

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 28th September, 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

PETITION

REPORT ON PETITION: ENACTMENT OF MILITARY VETERAN LAW

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, the Members of the Committee on National Security, Defence and Foreign Relations are away on official duties. I therefore defer the tabling of that report.

(Report on Petition deferred)

What is your point of order Sen. Khaniri?

Sen. Khaniri: Madam Deputy Speaker, I was rising to protest but you have given an explanation. I had the privilege of presenting that Petition on behalf of the veterans. I presented that Petition in August of 2019.

As you are aware, in accordance to Standing Order No.232 (2), the Committee was supposed to have reported within 60 days. It is well over 60 days. It has been two years since. Although we have been dealing with the COVID-19 pandemic, that special group of Kenyans are waiting for the outcome of their Petition. I hope that the team will be back before the end of the week to table that report.

The Deputy Speaker (Sen. (Prof.) Kamar): The report on that Petition will be rescheduled as soon as the Committee is back so that we benefit from the insight of their discussions.

Next Order.

PAPERS LAID

REPORT ON THE PUBLIC FINANCE MANAGEMENT (EQUALIZATION FUND ADMINISTRATION) REGULATIONS, 2021

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Sen. Faki: Madam Deputy Speaker, I beg to lay the following papers on the Table of the Senate, today, 28th September, 2021:

Report of the Sessional Committee on Delegated Legislation on the Consideration of the Public Finance Management (Equalization Fund Administration) Regulations, 2021, Legal Notice No. 54 of 2021

(Sen. Faki laid the document on the Table)

The Deputy Speaker (Sen. (Prof.) Kamar: Hon. Senators, the Chairperson of the Standing Committee on National Security, Defence and Foreign Affairs will lay the next Paper.

INTERIM REPORT ON INCESSANT INSECURITY CAUSED
BY BANDITRY IN LAIKIPIA COUNTY

Hon. Senators, as I said earlier, the entire Committee is out on official duty so we will defer the laying of that Paper.

(Laying of the Paper deferred)

The next three Papers will be laid by the Senate Majority Leader.

FINANCIAL REPORT ON VARIOUS COUNTY FUNDS/COMPANIES

The Senate Majority Leader (Sen. Poghio): Madam Deputy Speaker, I beg to lay the following Papers on the Table of the Senate today, 28th September, 2021-

(i) Report of the Auditor-General on the Financial Statements of Nyeri County Government Executive Car Loan and Mortgage Fund for the year ended 30th June, 2019.

(ii) Report of the Auditor-General on the Financial Statements of Thika Water and Sewerage Company Limited for the year ended 30th June, 2019.

(iii) Report of the Auditor-General on the Financial Statements of Kiambu County Assembly Car Loan and Mortgage Scheme Fund for the year ended 30th June, 2019.

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

NOTICES OF MOTIONS

APPROVAL OF THE PUBLIC FINANCE MANAGEMENT
(EQUALIZATION FUND ADMINISTRATION)
REGULATIONS, 2021

Sen. Faki: Madam Deputy Speaker, I beg to give Notice of the following Motion-

THAT, the Senate adopts the Report of the Sessional Committee on Delegated Legislation on the Public Finance Management (Equalization Fund Administration) Regulations, 2021, Legal Notice No. 54 of 2021, laid on the Table of the Senate on Tuesday, 28th September, 2021; and pursuant to Section 205 (4) of the Public Finance Management Act, approves the Public Finance Management (Equalization Fund Administration) Regulations, 2021, Legal Notice No. 54 of 2021.

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

RESCINDING OF THE SENATE RESOLUTION ON APPROVAL
OF SENATORS TO SERVE IN THE POWERS AND
PRIVILEGES COMMITTEE

The Senate Majority Leader (Sen. Poghisio): Madam Deputy Speaker, I beg to give Notice of the following Motion: -

THAT, pursuant to Standing Order No.58 (2) (a) the Senate rescinds its resolution made on Thursday, 16th September, 2021, on the approval of Senators to serve in the Committee of Powers and Privileges. Secondly, I beg to give notice of the following Motion.

APPROVAL OF SENATORS TO SERVE IN THE COMMITTEE
OF POWERS AND PRIVILEGES

THAT, notwithstanding the resolutions of the Senate made on 14th February, 2018 and 24th June, 2020, on the approval of Senators to serve in the Committee of Powers and Privileges and pursuant to Section 15(1)(b)(2) of the Parliamentary Powers and Privileges Act and Standing Order No.189, the Senate approves the following Senators nominated to serve in the Committee of Powers and Privileges:

1. Sen. (Rev.) Naomi Waqo, MP to replace Sen. (Dr.) Alice Milgo, MP.
2. Sen. Christine Zawadi Gona, MP, to replace Sen. Kipchumba Murkomen, EGH MP.
3. Sen. Abdukadir Mohamed Haji, MP, to replace Sen. Kimani Wamatangi, MP.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you. Can we have the next Notice of Motion?

ADOPTION OF REPORT ON UTILIZATION OF COVID-19
FUNDS BY COUNTY GOVERNMENTS

(The Clerk-at-the-Table consulted the Deputy Speaker)

(Notice of Motion deferred)

The Deputy Speaker (Sen. (Prof.) Kamar): Chairperson, Committee on Health? For the record, I would like to mention that this Committee has had its programmes postponed several times and we would like to urge the Chairperson and the Members to come and do presentations for the reports because we have many reports from this Committee pending.

This Committee has had the highest record of postponement of their reports. That was supposed to be under Order No.5 in the Notices of Motions and we have missed them again. I would like to urge them to come and give their reports.

Sen. Khaniri: Madam Deputy Speaker, while we are on the agenda of Statements, I want to bring to the attention of the House that some time back, I raised a Statement on the State of Affairs in Vihiga County whereby the budget of the county had been suspended by the courts. We deliberated on this matter here and it was assigned to the joint Committee on Finance and Devolution.

The core function of the Senate is to protect counties and their governments. I thought this was a very critical Statement and, that the Committee would work on it expeditiously and bring a report to this House. The people of Vihiga are still waiting to know the outcome of this Statement. Am I in order to find out from Members of those two committees what happened to the Statement?

I thank you.

The Deputy Speaker (Sen. (Prof.) Kamar: Sen. Farhiya, you are a Member of the Committee.

Sen. Farhiya: Madam Deputy Speaker, I am a Member of that Committee. It is a challenge to have two committees working at the same time. In future, let us give a Statement to one Committee; let us not have joint committees.

I do not know what finally happened but what I know for sure is that we tried to sit twice but there was no quorum for both of them at the same time. There were many challenges around that. What we can learn from that is that if something does not go right, the best thing is to ensure that we learn from the mistake and move forward.

We went to the field and talked to people. We did a report but I do not know about the final report. I know that twice we did not have enough quorum from both committees.

The Deputy Speaker (Sen. (Prof.) Kamar: Thereafter, the House Business Committee proposed and talked and we agreed that we should not have two committees dealing with one issue. We hope you can deal with the backlog because that Statement is among the ones that we have had committed to the joint committee before the decision was made. From now, we are not allowing two committees to deal with one matter.

The next Statement.

Sen. Mwaruma: Madam Deputy Speaker, you have mentioned about getting responses for our Statements. I have commented several times that I have not received responses for Statements from, one, the Committee of Roads and Infrastructure on the Chala-Njukini-Ilasit Road, five months down the line.

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Two, is on the Committee of Health, which you have mentioned. There was the audit report, which the Committee on Health was supposed to call governors to come and respond. It started but it stalled mid-way. I do not know the reason for this. My people of Taita Taveta think that the audit report will not be looked at. We need to know from the Committee of Health when they are going to call or invite the counties to come and respond to the audit queries because some of them point towards loss of COVID-19 money.

We have spent a lot of time in the COVID-19 Committee talking about how the money was spent. I would like to know from the Committee of Health when my county government will be called to respond on the issues that were raised by the Auditor-General on the use of COVID-19 funds.

Thank you.

Sen. Khaniri: Madam Deputy Speaker, I really want to appreciate that you took that decision that in future no two committees will be assigned to do one responsibility. That is a step in the right direction.

I want you to weigh in heavily on this Committee. You have heard Sen. Farhiya respond and she has alluded to the fact that they have been having a problem with quorum. However, she has not given any serious commitment that this report will come to this House.

Let us take the work of this House a little bit more serious. This is a very serious matter where I expected her to give some timeline that, we are trying to put this report together and in a week's time we should be able to table a report. I know for sure that they went to the ground; the team was led by Sen. Nyamunga. Could she give an indication and some commitment to the House?

Sen. Nyamunga: Thank you, Madam Deputy Speaker. This issue was raised last week. I also spoke to some of the stakeholders this morning on this matter.

I talked to our clerk and he assured me that the report is ready. I assure Sen. Khaniri that within this week, we will make sure that the report comes to the House.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Poghio, do you still want to add something to that?

