

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 2nd June, 2021

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

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

PRAYER

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM LAMU COUNTY ASSEMBLY

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery, this afternoon, of visiting staff from Lamu County Assembly. The staff are here on a five-day benchmarking visit. The objective of the visit is to provide an opportunity for the officers to engage and learn from their respective counterparts in the Senate.

I request the officers to stand when called out so that they may be acknowledged in the Senate tradition. They are as follows-

(1) Mr. Peter Kuria – Librarian

(2) Mr. Athman Elema Molmulcha – Senior Hansard Reporter

On behalf of the Senate and on my own behalf, I welcome both of them to the Senate and wish them well for the remainder of their stay.

I can see two Members who would like to join me in welcoming the staff from Lamu County.

Sen. (Dr.) Zani, proceed.

Sen. (Dr.) Zani: Thank you, Madam Deputy Speaker. Allow me to join you in welcoming the officers from Lamu County Assembly to the Senate. We are in the second phase of devolution having started this journey in 2013 and there have been many changes both in the county level and in the Senate. So, there is a lot to take in even as we move with the dynamics of ensuring that devolution is well entrenched within counties.

We have had several challenges over time and we have tried to surmount them by bringing various legislation to help ensure counties are well run. We have encouraged

own source revenue because it is a big issue in counties. It is very difficult to attain the development we want without revenue.

Madam Deputy Speaker, as you join us this afternoon, probably, we will be discussing and debating the County Allocation of Revenue Bill. It is a critical Bill because this is the horizontal allocation for revenue to counties. The Senate has stood with counties to ensure revenue is allocated to counties and that the revenue is increased too. Indeed, it has been increased this time to the tune of Kshs53 billion. As the Senate, we are working hard to ensure counties thrive. Without officers in counties playing their role, this becomes difficult.

We hope during this time as you benchmark, you can see how you can enhance various aspects in Lamu County and the coast region, which needs to benefit from devolution.

We wish you well. We are here to answer any question as we meet along the corridors and as we interact with you and as you listen to us this afternoon. Welcome to the Senate of Kenya.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator.

Sen. (Dr.) Langat, proceed.

Sen. (Dr.) Langat: Thank you, Madam Deputy Speaker, for giving me the opportunity to join you in welcoming the officers from Lamu County Assembly.

Lamu County is one of our smallest counties. It is like our baby and we love Lamu County. They are welcome to the Senate. The Senate is their home. This interaction is very healthy because the Senate is the mother and father of devolution. This is where we determine the resources that go to our counties and also do oversight.

As officials of the counties, we encourage them that integrity and transparency and accountability at work is what the Senate wants from them. Often, we encounter challenges because of corruption in our counties. We would like to encourage officers from our counties to be very humane and professional in dealing with county resources.

This is because most of the people working in our counties come from local areas. Integrity and professionalism in whatever they do in the counties goes down as a legacy to be remembered. The same way, whatever wrongs they do, it will not be forgotten because they would have let down their brothers and sisters and the next generations.

As Senators, we should encourage them to support our counties using the little resources we fight for here. Remember we in Team Kenya fought seriously to save especially small counties like Lamu which were to lose a lot of money. Whatever little we give them through the struggles and challenges we face as Senators, they should also do things that touch the lives of hustlers in those particular places and assist them in development.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you Senator. Let us go to the next Order.

PETITIONSTATE OF CORRUPTION, RECRUITMENT, PUBLIC PARTICIPATION,
ACCESS TO INFORMATION AND CIVIC EDUCATION IN KISII COUNTY

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, please take your seats. Sen. Malalah, please take your seat.

(Sen. Malalah sat at his place)

Hon. Senators, I have a petition to present to the Senate concerning the state of corruption, recruitment, public participation, access to information and civic education in Kisii County. I hereby report to the Senate that the petition has been submitted through the Clerk by Reuben Kibekwa Mageuzi, a citizen of the Republic of Kenya.

As you are aware, under Article 119(1) of the Constitution, “Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.”

Hon. Senators, as you are aware, under Article 119(3), the salient issues raised in the said petition are as follows-

(1) THAT there has allegedly been non-compliance with mandatory provisions for the Public Procurement and Asset Disposal Act and corruption in the tendering process in the Kisii County Government.

(2) THAT there has allegedly been irregular recruitment processes whereby personal staff have been recruited without proof of academic and professional qualifications as required by the law guiding the Kisii County Public Service Board and the Kisii County Assembly Service Board.

(3) THAT the County Government has allegedly failed to deliver civic education and conduct public participation and public policy matters in the county.

(4) THAT the Kisii County Government has allegedly obstructed access to information pursuant to Article 35 of the Constitution of Kenya.

(5) THAT, that there has allegedly been failure to involve the members of the County Economic Budget Forum in decision making as required pursuant to Section 3137 of the Public Finance Management Act, 2012.

The Petitioner, therefore, prays that the Senate investigates the issues raised in the Petition and makes appropriate recommendations thereon.

Hon. Senators, pursuant to Standing Order No.231, I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes.

Sen. Malalah: Thank you, Madam Deputy Speaker. I stand to comment on the Petition that is before us today. The matter raised by the petitioner is not just an issue that is limited to Kisii County.

As the oversight body, we need to be vigilant especially during this last financial year. Most of the governors and specifically the second-term governors engage in a lot of

misappropriation. This is going on in our respective counties. Therefore, this calls for our vigilance. We need to be keen on how our county governments are appropriating funds this financial year.

Madam Deputy Speaker, most of the governors have retreated into cocoons and groups that are fleecing our counties. A case in point is my county of Kakamega, whereby if you look at the companies which have qualified to take up tenders in the county government, you will see a certain definite pattern where some companies are gaining more than others.

Madam Deputy Speaker, in Kakamega County, if you do not know the Procurement Officer, the Chief Officer, the Executive Committee Member or the governor, you cannot get any tender. We have the 30 percent tenders set aside for the women and youth and people living with disabilities that have been given to the same people who have won big tenders in the county.

I was disturbed by a case in my county where there was a tender, which was floated for bush clearing. Each tender cost Kshs4 million. They had 12 tenders for bush clearing. Bush clearing only requires labour and a few equipment like *pangas* and *jembes*. Such tenders should be given to the youth and women of this country so that we can stimulate their capacity to undertake bigger tenders.

Unfortunately, in Kakamega County, those tenders were given to companies which have been doing tenders worth Kshs100 million. This is sad.

I want to inform governors of this Republic that devolution was meant to benefit the local *mwananchi* on the ground. It was also meant to benefit and increase capacity in our counties. It is sad that such contracts, which require only labour are being given to people who already have capacity.

It is incumbent upon this House to ensure that we oversee the issuance of tenders in our counties. We should ensure that the youth who have neither the capacity nor the capital to do big tarmacked roads or to honour tenders worth hundreds of millions of shillings are given opportunity to take up tenders that do not require a lot of mechanization.

Madam Deputy Speaker, lastly, I have said on the Floor of this House that this being the last financial year, we need to guide our respective county assemblies to ensure that they put money in projects that they had initially started.

We have seen county governments starting projects and abandoning them midway. We should ensure that this financial year, we allocate money that is going to complete those projects.

It is sad and I have said on the Floor of this House that since 2013 in Kakamega County, we do not have a single flagship project that has been completed. When you look at the Bukhungu Stadium, it is not complete. The Shamakhokho Level IV Hospital in Shinyalu has not been completed. Nothing is happening in the tea factory in Shinyalu Constituency.

The milk processing firm in Malava Constituency has stalled. Nothing is going on in the Mumias Level IV Hospital and the water project in Khwisero and Butere. The maize plant that was meant to benefit the people of Lugari and Lukuyani has stalled.

We are only remaining with one year to the end of Gov. Oparanya's tenure in Kakamega. I want to ask Gov. Oparanya; as he does his last financial budget to make sure that those projects are completed. The people of Kakamega will ask him questions at the end of his tenure.

Madam Deputy Speaker, we ask all governors, including the Kisii governor who has been petitioned to be accountable. That is my submission and I will continue pressing for things that affect my people.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you Senator. Hon. Senators, I see six people who are interested and I will stick to the 30 minutes. Already six minutes are gone. I want to encourage you to take only four minutes each so that everybody gets a chance. Four minutes, Senator Cherargei.

Sen. Cherargei: Thank you, Madam Speaker. I thank Mr. Mageuzi for having faith and petitioning the Senate. It is a sad affair in Kisii County Government. What is happening there mirrors what is already happening in various counties.

I agree that this being the last financial year, we should not only be looking at the second-term governors, but even first-term governors are also plundering public resources for their campaigns for their second term.

Madam Deputy Speaker, on the issue of procurement and the state of corruption, we need to get more information. I hope the Committee that this Petition will be referred to will be able to give us those facts.

On the issue of staff, it is very unfortunate and sad that even in Nandi County, we have a similar situation where the Ministry of Health rejected 21 staff that were hired because they were unqualified. It looks like counties are basing their hiring on nepotism and corrupt practices like non-qualification.

Madam Deputy Speaker, we just had a meeting on the issue of the utilization of Covid-19 funds in Nandi. You realize that Kshs4.1 million was never paid to 254 members of staff. These are junior members of staff like drivers, receptionists, watchmen, cleaners and many other people that work within the Nandi County Government and the money released was Kshs244 million and yet Kshs4.1 million which are allowances to the staff has not been paid.

On the issue of the wage bill and the staff recruitment process, we must come up with a way out because as a Senate, we must assist as much as we oversight counties.

There is already an order that 30 percent should not go beyond recurrent expenditure but you find most counties are going beyond the recurrent expenditure. The wage bill supersedes the development expenses.

Madam Deputy Speaker, going into the future, the issue of staff recruitment needs to be looked into because when there is a new governor, he or she comes with their people whom they hire. We have a similar problem in Nandi County.

Finally, on the issue of the County Economic Forum, this is the provision of the law. One or two weeks ago, we impeached the Wajir Governor over non-provision of medical and health services in that county. This County Economic Forum is a serious issue provided under the law.

I do not know why the Kisii Governor, who is a second-term governor and knows this provision, does not meet the County Economic Forum. I hope the Committee will be able to report within 60 days so that the people of Kisii and through the Petitioner, Mr. Mageuzi, can get justice for our people. Thank you, Madam Speaker, for this opportunity.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Wambua you have four minutes.

Sen. Wambua: Madam Deputy Speaker, I thank you for this opportunity. I want to join my colleagues in congratulating the petitioner and hasten to add that issues of corruption are not unique to Kisii County. It would appear that when we devolved functions to the counties, perhaps the greatest function that we devolved was corruption.

Corruption is being perpetrated by county governors almost without exception. I come from Kitui County, which is arguably one of the counties that is topping the charts in terms of corruption perpetrated by the County Government of Kitui. I want to address myself to two issues, the issue of health---

(Loud consultations)

Madam Deputy Speaker, can I seek your protection from the Senators who are consulting loudly?

The Deputy Speaker (Sen. (Prof.) Kamar): Senators, can you consult in low tones so that we can hear the Member on the Floor?

Sen. Wambua: Unfortunately, the two Senators making the loudest consultations have just made their presentations and we listened to them. I wish that they could listen to us as well.

I said that I will address myself to two issues, the issue of health and the issue of tenders to young people. The health situation in Kitui County is in the Intensive Care Unit (ICU). We have a supposedly Level Five hospital that does not function. It has got nothing functioning including the staff.

Madam Deputy Speaker, I have been thinking over this issue. I am thinking of approaching the Senate Committee on Health to begin a conversation on whether it is viable to have the County Government of Kitui sign a deal of transfer on the health function because clearly, the Governor and her officers are unable to manage the health situation in Kitui County.

I have heard Sen. Malalah talk about tenders given to multimillionaires at the expense of young people. I had a case in my county three years ago where a tender for clearance of bushes was given to young people to execute, but the money was paid to contractors and the contractors went away with the money. Three years down the line, the young people who are only demanding Kshs5,000 or Kshs6,000 have not been paid their money.

Madam Deputy Speaker, this corruption is not just about governors who are preparing to leave office in their second term. In fact, it is a lot more pronounced among governors who are trying to accumulate wealth to run for a re-election. I stand on the Floor of this House to say that as we pursue the possibility of reverting the health

function in Kitui County to the National Government, I want to say without blinking an eye that the time has come, that apart from just impeaching governors, they should be taken to court and jailed for theft of county resources.

Madam Deputy Speaker, I support the petition.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Mwaruma. You have four minutes.

Sen. Mwaruma: Asante, Bi. Naibu Spika, kwa kunipa fursa hii kuchangia ardhilhali ya Bw. Mageuzi. Kusema kweli, ufisadi umekithiri katika serikali za ugatuzi. Ninakubaliana na Sen. Wambua aliposema kwamba tuligatua ufisadi; kwamba kati ya yale mambo ambayo tuligatua, kubwa zaidi ilikuwa ufisadi. Ufisadi umekithiri katika serikali za ugatuzi, na ninashukuru kwa sababu wananchi wameanza kuona kuwa sio lazima uangalizi ufanywe na mabunge za kaunti. Wananchi wenyewe wanaweza kuchukua hatua kuhakikisha kwamba uangalizi umefanywa vizuri.

Kusema kweli, katika serikali za ugatuzi, ufisadi umepewa kipaumbele. Fedha zinazoenda kusaidia wananchi haziwafikii na kutumiwa kwa lengo lililokusudiwa. Nakubaliana na wenzangu waliosema kwamba kuna miradi mingi ambayo imeanza katika ugatuzi na haijakamilika kwa sababu ya ufisadi. Katika Kaunti ya Taita Taveta, kuna miradi mingi iliyoanzishwa. Kwa mfano, wakati wa mambo ya COVID-19, kuna *isolation centres* ambazo zilikuwa zinajengwa. Baada ya kupata Ksh153 milioni zikiwa pesa za COVID-19, bado hiyo hospitali haijakamilishwa mpaka leo.

Laini ya kwanza ya uangalizi ni ya wajumbe wa kaunti kwa sababu mara kwa mara kunapotokea ufisadi, wananchi wanaangalia Seneti sana. Ninashukuru kwa hiyo imani wananchi walio nayo kwa Seneti kufanya uangalizi. Lakini uangalizi wa kwanza unatafikana kufanywa na mabunge ya kaunti.

Bi. Naibu Spika, la kusikitisha ni kwamba wajumbe wa serikali za kaunti wamenunuliwa na kuwekwa kwa mfuko na magavana. Sasa hakuna uangalizi wa kutosha unaofanyika katika serikali za ugatuzi. Kwa hivyo, ninawaomba wananchi ambao wako kule mashinani wachukue hatua mikononi mwao, kama hawajaridhika na uangalizi unaoendelea katika mabunge ya kaunti. Inafaa wawasilishe ardhilhali zao kwenye Seneti, na sisi tutaangalia jinsi tutakavyoendelea.

Tutafuatilia kuona vile hii petition itakavyoenda ili ya Bw. Mageuzi apate majibu yake ndani ya siku 60 kwa hiyo ardhilhali na watu wa Kisii wapate afueni kwa hayo maswala yaliyoibuka na Bw. Mageuzi.

Asante, Bi. Naibu Spika, kwa hii nafasi.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Mutula Kilonzo Jnr. you have four minutes.

Sen. Mutula Kilonzo Jnr.: Thank you, Madam Deputy Speaker. I rise to support the Petition and agree with a lot of the sentiments raised by the Senators that it appears as if governors are hoarding information. They cannot release information at county level until members of the public come to the Senate for very little information to be given. I must credit this petitioner for being vigilant.

I saw the same issue when it came to the COVID-19 funds in relation to Makueni County that simple questions asked by the county assembly were not responded to until

the Senate Committee on Health convened a sitting so many days later. It is the same everywhere. It was the same case when the Governor of Nakuru was requested to make Statements about the Petition on the street children who were dumped somewhere in a forest.

Madam Deputy Speaker, this Petition is timely. The Committee that will hear this Petition must make it very clear that the right to access information under Article 35 of the Constitution is not a preserve of information brought to the Senate. That information must be given to the public. In fact, at some point, we should insist that some of this information should be made public even without a request, so that the public does not have to come all the way to Nairobi to get information like the one that is being sought for in Kisii.

It is a disease that is prevalent around the 47 counties, and I hope that we can get a quick resolution to this. A penalty must be prescribed. When we did the Access to Information Act, we put a penalty for refusal to release information.

I support the Petition.

Thank you, Madam Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Wetangula.

Sen. Wetangula: Thank you, Madam Deputy Speaker. I also join colleagues who have supported the gallant citizen from Kisii who has petitioned this House. It is a very unfortunate situation all over the country that governors do not seem to understand or even appreciate the line between public and private property to the extent that governors run counties as if they are personal entities even denying the public information or setting up critical organs that are part and parcel of what would made devolution succeed.

I join the distinguished Senators who have spoken; Sen. Malalah, Sen. Cherargei, Sen. Mutula Kilonzo Jr., and Sen. Wambua in decrying the pervasion of corruption going on in counties. Some cases reach this House and some do not but what is going on out there is disheartening to the spirit of devolution.

Governors treat public finances as if they are their hard-earned monies. They use the monies to go around doing all manner of crazy things, bribing anybody who comes their way to get their way, bullying those who do not agree with them and doing very strange things.

Madam Deputy Speaker, we say here over and over that the institutions of governance in this country must be strengthened. We need to strengthen the Office of the Director of Public Prosecution (ODPP), the Office of the Directorate of Criminal Investigations (DCI), Auditor General and the oversight committees of assemblies to ensure that governors are brought to book. For example, in my county just like Sen. Malalah has been saying, most of the contracts in the county are done by the governors' proxies. Literary, road constructions and any supplies. You will find phony companies all over but they are all proxies of the governor. This is true of everywhere.

You also find like now, when the County Assembly of Bungoma rose to ask serious questions about management of public resources. The governor with utter impunity has denied the release of resources to the County Assembly of Bungoma to make it function. This is a criminal offence for which we are going to cite him and make

sure he is brought to book. The spirit of devolution that Kenyans fought for was not to enrich a few individuals or create demigods in counties. It was to benefit the ordinary citizens of Kenya.

Madam Deputy Speaker, I have gone round my county. Everywhere you go and ask are there any groups of youths in this village that have ever benefited from a contract preserved for youths. There is none. You ask for women and there is none yet by law 30 per cent of all procurements and contracts are supposed to be preserved for women and youth. These are again the same contracts that proxies are doing to enrich a few individuals not only in my county but many other counties as well.

We must, as a House, rise to the occasion and fight the nightmare of corruption that is eating away the fabric of society. This afternoon we are going to debate County Allocation of Revenue Bill (CARB). We are transferring the next financial year Kshs370 billion to counties. This money should not go to counties to make a few fellows comfortable at the expense of everybody else.

Hospitals are not working. There is no clean water for women who run households in this country. The work that is supposed to be done in terms of helping the dispossessed and disadvantaged communities is not being done but you see a few individuals called governors going around. Like I said last time, the obscenities they show including carrying special chairs to funerals to sit on.

Madam Deputy Speaker, this is how obscene some of these governors are. I have seen this with my own eyes. I do not know if Sen. Malalah is still here. In his county, I have witnessed not once, twice nor thrice, a pick-up arriving with a seat that looks like a thrown for a governor to sit on in a funeral. This obscenity must be fought. We salute this gentleman from Kisii for bringing this Petition to this Senate.

Lastly, when Petitions come to this House, you will direct that it be dealt with in 60 days. We rarely get feedbacks on these Petitions within the stipulated time thereby defeating the purpose for which we bring this House. We must have committees that you commit Petitions to, work and bring their reports within the time stipulated under our Standing Orders.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator. Sen. (Dr.) Lang'at, proceed. You have four minutes.

Sen. (Dr.) Lang'at: Thank you, Madam Deputy Speaker, for also giving me this opportunity to join my colleagues in supporting this Petition---

(Sen. Cherargei consulted loudly)

Sen. Cherargei, you are interesting.

Whatever issues that have been raised here are very true. It is not only affecting Kisii County but all over our counties in this country. For example, when we talk about issues to do with procurement. In our counties, procurement is so skewed and very unprofessional activities taking place. If you check what is happening in all of our counties, the procurement rules are not followed by any governor. They influence the procurement officers sometimes. Even when we ask the procurement officers if they are

aware of whatever they are doing, you can hear them say we are following the direction of the boss. This leads to terrible corruption which in turns leads to the syphoning of the county money to individual pockets of some people.

Madam Deputy Speaker, we must fight this menace seriously as the Senate. I support this Petitioner from Kisii. When we get across most of our counties, there are several projects that have stalled. Worst of all are those projects in counties which their founding governors never succeeded to go to their second term. The governors who came in completely ignored those projects yet a lot of money had been injected into them.

If you go to my county in Bomet, there is a massive stadium which was constructed by the first governor. However, up to today when he left, that project which had cost a lot of money to the county has become a white elephant. We must fight these corrupt individuals in our counties that are enriching themselves through public resources.

Madam Deputy Speaker, I want to also mention something on the recruitment process. Some governors are terrible. I would wish to tell Sen. Wetangula that there is a governor from somewhere who has recruited 632 people in the name of public health workers. They were never interviewed and their qualifications were not mentioned. That is your county. They are paid Kshs2000 every month through Mpesa. You cannot even tell if those people are existing or they are ghosts.

These governors are terrible and we must check on them. When we ask them, they say that they are politicians as well. They are not even ashamed. One of them told us that he is a politician and he has to do the irregular activity. We must follow it up. The worst is coming.

Most of the money that we disburse, from here, is consumed through litigation in courts. There are counties that use over Kshs1 billion every month to pay lawyers because of irregular recruitment and creation of positions that are not constitutional. When people petition and take those cases to court, the counties pay a lot of money for the same. I salute the gentleman who brought this Petition and urge the Committee that will take up this matter to handle it seriously for justice to be restored in Kisii County and the other counties.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Member. That concludes the list of the Members who are in the House. We have two Members online. Sen. (Dr.) Musuruve, I will give you three minutes because you came in late and Sen. K. Muthama will have three minutes. Sen. (Dr.) Musuruve is online. Can we hear from Sen. K. Muthama? Thank you. We will have a way of doing that under any other business.

Hon. Senators, pursuant to Standing Order No. 232(1), the Petition is committed to the Standing Committee on Devolution and Intergovernmental Relations for its consideration. In terms of standing order No. 232(2), the Committee is required in not more than 60 calendar days from the time of reading the prayer to respond to the petitioner by way of a report addressed to the petitioner and laid on the Table of the House. Hon. Chairpersons of Committees, it has been raised now and again that you have not been adhering to the 60 days. Please, let us stick to the 60 days.

I thank you.

Next order.

PAPER LAID

REPORT ON THE COUNTY ALLOCATION OF REVENUE BILL (SENATE BILL NO.30 OF 2021)

The Deputy Speaker (Sen. (Prof.) Kamar): Can we hear from Sen. Kibiru?

Sen. Kibiru: Madam Deputy Speaker, I beg to lay the following Paper on the Table of the Senate today, Wednesday, 2nd June, 2021-

Report of the Standing Committee on Finance and Budget on the County Allocation of Revenue Bill Senate Bill No. 30 of 2021.

(Sen. Kibiru laid the Paper on the Table)

The Deputy Speaker (Sen. (Prof.) Kamar): Next Order.

We will hear from Sen. Kibiru again.
Sorry, next Order.

