants of Kenya (ICPAK) and the business community that we interact with, are requesting that the KRA adopts a humane way of dealing with taxes and the people who pay taxes. We are saying that you do not kill the goose that lays the golden eggs. There are better ways of managing debt collection or taxes. We are asking the KRA to change their tactics and probably, they will be able to have a wider basket and meet their targets. That is something that came up from all corners, especially from one Sen. Wamatangi.

The Committee noted that some of the measures have been ongoing. However, we could not touch the outputs. Therefore, as the National Treasury moves to implement the

issues presented here or they have put in pen and paper, we would want them to walk the talk. We would want clarity on how they will be implementing these issues.

On the Medium Term Debt Management Strategy, like we mentioned, the 2021 Debt Management Strategy (DMS) tabled in the Senate proposes an optimal strategy that minimizes costs and risks of public debt. It suggests a borrowing framework of 57 per cent from net external borrowing and 43 per cent in net domestic borrowing. The strategy is underpinned by the need to move away from high interest cost of domestic debt.

This country and the economists in this country need to be innovative. I remember the National Treasury called us for breakfast at Serena Hotel, where they were presenting a post COVID-19 Recovery Strategy. Some of the issues that have come up are that the Government needs to reduce some of its investments from some companies like Safaricom, Kenya Pipeline and others that can give the country more money to get out of this kind of debt.

Further, we asked what it is that we are doing about the expensive commercial loans. Now and then, we are being told that they are trying to restructure and borrow a patient capital from bodies like the World Bank, the International Monetary Fund (IMF) and others, so that they can relieve the pressure on the commercial loans, which are very expensive. I believe that they are the ones that are choking the economy of this country because the repayment is quite expensive.

Mr. Speaker, Sir, we also got a presentation or looked at the Public Debt Sustainability Analysis (DSA). This is a way of analyzing whether the country is solvent. Is it a going concern? At what point in time will we have debt distress? For now, the overall ratio indicates that Kenya's debts, that is, public and public guarantee debts to GDP ratio is at 63.4 and is moving towards breaching the threshold of 70. Therefore, we are almost there and that is a worrying situation. We do not want to get into a situation where we become a non-going concern because we are choked by debts.

The debt service as a percentage of revenue remains bridged into the medium term. The threshold is 50 per cent as per the law, but our country is at 54 per cent. This indicates liquidity shocks and debt service, which is a first charge and takes up a large amount of the revenue collected. The total national debt is at Kshs7.28 trillion, which is within the Kshs9 trillion ceiling approved by Parliament. However, the Committee noted that given the current growth rate of the fiscal deficit, the threshold is likely to be breached by mid 2022-2023.

Mr. Speaker, Sir, we turn to one critical area where we look at the vertical division of revenue. The projected shareable revenue is Kshs1.775 trillion. The National Treasury proposes an allocation of Kshs409,881,000,000 to county governments for the Financial Year 2021/2022. This is inclusive of county equitable share which is proposed at Kshs370 billion.

You will realize that the Chairman was hiding because we had a protracted battle. I was baptized by fire. My first assignment as the Chairman was not easy. Having said that, it was good because everybody, even the serious 'Team Kenya' got what they wanted. We are now happy moving forward. It has been noted that though the county equitable share has increased in nominal numbers as a percentage of ordinary revenue, it has consistently---

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

Sen. Kinyua: Mr. Speaker, Sir, I have heard the Chairman of the Committee on Finance and Budget saying that there is one team that was serious. Does he want to insinuate that the other team was not serious?

The Speaker (Hon. Lusaka): That was just on a light note.

Sen. Kibiru: Thank you, Mr. Speaker, Sir. The Senator for Laikipia, my good friend was in the more serious team.

It has been noted that though the county equitable share has increased in nominal numbers as a percentage of ordinary revenue, it has consistently dropped from a high of 22.5 per cent in the Financial Year 2015/2016 as projected, low of 20.84 per cent in the Financial Year 2021/2022. It is further projected to drop to 14.9 per cent in the Financial Year 2023/2024. This is where the BBI report comes in to anchor the 35 per cent in the Constitution.

The Committee noted the downward trend. I would like to look at the county own-source revenue. It is sad that we noticed what the County Public Accounts and Investments Committee (CPAIC) has also noted that there is a trend of decline in the own-source revenue collections by the counties.

This poses a risk of county budgeting and eventual service delivery. Counties continued to accumulate pending bills. One of the reasons we hired Sen. Mutula Kilonzo Jr., to be our legal representative in the leadership meeting which I hope had a good verdict is because we need to amend the Public Finance Management (PFM) Act.

Some of the issues we are trying to address in the PFM include how counties do their budget. They have a wish list and they put it all in their own-source revenue. A county says they will collect Kshs800 million and in essence, for the last eight years, they have never hit Kshs350 million. One of the recommendations we have made is that counties budget based on the average collection of the last three years. Then we will not have people with a wish list for whatever reason, which do not benefit the citizens of this country.

Having said that, the Council of Governors (CoG) led by the Governor of Laikipia asked us to look into how they can get some of the levies, like the Catering Levy. All the hotels, eateries and bars are in the counties, so one wonders why the national Government continues to collect the Levy.

We promised them we will have a meeting and look at how we can help them. They also requested us, in terms of own-source revenue, on what we can do to help them enforce payment by the big brother. The biggest defaulter of Property Tax is the national Government. They were asking us, as a Senate, to think and come up with ways to help them deal with defaulters. They have a problem because a county like Laikipia could be owed money by the armed forces, but they are unable to collect the outstanding water bills.

Mr. Speaker, Sir, one thing that came up when we had a meeting with the National Treasury is the need to establish an Integrated Revenue Management System to aid counties in revenue collection and management. This would seal revenue leakages and improve on performance.

We are in the era of systems and Information Communication Technology (ICT) and we can make work easier. I mentioned that we need to understand spatial planning that was required and had a timeline. How far are we on the valuation roles within the counties? This is an area we will be embarking on from next week. Our legacy is to leave legislation, laws and regulations that help counties enhance revenue collection.

The Committee made a number of recommendations, both policy and financial. The policy recommendations we made are that-

(1) The National Treasury should not use the base effect economic growth to project high revenue collection and the resultant increase spending. It should not be interpreted to mean the living standards of Kenyans. The seven per cent growth may not translate to benefit people's pockets. The National Treasury may want to relook at that.

(2) The National Treasury should develop realistic ways of projecting revenues based on historical performance and using an average of the past three year's revenue performance. The way we are doing for the county governments, we think that they should start with the expenses and move backwards. We are telling them to be realistic; get the facts right because this country and the economy has never met its target. We always adjust downwards. It is a high time we lived within our means moving forward.

(3) In order to cap potential effects of reliance on the diaspora remittances and sustain the country's account balances, the National Treasury in conjunction with other relevant Ministries should invest in promotion and marketing of export of agriculture products and create access to new export markets and value addition of small and medium sized farmers. This is in order to promote diversification of agricultural exports and improve current account balances.

One of the issues that emerged is that everybody is happy with the diaspora remittances. In another area, we have recommended that it is high time the Ministry of Foreign Affairs makes the diaspora desk a division or a department.

We have countries that treat their citizens in the diaspora seriously because of the effect of the remittances to their economies. Let them have special passes and issues like that. Let them be treated kings. Indeed, we will see remarkable improvement and sustainable remittances from the diaspora. If that is the goose that lays the golden egg, we need to handle it with kind hands because it looks like it is our cash cow.

Mr. Speaker, Sir, to enable the Government enhance revenue collection, it is recommended that the multi-agency team comprising of the Commission on Revenue Allocation (CRA), the Kenya Revenue Authority (KRA) and the National Treasury should carry out capacity building to enforce the policy on own-source revenue. They should as well work with counties to harness county revenue potential. The marking of revenue potential coupled with collection efficiency would ultimately boost the collection of own source revenue. Further, the National Treasury should adhere to the Cash Disbursement Schedule approved by the Senate.

Mr. Speaker, Sir, by the time we met the CRA, Kshs168 billion was outstanding to be disbursed to the counties. A number of excuses were given like the National Treasury cannot disburse funds when the accounts of county governments have balances.

Sen. Mutula Kilonzo Jnr. was asked where is it written in the Constitution or law that should not happen. Of course in terms of cash management, the National Treasury

would argue that they need not borrow to put money lying in accounts. However, at the same time we also observed that there are counties that are unable to make quick absorption of the resources that are sent to them.

Mr. Speaker, Sir, further, we said that the National Treasury should fast-track processing and submission of public finance management and Equalization Fund regulations. We learnt that these regulations are lying somewhere with the Cabinet. It is high time, as we wait for the Building Bridges Initiative (BBI), we get them to approve the regulations.

There is lack of compliance to the requirements for development spending. The 30 per cent mandatory requirement for development funds in the counties is not being achieved in most of the counties.

Mr. Speaker, Sir, each county government should also take stock of all its pension liabilities. One of the things that came up and keeps coming up is that county governments owe the pension schemes about Kshs26 billion. Even if counties rationalize their staff and probably do an early retirement so that they can improve on efficiency by bringing more versatile staff to replace them, it becomes very difficult to do that if the pension funds are not there for the officers going out because they have to be compensated as per the law. We urge the counties to come up on how they can meet that the requirements of the Bill.

The CRA should map up projects and programmes in the national budget which are devolved as stated in the Fourth Schedule. The National Treasury should further come up with a plan to transfer the functions and their resources to the county governments.

Mr. Speaker, Sir, eight years down the line even when we have very clear functions that have been devolved, we still have Nairobi. By Nairobi I mean the ministries retaining a lot of money with certain functions that are supposed to be executed. I believe counties have come of age. If we put in place the right structures that we have been trying to put in the County Public Accounts and Investments Committee (CPAIC) and other endeavors, counties should be in charge of their activities. That was the intention of devolution. We need to support that as a Senate.

Mr. Speaker, Sir, the National Treasury should carry out an evaluation of the Financial Year 2021/2022 in terms of the performance and achievements of conditional grants finance from the national Government and share of revenue to determine whether the intended policy objectives have been achieved. This evaluation report should be submitted to the Senate within the next four months. We cannot improve what we cannot measure. For us to make continuous improvement, we must keep on measuring and putting down what we need to do and what is required.

Mr. Speaker, Sir, we recommended that in order to ensure that there is no further accumulation of pending bills, we should put more emphasis in the amendment of the Public Finance Management Act. It must be first in first out. We still have pending bills for the Financial Year 2014/2015. You will see people being paid because they delivered last week.

For purposes of tidiness on how we conduct business, we should stop enjoying suppliers' credit. That is why probably the BBI is pushing for the Prompt Payment Bill. I am not campaigning for BBI, but I think those are the benefits, Sen. Wambua.

(Laughter)

Mr. Speaker, Sir, as a Committee, we felt offended when---

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

Sen. Wambua: Mr. Speaker, Sir, because this is a House of record, the Chairperson of the Committee on Finance and Budget has mentioned the name of Sen. Wambua in the same line with the BBI and the Budget Policy Statement (BPS). I see no relationship and I need clarity on when Sen. Wambua comes in on BBI and the BPS.

I thank you.

Sen. Kibiru: Mr. Speaker, Sir, because I have read the BBI Report and Sen. Wambua is my very good friend, he has a Bill that he wants funded and anchored in the counties. That is why I thought as a friend, I need to just highlight that the Prompt Payment Bill is part of the bigger picture of BBI.

Thank you, Sen. Wambua.

(Laughter)

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

Sen. Sakaja: Mr. Speaker, Sir, I would just like to inform the good Chairperson of the Committee on Finance and Budget. He has mentioned the Prompt Payment Bill twice as a Bill being pushed by the BBI. I hope he is informed that he himself has voted on that Bill twice in this House. It is sponsored by me and Sen. Farhiya.

However, I think BBI has copied it, but imitation is the best form of flattery. So, refer to the Sen. Sakaja's Prompt payment Bill because that is the one the Senate has been voting on before BBI.

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

Sen. Seneta: Mr. Speaker, Sir, I want to ask whether it is in order for the Chairperson of the Committee on Finance and Budget, whom I respect a lot, to be reading a BPS Report and at the same time talking about BBI. I am really trying to write a few notes on what I am supposed to contribute to. However, the Chairperson seems to be in a public participation forum of the BBI instead of him giving us the insight of the Report his Committee has brought to the Floor of the House.

I want you to give us direction whether we shall continue with the Chairperson of the Committee on Finance and Budget's Report or he takes us through the BBI Report. If he is telling us things to do with the BBI then we should also be having the BBI Report with us here. He should not be mixing us up; I am totally confused.

The Speaker (Hon. Lusaka): I think you are confused from something else and not exactly that. If my memory serves me right, he only mentioned BBI once. I do not think that can be a source of confusion.

(Laughter)

Sen. Kinyua, what is your point of order?

Sen. Kinyua: Mr. Speaker, Sir, the Chairperson of the Committee on Finance and Budget also doubles as the Chairperson of the BBI in Mount Kenya Region. I think he is doing what he is supposed to do best.

The Speaker (Hon. Lusaka): I think you are now dragging BBI into his debate. Let him complete because we are now derailing ourselves.

Sen. Kibiru: Yes. Mr. Speaker, Sir, I want to finish. Sen. Mary Seneta, I just brought in some issues because budget issues are very complicated especially for historians, lawyers and others.

(An hon. Senator spoke of the record)

The Speaker (Hon. Lusaka): Mr. Chairman, we are trying to save you, but seemingly, you are getting deeper into more mud.

Sen. Kibiru: Thank you, Mr. Speaker, Sir. I want to proceed. I was saying that the Committee felt a little bit uneasy when we heard that the National Treasury is putting in Kshs1 billion to increase on the figure of Medical Equipment Services (MES). This is an animal that we have all been trying to fight and as a Committee, we have refused. We were persuaded, but we have recommended that the allocation to the MES project should remain at Kshs6.2 billion since this contract has fixed terms and the cost should not be fluctuating annually.

At one point it was even Kshs9 billion and other time Kshs5 billion. Our recommendation is that the faster we do away with this animal, the better. We have recommended that the money be reallocated elsewhere. I mentioned about the Ministry of Foreign Affairs.

Mr. Speaker, Sir, on debt management, our recommendation is that the Auditor-General should conduct a performance audit on public debt to establish the economy efficiency and effectiveness of public debts, including the true debt sustainability position since there are conflicting statistics in the Kenyan debt situation.

The issue of debt is something that people talk about in whispers. People do not want to tell the truth. It is high time we do a surgery, dissect and see how we are performing on issues of debt. What value are we getting out of the debt?

In terms of policy, the National Treasury should submit an updated public debt register as an annex when submitting the Medium Term Debt Strategy to Parliament. We want to know the status and the position when this one is done.

We also looked at the allocation. Like we mentioned, we now have a kitty of about Kshs370 billion. On the allocation of conditional grants from proceeds of grants and loans from development partners, we have Kshs32.3 billion. Allocation of medical equipment: Kshs6.21 billion. Since the contract is fixed, we said that we will reduce the Kshs1 billion that was there. The Kshs1 billion saving from the allocation of MES should be redirected to reduce the fiscal deficit. I hope that the National Treasury has heard that.