The Senate Majority Leader (Sen. Poghio): Madam Deputy Speaker, there is a much more serious matter which was raised alongside things that have been cited. This is the fact that two Committee sittings could not raise quorum at the same time.

I want to speak to Members directly. That is what we should deal with and that is why we are in the Senate. When we meet in devolved functions like in the Committee on Health, we should take it as the primary thing we are doing, especially when we have a leader like Sen. Farhiya in that Committee.

Madam Deputy Speaker, part of the Leadership is to ensure that there is quorum. That is why they are there. It is a privilege to be a Whip in a Committee. Their work is to whip Members to that Committee. Therefore, we should all take responsibility. It is an indictment on our part. We should take our duties, especially of devolved functions, seriously.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you. We now know that we are safe out of the Statement that came from---

(Sen. (Dr.) Langat consulted loudly)

Are you still on the same point, Sen. (Dr.) Lang'at? I thought you want to issue your Statement.

Sen. (Dr.) Lang'at: Madam Deputy Speaker, I will issue the Statement later.

I support what Sen. Khaniri and the Senate Majority Leader have said. We have a serious problem with the Committee on Health.

I have three Statements that targeted that particular Committee for the last three months and up to date, nothing is forthcoming. I request that something be done to save our Statements and the trust that we have from our people.

Sen. (Dr.) Ali: Madam Deputy Speaker, I want to inform my friend, Sen. (Dr.) Langat, that as a Member of the Committee on Health, I agree that we have had problems. However, today we had a meeting and we have instructed the secretariat to make sure that they bring everything pending to the Committee. This is because we had a problem with the Ministry in responding to issues.

In the next two weeks hopefully, we will have dealt with all pending Statements and Petitions. That is what we have agreed today. That will be done.

On the other issue of Taita Taveta, last weekend, we dealt with all the remaining counties on the issue of Covid-19 cases but we have not presented them here. We told those that did not appear before the Committee to write to us with an affidavit that their response is correct. We have dealt with it and hopefully in the next one week, the report will be brought to the House.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you for the information and the assurance that in two weeks, that Committee would have cleared their backlog.

Lastly, proceed, Sen. Farhiya. Let us make progress.

Sen. Farhiya: Thank you, Madam Deputy Speaker. Last week, we discussed the issue of the Committee on Devolution and Intergovernmental Relations having a problem. The fact is that the Chair admitted that there is need to reconstitute that Committee.

I am a Member of the Committee on Finance and Budget. On both occasions that we met, we had quorum. The Committee on Devolution and Intergovernmental Relations, as the Chairperson rightfully cited, has a challenge and he needs the Committee reconstituted so that he can have good people who are willing to work with him and provide quorum.

That is where the problem is.

The Deputy Speaker (Sen. (Prof.) Kamar): That is a good clarification. Let us now go to Statements. The first Statement is by Sen. Mwaruma.

STATEMENTS

THE POSITION OF TEACHERS ON THE PROPOSED
COMPULSORY TPD PROGRAMME

Sen. Mwaruma: Thank you, Madam Deputy Speaker. I rise pursuant to Standing Order No. 47(1) to make a Statement on an issue of general topical concern and national importance; namely, the position of teachers regarding the proposed compulsory Teachers' Professional Development (TPD) programme as launched by the Teachers Service Commission (TSC).

Teachers across the country have expressed their displeasure at the compulsory retraining of teachers named TPD as recently launched and advertised by TSC.

Madam Deputy Speaker, this training consists of six modules with each module containing five topics to be learnt in five years. A topic per year. This translates to 30 solid years of learning all the six modules in TPD.

The cost of each topic in every module is currently pegged at Kshs6,000. This means that every teacher has to spend a minimum of Kshs30,000 for every module on tuition fees alone.

For a teacher to complete all the 6 modules, they will have to spend more than Kshs180,000 on tuition fees. This is not the only cost involved because teachers will have to travel and get accommodation plus other incidentals during the time of residential training.

This training is scheduled to take place in four institutions in Kenya, namely, Mt. Kenya University, Kenyatta University, Riara University and Kenya Education Management Institute (KEMI).

I wish to point out that there are many learning institutions in Kenya with capability and ability to deliver such a training, yet only these four have been identified countrywide.

This now leads to several questions that need to be answered. First and foremost, are these the only institutions that qualify to take the teachers through the TPD modules? How were they identified? How was the procurement of the services done? Can the institutions accommodate all the over 300,000 teachers at once? Is it possible to involve institutions near the teachers, given that many more universities now exist in the counties?

Madam Deputy Speaker, teachers have advanced the following reasons for their objection against TPD training-

(a) Teachers are required to cater for the total cost of training.

Normal practice is that it is the sole responsibility of the employer to identify capacity gaps within any public service, including teaching, and finding ways of addressing the gaps.

It is also the sole responsibility of the employer to budget and cater for the total cost of retraining, or any other form of capacity building, including any incidental costs.

(b) It is a requirement that all Government programmes and projects need to be taken through the public participation process as enshrined in Article 232(1)(d) of the Constitution of Kenya 2010.

The TSC, as a duty bearer, ought to have provided a forum to afford teachers the opportunity to participate in such a decision that affects their lives in a massive way.

Teachers were not consulted and they have, therefore, unanimously rejected TPD.

(c) The research, which was done to identify the gaps in teachers training was against the general scientific norms of research methods because there is no way all teachers in the country, including those in Teacher Training Colleges (TTCs), could have been found unfit to offer teaching services.

There is need for TSC to share this research, if it was done, so that the public can appraise itself with the methodology, findings and recommendations. Sharing of research outcome is a basic tenet in research ethics, which will also enhance buy-in from the main stakeholders; the teachers.

(d) A refresher course will compel an employee to be a student in his or her entire working lifetime, 30 years, and is not only outdated but also unpalatable. It is absurd that six modules will be studied in 30 years of a teacher's teaching career when the same teachers took 16 years or less to learn from pre-primary to college or university. Would it not be more feasible to condense the training in say five years and then fresh research be carried out to identify any further capacity gaps?

(e) Such training is not an emergency and therefore the employer must withdraw it and hold consultative meetings with relevant stakeholders on the best options in rolling it out, if at all it is of any importance. The employer must also undertake to finance the total cost for the entire 30 years of the program for every individual teacher should it be rolled out.

(f) Even if the promoters were to be pegged on Teacher Professional Development (TPD) modules as is being claimed, it is not possible for all the over 300,000 teachers on the Teachers Service Commission (TSC) payroll to be promoted at once immediately after completing one module.

(g) We are in an ever-changing world and therefore a refresher course whose content is designed to last for 30 years is out of touch with the reality and would soon become obsolete.

(h) Under the current economic constraints, which has led to the freezing of salary increments for all Government employees, it would be immoral to subject the little salary that the teachers earn to finance programs which may never be of financial benefit in the long run.

To add to this, teachers have not been spared by the current economic hardship occasioned by skyrocketing fuel prices, the effects of the Coronavirus Disease (COVID-19) pandemic and the general inflation brought about by the soaring prices they have to shoulder.

Madam Deputy Speaker, having said all the above, I conclude by appealing to you to task the relevant Committee of this House with the responsibility of weighing in

on this issue with a view to saving the teachers of Kenya from being unnecessarily subjected to this sporadic training, which has not gained acceptance from the teaching fraternity and to mitigate any prospect of this matter being declared a trade dispute.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Your Statement was framed under Standing Order No.47 (1), but you have made your request and I have heard you.

Before I allow Members to make a few comments, Sen. (Dr.) Langat should make his Statement because it is very closely related.

Sen. (Dr.) Langat.

INTRODUCTION OF IN SERVICE TEACHERS' TRAINING POLICY

Sen. (Dr.) Langat: Thank you, Madam Deputy Speaker. This Statement is actually closely related. I think that it is because we are teachers and are always concerned about our colleagues.

I rise, pursuant to Standing Order No.48 (1), to seek a Statement from the Standing Committee on Education on the introduction of the in service teachers' training policy by TSC.

In the Statement, the Committee should-

(1) Explain the reason behind the introduction of the in service professional training policy by TSC.

(2) State why teachers are required to cater for the cost related to their on the job professional development as opposed to the practice where the cost of such professional development programs is always catered for by the employer.

(3) Shed light on the criteria used in selecting Kenyatta University, Mount Kenya University, Riara University and the Kenya Education Management Institute (KEMI) as trainers disregarding other institutions that are near schools for the convenience of the teachers.

(4) TSC should explain the rationale on the consideration of teachers' performance in the modules as one of the components to be evaluated for promotions noting that the training is not compulsory requirement.

(5) Inform the Senate whether relevant stakeholders were involved through public participation for implementation of the policy.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): I will now allow Members to contribute for a maximum of 30 minutes. I already have six Members, which means five minutes each. Sen. (Dr.) Ochillo-Ayacko.