STATEMENTS

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, the statement pursuant to Standing Order No. 47(1) brought by the Senator for Vihiga County has been deferred out of his own personal request.

THIRD WAVE OF COVID-19 AND VACCINE CONCERNS

(Statement deferred)

We will go to the Statement pursuant to Standing Order No. 48(1). The first Statement is by the Senator for Lamu County. He is not here and he is not online.

MARITIME BORDER DISPUTE IN THE INDIAN OCEAN BETWEEN KENYA AND SOMALIA

(Statement deferred)

The second Statement is by Sen. Kang'ata who is also not here and is not online. The same thing affects Statement number three which was from the same Senator.

CANCELLATION OF TENDER FOR SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING OF ERP AND CLAIMS MANAGEMENT SYSTEM

(Statement deferred)

THE USE OF KPA AS COLLATERAL TO M/S CHINA EXIM BANK
IN THE FINANCING OF SGR

(Statement deferred)

The fourth Statement is from the nominated Senator, Sen. Pareno. She is not in the House and she is not yet online.

THE KENGEN WIND POWER PROJECT IN NGONG HILLS

(Statement deferred)

We will go to one special request that was made by the Senator for Kakamega County. It was approved earlier this morning.

INTENDED PRIVATIZATION OF MUMIAS
SUGAR COMPANY LIMITED

Sen. Malalah: Thank you, Madam Deputy Speaker. I rise pursuant to Standing Order No. 481) to seek a Statement from the Committee on agriculture, Livestock and Fisheries on the state of affairs at Mumias Sugar Company Limited and the reported resuscitation measures. In the Statement, the Committee should -

1. address in detail the current state of the company's assets and liabilities while indicating the value of the core and non-core assets and stating which entity undertook such valuation if at all;

2. state the fate of the current receiver manager while providing details on when and by whom the decision to lease out the company was made and tabling correspondence on the said decision to the Capital Market Authority and other regulatory bodies;

3. provide details on the procedure to be followed by the Government in selling its stake in the company and address specifically the bidding process including who the bidders were, when the bidding took place, when the evaluation of submitted tenders was done, what criteria was used to pick the successful tenderer, what were the relevant legal instruments under which the process of leasing was conducted, whether there was public participation in the process, which other companies submitted their bids for the tender and when were they invited to bid;

4. explain the company's revival plan and provide details of the entity deemed to be qualified to take over Mumias Sugar Company Limited while providing the justification;

5. indicate whether the stakeholders were consulted and provide a report of such consultation, if at all, including the creditors and debtors and clarify who will pay the pending debts owed by the company, particularly, debts owed to farmers and workers.

It must be very clear that we, leaders of western region, are not opposed to any investor taking over Mumias Sugar Company Limited because our interest has always been to resuscitate the sugar mill, however, we want accountability. We want the people of western region to know the person who is coming to take over from Mumias Sugar Company Limited. We want information to flow. That is why I have brought this Statement on the Floor of this House, as the representative of the people. This is the right platform for us to engage with any person who wants to take over Mumias Sugar Company Limited.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Wetangula, I will give you a few minutes. We only have 10 minutes. So, I will give you three.

Sen. Wetangula: Thank you, Madam Deputy Speaker. I support the distinguished Senator for Kakamega in this Statement. The Committee on Agriculture, Livestock and Fisheries is chaired by my distinguished friend Sen. Ndwiga of Embu County.

I brought a Statement last year listing very comprehensively the issues we needed to know in the process of privatization or intended privatization of sugar factories. Sen. Ndwiga and his committee have neither informed me of the developments to that Statement nor brought any answer to this House but I believe they will do that although it has taken inordinately long.

In addition to what Sen. Malalah has asked, we want to know from the Committee if the Privatization Commission of Kenya has looked at the issues of Mumias Sugar Company and prepared a report which must be tabled in the Houses of Parliament for debate and approval before any steps are taken.

Secondly, in addition to what Sen. Malalah is asking, what is the fate of the nucleus land of Mumias Sugar Company, the land that belongs to the people who donated it to the Government when Mumias Sugar Company was set up? Will the new investor compensate the citizens of Mumias, Kakamega and Bungoma who were beneficiaries of Mumias Sugar Company when it was working?

Thirdly, on the eve of the General Elections of 2017, President Uhuru Kenyatta gave Kshs2 billion of public resources to Mumias Sugar Company. Who is going to account for that money in the process of handing over the factory to the intended investor? Fourth, apart from not being consulted, how are the outgrower farmers of Mumias going to be managed and relate with the intended investor?

Fifth, is the intended investor going to pay out debts that are owed to the farmers in terms of cane delivered and not paid for? Sixth, there are workers of Mumias Sugar Company who have not received any salaries for months and those who have retired with no benefits because statutory deductions were never paid to the National Social Security Fund (NSSF). Is the intended investor going to foot that bill?

Above all, we want to know from the Chairman of the Committee. I am happy it is Sen. Ndwiga because he exhibited some rare competence when he was Minister of Cooperatives, and I believe he carried that to the Committee. Can he tell the country

whether the Government has now abandoned the policy of dealing with sugar factories as an entity from Nzoia, Mumias, Chemelil, Muhoroni and Sony and is now segmenting and dissecting the factories and dealing with them as individual entities and therefore weakening the opportunity and resolve of our collectivity in fighting for sugar farmers and beneficiaries thereto who number over 10 million in the sugar belt of this country?

Sen. Cherargei: Madam Deputy Speaker, I support the Statement by Sen. Malalah. I think it was early in April when over 800 workers were sent home. As I speak, there are 800 people who used to work for Mumias Sugar Company but were released a few months ago.

On the issue of acreage, we are aware that land was donated as Sen. Wetangula has said. What will the investor do about that? I am a frequent visitor to Mumias and I was there a few weeks ago. When you visit Mumias, you will see people farming maize and grazing their cattle. What happens to the nucleus land? On the issues of bailout, the Committee should tell us what happened to the Kshs2 billion that was given to the company.

Nandi is in the nucleus of Muhoroni, Miwani and Chemelil sugar factories. There was an idea of leasing them. I remember Sen. Malalah, Sen. Wetangula, Sen. Murkomen, Sen. Wambua and I visited Kibos. The farmers had an issue with how the leasing of sugarcane nucleus land was being done without their involvement.

Some of us are not opposed to development across the country. As I speak, the President of the Republic of Kenya is supposed to launch a special Economic Processing Zone (EPZ) in a contested land between Kisumu and Nandi counties. It is shocking that Nandi County was never involved but the President wants to launch an EPZ that will involve the nucleus of Miwani, Muhoroni and Chemelil sugar factories, yet the land issue is yet to be resolved.

These people are not telling us what happens to the leasing and who the investor is. Just like Mumias Sugar Company, tenders have been floated for the nucleus of Miwani, Muhoroni and Chemelil sugar factories. Nandi is part of the 10 million citizens of the sugarbelt but we have not been involved. What happens to assets and liabilities and land that was donated which the National Land Commission (NLC) has said must be reviewed?

Mumias Sugar Company is critical in economic development within western region and Mumias. We hope we will get the answers.

I support.

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, the Statement now stands committed to the Committee on Agriculture, Livestock and Fisheries. We expect the Committee to give us a response within 14 days.

I can see Sen. Ndwiga wants to say something. Are 14 days okay for you, Senator?

Sen. Ndwiga: Madam Deputy Speaker, indeed that is a thorny issue that my Committee will look at expeditiously. We will give you the response within 14 days.

That aside, it is my personal feeling and that of the Committee that we need to have a sugarcane conference in that side. Some of the sugar issues are brushed over by

the Executive and the Ministry of Agriculture, Livestock and Fisheries. The Committee feels that we should facilitate that sugarcane conference so that we discuss all sugar issues.

Members will get to know the focus of the Government, new polices, privatization polices and who is taking over. Even before we get there, we will deal with Mumias Sugar Company as requested by the Senator and give responses to that Statement within 14 days.

The Deputy Speaker (Sen. (Prof.) Kamar): There is a point of order from Sen. Wambua.

PAYMENT OF A ONE-OFF HONORARIUM AND MONTHLY PENSION TO
FORMER COUNCILORS UNDER THE DEFUNCT LOCAL AUTHORITIES

Sen. Wambua: Madam Deputy Speaker, I am rising on a point of order on the issue of Statements.

I made a statement on the Floor of this House more than a month ago on the plight of former councillors. The Chairperson of the Committee on Labour and Social Welfare undertook to deal with that issue within 14 days. The former councillors are now personally approaching Government directly to plead for their case. I rise on this issue because as the Senate, we will miss out on an opportunity to demonstrate duty of care for leaders.

When I spoke to Sen. Sakaja about this issue, I was of the impression that the best way of dealing with this matter was for the Committee to visit selected regions, meet councillors and get a one-on-one feel on the suffering these people have been exposed to. To date, I have not heard anything from the Committee.

I plead with you to direct that this Committee to undertake this matter as a matter of great importance. This is not the way we want to treat our leaders., tomorrow, some of us will be out of leadership. We do not want to be treated in the manner that the former councillors are being treated in this Republic. It is something that the Senate can do and make sure we return some benefit to those who wasted their energy and resources serving Kenyans. Today, they have been reduced to paupers.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator. That is a valid point of order.

Hon. Senators and Chairs of Committees, let me just point out that Standing Order No.48(3)(b) says that within the agreed period, you are even expected to invite the Senator who has asked the question. Please, let us obey our Standing Order. When we commit ourselves to 14 days, let it be 14 days.

(Sen. Cherargei spoke off record)

On the same?

Sen. Cherargei: Yes, Madam Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kamar): We had finished because I had agreed with the Senator.

Sen. Cherargei: Madam Deputy Speaker, I just want to add something.

The Deputy Speaker (Sen. (Prof.) Kamar): Senator, what do you want to add to that?

Sen. Cherargei: Madam Deputy Speaker, there was a Motion then. I think it was in 2018 or thereabouts where the Senator for Laikipia County, Sen. Kinyua, brought the Motion and I am the one who seconded. It was transmitted to the National Treasury and there was some consultation with the National Assembly.

Apart from the statement from Sen. Wambua on the councillors' payment, there was supposed to be regularization to advise us. In fact, I remember the Motion recommended that the Cabinet Secretary (CS), Hon. Rotich, back then but now Hon. Ukur Yatani, was to advise Parliament on how the payments can be done to councillors. I agree that these former councillors should not be left at the mercy of the Executive on whether they need to pay or not.

If we refer to the HANSARD, it was also discussed that this issue must be resolved once and for all. Looking at the Statement, I could also invite, in your direction, that the Committee concerned also looks at the recommendations or resolution of that Motion that was debated in this House.

All of us in leadership might not be here next time. It is important for our welfare and that of former leaders to be looked into. It is not because we want to overburden public funds but to ensure their welfare is taken care of because they have served this country.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you. May I direct that the Chairperson of the Committee on Labour and Social Welfare reports back to us in the next 14 days. In bringing the report, they should include what was earlier resolved so that we get this thing out of the way. I think all Members have been approached by the former councillors wherever you come from. This has been a painful part of their life. We need to resolve this so that they can retire peacefully like everybody else.

Next is Statements pursuant to Standing Order No.51(1)(b). The first statement is from the Chairperson of the standing Committee on Agriculture, Livestock and Fisheries on the activities of the Committee.

ACTIVITIES OF THE COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES

Sen. Ndwiga: Thank you, Madam Deputy Speaker. I rise pursuant to Standing Order No.51(1)(b), to make a statement on the activities of the Standing Committee on Agriculture, Livestock and Fisheries, for a period commencing 9th February to 19th March, 2021.

Madam Deputy Speaker, during the period under review, the Committee held four sittings, considered four Bills, one Petition and one statement. The Committee also held its Work Planning Retreat between 18th and 21st February, 2021.

In respect to Bills, the following were considered:

- (1) The Coffee Bill (Senate Bills No.22 of 2020)
- (2) The Draft Coconut Industry Development Bill
- (3) The Draft Cotton Bill
- (4) The Draft Pyrethrum Bill

On the Coffee Bill (Senate Bills No.22 of 2020), the Bill sponsored by the Committee was published on 23rd October, 2020 and thereafter forwarded to the National Assembly for concurrence. The principal object of the Bill is to provide for the development and regulation of the coffee industry in Kenya.

The Bill proposes to reorganize the coffee industry by transitioning the regulatory and commercial roles, currently undertaken by the Agriculture and Food Authority (AFA), to the Coffee Board of Kenya (CBK). The Bill further seeks to transition the research of coffee currently undertaken by the Coffee Research Institute (CRI) under the Kenya Agricultural and Livestock Research Organisation (KALRO) to CRI.

The Bill has been read the First Time – and noting that a similar Draft Coffee Bill had been developed by the Ministry of Agriculture, Livestock, Fisheries and Cooperatives, the Committee during its Work Planning Retreat held between 18th and 21st February, 2021, resolved to hold a Coffee Conference on 16th April, 2021. The Conference will create a platform for discussions on reforms in the coffee sub-sector, as well as discussions between the Ministry and the Committee on the two Bills. This will be with a view to harmonize their provisions.

Regarding the Draft Coconut Industry Development Bill, the Committee is in the final stages of consideration. The Bill shall be ready for publication by April, 2021. I think it has already been published.

Madam Deputy Speaker, the Committee further resolved to develop the Draft Cotton Bill and the Draft Pyrethrum Bill, which seeks to provide for the regulation, development and promotion of the cotton and pyrethrum industries. The two Bills are currently undergoing drafting and shall be considered by the Committee in due course.

Regarding Statements pursuant to Standing Order 48(1), one statement was referred to the Committee. This was on the Climate Smart Project in Lamu County. It was sought by Sen. Loiptip on 4th March, 2021. The Committee awaits a response from the Ministry of Agriculture, Livestock, Fisheries and Cooperatives.

Madam Deputy Speaker, with regard to Petitions, the Committee considered one Petition concerning the plight of seed farmers in Trans Nzoia County which was committed to the Committee on 22nd September, 2020.

The Committee met the petitioners and Kenya Seed Company in November 2020 and awaits a response from the Ministry on the Petition. Upon receipt of the response, the Committee shall table its report in the Senate.

Madam Deputy Speaker, going forward, the Committee intends to carry out the following key activities during the next quarter-

(i) Consideration and publication of Bills to amend the Crops Act 2013 so as to unbundle the regulation and management of major crops that fall within the arm-pits of the agriculture and food authority and establish stand alone agencies for their regulation.

(ii) Thematic conferences to address challenges facing various subsectors in the agriculture sector and reforms including the coffee conference, coconut conference, cotton conference, sugar conference and the pyrethrum conference.

(iii) Meeting with the Cabinet Secretary for the Ministry of Agriculture, Livestock, Fisheries and Cooperatives to elaborate on the policy framework that is being applied to undertake the ongoing agricultural reforms by the Ministry of Agriculture, Livestock, Fisheries and Cooperatives.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator. The next Statement is from the Chairperson of the Standing Committee---

Yes, Sen. Wetangula, kindly, proceed.

Sen. Wetangula: Thank you, Madam Deputy Speaker, for an opportunity to make a comment on the Statement by the distinguished Senator for Embu, the Chairman of the Committee on Agriculture, Livestock and Fisheries.

Madam Deputy Speaker, I was listening very keenly to his statement, unless it escaped my ear. He has mentioned absolutely nothing about county governments' participation in what he is doing unless I missed it.

Agriculture is 95 per cent devolved function. You cannot embark on any reforms in any sector of agriculture without involving county governments at executive and assembly levels. This is because they are first frontline agencies in the management of the affairs of this country in dealing with agriculture.

I hope that the Chairman in moving towards this conference and is talking about any other meetings for that matter, he takes the correct view that being a devolved function, continuing to engage the Cabinet Secretary for Agriculture to the exclusion of counties and their governments is a claw back on devolution. We should avoid this.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator. Sen. Ndwiga, do you want to respond to that? I give you two minutes only.

Sen. Ndwiga: Yes, Madam Deputy Speaker, I can do that from here. My Committee has been working very closely with the Council of Governors (CoG). Indeed, in the development of all these Bills, we sit with the Committee on Agriculture of the CoG. The report I was giving was about what we have been doing.

We have had several meetings with the CoG. In fact, all these conferences I am talking about, we are planning jointly with the CoG. It is true that agriculture is a devolved function. We involve the CoG in every step. Where there is registration, we involve the CoG.

Madam Deputy Speaker, the House may be happy to know that even where the Ministry has tried to avoid the involvement of the county governments, this Committee has broken the stalemate and we have moved forward. For example, in the Coffee Bill

that is coming to this House, the Bill from the Ministry of Agriculture had totally avoided involvement of the county governments.

However, the Bill that will be laid here, the House will be happy to note that the county governments are totally and heavily involved in everything that we do with all these crops including coffee, pyrethrum and sugarcane. The county governments are properly involved. We have done adequate consultations.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator. Point taken. The Chairperson of the Standing Committee on Devolution and Intergovernmental Relations to make a Statement relating to the activities of the Committee.

Sen. M. Kajwang', kindly, proceed.

ACTIVITIES OF THE COMMITTEE ON
DEVOLUTION AND INTERGOVERNMENTAL RELATIONS

Sen. M. Kajwang': Madam Deputy Speaker, I rise pursuant to Standing Order No. 51 (1) (b) to make a Statement on the activities of the Standing Committee on Devolution and Intergovernmental Relations for the period commencing 1st June 2020 to 5th March 2021. It is quite a dated Statement.

During the period under review, the Committee held a total of 30 sittings and considered various matters.

Let me commence by considering the statements assigned to the Committee. In our last Statement, the Committee reported that it was considering a Statement sought by Sen. Abshiro Halake, MP, regarding the burning of County Executive offices, in various counties, where accounting records are held.

The Committee received responses from the various counties that had suffered this mischief, namely Kisumu, Homa Bay, Migori, Busia and Kitui counties. The office of the governors of these counties gave a detailed account of the internal investigations that they undertook to mitigate the recurrence of the fire incidences, and improvement of risk management policies and processes to adequately deal with such incidences should they arise.

Madam Deputy Speaker, they also informed the Committee that the various cases were still being investigated by the Directorate of Criminal Investigations (DCI). Having received these reports, the Committee promptly forwarded them to Sen. Abshiro Halake, MP, who then gave a Press statement issuing a stern admonition to all counties to refrain from engaging in such destructive, dangerous and futile activities. The matters are still before the DCI and we shall be following up for implementation.

Sen. (Dr.) Ochillo-Ayacko, EGH, MP, sought a Statement on the status of project funding and implementation for Rongo Township, Awendo Township and Migori Municipality. The Committee has written to the Ministry of Devolution and Arid and Semi-Arid Lands requesting for this information. The Ministry has responded by forwarding this request to the County Government of Migori. We are awaiting a detailed response from Migori County before concluding this matter.

Madam Deputy Speaker, in the period under review, the Committee also extensively considered the transfer of functions from the Nairobi County Government to the national Government, specifically the Nairobi Metropolitan Services (NMS).

On this issue, the Committee felt the transfer exposed certain gaps, in particular, with respect to the provisions contained in the manner in which the transfer was effected, oversight mechanisms of the transfer, the alleged duress under which the Nairobi County Government was placed to effect the transfer and the subsequent impeachment of the Governor of Nairobi County and appointment of the Deputy Governor of Nairobi County.

Taking note of the apparent lacuna in Section 26 of the Intergovernmental Relations Act No. 2 of 2012 on agreements on transfer or delegation of powers, the Committee has initiated the Intergovernmental Relations (Amendment) Bill, 2021, which seeks to cure some of the gaps that were exposed during the transfer of functions to the Nairobi Metropolitan Services and seeks to make comprehensive provisions on the process of transferring functions and entrenching the Senate's oversight role in the transfer of functions. This Bill has already been presented for publication and will be coming for First Reading in this House.

Madam Deputy Speaker, the Committee also considered an impasse that arose between the County Executive and the County Assembly of Kirinyaga County on county budget estimates for the 2020/2021 Financial Year. The County Executive and County Assembly of Kirinyaga could not agree on the proposed allocations within their county budget, and this disagreement threatened to bring county operations to a standstill.

In July, 2020, the Committee held meetings with various stakeholders including the Governor, Kirinyaga County, the County Assembly and the Controller of Budget. Thereafter, the Committee met the County Assembly Majority Leader, the Chairperson of the County Budget and Appropriations Committee. After that, it is noteworthy that there was an impeachment process against the Governor of Kirinyaga and the Senate resolved that the grounds raised were not adequate for her impeachment.

The Committee has tabled its report on that budget impasse. The Committee played the role of mediator in resolving the impasse between the county executive and county assembly and was able to open an avenue for dialogue, deliberation, ventilation and cooperation between the County Executive and County Assembly.

The matter was concluded, the disastrous effects of Kirinyaga County not having a county budget was successfully averted and the Kirinyaga County Appropriations Act of 2020 was passed. The report of the Committee captures various important issues but more specifically illustrates what happens when an assembly rejects a governor's memorandum and secondly, what will be the threshold for the county assembly to alter the budget as presented by the county Executive.

As you are aware, also assigned to this Committee in November 2020, is a petition on the boundary dispute between Kisumu, Siaya and Vihiga counties by the Abanyore community.

The Committee has held extensive hearings especially from the petitioners and the Abanyore Community led by the chief petitioner, Mr. Nashon Ogana. We have also

listened to the Governors of Kisumu, Siaya and Vihiga Counties and also the Ministry of Interior and Coordination of National Government.

This matter is very sensitive. Parliament has been petitioned twice in the past over this issue. The Committee has received further input from the National Land Commission. The Committee is in the process of writing its report which it shall bring back to the House in compliance with the 60 days that you ordered.

In addition, the Committee has fulfilled one of its core mandates in line with the Standing Orders as the Committee that considers all matters relating to management of county governments, cities, towns and urban areas. The Committee has considered the Petition from Nakuru County to upgrade Nakuru Municipality to Nakuru City after undertaking thorough inquiries to ensure that Nakuru Municipality has fulfilled the requirements contained in the Urban Areas and Cities Act.

Also, following a Petition that was brought to the Senate where there was concern about the manner in which Nakuru County is catering to the needs and welfare of its street children and families, the Committee has now tabled its report and the Motion has been scheduled for debate.

Madam Deputy Speaker, the Committee has also sought to make partnerships that could enhance the oversight role of the Senate through development of a monitoring and evaluation framework and possible funding that would ultimately have the net effect of strengthening devolution.

To this end, the Committee has held meetings with the Devolution Donor Working Group, which is an amalgamation of representatives from all European Embassies, Consulates and High Commission in Kenya. Their current focus at the moment is to offer aid to counties in the form of conditional grants.

The Committee held its first meeting with the group on 10th November, 2020, to deliberate on their inner workings, understand what they do and the challenges they face in offering the conditional grants. From this meeting, the Committee resolved to have more regular discussions with the Devolution Donor Working Group.

Lastly, the Committee, held a meeting with the Council of Governors (CoG) on 2nd March, 2021. There was a change of leadership and there was new leadership and a new Chairperson of the CoG and new leadership of the various committees of the CoG.

Out of many resolutions that we arrived at, at that meeting, we agreed that the Senate would have bi-annual engagements with the CoG to ensure that we are on the same page when it comes to matters to do with devolution.

We also agreed that the Senate Liaison Committee and the liaison committee of the CoG need to meet more regularly so that the various committee chairpersons are able to share experiences.