Mr. Speaker, Sir, the fiscal deficit on commitment basis excluding grants for the Financial Year 2020/2021 should be binding at Kshs970 billion. The net domestic borrowing and net foreign financing to be set at Kshs661 billion and Kshs267.3 billion

respectively. We thought it is very important that we pronounce ourselves on this, so that we can hold people to account if they do not follow the recommendations.

Finally, the allocation of the Equalization Fund of Kshs6.83 billion be approved as provided for in the BPS. In a nutshell, that is the report and the recommendations made by the Committee on Finance and Budget.

I beg to move and request my able Vice-Chairperson to second the Motion. Is he asleep?

(Laughter)

Sen. (Dr.) Ochillo-Ayacko: Mr. Speaker, Sir, I was not asleep. I was in deep thought, particularly about Sen. Wambua. He is my very good friend and he is jittery about the Building Bridges Initiative (BBI). Actually this report was discussed by the Committee as a precursor to the BBI. We have expectations that more revenue will be allocated to counties, more so when the Constitution becomes definitive that 35 per cent should go to counties.

If you read this report both literally and figuratively, it also promotes that expectation. The BBI is the ultimate documented expectation that our counties will get more revenue. When we discussed it, we did not discuss BBI---

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

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

Sen. Wambua: Thank you, Mr. Speaker, Sir. The Senator of Kitui County has the capacity to state his position on all matters, including BBI. I seek protection from the Chair that the Senator of Migori County does not ascribe positions to me on BBI. I am not jittery about anything. I am just listening and following.

As Sen. Kinyua said, if the Committee of Finance and Budget wants to convert this conversation into a public participation forum then we need to be given notice. If not so, we are here to discuss the Budget Policy Statement (BPS) and we are ready for it.

I thank you.

Sen. (Dr.) Ochillo-Ayacko: Thank you, Mr. Speaker, Sir. I noticed that Sen. Wambua wants to drag us to that debate, but it would suffice to mention that I recently had a bet with him on whether Kitui County would pass BBI or not and he lost the bet. That is why we had to mention this. He lost it and it is on record. I did not vote in Kitui. He lost it and he is upset about mentioning BBI.

(Laughter)

Mr. Speaker, Sir, having mentioned that, I want to encourage all of us to look at the BPS Report that we are discussing. The BPS is a very important first step towards protection of counties, ensuring counties are allocated sufficient revenues and that policies that are legislated or promoted do not work against the counties.

I am happy and I hope my colleagues have had time to look at this report, or will continue having time to look at it. This is a good report. It is a progressive report. It also comes against the background of what we had last year, which was a standoff. My Chair

and Members of our Committee got into serious trouble. In fact, the entire House took over our work and did what was done that has culminated in the increased allocation that is now Kshs400 billion.

I want to thank the team that called itself “Team Kenya” for the robust engagement. Without their engagement and our team digging in, the contradiction would not have yielded that benefit that we have. This House must continue engaging robustly. If we were all “yes” people I do not think that we would be having the kind of money that we have. Somewhere in history each person will get a paragraph of that history and enjoy it with people who will be writing it.

Each of us played a role and that is why the Senate is very important. Let us not just agree to all issues. Our disagreement is heard and interventions are made that are beneficial and inclusive to all Kenyans. Let us not get embarrassed for having participated in that animated discussion that gave birth to the kind of money that we are talking about.

In future, we should have that kind of robust engagement. The National Assembly used to and still takes us for granted. Our robust engagement with them ended up in court. We are progressively trying to protect our gains. As the future arrives, which it does every day, the progress we have made in our relationship with the National Assembly will also be anchored in law.

It will be something that has precedence and that will be recorded in history that, Mr. Speaker, Sir, you are our hero. You went to court and annulled 23 pieces of legislation. We were also unanimously in support of the position you took.

This Report is a good. However, there is optimism that can be misplaced. There is projection that the economy is likely to grow by seven per cent. I think if one takes it literally, these are not normal times. That seven per cent growth is movement from a very deep hole to the surface. We are still in that hole, but we may be moving from -50 to still -5. We will still be at negative. Do not think about the seven per cent and think that Kenyans will have more money.

Looking at the BPS, COVID-19 took away a lot of our resources and income and that growth will just be towards the positive side. We will still wind up being at close to negative six or something. I think it is progress. We, as leaders, must be hopeful and always give hope and expectation, realistic though, to our people that good times are ahead. That aspect is there.

The National Treasury should be very clear on that and not start committing the future that the seven per cent growth is indicative of the fact that there will be more money to be shared. We, as a Committee, had that discussion with them. We made it very clear to them that they should factor in that and not make it an expectation, the basis of which will be looking at in future.

Mr. Speaker, Sir, we also noticed that there is a high risk when we look at the debts we have as a nation. This nation has very serious debts both local and international. The National Treasury was not quite explicit on the news we read from the newspapers and from other sources of rumours, including social media, that they are seeking to expand the debt ceiling. They did not come out very clearly as to whether that is a rumour and how they intend to go about it. However, we made it very clear to them that the

reality on the ground is that nobody has money. If we continue borrowing, then the state of the nation and money in circulation will be worse. The state of pending bills and the county economies will be worse than what it is. I hope that the National Treasury will take seriously the recommendations we made.

We, as a Committee, were disappointed that the National Treasury continues to look at the Senate as not being pivotal in matters budget and finance. On that day CS, National Treasury, we were informed was meeting the National Assembly budget team and had also set a meeting with us. We had the misfortune of not meeting the CS, but we had very competent professionals from the National Treasury.

We resolved as a Committee that in future the CS Treasury must take the Senate seriously. This is because if we look the PFM Act and the Constitution, this is a shared responsibility. We allocate money to counties collectively and individually. We are not just passengers on matters money. We are the main drivers because a national Government without counties is like a roof without foundation. I think growth must come from the counties. I hope that the National Treasury will take seriously the observation we made that they try to slight the Senate when it comes to matters finance.

We, as a Committee, also noticed that the national and county governments do not comply with the PFM Act when it comes to stratification of ceilings that are supposed to be spent on salaries and recurrent expenditure. We recommended and still do so, that the National Treasury, the Controller of Budget (CoB) and other enforcement institutions must find a way of enforcing these regulations.

Regulations are made for good order and stability. They must not be made in vain. It would be worse if the violator of laws or regulations of policy are the people who are supposed to enforce them and comply with them. Governments must never break law and regulations.

We hope the National Treasury and other related institutions are hearing us loud and clear and will in future ensure they are part of compliance with the rule of law, and also its enforcement. A government that does not comply with law or its enforcement has no moral or legitimate authority to purport to be a legitimate Government. We hope that recommendation will be taken seriously.

It is good to note that the amount that has been allocated to counties is good. It was the amount that almost made us become enemies when we needed one another. The Senate is not just a collection of enemies who are members of the Senate. We, as the Senate, are collective and must remain so because output is collectively ours. The opinion of an individual Senator is not the decision of the Senate.

I am happy that the allocation was increased and that because of our collective determination, the fact that revenues are low, the Executive has struggled to honour that commitment. I thank the President, the Cabinet and the Government for trying as best as they could to ensure that commitment was not hot air to Kenyans. It is a commitment that we are trying to honour. I hope the National Treasury will find enough money and disperse it to counties, so that we are not just a Parliament that is talking sweet words and making commitments that are not honoured.

Mr. Speaker, Sir, my Chair and other Members will have opportunity to have their input so I do not want to take all the oxygen from this report. I associate myself fully with

its contents that we unanimously adopted. I thank our secretariat and your secretariat for the support they offered this Committee.

I beg to second.

I think Sen. Wambua scared me a little.

The Speaker (Hon. Lusaka): Sen. Wambua, you are doing very well today.

(Laughter)

(Question proposed)

Proceed, Sen. Sakaja.

Sen. Sakaja: Thank you, Mr. Speaker, Sir. I acknowledge the work that has been done by the Committee in trying to hurriedly, given the timelines, consolidate a report from all the committees that have had to submit their views on the BPS in less than two days. This is something I have raised earlier. Section 25 of the PFM Act has never been followed to the letter. Section 25(7) of the PFM Act states that-

“Parliament shall, not later than fourteen days after the Budget Policy Statement is submitted to Parliament, table and discuss a report containing its recommendations and pass a resolution to adopt it with or without amendments.”

It talks about a report by Parliament. Parliament is the National Assembly and the Senate. What we have been doing is sending two reports; a Senate Report and a National Assembly Report. I am not a lawyer, but I know it would have been easy for the drafters to say the National Assembly and the Senate shall submit their report of the review on the BPS.

What has been happening and it is very sad is that the National Treasury has been receiving two reports and putting one in the shredder, that is the Senate report, and considering the National Assembly report. For the past seven or so years, there has not been consideration of what the Senate presents on the BPS.

Unless we insist that in the next financial year, there shall be one report that moves from one House and goes to the other House, amended and passed as one report of Parliament, then we might be doing this in vain. This is because beyond this, there is nowhere else we engage in the national process of budget making.

The Budget Review Outlook Paper (BROP) comes in October, but the estimates go to the National Assembly alone. The estimates are informed by the BPS. So, that is something we need to think about as a House.

The able Chairman has said that his Committee wants to review the timelines as well as the PFM provisions. Please propose the amendments because it is your Committee that has the mandate to propose those amendments to the PFM Act. Having said that, I am glad the Committee has noted.

There is a lot of use of high-sounding words which many times mean nothing. You may find the PBS having a theme that sounds nice. I do not know what the theme here is. They talk about fiscal consolidation and it sounds nice. However, if you look at the actual provisions and the numbers, there is nothing being consolidated. If you move

from a budget of below Kshs3 trillion to Kshs3.01 trillion, what are you consolidating yet the expenditure is growing?

We are talking about 0.6 per cent economic growth in this financial year without proposing serious measures that inject a stimulus that this year we will move to 5.4 per cent. I am not sure the Committee interrogated what measures are being proposed for that jump from 0.6 per cent to 5.4 per cent because that is our work. We should interrogate and propose that, but we are in the fourth quarter. Is seven per cent growth in 2021 plausible? I am not sure because COVID-19 is not done.

You will remember that last year, His Excellency the President did a good thing to cushion Kenyans. He reduced Pay As You Earn (PAYE), Value Added Tax (VAT), Corporate Tax and many others. However, those provisions that would have cushioned Kenyans were lifted on 1st January, 2021. We expect to reach seven per cent growth, but I do not see the connection. That is what we should have asked as the Committee on Finance and Budget.

The report states that the net credit to the private sector expanded to 8.2 per cent by November, 2020, and that net credit grew by 17 per cent, which was different by 42 per cent growth in net credit to the public sector. Therein lies our biggest problem and I am glad the Vice-Chairperson has mentioned it. We can be awed by numbers, but is there money in the pockets of Kenyans? For the longest time, Kenyans feel there is no money in their pockets because they have been crowded out of the domestic market by the Government.

Mr. Speaker, Sir, one proposal that the Committee on Finance and Budget should have proposed is what we have in other jurisdictions like India where you can borrow what you want, but from the domestic market. The credit mix must reach a certain level because we are talking about close to Kshs700 billion that we intend to borrow from the domestic market. Which bank would give Ochillo-Ayacko & Sons Limited a loan for their business? It cannot do so. That is why we have had many job losses because the private sector and the Small and Medium Enterprises (SMEs) are bleeding.

We see Nairobi as the hub of entrepreneurship on this continent yet we are blocking the private sector from growing by making them not access the credit. By the way, I do not believe we have a debt problem. We have a deficit problem in this country which is because we have decided that we must do a budget of Kshs3 trillion.

I think there is fallacy in economic thinking that we must achieve everything in two or five years and that is what must be reviewed. If we want to save the economy of this country, we should talk about how we will reduce the budgets going forward and end up in the next three or five years with a Kshs1.5 trillion budget which we can adequately service.

When Hon. Mwiraria was the Minister for Finance, I remember him saying proudly that we would fully finance our budget. If I am not wrong, 95 per cent of our budget was financed by our taxes in this country. It is only five per cent that was borrowed and very little from the domestic market.

That time banks would come to hawk loans to students. When I was in the university, they used to tell us to take unsecured loans and Kenyans felt there was money.

So, the issues of debt from the domestic market and the budget deficit must be addressed if we want to rescue this country and save our economy, and for the future.

The biggest project that this Government does every year is paying our debt. We send more than thrice the amount of money we give to counties. We hit Kshs1 trillion annually yet we are fighting for Kshs370 billion to the counties. So, the biggest project is our debt payment.

Another issue is the non-concessionary loans that are domestic in nature. I wish I was a Member of that Committee, but I am sure even with my remarks I will never be put there. We should have tasked the Cabinet Secretary to tell us which ones he has negotiated because you need to renegotiate those loans. You will find loans for five or seven years being repaid at 23 per cent interest yet you can get concessionary loans at close to three or even one per cent interest and spread them to 30 years and beyond so that you reduce the pressure.

Like I said yesterday on a different topic, our Constitution says that the burden of debt must be shared between generations. I really pity the next President of this country because apart from servicing debt, probably there is nothing else he will do.

If you look at the revenue outlook, I am glad the Whip is the one who has been saying how we are squeezing the goose that lays the golden egg, our revenue philosophy has become one of policing rather than that of incubating and building industry.

Again, I will refer you to the former Government where President Mwai Kibaki used to say *kulipa Uhuru in kujitegea*. He would encourage Kenyans everywhere on why they need to pay debt. They would even register a business on your behalf for you to be able to pay your taxes. However, today when you have a tax dispute of Kshs10 billion, the option is to shut down your business. So, not only do you pay what you owe, but tomorrow you will not pay anything else.

Look at what happened to Humprey Kariuki's companies. We had Keroche Breweries and Sportpesa that were paying a lot of taxes. We fight over the little that we do not agree on and kill that much that is being paid. I think the philosophy of criminalizing businesses instead of encouraging and nurturing should stop. Look at the Internal Revenue Service (IRS) in the United States (US). They will assist you to grow your business so that they can have a bigger pool from where they raise revenue. That is something that must be looked at.

It is encouraging that diaspora remittances have gone up despite COVID-19, but we need to be careful. I am sure that the Committee on Finance and Budget are aware of this because they were shown the figures. When you look at the fact that our four months import cover is good, remember that in the last financial year, the cost of fuel went down.

The cost of fuel was very low and you know that during COVID-19, there was very little international travel. Therefore, the demand was low. When the demand was low, then we were able to say we have "X" amount of reserves. If you look at the projections and in the past few weeks how much the price of fuel has been going up, those numbers that you have been given might be fictitious to a certain extent. I would like you to look at it in terms of moving forward in the year.

International travel has opened up. Planes are back; whether it is Emirates Airlines, Delta, Kenya Airways *et cetera*. Therefore, we will not be able to have that kind

of cover anymore. The revenue outlook and import cover may not be realistic. If you look at sectoral expenditure, the focusing is not good.

Mr. Speaker, Sir, we have spoken about post-COVID-19 economic recovery strategy. I would challenge the Chairman of the Standing Committee on Finance and Budget or any Member of the Committee to give us five points in that post-COVID-19 economic recovery strategy apart from the high-sounding words you were told by the National Treasury and stakeholders. It is mouthful and sounds smart when you say 'post-COVID-19 economic recovery strategy,' but what are the five activities?