Sen. (Dr.) Ochillo-Ayacko: Thank you, Madam Deputy Speaker. Teachers are very important for our development. If we were not taught, we would not be here today. Every leader would not be what they are without being taught. Therefore, the grievances being raised by teachers must be taken with the seriousness that they deserve.

One, trying to forcefully train people means that you are aggrieving, angering and annoying them. It is likely to achieve nothing. If you make people who are properly trained angry because of the manner in which you are forcing that training on them, they are likely to be angrier. When they are angry, an angry employee is unlikely to handle this. How are the relevant authorities who are involved in this going to manage the anger that will be a consequence of this forced training?

Two, it is important to tell the nation and the teachers the rewards associated with this training. You cannot talk to them about promotions. The owner of the Statement has indicated factually that you cannot promote 300,000 people. There are no such positions. Are there salaries that will be added to them? Are there allowances? Are there benefits that are consequences of this forced training? That must be told to all of us and to the teachers so that they are motivated towards getting trained.

Thirdly, it is important for all employees to have a work-life balance. There are teachers who are elderly and others who are young and have just gotten into the family way. If you ask them to plan to be away from their families, loved ones and side businesses for a whole 30 years, what the hell are you telling them?

These people have functional lives. They took up that employment knowing that they were fully trained. In the middle of their plans and lives, you now tell them that something compulsory has come up. It is going to affect how they operate and relate to other people, including what they are doing right now, for 30 years. Did the planners look at the work-life balance that is required for the welfare of this very important profession? There are many of us who would like to speak to this topic.

Lastly, how did these people, including Prof. Mogoha, identify what they think the teachers did not have, so that they have the temerity of claiming that our teachers who taught you--- You are one of the best professors I know. I also think that I am one of the best students they ever taught. Uhuru Kenyatta is one of the best presidents they ever taught. Raila Odinga is one of the best engineers.

Hon. Ruto is one of the best PhD holders they taught. So, what is it that we learnt wrongly that teachers have to be re-engineered to teach us? We are leaders. All of us should then go back to school and be taught again.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. (Dr.) Musuruve, you have a maximum of five minutes.

Sen. (Dr.) Musuruve: Thank you, Madam Deputy Speaker, for giving me this opportunity to comment on the Statement by Sen. (Dr.) Langat. This is similar to the one by Sen. Mwaruma.

Organizations are usually productive when they are able to offer professional training to their staff. That means the staff will be more knowledgeable. Some organisations put money aside for training their employees so that they become better.

I am just wondering how teachers will pay for the training. Even if they pay on their own, the TSC should also come out clearly and tell us who is going to train the teachers and their qualifications and expertise because that is something of concern. Another question is; why should one topic take a whole year?

Having been in the classroom it is unthinkable that one topic can take one year. It is not possible because even when you go to the colleges where they train, a topic can take about a week or two. How intense is the topic that it has to take one year? The TSC should come out clearly on that and tell us the reasons for it to take that time and the objectives.

Why do they want the teachers to go for the training when they have already been trained? Teachers can even train themselves. What new knowledge will come about because of the Competency Based Curriculum (CBC)? There is need for the TSC to answer these questions.

I am sure the leadership of the TSC will appear before Members of the Committee on Education. When they do so, I hope they will make us see the sense of the training that they have talked about.

Sen. Were: Thank you, Madam Deputy Speaker, for the opportunity to contribute to this Statement. I want to thank Sen. Mwaruma who usually has the feelings of the teachers at heart. He has brought several issues before us which are matters touching on the teachers.

I have no problem with teachers being trained to improve their professional capacity. This has been going on because it is not the first time. It used to be called in-service training. When it used to happen, it was not at the cost of the teacher and not limited to a particular university. The cost was met by the employer, which is the TSC, or the Government then.

To expect a teacher whose salary increase you have frozen to pay Kshs150,000 tuition fee only is not only punitive but absurd, knowing that they have just coloured this and called it teacher's professional development, when in actual sense it is the usual in-service training that teachers have been entitled to.

What was the criteria used for choosing the three universities and the Kenya Education Management Institute (KEMI) as training centres? What is special about these universities or areas of training when former President Kibaki and his team establish a university at least in every county?

That would make it easier for teachers to access training centres and reduce the cost because they can commute the way they usually commute to school to go and attend the training, unlike now when they say that, for example, it will be offered at Riara University. How many branches does it have? At least Mount Kenya University (MKU) is found in many places but that is still a cost to the teacher.

As I said earlier, it has always been the responsibility of the employer to identify and access the training needs and meet the cost. Where is the report with the findings that recommended that certain modules or topics are lacking in the teaching profession?

Was that report shared with the teachers or their unions so that they are active participants in what we would call public participation? As stakeholders, were they approached and were the findings shared with them? Was the final decision on which universities to be used shared with the teachers or the trade unions, which are their representatives?

I know they have new officials in the trade union movement and there are issues around that. How comfortable are the teachers when they are cannibalizing their union? Teachers are being told to go to court but we would rather they come to Parliament where we can engage all the stakeholders in an amicable way, to reach a solution on this issue.

The Deputy Speaker (Sen. (Prof.) Kamar): Let us have Sen. M. Kajwang' online. Is he still there?

(There was a technical hitch)

Sen. M. Kajwang', we cannot hear you. Can you reset then we will come back to you? Let us listen to Sen. Khaniri.

Sen. Khaniri: I thank you for the opportunity, Madam Deputy Speaker. Allow me to thank Sen. Mwaruma for raising this matter under Standing Order No.47 and the Senator for Bomet for requesting a Statement.

This is a very thorny issue. I was working on a similar Statement and I am grateful that they have brought it. I am even sure they have brought it in a better manner because the two of them having been teachers know where the shoe pinches.

Madam Deputy Speaker, there are only three issues that are coming out clearly. Although the Statement was raised under Standing Order No.47, we plead with you to make sure that you assign a committee to investigate this matter.

There are three fundamental issues that have been raised. Our Constitution, 2010, is very explicit on public participation. You cannot just impose your own ideas on a people without subjecting it to their opinions and them airing their views on the same.

There is a reason why that particular Article was put in our Constitution; that people must participate in the decisions being taken upon them. Once this matter goes to the committee, the question to ask is whether the teachers were involved in decision-making. Lately, we are getting concerned with the way decisions are being made haphazardly by the Ministry of Education. Was there public participation?

The second issue coming up vividly is who bears the cost if the in-service training is to be done. My understanding is that it is the employer who is supposed to bear the cost of improving the skills of their employees. Why is this being put wholly on the teachers? Maybe there should be cost-sharing, so that the teacher foots part of it and the employer the other percentage.

The third issue of concern is the formula that was used to arrive at the three universities and the other institutions, who are domiciled almost in the same locality, in exclusion of other institutions. We have Moi University and Masinde Muliro University that can do the same. Why just choose these institutions that are domiciled in the same area to be the ones that will do the training? This adds to the cost of training because people have to travel from their various localities. There are universities at the Coast that can do this. People have to travel all the way from Western, when there are universities there that can do the same.

As the Committee looks into this matter, that should come out quite prominently. My suggestion is that if the Ministry had to do this, they should have done it

progressively with the new recruits. Why are they involving people who were trained 20 to 30 years ago? There is an old saying that you cannot teach an old dog new tricks.

I propose that this in-service training is punitive to our teachers. We, as a Parliament and their elected leaders, must stand with our teachers and protest vehemently and protect them, so that the Government bears that cost of training and ensures that whenever matters concerning a particular people have to be canvassed, the people must be involved.

Thank you.

Sen. (Prof.) Ekal: Thank you, Madam Deputy Speaker, for giving me the chance to comment on these Statements by Sen. Mwaruma and Sen. (Dr.) Langat.

Sen. Mwaruma and I are teachers. Teaching is a lifelong profession that you choose. For those of us who have been in the classroom for over 40 years, it required that you liked the particular field. It is a lifelong choice that you want to teach and pass knowledge to other people. That was why we stayed in the classroom for that long.

Being a subject of choice should not be something that is forced on someone. When I was a young boy, I wanted to do engineering. I could not get it and so, I went into teaching. It was not something that was forced on me. To force somebody to go and become a teacher does not make sense, because once you force a human being to do something they do not like, they cannot do well in that field because they resent being forced to do things they do not want.

It used to be that you go to a college or university of your choice that offered the courses you were interested in. In my case, I chose the then Kenya Science Teachers College for Mathematics and Physics because that was what I wanted to train on and teach. I studied those subjects and went on to teach. Those who wanted arts would go to colleges that offered arts, where they would train and go on to teach those subjects.

There was never such a thing as forcing somebody to go and train on a field they were not interested in. If anything, there had to be in-service training. It required that if there was something new, teachers had to know how to teach it. As has been already said, that was financed by the Ministry or whoever was sending those people for training.