We also agreed that the Senate and the CoG would ensure that there will be candid and robust discussions pre-budget, to ensure that the Division of Revenue Act (DORA) and the County Allocation of Revenue Act (CARA) reflect the wishes and aspirations of the county governments.

Madam Deputy Speaker, as I conclude, the Committee will be focused on a few specific activities and I will just mention one or two. The Committee is still following up

the matter of transfer of assets and liabilities of defunct local authorities; a matter that had been assigned to the Intergovernmental Relations Technical Committee but is yet to be concluded.

The Committee is also looking at the matter of disbursement and oversight of conditional grants, a task that it will do closely with the Committee on Finance and Budget. We take note that there has been some improvement with a separate Bill that has been generated for conditional grants.

We are also looking at policy and legislation to strengthen regional blocs and the implementation of the report on Capacity Assessment and Rationalization of the Public Service (CARPS). We are also working on the devolution conference which will be held later in the month of August in Makeni County.

Madam Deputy Speaker, that is the report of the Committee for the period.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator. The next Statement is from the Chairperson Standing Committee on Energy; a Statement relating to the activities of the Committee. The chairperson for the Committee on Energy is not in and he does not seem to be online, so we defer that.

ACTIVITIES OF THE COMMITTEE ON ENERGY

(Statement deferred)

Next Order!

Hon. Senators, Order Number eight is a division so we will defer that for the convenience of the House.

BILLS

Second Reading

THE MENTAL HEALTH (AMENDMENT) BILL
(SENATE BILLS NO. 28 OF 2020)

(Bill deferred)

Next order!

Second Reading

THE WILDLIFE CONSERVATION AND MANAGEMENT
(AMENDMENT BILL) (SENATE BILLS NO. 30 OF 2020)

(Sen. Mwaruma on 25.5.2021)

(Resumption of debate interrupted on 25.5.2021)

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you. Hon. Senators, the Bill had been proposed and seconded. The first Member to contribute is Sen. (Dr.) Zani.

Sen. (Dr.) Zani: Thank you, Madam Deputy Speaker, I stand to support the Wildlife Conservation and Management (Amendment Bill) Senate Bills No.30 of 2020.

Let me start by congratulating Sen. Mwaruma for bringing this amendment. He has been extremely passionate about matters of conservation, wildlife issues and management which are critical not only in his county but across the board. This is not just prevalent in Taita Taveta, we have had the same issues arising also in Kajiado. We have had very many Members coming forth with issues about their cattle being affected and attacked by lions. Sometimes people fight back and the lions are killed which then becomes an issue of compensation.

The issue of human beings and wildlife conservation and its coexistence has proven to be a thorn overtime, that is quite difficult to---

The Deputy Speaker (Sen. (Prof.) Kamar): There is a point of order from Sen. Murkomen.

Sen. Murkomen: Madam Deputy Speaker, did you realise that while madam *mzungumzishi*, sorry, Sen. (Dr.) Zani was making a very important contribution, and I can see that she has a very nice dress, she was doing something else; removing her clothes in the Senate in the full glare of the cameras? Is that in order?

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Murkomen, unfortunately you did not show us while it was happening. So, we did not see it.

Sen. (Dr.) Zani: Madam Deputy Speaker did not see. Sometimes this Chamber tends to be a little bit hot. This area where I sit is quite cold. However, when you stand up to contribute, the passion of the issues makes it mandatory for you to speak from your heart because these issues not only affect Kwale, but also other counties like Kajiado and Samburu. Indeed, we have had so many Petitions and Statements regarding this issue.

I remember sometime back when we had the Cabinet Secretary, Hon. Balala, in the Standing Committee on Tourism, Trade and Industrialisation, this issue came up. I remember some of the Senators from those regions were there and were involved in the discussion.

At that time, what became clear is that some of these solutions are well known. For example, ensuring electric fences are put in place so that wildlife do not cross to certain regions and the issue of compensation came up. At that time, the assertion that was made is that it is difficult to pay some of these monies at the right moment and on time because of financial constraints. However, since the issue has been coming up over and over, it is critical that we entrench some statutory requirements and enforcements to make this possible.

The issue of timing of compensation is critical but most of the time the compensation is open ended. You will find a certain allocation having been put and there are specific allocations that are stipulated in this Bill. For example, in the case of death, it is Kshs5 million, in the case of injury or disability, it is Kshs3 million and in the case of any other injury a maximum of Kshs2 million *et cetera*. When it comes to actual giving of money---

Madam Deputy Speaker, in these cases, we are talking of someone who might have lost their life maybe because they were trampled on by an elephant or a child who might have been injured because they were attacked by a lion. If that compensation takes a long time, then it becomes a case of justice delayed is justice denied.

I think it is because of this specific issue of finances not coming on time that this Bill seeks to ensure that certain statutory requirements are put in place. For example, a timeline is given when compensation must be done. The committees at the county level are empowered to address various issues that are important.

This Bill seeks to amend the Wildlife Conservation and Management Act No. 47 of 2013. There are other important organs. These are the county wildlife conservation and compensation committees that are already in place but they have not been doing their work appropriately because of the various constraints that I have already mentioned.

This Bill seeks to ensure that in each financial year, adequate funds are provided for management of the affairs of each community wildlife conservation. This provision is specific because it entails empowering the Cabinet Secretary, upon the advice and in consultation with the Commission on Revenue Allocation (CRA), to formulate guidelines regarding incentives and benefit sharing.

I think this is where the problem has been. These guidelines are not clear because sometimes the amounts to be paid are not clear. The Cabinet Secretary will also be empowered to publish in the Gazette within 21 days the formulation of rules and regulations to govern the regime on incentives and benefits.

Despite various legislations that we have introduced in this House in terms of incentives and benefits, when it comes to implementation--- Later on an amendment was moved by myself trying to ensure that legislation and any sort of Motion that has passed can be implemented--- These benefits and incentives are good on paper but when they are not implemented, it makes it difficult for people to feel that justice has been done to them.

These guidelines and benefits will ensure that in various cases, a provision is made that a minimum of 5 per cent from the benefits from national parks will be allocated to local communities and neighbouring parks. Generally, this Bill tries to make a provision that is already in the 2013 Act where specific guidelines have been given but they have not been entrenched.

In this Bill, Sen. Mwaruma proposes that the Cabinet Secretary shall, as the case maybe, in each financial year, provide adequate funds. That is very key. The responsibility will be given to the Cabinet Secretary to ensure that funds are set aside. It has been generalised in the other legislation but this Bill seeks to give specific responsibility.

In fact, in the other proposed amendments to this Bill, there is a proposal to change the word "Government" to "Cabinet Secretary" because in most of the writings of the Act, the reference is to the Government. In Sen. Mwaruma's assertion and analysis, this is general. He proposes to change the word "Government" to "Cabinet Secretary" because specific responsibility is given. That will be done by introduction Clause 21(a)

which will give powers to the Cabinet Secretary. There are specific provisions and regulations in Clause 76.

Clause 21(a) is also key. It seeks to ensure that compensation is undertaken within 12 months of a determination by the respective community wildlife committee. On page 118 of this document, that is Clause 25, there are specific provisions of doing that.

First, the community wildlife conservation committee will seize of any request made to it for them to address a particular compensation. After a claim is made, the county wildlife conservation compensation committee, which is already established, will upon verification, submit the claim to the Cabinet Secretary together with its recommendations thereof.

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

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

Madam Temporary Speaker, various recommendations are given and I had mentioned that earlier in terms of compensation if it is an injury from a wildlife. However, if compensation is towards damage of crops, livestock and other property, then consideration will be made and some sort of compensation will be given. That is very critical. I think what this is bringing in is the element of the timeframe.

We also have to be very clear that “within 12 months” does not mean at 12 months. The sooner the better should be the mantra of this Bill. If it can be one month after the injury, it will be better but at least, it should be provided for within 12 months. At clause 3, which is very critical, a new paragraph is added which is;

“to provide support to the local communities negatively affected by activities undertaken with respect to wildlife conservation management.”

Madam Temporary Speaker, most of the time, we do not have any legislation or a mechanism to ensure retribution or rehabilitation of a particular circumstance that was there. For example, apart from just paying for crops that have been damaged, it is important to ensure that the land if for whatever reason, a volcano has taken place or is no longer in use because wildlife ran right through it and maybe the crops have been affected as a result; one way or another, activities must be undertaken to try to reclaim, rehabilitate and put back a reset of the circumstances that were there before.

At Clause 4, the issue of Government versus Cabinet Secretary is clarified. This is to ensure that direct responsibility is put on the Cabinet Secretary. In this particular clause and in its amendment, monies annually allocated for this purpose by the National Assembly need to be appropriately distributed by the Cabinet Secretary and at the end of the day it is possible for this money to be used at the right time.

Madam Temporary Speaker, in Clause 5, the whole amendment has to do with various places and issues including the issues of time and within 12 months’ limit. Those particular amendments are now specifically put at the various subsections in the particular Act. This clause is about mainly deleting a sentence and substituting thereof with another statement.

Madam Temporary Speaker, the issue of compensation has been a big issue. Not only compensation but also in benefit sharing. What should communities do when their natural resources have been exploited and how can they be paid for it? What should happen and what percentages should there be? Various Acts put various provisions, like the Mining Act gives specific provisions to the community. The natural resources and benefit sharing have specific proposals. In this particular amendment, Sen. Mwaruma focuses on 5 percent that has to be given to the local communities.

At Clause 6 in terms of amendment, the Cabinet Secretary shall in formulating guidelines ensure that the guidelines comply with the conditions; that a minimum of five percent of the benefits from national parks and national reserves shall be allocated to local communities.

Maasai Mara have had a very good model of doing this. There is a way in which when communities know that their resources are going to be helpful for them, makes them be able to persevere. For example, if we have tourists who are coming to look at wildlife at Mara, communities feel encouraged and are able to a certain extent withstand any issue that may come up. This compensation when it comes, allows communities to take their children to school. This same compensation allows communities to look for water and food. It also allows people to be able to proceed with their livelihoods and therefore it is very critical.

For the case of Maasai Mara, there were many conflicts that happened before but now they have been able through time to develop scholarships for the young people in that community. That way, you move into addressing the wildlife-human conflict, for example, on what to do when there is an attack by a lion. If the communities want to understand and withhold the animal has attacked them, they find ways and means of dealing with it. However, if they do not see this very delicate interconnection; the co-existence between human beings and wildlife, then it easily becomes acrimonious.

Madam Temporary Speaker, for the longest time and every time Sen. Mwaruma has brought a statement to this House, it talks about communities that are crying as a result of infringement of livelihoods because of the co-existence between human beings and wildlife. Sen. Mwaruma tries at the third schedule to expand the specific jurisdiction in terms of compensation and includes a very important element of snakes or animals of other species that have not been addressed in the previous legislation because that is critical.

On crops, livestock and property management from elephants, lions, crocodiles, buffaloes, snakes and wild dogs the Senator tries to expand this jurisdiction. I can see why, especially in the case of Taita Taveta, some of these animals like snakes have been left out and these can cause a bit of harm at the community level. This is very critical for the Senator to do that.

Madam Temporary Speaker, it is a very short amendment Bill with clear specific deliverables that are found in each of the various amendments. At the end of the day, what is also key and in Clause 6b;

“The determination of the minimum percentage of the benefits of the allocation to the communities under subsection shall be based on the gross total revenue and fees collected within the respect of the protected areas.”

The issue of gross total revenue and fees collected is now then being highlighted. Madam Temporary Speaker, unfortunately, the regimes have not been able to identify what has been collected at the counties, how it should be apportioned, where it should all go to and how it should be distributed. It is very tricky. It is not mentioned in this Bill but as it goes to the Committee, these are some of the issues to think about. Issues of own source revenue and where that money goes to and how can that money be further distributed.

I find that in most legislation when we are talking about these sort of benefits and how they should be appropriated, most of the time we talk about a percentage that should go out but how should this percentage be handled? Is it going to be collected nationally and then redistributed? Is it going to be collected at the county level and taken to the national level for redistribution? This is a specific area that Sen. Mwaruma is trying to say that a certain percentage of these resources and revenue collected be left to be used at source. The mother Act, the key Act and the Principal Act already puts into place in each of the counties the Community Wildlife Conservation Committee.

Madam Temporary Speaker, my time is up and I support this Bill. I hope through this Bill, we will be able to address the issue of human life and wildlife conflict and deal with some of the resolutions that may be put in this amendment. Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Senator Wetangula.

Sen. Wetangula: Thank you Madam Temporary Speaker. This is a very progressive Bill with certain issues at Committee stage that Sen. Mwaruma needs to take into account and bring to the House.

Madam Temporary Speaker, wildlife/human conflicts have been increasing every year. You may recall in the last Senate, our late colleague and may he rest in peace, Sen for Laikipia, Mr. G.G. Kariuki, was constantly talking about compensation for persons maimed or killed by wildlife and some families rendered destitute by wildlife destruction. Some of those families were rendered destitute by wildlife destruction of not only their crops, but even their possessions like houses.

Madam Temporary Speaker, I remember that I once visited a friend in Oloitokitok. When I went to his home, it looked like a war zone. When I asked him what had happened, he said that elephants had passed there and destroyed everything. They pulled down his house and destroyed his entire banana plantation and crops that were there. What followed was a wild goose chase for compensation.

People get injured at the ages of 30 and 35 years and live to die at 60 or 70 years without being compensated and that is why this Bill is so important. It creates a time constraint for the compensation committees at the county and national levels to ensure that people get compensated when they suffer attacks from wildlife.

Madam Temporary Speaker, when you look at the management of our national parks and game reserves, it is also important that we voice our concern in the manner which the wardens who manage these parks fail to control the movement of wildlife.

We know that wildlife is there and some of the animals are dangerous. They can move out of the parks and consequently, we have a duty as the Government to make sure that unless it is under very extraneous circumstances, animals are confined in the parks and reserves so that they do not go out to attack people. Equally important is situations where human beings also stray into the habitats of animals and then get those problems.

Madam Temporary Speaker, looking through this Bill, I see one big omission by Sen. Mwaruma. He set out the compensation process and the county wildlife conservation and compensation committees that deal with compensation very well. However, he says nothing about the attempt of the Act he is amending in ousting the jurisdiction of courts.

Under our Constitution, any person has the right to seek justice in courts of law. In many cases, you will find that the compensation by these committees is so meagre that they cannot adequately compensate families that have lost loved ones or their property.

In this case, an aggrieved person must be given the right and opportunity to elect to take the avenue of an Alternative Dispute Resolution (ADR), which is created here, by not going to court and receiving what is offered. Since it is not a case, they do not go there to argue a case. They sit, assess, and tell you how much you are entitled to, for example, Kshs10,000 for broken legs.

If you are not satisfied with the decision of these committees, you reserve your right to go to court and fight. Like if you were working at a *mjengo* where your tools of work depended on your able body, your hands and your legs functioning, and an elephant destroyed you, there is no way that Kshs10,000 can compensate the loss in feeding your family and fending for those who depend on you. You will, therefore, go to court and the court will assess your lost earnings.

Lawyers like my distinguished colleagues Sen. Mutula Kilonzo Jnr., and Sen. Cheragei, and yourself will tell you that. The court will then assess your lost income, multiply it to the level of where you would have retired under ordinary circumstances and compensate you. This is lost in this Bill. I urge the Committee or the Sponsor of the Bill to bring back a provision that allows affected persons to seek justice in our courts of law.

Madam Temporary Speaker, there is also the issue of insurance of our wildlife and game parks. Now that a Bill like this expands the levels of compensation to cover---

I am amused to see that Sen. Mwaruma wants a compensation from attacks by wild pigs. If they are the wild pigs that I know, when they see a human being, they run away fast as they can. I do not know where wild pigs attack people but he has put it here. Perhaps he has experienced this in Taita Taveta.

When you look at this wide net of animals that are dangerous, attack people and require compensation, including poisonous and dangerous snakes, I do not know the difference between poisonous and dangerous snakes. I think they should be the same. There are sharks, stone fish, whales, sting rays, wild pigs, buffalos, and the other animals that are already in the mother Act.

This then calls for an almost compulsory insurance by the game parks. The levy that we are talking about of 5 per cent cannot adequately compensate people. Sen. Mutula Kilonzo Jnr., told me that in his area, Makueni, out of every five deaths, two are from snake bites. How are you going to compensate people from such a meagre available resource that is available for this purpose? We need insurance and reinsurance so that it can foot the bills of compensation when we have these kinds of situations. Sen. Mwaruma will be guided to propose that insurance be mandatory for all these game parks, game reserves, conservancies and so on, and so forth.

You will remember the case, two or three years ago where a Japanese tourist in Naivasha who was excitedly taking pictures of a hippopotamus. The hippopotamus sprang from the water and sliced her into pieces, killing her instantly. That kind of tourist compensation is heavy. The 5 per cent levy that we are talking about will not be enough to compensate such a tourist if they come from those big families with massive wealth that we know of. This is because insurance is a very complex process.

Madam Temporary Speaker, as I support the Bill, I want to say one or two things that concern wildlife and the management of our game parks. I saw a very curious statement from the Cabinet Secretary (CS) for Tourism and Wildlife. He intends to privatize our game parks. On whose authority? Who has protested the current structure of ownership of our game parks? Who does he want to privatize them to? Has he carried out public participation? Has he sought the views of Kenyans from all walks of life?

We have the Maasai Mara National Reserve that has done very well. We have game parks and game reserves that are domiciled in counties. If the Ministry of Tourism and Wildlife of the national Government is unable or tired of running these game parks, it should pass them on to county governments. You cannot just wake up and say that you are going to privatize our game parks. Privatize them to who?

Privatization of public assets that end up to private individuals is the charade we keep on having in this country. When you lift the veil, as lawyers would say, you will find that perhaps the person talking of privatizing has vested interest in it.

He is going to end up owning our very choice assets in the country. If Amboseli National Park is a burden to the National Government, pass it to Kajiado County. If Tsavo National Park is a burden to the National Government, give it to Taita Taveta County. If Kitui South National Park or what is it called, Sen. Mutula Kilonzo Jnr.?

There is one in Kitui County bordering Tana River County; pass them on to the county governments to run them. There is Meru National Park where the same thing is happening. Kora National Park, the one in Samburu and Laikipia conservancies and the open fields where people go and enjoy. If you cannot man them, give them to the county governments.

Madam Temporary Speaker, we cannot just be excited about this idea of privatization when we know that what we privatize is already not working. Mumias Sugar Company was doing very well when the Government was owning and running it. Look at the sorry state of Mumias Sugar Company after privatization. It has gone to the dogs and many others. We can cite all of them.

I want to caution my good friend the Cabinet Secretary (CS) Hon. Balala not to embark on a misadventure that will lead him into difficulties. This is because as a House of Parliament that protects counties and their governments in which these public assets are domiciled, we will not allow him to embark on an adventure that is going to disenfranchise the people where these facilities are located.

Madam Temporary Speaker, if anything, he should be bringing up policies on revenue sharing. Kajiado County has been crying for a share of Amboseli National Park. Taita Taveta County has been crying for a share of the proceeds from Tsavo National Park.

In fact, if you go to Taita Taveta County, they tell you that the only available space for the locals is less than one third of the county and it is on the hills. The rest is either Tsavo East, West, some big ranches, or big plantations. You find people squeezed in small places in small markets. Instead of growing as towns, they are growing as slums because there is no space.

If the Government wants to give away our public assets, bring that to Parliament. This House will debate, arbitrate, and advise that pass those assets to the locals so that they can benefit from them.

I beg to support.

The Temporary Speaker (Sen. Nyamunga): Thank you, Senator. Sen. Cherargei, proceed.

Sen. Cherargei: Thank you, Madam Temporary Speaker. From the onset, I support this amendment. Of course, as my colleagues have indicated that in the future when it comes to Committee Stage, we will give some ideas here and there. All of us appreciate the role that tourism and the uniqueness of especially the 'big five' that has been recognized world over that is only found in Kenya.

It does not go without notice that one of the top foreign exchange earners to this Republic in terms of revenue is through the wildlife and tourism sector. I know the sector has been affected adversely especially with the COVID-19 pandemic. I know many in the hospitality sector which falls part of the larger tourism and wildlife, most of them according to July 2020, Kenya National Bureau of Statistics (KNBS) report, at least 1.7 million have lost their jobs because of COVID-19 pandemic. Therefore, I know a huge chunk comes from the sector which relies heavily on tourism where wildlife is domiciled.

I want to support by saying that as a country, we pride ourselves as unique and diverse of the fauna and flora of this Republic. With the growth of Kenyans that is approaching 47.5 million plus, according to the 2019 National Housing and Population census, as population and cities grow, it also becomes uniquely challenging. Due to the growth in population, the human-wildlife conflict is the order of the day. Nairobi is one of the few cities in the world that has a national park within its metropolis.

Madam Temporary Speaker, therefore, it is well put by Sen. Mwaruma. I want to appreciate that this is unique. Even in Nandi County, we also have wildlife. Of course, there is a wildlife called Marsh Buck, it is called *Sitatunga* and is available within the marshy areas of Kingwal. Seeing as we have three forests in Nandi, we have snakes and

Sitatunga among other wild animals in that region. I agree with Sen. Mwaruma that it was timely that we should have this.

On this issue of 12 months, I think what should be happening on the process - my senior colleague has argued on this - is that we need to reduce deadline of assessment of the matter. If it is not even appealed, I do not think it should go beyond 12 months. In my opinion, we should make it as soon as possible perhaps six months so that the dependents and beneficiaries benefit promptly. You can imagine the horrific experience they will undergo through the 12 months.

Madam Temporary Speaker, we agree that the judicial process is cumbersome and litigious, but we should find a way. This is based on assessment. If the postmortem result, assessment, and investigations that have been done by the Kenya Forest Service (KFS) and other agencies are concluded, then the payment should be prompt. If he was the breadwinner, you can imagine if the beneficiaries stay out of school, go without food or any other basic need for that length of time.

Madam Temporary Speaker, the second point that I wanted to comment is on local community support. I agree that this issue of local content and natural resources has been a thorny issue, not only in wildlife but even in the oil. You remember the issue of Turkana where the community had to go to the streets to demonstrate.

I appeal to the policy formulators that in the issue of resource sharing and local content, if they support the local community and give them the necessary support like hospitals and social amenities, I can assure you that you will not need to put an electric fence around those national parks or wild game parks. This is possible if communities know the value of having that animal there by ensuring that we give them the necessary support.

Madam Temporary Speaker, I remember in Turkana on the issue of Tullow Oil, the people had to go to the streets so that justice can be given. Even on the issue of minerals in the coastal regions, I wish that the Ministry of Tourism and Wildlife would concentrate.

I want to ask the CS, Hon. Balala - I know he is busy banning importation of rare animals and exportation of animals, privatization and what have you - to just concentrate on basics first. We need basics. He can work and ensure that the local community committees' function and these people are given the necessary support like water, social amenities that I have indicated.

Let us start from the basics and not worry about whether these species have been imported or exported or whether privatization is the way to go. Let us just allow the people to own the animals that belong to them. It is so important for the development of this country.

Madam Temporary Speaker, secondly, I want to go to the issue of the Wildlife Endowment Fund (WEF). I think it is timely. I am happy that most of the issues have been captured. However, we agree that wildlife security operations and poaching have been a problem in this country where wild game is killed for exporting. I am told that they are used for medicinal or cultural values and what have you.

I agree that we need to be careful especially on the issue of poaching because some of the animals that we have in this country are so rare like the White rhino or White elephant; it was so unique. My proposal is that we should also have a lab.