You cannot have a budget this year that looks like last year's budget and you say it is post-COVID-19 economic recovery strategy. There must be certain activities that are specific towards that economic recovery. Many of them would have been the credit guarantee. How much are we putting to cushion businesses in terms of credit guarantee? Look at the hospitality industry that suffered the most. What are we doing to encourage investment in those industries that suffered the most and cushion them?

We have seen the stimulus. The United States (US) Senate was discussing post-COVID-19 stimulus. When are we going to discuss such things for the people that we represent in this country, or we would rather just talk about the poetry around the economic recovery strategy?

I dare say that there is actually no post-COVID-19 economic recovery strategy because we have not seen it. I would love to be proven wrong. There is lack of clarity in those policy interventions that we have. None of them is being linked to the Medium Term Economic Framework that this country is standing on.

Mr. Speaker, Sir, I will just mention two things because I know that many Members want to speak. I will mention a few things on the counties. Everyone who has spoken has alluded to the fact that we had a very colourful year last year. I am glad everyone is now very pragmatic in saying that we now move forward. We have been able to secure Kshs370 billion to counties as a result of that engagement, which was robust. Sen. Kibiru said that there was a serious team and a more serious team. I wonder how the more serious team was defeated 10 times, if it is more serious.

Mr. Speaker, Sir, that notwithstanding, we have seen both the Commission of Revenue Allocation (CRA) and the National Treasury trying to be a bit crafty by saying that of the Kshs370 billion, it is only Kshs316.5 billion that will be equitable share that will be applied based on the formula that we passed. Then Kshs34.6 billion or thereabout, will be conditional grants. The rest will be based on Kshs316 billion only as the baseline.

The rest is conditional and then there is transfer of roles of certain Ministries, Department and Agencies (MDAs) from the national Government to counties. We will resist that and not allow it. Our agreement was at Kshs370 billion. In fact, what we passed had a simulation of how the Kshs370 billion will be divided. Therefore, the conditional grants will come above the Kshs370 billion. I hope Members are listening keenly because the devil is in the details. It is above Kshs370 billion that we will talk about the conditional and whatever else they want to adjust, I am confident it can be done.

We have seen budgets of national Government departments that run devolved functions that are bigger than budgets of entire counties. Look at agriculture and health

with four facilities and policy. Their budgets are bigger than many of the counties combined. That money should be transferred into the kitty of equitable share and not the national Government saying where it must go to. That is the work of the Senate. The Cash Disbursement Schedule must be followed.

I am very happy and proud as a Senator because I brought Kshs15 billion in the first year and because of that fight, we have gone to Kshs19 billion. Nairobi City County with a budget of Kshs37 billion this financial year - we are in February - has only received Kshs4.7 billion out of Kshs37 billion. It is Kshs4.7 billion on current and zero on development. We are heading to March. In five months, you will want Nairobi City County to absorb Kshs31 billion. How will that work?

There is what we pass, but also urge the Committee on Finance and Budget to help us in budget tracking and implementation to make sure that what we pass actually goes in.

Mr. Speaker, Sir, we gave our remarks as a Committee, the Standing Committee on Labour and Social Welfare. We gave them to the Standing Committee on Finance and Budget and I hope they have been looked at. We asked that the biggest challenge in this country is unemployment and more money must be put into dealing with unemployment.

We talked about the National Employment Authority (NEA) that has a huge role. In the last four years, they have helped us secure 70,000 jobs, which we can list. That is the one which I can say I know for sure. The NEA has helped us secure 70,000 so far. The 70,000 was just in one country, that is, Saudi Arabia. If you look at Oman, Dubai and other countries, there is a huge potential.

We begged that in this BPS, on top of the big projects we are doing. Please, let us incorporate a school feeding programme. Our children are struggling and suffering, especially in the urban areas in their schools.

Mr. Speaker, Sir, I support this report. I have no amendments to it. However, I just ask that as the Senate, let us review our processes, so that we are not just doing public relations or working in vain. The recommendations we make are very good. I must applaud Sen. Kibiru for leading the Committee on Finance and Budget very well. He is dressed like a Cabinet Secretary for Finance. He has given his budget speech. I must applaud him and urge him to be more radical.

Being radical and asking questions does not mean not supporting the Government. Nowadays I know there is that notion in the air that when you ask questions, you are not supporting the Government. However, we support the Government by telling it the truth. We are going into a hole. If we are asked to raise the budget ceiling to Kshs12 trillion, we shall refuse. We cannot allow that. In fact, we want the real consolidation by reducing our budget moving forward to at least Kshs1.5 trillion, and let us see how to do that.

Thank you, Mr. Speaker, Sir.

I support.

(Interruption of Debate on Motion)

COMMUNICATION FROM THE CHAIR**RESOLUTIONS OF COUNTY ASSEMBLIES ON THE DRAFT
CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020**

The Speaker (Hon. Lusaka): Hon. Senators, before I invite the next Senator, I have a Communication to make on the resolution of County Assemblies on the Draft Constitution of Kenya (Amendment) Bill, 2020.

I wish to make the following Communication regarding the status of delivery by the County Assemblies to the Speakers of the two Houses of Parliament their decisions on the Draft Constitution of Kenya (Amendment) Bill, 2020.

Hon. Senators, the Building Bridges Initiative Steering Committee, delivered a draft Bill to amend the Constitution by popular initiative and signatures of persons in support of the initiative to the Independent Electoral and Boundaries Commission (IEBC) for verification.

Consequently, the IEBC, pursuant to the provisions of Article 257(4) of the Constitution, submitted the draft Bill to the 47 County Assemblies for consideration after verification of the signatures in support of the initiative.

Hon. Senators, Article 257(6) of the Constitution affords the respective County Assemblies a period of three months after receipt of a draft Bill to amend the Constitution by popular initiative within which to approve the Bill. Thereafter, the respective Speakers of the County Assemblies are required to communicate the resolution of the approval by the respective assemblies, by delivering a copy of the draft Bill jointly to the Speakers of the two Houses of Parliament, with a certificate indicating such approval.

Hon. Senators, you will recall that during the *Punguza Mzigo* (Constitution Amendment) Bill, the Speaker of the National Assembly and I agreed to jointly develop and issue standard Guidelines for delivery by the County Assemblies to the Speakers of the two Houses of Parliament of a draft Bill for the amendment of the Constitution by popular Initiative, to inform the process. These guidelines were published in the *Kenya Gazette* as Legal Notice No.175 dated 22nd November, 2019 and have informed the current processes before Parliament.

Hon. Senators, paragraphs (5) and (6) of the Guidelines provides as follows, and I quote—

“(5) Upon the expiry of the period specified under Article 257(5) of the Constitution for the consideration of a draft Bill by a County Assembly, the Speakers of the two Houses of Parliament shall—

- (a) report to their respective House of Parliament—
 - (i) the County Assemblies that have submitted the draft Bill and the certificate approving the Bill;
 - (ii) the County Assemblies that have submitted the draft Bill and the certificate rejecting the Bill;

- (iii) the County Assemblies that did not submit the draft Bill and the certificate;
- (iv) whether or not the threshold required under Article 257(7) of the Constitution has been met; and,
- (v) such other information as the Speakers of the two Houses of Parliament may consider necessary; and,
 - (b) submit to the Independent Electoral and Boundaries Commission and publish, by notice in the *Gazette*, the information specified under subparagraph (a).
 - (6) The Speakers of the two Houses of Parliament shall not receive any draft Bill and certificate where the Bill was considered by the County Assembly after the expiry of the period specified under Article 257(6) of the Constitution.

Hon. Senators, in furtherance to requirements of paragraph (5) of the said Guidelines, the statistics of the submissions, which had been formally delivered by the respective Speakers of the County Assemblies as at 2.00 p.m., today, 25th February, 2021 are as follows-

(a) Thirty three County Assemblies had delivered the Draft Bill with a certificate indicating their approval of the Bill, that is, Siaya, Homa Bay, Kisumu, Trans Nzoia, Busia, Kajiado, West Pokot, Laikipia, Kisii, Nairobi City, Garissa, Mombasa, Nyamira, Taita/Taveta, Kakamega, Kitui, Vihiga, Murang'a, Narok, Makueni, Kirinyaga, Nyeri, Bungoma, Machakos, Nakuru, Meru, Tharaka Nithi, Embu, Marsabit, Nyandarua, Kericho and Tana River;

(b) One County Assembly has rejected the Draft Bill, that is, Baringo.

However, I note that the County Assembly only submitted a certificate of rejection without the Draft Bill.

In this regard, we shall be communicating to the County Assembly the requirements under the Guidelines for purposes of their compliance as the three months window has not lapsed.

Hon. Senators, a simple calculation reveals that 13 other county assemblies are yet to deliver the draft Bill to the Speakers of the Houses of Parliament with a certificate indicating either their approval or rejection of the Bill.

Correspondences received from the IEBC indicate that the delivery of the Draft Bill to the county assemblies was done on varying dates. The first set of county assemblies received the draft on the 27th January, 2021, while Elgeyo-Marakwet received the draft Bill last, having received it on 2nd February, 2021.

Consequently, the last date by which Elgeyo-Marakwet County Assembly ought to make a resolution after its consideration of the draft Bill pursuant to the provisions of Article 257(5) of the Constitution is 3rd May, 2021.

Hon. Senators, from the statistics I have just read, 33 county assemblies have so far approved the draft Bill. Article 257(5) read together with Paragraph (5) of the Guidelines provide that each county assembly shall consider the draft Bill within three months from the date it was submitted by the IEBC. However, Article 257(7) of the

Constitution provides that if a draft Bill has been approved by a majority of county assemblies, it shall be introduced in Parliament without delay.

In view of the foregoing, it goes without saying that the threshold required under Article 257(7) of the Constitution for introduction of the Bill in Parliament and attendant requirements in the Guidelines have been met.

Hon. Senators, Article 257 of the Constitution was not crafted in vain. It is a provision, which allows any citizen to originate a proposal to amend the Constitution and to garner popular support for the proposal with a view of having the proposal considered by Parliament upon gaining the support of the majority of the county assemblies.

It is noteworthy that the initiation and steering of the current process involved a significant investment of public resources, noting that it was a culmination of the recommendations of the Building Bridges Initiative Steering Committee. Any delay in processing to the next stage, which is consideration of the Bill in Parliament, would cause anxiety in the country, and would go against the spirit and intention of Article 257(7).

Having consulted the Speaker of the National Assembly, we have resolved to commence the process of consideration of the Bill in Parliament without any further delay in accordance with the Constitution and the Standing Orders of the respective Houses.

Hon. Senators, in this regard, I hereby direct the Clerk to publish at the appropriate time, the following information in at least two newspapers of national circulation and in the *Gazette* for general information of the public-

- (1) The list of county assemblies that have submitted the draft Bill and the certificate approving the Bill jointly to the Speakers of the Houses of Parliament;
- (2) The list of county assemblies that have submitted the draft Bill and the certificate rejecting the Bill jointly to the Speakers of the Houses of Parliament; and,
- (3) The list of county assemblies that have not submitted the draft Bill and the certificate.

As Speakers of the Houses of Parliament, it is our hope that once this information is published, the remaining county assemblies will submit their respective returns to us within the stipulated timelines to enable Parliament to conclusively submit to the IEBC, the respective decisions of the county assemblies. Further information regarding the parliamentary process will be provided to the House in due course.

The House is accordingly advised.

I thank you.

(Resumption of Debate on Motion)

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. I was to going to ask about the parliamentary procedure, but since you have communicated a later date, I will hold my horses.

I rise to support the Report and onset disclose that I am Member of the Committee, but I have pointed the challenges to it and policy that has been provided to us by the National Treasury.

First, to echo the sentiments both of the Chair and my good friend, Sen. Sakaja, it is important that I state that---

Should I wait? I am talking to nobody. Who I am addressing?

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

[The Temporary Speaker (Sen. (Dr.) Isaac Mwaura) in the Chair]

The Temporary Speaker (Sen. (Dr.) Isaac Mwaura): Unaweza kuendelea tafadhali.

Sen. Mutula Kilonzo Jnr.: Thank you. I was saying that I must state and echo the sentiments of my good Chairman, my brother, Sen. Sakaja and the Vice-Chairperson. The challenge we have with this BPS is that until now, I still do not know why we do it. In fact, my only concern in this year's BPS was division of revenue. This is because the rest of the recommendations in terms of the provision of Section 25, Clauses 1-7, I do not see any role that we play.

Although the Chairperson has proposed and we have proposed in the Committee that the conditional grant on medical leasing equipment should not go to Kshs7.2 billion, it should remain at Kshs6.2 billion and the Kshs1 billion is reassigned, I can bet that the National Treasury will ignore that proposal.

Secondly, a policy is a matter of the Executive. Our Chairman is extremely polite to the Executive when it comes to this BPS. The Cabinet Secretary (CS) for National Treasury and Planning had time to have a retreat, not a meeting, have a retreat with the National Assembly Committee on Budget. However, in our case, he sent us officers - they are not junior officers - but they are not him. Therefore, in terms of policy, I cannot say conclusively that the questions we needed to ask and the answers we needed to hear were communicated to us.

On the question of debt, it remains a little hazy as to whether the national Government will exceed or comply with debt. As to the question of debt, whether the national Government will renegotiate some of the expensive loans still remains a little hazy.

Our recommendation in this Report is that we need to see a debt register, to investigate whether or not at the time we passed the budget ceiling, the question as to whether debts will be retired was complied with. That also remains very hazy.

Mr. Temporary Speaker, Sir, we have raised this concern and it must go on record; that there is no policy at national level on conditional grants, both from the national Government and donors. Therefore, when the national Government proposes that the Road Maintenance Levy Fund would be put as part of equitable share, we are left asking more questions. You had no policy in the first instance. You have no policy why you are retiring some of the conditional grants. We do not know how they will be utilized. We do not know whether they are utilized, in the first place.

The Chair and I are aware that the Committee of Sen. Wamatangi, I do not know whether he still chairs it, has been interrogating the use of these funds by counties. However, Makueni County cannot answer to the question as to the use of these funds. I

have seen the recommendation of the Committee on Roads and Transport. I have seen comments by Senators about the Road Maintenance Levy.

We are having a problem of the chicken and the egg. We want to retain the conditional grant. The conditional grant is not properly utilized, but at the same time, we want to ensure that the mistakes of county governments are not visited on them. We still have that fund in existence. That issue is still unresolved because the person whom we would ask that question did not come. It is a concern. We have put it in the Report.

On domestic borrowing, Sen. Sakaja is right. That is part of the reason a law was signed to make sure that there is a reprieve for local businessmen in terms of borrowing. This was to ensure that the interest is not too high, and the Government is not borrowing too much from the domestic market. This is because it is attractive to local banks to give money to the Government and not the local entrepreneurs.

Sen. Sakaja mentioned Sen. (Dr.) Ochillo-Ayacko and sons figuratively. That includes Mwikali and sons, Mwikali and daughters, Mutheu and sons, and Mutheu and sisters. They cannot borrow. Banks are not interested in lending ordinary Kenyans money because they expect the Government to borrow from them. That one also has not been addressed.

The Temporary Speaker (Sen. (Dr.) Isaac Mwaura): Sen. Kinyua, una hoja ipi ya nidhamu?