The world over, we know that when you are an employee of a certain factory, hospital or wherever, whoever thinks that you lack in some knowledge or specialty would send you over to train at their cost, so that you would come back and be a good employee.

It seems like for over these years I have not been in the classroom, education has changed from what it used to be to something like a commercial field. It has been commercialized to a point where some of the things forced on the people are ridiculous. An example is where you are told to go and take a particular course and pay Kshs150,000 for teachers who are not even paid enough money.

I have been teaching for over 40 years and I am not rich because education is not a field you go in to get rich. To tell a teacher to pay Kshs150,000 to do something they are not interested in, is tantamount to some kind of dictatorship. That is something an intelligent teacher would not agree to.

As Sen. Khaniri said, as people who represent these teachers, we are going to fight for them. We will say that it is ridiculous and something better must be found for those teachers to train if at all they need to be trained. Somebody that is trained for 30 years already knows what they were trained on and should not be forced to go for new training.

The Deputy Speaker (Sen. (Prof.) Kamar): Is Sen. Moses Kajwang' back? Sen. Were, do you have a point of order?

Sen. Were: Madam Deputy Speaker, I have a point of information. I want to inform the House that when you were the Minister for Science and Technology you were the team that set a university in every county. Therefore, there is no reason TSC would have three universities stationed in one county, handling the teachers' in-service course, when you put a university in every county under the Former President Kibaki.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator. Earlier, you said 'team,' so I was wondering whether you remember the team. Now, I know that you know the team.

Sen. Faki.

Sen. Faki: Asante Bi. Naibu Spika kwa kunipa fursa hii kuunga mkono Taarifa iliyoletwa katika Seneti na Sen. Mwaruma na maombi ya Taarifa iliyoletwa katika Seneti na Sen. (Dr.) Langat.

Kazi ya walimu ni muhimu sana katika nchi yetu kwa sababu wanajenga msingi wa wanafunzi wetu kutoka mwanzo wa masomo yao mpaka watakapomaliza katika chuo kikuu au kwingineko. Taaluma ya ualimu ni lazima itiliwe maanani sana na Serikali.

Tumeona hivi majuzi walimu wamenyimwa nyongeza ya mshahara kwa karibu miaka mitatu inayokuja, kwa sababu inasemekana uchumi umezorota. Papo hapo, tunaona kwamba wako tayari kuwabandikia mzigo wa kujisomesha kwa gharama kubwa ya Kshs150,000 ambayo ni gharama tu ya kulipia kozi bila ya labda chakula na malazi.

Kwanza, Wizara ya Elimu kabla ya kuleta huu mtaala mpya, lazima walikuwa wamefanya utafiti na kujua kwamba walimu watahitaji ujuzi upi mpya kuwawezesha kusomesha mtaala huo. Je, huu mtaala ambao wameuleta ulipitia ushirikishwaji wa uma ili yale ambayo yatakubalika yawe ni rahisi kutekelezwa katika siku za usoni?

Hivi sasa, karibu kila kaunti ina chuo kikuu. Hatuoni sababu ya mtaala huu kufundishwa na vyuo vinne pekee. Hili si jambo tunaloweza kusema lina utaalamu maalum ambao unaweza kupatikana katika chuo kimoja pekee. Ni mtaala unaoweza kufundishwa katika chuo kikuu chochote katika nchi ya Kenya, kwa sababu ni walimu kupewa mafunzo mapya kuhusu watakavyotekeleza huo mtaala mpya.

Mwisho, walimu kote nchini tayari wanafundisha. Je, kwa wale ambao hawatakuwa tayari, kwa mfano, hawana pesa za kusoma huu mtaala mpya, je, watafutwa kazi ama watafanywa nini? Ni wazi kwamba wengine hawatakuwa na uwezo wa kifedha wa kwenda kufanya mtaala huu mpya.

Asante, Bi. Naibu Spika.

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

Sen. (Dr.) Ali, proceed.

Sen (Dr.) Ali: Thank you, Madam Deputy Speaker. I thank the two Senators for bringing this issue to light. Teachers are the most humble and good people in the community. They have worked for our communities in the remotest areas and big towns, but they always suffer the most. What shocks me in this country is that when it comes to education and change of the education system, why do we always rush it? We always want to do things the way the system wants.

I remember the way the 8-4-4 system of education was introduced and it messed up everything that was there. Now, without proper consultations, they are now talking about another system, which nobody knows about. This is sad. The Government of the day should not just come up with issues when the people are against it. Many teachers are against this system by the Government. Every teacher anywhere in this country is against the Competency Based Curriculum (CBC). If you ask teachers about this CBC, they will tell you they do not know anything about it.

Why is there a rush? Why can we not discuss these things properly and allow public participation, as stated by Sen. Khaniri. Let us ventilate on this issue. If we find that this is good for this country, then no one will have anything against it.

Madam Deputy Speaker, the worst part is that we are telling teachers to come all the way from Wajir or Mandera to Nairobi to learn about CBC. For example, an old man who is supposed to retire possibly in the next two or three years to pay Kshs150,000 and take care of his expenses. That is not possible. It is not right.

The Ministry of Education, Science and Technology and the executive arm of Government should look into this. The Cabinet should realise that this is not the right way to go. Whoever came up with these ideas, we need to have proper consultation, so that every county is involved.

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

Sen. Nyamunga, you have the Floor.

Sen. Nyamunga: Thank you, Madam Deputy Speaker for giving me this opportunity. Mine is very brief. It is important for TSC to be efficient and think outside the box. First of all, in every profession, it is important to have continuous learning. No teacher should graduate and continue teaching for the rest of his or her life without going back to school and understanding how the world is moving.

The TSC should think about one or two things. First, it is costly. I do not think with the salaries teachers earn they cannot afford to pay Kshs150,000 to attend training, yet it is the betterment of children and Kenya. If Kenyans need better teachers who are more informed, they should have a budget for retraining teachers. It is acceptable and allowed.

Secondly, there is online learning. It does not make sense to identify only three colleges within a region and expect all teachers to be trained in those institutions, while they can do the same online. I advise TSC to be more digital. This is a digital Government and we need to see them doing things digitally. During this COVID-19 pandemic, we have realised that everything can be done online. Let them think about digital learning, costing and distribution of learning institutions across the country.

Thank you, Madam Deputy Speaker.

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

Sen. Sakaja: Thank you, Madam Deputy Speaker. This is a matter that no one should even request the Committee on Education to take up. The Committee, on its own Motion, should have been on this matter. There is a huge outcry from our teachers. I have received a lot of concerns from my teachers in Nairobi.

There is merit---

(Loud Consultations)

The Deputy Speaker (Sen. (Prof.) Kamar): Order, hon. Senators! I can see the Chairperson of the Committee on Education is being distracted. Sen. Sakaja is talking to you.

Sen. Sakaja: Madam Deputy Speaker, the Chairperson of Committee on Education and the Senator who sought the Statement are the ones consulting loudly. There is merit in continuous professional development. We should not sound like we are discouraging that from the teachers. It must continue. It is encouraged in all fields. All of our professions, it should keep going on for professional development. However, it is not this kind of professional development. I doubt if much has changed in terms of the core content of what you are teaching.

When the Senator for Turkana was at the Kenya Science Teachers College, the Periodic Table has not changed. It is still Hydrogen, Helium, Lithium, Beryllium, Boron, Carbon, Nitrogen, Oxygen, Sodium and Magnesium – I can go on. Mountains' formations in Geography are the same. The Newton's Law in Physics, Law of Inertia and electronics are the same. What has changed is the method of doing it; the softer issues, Information Technology (IT) where the world is. The kind of training we expect is not the core, but the different methods as how the world is moving. This is not something that would cost Kshs150,000 and for teachers to move all the way from Wajir or Turkana to come to Nairobi for that training.

The Committee should look at three things. One, the training must be paid for by the TSC. It should be done in the regions where the teachers are because there is an institution. In fact, capacity must be developed through the education departments in the districts to facilitate the continuance of this learning.

Additionally, because of where the world is going - as Sen. Nyamunga has said and I am grateful - this training should be online. We are trying to teach them the ways of today, how things are going, how to login to the *Zoom* software and help their children.

When we were in school, our limits were based on the imagination of our teachers. For students today, their outlook is unlimited because of the internet and the World Wide Web (WWW). This is the kind of training we expect teachers to undergo.

People were celebrating when hon. Wilson Sossion left the Kenya National Union of Teachers (KNUT). They say you never miss the water till the well runs dry. Hon. Sossion would never have let this go on. He was a great union leader. We are not hearing KNUT coming out strongly. Sen. Mwaruma is not in KNUT. They should have come out strongly themselves in Parliament to raise this issue. Let us encourage our teachers.