Sen. Mwaruma, you can include them so that we can even procreate some of the rare species. You can imagine if we have, for example, an elephant that is rare or the giraffe. I saw one in North Eastern that is an albino. I hope I am using the correct word.

We can get those rare species even in partnership with the Kenya Medical Research Institute (KEMRI) and the International Centre of Insect Physiology and Ecology (ICIPE).

In addition to the endowment funds, we should have a way of procreating and protecting specific species. They can partner with KEMRI, Kenya Forest Service (KFS) and other agencies to ensure that we do not lose those species.

The increase in pollution, environmental degradation and soil erosion should be a wakeup call. We should ensure that there is a way in which we protect the ecosystem. We can build proper laboratories and have a place where we keep some of those species and seeds.

There was hue and cry when a private investor, in Maasai Mara, was allowed to develop a hotel along the path that was used by the animals when they were migrating, something that is referred to as the Seventh Wonder of the World. We should have proper regulations which should be followed by people who want to develop structures in our national parks. We cannot allow people to build resorts and hotels in the park without fear of interfering with the flora and the fauna of that specific place.

I am saying this without prejudice. I know that some of my colleagues could be having hotels and resorts within the parks, but my key point is that we should consider the damage that will be done in the ecosystem before approving such projects.

The other thing is the wildlife compensation scheme. It has been indicated there that we need to be efficient and prompt with the compensation. I do not know how Sen. Mwaruma can develop this but we need to have a reporting mechanism that will help us know the number of people who have died in a particular area. We should know the people who have died of snake bites in Makueni County and the money that they were paid as compensation. We should also state whether the reporting mechanism will be devolved to the counties or not.

I can see the 'Maa kingpin', Sen. Olekina, in the House. We need to know the amount of money that is collected from the parks.

I am a Member of the Committee on County Public Accounts and Investments. When the Governor of the county government of Narok appeared before us, he could not tell us the amount of money that they collect from Maasai Mara. We need a reporting mechanism. We need to know how much money has been used on compensation and the number of Kenyans who have been killed by the wild animals.

I also want to talk about compensation. I have seen my colleague pushing for compensation to personal property, death, or damage to property. My suggestion is that the Kshs5 million should be the minimum. I do not want us to state the maximum

amount. The courts should use their discretion during the assessment. The decision should be on case-by-case basis.

We can make the amendments during the Committee of the Whole so as not to restrict the courts. This is because we may never know the extent of the damage. On the issue of permanent disability, I think that Kshs3 million is a little bit too low and we should once again leave it open for the courts to make a ruling based on the case. We can just give the minimum as Kshs5 million then give room for the courts to make a ruling based on the case.

I expected to see something on psycho support where counselling services are offered. Giving someone Kshs5 million is not enough. Other than paying those people, we should have trauma centres where they can be counselled. Someone who has been attacked by a snake or an animal will hallucinate and have nightmares.

That is why we will need the trauma centres where the victims can be counselled. Some of those victims might have been incapacitated. Those who are unable to walk can be taught how to use crutches in those centres and those who turned blind can be taught how to use braille. The victims who end up losing their hands can be taught how to write and so on.

Clause 25(5) states that-

‘The County Wildlife Conservation and Compensation Committee shall review the claim and award and pay a compensation valued at the ruling market rates: Provided that no compensation shall be paid where the owner of the livestock, crops or other property failed to take reasonable measures to protect such crops, livestock or property from damage by wildlife or his land use practices are in compatible with the ecosystem-based management plan for the area.’

What happens if I neighbour Maasai Mara and I cannot afford to construct an electric fence and the elephants walk into my farm? We need to amend this to remove the burden of proof from our people. The burden of responsibility should be put on both the Ministry and the individual.

On the issue of compensation, I agree that the community should be given 10 per cent and not five per cent. In the Mining Act, we do have 10, 20 and 70 per cent allocated. Let us use 10 per cent on the communities for them to also benefit.

This is a timely amendment, and we look forward to it being passed. In the future, we need to discuss real issues. I have seen my colleagues asking for Inter-Parties Parliamentary Group (IPPG) on Building Bridges Initiative. Instead of doing that, they should allow the courts to do their work. Let us concentrate on issues that affect Kenyans. Compensating somebody who is in Makueni or Taita Taveta counties will mean a lot to them as opposed to chasing the wind.

I support this and look forward to introducing some amendments in consultation with Sen. Mwaruma. I commend Sen. Mwaruma for this brilliant amendment. I hope to see it going into fruition.

The Temporary Speaker (Sen. Nyamunga): Thank you, Senator. We will hear from Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Thank you, Madam Temporary Speaker for the opportunity. We share a border with Taita Taveta County and that means that we also share the same problems. The elephants that move around aimlessly and freely from Tsavo National Park affect our people in a similar manner. The problem that the people of Taita Taveta County are facing are not any different from what we face. Unfortunately, the people of Taita Taveta have the best tented camps, lodges and tourists who spend a lot of money there yet compensating them becomes very difficult.

Allow me to highlight the principle. I have a letter from the Cabinet Secretary (CS) that suggests that the parks are contributing up to 9 per cent of the Gross Domestic Product (GDP) of this country. My own impression is that it could be more but nine per cent is still good enough. These animals are living amongst people but it becomes difficult to compensate those people when they are injured by wildlife.

There was a Petition in 2014 on the collections by Maasai Mara that came to the Committee on Finance and Budget. Masai Mara collects money in the tune of billions in dollars which forms part and parcel of their own source revenue. I still wonder about CS, Najib Balala. It is only the President who understands him. I do not understand him at all. When ten rhinos died in Tsavo National Park, he said that he is only responsible to the President. In other jurisdictions, he should have been fired on the spot.

When a person suggests that you should have a private park, what are they talking about? Does he live in this country? Parks are in the counties. If we were to ask what Taita Taveta County should do with Tsavo National Park, then that park should go to Taita Taveta County, so that they collect the money he does not want to collect. The same case should happen to Maasai Mara, Samburu, Isiolo or Marsabit where we have beautiful parks.

We know why he wants to privatize parks. It is because he is holding brief for people who he wants the land to go to. It is not an innocent remark. It is a remark made on behalf of the bourgeoisies who want titles of our parks so that they own our national assets.

Sen. Wetangula: We will not allow him!

Sen. Mutula Kilonzo Jnr.: We will not allow you. Shame on you!

Madam Temporary Speaker, in Tanzania, 60 per cent of the revenue collected from parks goes back to the community to either build hospitals or schools and do fences around their parks and provide water. Sen. Mwaruma, that is why colleagues are saying 5 per cent is too low.

With a lot of tremendous respect to Sen. Olekina here, that is why the Maasai on the other side of Tanzania are doing very well. Businesses in Arusha are run by Maasais because they have taken care of them with the 60 per cent revenue they get to the communities.

Sen. Mwaruma, instead of proposing adequate funds in the first Clause, I can tell you it is not a question of adequate funds. Every year the National Assembly allocated money to the Ministry of Tourism for paying compensations. This financial year alone there is about Kshs600 million but because of incompetence of somebody who I will not mention again, that money is never paid out.

Sen. Wetangula asked a very fundamental question. A child who would have become a lawyer or an engineer is trampled upon by an elephant. There is an elephant in Mtito Andei called “Mwanzia” who comes out of the park every day at 5.00 p.m. We call it Mwanzia because it walks around. If it tramples on a child who would have become an engineer or a lawyer, the law says that child should be paid Kshs5 million. If that person had been hit by your private car, they would be paid more because of the multiplier effect.

We should make it possible for Kenyans to go to court for compensation when animals trampled upon them. If you destroy somebody’s crops and the person goes to court, there is a standard interest rate from the date the person filed suit. In the case of Makueni, somebody’s crops were destroyed in 2013 but they were paid Kshs30,000 in 2021. Who has lost? It is you. Sen. Mwaruma, that is the reason we are proposing that that avenue be opened. That is the only way for the Ministry to learn that people ought to be compensated.

I have files upon files of people who have been killed or whose crops have been destroyed. In some cases, in Makindu and places next to where Sen. Mwaruma comes from, people see rain after two years. Immediately you cultivate land, the elephants come and have a party in your shamba then you are compensated five years later. It is of no value.

I suggest that this amendment be done. It should make it mandatory and if one is not compensated, then they should have an avenue of going to court, so that we can enforce these judgments against the KWS. That is the point.

The Government through the National Assembly proposed a county wildlife conservation committee chaired by the county commissioner in every county. It was never implemented but why? Can you believe that in some cases they do not have sitting allowance? They cannot sit because they do not have a sitting allowance. Somebody is dead but they cannot sit.

In fact, Sen. Mwaruma, why is it not possible for the county wildlife conservation committees to have sittings where these incidences have happened? Why, for example, should a person who has been injured in Mtito Andei on our side go to Wote for a hearing as opposed to that committee going there?

In your case, why should somebody in Taita Taveta on the other side where you have beautiful lodges come all the way to the county headquarters for a hearing? We should make it possible for the sittings to be held where incidences have happened. I propose that you have amendments to Clauses 21 for Sections 23 and 24.

Sen. Wetangula had asked a question and it is important that I say this. I wish Sen. Wambua was here. When it gets very hot in Kitui, they put water outside their doors because snakes go to people’s homes. In a place such as Kathekani in Mtito Andei, one has to check under the bed when they go to sleep or the roof because snakes could be possibly hiding there. There is a reason Sen. Mwaruma has proposed amendments because the National Assembly removed snake bites from the schedule.

Between Voi and Nairobi’s Kenyatta National Hospital (KNH), there is no hospital that stocks an antidote for snake venom. Chances of somebody dying along

Mombasa Road are very high because the Government does not stock anti venom. It is done by private hospitals. I have a child who ended up losing a hand because she was poisoned. By the time she was taken to Kilome Nursing Home, it had turned yellow and they had to amputate because the Government has no policy for buying antidote and antivenom.

If the Government had a policy for buying antidote and antivenom, it would not be necessary to have snakebites as part of this because you can be treated. For now, we must leave it there. The statistics from Makueni and Taita Taveta counties show that out every five people, two die out of poisonous snake bites where in some cases snakes hide in their homes.

There is the Tourism Levy Fund in addition to others. Sen. Mwaruma knows that all the lodges in Taita Taveta County which we visit charge 3 per cent of that Fund and transmit it to the national Government. Other than insurance policy, I suggest that we have a Fund set aside for money collected by the national Government from our parks.

In the Tourism Levy Fund, the 3 per cent they collect from Salt Lake, Voi Lodge and others is transmitted to the national Government. In a report tabled by Sen. Kibiru, the Senate Committee on Finance and Budget suggested that these Funds should be collected by county governments. If the Cabinet Secretary, Hon. Balala and company, are tired, let them give parks to the county governments and see how we will manage them. I think we have the capacity to manage them.

Similarly, it is also possible to ensure that people are paid in less than 12 months. This is because you cannot get into Maasai Mara Game Reserve without paying. So, why should you wait for 12 months if a rogue lion jumps out of the gates and injures somebody yet there is a tourist who has flown possibly from Australia just to come and see the beautiful lions that are in Maasai Mara?

You should ask Sen. Olekina how much it costs to sleep in a place called Angama Mara that he loves. It is USD1,000 per night.

Sen. Wetangula: It is an arm and a leg?

Sen. Mutula Kilonzo Jnr.: Or Kempinsky or Mahali Mzuri owned by Sir Richard Branson. It is Kshs120,000 per night. Imagine how much the national Government is collecting, yet they are unable to compensate Kenyans for human-wildlife conflict.

In the case of Taita Taveta and Makueni County, we have asked very simple things, if Sheldrick Wildlife Trust can have a fence in Kibwezi and in some parts of Makindu, how is it that the national Government has been unable to fence its parks to avoid elephants just running around? The people in Laikipia have built a corridor for their migration.

When you watch the *Nat Geo Wild* Television Channel, the elephants have a corridor where they migrate, go to wherever they want to go and come back at leisure. They still attack you, but you have created a corridor for them to migrate, a secured fence. They even raise money to do it.

I do not know how far Sen. Olekina is in doing the fence at Maasai Mara. It is the same thing. If he can go out there and get a fence around Maasai Mara, why can we not

have the national Government do the same, so that we prevent the human-wildlife conflict? We can do so. This is because we are making a lot of money from these parks.

I do not know whether Sen. Olekina knows. There are two White Rhinos in Maasai Mara. One is called Kofi Annan and the other one is called Queen Victoria. These two white rhinos are protected by six rangers. You know those good gentlemen. I went to the Maasai Mara in 2015 and found them there. I went there last year and found these people.

Madam Temporary Speaker, if you have not gone to see these two White Rhinos, you will take a picture next to them. These people walk around with these Rhinos, day and night. Whether it is raining or not, they are with these two Rhinos. People pay a lot of money just to go and look for them in the bush because they do not live in a fenced area.

This money ought to benefit the communities that live around the parks. That is the solution Tanzania has found to the human-wildlife conflict. Involve the community. Pour in some of the money that you are making from the parks, so that the persons who guard this wildlife from getting into human settlements are the beneficiaries themselves. That is the secret. However, because we get nothing out of the parks, nobody bothers.

If you drive to Mombasa, you will find that at some point somewhere around Voi you will be stopped because sometimes the elephants just come to Mombasa Road to sit on the road. Until they move, you cannot go anywhere. If you are not careful, some of the elephants, the black ones that come from Amboseli become very dangerous at night.

Therefore, Sen. Mwaruma, has a course for the people of Taita Taveta who have been made poor by people who are making money from parks. Sometimes I feel sorry for Taita Taveta. It has the biggest mines. People are mining in Taita Taveta and nothing is being ploughed into the community. The largest game parks are in Taita Taveta. Nothing is going to the community.

The biggest sisal plantations are in Taita Taveta yet nobody is benefitting. Taita Taveta should not be poor. We support because we want the people of Taita Taveta, Makueni and everywhere there is a park to have the benefit. We must feel proud that we are hosting animals.

There is nowhere in this Constitution that says Kenya belongs to Kenyans and wildlife. We are hosting the wildlife and they not hosting us, both in Taita Taveta and Makueni. Therefore, we should not pay the price for wildlife being amongst us. If a Kenyan is found in the park just collecting firewood, they are charged Kshs200, 000 on the spot apart from the assault.

I am defending a young man, a form four, who was shot on his knees by Kenya Wildlife Services (KWS) officers in Tsavo last year. It is an inquiry which I am following. When somebody is injured in the park or injured in their residences outside the park, it takes 10 years to compensate them. What sort of country treats its citizens like that? it is unfortunate.

Therefore, I think we must read the Riot Act to hon. Najib Balala, the Cabinet Secretary, that, if he cannot perform, he better resign. This is a fellow who cannot see the bush from a tree. That is why you would rather say, let us privatize the park instead of

saying, let us compensate Kenyans and let us make our parks a little bit better to get more tourists.

I got a call from somebody who wants to visit the Maasai Mara recently. Even in the middle of COVID-19, there are people who want to come to Kenya. Just like the President of Tanzania, President Samia Suluhu said about our wild beasts. It is an amazing concept that animals can come to Kenya get pregnant and go back to Tanzania to deliver.

Serengeti is making a lot of money for Tanzania. This is because they have managed their parks properly and they have managed anything else that comes as collateral damage out of having these wild animals that we love so much in those parks.

I support these amendments with those corrections and amendments. Sen. Mwaruma, we are going to support because this is possibly another way of making sure that we have better own-source revenue for our counties that hosting parks. Tsavo East and West is largest national park in the country, and it is in Taita Taveta where Sen. Mwaruma comes from and the people that host these animals are the poorest. It is a tragedy. I support.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Thank you, Senator. Sen. (Dr.) Ochillo-Ayacko.

Sen. (Dr.) Ochillo-Ayacko: Thank you, Madam Temporary Speaker. I want to support Sen. Mwaruma's amendment to the existing law. You have noticed that all the speakers are in support of this amendment. They are in support of improving the relationship between the animals and those affected by their being hosted in their counties.

Madam Temporary Speaker, I think this is one piece of legislation- the primary that Sen. Mwaruma seeks to amend- that Karl Max talked about; that, certain pieces of legislations are put in place to exploit others. In fact, this is exploitation of poor Kenyans.

If you notice the rich world or the rich parts of the wild, they do not even have wildlife. They are the ones trying to tell us to keep them they do not have it. In fact, somebody should find out why they do not have it and they come to our countries purporting that we will get money from keeping wildlife and that from that money we live better.

If you look at this piece of legislation, it was probably passed by majority of Kenyans. Most people tend to live in highly populated areas. They live somewhere in central, Nyanza, Western Kenya, Mombasa and other places. They do not live in Taita Taveta, Maasai Mara and these sparsely populated areas.

If you look at Taita Taveta County, you will find that the number of Members of Parliament are so few that they cannot make a bent when it comes to amending legislation. This is a situation where majority Members of the Senate and National Assembly must take responsibility. We cannot use our majoritarian numbers wherever we come from to oppress few people and poor people. We must look at this issue, eyeball to eyeball and do what must be done.

When you are in Taita Taveta or Maasai Mara or in some other place and you find an ordinary Maasai, Taita, Taveta, Samburu where we have all these game reserves, their lives never improve. In fact, their lives continue suffering and then we put in legislation that for us to pretend that we are keeping wildlife, their lives do not matter and that, these elephants, wild animals must continue killing them.

I also read the Bible and the Koran. I have never seen anywhere where it is decreed that you cannot kill an animal which is trying to kill you. If you kill this, you are jailed. If you are seeking compensation for having a relative killed or property destroyed by it, you do not get it.

If you are asking to be a partner in the profit industry that makes you keep it, then you are not part of it. Where are you supposed to go? Recently, I was watching a movie by the Maasais saying that, 'if a lion kills their cow, they will kill it'. If there is no compensation for this, the Maasais are right, they will kill these animals and you will do nothing, not even get a witness.

When the State and the society become oppressive, people go underground. They will not tell you who killed the lion or the rhino. They will think that those things do not belong to them. If we want to be responsible, let us first be responsible for the lives of our people, particularly the vulnerable ones who are poor and few. We must do that by looking at the value of life. Let us not think that the life of a poor person has no value.

In fact, if we look at where we started, who had anything? We were given opportunity by those who were protective of us and we must provide the same opportunity to all Kenyans by adequately compensating those who are disadvantaged by our desire for profit and pretending that we are conserving the environment. Let us conserve Kenyans first. In fact, there is no environment to conserve if you cannot conserve Kenyans.

When it comes to counties like Taita Taveta, Makueni and my own county of Migori, we have certain animals that kill people. If you are found with the skin or a hide of a python, which is not listed here and is not poisonous, you are arrested.

However, I can assure you that it is extremely dangerous to everybody; adults and children alike, to disabled people and women. Nonetheless, it is not listed here. There is a concept in law that if you are keeping anything fierce or capable of visiting destruction of people, then you keep it at your cost and expense. This nation must take responsibility for keeping fierce things that damage life and crops. This Bill is a good step towards bringing that. I encourage Sen. Mwaruma to be bold.

Madam Temporary Speaker, there is an attempt to claim that this is a Money Bill or some people may claim that. I do not think we should give a damn about that. Money or death? This is something that is going to correct something that is about death, life and coexistence. We cannot dance around the corpses and poverty of people. When we count our population we include them, but when we share our resources, we exclude them.

Those people can be us; those who may not be suffering such atrocities like citizens from those parts of Kenya. It is a shame to still have in legislation the fact that an animal has a right to kill you and that you have no right to be compensated.

Compensation is compensation if it is prompt and adequate. Otherwise, those other things that are not prompt and adequate are not compensation. We cannot purport to put some numbers that make no sense to somebody whose potential and in life could be anything; from Isaac Newton to any other person. What makes other people think that Isaac Newton before he travelled to that part of the world was not from Taita Taveta, he may have been well from that place and a future one may come from there or maybe Maasai.

This kind of pieces of legislation require a global approach. We must not have Statutes that are designed to keep wildlife in a manner that does not protect and defend the lives of our people. The only thing you have that you do not buy and nobody can sell to you is your life. Nobody should come anywhere, including here and tell us that we must keep wildlife if it is killing everybody. That, if you are killed, you cannot get compensation.

Assuming some python visited the President when he goes to Migingo, what will you do to that python? Is the life of the President more important than the life of my brother, Sen. Kibiru? Absolutely not! Since Sen. Kibiru will be President soon in our lifetime; if he is killed now, when will he be President?

Madam Temporary, Speaker, I conclude by supporting this amendment. It is the spirit, particularly to the extent that it is proposing that we add the amount of compensation given to people. That we expedite the timelines within which it is made available. We increase the net when it comes to the wildlife that are capable of causing harm to people. We must ensure that it happens. For this nation to continue keeping wildlife, it must be made beneficial to people who are most affected by their presence. That is a good spirit.

I conclude by saying that, if it is not done, I will pray and others will, that God deals with the animals. You might just find that they have died, so what will you do? It is important for us to do something that will save them other than waiting for extra-terrestrial intervention.

Thank you and I support my colleague.

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

Sen. Kinyua: Thank you, Madam Temporary Speaker. From the onset, I support this Bill by my colleague Sen. Mwaruma. The issue of wildlife-human conflict has been there in Laikipia for a long time. From the time I was in primary school, Hon. G.G. Kariuki, the then Member of Parliament was talking about this issue of animals attacking human beings as well as destroying crops.

If you would allow me to give some of the statistics from Laikipia so that you can see the weight of this matter. I heard Sen. Mutula Kilonzo Jnr., saying that we have corridors in Laikipia. He insinuated that in Laikipia County you do not have these issues. It is true that we have corridors but we still have problems in Laikipia. We are the *bona fide* owners of land in Laikipia County. We have the title deeds and not the elephants, hyenas or monkeys who keep on disturbing us.

In Laikipia, we lose one to two persons every month from the attack of elephants and hyenas. We experience crop destruction to a tune of millions of shillings. If you allow me, I can state some of the issues we go through. In 2017, a marauding elephant attacked and injured Jerica Nasusui in Kwaruaho village in Rumuruti ward. The same was reported to Kenya Wildlife Service (KWS) but there has been no feedback since 2017.

On 5th February, 2019. A 12 years old pupil of Mwereri Primary School was mauled by a hyena to bones at his home area in Ol'moran, Laikipia County as he was dressing for school, leaving her 71 years old father and 56 years old mother heavily wounded as they were trying to fight off the animal and save their son.

On 3rd September, 2019, Reshadu Kenyanyi a 16 years old was trampled to death by an elephant at Karuru/Kiruri village in Laikipia Subcounty on his way to school. The Class Seven teacher was in a group of about 10 classmates who were heading to school when a rogue jumbo charged at them killing him on the spot while others escaped with injuries.

Madam Temporary Speaker, on 26th December, 2019, a 36 years old woman, Stella Chebii was trampled to death by an elephant in Ol'jabet in Laikipia. She was herding her animals.

Madam Temporary Speaker, in June 2020, a hyena invaded and killed six goats at Kamau School in Ndururu Village in Githiga Ward. I am giving these statistics so that it can be known that what Sen. Mwaruma has brought to this House is that we are talking about people. It is not only statistics where we say how many people have been killed. I am mentioning names so that it can be on record and we have reported this. So, when Sen. Mutula Kilonzo Jnr. and Sen. Wetangula speak about the negligence from the Cabinet Secretary, it is on record, it is known and he is supposed to pull his socks.