Sen. Kinyua: Asante, Bw. Spika wa Muda. Ninamsikiza Seneta wa Makueni kwa makini sana. Anayoyaseme ni kama ananugunika. Hasemi ni hatua zipi walimchukulia Waziri walipomwita akakosa kuja mbele ya Kamati ilhali ni mwanakamati hii. Sina shida na Sen. Sakaja kwa sababu yeye si mwanachama wa Kamati hiyo. Lakini, Seneta wa Makueni, Sen. Mutula Kilonzo Jnr., nimemsikia akigugunika kuwa Waziri hakukuja mbele yao. Je, ni hatua gani walichukuwa kama Kamati ndio nasitujue ni hatua gani zaidi zinatafaa?

The Temporary Speaker (Sen. (Dr.) Isaac Mwaura): Sen. Mutula, unaweza kujibu hilo swali kwa sababu nimesikia ukisema kwamba watu wanajifundisha siku hizi kunyamaza.

Sen. Mutula Kilonzo Jnr.: Nitamjibu ndugu yangu, lakini angesubiri kwanza nimalize mazungumzo yangu. Hii ni kwa sababu ningempa hatua ambazo tumeziweka katika mikakati hii. Lakini kwa sababu ameuliza, na niendeleo kuzungumza na kizungu na si Kiswahili.

Mwenyekiti wa Kamati hii---

The Temporary Speaker (Sen. (Dr.) Isaac Mwaura): Samahani, unaweza kuchanganya. Haina shida.

Sen. Mutula Kilonzo Jnr.: Umenipatia nafasi. *What a nice one.* Mwenyekiti wa Kamati, Sen. Kibiru, amezungumza hapa kwa urefu kuhusu vile ambavyo tumepata shida na Waziri ambaye anasimamia fedha kutokuja mbele ya Kamati yetu. Hatua imechukuliwa kwamba wakati tunazungumzia *Division of Revenue*, tutakuwa na mazungumzo ya kindani kuhusu ni kwa nini anapuuzilia Kamati ya Seneti na hata yule ambaye alikuwa hapo mbeleni, hakuna mmoja wao ambaye aliona umuhimu wa kuja katika Kamati ya Seneti.

Kwa hivyo, ni jambo ambalo tunafaa kulizungumzia kama Seneti. Si jambo la Kamati ya Fedha na Bajeti pekee. Ni jambo ambalo tunafaa kuazimia hapa na tuseme kwamba tumechoka *and enough is enough*.

Let me now continue in English language.

Mr. Temporary Speaker, Sir, I must point out that the BPS is a very big concern. Although the Chairman did not mention, the Government has guaranteed a loan of Kshs41 billion to Kenya Airways (KQ). I have a question. The Committee Chairman mentioned that we must continuously ask the question, is Kenya Airways a going concern? When they have a debt guarantee of Kshs41 billion, these are questions of policy.

The second policy and a question is that the Chairman mentioned that we have questioned the reason the Government is looking at bank balances of counties as a method of releasing funds. We said so at the Committee that the Cash Disbursement Schedule is not what Sen. Sakaja famously refers to as “suggestions”, it is a resolution of the Senate. They cannot go behind the Cash Disbursement Schedule to investigate what Nairobi has, what Makueni has *vis-a-viz* how much money they should release.

Importantly, there is a reason why Article 219 is there. Out of Kshs3 trillion that Sen. Sakaja questions as a budget - I also heard Sen. Wambua whispering here, asking why we have such a huge budget - it is contemplated under Article 219 that if you allocate Kshs370 billion to counties that money is ring-fenced irrespective of the problems the national Government is having. That is really the point.

In the Division of Revenue Bill, we have a famous clause that if there is a shortfall in revenue collection, the shortfall shall be borne by the national Government. We have insisted here that the National Treasury does not have discretion on the Cash Disbursement Schedule. It surprises us that while they do not have that discretion, they have the discretion of shifting Kshs1 billion to pay pending suppliers on Managed Equipment Service (MES) scheme; the famous MES in which we were unable to make findings here for reasons that I shall not say on record.

(Laughter)

It is sad that they can shift money so easily, that you can move Kshs1 billion on conditional grants and yet if you were to request for the additional funds to make it Kshs371 billion to counties, we would have to form “Team Kenya” here to get it.

Sen. Kibiru is right and this question must be asked. Catering Levy is part of entertainment tax in the Constitution. Why is this money not given to counties? That is something we have asked and we will continue addressing; it is not here.

Although county governments have been given what would be a license to borrow, we have said in this report that they cannot borrow the way they want. We need to see a policy under Article 212 to guide national Government borrowing.

There is something Sen. Sakaja missed and I think he should note that Government owes the Nairobi City County a lot of money in terms of property rates which they have not paid. That question is in this report and it has not been addressed. We will continue asking, on behalf of Nairobi residents and Kenya, why the Government

is not paying property taxes for purposes of buildings in Nairobi, including where we are seated today.

Public debt is a matter of concern. When I moved the Motion to reject the ceiling all of you were looking at me with glazed eyes. I will not tell you why you were looking at me with glazed eyes, but I will repeat: It is a matter of concern. It is crowding out division of revenue. I am not concerned about the others.

We must continue asking the necessary questions about public debt. When we were discussing this issue Mr. Temporary Speaker made a side comment and he referred to the question of public debt. You approved it here, but it is a matter of concern.

It concerns me my dear colleagues, that whether it is now or later with a Gross Domestic Product (GDP) of Kshs10 billion, we are now talking about a debt of Kshs7.8 billion and the Chairman says we are going to reach the threshold of Kshs9 billion in a year. It is a matter of concern. So, the question of retiring expensive loans is a matter that we should discuss.

I want a President who will be so radical that we must default on some of the Chinese loans. We must say “No” to some of these debts. We must say that these debts were obtained by Kenya through force, coercion, undue influence or whatever it is. We must refuse. I am looking for a President who will say “No” to this. Who will be that person?

An hon. Senator: Hustler!

An hon. Senator: Kalonzo! Kalonzo!

An hon. Senator: Chairperson!

Sen. Mutula Kilonzo Jnr.: Will the real men stand up and say “No” to these debts? They are terrible debts!

The Temporary Speaker (Sen. (Dr.) Mwaura): Samahani nimesikia jina langu likitajwa.

Sen. Mutula Kilonzo Jnr.: These loans are terrible. At 36 per cent, we will not be able to pay these debts. I have asked the fundamental question. We must ask that question while we are discussing debt where is the paper work on the SGR? Is it true that we have put the Port of Mombasa as a collateral? Is it true also that that document concerning the SGR speaks about an arbitration in Beijing, China and it is in Chinese language? Can we ask these questions my dear colleagues because this is our country? Who becomes President is not going to change that fact.

As we discuss Government policy with regard to debt with regard to our policy on financial statements, let us ask the correct questions. I support Sen. Sakaja because we are asking the correct questions not only to help the Government, but to correct the mistakes that have been made by this Government.

While Sen. Sakaja mentions debt and says that we have over-borrowed, which Government has over borrowed? Which Government allowed this sort of borrowing? Who was clapping when they were borrowing? Who is disowning this borrowing while they are still in the same Government? Dear Senators, do I need an answer to those questions? Who is turning their back on borrowing yet you were part of this Government when they were borrowing?

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

The Temporary Speaker (Sen. (Dr.) Mwaura): Hoja ipi ya nidhamu, Sen. Sakaja?

Sen. Sakaja: Mr. Temporary Speaker, Sir, this is now becoming a hot potato that Sen. Mutula Kilonzo Jnr. wants to pass to me because he is now a coalition member. In fact, he accompanied his party leader to the Jubilee headquarters to join this party, let him take the blame equally. Let them take the blame equally.

Secondly, I do not own the Government; I am also a Member of Parliament in Jubilee. I have repeatedly questioned what I think is not right and supported what I think is right, and I will continue doing so. So, he is a coalition partner, he should take the responsibility as well.

The Temporary Speaker (Sen. (Dr.) Mwaura): Asante Sana, Sen. Were, una maoni ama arifa ipi?

Sen. Were: Mr. Temporary Speaker, Sir, I want to inform Sen. Sakaja and the rest of the House that the borrowing that we are condemning happened before some of our Members like the Wiper Democratic Movement Party entered into a cooperation agreement. That was the Eurobond and some external debt that was taken in 2014/2015 Financial Year.

I am also happy to inform the House that the Amani National Congress (ANC) party and its party leader have never entered into any sort of cooperation, agreement or coalition with this debt borrowing Government.

Thank you, Mr. Temporary Speaker, Sir.

Sen. Wambua: Thank you, Mr. Temporary Speaker, Sir. Just to inform Sen. Sakaja that what Sen. Mutula Kilonzo Jnr. accompanied the party leader to do at the Jubilee headquarters was to sign a document called a cooperation agreement which has no bearing at all on the debt and on borrowing.

Secondly, I would like to inform Sen. Sakaja that Sen. Mutula Kilonzo Jnr. was among the seven Senators in this House who voted to oppose additional borrowing by the Jubilee Government.

I thank you.

Sen. Cheruiyot: Mr. Temporary Speaker, Sir, you have heard Members from the Wiper Democratic Movement Party try to run away from their working relationship with Jubilee Government. However, will Sen. Wambua denounce the remarks of his party leader who announced to the entire nation on the day that he was burying his father that he wants to be the Presidents right-hand man? Therefore, the biggest challenge that President Uhuru faces is debt management.

How can you be someone's right hand man if you are not helping him solve the same problems? Even Sen. Were cannot run away. Part of the struggles we have is because of launching phantom projects like the *Huduma Namba*. I would wish to remind her that part of the poster boys that this Government used to launch the phantom *Huduma Namba* is none other than her party leader, Hon. Musalia Mudavadi. So, they are all part and parcel of this problem. Please, do not run away from our challenges.

The Temporary Speaker (Sen. (Dr.) Mwaura): Nafikiri sasa kuna hoja nyingi za nidhamu. Nampa nafasi Kiongozi wa Wachache, Sen. Orengo.

The Senate Minority Leader (Sen. Orengo): Mr. Temporary Speaker, Sir, I have read keenly the coalition agreement between the Wiper Democratic Movement Party and Jubilee Party, which is registered with the Registrar of Political Parties. I have not seen a provision in it where they undertook to help Jubilee Party run the Government or participate in Government activities, sit in Cabinet or insist that they should be allocated the Office of the Deputy President or any other position.

Mr. Temporary Speaker, Sir, where a house is falling from within, there is very little you can do about it, especially when the membership of that family is buying more petrol to burn it.

(Laughter)

I am giving very serious information to my learned friend. When Sen. Sakaja was speaking here, he talked about everything wrong with the BPS and with what is going wrong. That is the way it should be. However, he was not suggesting that there should be insurrection of bringing down the Jubilee Government. That is quite different from somebody who is eating from inside the Jubilee Government.

My information is that the nearest Chair to that of the President today in the Cabinet meeting was occupied by a member of United Democratic Party (UDP).

(Laughter)

When the leader of the Wiper Democratic Party tried to go to State House, he was told that he could not go in because there was a Cabinet meeting. I was hoping that the leader of the “wheelbarrow” party would walk out and say: “You know, things are going on and I can no longer sit here.”

Sen. Cheruiyot, the other day I saw you sitting behind that convoy of ten motorcycles and no wheelbarrow following. Then, you are talking about the Government not delivering. Part of the problem with the Jubilee Government is waste. Just look at the waste in the Office of the Deputy President and that of the President. This would not have happened in President Kibaki’s Government.

The Temporary Speaker (Sen. (Dr.) Mwaura): Sen. Mutula Kilonzo Jnr., endelea lakini ukiamua kuja kwenye mahusiano ya kulea mtoto hauwezi kusema si wako, nafikiri hapo kuna shida.

Sen. Mutula Kilonzo Jnr.: Bw. Spika wa Muda, mtoto si wetu, ni wa Chama cha Jubilee . Hatukuwa mahali mlikuwa mnafanyia hayo maneno.

This is a very serious issue. As a Senate, we must interrogate. That is the reason, as a Committee, we have said that when you table a BPS, and you are talking about debts, either retiring debts or acquiring less expensive debts, you must submit a debt register as part and parcel of the BPS. Otherwise, it is assumed that you are hiding things to create a crisis, so that you say without increasing the ceiling, we would not be able to do certain things.

Mr. Temporary Speaker, Sir, we must speak to this in such a way that you do not get people across the aisle standing and looking holier than thou. When the history of

Kenya is written, it will have a chapter about the unnecessary borrowing by the Jubilee Government. We must say so whether we cooperate or agree, it does not really matter. However, that chapter will say that we have committed unforgivable sins to generations and generations to come.

What Sen. Kibiru said is correct about the KRA. I have sat to negotiate on behalf of clients on payment of taxes. The Act talks about promoting a business environment. You cannot criminalize payment of taxes.

Mr. Temporary Speaker, Sir, these people go to lawyers and take away their money. They do not even ask where that money comes from. They have crippled business. I think they can approach this in a better way. A young person called me yesterday and said he used to have houses in Mukuru Kwa Njenga, where he was making Kshs12,000 every month. He said: "These people are pursuing me and I want to run away." He has run away. That is just an ordinary Kenyan.

There is no waste that Sen. Orengo is talking about. The waste that we see in the Government is part and parcel of the reason an ordinary does not want to pay taxes. It is assumed that you want to buy those nice gadgets that fly at night, but during the day, you push 16th Century equipment called wheelbarrows. It is a contradiction. Kenyans can see through some of these acts that you continue perpetuating in the name of improving the economy of other people.

We have made our general suggestions here. I hope under Section 25, the National Treasury will comply with the things we have said, the report and recommendations on debt, division of revenue and policy regarding conditional grants. This is just a policy. We are waiting for the acts themselves when the Bills are tabled pursuant to it, so that we can see whether the National Treasury has complied with our recommendations.

Mr. Temporary Speaker, Sir, I am glad Sen. Orengo is here – I hope we can find in some form when we can discuss serious issues. When you give the Judiciary Kshs17 billion, it is a mockery. Why does the Government think that the Judiciary is just an unnecessary appendage of Kenya? Why would we give Parliament Kshs37 billion?

As Parliament, we can only interrogate the Ministries. Why would you do that? The Judiciary has courts all over the country. Parliament is only centered in Nairobi; it is unfortunate. A department like Immigration makes Kshs14 billion. I have asked for the amount of money we are collecting through court fees, fines *et cetera*. Probably, you will find it is more than the money we give the Judiciary.

It is unfair to train 7,000 lawyers, hire 47 judges of the Supreme Court and High Court, and they have no work to do because they do not have money for fuel, and you have a convoy of guzzlers, like the one of Sen. Cheruiyot. It is unfortunate. Ours is a bad country.

The Temporary Speaker (Sen. (Dr.) Mwaura): Asante sana, Sen. Mutula Kilonzo Jnr. Umezungumza kama si Mwana Kamati wa hiyo Kamati ya Bunge la Seneti ambayo nilikuwa Naibu Mwenyekiti.

Sasa hivi nitampa fursa Sen. Cheruiyot ili aweze kujibu.

Sen. Cheruiyot: Thank you, Mr. Temporary Speaker, Sir. I am a Member of this Committee and have been for the last five or six years. Unlike Sen. Mutula Kilonzo Jnr., I will not run away from the mess.

As a Committee, we share in the blame and tally as a House. We do not apportion blame. In this current system, Parliament works through its committees. As a House, we are guided by what our committees tell us.