On the issue of cost, many teachers are like many of us here. The payslip has a net pay of zero. They have many loans from their SACCOS. I have seen payslips of many teachers; they have mortgages. I do not see any who can out of the blue come up with the Kshs150,000 for something they should be getting for free as part of our investment in education.

Finally, I heard Sen. (Dr.) Ali talk about CBC. I know there has been hue and cry around the new curriculum. Nevertheless, none of us has heard the voice of the students. We need to look at it differently and hope that the Committee on Education, whose Chairperson is consulting and not listening to us, can organise a forum for Senators on this issue. Let us look at what is happening around the world. Let us not put our children in a cocoon. We have heard what parents and the teachers are saying. What is the best interest of the children?

Sen (Dr.) Milgo, you should organise a conference where all of us are taken through as parents or potential teachers to understand what is needed. Not much has changed; please, let us get an answer from your Committee in the shortest time possible. Our teachers are really crying because of this.

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

Sen. Shiyonga, proceed.

Sen. Shiyonga: Thank you, Madam Deputy Speaker, for giving me this opportunity to support the Statement brought to this House by Sen. Mwaruma.

I will start by expressing my sympathy to the teachers of Kenya for the situation they have been put in. It is sad that we are now talking of reviewing the curriculum and make it more expensive for the teachers, especially during the COVID-19 pandemic.

Madam Deputy Speaker, the Teachers Professional Development (TPD) is ill intentioned. It is sad to force teachers to sponsor themselves on the TPD, yet they are already suffering from lack of salary increment. I wonder why the Teachers Service Commission (TSC) and the Ministry of Education are trying to capitalize on making personal or ministerial gains from the poor teachers of Kenya.

The teachers of Kenya have in the past been forced to go on strike time and again for them to be listened to. How could somebody sit in a boardroom here in Nairobi and make such a decision without public participation with the stakeholders, yet education is a national function?

Education is a national function. The teachers and other stakeholders should have been involved in the making of such a decision. The Ministry of Education and the TSC should have consulted the stakeholders through public participation. The proposal of the TPD by the Ministry of Education is dictatorial. There is a lot of dictatorship at the Ministry of Education right from the implementation of the education curriculum to the training of teachers. The Ministry of Education is now concentrating on commercializing of education rather than the benefit of education to the learners.

Madam Deputy Speaker, the teachers of Kenya are parents as well as civil servants who need to be assisted by the Government. The functions and responsibilities of teachers go beyond teaching. Why can the Ministry of Education not make use of the digital forums available? The Senate of Kenya is running its proceedings virtually. Why

should a teacher from Mandera or Turkana be forced to come to Mt. Kenya University, so as to be trained? Why should the teachers be forced to fund their training? Why is Ministry of Education dictating to teachers what they should do? Education and training needs to be on a willing basis. Teachers are not supposed to be forced to go on training.

I call upon the TSC, which has eroded the beauty of education in this country, to rethink their decision. I cannot advise anyone to go into that teaching profession now. Secondly, why is the TPD being restricted to only three universities? We can only conclude that a few people stand to benefit from all this. I would like to warn the officials from the Ministry of Education that we are watching. I would like to warn the officials who think that the education sector in Kenya is their personal property. I urge the Ministry of Education to come up with strategies that are favourable to our teachers, who are also parents, to instill principles and values into our children.

Madam Deputy Speaker, I applaud my colleague for bringing this issue to the Floor of the House and state that the education sector is at its worst currently.

The Deputy Speaker (Sen. (Prof.) Kamar): Proceed, Sen. Olekina.

Sen. Olekina: Madam Deputy Speaker, I rise to support the two Statements by my colleagues, Sen. Mwaruma and Sen. (Dr.) Langat. From the onset, I would like to clearly state that continuous learning is key to any development of anyone in any career.

I have listened to my colleagues, Sen. Sakaja and Sen. Nyamunga, give two different perspectives on the importance of continuous learning in different environments. Sen. Sakaja's submissions have caught me in a situation where I am left wondering whether this country is one. If Sen. Sakaja is talking about Nairobi, things are changing. His arguments would suit better the rural parts of this country. In over 90 per cent of this country, nothing changes. The Periodic Table is still the same and our children are still learning under a tree.

The arguments by my sister, Sen. Nyamunga, suit the affluent community, who use technology and continuous learning is key. The problem in this country is that the people who sit in the offices of the Ministry of Education in Nairobi think that everybody sits under air conditioned offices, getting served tea at 10.00 am, and has a laptop that has been provided free of charge by the Government of Kenya. The officials at the Ministry of Education do not know the conditions that the teachers are living in.

Madam Deputy Speaker, this is an opportunity for Parliament to show that we can pass a Motion to stop this. Kenyans will now rush to the courts who I hope will save us. We are the institution that comes up with legislation. The TSC is now issuing contracts to teachers. Currently, the teachers of Kenya are paid close to Kshs500,000 per year, depending on the job group. If the Ministry of Education would like the teachers to sponsor themselves in the TPD programme, they should clearly state in their contracts that they will give the teachers at least Kshs150,000 extra for the TPD programmes, for them to improve their skills and enhance performance. I just wonder whether the Periodic Table is going to change after the TPD programme.

We, Senators, have staff who serve us here. I am aware that some of our staff members are in Nakuru attending training on accountability. Is the Parliamentary Service

Commission not funding their training, accommodation and allowances? It is absolutely ludicrous for us to expect our teachers to fund their training under the TPD programme.

It is about time for this Parliament to decide whether it is going to be the ombudsman of the citizens, particularly for our teachers who are paid peanuts, or we are going to act as a rubberstamp, while lamenting that we are a toothless bunch of individuals who have been elected to come here and line our own pockets.

Madam Deputy Speaker, when I read those two Statements, I told myself that we are good men. Sen. (Dr.) Langat asked very important questions, which I would like the Chairperson of the Committee to expound more on. What did Sen. (Dr.) Langat mean when he said, 'explain the rationale on the consideration of teachers' performance in the modules as one of the components to be evaluated for promotion, noting that the training is not a compulsory requirement?' I should add that in the contracts that the teachers signed at employment, it was not stated that it will be required of them to continue gaining continuous training for them to be promoted. The teachers learn through their experiences on the job.

I hope the Chairperson of the Committee on Education will expound more on this matter and give us reasons as to why the Ministry of Education decided to come up with a new system, yet they have not equipped the laboratories. We all know the counties where we come from, apart from the county represented by Sen. Sakaja. Even in the county represented by Sen. Sakaja, only half of it--

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Olekina, your time is up, but I will give you one minute to finish up.

Sen. Olekina: Madam Deputy Speaker, what I am saying is that apart from where Sen. Sakaja is representing and only the affluent neighbourhoods, everyone else who lives in this country goes to a shithole school that does not have any windows for ventilation and a computer lab. Now, you expect a child who is in Msambweni to come up with a smartphone, when the parents do not even have a 'Mulika Mwizi.' Come on!

The Deputy Speaker (Sen. (Prof.) Kamar: Hon. Senators, my 30 minutes ended one minute ago, and I have three Members. I want to give you two minutes each, so that we can finish. We wanted the Statements Hour to end at exactly 4.00 p.m., and I have two more Statements to be read without additions.

The Senate Majority Leader (Sen. Poghisio): Madam Deputy Speaker, although my friend Sen. Olekina has finished speaking, there is a word in English that he has used, which I do not think is really parliamentary.

Hon. Senators: Say it!

The Senate Majority Leader Sen. Poghisio: I cannot repeat it because I will have participated.

The Deputy Speaker (Sen. (Prof.) Kamar: Thank you, for not repeating it. Sen. Olekina, since I did not hear, I can excuse you but, please, check the HANSARD; it will help you tomorrow.

Sen. Sakaja, I still have your Statement and I have five minutes only.

Sen. Sakaja: Madam Deputy Speaker, you need to direct because, indeed, there could be a word that is not parliamentary. However, you can direct, so that we do not

repeat it, that the Clerks-at-the-Table go through the HANSARD and withdraw from the record of this House any word that might not be parliamentary. If there is a word that is not parliamentary, let it be withdrawn because the record of this House---

Last week, I was going through the HANSARD of 1964 and what hon. Tom Mboya used to say in this House. This is a record for posterity and so, if there is such a word, let it be expunged and we can go on, instead of making it a debate and leaving it in the HANSARD.

The Deputy Speaker (Sen. (Prof.) Kamar): Let me rule on that one. Are you going to tell us what you said?

Sen. Olekina: Madam Deputy Speaker the word that I used was “shithole”. What it means in the dictionary, and I will read it, is that:

“It is an extremely dirty, shabby or otherwise unpleasant place.”

That is the exact word I used; I did not create the word. What is unparliamentary about that word? It is, of course, parliamentary. It is not a word that is not in the dictionary. It is not a word that does not describe a place. If that word is unparliamentary, then I wonder why it was ever created.