On 16th February 2021, a 63 years old woman, Mary Rebesa Nyandonyo was trampled to death an elephant while collecting firewood in Rumuruti at 10.00 a.m. while in the company of other villagers who managed to escape. In a span of one month in February 2021, one marauding elephant trampled upon Hassan, a primary school student at Dindika Primary School in Githiga and killed a neighbour identified as Gathogo and there was no effort by the Kenya Wildlife Service (KWS) to restrain the animal.

Madam Temporary Speaker, on 2nd March 2021, the eve of Wildlife Conservation Day, a herd of elephants evaded Esther Wanjiku's farm in Rumuruti destroying several acres of maize in one night. On the same day, four elephants invaded Leleshwa and Kaaga and destroyed food, orchards and other farms.

On 8th March 2021, a hyena killed three goats belonging to Mr. Kimemiloi in Neiboron Ol-Moran Ward. Around Olbolosat and Manguo, hippos continued killing and maiming human beings and causing havoc in farms with little recourse from KWS.

Madam Temporary Speaker, despite farmers reporting to KWS almost on weekly basis, the response time from KWS remains a challenge since most attacks occur at night and most farmers lack direct access to KWS.

It is not only Laikipia, this situation revolves across the country. Since 2014 to 2017, 13,000 compensation claims have been lodged; 452 arising from human deaths,

455 from human injuries, 5,073 from crop damages, 3,012 from livestock predations and 33 from property destruction. None of those have been compensated. I am talking about cases that have been reported to the Ministerial Wildlife Conversation and Compensation Committee and nothing has been done.

Madam Temporary Speaker, Sen. Wetangula and Sen. Mutula Kilonzo Jnr., I am saying that because they are lawyers, will tell you tort law and common law on negligence; trespass and strict liability requires that a person who keeps an animal that causes injury to the neighbours must be held liable.

The people who own these animals in Laikipia are ranchers in Laikipia. They release these animals to our farms, especially when there is drought and fire. We get trouble with these animals but we do not get compensation.

What I want to encourage my colleague, Sen. Mwaruma is that this Bill is timely. What we all need to do is to tighten the issue of compensation. The late Hon. G.G. Kariuki had talked about it in this Senate and in the National Assembly until his days came to an end; may the Lord rest his soul in eternal peace. However, the people he was talking on their behalf have not been compensated.

Madam Temporary Speaker, this is the issue that we must not only talk about but we must take action so that people can be compensated. In Laikipia, we are suffering from all angles. If it is not animals, at night we are being attacked by bandits. If it is not bandits, I do not know whether locusts are supposed to be classified under this Bill. Locusts are---

On the last page of the Bill in the schedule, I saw that on the issue of wildlife species in respect to which compensation may be paid whether there is death or injury, there was mention of elephant, lion, leopard, rhino, hyena, crocodile, cheetah, buffalo, poisonous snakes, hippo, sharks and stonefish. We get destruction even from monkeys. There is whales, stingray, wild dogs, and wildebeests.

Madam Temporary Speaker, this is a timely Bill. What we should do is to tighten and shorten the time of compensating and even the amount that people are supposed to be compensated. If you attack an animal in any part of this country, you will see about three choppers of KWS landing in that area. However, if five Kenyans are killed, nobody bothers.

When we talk about voting, it is these Kenyans who vote, it is not the lions or hyenas that vote. After voting, our powers are over and we are left at the mercy of these animals to kill us and destroy our crops and the best we can get is just a story that there will be compensation. Somebody comes to a *shamba*; we are told the first person to come should be from the Ministry of Agriculture. When the person from the Ministry of Agriculture comes, he tells us he does not have capacity and then from there we have to talk to a person from KWS.

Madam Temporary Speaker, there must be proper coordination so that one knows if you talk to the person from the Ministry of Agriculture and the person from KWS, how long will you wait before you get compensation?

Thank you.

Sen. Olekina: Thank you, Madam Temporary Speaker. I rise to support this timely Bill, the amendment to an existing Act, which is the Wildlife Conservation and Management (Amendment) Bill (Senate Bills No. 30 of 2020) by Sen. Mwaruma.

Madam Temporary Speaker, this is a matter which is very personal to me because when I was growing up in Narok, my father who was a farmer lodged a lot of complaints to the KWS when his crops were decimated by buffalos and elephants. I was a young boy in school but until today when I am the Senator in the Republic of Kenya representing the people of Narok where most of the wild animals live, he has never been compensated.

I was hoping that my good friend would bring this amendment and consider the people who have never been compensated. I do not know whether it can be retrospective but, I think it is important to be able to understand the cause of all this.

Madam Temporary Speaker, we, human beings, are the cause of all these problems. As we seek to be compensated, we also must take responsibility. During the big debate on the Building Bridges Initiative (BBI), some of us saw an opportunity to try and bring in certain proposals on how we can minimise the human-wildlife conflict.

Worldwide, people have discussed this and we were borrowing while discussing this issue of BBI. If you look at the International Journal of Science and Research, you will see a lot of research which has been carried out on how we can solve this problem of human-wildlife conflict.

We have encroached into the land which was predominantly occupied by wildlife. We have also continued to benefit immensely by the tourism activities when tourists come to visit this country. We benefit a lot from Maasai Mara Game Reserve, Tsavo National Park and in Samburu, but the problem is that we, and the Executive, has never been eager to ensure that they protect the population.

Madam Temporary Speaker, actions by the Ministry of Tourism and Wildlife have continued to impoverish populations because of ignoring the plight of people whose crops are destroyed. Human-wildlife conflict does not only revolve around a human being attacked by an animal. Destruction of property is also considered as part of the conflicts. I am happy that it has been addressed in this Bill.

One of the things that really baffled me when I saw this is the time of compensation. I request my good friend to reconsider it. Hypothetically, if I am taking care of my cows, as most farmers and pastoralists would do in areas where there is wildlife, there are two dangers there.

The wildebeests carry very dangerous viruses. Once they come into contact with our domestic animals, they cause a lot of problem like the east coast fever and other diseases. In our culture, we call them *ingatii*, because you cannot get a solution to them. This goes for buffaloes as well, and other grazing wild animals.

I hope Sen. Mwaruma considers further amending his proposed amendment to reduce the time of compensation to immediately. Hypothetically, if I am taking care of my cows and I am maimed and become disabled, does that mean that my family will stay hungry for twelve months for them to be compensated? These are things we must be serious about.

Madam Temporary Speaker, I support the sentiments of Sen. Wetangula and Sen. Mutula Kilonzo Jnr. on the issue of the management of these reserves. I do not know why Tsavo National Park or Amboseli National Park should be national government entities. In fact, this Senate can do the best job now. If we are not able to bring it into the Building Bridges Initiative (BBI) or any other constitutional amendment, we should revert those national parks back to the county governments. The people of Kajiado would benefit immensely if they had Amboseli National Park back. Makueni County would get a share of it.

When you try to reason with the current Cabinet Secretary of Tourism and Wildlife, the only thing he knows is privatization of the parks and coming up with regulations on how to manage them. At some point, he even ventures into issues that he does not have the mandate over.

I remember when he was raising hell over the issue of regulations in Narok County. The Maasai Mara National Reserve belonged to the people of Narok because they are the ones who donated it. I strongly believe that even Tsavo National Park belongs to the people of Taita Taveta and Makueni while Amboseli National Park belongs to the people of Kajiado and Makueni.

These are the amendments we ought to bring here during this time that we are all fighting to increase own source revenue from the counties. We should consider those as part of the own source revenue. Sen. Mwaruma, saying that a small percentage from the national Government should go back to the county government is not the solution. We ought to be pushing for taking these assets back to the counties.

Madam Temporary Speaker, we are lucky that 19 per cent of the money that is collected in Narok County supports the communities to deal with the issue of compensation. That 19 per cent is not enough. We are talking of a small percentage of 5 per cent of the revenue collected from Tsavo National Park to go back to the communities. If 19 per cent is not enough, what about 5 per cent? The argument we should be having on the Floor of this House is how to revert the management of national assets back to the people.

One of the things that really annoys me is that we are hungry to get land. We encroach into the parks, but when we propose to have a buffer zone---

For instance, in the case of Maasai Mara, there is no reason we should not have a 10-kilometre radius buffer zone as a migration corridor, so that we limit human-wildlife conflict. Instead of the Cabinet Secretary thinking about that and trying to create public participation, he is talking about privatization. How are we going to help that?

If you look at the International Journal of Scientific and Research publications of 2014, you will see that a survey on how to resolve the issue of human-wildlife conflict was carried out. About 60 per cent of the people said that if they are not willing to compensate people, then they should put up an electric fence to let wild animals stay in the parks and people will stay in their areas but that was never done. It is time we became serious on this issue of human-wildlife conflict. We should not only prioritize the issue of compensating wildlife and not human beings.

Sometimes I am ashamed because if you go to Kajiado, Narok, and maybe Taita Taveta and Samburu, you will find people who come from abroad from the United Kingdom (UK), the Netherlands, the United States of America (USA), forming some sort of compensation committees where they raise money from their countries, so that when a human being is attacked by a lion, instead of the Maasai going to kill the lion, you are told that you will be given Kshs5 million. What is Kshs5 million?

I have also seen the figure of Kshs5 million here. It is proposed that if a human being is killed, you give them Kshs5 million as compensation. Will Kshs5 million compensate for a life for someone who you were lucky to have, but just because of negligence, that person is taken away?

Madam Temporary Speaker, I hope that my good friend will consider adding the following amendments. The first one is creating a wildlife corridor of a radius of about 10 kilometres so that you have about 10 kilometres from the gates. Let me tell you what is happening in Narok today. People – some of them are Members of this House, others are Cabinet Secretaries and other politicians – have gone to Narok to purchase land. They buy land next to the park and put electric fences all the way to the Mara River.

When a wildebeest tries to cross because it does not want to graze in a place where the grass is high and goes to a place that has been destroyed by domestic animals, it is hit by the electric fence and dies. If you traverse the County of Narok by air, you will be shocked by carcasses of dead animals, most of them killed by the electric fence. If you really want to have an electric fence, why do you have to buy land next to the park? I think certain regulations should come in place that no one should be allowed to build any house next to the park.

Earlier on, I heard Sen. Cherargei talking about a gentleman who built a camp in the migration corridor. That gentleman constructed a park in a place that was further from where the crossing happens. However, because of the degradation of our land, when it rained and we safeguarded the Mau Forest, all of a sudden, there was a lot of water. What happened is that there was no water in the place that had been destroyed, and the animals could not cross there. So, they moved up.

Since that person was at the right place, we need to look at all human activities because the more we destroy the park, the more we destroy wild animals and the more people will be attacked by them when they are looking for a place to run to. Therefore, human activities must also be taken into consideration as a way of safeguarding domestic and wild animals that we all depend on.

Finally, on the issue of compensation, I just want to reiterate as follows. Sen. Mwaruma should consider limiting the period from twelve months to immediately because that can help. Why not test the waters?

Why not bring a further amendment calling for Tsavo National Park and Amboseli National Park to go back to the county governments and do public participation as we are required in all pieces of legislation? You will find that on that particular time, and I am sure Sen. Mutula Kilonzo Jnr. will tell you in most cases in this Parliament when we do public participation, you will find that only one citizen appears.

Madam Temporary Speaker, that time there will be over 5,000 people coming. The 20 per cent of them will be saying no because they have a vested interest. However, the 80 per cent will say we also will not get this. This is because what will happen is that now more local people will get employed. If you go to Kajiado County and Tsavo National Park around that Taita Taveta, the people will tell you *hii ni kitu ya serikali, hatuna haja nayo*. This is because even the people who work there are not residents from that area. They are not locals. They are people who were imported from other parts of the country to come and man an asset for the national Government.

Madam Temporary Speaker, one thing which is even upsetting is that even though that is an asset for the national Government, it is only a few cabals that benefit from the proceeds and money which is generated from those national parks. It is not everyone. I will dare Kenya Wildlife Service (KWS) to publish their audited financial statements. Let them tell us how much they generated last year from the revenue of people who visited those parks. We want them to tell us how much of that money went back into the community. We want them to tell us what their plans in terms of ensuring that they minimize this human-wildlife conflict are.

As I wind up because I see my time is up, these attacks on human beings, livestock, and crop raiding and property damage, I would beseech my colleague to put a figure on each one of them. If your property is damaged, where are you going to sleep? Do you want to wait for 12 years while sleeping outside? If your crops are damaged and you expect to feed on them, will you continue to languish in poverty yet you did everything humanly possible to elevate yourself from that impoverishment?

Madam Temporary Speaker, I fully support this amendment. I do hope that during the Committee stage, Sen. Mwaruma will be welcoming for us to bring in amendments to test the waters. It is about time that we limit the role of the Cabinet Secretary (CS) Hon. Balala to being just another CS without a portfolio.

Thank you.

The Temporary Speaker (Sen. Nyamunga): We now call upon the Mover to reply. Sen. Mwaruma, proceed.

Sen. Mwaruma: Madam Temporary Speaker, thank you for this opportunity to thank all the Members for contributing towards this amendment Bill. We have had quite a good discussion surrounding this amendment from the first day to this day. I would like to thank all those who participated. We have had very robust discussions.

What is happening in our counties is not good at all. We are cohabiting with wild animals and we are not getting the benefits from these wild animals. Most of what we are getting is suffering from wild animals as a result of human-wildlife conflict.

I would like to thank all these inputs especially from Senators. Sen. Olekina was the last person who said that we should even be bolder to propose an amendment to have all the national parks go to be game reserves. I have taken that with stride. I will look at possibilities of putting that in these amendments.

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

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

Mr. Temporary Speaker, Sir, I would like also to thank the proposal that the compensation should be immediate instead of the one year that we proposed in that amendment. Although it is clear that it might take time, Sen. Olekina, to do the budgeting and put enough money in place since our budgets are done yearly. It might take a bit of some time to put adequate funds for the compensation. However, if we know the approximate amount of claims each year that we get from the people who live around the conservation areas, still we can approximate to see how much is required for the compensation.

Thank you, Sen. (Dr.) Ochillo-Ayacko, Sen. Mutula Kilonzo Jnr., and Sen. Wetangula for the discussions and the input that has gone into enriching this Bill. The most one that I have picked is that we should have people going to court to seek orders so that payments can be done in good time.

Mr. Temporary Speaker, Sir, I might not be able to mention all those who contributed to this Bill. However, I will sit down and look at all the propositions that have been put forward when we were discussing this Bill. We shall have our next stage. I know we will enrich this Bill particularly the areas of right to go to court and activating the insurance scheme that has been discussed very loudly by Sen. Wetangula and Sen. Mutula Kilonzo Jnr.

I know the County Wildlife Compensation Committees (CWCCs) are not functioning very well. It has been observed sometimes they do not have sitting allowances to sit and determine how much our people are supposed to get in compensation. We need to see how we can rectify that when we go to the next stage.

Mr. Temporary Speaker, Sir, with these few remarks, I would like to request that pursuant to Standing Order No. 61 (3) that we defer the putting of the question to a later date given that we do not have quorum.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Thank you, Sen. Mwaruma. The putting of question is, therefore, deferred to tomorrow afternoon.

(Putting of the Question on the Bill deferred)

Next Order.

Second Reading

THE COUNTY ALLOCATION OF REVENUE BILL
(SENATE BILLS NO. 30 OF 2021)

Sen. Kibiru: Mr. Temporary Speaker, Sir, I beg to move that the County Allocation of Revenue Bill (Senate Bills No. 30 of 2021) be read a second time. This is another time of the year when the Senate is called upon to execute its mandate and as a Committee, we have been working hard trying to ensure that we tidy up all the issues. We

hereby do present the report on the County Allocation of Revenue Bill (Senate Bills No. 30 of 2021). We hereby make our submission as per Article 218 of the Constitution.

The Division of Revenue Bill, 2021 gives us a total of Kshs370 billion as equitable shares to county governments for the financial year 2021/2022. The County Allocation Revenue Bill, 2021 differs from the previous Bills because it does not include conditional grants from both nationally raised revenue and from the proceeds from the loans and grants from our development partners. The departure was occasioned by the High Court Ruling No. 252 of 2016. The High Court directed that the conditional grants cannot be included in the Division of Revenue Bill. Therefore, the Division of Revenue Bill, 2021, does not contain the conditional grants allocation. Consequently, the County Allocation Revenue Bill, 2021, cannot contain their allocations.

I can confirm that the Committee has sponsored a Bill and it is the reason as to why we delayed to move the Motion. The Bill is the County Governments Grants Bill which will provide for allocation of conditional grants among county governments from the national Government share of revenue and from proceeds of loans and grants from our development partners.

The County Allocation Revenue Bill, 2021, contains two Schedules relating to the following. The First Schedule is on equitable share which is Kshs370 billion, allocation of each county government equitable share of revenue raised nationally in the financial year 2021/2022. The second one is the schedule on the county government budget ceiling on recurrent expenditure in the financial year 2021/2022.

The First Schedule provides the horizontal distribution of the equitable share among the 47 county governments using the third basis approved by Parliament in September, 2020. The basis provides that Kshs158.25 billion be shared using the allocation ratio applied in the financial year 2019/2020. The net, which is a balance of Kshs211---

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

The Temporary Speaker (Sen. (Dr.) Lelegwe): What is it Sen. M. Kajwang'?

(Interruption of Debate on the Bill)

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

Sen. M. Kajwang': Thank you, Mr. Temporary Speaker, Sir. I was keenly following the submission by the Sen. Kibiru, the Chairperson of the Committee on Finance and Budget.

Pursuant to our Standing Orders, Standing Order No. 31 states that the Senate may resolve to extend its sitting time.

I wish to move the Motion that the Senate extends its sitting time until conclusion of its Business today. That is because we are conscious of the fact that our calendar indicates that tomorrow will be our last day before we go into our one-month recess.

I, therefore, request to move the Motion and request Sen. Kinyua to second.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hold on Senator. We are doing some consultation on the request before you second the request by Sen. M. Kajwang’.

*(The Temporary Speaker (Sen. (Dr.) Lelegwe
consulted the Clerks-at-the-Table)*

Order, Sen. M. Kajwang’. We request that you revise your Motion to include up to Order No. 10. We can extend time until conclusion of business as contained in Order No. 10.

Sen. M. Kajwang’: Mr. Temporary Speaker, Sir, I thought that a Member proposes the Motion as he deems fit then it is seconded and if the House does not find it fit that we extend time until conclusion of business, then it shoots down the Motion. Not without being specific to a certain Motion.

I rose on that Motion because I know that there are important Businesses in that Order Paper and we will go for a one-month recess after tomorrow. If the House deems it fit that we extend time until we conclude the Business in the Order Paper, then the House has got the leeway and the power to second and approve that without being constrained by the Speaker on what orders to address.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. M. Kajwang’, we have consulted with the House Business Committee, and we have deferred Order No. 16 and 17. You can, therefore, proceed and move your Motion.

Sen. M. Kajwang’: Mr. Temporary Speaker, Sir, I do not know the reason as to why you are referring to Order No. 16 and 17 yet we have other Orders in the Order Paper. I am not talking about any specific business or interest. I am moving the House to extend time for us to exhaust the Business that is before us. When we get those Orders, you shall defer them.

However, I might be interested in Order No. 13 or 14 so it is not fair to tell me that you have deferred Order No. 16 and 17. Allow the Members to move the Motion then if it is seconded and adopted, then the Speaker shall guide. I will not challenge the decision of the Speaker on deferment of any Order.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. M. Kajwang’, we have already deferred the said Orders. Therefore, proceed with your request to extend time.

Sen. M. Kajwang’: Mr. Temporary Speaker, Sir, pursuant to Standing Order No. 31(3)(a), I beg to move a Motion that the Senate do extend its sitting time until the conclusion of the Business today.

I ask Sen. Kinyua to second.

Sen. Kinyua: Mr. Temporary Speaker, Sir, I rise to second the Motion on extension of time until conclusion of business today.

(Question proposed)

(Question put and agreed to)

(Resumption of debate on the Bill)

The Temporary Speaker (Sen. (Dr.) Lelegwe): Proceed, Chair of the Senate Committee on Finance and Budget.

Sen. Kibiru: Thank you, Mr. Temporary Speaker, Sir. I thank Sen. M. Kajwang' for coming up with that Motion of extending time. We could probably ask the Secretariat to inform our Members through the other forums that we have extended time. Those who are online can also be alerted to stay on to contribute.

I was on the point where I said that the Schedule is based on the formula that was approved last year. The basis provides that Kshs158.25 billion be shared using the allocation ratio applied in the Financial Year (FY) 2019/2020.

The net which is Kshs211.75 billion is allocated using the formula: 18 percent on population, 17 percent on health, 10 percent on agriculture, 5 percent on urban, 14 percent on poverty, 8 percent on land mass, 8 percent on roads and 20 percent on basic share.

The proposed Second Schedule is in relation to county governments' budget ceiling on recurrent expenditure for the country executive and County Assemblies for the FY2021/2022. The recommendation is in fulfillment of Article 216(2) and (3) of the Constitution of Kenya, 2010 and Section 107(2)(a) of the Public Finance Management(PFM) Act, 2012.

On the county assemblies' and county executives' ceilings, the budget ceilings are important in ensuring prudent allocation and expenditure of public resources and conform to Article 200(1) of the Constitution of Kenya, 2010.

The ceilings are provided to promote harmony between the county executive and county assembly in sharing resources. The ceiling also ensures adequate resources are allocated to development projects in line with the law. We all know what the law states that 30 percent goes to development and the county executives have not been complying with the law.

The following is an analysis of county assembly ceilings:

County Assembly ceilings cover expenses on personal emolument, legislative process support, training and insurance and other operations and maintenance. The county assembly ceiling recommended in the Bill for FY2021/2022 is Kshs33.25 billion, which is the same amount as in the FY2020/2021 as well as FY2019/2020.

A breakdown on the county assembly expenditure components indicates that salaries, allowances, gratuity and pensions are amounting to Kshs24.24 billion or 73 percent of recurrent expenditure while operations and maintenance the O&M totals to about Kshs8.36 billion representing 25 percent of the total allocation.

Mr. Temporary Speaker, Sir, County Assemblies have raised concerns on the non-disbursement of all budgetary allocations. The delayed Exchequer releases have contributed to loss or unspent resources at the end of the financial year as well as pending bills.

From one financial year to the other, the Committee received a list of 35 County Assemblies with pending bills amounting to Kshs980 million. The expenditure on salaries and wages has been rising over the years due to annual salary increments. The Salaries and Remuneration Commission (SRC) in 2020 released a circular giving guidance on the position and annual salary increments for county government staff.

These increments have an effect on gratuity costs and as well as a need to be covered within the ceilings. The Commission on Revenue Allocation (CRA) submitted that in adherence to SRC circular, County Assemblies will require an addition of Kshs1.4 billion. It may also be noted that several County Assemblies made submissions to the Committee requiring for upward adjustment of their recurrent expenditure ceilings.

While considering the County Allocation of Revenue Bill for FY2018/2019, the Senate gave a moratorium of three years for the county executives and County Assemblies with staff beyond CRA recommended capping to rationalize their staff. The Senate moratorium is lapsing in a few days; on 30th June, 2021.

From the information submitted by several County Assemblies, it is clear that most of them have not been able to achieve rationalization of staff establishment. Several county assemblies have requested for extension of their deadline to allow more time for rationalization.