Mr. Temporary Speaker, Sir, the obvious challenge that many people do not realize is something that one of the speakers had earlier on highlighted; the overall structure of the Budget Policy Statement (BPS) and the route that it takes with regard to proposals that come from the House.

Somebody keenly noted that the wording in statute is that “Parliament shall give a report of its consideration.” Unfortunately, we continue to give separate reports between the House of the National Assembly and that of the Senate.

The English have a saying that “he who pays the piper, calls the tune.” If you are the Cabinet Secretary (CS) in charge of the National Treasury and Planning, and have to choose between what to us is constructive work, but to them is the nuances of politicians, between listening to the National Assembly and the Senate, you know very well who they choose and for what reason.

It is, therefore, upon us to find better wording to find ways of ensuring that there shall only be one report of Parliament as is expected. If you look at the history of the last two terms of Parliament, almost all major national assignments--- If you think about the reforms of the Independent Electoral Boundaries Commission (IEBC) in the Committee that was chaired by the Senate Minority Leader and the then Senator of Meru, Kiraitu Murungi, and I can think of one other report--- All national capturing reports that are of the importance of what a BPS is, are handled by joint committees of Parliament. Therefore, it is upon us, as a House, to provide the modalities upon which we shall ensure that our input, as the people that speak out for devolution.

We should structure the report in a way that when the National Assembly, which deals with many of the Government departments, the semi departments and the Ministries--- We who understand better than guys in the National Assembly, the pain and struggle to send devolved additional doses to the counties, should provide the modalities to ensure that we give a report that reflects the nation as it is.

I cannot think of a better way of doing than the consideration of the BPS at the next financial year by a joint committee of both Houses. They are our colleagues. They are people whom we sit here with and share tea. They are from various political parties. What will be difficult for them to sit with us and understand some of the things that we say? Perhaps, it will be the easiest way to unlock some of the challenges we have with division of revenue between the two levels of Government, because they will be able to appreciate and understand us.

Mr. Temporary Speaker, Sir, that is a further proposal that we shall make. In making my remarks about it, part of the things that we need to remind ourselves as leadership, is that this is the actual work. I can equate BPS to a report form, if you are a student in school. This is what speaks to all the things that we do in this House; the Bills, the Motions and the people that we come to oversight.

In the long run, for it to make sense to the citizens of this country, and for the Kshs40 billion that they cough up each year to run both Houses of Parliament, it all ends up with the BPS. It gives us a view of the state of the nation. Perhaps, this is even more important than the State of the Nation Address. That is not to demean the stature of our President; I respect him. This gives you a better and detailed response of the things that are happening in our country; the challenges that the ordinary citizens who vote and ensure that we are comfortably provided with the resources that we need to operate as leaders, you get the report through the information that comes here.

Mr. Temporary Speaker, Sir, this is a debate which I had not thought about quite clearly, but if you reflect on the topic of a conditional grants, I do not agree with the proposed avenue that they want to deal with. You recall that at our last consideration of the BPS last year, we sent out a warning that if you are devolving Kshs316 billion, but have another separate kitty known as the conditional grant, which you have no formula for accounting---

If you recall when conditional grants came into place around 2015 or 2016, I think the first one was around Kshs14 billion, we are now at Kshs70 billion. We sent a warning at that time that the National Treasury was finding a route through which they were sending money to counties at their preference. Therefore, they were illegally doing work that would have otherwise been done by Parliament.

If you recall how some of these projects are fashioned, I think of universal healthcare. They only pick about four or five counties. What is the scientific finding that informs the decision at policy level to say, for example, you pick Kisumu over Siaya? You know how the Government traditionally thinks. I know how they do their things every time they want to launch a national programme.

When you think about the Nyanza Region, it will never be by any other county other than Kisumu. People in Siaya, where the Senate Minority Leader comes from, are hardly ever considered. If you come to Rift Valley, it will mostly be Nakuru, because there is still the thinking that it is the former provincial headquarters.

We sent out a warning, but sorting it the way that it is being proposed in the current BPS, was not what we envisioned. We proposed to them that they come back to us with proposed regulations on how conditional grants are to be governed. That was one of the proposals that I hope they will consider because it is something that we mentioned in this report.

By and large, they can also consult. The work of Parliament is to oversight. I believe that oversight includes coming before the various committees of Parliament. If it is something to do with the fuel levy that is highly mentioned in this BPS, let us hear the proposals on why they think that it would be a good idea to lump it up together with all the other funds that are being devolved.

Therein lies a danger. You understand how most of our county governments operate. The minute you do not ring-fence--- In fact, one of the reasons roads are being done in many of our counties that have towns is because of this fuel levy. The minute it is no longer clear that the funds that a particular county is receiving is from the fuel levy account, I can assure you that governors will find other avenues for using this particular fund. That will be a big detriment to our roads.

We had a big discussion about the Roads Bill, and you will remember the points that were being proposed here as to why people think that it will still be a danger to devolve Class C roads and downwards to our counties. I was still thinking about what we will do with it.

Members of this House came up with a good proposal. I think it was from the Committee that was chaired by Sen. Wamatangi. They said that if we devolve these funds as part of the fuel levy, then Senators have a role to oversight. You know what the National Assembly does with this money; they are allocated per constituency.

We are all politicians and understand the process that goes on into ensuring this. Sometimes you will find that on the same road, today a Member of the National Assembly will be there with a tipper and some murrum, and Kenya Rural Roads Authority (KeRRA) pays for that road. A few weeks down the line, MCAs also come and say that they want to do the road in a better way. However, all these are schemes through which we are losing funds. We have raised our concerns about this particular proposal that is not well thought out.

Mr. Temporary Speaker, Sir, let me say this for the record. In my two terms at Parliament, this House has only had one chance to have their voice heard on the issue of debt. I am proud of how the people of Kericho voted with regards to how we should be managing our debt as a country.

First of all, we told the CS that without a good basis and a good proposal on how he intends to retire most of these expensive commercial debts that we have taken, we cannot give him the approval. That is why we voted “no” on that particular Motion when it came to this House. That problem still persists.

Sen. Mutula Kilonzo Jnr. wonders why the CS for the National Treasury could not come. I can tell him for free that it is because the last time he appeared before the Committee on Finance and Budget, the debt list that he provided before us was in excess of Kshs8 trillion. How comes in the BPS they claim that the debt register stands at Kshs7.2 trillion? We are going to ask those questions. I do not know if our colleagues in the National Assembly have time for those kinds of questions.

When I have had opportunity, and this is not in any way to demean Members of the Budget Committee of the National Assembly--- In any case, I will be appearing before them tomorrow to ask for funds to run both Houses of Parliament. I respect them, but sometimes when you follow their deliberations - which sometimes I have had time to follow - it is normally centered on how you increase the National Government- Constituencies Development Fund (NG-CDF) and the Kenya Rural Roads Authority (KERRA) funds. Those are things within their control. That is the struggle for this Republic and happens to be our challenge.

In fact, if you think about it critically and we had banter earlier here when we were trying to discuss who has created it. A few weeks ago, I suggested something before this House that many people may not have agreed with. I said it was time we thought about ways of completely detaching the influence of the Executive on the Legislature.

Many people do not seem to follow or understand why I continue to push that point. The reason people could not agree, despite the obvious reason that common sense

was dictating that you cannot give a Government that has a such a huge appetite for debt, permission to borrow up to Kshs9 trillion, was because of the continuous influence by the Executive on the Legislature.

Constitutionally, it is our duty to oversight first, as a House and secondly, as respective representatives of the various people that vote for us to come to this House. That architecture around political parties has an influence on how many of these decisions have been arrived at. Many are the times that we have had the discussion about party positions. One wonders how political parties arrive at party positions.

For example, at that time, my friend, Sen. Murkomen, was the Majority Leader. He came back with information that the party position was that we support. Many people would toe. Sen. Mutula Kilonzo Jnr., will not do any different if that was the position of his political party; he will come out.

We need to ask ourselves, as legislators, as we move towards what I consider a very critical phase--- This is because the challenges we are talking about a time will come--- Let me tell you the truth, Senators that are listening and Kenyans that are watching. Staff that work for you in your various constituency offices received their salaries only last week, while some are yet to receive.

We made that request to the National Treasury as early as January, but there is no money. You need to engage the CS for National Treasury and Planning offline and ask him to speak the truth. If you have a friend at the National Treasury, they will tell you that we live from hand to mouth. We wake up in the morning to see what has been collected and decide what we pay first. It depends on the pressure that is coming in Parliament because we have the muscle.

I saw last week that the National Assembly wanted to impeach the Cabinet Secretary because of delayed disbursement of NG-CDF. They will, therefore, sort out Parliament first. You will get your salaries, but in the Civil Service, for the first time ever, it is not a guarantee that at the end of the month they will get their salary.

Perhaps, if you ask many of us, we do not consider that a crisis. Time has come where, as a House, we must call the team from the National Treasury and perhaps switch off the cameras. I have realized that when sometimes politicians get the attention of the media, we want to lose our heads and try to score quick brawny points, but do not want to be honest and ask them what we do with this country.

I think it was Sen. Sakaja who earlier observed that--- I see people competing for power. We are trying to outdo each other in the various rallies. For example, I am carrying my wheelbarrow, Sen. Orenge is juggling his oranges, Sen. Mutula Kilonzo Jnr., is basking under his umbrella with no sunshine, but---

(Sen. Mutula Kilonzo Jnr. spoke off record)

Yes, I have said you are hiding under an umbrella. I guess because of the sunshine in Ukambani. I have to understand that is why, perhaps, you picked an umbrella.

The point is that the gentleman or lady, who will be elected as President of the Republic of Kenya, will have to spend perhaps the first two years of the term negotiating with debtors, who will by then have come here. They were not as smart as the thugs in

the leased medical equipment, who deduct it at source and never give counties the chance to pay them. The Chinese were not as smart. Perhaps, if they had opportunity, they would have granted us the loan. I guess at that time things will be so difficult. We may have a stand-in because of those agreements.

Sen. Mutula Kilonzo Jnr., if you are serious about the questions you are raising, then bring a question and we will support you together. Bring a question on the Standard Gauge Railway (SGR). Do not make all those things you are claiming to become just good sound bites. Bring them and let us do the work. Let us question those things because it will be important for posterity.

Twenty to 30 years down the line, it will not be known which side of the House you were sitting when all this mess was happening. Our children and grandchildren will just be saying: “My dad was in leadership those days when these things were happening.” At that time, perhaps, we will be called a mandarin Republic of Kenya or something like that because they will have taken over. As leaders, this is my plea to all of us. Let us take time.

We had this discussion as Members of the Committee on Finance and Budget; that we seriously need to have a candid conversation about the state of our economy. If we do not talk about it, very soon, these people that we think love and cheer us--- When it is no longer sustainable and people can no longer earn or purchase basic commodities---

We need to watch videos of what happened to the Parliament of Venezuela when people became too angry. They tore all their leaders. At that point, Sen. Mutula Kilonzo Jnr., it will not matter which side of the House we will be seated. They will just know we are leaders.

That is the unfortunate thing about Kenya. When you raise anything, they will say: “But you are the leaders.” It is time we took over leadership and reviewed some of these proposals and questions. Those questions are part of my commitment. I say this as part of the Committee on Finance and Budget that it shall be bringing a question to this House, so that the CS can for the first time furnish this House with the debt register because they have refused to do so. Even that which came to this House, during the time we were debating how to increase the debt ceiling, was not as accurate as possible.

Let us first know how much we owe people as a country and how many we can negotiate with. We left these duties to be done by the National Treasury for the last eight or nine years, and we have seen the challenge.

As the oversight arm of Government, can we conduct our duties with such dedication that people will look back and say, “at least, the Senate of the Republic of Kenya at that time was trying to save the situation?” This is so that people begin to think and give proper justification before they borrow.

I hope to present that question perhaps next week, so that we can handle it as a House and make recommendations. Perhaps, it has reached a point where instead of just thinking about a ceiling – I hear that is the proposal - let them come loan by loan, so that we give the approval where it--- It has now reached that point where even if you may want to deny them the chance to borrow, they will ask you: “What do we do?”

Last term I heard, and proudly so, the President graciously announcing to the country that we did not borrow to pay our teachers and other civil servants.

Unfortunately, that window closed. I am aware they have sent salaries to Members of Parliament today. The truth of the matter is that even that salary you have received today is Chinese money that was borrowed yesterday.

We better discuss and have a conversation because this is not very encouraging. Many Kenyans have more pressing challenges than reading a 100-page BPS. It is our responsibility.

Chairperson of the Committee on Finance and Budget, once you are done with this, let us come and begin with that question of debt and begin to tick off all the challenges we have been reminded that are curtailing our growth as a Republic.

The Temporary Speaker (Sen. (Dr.) Mwaura): Asante sana. Umeongea kwa simanzi nyingi kuhusu utumwa wa madeni. Maswala haya nilikuwa nina yazungumzia mwaka wa 2014. Sasa ninayasikia hapa. Kwa hivyo, ninaona kwamba yale niliyosema yameanza kutimia.

Sasa hivi ninampa nafasi Kiongozi wa walio Wachache, Sen. Orengo.

The Senate Minority Leader (Sen. Orengo): Mr. Temporary Speaker, Sir, I rise to support the adoption of the Motion and commend the Committee led by the very able Chairman, the distinguished Senator for Kirinyaga. I listened to him keenly when he was moving the Motion.

While I essentially support this Motion, earlier on, Sen. Sakaja said that there is a lot of poetry in some of the documents that come from the National Treasury. It is like reading a document from the international community or the United Nations (UN). Normally, the meaning can be lost in translation.

What does this report say about the state of the country? I want to begin by saying that this report gives the status of the country as being in very dire circumstances. That is the starting point.

I was looking for something in the BPS because driving the economy and trying to ensure that the people of Kenya get services--- As Sen. Mutula Kilonzo Jnr. said earlier, when you realise that we have weighty problems facing the country, the next thing is to give recommendations, and also put on the table implementable proposals on how you are going to deal with the problems that confront the nation.

As we discussed with Sen. Mutula Kilonzo Jnr., budgeting is not about a wish list. It is about what you want to do for the country. The centrality of a budget process is not a matter of lateral legislation because it is in the Constitution. The Constitution requires certain guidelines to be followed to enable the country judge as to whether or not the Government in place is providing services as it should after taxing citizens.

What does this report say about the condition or state in which our country is? If you look at the economic outlook, which is on page six of this report, the economic growth has gone down. There is uncertainty about growth because of the COVID-19 pandemic.

It says that the economic performance in the first quarter of 2020 was 4.9 per cent and that was before the pandemic. In the second quarter, it was negative 0.7 per cent, and in the third quarter, it was negative 1.1 per cent. They say they are anticipating an improvement in the fourth quarter. By all indicators, the fourth quarter may even be worse, just by looking at the way we anticipate to roll out our vaccines and so on.

The root of our problem seems to be the COVID-19 pandemic. We say that everything is wrong about the economy because of the pandemic, but how we deal with it is also not clear. Somebody should tell me why Ghana should be the first country in Africa to get the vaccine from COVAX Fund that was put together to help developing countries.

I think it speaks loudly why it has gone to Ghana and not here, but we are not asking ourselves those questions. I do not know whether we will be the second or third; South Africa has got certain capacities. They have been able to do some of the things on their own. Looking at how we dealt with the whole issue of Personal Protective Equipment (PPE) at the early stages, yet there was corruption, deceit and fraud, what about if the vaccines come?