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, I want to read the HANSARD so that we see the context in which he mentioned that Statement. Give me time to go and read it and then we will come to rule on it.

Sen. Cherargei, you have two minutes.

Sen. Cherargei: Thank you, Madam Deputy Speaker. I want to say that this Statement is very timely. I agree that teachers’ career progression and development should be something that we do. Even in the legal profession, we have what we call Continuing Legal Education (CLE) among others. In all fairness, teachers should be the ones not to shoulder the burden of cost.

Whether there was public participation, I think it is very important. It is a constitutional issue. We have a litany of cases where the Government has been ruled against, where they have not done public participation. The TSC should not just issue orders and directives; they must consult teachers. Teachers have been pushing for their pay and their terms of service to be improved. It is important that the training is delocalized, the way they have delocalized the transfer of teachers across the country.

That in-service training should be done even in secondary schools that are within the vicinity. There is a very interesting selection of Riara University; they are offering pre-law certification for the Kenya School of Law. This is the same university that offers professional courses. What is so special about Riara? We cannot reduce this thing to enrich a few universities or individuals within the system at the expense of the teachers.

I agree with the teachers in the fight against this. This is unfair and ridiculous. It should not hold any water. You have heard that even the CBC is the most expensive. The other day, a parent was complaining that her child was sent home to take a picture of a sleeping mosquito. How do you take a picture of a sleeping mosquito?

Let us be realistic. Let us not allow this CBC, which is very expensive and unfair to our children--- I stand with the teachers and the TSC must re-strategize on how they will do this in-service training.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kamar: Sen. M. Kajwang’, you have two minutes.

Sen. M. Kajwang’: Madam Deputy Speaker, I rise to support the Statement and also wish to speak on behalf of the KNUT branches in my county, from Suba to Homa Bay to Rachuonyo. They have clearly told me as their Senator to reject this imposition of ideas coming from the Ministry of Education.

Unfortunately, the policies in the Ministry of Education seem to be rammed down the throats of Kenyans. It was just the other day when the CBC was introduced. The then Cabinet Secretary came before the Senate Committee on Education and said that the country was not ready. Now, one month later, we have found the same policy being implemented and forced on the children of Kenya.

The teachers of Homa Bay are saying that as long as the institutions are going to be in Nairobi, they will say no. Why do we want to bring everything to Nairobi and why these universities? This is a sign of chronic capitalism and that is why public universities are broke. They are collapsing because the Government is taking money to private universities; money that could have been used to show up the finances of public universities.

As long as the Cabinet Secretary is telling people to go to hell when they question the CBC, the teachers of Homa Bay are rejecting this policy. As long as those teachers who went to universities and did degree programmes expecting promotions remain unpromoted, the teachers of Homa Bay are saying “No” to these dictatorial tendencies from the Ministry of Education.

Finally, I want to urge that when the Cabinet Secretary for Education comes before the House, let him come to the Committee of the Whole because he also has a reputation of ignoring the House, just like the Cabinet Secretaries that we censured last week.

Sen. Hargura: Madam Deputy Speaker, I would like to support this Statement sought by the two hon. Members. The issue of the training of the teachers as part of their professional development, in any profession with new changing systems, we need to have continuous training. As an employer, the TSC needs to have known that it is part of its own service delivery to make sure that its staff are competent. They need to contribute to it.

Due to time, I would like to mention the issue of the institutions. We have teacher training institutes in this country, where in the event of change of the training system for the teachers, then for that programme to be sustainable, it should be done at that level. Therefore, identifying four universities and asking teachers to go there will not be sustainable. That programme needs to be done at the teacher training level, which are also fairly distributed.

Other than that, when you come up with this new curriculum, the teachers need to be trained and it has to be a continuous training. The other day, the same TSC was saying that they do not recognize the Bachelor of Education training for teachers in the

university. I do not know what they are doing in taking teachers back to the universities, while they do not intend to continue with that training.

I would like to urge that when the Cabinet Secretary comes, the TSC should also be there, and this issue needs to be addressed.

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, the two Statements from Sen. Mwaruma and Sen. (Dr.) Langat in the combined form that we have discussed, stand committed to the Standing Committee on Education. We give the Committee 14 days to come back with a report. I will give one minute to the Chair of the Committee to agree with the House that in 14 days she will be back with the report.

Sen. (Dr.) Milgo: Thank you, Madam Deputy Speaker. I assure the House that our Committee has already convened a workshop to get to the gist of CBC, which shall be conducted next week. We shall be seized of these two Statements, and in the next two weeks, come up with answers.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Chairperson of the Committee. We have one more Statement from Sen. (Dr.) Musuruve on Standing Order No. 47(1) and the last one from Sen. Sakaja, in that order.

Sen. (Dr.) Musuruve, please, read your Statement.

Sen. (Dr.) Musuruve: Madam Deputy Speaker, can I be helped with the Statement because it never came back to me? I wish to read it.

THE INTERNATIONAL DAY FOR OLDER PERSONS

Thank you, Madam Deputy Speaker, for giving me this opportunity to make a Statement on a general topical concern on the International Day of Older Persons.

I rise pursuant to Standing Order No. 47(1) to make a Statement on a matter of general topical concern, namely, the International Day of Older Persons, which is celebrated on 1st October, every year, by raising awareness about issues affecting the elderly such as elderliness and elder abuse. It is also a day to appreciate the contribution that older people make in the society.

Madam Deputy Speaker, on 14th December, 1990, the United Nations General Assembly (UNGA) voted *vide* Resolution 45/106 to designate 1st October as the International Day for Older Persons.

It is noted that there are currently more than 700 million people over the age of 60 years, with Eastern Asia being the home to the largest number of older persons at 261 million and Europe and Northern America following with over 200 million. It is predicted that by the year 2050, this figure will have risen to over 1.5 billion, with the fastest increase in the number of older persons expected to be in Northern Africa and Western Asia and the second fastest projected to be in Sub-Saharan Africa.

Madam Deputy Speaker, various initiatives preceded the resolution of the day in order to address the challenges that face the ageing population. The Vienna Plan of Action on Ageing which was adopted by the 1982 World Assembly on Ageing and endorsed by the UNGA; the United Nations Principles for Older Persons, adopted *via* Resolution 46/91 by UNGA in 1991 and the Madrid International Plan of Action on

Ageing adopted at the Second World Assembly on Ageing in 2002, are examples of such initiatives that are used as instruments for addressing issues of older persons.

Madam Deputy Speaker, the Vienna Plan of Action seeks to strengthen the capacities of Governments and civil society to deal with the ageing population and address the developmental potential and dependency needs of older persons.

It promotes regional and international cooperation. It includes 62 recommendations for action in addressing issues such as research, data collection and analysis, training and education. It also has salient sectors such as health and nutrition, housing, environment, family, social welfare, income and security. The Madrid Plan of Action is a response to opportunities and challenges of populations aging in the 21st Century.

Madam Deputy Speaker, Kenya has made tremendous efforts in advancing the rights of the elderly. In 2007, the Government of Kenya, in a practical attempt to help the older persons, started the Older Persons Cash Transfer Pilot Project in Thika and Nyando and later implemented it in Busia under the Rapid Response Initiative.

This programme later transitioned to the current *Inua Jamii* programme. The programme has embraced not only the elderly, but also the vulnerable and Persons living with Disabilities (PWDs).

Madam Deputy Speaker, the rights of the elderly are enshrined in Article 57(a)-(d) of the Constitution of Kenya, 2010, which stipulate that-

“Older persons have a right to-

Participate in affairs of the society, pursue personal development, live in dignity and respect, and receive reasonable care and assistance from the family and state.”

Madam Deputy Speaker, it is not only regrettable, but also sad that despite the constitutional provisions, older people face a lot of challenges. Most live a lonely life, are abandoned by their own families, lack medication and appropriate nutrition, healthcare services and social security. Some elderlies are cut off from their families and left in the care of homes. Some are isolated to the extent of remaining in solitude. This brings them down and reduces their dignity. Sometimes they hardly get a phone call from those that were once close to them.

As we commemorate the International Day of the Elderly, I call upon all Kenyans to defend Article 57(a)-(d) of the Constitution by reaching out to the elderly and appreciating them. Some of the ways of showing appreciation include spending time with them, being polite, asking for advice, eating together, discussing family heritage, history and traditions, calling them, visiting them and reassuring them of love and appreciation.

Madam Deputy Speaker, I am also calling upon county governments to create a biodata of all their elderly and build county recreational facilities for them, establish social security and obligatory health services for them and keep reporting to Parliament periodically on the mechanisms put in place to uplift their lives.

In conclusion, I call upon the Government to strengthen the cash transfer programme services by increasing the amount of money given to the elderly and make

the programme more efficient, transparent and effective in reaching the right beneficiaries.

Happy International Day for the Elderly everyone!