The national Treasury submitted a memorandum on the Bill. In the memorandum it was observed that there was need for the Bill to provide for reporting on the transferred functions. Through the memorandum, the national Treasury proposed that the CS National Treasury and Planning shall prepare a report for each quarter for the financial year in respect to the expenditure of funds transferred to the national Government. The Committee acknowledges that this provision will provide accountability mechanisms especially for performance of such functions.

The Committee recommends that the Bill be approved with amendments. The amendments relate to-

- (a) Amendment to Clause 6 to provide for reporting on the expenditure on funding of transferred functions.

To prevent accumulation of pending bills by County Assemblies, the Committee recommends introduction of a new clause after Clause 11 to amend the PFM Act, 2012 to ensure all monies appropriated for County Assemblies are transferred in full by the end of the financial year.

In the event of unspent balances, it should be availed in the subsequent financial year for budgeting and settlement of any financial commitments made in the previous year.

This came out very strongly because once the financial year ends and the County Assemblies have not received disbursements from the county governments, they normally do not get the balances of the money they had budgeted for. So, we thought it prudent to capture that and ensure it is captured in this Bill.

The other is readjustment of County Assemblies' recurrent expenditure ceiling by an additional Kshs1,428,254,696 to enable counties adhere to the various SRC circulars pertaining to annual salary increments and promotion of staff.

Mr. Temporary Speaker, Sir, we all know that County Assemblies are the first line of oversight. We felt as a committee – I believe the Senate agrees with us - that we need to ensure our counterparts are well taken care of especially when it comes to issues of resources. This is because we all know the county executives more often than not hold a carrot and stick on the County Assemblies.

We want autonomy which will also come in another Bill which we are proposing on the PFM Act.

Provision of Ksh980,327,527 for counties to clear their pending bills.

The Committee recommends that these funds should only be released after verification of pending bills by the Controller of Budget (CoB).

We thought it is prudent because we have all heard about these pending bills, that we put a caveat. That is why we are saying the funds will be paid subject to approval or verification by the CoB.

Mr. Temporary Speaker, Sir, as we may observe, the effect of the assignation of these funds to the 35 county assemblies therefore has the effect of increasing expenditure ceiling from this financial year. It is therefore prudent to note that the increase in the ceiling has been occasioned by this special dispensation to enable the clearing of pending bills.

Regarding the Senate resolution that the county government should rationalize the staff establishment before 2021, the Committee recommends that the same be extended to June, 2023. The Members of the County Public Accounts and Investment Committee (CPAIC) know that this issue has been raised by the Auditor-General and very few counties have been able to adhere to that. We heard the prayer from those who submitted especially the county assemblies that they be allowed to extend. Remember, they need resources to do the rationalization.

Mr. Temporary Speaker, Sir, as I conclude my Report, I want to make a few remarks. First, is to thank the Committee that I worked with; my Committee. We put in a lot of effort. We met very frequently and we churned out a lot of reports. Kudos to my Committee Members and the Secretariat for making sure that we get this Report.

On the County Governments Grant Bill, we have had challenges. When we call the stakeholders, it seems that the National Treasury, the Attorney-General and the Council of Governors (CoG) had a problem in trying to agree on the best mechanisms on how to interpret or implement the rulings of the court.

We found as a committee, that it is important that we make a legislation and that is why we have proposed that Bill. The Bill has already been published and is undergoing concurrence with the Speaker of the National Assembly. When it comes, we will proceed and we will ask the Senators to help us pass the Bill so that we can also be able to allocate the conditional grants.

Mr. Temporary Speaker, moving forward, we have been asked by the Governors that we need to rein in on the National Treasury. What came up as we debated on the Bill is that the National Treasury operates with some impunity. They are not disbursing money as per the law. This is a law we are passing, and we expect it to be adhered to. The schedules once passed should be followed to the letter.

Mr. Temporary Speaker, we even proposed to the National Treasury that they should have an overdraft from the Central Bank so that counties must get money as and when it is due. When we talked to the National Treasury they said that sometimes the counties have monies that are in excess of Kshs500 million so they cannot disburse funds to them.

Sen. Mutula Kilonzo Jnr. asked who gave them the permission to do that. This is because once we pass the law, when the schedule becomes due, the National Treasury will have no mandate to alter whatever we will do.

As a committee, we will propose amendments to the Public Finance Management (PFM) Act. We propose the creation of what we learned with Sen. Mutula Kilonzo Jnr. somewhere, that is the Treasury Single Account (TSA) system. Many countries have embraced the TSA system for managing government cash.

The beauty of it, as we will explain when we make proposals in the amendments, is that it will give the Government and especially the Central Bank of Kenya (CBK) the control over all the resources. Counties could be borrowing but there could be some Government money lying in some commercial banks. We will propose that tax and non-tax revenues be domiciled in one account at the CBK.

This is happening even in countries like Sudan. We feel it is high time we started doing that as a country. Probably the reason banks are making huge profits even in the current situation where we have COVID-19 is because of trading with the taxpayers' money while the Government continues to borrow. This is a proposal we will put forward in the amendment.

We will also meet the Cabinet Secretary in charge of the National Treasury. We have asked him to meet us tomorrow because we need to know why they are not disbursing money to the counties.

Mr. Temporary Speaker, Sir, without much ado I ask my able Vice-Chairperson to second.

Sen. (Dr.) Ochillo-Ayacko: Thank you, Mr. Temporary Speaker, Sir, and the Chairman, Sen. Kibiru, for summarising the work that our committee has done on behalf of the Senate.

The report and the Bill attached to it is the most important business that the Senate does. It is the duty of the Senate to divide to all counties money that is supposed to be used for running the affairs of those counties every year. Today, the report making that proposal a Bill, including the proposition, is the subject matter of debate in this House, after it has been moved and is being seconded by myself.

This is an important moment. I hope that all Members of the Senate will have the strength and stamina to sit long hours and participate in debating and adoption of this important Motion.

The weakness of devolution is about funding. Many times, we talk about governance which can be dealt with and the attempts to deal with governance. Human beings can be brought back to operate within the law and sanctions. However, if funds are not available, then there is little likelihood that services will be offered and devolution will not have its meaning.

From my humble seat, I have identified the National Treasury as the biggest threat to devolution. The current occupants of offices in the National Treasury hardly respond to our requests for meetings. In fact, without pre-empting a report that might come here, they hardly respond when it comes to providing information or supporting the position that this House pushes for.

I do not know why they do so, but perhaps they live in another world and reality will come upon them because they are the ones that are sabotaging devolution. The first aspect of funds that sabotages devolution is inadequacy in terms of provision of such funds and that was seen when we were working on the formula. It was amplified when we were working on the Division of Revenue Bill (DORB) and perhaps settled when we agreed on an amount that was higher than what we were previously receiving and when there was guarantee by the Executive that the figures to be distributed or to be shared would be increased by Kshs70 billion.

So, we can all sit easy and theoretically or in terms of paper talk about the availability of additional an Kshs70 billion to be shared among our 47 counties in this County Allocation of Revenue Bill (CARB). However, the problem does not end there.

The problem is made worse by irregular and late disbursements by the same National Treasury. They collect the money, disburse when they think they should. They have no way of engaging counties and assuring counties of the reliability of their disbursement schedule yet, we as legislators sit here, provide a schedule which is law and they must comply with, but they do not do that. So, county governments, including Migori where I reside and represent here, do not receive money in time.

You will find that children being born in Kuria, Kehancha Referral, Nyatike Referral and other places do not get the attention that they should get. I think this problem is replicated or spread among all other Kenyan counties. It is the National Treasury that does not indicate or engage the Committee or the Governors.

We have talked to the national Treasury and it is like talking to a stone; the stone hears but never responds, the hyena said so. I think the hyena must be saying that from Tsavo in Taita Taveta County that we have been discussing. The hyena must be saying that it has already told the rock because we keep on talking to them about this and we never get a response and that is really tragic.

Counties are owed a lot of money and we are trying to fix it, but the impunity exhibited there is one that should be dealt with expeditiously by this House. As we speak today, a lot of monies are owed, pending bills are owed, statutory deductions are owed and they attract penalties.

The same national Treasury that does not remit money in time has created through us some other entities called the National Social Security Fund (NSSF), National Hospital Insurance Fund (NHIF) and Kenya Revenue Authority (KRA) and other entities that collect statutory deductions from counties. They penalise people for failure to remit them in time. The penalties are significant or substantial amounts of money.

So, these things do not make sense. The counties cannot comply with plans or cannot operate within the plans that they gave out. The counties are given at the very last

minute huge sums of money that again another law called the Public Audit Act does not permit them to consider in the financial review under discussion.

The financial year ends on 30th June. You receive money a week after the end of 30th June, you cannot spend it and you cannot place it in the just ended financial year or in the next financial year.

The darkness within that rule of accounting is a problem. We are not certain whether the requirement that they re-budgeted and that a supplementary budget under the equivalent of Article 223 of the Constitution suffices because those supplementary budgets are passed with supersonic speed.

I doubt whether the Members of the County Assembly (MCAs) know what they are passing and whether there is compliance with reallocations. That is where things get lost. There is no tracking of what happened to the previous budget and what is coming into the incoming budget.

Mr. Temporary Speaker, Sir, there are a lot of problems that the National Treasury is responsible for. They continue hiding behind that big building borrowing on our behalf, but they are creating a cancerous situation. If it is not cured, this House and its sister House will continue passing in their books what we think is money and programs that they think is development, but these programs are not funded. They are not funded in time, they are clawed back by penalties and our people continue to suffer.

If the National Treasury is hearing us, they must change. They must be made to change by Parliament because it appears that they are the biggest threat to the County Allocation of Revenue Act (CARA) and the benefits of allocating money to counties.

Mr. Temporary Speaker, Sir, not so far in the future there will be proposed legislation to cure some of these things. I hope that the National Assembly, our sister House, is listening to this. We are the ones who deal with the Auditor-General's report year in, year out. We are the ones who know the challenges that we experience in relation to the behavior of the National Treasury.

At times, when we talk about the National Treasury, our sister House is of the view that they own that place. That place is causing suffering, and if they represent the same people we represent, that suffering must be jointly fixed by both Houses if we are to live to our calling as Parliament, where people debate public problems. Our friend Sen. Sakaja calls it *pale*.

Mr. Temporary Speaker, Sir, I support this Motion and report. We need to fix funding in terms of the volume of funding that goes to counties, the timely disbursement of this funding to counties, and how these funds are used. If we just think about oversight, we will be overlooking something that is dying from a cause that has been made outside the activities of county executives or outside the intervention of the Senate.

The problems of counties are huge, but they are being caused by the National Treasury. Counties including Homa Bay, Migori, and Kirinyaga are grinding to a halt. Makueni is nearly dead. If we do nothing about this, we will be overlooking the financial corpses of counties that died under our watch.

Mr. Temporary Speaker, Sir, I support and second this Motion. I hope that it will gain favour with our colleagues who are seated here.

(Question proposed)

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Temporary Speaker, Sir. This is obviously a very good time for us as the Senate. It is the only Bill that we have the power to originate. I thank the Chair and Vice-Chair for the guidance in this matter. It is the fruit of the long protracted battle that we had last year on the revenue sharing formula. It has granted counties an extra Kshs53 billion into their kitty.

While we are discussing money, the Chair and Vice-Chair are aware that counties have not received up to Kshs82 billion and we are now in the month of June. I have a feeling that we are passing CARA in faith, as Christians and Muslims, because nobody wants to admit that the country is broke. We have no money to give counties.

Mr. Temporary Speaker, Sir, it was anticipated, and I think it was the anticipation--- My interpretation of Article 219 of the Constitution, and the Chair alluded to this issue is that, when we allocate money to counties, that money should be ring fenced. That is the reason that once we passed Kshs370 billion, no one can reduce it to Kshs369 billion, even if the world was ending.

Mr. Temporary Chairman, Sir, the suggestion by the Chairperson is that CBK, the custodian of our resources, ought to advance up to Kshs370 billion to counties in the next financial year irrespective of the question of collections or questions that are affecting the National Government. In the Division of Revenue Bill, the clause that says that counties will receive money and if there is a shortfall, the shortfall should be borne by the National Government, that should be made a reality. We are going to pursue this matter and I hope the Chairperson is going to be very steadfast. We trust him that counties can access money as an advancement from Central Bank of Kenya (CBK) without waiting for the National Treasury to pay the Chinese or other people.

Mr. Temporary Speaker, Sir, does it not surprise you that Kenya is divided into national and county. National Government is not broke for purposes of remittances but the county governments are broke. There are National Government projects. Where did the National Government get the money to do the sort of projects they have been launching throughout last week in Nyanza, for example, while counties cannot even do cattle dips? Are we are living in the same country?

It is important that we think about the principles used by the Cabinet Secretary (CS) National Treasury, that they peep into the accounts and check. If Kirinyaga County has Kshs500 million they say do not give them money, give the money to Mombasa County yet in reality it is paper money. That money does not exist. That money cannot be accessed. We ought to find a method to put Treasury in check.

Mr. Temporary Speaker, Sir, the Chairperson does not confess that the CS of National Treasury has given us a runaround. He has been playing hide and seek with the Chairperson and the Vice-Chairperson until we are now on the Floor. Every time he is supposed to answer questions he runs away. Every time we want to find out why counties are not receiving money, he finds a good excuse to be busy.

While he is considering increasing the ceiling of borrowing to Kshs12 trillion, I wonder whether he will find the time to come or he will also be busy on that day. If he does not come, I do not know how this is going to pass through the Senate.

Mr. Temporary Speaker, Sir, it is disappointing that our members of County Assembly (MCAs) in Taita Taveta and Makueni Counties have not been paid their salaries for more than four months. It is very sad. For reasons that we do not know, these people are not being paid. To some extent even our offices do not receive these funds. Perhaps the CS ought to make an admission that there is indeed a problem so that we do not appear to be making law for the sake of it.

The Schedule that we pass every year should not be an academic schedule. It is a law. I have said this before and we must repeat and the Chairperson must repeat and reiterate that the CS, National Treasury does not have the opportunity, the right or legal mechanism to go behind the Schedule and use another method of discretion. It makes it sound as if the Public Finance Management Act are rules of a market somewhere in Kathonzweni in Makueni County where you decide as you please when the sun rises or sets.

Mr. Temporary Speaker, Sir, in terms of monitoring the use of these resources, while we fight for counties, and your governor is very famous for being one of the governors being pursued for assets worth Kshs11 billion belonging to counties, sometimes we do this out of patriotic duty. A lot of our counties cannot show the reason why we are fighting but we cannot stop fighting. Counties are mismanaging funds; they are mismanaging COVID-19 funds.

It surprises me that when the country is broke the people who are building in all market places in the counties are county officials. So, where do they get this money from? It is a question that has not been addressed.

It is a question that the Chairperson spoke about this morning. He talked of what Sen. (Dr.) Ochillo-Ayacko's team is doing in the Committee of County Public Account and Investments. We are not seeing teeth to bite these governors. We are not seeing them being chased for mismanagement of public resources.

The Chairperson has not mentioned that this budget and the next one will be very dangerous. That is because the next budget will not be implemented by the sitting governors. This is the last budget that they will implement. What Sen. Olekina said is true. The Public Financial Management Act amendments for this year and next year will be very instrumental. The second term governors will find an opportunity to pilfer these funds going by the records and if the audits are in the financial year 2015/2016, they have made their calculations very right.

They know that they will be in Hawaii, Maldives or some exclusive island without network by September, 2022, and we will not be able to catch up with them because our audits are late. By the time you will be finding fault, they will have retired to places where you cannot extradite them like Panama or some exotic town in South America, which is unfortunate. We fought for an extra Kshs54 billion to go to the counties but I cannot confidently say that the people of Kenya should not expect any

good thing to happen. The Controller of Budget and the Auditor-General are, therefore, put to task.

I have said this in terms of our reforms to the Public Financial Management Act and we have made a note. There is a gentleman who is called Njoroge and in our old Constitution, he would be the Controller of Budget and the Auditor-General. I do not know why we should not have the same person again. We would then have the person releasing Kshs10 to Makueni County be the same person asking where that Kshs10 went to. At the moment, there is a disconnect between the Controller of Budget and the Auditor-General in terms of financial reporting.

I am happy with the current Auditor-General. She is asking the right questions. We have been unable to get the National Treasury to ask questions about the Equalization Fund. Fortunately, the Auditor-General has asked why they have not spent the funds allocated in the Equalization Fund. Only 30 per cent of the funds that have been allocated since 2010 have been spent yet counties like Samburu, Marsabit, Mandera, Isiolo, Tana River and Kitui are supposed to benefit from the Equalization Fund. Those counties are still wallowing waiting to excel to the extent we proposed to extend the term limit and the sunset clause to 30 years in the Constitution Amendment Bill. If you cannot perform what you are supposed to do in 20 years, what makes you think that you can achieve it in 30 years?

I am happy with the Auditor-General and we must continue supporting her so as to get the audit reports quickly. The Auditor-General requested that we change the reporting framework. If we are to achieve the complete audits then we have to synchronize the financial year together with the reports on audit because there is a disparity. That is what the Auditor-General is proposing. When we do that, we will get real time reports the same way we have dealt with the counties expenditure on Covid-19 funds.

In support of this Bill, we must insist on our legacy irrespective of having governors who are pilfering funds. Our legacy, as a Senate, will be on the amount of resources that we have managed to devolve to the county governments. In future, we will get good governors.

We have had a string of bad governors across the board but we have not impeached enough and they have not impeached enough at the county level. Since we operate on good faith and hope that we will have a country where people are responsible for the resources that are devolved to counties, then there should be good results for the Kshs53 billion we have devolved to the counties this financial year.

It is unfortunate that we have now discovered that money allocated to county assemblies which is sent late is misappropriated and used by the county executives without reporting. The amendment we have proposed to Section 130 provides that the monies that have not been spent but have been allocated to county assemblies for every financial year should be credited to their accounts and used for purposes of their budgets in the appropriations. Therefore, I hope at the Committee Stage, the Chairman is going to propose that amendment that will ensure these funds do not end up in the wrong account.

Sen. Olekina asked me why we cannot have two treasuries where the amounts go directly to them. Under Chapter Twelve and in terms of amendments to the Constitution, we do not require a referendum to amend so that clerks of the county assemblies can have some element of autonomy.

Members of County Assemblies (MCAs) are suffering. I have seen it in Makueni. The Governor may decide that they are not going to have allowances and says so publicly. He tells them there is no money and ask why they need allowances yet it is part of the budget. Members of the executive receive their allowances but MCAs do not. Nominated MCAs are being mistreated left, right and centre for reasons I do not know.

I hope we can truly achieve the independence because it will be a tragedy to give counties 35 per cent of their recently audited accounts. With weak county assemblies like the ones we have now, you will never see more heist when counties start receiving that sort of money passed by this Senate through the National Treasury.

I support, but eventually we must find a way of dealing with the National Treasury. It should not operate as if it is part and parcel of the Cabinet. The Cabinet Secretaries operate as if they are the fourth arm of Government. They operate on their own and do what they feel like when they feel like and do not answer to anybody. It is a mistake and something we must resolve.

Sen. (Dr.) Zani: Thank you, Mr. Temporary Speaker, Sir. I support that the County Allocation of Revenue Bill, 2021 be read a Second Time. In September, 2020, Parliament approved the third basis for allocation of the share of national revenue among the county governments on condition that the formula's implementation will be preceded by Kshs53.5 billion increase in the counties equitable revenue share. This is an experience we all went through in this Senate. This is the prime reason the Senate exits to ensure that the counties develop.

I wish to pick it from another angle from what Sen. Mutula Kilonzo Jnr. has said that having done all this, when the money goes to the counties--- Going by the Auditor General's financial report of 2014/2015 about the misgivings in the counties, certain things have to be done in the counties to ensure that money is used the way it is meant to be used.

It is unfortunate to hear that Kshs22 billion was allocated but not used in the FY 2020/2021 yet workers in Taita Taveta and Makueni counties did not receive their salaries. When the Chair of the committee was moving this Bill, he said that we need to incorporate TSAS, so that we ensure that what goes into this kitty is appropriately used for what it is meant.

Lastly, Mr. Temporary Speaker, Sir, if this money is not released in time, then it means counties cannot do what they are expected to do. In that report by the Auditor-General, counties missed revenue targets and at the same time, they have many unpaid bills. It is partly because of under-collection of revenue. This revenue is not reaching in time and is not being used appropriately. Most counties did not adhere to the approved budgets over time. There was no approval for budget items from the Controller of Budget (CoB) which is key.

In fact, we have always tried to interrogate why when this money is allocated to counties, a system of follow up through cannot be done. We have engaged the CoB on this and she said she can only apportion and recommend for money to go to counties. However, that office cannot do a follow through to make sure that money is used where it is meant to. That is where we have a problem. It may be a question of staffing or changing and tilting things.

As far as I see, even though we have IFMIS, it has not worked effectively over time to ensure that this money is followed through. Issues like poor record and book keeping, inability to use automated accounting systems, missing staff establishments, policies, among many other things is what is happening. It is sad.

Mr. Temporary Speaker, Sir, as the Senate, we stood for what we needed to do and ensured there was an increase from Kshs316.5 billion in the 2020/2021 allocation to Kshs370 billion. Therefore, the county governments' equitable share of revenue allocated to county governments in this basis are key and adhere to Article 217 of the Constitution.

Over and over, we have talked about own source revenue and the need for county governments to try and up their resources. The defunct local authorities used to collect enough to pay staff and take care of their expenses. That is no longer happening. Article 209 of the Constitution has assigned counties the power to raise revenues. As such, counties are expected to improve and maintain sustained collection of their own revenues.

With the Kshs53.1 billion proposal, it is assumed that growth trajectory through own source revenue within the year stipulated, should be able to add sufficient additional resources to finance all functions assigned to county governments as contemplated in Article 203 of the Constitution.

Part of the reason why we have a problem is that own source revenue has not worked and at the same time, what is taken to counties is not going on time. When it finally gets there, there are issues within counties.

Mr. Temporary Speaker, Sir, a further Kshs6.8 billion had also been set aside as the equalization fund in the Financial Year 2021/2022. This translates to 0.5 per cent of the last audited revenue accounts of Government, as approved by the National Assembly. This fund is used to finance development programmes that aim at reducing regional disparities among beneficiary counties. For a long time, there has been marginalization. So, there is need for us to upgrade and ensure such counties see the light of day and reduce the disparity in terms of regionality.

For stability and predictability of county revenues, county governments' equitable share that is raised nationally is protected by the Division of Revenue Bill. As has been mentioned, Clause 5 provides that any shortfall in revenue raised nationally, shall be borne by the National Government. This is what Sen. Mutula Kilonzo Jnr. says that if there is a shortfall, that provision in this clause is that this should be borne by the National Government and adequately addressed. Otherwise, we will have a situation where counties have planned but their plans cannot be executed and on time.

We have as a process both the vertical and horizontal allocation of resources. We already had through the Division of Revenue Allocation that became the Division of

Revenue Bill, a Division of Revenue from horizontal and vertical. For Division of Revenue Bill, it gave the vertical distribution of resources and now for the County Allocation of Revenue Bill, which is now a Bill, gives a specific horizontal distribution of the resources that need to get into the counties. This is adequately covered in Clause 3

Clause 3(b) is also very critical because it says that through this Act, it will facilitate the transfer of allocations made to the counties. It is not just putting these allocations in place but facilitate the transfer of allocations to counties under this Act from the Consolidated Fund to respective County Revenue Funds. That Clause is very key.