Mr. Temporary Speaker, Sir, I want to give you friendly advice. By the time we get there, there will be many vaccines coming from Government entities. I do not know whether persons who will get the right vaccine are those who walk by the Kenya Medical Supplies Authority (KEMSA) offices and are invited. It seems the people who make the best deals in Kenya are those who just walk by, and not those who work and sweat.

On that particular question about the economic outlook, we better admit that we are in dire circumstances. When you want to resolve a problem, you must admit in its entirety. Where are we going to get the money looking at revenue performance? There is no answer to it. They are saying that expected revenues have been falling and will continue to fall, and the economy is not performing. That is another bad outlook because all it points at is that without debt, probably we will not have a budget.

Moving to fiscal policy, this points to a matter which we had a discussion about on tax revenue and how we collect taxes. That is now an old story for the past three or four years. Although we collect, what we do with it is a big question. Now we are not even collecting. Again, we are in dire problems.

Inflation rate is on page nine, and it is not a good story. The interest rates are there, and it is not a good story to hear about. The summary is nine pages. The penultimate page deals with the question of medium debt management strategy. Those nine pages are supposed to give some confidence.

If I were an investor coming to Kenya, looking at the summary of the BPS, the conclusion is not to put your money into this economy. This is what this report says. I do not see anything positive about this BPS, which then is a derivation of the report that the Committee came up with.

I am happy that the Committee has made comments on most of these issues. However, in the spirit of being patriotic, they are telling us to try and live with it. They did a good job, but we are not adopting the report for cosmetic reasons. Having said all that, what are we doing as a Senate or a legislature to make sure we are not caught up in circumstances because we are going down and down?

In further discussion of this report, I would like to say the following. If you generally look at what is happening in Kenya, and especially in Nairobi City comparatively, you would be impressed. If you are looking for brick and mortar, the Expressway is a big project that can make a big difference.

We now have the Standard Gauge Railway (SGR), even if it is halfway because it should have gone up to the border of Kenya and Uganda. It is about to get to the middle, which is Nakuru. That is something. When you go to Lamu, a lot of money is being used to construct a modern port.

Head of States have been to Lamu recently because of what is happening in Ethiopia. The Prime Minister of Ethiopia was here for a very good reason because the northern part's access to the Red Sea is compromised by what is happening in that part of the world. Therefore, they see an opening through the Lamu Port-South Sudan-Ethiopia-Transport (LAPSSET), a big project that has been undertaken.

Having said that, however, are people feeling good in their lives and in their pockets? After all this brick and mortar, why are people not happy? When the previous Government, the Grand Coalition Government, was doing big projects, the Thika Highway and other projects, which can be enumerated, nearly all the airports were upgraded, and people were feeling that they have money in their pocket. That is the bottom line.

You can build a palace like the President of Romania, Nicolae Ceaușescu. He built magnificent things in brick and mortar, but the country was suffering. In Romania, I can understand because the man was building palaces. However, here we are trying to improve infrastructure, which should translate to a growing economy and money in people's pockets. However, brick and mortar constructions that we do and people do not feel money in the pocket, they will not be impressed.

That is why in Ukambani there was somebody who was doing roads there, and when the time came, they told him, 'you can go with it.' For the Standard Gauge Railway (SGR), beyond Nairobi, there are people who are feeling that you can take it away because it is not changing their lives. We must try to learn doing things that would change people's lives.

My first entry point, and I was listening to Sen. Mutula Kilonzo Jnr. very keenly, the first reason all these things we are doing are not translating into viable projects, which can make people live better or have a positive impact on people's lives is that the SGR--- Even the Chinese are amazed. If you talk to them, they will tell you that the railway line should not have cost the amount of money it did. However, if Kenyans are ready and willing to buy this document here for Kshs1,000 when it should cost Kshs20, the guy who is selling is saying, "Oh, this is very good. This is a good customer."

I shop in Nairobi where they keep very nice suits and clothes. Some people who do not know anything about clothes would walk in and ask: "How much does this cost?" When he is shown the most expensive one, he does not care whether it is quality, they say, "I want that one." What they used to do because there were people from a particular country who used to like that shop, they would be told that the least expensive suit is the most expensive, and they would buy.

Therefore, if you go to the Chinese and tell them that we want to build a railway line for Kshs20 billion, and you are prepared to load another Kshs20 billion out of it, they will say: "Okay, you are the government. So, what can we do?" A lot of projects in Kenya have translated in people making money out of this borrowing.

Look at the compensation being paid for land for building infrastructure, including the SGR. The amount of money people were being paid on compensation, I think even real estate in Heaven, cannot be that expensive. There is no part of the world you would buy pieces of land at the rate at which they are being bought here. So, it makes life very difficult. It makes borrowing in the end very expensive because you are building a structure that you will never make money out of.

Finally, there is the question of waste. Kenyans like waste when you translate it into good things around their offices. I was told at one time by some developers that when they want to build anything, they would train one person to be doing everything in terms of driving the truck, which is doing the repairs, being able to erect what was required and write a report about it.

Sometimes you may find the way people work here is that you may have one labourer doing a job, but he has about four supervisors at the same time. In those types of circumstances, you cannot make any returns.

Mr. Temporary Speaker, Sir, what am I trying to say? This country is bleeding because of its leaders. We are in these economic circumstances because of our leaders. I include myself honestly; I do not want to remove myself from it.

If China, where the pandemic started, is still registering positive economic growth, they went down, but never went below zero. Kenya has not been hit the way China was hit. Comparatively, we have not been hit hard as countries in the North or the West. Therefore, there is no excuse why revenue should fall and why we should be having this kind of forecast in this report.

Mr. Temporary Speaker, Sir, I want to say this with all humility. Governments were supposed to run in a particular way. That is why in the Westminster Model, when Blair and Gordon Brown could not work together, one had to give way. When both did not quite do what they should do and went to the electorate, they were both chased away.

It is just like the story of my friends, Dr. Mukhisa Kituyi and Hon. Musikari Kombo. They fought so hard against each other and were very good people, but when they went to the electorate, they were all removed. The Government is supposed to function in a certain fashion, especially when you are in this kind of dire circumstances.

If those who went to Kasarani, took the Bible, and said this is where they were taking Kenya cannot read from the same script, then how can the Senator for Kiambu help resolve the problems? Today, when people were sitting in the Cabinet, the Senator for Kiambu was not there. However, the people upon which responsibility and mandate were given to run the affairs of this country and made certain deliberate statements about there being only two politicians in the Cabinet, in circumstances like this one---

Mr. Temporary Speaker, Sir, conventions tie people together or give people ways of solving a problem. In the United States, when Spiro Agnew became an embarrassment to President Nixon, Agnew had to go. He had to go not because the Constitution said it, but because they had promised that country the kind of governance they deserved. When Nixon also misbehaved, he did not wait for impeachment. He went simply.

The starting point for me is that even for the sake of this country, this Government called Jubilee is letting the country down. You are letting the country down. The promises that they made eight years ago, we are now looking at this. We were supposed

to be a very innovative kind of country. I should not even be carrying a piece of paper like this because of the promises you made. This book should not be here because of the promises that you made.

The starting point is that our governance has gone south. So long as it is going south, nothing can be repaired adequately in time for us to have a proper legacy for this country.

Mr. Temporary Speaker, Sir, last week on the Floor of this House, I said that one of the richest countries and still is, is the Democratic Republic of the Congo (DRC). You are a very good economic commentator, and I want the Chair to listen to this. Mobutu knew how to psyche the country, but he also knew side-sit on the largesse of that country called Zaire, the richest country in the world. When he went back to his rural home, there would be long lines of people being given goodies. That kind of government is antiquated.

I was ashamed when I was in a delegation to Dubai recently and somebody very high up in that government - and Sen. Mutula Kilonzo Jnr. was there - told us that he was in this country, Kenya, in 1982. He said that at that time, Kenya looked like a paradise for them. He was here for holiday. When he was thinking of going back to Dubai, it was like going back into the wilderness. He says anytime he comes to Kenya he feels like crying. How has it happened that their country in a desert has come with all that and now we have a delegation from Kenya trying to marvel at what they have done?

He said, "The way you are now, I was exactly in that position when I was in Kenya in 1982." He continued to come back to Kenya. The only thing he said about Kenya subsequently, other than the problems that we have, was one time he went to see President Moi and talking to him became very difficult because the only thing he noticed is that he had very big hands. He is smaller than Sen. Mutula Kilonzo Jnr. in size.

Therefore, I want to say that this country of ours is meant for greater things and those greater things are going to come about when we do things the right way. When we want to take a loan, we take the loan in strict compliance with the law and the practices that are required.

It was noted here that the Cabinet Secretary could not find time for the Senate. That means our institutions are not working. If a CS in this budget making process cannot find time to come and have a sitting with the Senate or a *Zoom* meeting, then something is wrong about the authority of our House. This time round, I do not want to blame the Senate because I think we have tried.

However, what it speaks to is that our systems are not working. If a CS can ignore the Senate, then who else can abide by the requirements of the Constitution? We have a role to play. He was being invited because it is the Constitution that says so. It is just like any person being summoned by the court. At the end of the day, if you do not go, there is some kind of punishment. However, punishment from the Senate looks like something some people can live with.

Mr. Temporary Speaker, Sir, the other thing that I have noticed, which probably in another time we must correct, is how the budget process begins. This is because the estimates that are handed over to the National Assembly two months before the presentation of the Budget itself are still Executive-driven. Already, the Budget

documents that are tabled in Parliament are exclusively a product of the Executive. Therefore, you have got to work round it to make sense out of it. The parameters that have been set make it very difficult for Parliament to make an impact on that process. I think that is a topic for another day.

Finally, Mr. Temporary Speaker, Sir, the bottom line of all these things that we are doing, and now that our responsibility is to the counties, I can see my County of Siaya, compared to the last financial year, will get nearly Kshs1.5 billion on top of what they got in the last financial year. There is improvement. There is extra money going to the counties, and the citizenry is looking for services.

I was on a vernacular radio programme recently and they were sort of reprimanding me that I am not loud enough in criticizing my county government for the lack of services or the fraud that is going on in the county. At the end of the day, the citizenry of this country expect services in all the counties. If those services are not delivered, then, the citizens will think we are not doing our work properly.

Therefore, I want to plead with the Executive that the way these budgets are meant to be structured and implemented, is really for purposes of making sure that people get services.

Sen. Mutula Kilonzo Jnr. rightly spoke about what is going to the Judiciary. In order to create an enabling environment for security and business, what you do in the courts is very fundamental. If you go to the commercial departments in our courts, there are a lot of agencies and companies having disputes. If those disputes are not determined efficiently and in the time that makes it possible not to make business losses, then that environment cannot be good for business.

I hope that this very low allocation to the Judiciary will be improved through appropriations that will come after the main Budget. However, if something can be done about it now, I think it is important. I am saying something should be done about it because we do not do appropriations. Appropriations are done in the other House. I think it will be shameful to expect the Judiciary to do the work they are expected to do and have a meagre sum of Kshs17 billion to run the entire court system in the Republic.

Mr. Temporary Speaker, Sir, I support and urge the Chair, whom I really respect, that all these recommendations that we have made will be taken seriously by the National Treasury.

I also want to commend His Excellency the President of the Republic for coming to the realization that we are in very difficult times. Instead of making a mockery of how he has found it necessary to work within the framework of the multiparty democratic system that we have, not within the context of a coalition government, but within the context of Kenya being a multi-party democratic State. The fact that he has found out that it is proper for him to talk to the Wiper leadership, Orange Democratic Movement (ODM) leadership and the Amani National Congress (ANC) leadership and the party and Ford Kenya when the house is burning is a gracious and the patriotic thing to do. Elements within Jubilee Party should also follow suit. We do not want you to fall apart. We want you to enjoy these five years of tenure. We will never move on the other side.

I am happy enough where I am. Coming on the other side is probably dangerous. However, you want every person in the Jubilee Government to enjoy the remaining one-

and-half years, including the Speaker, the Deputy President, the Senator for Manderu and all the elements within Jubilee.

Let me give you a little advice of wisdom, taking over Government is not easy. We have had this experience for a long time. Nonetheless, as you try to do it, do not forget your people. There are elements in Jubilee who are forgetting the people. I liked what Mr. Atwoli said yesterday, that if there was somebody who would have ruled this country by the storm he created, it was Hon. Matiba. The crowds can be misleading.

Sen. Linturi, there was one time a powerful and popular mayor of Kampala went to New York, arrested, charged and served a three-year sentence. I met him in China after he had served the sentence. The day he came back from New York, there was no place on the road for any vehicle and people were walking from Entebbe to Kampala. There was a commentator in BBC who asked one of the guys who were celebrating the comeback of this hero. "Why are you celebrating? As far as we are concerned, this guy is a thief who had been jailed in New York." The guy said, "Yeah, he maybe a thief, but he is our own thief."

In Kenya, we are getting to a situation where being a thief becomes a matter of value. I have never seen a situation where people parade wealth the way we are doing in this country. Where politicians are, it is just exuberance. You will shock the world the way we are behaving. How do we get this money to do the kind of things we are doing?

Read the BPS and see we are broke. People in the broke Government can spend Kshs30 million a day. Even if you go to Bill Gates, he will not give you that kind of money. You have to account for it. This bad manners that is exposing us to the international community and the citizenry is bad.

Mr. Temporary Speaker, Sir, when I was elected to Parliament for the first time, I had no car, bicycle, wheelbarrow, wife or house, but I defeated a sitting Cabinet Minister by walking and talking to the people. In Kenya today, you cannot do that. We are past that kind of situation and we are encouraging it. *Yule Mtanzania alisema, tumechukua akili zetu tumeweka kwa mfuko na akili ndogo inatawala akili kubwa.* This is what is happening in this country. If we can shout, but the country will go down as we celebrate our poverty and be in the league of nations going down. When vexes come, they go elsewhere, but not here because people are scared.

The Temporary Speaker (Sen. (Dr.) Mwaura): Asante sana, kwa umahiri na ushupavu ambao umezungemza nao Sen. Orenge, kiongozi wa Wachache. Umetukumbusha mambo ya kule Gbadolite Mobutu Sese Seko. Kuna hekima nyingi zatokea hapa katika Ukumbi huu wa majidiliano na malumbano lakini uamuzi ndio wa maana hususan, tukiangazia mirengo ya kisiasa na pia matazamio ya waka kesho. Hapo ndio kuna kasheshe kidogo kwa sababu sisi kama viongozi tumependekeza wajibu wetu wa kufanya maamuzi yaliyo bora kwa nchi yetu.

Aliyekuwa Mwenyekiti wa Kamati ya Fedha na Bajeti, sijui kama ni Waziri Butu wa Hazina, karibu Sen. (Eng) Mahamud. Ulifukuzwa na mimi nikafukuzwa kwa mtawalia. Una nafasi ya kuzungumza.

Sen. (Eng.) Mahamud: Thank you, Mr. Temporary Speaker, Sir, for giving me the chance to contribute to this report of the Committee on Finance and Budget on the BPS, 2021. The BPS as usual contains a lot of policy proposals, including expenditure

and revenue raising measures. The BPS dissects the whole economy of the country and gives an overview of what is happening in the economy and what is expected to happen.