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, I hope that we will reach Order No.23, which is a Motion by Sen. Nyamunga on recognition and appreciation of the elderly. If we reach there, we will allow contributions.

Because of time, we move on to the Statement by Sen. Sakaja.

ARBITRARY KILLINGS OF INNOCENT *BODA BODA*
RIDERS IN NAIROBI CITY COUNTY

Sen. Sakaja: Madam Deputy Speaker, I request for a Statement on the arbitrary killings of innocent *boda boda* riders by the police in Nairobi City County.

I rise, pursuant to Standing Order 48(1), to seek a statement from the Standing Committee on National Security, Defence and Foreign Relations regarding the recent spate of arbitrary killings of innocent *boda boda* riders across the County of Nairobi, allegedly by rogue police officers.

In the Statement, the Committee should address the following: -

(1) Explain the circumstances that led to the shooting to death, allegedly by police officers, of two unarmed *boda boda* riders. That is, Mr. Rabin Ogeto and Mr. Bernard Mabwago, in broad daylight in the course of their duties on Saturday, 25th September, 2021 and Sunday, 26th September, 2021 along Kirinyaga Road and in Kasarani respectively.

Madam Deputy Speaker, I offer my condolences to their families.

(2) Outline the action that has been taken by the Inspector-General of Police with regard to the arrest and prosecution of the officers involved in the killing of the two *boda boda* riders.

(3) Explain why cases of extrajudicial killings have continued despite the public outcry and what strategies have been put in place by the Inspector-General of Police to ensure humane, professional and responsible policing.

(4) Provide a report from the Office of the Director of Public Prosecutions (DPP) on how many cases of rogue officers have successfully been prosecuted, including the cases I have brought before the Senate from Kiamaiko and Kasarani of Yassin Moyo and Steve Mwendwa.

(5) Give a report of the Independent Policing Oversight Authority (IPOA) on the mitigation measures that have been taken to end this menace of extrajudicial killings by rogue officers and their disregard of the law.

(6) Outline the measures the Government has put in place to compensate the families of more than 100 men and women who have fallen victim to extrajudicial killings in the last 15 months. Fifty per cent of these killings have been in Nairobi City County.

Madam Deputy Speaker, I thank you and hope that this can be resolved speedily. These killings happened on the Saturday and Sunday of this past weekend. There are

many other cases in Nairobi where *boda boda* operators are being harassed and made to really suffer.

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, this Statement stands committed to the Standing Committee on National Security, Defence and Foreign Relations. We want them to bring the report in 14 days.

Next Order!

BILL

First Reading

THE ELECTIONS (AMENDMENT) (NO. 3) BILL (SENATE BILLS NO. 48 OF 2021)

(Bill deferred)

MOTION

APPROVAL OF THE PUBLIC FINANCE MANAGEMENT (EQUALIZATION FUND ADMINISTRATION) REGULATIONS, 2021

The Deputy Speaker (Sen. (Prof.) Kamar): The Chairperson of the Sessional Committee on Delegated Legislation.

Sen. Faki: Thank you, Madam Deputy Speaker. I can see my junior, Sen. Cherargei, is excited with the Report.

I beg to move the following Motion-

THAT, the Senate adopts the Report of the Sessional Committee on Delegated Legislation on the Public Finance Management (Equalization Fund Administration) Regulations (2021) Legal Notice No. 54 of 2021, laid on the Table of the Senate on Tuesday, 28th September, 2021; and pursuant to Section 205 (4) of the Public Finance Management Act, approves the Public Finance Management (Equalization Fund Administration) Regulations (2021) as contained in Legal Notice No. 54 of 2021.

Madam Deputy Speaker, the Public Finance Management (Equalization Fund Administration) Regulations (2021) were published by the Cabinet Secretary (CS) in charge of the National Treasury on 29th April, 2021 pursuant to Section 205 (1) of the Public Finance Management (PFM) Act, 2012.

The Regulations were submitted to the Senate by the Cabinet Secretary for the National Treasury on 19th August, 2021 pursuant to Section 11 (1) of the Statutory Instruments Act (2013) and tabled before the Senate by the Senate Majority Leader on 7th September, 2021. After tabling, it was subsequently submitted to the Senate Sessional Committee on Delegated Legislation.

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In a nutshell, the Regulations are intended to be applied to provide guidance on the administration and management of the Equalization Fund. These Regulations were first brought to the Committee through the National Assembly by way of concurrence. However, the Committee declined to consider them because they had not been tabled before the Senate.

Madam Deputy Speaker, before I delve into the content of the Regulations, allow me to give a brief background as to why the Regulations were published. The Regulations seek to give guidance on the administration management of the Equalization Fund, whose operations were halted by a court order issued on 5th November 2019, Petition No.291 of 2016.

The court disbanded the Equalization Fund advisory board and halted any further expenditure from the Fund. Other orders issued by the court included that the Equalization Fund, being for the benefit of marginalized counties, can only be disbursed by the national Government through the respective and affected county governments, and in accordance with the recommendations made by the Commission on Revenue Allocation (CRA) as approved by Parliament.

Two, the guidelines on the administration of the Equalization Fund Published on 13th March, 2015 in the *Kenya Gazette* were unconstitutional and null and void for violating Articles 1 (4), 2 (1), 6 (10), 174, 201, 204, and 216 of the Constitution, and Sections 12 and 18 of the Public Finance Management Act.

Madam Deputy Speaker, the National Treasury was given six months from the date of the judgment, and in consultation with all relevant stakeholders, to prepare an appropriate policy under statutory instruments on the administration of the Equalization Fund that is compliant with the recommendations made by CRA, as approved by Parliament. The objectives of the Equalization Fund and devolution are set out in the Constitution.

It is because of these orders that the National Treasury had to go back to the drawing board and come up with the new regulations. It is important to note that since the court order, the funds have not been withdrawn and as such, there are stalled projects within the counties; uncompleted projects for which payments have not been effected to date.

It will also be important to bring to the attention of Members that Article 204 (6) of the Constitution envisages that the Equalization Fund shall lapse after 20 years. It has a sunset clause of 20 years after the enactment of the Constitution, unless it is extended by legislation.

In terms of identification of marginalized areas, the marginalization policy is the guiding policy. Upon the lapse of the first policy, the second generation marginalization policy for identifying marginalized areas was launched on 22nd June, 2018 by the CRA. The policy focuses on sub-locations distributed across the country in 34 counties, relative to the 14 counties recommended in the first policy.

The policy uses information on access to safe water, school attendance, access to improved sanitation and electricity. The deprivation index was used to rank 7,131 areas mapped into 34 counties and 107 constituencies from the most deprived to the least

deprived. Details of these areas are annexed to our report as Annexure 2. Members can get details from there.

Madam Deputy Speaker, let me now move to the scrutiny by the Committee. In scrutinizing the Regulations, the Committee met the National Treasury, the Council of Governors (CoG), the CRA, the Controller of Budget, County Assemblies Forum and received written submissions from the Central Bank of Kenya. (CBK)

The key stakeholders had been consulted at the drafting stage of the Regulations, but still, they have several concerns on the published regulations that were needed to be addressed before effective implementation. However, the National Treasury informed the Committee that the concerns brought before the Committee by the stakeholders were different from those that had earlier been raised during consultations with the National Treasury.

In order to fast-track the implementation of the Regulations, the National Treasury gave an undertaking that the necessary amendments would be made to the regulations within six months after approval by Parliament.

Madam Deputy Speaker, in our deliberations as a Committee, we found that the issues that were raised were not of a fundamental nature to stop us from approving the regulations. The National Assembly had considered and approved the Regulations on 7th July and subsequently sent a Message to the Senate on its resolution.

In terms of content, I will only highlight a few paragraphs of the regulations. Membership of the board that will oversee the implementation of the project will comprise of a chairperson appointed by the Cabinet Secretary and Permanent Secretary (PS), National Treasury; the PS Devolution, a nominee of the National Assembly from pastoralists community, one person nominated by the Senate, a nominee of the Council of Governors (CoG), three others nominated by the organisations working in the beneficiary counties and a representative of special interest groups appointed by the Cabinet Secretary.

The funds will be utilised as conditional grants to the affected counties in accordance with the Division of Revenue Act and the County Allocation of Revenue Act (CARA) for the respective financial year. All withdrawals from the Fund shall be deposited into the respective spending county's account. The County Grants Bill shall be incorporated once it becomes law.

Finally, in addition to the board at the national level, three administrative units are also proposed for establishment by the respective county commissioners in eligible counties. These are as follows:

First, the county technical committee whose responsibility will be to approve all the projects to be financed from the Fund. It shall comprise of county commissioners as chairpersons, County Executive Committee Members (CECMs) for Finance, National Government-Constituencies Development Fund (NG-CDF) managers, representative from the county assembly and the chairperson of the NG-CDF.