Mr. Temporary Speaker, Sir, the issue of budget ceilings and these are included in Schedule 2 of the Bill are very critical and it took time. I remember some time back where county assemblies and the County Executives had to sit through to identify these particular budget ceilings. When allocations were done prior to that starting Financial Year 2013/2014, these budget ceilings had not been put in place. Now this Bill has appropriately done that.

Another key aspect about this particular Bill is that funds should follow functions. For a long time, this has been talked about starting from Financial Year 2013/2014 and we know there were certain functions that should have gone to the counties that needed to be transferred to the counties. For example, libraries.

The Senate at that time transformed ourselves into a Committee of the Whole and separated ourselves into different counties to identify functions that had moved and funds had not followed those particular functions including libraries. This Bill is very specific that whichever way, a respective County Assembly shall appropriate such monies as may be required for the transferred assumptions. This is important.

Mr. Temporary Speaker, Sir, I have talked about the Controller of Budget in terms of spending and how the cash transfers should also be done. That is the basis of the confidence that is needed so that at the end of the day, when this allocation has been done to the counties, everybody is comfortable with what has happened.

Counties must ensure that the actual transfers have been done to the county government. This is envisaged at Clause 3 and at Clause 8(3) that the County Treasury shall as part of its consolidated quarterly and annual reports required by the PFM Act report the actual transfers so that the actual transfers from the county treasuries need also to be reported appropriately so that we know exactly what has gone there.

Mr. Temporary Speaker, Sir, lastly at Clause 9, this is a misconduct clause that there is an offence and that offence is punishable under this particular Act. As the Chair of this Committee said as we are moving this Bill and also as the Vice-Chair said; this is one of the most important functions that the Senate does annually to ensure that counties receive this particular allocation.

Schedule 1 is very clear and it gives several columns (a), (b), (c), (e), (f) and (g) that we have already expounded on. On Column (d) and (f), the allocation ratios have been allocated and the basis of the formula is clear to us in terms of the prepositions and the decisions that were done like money goes into specific counties and the specific allocations that have been put into place.

Looking through there is (d) plus (f), the allocation that is expected to go to the counties. Kwale County will be receiving slightly above Kshs8 billion, Mombasa County will receive Kshs7 billion, Tana River County will receive Kshs6 billion and Tharaka-Nithi will receive Kshs4 billion respectively.

As the mover indicated, this is the equitable share that does not include conditional grants that have been put as part and parcel, now within this particular framework.

Going again to the Second Schedule, there is the issue of the various counties and their ceilings. These ceilings must be entrenched so that any county assembly or county government will from the beginning know that this is the allocation that the county assembly and county executive should use and stick to those specific provisions that have been given in that particular allocation.

The work that the Senate has done has not been in vain. Putting everything together, all the indicators and indexes to finally agree on having this share go to the counties is very key. The increase of Kshs53.5 billion is commendable. We hope that with the timely disbursement of these funds to the counties, we can begin to see the dream for what devolution was envisaged to be. We know that many people passed the Constitution of Kenya 2010 because of devolution and what that meant.

When I hear the passion of the Senators who were speaking about protecting this devolution, then we are reaching a phase where this Committee together with other committee have a critical role to play in assuring that together with the various stakeholders, the National Treasury is able to move expeditiously to transmit these funds in a timely manner and also for county governments to utilize these funds efficiently within the counties and achieve the goals of devolution that the Kenyans so much yearned for when they passed the Constitution of Kenya, 2010.

I support, Mr. Temporary Speaker, Sir.

Sen. Olekina: Thank you, Mr. Temporary Speaker, Sir. I rise to support the County Allocation of Revenue Bill (Senate Bills No. 30 of 2021).

Mr. Temporary Speaker, Sir, let me begin by thanking the Committee for carrying out a very good job in ensuring that our counties receive money. One of the things that really impresses me this year and that I am very grateful for is that the County Allocation of Revenue Bill does not include conditional grants. Conditional grants, as you will see in the submission by the Commission on Revenue Allocation (CRA), was being used to make counties appear as if they were receiving money.

Mr. Temporary Speaker, Sir, during the debate on revenue formula, we all argued because Senate was coming up with figures and National Treasury was very clear and saying, we do not have this money. I find it a little bit ludicrous that we are pushing National Treasury so much to send money to counties, we increase revenue allocation to counties yet counties have not received that money.

Mr. Temporary Speaker, Sir, I do not know what we are going to do to ensure that these counties have the money. When I was reading through this very good Report which that has been prepared also with the input of county assemblies, I find it very difficult to

understand where National Treasury is going to get all this money and ensure that it is released on time without money being collected by the Kenya Revenue Authority.

Mr. Temporary Speaker, Sir, one of the biggest challenges that I have always had - and I have always concurred with the National Treasury on this matter - is on the issue of pending bills. There is absolutely no reason as to why counties should have pending bills. However, when you look at the submission by the CRA, they indicate that counties have a lot of pending bills. Therefore, if you have budgeted and you have received the allocation, why not spend within your means?

Mr. Temporary Speaker, Sir, I was expecting that the Committee in their recommendation would be a little bit tougher when it comes to the issues of counties spending money that they do not have. I have seen one of the recommendations by the Committee that suggests that if any money remains unspent, it should be sent to the counties, so that they can budget it for the next financial year. If that is the case, we will continue accumulating pending bills.

The proposal should be before any money is released by the National Treasury, counties should ensure that they do not have any pending bills. It is a big challenge because a lot of money which National Treasury says counties have, is money on paper but there are commitments. We need to relook at that issue.

One of the biggest challenges which will continue affecting county executives and the county assemblies is the issue of remittance.

Sen. Kibiru: On a point of order, Mr. Temporary Speaker, Sir. Since this is a House of record, we are not saying that the money that remains should be taken to the counties. The issue is that when county assemblies budget but money is not disbursed on time, for instance, we are in June, their money ordinarily gets lost. It is not used by the county assemblies but the county executives. That is the mischief we want to cure.

Sen. Olekina: Mr. Temporary Speaker, Sir, I thank the Chair for clarifying that point. If that is the case, then the committee should have been a bit firm in ensuring that county assemblies have the autonomy.

Nothing stops the committee from bringing an amendment to the Constitution, which does not require a referendum, so that it gives the county assemblies the autonomy. It is difficult for the county assemblies to oversight the county executives when they have to rely on the county executives for them to receive their money. We had instances of counties such as Machakos and Makueni where the executives completely refused to release money to the county assemblies. How do you expect them to be oversighted?

Before the point was clarified, I was driving the point on the issue of remittance. Why is it that money is deducted from salaries of county assemblies' staff, MCAs and the secretariat, yet that money is not forwarded to the Pension Fund? If we are not able to send money to the Pension Fund, we should not pretend that we are deducting the money from them.

The problem is that every year, retirement funds continue accumulating penalties and interests which is a big liability to the counties. As this House pushes for money to go to the county governments, it is time, we became realistic. The first thing we must ask ourselves is, if indeed it is true that any money which is not spent by the county

assemblies is spent by the county executive in the next financial year, why should we have pending bills?

One of the amendments I propose to the committee to consider, including in the CARA for 2021/2022, is that any money that is budgeted for but is not spent by a county assembly, either because the money had not been released by the county executive or was not sent by the National Treasury, should be used to offset their existing pending bills and that their budget remains.

I have met many Speakers of county assemblies lamenting that the executives do not release money to them. The only way for us to cure that is through making sure that it is in the Act of Parliament. Otherwise, we can be saying that just on paper but there is no way the county executives will comply. They will continue getting money but if the National Treasury does not release money for the county executives but do it for the assemblies, they will proceed and use that money to offset their own budgets.

These concerns should not be carried forward because we must have solutions now. We must ask ourselves tough questions if indeed they do not have money yet this House passed that money should be sent to the counties, where is it?

This County Allocation of Revenue Bill (CARB) is now dividing Kshs370 billion which sounds good but in reality, if the Government is not able to raise that money, what do we do? Of course, there is nothing we can do right now. We are barred by our Senate resolutions which is entrenched in the Constitution.

However, to be realistic, we have to become more creative. I would have hoped to see more recommendations on how counties can continue collecting more own source revenue so that in the event that the shareable revenue is not disbursed on time, they can continue paying their salaries.

Mr. Temporary Speaker, Sir, it is sad when you hear that a lot of staff in the county governments have not received their salaries. I know it happens to us as well. It happened to our staff. However, we must have solutions to these problems. We cannot be raising them up as if they are concerns and we do not do anything about it.

This issue of remittance is something that bothers me a lot. It is about time that one arm of government talks to another arm of government because it also affects us in this office as Senators. If we or our predecessors did not remit to the Kenya Revenue Authority (KRA), we end up collecting more penalties and interest.

Since we are having a challenge now sending money to counties, we need to amend the Income Tax Act and the Public Finance Management (PFM) Act such that there should be no more penalties that will accrue on money that has not been remitted by the county assemblies.

I would hope that it is not just their desire not to remit money, but it is because they have not received any money from Treasury. These deductions end up being good on paper but it affects people when they retire.

Mr. Temporary Speaker, Sir, when you look at the ceiling of these county assemblies, for the last two financial years they have remained constant, nothing has increased. So, there is no way you are going to tell me that if there is any annual increment in terms of salaries it will be effected, there is no money.

To make it worse, once people retire, I could see that moratorium of three years which the Committee is recommending for another two-year term, what happens? Even if we go for the next two years and we are able to rationalise the staff and the staff of the county assembly retire and that county assembly did not remit their deductions, what do you expect them to go and survive with? They will not be able to get their gratuity and retirement benefits. So, they will just be going round in cycles. They will be traveling from Narok, Nakuru, Kirinyaga to Nairobi chasing these retirement benefits. They will be asked to go back to their counties and they never send their money.

I think it is about time that we become realistic. I hope that Sen. Kibiru who is quite diligent on this matter can hold the bull by its horn; follow through and ensure that whatever has been deducted is remitted. If it is not remitted, let them stop any further development in the county assemblies. We do not have any development fund in this Senate. We sit here, let them sit in the assemblies which are there or under the trees so that they ensure that all the money they get, if it goes to offset this deficit in the retirement benefits, they do so.

Mr. Temporary Speaker, Sir, one of the reasons why I sat here up to this time, around 7.15 p.m. is because I want to ensure that money goes to the people of Narok. I want to see that at least this County Allocation of Revenue Bill (CARB) is passed and counties can collect their own source revenue. Every single day when we meet governors in our Committees, they say, "We have not received money. It is tough. Please talk on our behalf. Please, fight for us."

This mandate of this House under Article 96 of the Constitution is to defend the interest of the counties and their governments. We are doing that today. I know it is during COVID-19, but I would hope that we will not only be about six Members here pushing for this money to go to counties. I think people in Kenya should be looking to see if their Senators are there to pass this legislation for them to get money.

As I conclude, I am happy that finally, amendments will be made. I hope eventually, the biggest amendment that will help county assemblies is when they become autonomous. I mean, when they have their money and can spend it the way they want. They will not be at the mercy of the executive for them to carry out their functions.

It is important to train these people. When county assemblies appear before our committees some of them have no clue even on basic accounting skills. In the breakdown of funds sent to county assemblies, there is a Kshs11 million figure for internal audit. There is about Kshs635 million for training and Kshs8.3 billion divided among the 47 county assemblies, for operational expenses.

If county assemblies do not receive their money, do you think they will prioritise training of their staff? Will they be able to allocate any money for audit committees? They will not. In fact, most of them will be making sure they get their salaries. Right now, they are not.

I hope this House puts its foot on the ground to ensure we protect devolution. There is no point of us clapping our hands on daily basis saying the National Government is doing very good. There are projects being launched daily, yet our own county

assemblies and executives, county governments whom we represent here, are not getting the money to carry out small developments.

Mr. Temporary Speaker, Sir, finally, most people believe that the National Government is the one doing all the work. I remember in Kisumu County during the Madaraka Day celebrations, many projects were launched. The event went very well because it was funded by the national Government. They have all the money.

Suppose one day they decide to go to Narok or Samburu County and have everything there funded by those county governments? My dear sister spoke about the idiom of form follows functions, where money is supposed to follow functions. There is no point of devolving functions and not send the money. If counties do not get even whatever money that is passed by this House to be shared equitably amongst the 47 counties, you will never run away from pending bills. We will continue getting pending bills.

The current figure of I think Kshs26 billion to the County Pension Funds (CPF), Kshs14 billion to the Local Authorities Pension (LAP) Fund will continue to accumulate, leave alone the money owed to contractors. Also, to the youth whom you say you defend for small projects they do and do not get paid. People will continue committing suicide.

I support.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. M. Kajwang', proceed.

Sen. M. Kajwang': Mr. Temporary Speaker, Sir, I rise to support the County Allocation of Revenue Bill, 2021/2022. It is in realization of the importance of this Bill, that I requested extension of time so that we can have time to express ourselves on this Bill so that if we break tomorrow for the long recess, then Members will have made their contributions.

This is the time for a Senator to confirm and to explain to residents of their county, how much the Senate has appropriated and approved to go to counties. As the Senator for Homa Bay County, I am very proud that I have discharged my duty faithfully when it comes to division and allocation of revenue.

Mr. Temporary Speaker, Sir, in 2014/2015, this House approved Kshs4.9 billion to go to Homa Bay County. In 2015/2016 Kshs5.6 billion; in 2016/2017, Kshs6.08 billion; in 2017/2018, Kshs6.5 billion; in 2018/2019, Kshs6.68 billion; in 2019/2020, Kshs7.149 billion; and, in 2020/2021, 6.74 billion. So, what do we have here? Which is the year under the review, Kshs7.8 billion?

Mr. Temporary Speaker, Sir, this Senate has approved the transfer of at least Kshs58 billion to Homa Bay County since devolution began. That excludes conditional grants and own source revenue. It is easy to say that in the past years of devolution, Homa Bay County has received and generated at least Kshs80 billion.

In a County with 40 wards, if you are to do a pedestrian division of the Kshs80 billion by the wards, one would easily say that each ward should have received at least Kshs2 billion shillings since we started devolution. I know some of the money goes to salaries, and operations. Even if half of the money went to salaries, operations and the county assembly, even if only 50 percent was to be invested in development, Homa Bay

County should have injected Kshs40 billion into development and the local economy over the past years of devolution.

Mr. Temporary Speaker, Sir, the question would be; in my ward of Gembe, do I see Kshs1 billion on the ground? In my neighbouring ward of Kasigunga, do I see Kshs1 billion on the ground? In the ward of Kendu Town which is the centre of Rachuonyo where the Governor comes from, do I see Kshs1 billion on the ground? When I switch on the radio, I hear citizens complain of improper service delivery. When I visit those areas, I am told they do not have a market and that the ginnery collapsed. I am told that they do not have clean water.

We have played our part as the Senate to provide money to counties. Have the Governors played their part to ensure that that money is faithfully applied? We have played our role. We came up with and approved a formula which despite great intellectual opposition it was responsive to service delivery rather than being responsive to static indicators.

Mr. Temporary Speaker, Sir, the Senate has played its role. The county assemblies have played their role too by approving budgets. They have approved development plans and fiscal strategies. The National Treasury has played its role. Today we have lambasted the National Treasury for late disbursements but the Kshs80 billion that I talk about in Homa Bay County, at least 80 percent of it has reached the county.

I know there have been delays but the genius that Sen. Kibiru has put in this Bill is that if there is a shortfall of revenue at the national level, the national Government bears that responsibility. Additionally, if there is an over-collection, then counties cannot be part of that. Treasury has played its role up to 80 percent. Whatever we are complaining could be 20 percent of the disbursements. Have County Governments responded in kind?

Mr. Temporary Speaker, Sir, look at the functions that have been devolved in the Fourth Schedule of the Constitution. You will allow me to be very specific because I represent the people of Homa Bay and they want to know today how much money their Senator is approving. I am going to repeat it that in this Bill, Kshs7.8 billion is going to Homa Bay County up from Kshs6.74 billion. That is an increment of Kshs900 before we put in conditional grants.

This is one of the most primal duties of a Senator; to make sure that his or her county gets resources. However, when you look at service delivery in the health sector, with Kshs80 billion shillings in a span of eight years, to what extent have we improved the infrastructure, the services and the quality of health service delivery in Homa Bay County?

We inherited a District Hospital called Homa Bay Teaching and Referral Hospital. How much money have we pumped into it? Not long ago, the Governor of Homa Bay launched a Kshs600 million project to put up a fresh administration and hospital block using public-private partnership. Where did that Kshs600 million go to? How much have we put in that hospital and dispensaries across the county? As it is today, everyone feels that the Homa Bay Teaching and Referral Hospital is a death chamber.

I want to hail the doctors, nurses and other healthcare workers who have put up a spirited discipline of service despite an infrastructure that is breaking down. About three weeks ago, I was informed that a perimeter wall collapsed and that messed up the sewage system. The main hospital in the county therefore did not have ablution facilities for outpatients. When someone comes to hospital with *kipindupindu*, then you ask yourself where they relieve themselves. Are they going to do it in the field and what is the impact of that on other patients?

Mr. Temporary Speaker, Sir, the investments are not being seen on the ground. Workers are always striking because of delays in Exchequer releases. The PFM Act, which I am quite familiar with, allows certain borrowing for cash flow management.

The counties that have been wise and consistent know that the cash flows from the National Treasury are erratic. Just the way you save for a rainy day with your personal finances, county governments have learnt that disbursements delay by two or three months. So they always keep a reserve to ensure that their most important workers do not go on strike.

We have not had Kshs80 billion in the health, yet that is the most important sector. I urge Governor Awiti to take Kshs1 billion in the last budget and put up a modern referral hospital then he can eat the rest. We do not care. We just want to see something tangible, because for over eight years, we have not seen anything productive or tangible in the health sector.

Sen. Olekina: On a point of order, Mr. Temporary Speaker, Sir. I hate to interrupt my very good friend, Sen. M. Kajwang', who was the Chair of the County Public Accounts and Investments Committee (CPAIC), but there is a terminology that he has used and I am wondering whether it is in order.

I would like you to rule him out of order for saying that Governor Awiti should eat the rest of the money. Can he substantiate that? I like the idea of reserving a certain amount of money for the hospital, but the idea of eating the rest of the money may send a wrong message from this honourable House.

Sen. M. Kajwang': Mr. Temporary Speaker, Sir, the unfortunate thing is that I have demonstrated that there is nothing to show in the health sector. It could lead to the conclusion that they have been eating everything. I would be happy if they ate Kshs1 billion less, but that is borne out of frustration.

You would expect governors who are in their second term to leave something tangible and visible to be part of their legacy. Without necessarily asking Governor Awiti to eat the rest, I pray that all the money will go towards transformative projects in the county in this final budget of Kshs7.9 billion.

The road sector is another one where we should be seeing tangible results. Since devolution, Homa Bay County has only done 33 kilometres of tarmac. That 33 kilometres started from Gendia, passing by the Governor's home to Kadongo. The 33 kilometre road has been part of the Auditor-General's reports to the CPAIC from the time of commencement of that project.

Mr. Temporary Speaker, Sir, a whole area like Ndhiwa has only one tarmac road. Other areas like Suba North until recently did not have a single inch of tarmac. I am not

asking the county government to take over the responsibility of the Kenya Rural Roads Authority (KeRRA), the Kenya Urban Roads Authority (KURA) and the Kenya Highway Authority (KenHA), but we have seen county governments being creative. They go for leasing arrangements and equipment schemes and ensure that they do the right partnerships to upgrade the infrastructure.

With Kshs80 billion, we expected that the people of Ndhiwa and Suba will at least--- The road that comes from Shauri Yako through Kipasi and goes all the way to join the Mbita Road would at least have been improved. If not tarmacked, it should have been put in a motorable state but that has not happened.

Mr. Temporary Speaker, Sir, onto agriculture. We appreciate that the economy of Homa Bay just like many other counties is rural and based on agriculture. What puts money in the pockets of the people of Homa Bay County is fish and cattle. I will tell you that I went to school as a result of proceeds of cattle because a cow is the bank of the rural economy.

The other day it was said that Gendia or Kendu Bay Town which again is next to the governor's home does not have a single bank. It does not worry me because our people store their value in cattle just like the people of northern Kenya. You will find a man herding ten camels and you laugh at him because he does not have a bank account. His bank is that camel. However, what does he expect the county government to do? The county government should provide extension services and ensure that there are proper policies and that the markets where they take their cattle are properly secured and diseases like rinderpest and others that affect livestock are controlled.

Mr. Temporary Speaker, Sir, the fisheries sector in Homa Bay County has collapsed. The fish processing plants that were put up by private players have now been turned into warehouses. The county government has not made any tangible effort to revive the fisheries economy. The only thing they have done is to license operators from China and the USA to put up cages in the lake from which they extort tolls and do nothing to empower the local communities.

Homa Bay County used to be the leading producer of cotton. We had Homa Bay, Busia and Kitui counties. That was before the *mitumba* revolution came in as a result of poor Government policies. However, it is now the responsibility of county governments from the principle of subsidiarity to ensure that they revive local agricultural sectors where a county has got competitive advantage.

One day when we were looking at the reports of the Auditor-General, we established that the County Government of Homa Bay had placed an order for a ginnery. Five years later, the ginnery has not been delivered. The prospective cotton farmers in Homa Bay County cannot undertake cotton farming because the ginnery that would add value to their products has not been delivered, yet the Auditor-General confirmed that money has been paid. What a shame if this can happen in a region where the people feel proud that the governor is the son of the soil?

When it comes to local industries like chicken rearing and even fish aquaculture, the greatest ingredient in chicken breeding and fish aquaculture is animal feed. If the feed is expensive, then the venture becomes unprofitable. At the onset of devolution, very

wonderful ideas came up like establishing an animal feed factory in a place called Arujo. Today, five years down the line, and it is cited by the Auditor-General every year, we do not have an animal feed factory.

Areas like Suba and Gwasi are fertile. There is black cotton soil that is rich for production of grains such as maize sorghum and millet. An excellent idea was mooted. There was a proposal to put up a milling plant in a corner called Gigoto in Suba South Constituency. Five years down the line, we have not received a single bag of milled maize, sorghum or millet from Gigoto. Every year the Auditor-General says funds have been committed.

Having chaired the County Public Accounts and Investments Committee (CPAIC), I have brought reports to this House where I have asked the Directorate of Criminal Investigations (DCI), Ethics and Anti-Corruption Commission (EACC) and all the relevant bodies to take action on some of these transgressions on the people of Homa Bay County. To date, nothing has happened despite resolutions of the Senate.

Mr. Temporary Speaker, Sir, we need to be concerned about that. That even today as we approved another Kshs7.8 billion to go to Homa Bay County, what happens to the resolutions of this House on past misuse of the resources that we have sent to them?

There are pineapples, groundnuts and sweet potatoes. Our sweet potatoes from an area called Kabondo have found their way in the UK supermarkets. We were told recently that there is an entrepreneur who has found a niche and is exporting sweet potatoes from Kabondo to the UK. They have found their way into the Royal Palace. In fact, we have been told that when the Queen is having a breakfast of sweet potatoes, those are sweet potatoes from Kabondo.

The county government had a wonderful vision of setting up a sweet potatoes processing plant in Kabondo. Today, nothing is on the ground. The people are not sure what happened after Kshs80 billion shillings down the line.