This year's BPS comes against the backdrop of subdued revenue performance and also poor performance of our economy in terms of recovery. This can be attributed to the crisis we have had along with the other countries during the COVID-19 pandemic that has severed our economy. Nobody knows when the COVID-19 crisis will go away. In fact, it has exacerbated serious challenges that this country must face in terms of revenue raising and expenditures and more so debt sustainability.

The report says that the economy has grown by 0.6 per cent in 2020, then it quickly says that the 2021 economic growth is expected to be seven per cent. This looks very unrealistic in the circumstances we are in today where the performance is poor. We still have the COVID-19 pandemic and the debt crisis on our neck, but still talking about a seven per cent growth.

According to Section 25 of the PFM Act, Parliament is supposed to consider the BPS as submitted by the National Treasury and submit a report to the National Treasury of their recommendations for inclusion in the final BPS and, finally, in the preparation of the Division of Revenue Act (DORA) and County Allocation of Revenue Act (CARA).

For the time I have been in this in Parliament because I was in the National Assembly in the last two Parliaments, I cannot find a situation where the National Treasury has incorporated the report of Parliament in its final report of the BPS. It seems like a ritual, we make the recommendations, highlight the report using flowery language and nice economic words. Year in, year out, it is the same and it is reported to them, but nothing takes place. The relevance that we have as the Senate or in the National Assembly is when it comes to the issues of DORA and CARA. It is only at that time that the figures are subjected to discussion by Parliament. Then you have protracted discussions between ourselves, the National Treasury and other arms of Government.

As has been said before me, going forward, the National Assembly and the Senate must find a way of working together. This is so that a joint report of Parliament, as envisaged under Section 25(7) of the Public Finance Management Act, be submitted to the National Treasury and be defended as Parliament jointly. The disjoint between our reports and no acceptance by the National Treasury is because we are a divided House. Therefore, the National Treasury will take whatever is easier before them.

Mr. Temporary Speaker, Sir, the Division of Revenue Act (DoRA) or County Allocation of Revenue Act (CARA), because it is appended to the report, is a very important function of Parliament, more so of the Senate. We remember very well that in the last Budget Policy Statement (BPS) and the Division of Revenue Bill between the discussions of budget, we had protracted discussions in this House in as far as DoRA is concerned. Before we went to the DoRA, we came through the formula which, of course, is a precursor every five years for DoRA.

I must congratulate ourselves, as the Senate, for having stood firm during that time and actually made a difference. For the first time, this House took a view that is nationalistic. We managed to come up with something which was good for this country.

Mr. Temporary Speaker, Sir, it is at the end that the Executive came and realized that there was no way forward. A promise was made that we were going to get Kshs370

billion this year. The Kshs370 billion now has come, but in a very interesting form. Hitherto, according to the Constitution also, counties will get equitable share and conditional grants from the national Government's revenue share. It is actually in the Constitution.

Three conditional grants that have been there in the successive years is the Fuel Levy Fund, Road Levy Fund, Level 5 hospitals, village polytechnic and user foregone is the fifth one. Those have now been converted into equitable share. That is how we got Kshs370 billion. In fact, equitable share remains at Kshs316.5 billion, and it is to all. No additional money was given. It is only conditional grants that have been converted.

Mr. Temporary Speaker, Sir, on the conditional grants, we expected that there was policy guiding it. There was a reason the Level 5 hospitals were funded in the manner they were. They were not in all the counties. They are in about 11 counties now. The other counties do not get it. That money has now been distributed to everybody. The people who used to benefit on their own will now have to look for other monies and fund it.

On the village polytechnic, the Kshs2 billion was for everybody. That has no problem. The user foregone of Kshs900 million is for everybody, and there is no problem. When it comes to the Road Maintenance Levy, the policy in the law that is in place in terms of road maintenance has been there even before the current Constitution of Kenya 2010 came into effect.

Mr. Temporary Speaker, Sir, there was a reason we put in place the Road Maintenance Levy and tax fuel users, so that our roads are maintained. The fuel user levy is governed by the Kenya Roads Board (KRB) Act. The successive legislations, which have been made for the road authorities, apportion certain percentage to various authorities such as the Kenya Rural Roads Authority (KeRRA), the Kenya National Highways Authority (KeNHA) and the Kenya Urban Roads Authority (KURA).

The 50 per cent as per the current law, which has been enacted mischievously, because the Kenya Roads Bill that was mediated with no agreement has been accepted to be now law. In that one, some percentage was set for the counties.

Mr. Temporary Speaker, Sir, this money is utilized in an annual investment programme, which is submitted by the authorities. Counties are required also to submit to the KRB, so that it is properly planned and audited. This money is going to be equitable share. It will get lost. In fact, counties will wish that was so. This is because the Kshs9.3 billion will now be divided equally among counties. That will not share its roads. It can be used for buildings or buying cars. We have lost a whole policy in the legal framework of fuel levy.

Mr. Temporary Speaker, Sir, I do not see the sense going forward for Parliament to approve that. Parliament, in totality, must reject because if Kshs9.3 billion is taken out of the about Kshs350 billion, what we need to do is to get the extra money as promised by the Executive.

The other serious crisis that is bedeviling this country is the debt issue. We were told during the COVID-19 crisis that Kenya will borrow some unimaginable figures per day. Later, we heard that even the COVID-19 monies that were received and budgeted for were all stolen. We hear what is called "COVID billionaires".

Mr. Temporary Speaker, Sir, the debt crisis where we are is untenable. It is not something that is sustainable. If it was sustainable, then we could not be asking for debt rescheduling, which we asked for and were granted by some creditors. Measures of controlling debt must be put in place. The idea of just coming with a figure of Kshs9 trillion or Kshs12 trillion and asking Parliament, if at all Parliament is requested, is no longer sustainable. There must be a way that we can deal with this.

Of course, we have infrastructure and big programmes, but the programmes must be things that we can manage ourselves. There are credits from the International Development Association (IDA), multilateral donors, the European Union (EU) and the rest.

Mr. Temporary Speaker, Sir, this country has been living on that, but bilateral loans are very expensive. In fact, they mature before your projects are over. There are China and Export-Import (EXIM) Bank funds, which are funding our Standard Gauge Railway (SGR). I think they are all already due in less than I do not know how many years because the grace period is very short. Debt sustainability is something which Parliament must put its feet down, so that it is no longer that way.

The issue in Kenya is not revenue. Yes, we have subdued revenue performance, but expenditure is the problem. Today, our revenue is estimated in the coming year at about Kshs2 trillion. Our expenditure is at Kshs3 trillion. We have a lot of very strong appetite for expenditure. Unless the Government curtails expenditure, we will not see the light at the end of the day.

Mr. Temporary Speaker, Sir, one Member has mentioned about the governance issue in the country. Parliament has lost its role in what it is supposed to be overseeing. Parliament has become part of the Executive. Parliament has become an appendix of the Executive. In fact, we only do what the Executive wants us to do. There is legislation, but I must say that the Twelfth Parliament has failed in its oversight duties.

I heard earlier on blames about the Jubilee Government not functioning. The Government is now a joint Government, as it seems. Everybody is in the Government and defending it, and nobody is criticizing it. When we criticize the Government, we criticize individuals. The Government is not made of individuals, but institutions.

Mr. Temporary Speaker, Sir, if the institutions do not function, the Government does not function. The functionality of the Government must also be audited and checked by Parliament, which it is not doing. In fact, in this House, we must be a little bit honest to ourselves that we are failing on the duties we are supposed to do.

The BPS is here. Of course, we will pass our report next week. It is usually a ritual. However, I hope when it comes to our DoRA, we will stand firm that there is real equitable share and not some clever way of bringing figures of Kshs370 billion, but trying to misallocate funds. The issue of misallocating the Road Maintenance Levy Fund is criminal. It is not right to tax our fuel users and come and use the money for something else. These monies should not be put in totality to counties the way they are put it.

Mr. Temporary Speaker, Sir, with those many marks, I support the report of the Committee. There is nothing else they can do. We will always have lamentations. The report will go to the National Treasury, and they will include and exclude what is relevant. However, going forward, Parliament must work on a way that we can have a

joint report on this. Let it be on notice that coming to the Division of Revenue Act (DORA), we will still demand the promise that we got from the Executive that equitable share will be Kshs370 billion, excluding the Fuel Levy of Kshs9 billion.

I support.

The Temporary Speaker (Sen. (Dr.) Mwaura): Asante sana aliyekuwa Mwenyekiti, Sen. (Eng.) Mahamud. Sasa hivi nitampa nafasi, Sen. Were.

Ninaomba kwamba wale ambao watazungumza, Sen. Were. Na Sen. Wambua, msitumie muda mwingi sana, ndiposa kila mmoja wenu apate kuzungumza.

Sen. Were: Thank you, Mr. Temporary Speaker, Sir. I congratulate you for maintaining the Swahili Language in your sessions. I have read the Budget Policy Statement (BPS), and it has indicated that there was a 0.6 per cent economic growth in 2020, down from 5.4 per cent in 2019, mainly because of the COVID-19 pandemic. It has also said that revenue dropped by 12.9 per cent, compared to a growth of 17.1 per cent in December, 2019. This is also explained by the COVID-19 pandemic which contributed to this miserable performance.

Going through the statement, however, there is very little support in terms of policy to Small and Medium Enterprises (SMEs) that form 80 per cent of the economy, provide 80 per cent of the jobs in the country, and were the most affected by COVID-19. It, therefore, begs the question whether the drafters of this policy were really serious about growing the economy and working hard to bring SMEs into the tax bracket. There is very little support.

The same policy statement goes ahead to put the leased medical equipment as a conditional grant to counties, or a specific amount of money in support of counties in addition to the Kshs370 billion equitable share. You will remember that in this House, we had issues with this Medical Equipment Scheme, infamously known as MES.

The issues that we raised in our various reports here have not been taken into consideration. The best that should have happened in terms of policy is that we retain MES, just to provide maintenance or operational support to our county health facilities, and not to buy new equipment.

In various reports here, we got information that certain equipment has never been used by counties for various reasons like the set-up of infrastructure or power. For us to give more money to this scheme, which we established that is a conduit for corruption, instead of just providing maintenance and operational funds for this scheme, is a slap on the face of this House, including the National Assembly.

Mr. Temporary Speaker, Sir, the policy statement also goes ahead to say that they have removed conditional grants, and we now have unconditional grants under the equitable share of Kshs370 billion. However, conditional grants were very important, because they provided some ring-fencing of certain funds, especially funds to the health sector that were basically available for corruption or misappropriation. There used to be conditional grants to village polytechnics and to many other issues. It has not told us that functions that those the conditional grants that were given to were achieved and, therefore, not necessary.

Mr. Temporary Speaker, Sir, when we talked about increasing of funds to counties in our revenue allocation formula, we wanted the reduction of the 85 per cent

that remains at the national level to be reduced to 65 per cent, by increasing the percentage to counties to 35 per cent. It was not to retain the 85 per cent at the national level and instead take conditional grants into equitable share.

I found this to be mischievous. Those of us who said that we want more funds to the counties have sort of been played. It is important that we reduce the amount of money that remains at the national level, mainly because most of the key functions that take up a huge amount of money in the budget like health and agriculture are devolved. We cannot continue to have money meant for those devolved functions retained at the national level.

Our fight to have funds follow functions, which is also the principle that was followed by the Commission on Revenue Allocation (CRA) last year and this year will not suffice if most of the money remains at the national level. Be that as it may, that the conditional grants are no longer there and all the money is now under equitable share, it calls upon the oversight houses, the county assemblies, who are our primary oversight givers, and Parliament, to be more active in our oversight role.

This will make sure that we hold our counties accountable and make sure that the monies are spent appropriately according to their budgets. Again, we have said that they should stop being wish lists, but should continue to be realistic budgets that are based on what has been given to the counties for the last three years. Our oversight role needs to be increased in the coming year.

Finally, the debt management policy that has been outlined in the BPS has left out a few issues, for example, our public debt management policy. It has not been outlined how we move forward from where we have come from. All these debts that we accumulated, the Eurobond and other forms of external debt, how are we managing them, so that we do not repeat what was done before and how we got ourselves in this mess?

Mr. Temporary Speaker, Sir, I want to inform this House that the party Amani National Congress (ANC), through Hon. Bunyasi, has introduced a Bill in the National Assembly called the Public Debt Management Authority Bill. I urge Members, that when that Bill comes to this House, hopefully before the end of this year, we support it. It will help keep in check the issues of public debt.

I also want to congratulate the seven bearded sisters that voted against the increase of the debt ceiling last year. I would like to mention that I debated against that increase. We were vindicated, because debt has choked this country, and the Government is right now at a loss on what exactly it needs to do based on this BPS on a medium term debt management strategy. That is not properly and convincingly outlined.

Thank you. I support.

The Temporary Speaker (Sen. (Dr.) Mwaura): Asante sana kwa kujieleza kwa ufasaha. Umeweza kundeleza falfasa za chama chako kuhusu uchumi bora. Lakini wacha nikukumbushe kwamba kinara wa chama chako aliwahi kuwa Waziri wa Fedha wakati mmoja. Sitaki kutaja mwengine, lakini uchumi wetu wa Kshs100 bilioni hauwezi ukakithi mahitaji ya *wish list*, kwa sababu sasa hivi tunaendelea kutokomea. Huo ni ukweli.

Sen. Kibiru, tafadhali njoo hapa tuzungumze kudogo.

Kuna Maseneta watatu waliobaki. Tafadhali, ninaomba mzungumze kwa dakika tano ama sita.

Sen. Halake: Thank Mr. Temporary Speaker, Sir, I rise to support the report. While I congratulate the Committee for a job fairly well done and quite good recommendations, I have observed that this Budget, like the one preceding it, is not a people-facing budget.

I have not seen much by way of highlights to the social protection side, the Universal Health Coverage (UHC) and tax relief to the people that have been battered by the COVID-19 pandemic. As I stand here looking at this budget that is basically for paying debt, I am saddened and wondering how Kenyans will even eat in the next 12 months.

It is against this background that, for instance, I look at the revenue. Revenue collection including the appropriation in aid projected to increase by 6.9 percent to the Kshs2 trillion in the Financial Year 2021/2022 is underpinned by tax policy reforms.

These tax policy reforms again go back to punish the people because they are going to stagnate the economy as well. The more taxes that are piled on us and on the Small and Medium enterprises (SMEs) and on everybody else, the more the economy will suffer. The more the economy suffers then the increase we think we will get out of the taxation is going to be defeated. It is going to be a chicken and egg affair.

I do not know if the Government realizes this is perhaps the last of the Jubilee Governments budget. I do not know if next year we will be able to do another budget. If the legacy budget - which is the ninth one from the 2013 to date- is such, then the future looks very bleak.

Just looking at the tax policy measures to address the shortfalls going forward, the Tax (Amendment) Bill and the Finance Bill Act, 2020 put back taxation on renewable energy and took away taxation relief that was given to the people. All this is just taking us back and is not going to help us. This budget was designed primarily to pursue tax reforms for paying debt. It should have just been called "Debt Repayment Policy Statement" not necessarily the BPS.

Anything that has to be people-facing, for example, manufacturing and other things that are going to provide employment for the youth and spur economic growth are absent if not just mentioned in passing.

Look at the expenditure increase of 8.9 percent to Kshs35 trillion from the last year. Recurrent budget is the highest of that expenditure. Development budget is 23 percent while recurrent budget is 76 percent. How on earth out of this budget will we spur economic growth that is going to give us anything?

It is a very sad situation looking at this budget. I did not see the Committee on Finance and Budget give recommendations on putting in place things such things as tax measures that would help to spur the economy, enhance the debt collection programme, higher taxation on borrowing, economic recovery and other things which is basically looking at widening the tax base. It is not going to help us. It is just going to make the situation worse.

I do not want to belabor the issue of public debt because everybody has talked very extensively about it. I know the CS for National Treasury and Planning has told us that he is doing fiscal consolidation. That is again, looking at the wrong parameters, it is

not consolidating the right things. There are no Public Private Partnerships (PPPs) that are being looked at instead of having--- That remains a concern.

Reduction of public wage bill has not been looked at. Yes, many people are going to be retiring this year, but we need more in terms of reduction of public wage bill. What country are we running if the recurrent expenditure is 76 percent going to 80 percent?

Mr. Temporary Speaker, Sir, we have been told the debt will decline by 6.2 percent to Kshs937 billion from the public debt requirement. However, looking at the mix 37 percent is foreign debt while 63 percent is domestic debt. It is crowding out the private sector and is going to undermine the economic growth of the country because the banks will just give to the Government securities that give better returns on the investment.

How do we do commercial borrowing for recurrent expenditure of 76 percent? If we borrow commercially for investment in development expenditure that has a higher return on our investment more than the charged market rate, then it makes sense. I have not seen any such initiative for the economic growth of the country.

As much as it is a good thing to have a higher domestic borrowing because of the external shocks, our economy may stagnate. That means that the employment rate of our youth and our social protection will collapse and that is something scary.

Mr. Temporary Speaker, Sir, as I finish, debt sustainability is a big deal. Perhaps before the term of this Twelfth Parliament ends, an increase in the debt ceilings will come to this House. How is this House going to behave? How is this House going to vote? I do not want to guess, but my guess is as good as yours. What we are seeing now---

The Temporary Speaker (Sen. Mwaura): Samahani, Sen. Halake. Unamaanisha nini kwa sababu ni kama unatathmini jinsi tutapiga kura?

Sen. Halake: Mr. Temporary Speaker, Sir, I know your guess is right. That is all I was trying to say.

The Temporary Speaker (Sen. Mwaura): Unaweza kuendelea.

Sen. Halake: Mr. Temporary Speaker, Sir, the debt that is being mentioned here is not a true reflection because it does not include debts for counties, other Government agencies and parastatals. Sen. Mutula Kilonzo Jnr. mentioned about the debt register. That is the only thing that will show a true reflection of what our debt portfolio looks like.

It seems the figure is out of hand because sometimes we are told it is Kshs7.6 trillion and sometimes Kshs7.4 trillion. It is only after seeing that debt register that we will know whether or not we have passed the budget ceiling. I have a feeling that if that is added, then we are in a danger zone.

Sen. Were talked about the agency that is being set up. That is the right direction, but it is not an answer. We need to start focusing on completing existing projects and perhaps cut down on new projects. This is because projects seem to be drivers of corruption because of project implementation. Does it mean that we make budgets for corruption to take place? I have not seen any corruption mitigation measures in this BPS. That is also a scary situation.

I am happy with the increase in allocation to counties in terms of horizontal revenue share. We will have Kshs409 billion for the counties. However, that may not be sustainable if the economy collapses and the tranches that are supposed to be given become harder to raise.

Mr. Temporary Speaker, Sir, I have very many notes. As you can see, I read 200 pages and printed them, but because of time, I will rest my case. For now, I support.

I thank you.

The Temporary Speaker (Sen. Mwaura): Asante sana, Sen. Halake, kwa kuzungumza kwa weledi kuhusu *development corruption* ambayo inaitwa maendeleo fisadi ambayo yameboba sana. Watu wanajilimbikizia mali kupitia miradi ya miundo mbinu au miundo msingi.

Sasa hivi nitampa nafasi Seneta wa Kitui, Sen. Wambua. Nilikuwa kule wakaniambia wewe ndiye Mbunge wa kwao. Kwa hivyo, una nafasi.

Sen. Wambua: Mr. Temporary Speaker, Sir, I do not have a lot of time to say all the things that I would have wanted to say. I will try to summarize my contribution to fit into the time that you have requested.

First of all, I am in support of the Committee's report on the BPS, but I want to put some record straight before I make my contribution.

The first record that I want to put straight is just a matter of English. I listened to the Chairperson of the Committee on Finance and Budget, Sen. Kibiru, saying that the tabling of this report is something that happens all the time and it is done every other year. Just for the record because this is a House of record, it is done yearly; it is not done every other year. If it is every other year, then we are jumping one year and doing it the other year. Just for the record because that has been captured in the HANSARD.

The Temporary Speaker (Sen. (Dr.) Mwaura): Asante sana kwa kurekebisha jambo hilo. Nitajua wewe ni mhariri wa kutajika.

Sen. Wambua: Thank you, Mr. Temporary Speaker, Sir.

Straight to my contribution. I do agree with the sentiments expressed by colleagues that perhaps we, as sectoral committees of the Senate and of Parliament, may need more time to engage with the BPS.

The speed at which we are supposed to look at this document and make input into it, we should change the direction that the final budget document should take. It is a very hurried process. Perhaps there will be need to amend whatever sections of the Public Finance Management Act (PFM) to ensure that Parliament, both the National Assembly and the Senate, get more time to engage with this document.

I will mention two or three issues on the BPS. I sit in the Committee on Roads and Transportation. I know that regarding the Roads Maintenance Levy Fund (RMLF), there is a proposal in the budget statement that the Fund moves to counties as part of shareable revenue to counties. That will be a serious mistake if it is allowed to happen. Why? That fund is anchored in law. It is not just something that somebody can wake up and decide what to do with that fund. Those are public funds collected from fuel levy; funds that are supposed to be directed to the construction and maintenance of roads across the country.

You cannot just wake up because you have shifted policy and say, “Now, all this money goes to shareable revenue for counties and now governors can budget for this money as they please.” The question will be: Where shall we get the money to maintain our roads in this country?

Mr. Temporary Speaker, Sir, unless there is a substantive amendment of the relevant laws governing the management of the RMLF, that suggestion and proposal should not be entertained.

There is another issue and I said I sit in the Committee on Roads and Transportation that deals with infrastructure. For the longest time - and Sen. Mutula Kilonzo Jnr., I am very sure will have something to say about this at some point - five counties in this country have been given a special grant to construct county headquarters. These counties are Tharaka Nithi, Isiolo where Sen. Halake comes from, Lamu, Nyandarua and Tana River.

Year-in, year-out, there are budgetary allocations for the construction of these headquarters and there are no reports as to how far they have gone with the construction, how much money has been expended, how much work has been done or how much work is remaining. I think there will be need for full disclosure on this item because it is even appearing in the BPS for this year. It is important for us to know where this money goes or how far we have gone with construction of these headquarters. It is not an open-ended grant. We cannot be on this grant forever.

Thirdly, we will need full disclosure on the Standard Gauge Railway (SGR). I will give the reason for this request. Two years ago, I had an opportunity to visit Colombo in Sri Lanka with my friend, the late Sen. (Dr.) Kabaka, at a time when the Chinese had invaded the port and taken over it because of non-payment of debt.

At the conference that we attended, there was serious talk about billions of dollars that the Government had borrowed from China for the construction of an international airport. After the project was completed, it was realized that the runway was constructed on the migratory corridor for elephants. Secondly, it was situated in a sanctuary for breeding birds. By implication, there is no international airline or a serious airline operator who would fly their aircraft into that airport. It became a white elephant project.

Mr. Temporary Speaker, Sir, we need to know the thinking behind the SGR in terms of what revenues we are projecting to get from it. Those revenue streams must be anchored on reality. If we are in default, are we willing to disclose that we are already past the repayment period for the SGR? What are the remedies and what is at stake?

We do not want to wake up in the morning one day and find the Chinese have already invaded the Port of Mombasa or some other place. There will be need for Parliament to demand full disclosure on the SGR so that we plan our future knowing where we are going.

In the interest of time, I will stop there. I support the report.

The Temporary Speaker (Sen. (Dr.) Mwaura): Asante sana, Seneta wa Kaunti ya Kitui. Kaunti yake inatoshana na nchi ya Rwanda.

Sen. (Eng.) Hargura, ni zamu yako sasa.

Sen. (Eng.) Hargura: Thank you, Mr. Temporary Speaker, Sir. I stand to support the report of BPS by the Chairperson of the Committee on Finance and Budget.

Just to pick up from where Sen. Wambua left, I heard this week that the SGR is not even capable of evacuating the cargo from the Port of Mombasa. That is what was in the news recently. So, we are running into problems after we have disenfranchised the road transporters and now we cannot swallow what we have chewed. I think it is will be a problem.

Mr. Temporary Speaker, Sir, in this kind of situation, the BPS would have been an austerity measure budget where we should be cutting down on our expenditure and living within our means. Unfortunately, it is a case of somebody who is stuck in a hole and cannot come out. The solution he or she is seeing is to dig the hole further. That is what we are doing.

Our debt repayment is at about Kshs1 trillion per year. However, when we increase our budget to Kshs3 trillion I am worried because the President said that 30 per cent of the Kenyan budget goes to corruption. So, what are we doing? When we increase the budget, we are just opening up the ceiling for corruption and nothing else.

That said, we need to look at what budget we are coming up with and we have to make sure it is one that we can sustain. Our revenue is going down because we have been under collecting. When you under collect, then you should scale down your budget. However, we wait and then go and do supplementary budgets before the end of the year when we know we cannot collect enough and we cannot borrow enough.

Mr. Temporary Speaker, Sir, in the interest of time, I would like to stress one thing as a Member of the Committee on Roads and Transportation that road maintenance in this country has a history. In 1992, the World Bank Road Maintenance Initiative and the Government of Kenya looked at the condition of roads in the country. There was construction, but there was deterioration and no maintenance policy.

It was agreed that we had to have a maintenance policy and had to come up with a fund to support the maintenance aspect. We were not to borrow, but we had to raise the funds ourselves. In 1993, the Roads Maintenance Levy Fund Act was passed. That is how it came into law that per litre of fuel, you had to be charged a particular amount of money which goes directly to road maintenance.

In 1999, a framework was created for the management of that Fund. That is why the Kenya Roads Board (KRB) was created. The KRB created authorities and different levels of roads. In the Act, it was stated clearly that because funds follow functions and there are roads being maintained by counties, then a particular amount of that money needed to go to counties. We suggested 15 per cent and that is what the National Treasury has instructed the KRB to give to counties as conditional grant. That is money that is sent by the KRB to the National Treasury for onward transmission to counties. That is very specific.

We even tried to put that in the Kenya Roads Bill which could not see the light of day. It failed at mediation between the National Assembly and the Senate because of issues on those percentages. I hope it will be revived so that we can have it in an Act that 15 per cent goes to counties. So, it is clearly conditional. The issue of now trying to make it unconditional is against the law. What are we relying on? What is this policy which over rides an Act of Parliament? Somebody has to amend the Roads Maintenance Levy Fund Act that created the KRB before this can be done. I think it is illegal and whoever is

proposing this is not thinking thorough and needs to be stopped. We will address it in the Division of Revenue Bill.

Lastly, the roads sector needs to be very realistic, when they give their revenue requirement of Kshs400 billion and they get Kshs200 billion. They should know that is what is available and plan according to what is there.

They should concentrate on completing the started projects, specifically the Low Volume Sealed Roads 10,000 (LVSRs) Programme. This was a Government of Kenya project which was touted very much as one of the Jubilee flagships. Since it is a GoK funded Programme, it has stalled throughout the country. They should concentrate on completing those projects and stop starting new ones so that we can secure what we have already invested. Otherwise, that is money already lost.

I support and I hope our views will be taken into account.

The Temporary Speaker (Sen. (Dr.) Mwaura): Asante sana, Sen. (Eng.) Hargura. Wakati mwingine tunapozungumza hapa Bungeni, tuna mawaidha mazuri lakini kwa kweli, sijui kama yanafuatiliwa. Hata hivyo, jukumu letu ni kuwasilisha maoni ya wananchi kwa manufaa ya nchi.

Sasa hivi ninamwita Mwenyekiti ajibu.

Sen. Kibiru: Thank you, Mr. Temporary Speaker, Sir. I thank fellow Senators for the contribution they have made to the report. I thank Sen. Wambua who is a journalist by profession. Maybe I should have said that year in, year out, we do this kind of a process.

Every other Senator starting with Sen. Mutula Kilonzo Jnr. all the way to Sen. Cheruiyot, Sen. Orenge and the rest who have spoken here have agreed with our report and recommendations that there is need to increase the time that the Senate and, indeed, Parliament, is given to look at and deliberate the BPS. As a Committee, we will seek an amendment to the PFM Act, so that we increase the days from 14 to 28. .

Mr. Temporary Speaker, Sir, many Senators have agreed that the BPS is a bit ambitious to the extent that Senators like Sen. Halake said that it is not citizen-friendly. This is because it does not address the actual strategies that will be used to put money into people's pockets and food on their tables.

As a Committee, we will look at areas that we can improve by way of bringing Motions and Bills to the Senate, so that we can continuously improve on the way we treat the BPS.

Sen. Cheruiyot said that probably this is one of the very critical debates that the Senate should be taking seriously and spending more time in telling Kenyans how the economy will grow.

In my younger days, I heard the late Prof. Wangari Maathai say politics is so important, especially when it comes to budget, because it is us – by passing some of this taxation – who will determine the price of salt; the basic commodity that we all use in our homes.

Mr. Temporary Speaker, Sir, without repeating much of what has been said, I urge the National Treasury to be more innovative and not to reinvent the wheel. We have two good Sessional Policy Papers that they just need to take and implement.

I am happy they told us that they are enhancing the Public-Private Partnership (PPP), so that it can ease borrowing for infrastructure and other development projects for the Government.

In conclusion, I thank the secretariat. More sincerely, I also thank the Senators who have contributed and request that they vote for the Motion.

Sen. Mutula Kilonzo Jnr.: Have you requested for me to vote?

The Temporary Speaker (Sen. (Dr.) Mwaura): Kuna ombi ungependa kuuliza kwa sababu ya vile ambavyo kuko?

Sen. Kibiru: Okay, Mr. Temporary Speaker, Sir. Other than voting today, pursuant to Standing Order No.61(3), I request that putting of the question be deferred to a later date.

Thank you.

The Temporary Speaker (Sen. (Dr.) Mwaura): Asante. Kwa sababu ya vile kulivyo kwa sababu ya ukosefu wa akidi, hilo swala litazungumziwa kipindi kijacho.

(Putting of the Question on the Motion deferred)

ADJOURNMENT

The Temporary Speaker (Sen. (Dr.) Mwaura): Waheshimiwa Maseneta, sasa hivi ni saa kumi na mbili na nusu, wakati wa kusitisha Kikao cha Seneti. Kwa hivyo, Seneti sasa imeahirishwa hadi Jumanne, tarehe 2 Machi, 2021, saa nane na nusu za mchana.

The Senate rose at 6.30 p.m.