There is trade and modern markets. The people of Kendu Bay complain that they do not have a market. It is the same case in all the other centers. We promised people during campaigns several years ago that we will have a market in a place like Rodi Kopany. Today, it is a shame to go back. That is because we convinced them that the governor was a member of our party, which is democratic and progressive. The governor then went to Rodi and promised the residents a market. Today, there is nothing to report about.

The other thing is the cooperative sector. The small holder farmers are supposed to synergize in order for them to get value for money for their products. They are supposed to be organized into cooperatives. The cooperatives in our region have collapsed. That includes even those in the fishing sector. We now have the beach management units but it is actually every man for himself and God for us all.

In sports and culture, Homa Bay County is the land of the famous Gor Mahia, which the most famous team South of Sahara and North of the Limpopo is named after. Gor Mahia comes from a place called Kanyamwa in Kosele. We bought land to put up a Gor Mahia stadium but that land is still a bush and thicket to date.

The question is; where did the Kshs80 billion go to? That is the elephant in the room. If you sum the total allocations and to divide that by the number of wards, you will realize that something is amiss in most of our county governments.

The amount that we are approving today will be added on top of the own source revenue that is collected from *mama mboga*, *mama samaki* and *mama sweet potato*. Let us make sure that we, as a Senate, come up with proactive approaches to oversight that money. That is one of the proposals in the BBI Bill that I really favour because it will allow the Senate to oversight own source revenue.

At the moment, one would argue that the Senate has only got responsibility over the Kshs7.8 billion that we are allocating. We resolved in the past that we have to oversight the own source revenue. I am also glad that there will be a separate Bill for conditional grants. I hope that the accountability mechanism for conditional grants have been clearly defined.

The National Treasury is imperial and we have said much about how it is frustrating counties but let us remember that they have disbursed at least 80 per cent. County treasuries are also extremely imperial. That is why they are controlling county assemblies and that is why in some counties such as mine, centralization of the county treasury has led to frustration of line departments. Those departments are unable to execute anything unless they lick the boots of the person sitting at the county treasury. We need to decongest that. I actually blame us for coming up with a law that put too much influence on the county treasury.

I support this Bill but we need to follow this up with a proactive oversight mechanism. The Senate has played its role today and it has sent money. It has approved a formula, the county assemblies will approve the budgets and Treasury will release funds. Let the Governor of Homa Bay tell us how much of that Kshs80 billion plus has gone to Gembe, Kanyaluo, Wang'chieng', Kanyamwa, Kabuoch and the other 40 wards. After eight years, we expect each and every corner of the county and each and every sector to enjoy the fruits of devolution.

I congratulate the committee led by Sen. Kibiru and I urge the other Members to contribute to this extremely important mandate of the Senate. This is the only Bill that we are required, by the Constitution, to originate. The other bills can come from elsewhere. This is the most sacrosanct duty that we have as a Senate.

Sen. Cherargei: Thank you, Mr. Temporary Speaker, Sir. I want to commend the Committee on Finance and Budget led by Sen. Kibiru. This is one of the critical roles that we have to play as a Senate.

I commend colleagues who thought it wise that we needed to extend the Sitting so that all of us could have---

Mr. Temporary Speaker, Sir, in my opinion, you should also have an opportunity to share your thoughts and views because this is one of the key mandates we have been given as Sen. M. Kajwang' said. I empathize with him. I have been to Homa Bay on official duties and other social visits and I agree with him that it seems there is a problem.

The rigorous process of agreeing on Articles 203, 218 and 119 on the Revenue Sharing Formula took us many months. It went through pain, suffering and anguish. Most

of our colleagues shudder when they hear of that experience. I am happy we ended well with an extra Kshs53 billion.

It is worth noting that in the previous financial year which is the year under review, we had Kshs316 billion. It is significant that we moved that with an extra Ksh53billion and we are now moving to Ksh370billion. Samburu was among the counties that were likely to lose but at least every county will gain.

I have read the committee report and I am happy they have noted quite a number of issues regarding ceilings, staff, autonomy for the county assemblies and the county executives, mileage allowance for nominated MCAs and also ceilings in most of the allocations that have been provided by the SRC. Counties should use this Ksh370 billion--

Nandi County has a first term governor. In FY 2017/2018, Nandi County was awarded Kshs5.1 billion, Kshs5.3billion in FY2018/2019, Kshs5.6 billion in FY2019/2020 and the additional Kshs1.4 billion that was approved through the Revenue Sharing Formula we are talking about. Nandi County will get Kshs7.0 billion this financial year apart from conditional grants and other grants.

With the exception of Kshs7 billion outside the equitable sharable revenue, around Kshs20 billion has gone to Nandi County. There is a reggae song by Peter Tosh which says; "when you look outside the window, do you see anything to smile about?" He must have sang having Nandi County in mind because what is happening there is not commensurate to the disbursed amount. It is unfortunate.

Lucky Dube also said that when we stop going to schools we start building more prisons. I think it is unfortunate that in Nandi County there is not nothing to smile about out of the amounts we have disbursed from FY2017/2018 up to this financial year that is coming to an end. We need to be careful because we are headed for elections.

I have been sitting in the CPAIC. When a governor appears and we ask them what the problem was, they tell us that own source revenue was low because it was campaign period. We need to be careful even in the projection of own source revenue.

The elephant in the room is the disbursement by the National Treasury. Governors have been complaining that the National Treasury owes them up to Kshs53 billion. I am aware they received a little cash disbursement a few weeks ago. The National Treasury should be called to order because they are violating Article 219. They have an obligation of disbursing cash.

I heard from presentations by colleagues that when the Cabinet Secretary in charge of National Treasury and Planning was supposed to appear before the committee, he claimed to be too busy. The public debt is approaching Kshs7.1 trillion. Word in the corridors of Parliament is that the Cabinet Secretary might be coming back to raise the public debt to Kshs12 trillion. I hope we will not be available since he is not available to answer to these queries.

If they are borrowing money on behalf of all of us including counties, why is it that the counties are not getting timely disbursement of cash as provided for by Article 219 of the Constitution? That is why many people are complaining that the Judiciary is

giving orders that impede or violate the law. The question should be, if a Kenyan goes to court and says National Treasury has violated Article 219 of the Constitution---

Mr. Temporary Speaker, Sir, when the national Government borrows, they do not seek the consent of the counties yet the counties should have a say in the entire process of borrowing. If a good citizen moves to court and challenges the National Treasury for violating Article 219--- It is very sad that we have to discuss this at this time. The National Treasury should always consult us when borrowing to finance a deficit in the budget. I thought that budget includes county governments. What is the priority?

The delay in disbursement has two effects. First, it delays service delivery. Secondly, it leads to increase in pending bills. As I speak, Nandi County has an accrued pending bill of Kshs1.6 billion. Many counties are accruing pending bills because they cannot pay on time. They risk being penalized and contractors moving to court. This affects terms of service delivery.

Mr. Temporary Speaker, Sir, thirdly, I am happy that conditional grants will be sorted out independently. We will avoid commingling of funds. That word is too heavy. I can see the Senator for Narok County smiling. People from Nandi County can use big English words. Commingling of funds and other issues will be resolved once for all. We will have a different rule.

Nandi is supposed to be among the beneficiaries of Equalization Fund. I am happy the new Auditor-General has taken the role. She has been questioning why there is a delay in disbursement of Equalization Fund. Taita Taveta and Kilifi get Equalization Fund to ensure there are basic needs as provided under Article 204.

Mr. Temporary Speaker, Sir, the National Treasury must be called to answer to the concerns of delay in disbursement of funds and the issue of Equalization Fund. It is important to come up with the rules and regulations regarding conditional grants.

Mr. Temporary Speaker, Sir, another aspect is the projects status. For example, in Nandi, the governor has decided to leave the office complex that was built by his predecessor. That is people's facility. Nandi is squatting on county headquarters meant for the county commissioner yet the building is half to three-quarters complete. The current governor has left it and it is a stalled project.

I can speak with authority because I represent the people of Nandi. It is unfortunate to an office that should be functional and used to provide services. The other project is the stadium in Kapsabet. The former governor had started building the stadium, but because the current governor does not want to complete it, so that the other one does not take credit, he has started another one next to it. It is called sports complex.

We need to agree on the value for money. If anybody is elected, be it a Member of County Assembly (MCA), Member of the National Assembly, Woman Representative or Governor, when a project is not completed, it should not affect our predecessors. It affects the local *mwananchi* that was supposed to get that service. It is not about you, but about the people of Nandi who are over 800,000. Those are the issues that should be addressed.

When we allocate an extra Kshs1.4 billion to Nandi, we expect it to go to projects such as bursary and water. The roads in Narok and Nandi are so pathetic. When it rains, they are impassable.

Nandi is one of the counties that relies heavily on agriculture. When we want to transport our milk to the new Kenya Co-operative Creameries (KCC) in Kisumu and other milk buying centres, the roads are pathetic all the way to Mosop near western region. From Kibishi all the way to Chepterwai the roads are impassable. From Sarora to my sub-county Chesumei to Gechek, Tinderet and some places in Kibiyet and Taunet all the way to Chemase at the border of Kisumu, the roads are impassable.

Chemase is a region where sugarcane is grown. They collect cess but it is not reflected on the roads. In Nandi Sub-County where cess for tea is collected, the roads are not good. From Ketendet all the way to Underit and Matema, the roads are impassable. It is the same case in Lessos to Kelboy and many other areas. People in those places should benefit because they pay cess which should allow them access the opportunities.

In Nandi, we are lucky to have tea and cess is paid. We have sugarcane in Chemilil-Chemase Ward which is in Tinderet Sub-County. We also have sugarcane in Mosop Sub-County and also Kamboga, Kibiyet and many other areas. That cess should be used.

At some point, Sen. (Dr.) Zani argued how counties can make it efficient in terms of generating own source revenue. However, you will see *boda boda* men being chased to pay the cess while they do not have shades.

The Kenya Revenue Authority (KRA) says that *kulipa ushuru ni kujitegemea*, but people should also get services. Our counties are performing poorly. When collecting fees, they harass people, close their shops, and clobber young *boda boda* men.

In my county, *boda boda* riders have to construct shades. They do that to protect themselves from the sun and the rain. They use grass-thatched shades yet the county government has been given money. When the county government steps in, they construct funny structures using ordinary *mabati*.

For example, when you go to Mosoriot, you will see women selling their wares and vegetables when it is raining or windy, yet they pay money to the County Government of Nandi. They sell their items in open air market because stalls have not been constructed.

When you go to Mosoriot, Kibiyet, Ndala, Chepterwai, Maraba and even Kapsabet which is the county headquarters, I will not say outside the Governor's Office, you will see people selling wares because no one has built them stalls. When you go to Kaptumo and even Kobuchai which is the Governor's trading centre, you will see people selling in open air but they pay money. Wind blows away hardworking women's items.

When you go to Lessos and Nandi Hills, you will find hardworking women selling their wares on the roadside. They pay the fees but the County Government of Nandi has done nothing to ensure there are proper stalls. To make it worse, there are no public toilets. Those women stand from morning to evening yet some of them could be suffering from underlying conditions that require them to use washrooms.

As county governments generate own source revenue, they must provide services. They should not collect money for campaigning and giving out in *harambees* so that they are praised yet there are no results. That is the taxpayers' money.

Thirdly, is the value for money for the projects we have. For example, the Early Childhood Development Education (ECDE) centres are yet to be completed. If you ask people like Sen. Olekina who is a Member of the CPAIC, they will tell you that there is no ECDE centre that has been completed up to date in Nandi County despite the eight years of devolution.

Mr. Temporary Speaker, Sir, I want to finish with the issue of staff. The staff in Nandi have not been paid. The wage bill in Nandi is approaching 60 per cent which is contrary to 30 per cent that has been provided under recurrent expenditure. We had a meeting with the Standing Committee on Health and we realised that that Kshs4.1 million is yet to be paid to 254 labourers.

The sad reality is that people who are owed money are drivers, receptionists, and watchmen. These are people who live from hand to mouth. The county is not sensitive to ensure that the staff are paid their allowances and what they deserve to be paid. It is hard.

Out of 1,000 ways to die, one of them is to work for Nandi County. If you work for Nandi County, you are sure that you will not be paid, you will not pay your rent and your children will not go to school. They do not even pay statutory deductions such as the National Hospital Insurance Fund (NHIF). Working for Nandi County should be included in the 1,000 ways to die.

(The amber light was turned on)

Mr. Temporary Speaker, Sir, add me one minute so that I can conclude. In this Kshs370 billion that we are allocating, Nandi is likely to get Kshs7 billion out of the equitable shareable revenue.

I agree with the frustration on the issue of corruption. If you have to set the headquarters of corruption and corrupt practices, you should set it up in Nandi because there is corruption for any project being done in Nandi. If God was to come to Kenya and visit Nandi, He will demand to go back because corruption stinks in Nandi; from stolen items such as tyres, cement, *misumaris*, black paint and many others. Remember 17 staff are in court for stealing tyres.

The ECDE projects are yet to be completed. Kiborgo Tea Estates proceeds cannot be shown. The corruption headquarters is in Nandi. It is just like Homa Bay.

I want to challenge the EACC and the Director of Public Prosecution (DPP). What is the work of EACC? Why are they yet to prosecute? Why have they not prosecuted even one governor?

Mr. Temporary Speaker, Sir, I know your Governor is in court. The number of governors who are in court are so few as opposed to those who are walking scot-free when there are corruption allegations. I urge the EACC and DPP to do something because we share with them the audit reports and recommendations.

The Standing Committee on Justice, Legal Affairs and Human Rights which I used to Chair asked the EACC to share its successes. They told us that they have

recovered houses and vehicles. What they are not telling the country is what is happening in terms of corruption.

Mr. Temporary Speaker, Sir, we have disbursed Kshs2.3 trillion to counties since the inception of devolution. I urge the EACC, the DPP and the Senate that we must agree on how to fix this issue once and for all. The law provides that one can be arrested even after serving their term. However, governors can disappear.

Mr. Temporary Speaker, Sir, in as much as we support governors for timely disbursement of cash which everybody, we must demand for accountability and governors must be told that. I heard some of them complaining about impeachments and blaming the Senate.

It is our business to protect the interest of the people of this Republic. If a governor commits an offence, the priority should be the ordinary *mwananchi*. I was to use Wanjiku but I am told that there is somebody who has petitioned Parliament not to use Wanjiku and I do not know how that petition will go. The ordinary Kenyan should be proud of the Senate as their protector.

Nairobi is now managed by Nairobi Metropolitan Services (NMS). They have put cabros but the issue of garbage is yet to be dealt with. If you go to *mashinani* and *vichochoroni*, it is pathetic. There is a problem.

Mr. Temporary Speaker, Sir, concerning cess, county governments should be innovative. We have discussed it before. I know that Senators are suffering from this. When governors go to public podiums, they always blame Senators on the issue of money allocation and disbursement.

However, they are not telling *wananchi* that there is equitable sharable revenue, conditional grants and own source revenue. When you go to a function, you will hear the governor saying that money has not been disbursed, yet he is not telling the same people what they have done with the own source revenue and the conditional grants.

In Nandi, there are agricultural areas that have been established through the National Agricultural and Rural Inclusive Growth Project (NAGRIP). I am happy and commend the Committee on Finance and Budget because for the first time, these conditional grants will be set up.

We are tired of the governor walking into funerals and birthday parties and telling their girlfriends that money has not been disbursed. They should be honest that whenever they are given money, there is equitable sharable revenue, conditional grants and own source revenue.

Mr. Temporary Speaker, Sir, I call upon colleagues to think about the issue of oversight. We only have a little avenue in plenary and committee sittings like in the CPAIC. We had started very well in 2018, where we wanted to develop a format---

When Sen. M. Kajwang' walks into Kendu Bay and wants to see the project that has been done by Governor Awiti, he should have structures on how to engage. How will we facilitate oversight? He cannot just walk there and see with his eyes because governors can even hire goons to clobber the Senator.

In future, as a Senate, we must be innovative and come up with a way where you can walk to Maralal, look at the hospital projects, and get the documentation. At the

moment, for example, no one can access documentation on the building of Mother and Baby Referral Hospital in Kapsabet, which the county assembly is investigating. In fact, MCAs of Nandi were doing an investigation on the COVID-19 Funds. I am told that when they went to the County Executive Committee Members (CECMs), they were told to get out of there or they would be beaten up.

How will we ensure that there is a structured way of engaging in oversight? The MCAs should be advised that in future, they should be careful, because they carry out primary oversight, but they are busy being used by the governors to fight the Senators. That is not in good faith, because we should be complementary to each other.

I do not know whether the funds should be there or not, but as a House, we need to become innovative. I should be able to walk to Kapsabet County Referral Hospital and Nandi County Creameries and know the funder, get the documents that I want as the Senator and look at them, so that when we appear before the Senate or when we are doing our own stuff---

Mr. Temporary Speaker, Sir, finally is on the issue that has been raised by--- I can see that is still have time. Maybe I have a minute. I have heard them alluding to the fact that the BBI would have increased the disbursements. The same people have failed to disburse at least 15 per cent.

I need to correct this. Article 210 of the Constitution is very clear. It does not mean that the Government can give only 15 per cent, it says "at least." Therefore, the Government can give us the goodwill and the necessary percentage.

Since the BBI is dead as a dodo, we can now focus on pushing the Government to move to more than 15 per cent in future. I advise Sen. M. Kajwang' that he should not be canvassing issues that are alive and active in a court of law. Those issues will be canvassed. He should not be canvassing like President Uhuru Kenyatta---

The Temporary Speaker (Sen. (Dr.) Lelegwe): Order, Sen. Cherargei.

Sen. M. Kajwang': On a point of order, Mr. Temporary Speaker, Sir. Is it in order for Sen. Cherargei to disparage a decision of this House? A constitutional amendment Bill was brought to this House and we voted. Sen. Cherargei had time to say all those things. There was a resolution and the Bill carried the day. That therefore becomes a decision of the House.

Is he in order to start speaking as if the issue of the Constitution of Kenya (Amendment) Bill is before some village *baraza*, yet it has already gone through the First, Second and Third readings and has been adopted by this House? As a Senator, he is bound by the decision of the House.

Mr. Temporary Speaker, Sir, you should guide him to speak like he is part of the Senate rather than a member of the Talai junior council of elders.

Sen. Cherargei: That is how they speak when the State has captured Parliament.

Yesterday my brother was too close to the President. He has never been too close to the President and I think that excitement gives him an opportunity to defend. However, I wanted to advise that we should not prosecute our matters in public just the way President Uhuru Kenyatta yesterday was prosecuting the appeal. It is intimidation.

I voted against the Constitution of Kenya (Amendment) Bill and I had the right to do so. This is an open democratic space that has been provided for under the Constitution 2010. I want to ask Sen. M. Kajwang' to supply his notes to the appellate counsel so that--

The Temporary Speaker (Sen. (Dr.) Lelegwe): Order!

Sen. Abdul M. Haji, proceed on virtual.

Sen. Abdul M. Haji: Mr. Temporary Speaker, Sir, thank you for giving me this opportunity to contribute to the report of the Standing Committee on Finance and Budget on County Allocation of Revenue Bill (Senate Bills No.30 of 2021).

Looking at the recommendations of the committee on the issues of pending bills, I can only see recommendations on how to prevent accumulation of pending bills by county assemblies. How about pending bills accumulated by county governments to pay suppliers and contractors?

This is a very important debate. I thought I could fulfill the duty which I owe to myself and my constituency and therefore I cannot let the subject pass over in silence. It must certainly not just pass upon the indulgence of this House. However, I cannot do this. Therefore, I am compelled to speak. I do sincerely believe the purpose of debating this is so that we exchange ideas on how to address financial issues.

Mr. Temporary Speaker, Sir, accumulation of the pending bills has been an issue of concern currently with the county governments unable to pay contractors and suppliers for goods and services supplied. This has resulted into contractors and suppliers pending years waiting for the bills to be settled but with little breakthrough. Some and many, I would believe have been waiting for more than six years.

I urge the Standing Committee on Finance and Budget to find a way to include or compel the county governments to settle the pending bills of contractors and suppliers. In the process, they should find a way to rope in the county assemblies to have a role to approve the payments of the pending bills. The withdrawal must match the approval of the county assemblies. The county executives have failed the contractors and suppliers and have always been settling bills of the closest friends and proxies. Something has to be done to address this issue.

Mr. Temporary Speaker, Sir, thank you. That is my humble contribution and I support the Bill.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Honorable Senators, I therefore call upon the Mover to reply.

Sen. Kibiru: Mr. Temporary Speaker, Sir, I will start by thanking all the Senators who have contributed and more so the Senators who have been with us for that extended time. It seems we will leave here past 10.00 p.m. because I intend to take quite some time in thanking the Senators starting with the Senator for Nandi County.

Having said that, a few issues have been raised and probably this will not be the time to capture them in the Bill but I assure the House and the Senate for that matter that we shall be bringing the Public Finance Management (Amendment) Bill.

We had worked on it until the court ruled that it did not have the consensus of the two Houses. We took the Bill from the National Assembly and really worked on it. We

made a number of amendments. One of the amendments was to safeguard how the county assemblies get their money.

We have also included an amendment that will ensure that the county governments do not over budget. They cannot extend their wish list by over committing or over stating their own source revenue. One of the recommendations is that they shall be required to use a moving average of three previous year's actual collection for them to make realistic budgets. We think that over committing is the reason we have huge pending bills.

The issue of stalled projects has also been mentioned. Senators want us to put in a Clause stating that the stalled projects should be first completed. However, this House passed a Motion that was sponsored by yours truly. That Motion directed that a county government must first finish the stalled projects before undertaking new projects. As a committee, we will be following up with the concerned Ministry and the concerned county government to see if it is being done.

Finally, there is a concerted effort between the CRA, National Treasury and the committee to ensure that we come up with enhanced methods of increasing own source revenue in the counties.

Pursuant to Standing Order No.61 (3), I request that the putting of the question be deferred to tomorrow.

(Putting of the question on the Bill deferred)

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, I will defer items that were remaining on the Order Paper.

Second Reading

THE COMMUNITY HEALTH SERVICES BILL
(SENATE BILLS NO. 34 OF 2020)

(Bill deferred)

Second Reading

THE INVESTMENT PROMOTION (AMENDMENT) BILL
(SENATE BILLS NO. 2 OF 2021)

(Bill deferred)

Second Reading

THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT)
BILL (SENATE BILLS NO. 33 OF 2020)

(Bill deferred)

MOTIONS

ADOPTION OF REPORT ON INQUIRY INTO ALLEGATIONS REGARDING IRREGULARITIES
IN THE PROCUREMENT OF VARIOUS PHARMACEUTICAL
EQUIPMENT AND PRODUCTS BY KEMSA

THAT, the Senate adopts the Report of the Standing Committee on Health on inquiry into allegations regarding irregularities in the procurement of various pharmaceutical equipment and products by the Kenya Medical Supplies Authority (KEMSA), laid on the Table of the Senate on Tuesday, 30th March, 2021.

(Motion deferred)

ADOPTION OF THE FIRST PROGRESS REPORT
ON THE COVID-19 PANDEMIC SITUATION IN KENYA

THAT, the Senate adopts the First Progress Report of the Standing Committee on Health on the Covid-19 pandemic situation in Kenya, laid on the Table of the Senate on Tuesday, 30th March, 2021.

(Motion deferred)

ADJOURNMENT

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, having concluded the business of the day, it is now time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Thursday, 3rd June, 2021, at 2.30 p.m.

The Senate rose at 8.15 p.m.