Secondly, the sub-county technical committee shall receive, evaluate, prioritise and assess the feasibility and cost of the development projects. It shall comprise of the sub-county commissioner as the chairperson. The county governments contested that this

office is inexistent. We will also have four technical officers from the Ministry to prioritise funding, chairperson of project identification and implementation committee and the NG-CDF secretary.

To wrap it up, the project identification and implementation committee shall provide oversight on project implementation. It shall comprise of assistant sub-county commissioner, chairperson and village administrators of marginalized areas. The two offices have been contested by the CoG that they are inexistent. It is said that some villages have no village administrators.

We will also have a representative of special interest groups, a representative of the NG-CDF committee, member of the sub-county level and representative of religious groups or local Non-Governmental Organisation (NGO) with an office at the ward level.

In conclusion, therefore, the committee observed that the Regulations are to facilitate completion of ongoing projects and commencement of new projects in the marginalized areas before the lapse of the 20-year period, as provided for under Article 204(6) of the Constitution. We have already lost about 11 years since the Fund was established and the projects have not been implemented.

Further, the regulations will enable the release of payment for completed projects, which have not been paid for since they were completed. The regulations provide for project identification and implementation committees as recommended by the Commission on Revenue Allocation (CRA).

In the Second Marginalization Policy, the CRA recommended that the Equalization Fund Advisory Board establishes approximately 360 implementation units at the division level and transfers funds directly to it.

Thirdly, the regulations have brought on board the county governments of the marginalized counties in the management of funds. The Equalization Fund Advisory Board will include a person nominated by the CoG drawn from the areas identified as marginalized. This addressed one of the issues raised by the CoG with regard to constitutionality of management of the Fund. The regulation provides for implementation of both ongoing and new projects. This is important to avoid continued stalling of projects that were ongoing prior to the court order.

The key stakeholders were consulted during drafting of the regulations, but still they had various concerns on the public regulations that need to be addressed for effective implementation. The concerns brought before the Committee by stakeholders were different from those that the stakeholders had raised during consultations with the National Treasury.

The court had directed that the National Treasury should prepare an appropriate statutory instrument within six months from the date of the judgement, which was delivered on 5th November, 2019. The National Treasury is, therefore, under strict timelines issued by the court on the urgency of the Regulations, as funds need to be disbursed to the counties to ensure there are services to the citizens. The National Treasury gave an undertaking that the necessary amendments will be made to the regulations within six months after approval by the Senate.

Based on the foregoing observations, therefore, the Sessional Committee on Delegated Legislation recommends to the Senate that the Public Finance Management (Equalization Fund Administration) Regulations, 2021, be approved pursuant to Section 205(4) of the PFM Act, 2012.

Madam Deputy Speaker, I beg to move and ask the Senate Majority Leader, Sen. Poghisio, a lawyer and Member of my Committee, to second.

The Senate Majority Leader (Sen. Poghisio): Madam Deputy Speaker, I would like to second this Motion. I am a Member of the Committee. I recommend that we take the shortest time possible and pass these Regulations because this Fund is long overdue.

The Report is not asking for funds because they already exist. However, they have been there for 11 years without being used. We now have many counties. We also have the rules and regulations for the operationalization of this Fund.

Since this is urgent and many counties have been waiting for long and the period left is short, I urge us to pass the Regulations and move to the next stage of making sure that the funds are released, so that the counties benefit because, already, 11 years have gone and we only have nine years left.

The Equalization Fund was crafted to give meaning because it has been misunderstood by many of us. Many areas in the counties are affected. Those places have been mentioned in the Report, which all of us will read. With the passing of this, money will go direct to those places. Chances of diverting funds to other things are slim. Therefore, we should pass this Motion.

I am a Member of the Committee. A comprehensive public participation was undertaken and stakeholders agreed that it is now time and this is the way to go. Therefore, as I second, I urge my colleagues that we should not take too long on this. Let us pass these regulations, so that we move to the next stage to ensure all underprivileged and marginalized communities benefit.

I beg to second.

(Question proposed)

Sen. Sakaja: Madam Deputy Speaker, by the end of my submission, it will be clear whether I support or oppose this.

We appreciate that it has been many years that Article 204 has provided for the Equalization Fund to bring up to speed the general level enjoyed by the country in areas that have lagged behind in provision of basic services such as water, roads, health facilities and electricity.

Initially, I remember when the first marginalization policy was done, there was hue and cry because the law talks about marginalized areas, not marginalized counties or constituencies. The area could be across counties or constituencies.

It made sense to move beyond just limiting it to counties. This is because if you look at the indices we have in the Kenya Bureau of Statistics, there are areas where there is depth of deprivation, diluted by the areas of abundance. That is why you find some of these areas that have been listed in the second marginalization policy would not have

made it earlier because the general human development index rating on the county average, negates the depth of poverty. This made a lot of sense.

Secondly, an intervention to sort one of these four things in a county, for instance, water in Taita Taveta, maybe the intervention does not need a project. A project upstream in Makueni might be the solution to solve the water problem in Taita Taveta. That is why there is merit as well for the national Government to be the one implementing this marginalization policy.

Having said that, I like the words the Chairman used when he was describing - I think it is on page 5 - levels of deprivation in the counties across the county, the worst areas; what the Senate Majority Leader has called the poorest or worst hit. He talks about level of sanitation, road network, electricity, health facilities and access to it.

I oppose this Report.
Let me just quote page 12. It says-

The policy focuses on sub locations ---
That is good and is the argument we did in the last Parliament.

“distributed across the country now end in 34 counties relative to the 14 counties recommended in the first policy--- The policy uses information on access to safe water, school attendance, access to improved sanitation and electricity.

Madam Deputy Speaker, on deprivation index, I challenge anyone in this House to show a place with worse sanitation than Mathare or Kiamaiko. People are walking on open sewers in Korogocho, Mukuru kwa Njenga and Mukuru kwa Reuben. We also have “flying toilets” in Kibera, Katwekera and Lindi.

Many times people imagine that Nairobi is well-to-do because of these areas where we are sitting in now. If the Chairman wants us to take a walk now, it will not take us ten minutes to see living sewers. That is sanitation. Which area would be worse than that?

Regarding access to healthcare, there are five million people living in 200 informal settlements in slums in Nairobi City County. That is 60 per cent of the population, occupying only 6 per cent of the land. How can you have a marginalization policy that does not mention even one sub location of Nairobi City County?

Many times urban poverty bites worse than rural poverty. If you have no money in Nairobi, you will not get a place to stay or something to eat. In the village, it is possible your neighbour will give you a tin of maize. In Western Kenya, most of the hedges are edible. You just pluck and have it as a vegetable, but in Nairobi everything is commercial. In Swahili, we say *shamba la mawe*.

I do not understand. I would like the Chairman to intervene and give me a point of order to explain to me how you miss out even one of the slums in Nairobi City County in terms of marginalization, deprivation, lack of sanitation and access to healthcare.

When we hear stories of children dying---
Sen. Faki: On a point of order, Madam Deputy Speaker.

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

Sen. Faki: Madam Deputy Speaker, these are Equalization Fund Administration Rules. They are not the ones that identify the marginalized areas. We have not done the exercise of identification of the areas. That task is being undertaken by the Commission on Revenue Allocation (CRA). It is not the task of this Committee to identify the marginalized areas. The regulations do not talk of the marginalized areas, but how the Fund is going to be applied in order to benefit the marginalized areas. It is not talking of identification of the areas.

The Deputy Speaker (Sen. (Prof.) Kamar): I think that is very good clarification. There is a point of information from Sen. Halake.

Sen. Halake: Madam Deputy Speaker, as one that is very familiar with needs assessment, I wish to inform Sen. Sakaja that it is not true that urban poverty is worse than rural poverty. In fact, urban poverty has better chances of one getting some work from the industries and homes in the affluence of the city than in the rural areas. With rural poverty, there are places such as Northern Kenya, for example, Isiolo where there is bareness 150 kilometres in any direction.

It is a scientific fact and I can produce it. Let us not mislead.

Sen. Olekina: On a point of information, Madam Deputy Speaker. I have a lot of respect for my friend Sen. Sakaja. I inform him that Article 204 is clear on what marginalization is, compared to what poverty is.

Article 204(2) reads as follows –

“(2) The national government shall use the Equalization Fund only to provide basic services including water, roads, health facilities and electricity to marginalized areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible.”

Madam Deputy Speaker, if you go to Kibera, there are roads, electricity and hospitals such as Mbagathi. We have to differentiate between poverty and marginalization.

The Deputy Speaker (Sen. (Prof.) Kamar): He is well informed. Hon. Senators, I want us to listen to what Sen. Faki said. This is ‘the how’. It has nothing to do with who is receiving this money---

Sen. Sakaja: It does!

The Deputy Speaker (Sen. (Prof.) Kamar): If we could finish with the regulations as fast as possible---

Sen. Sakaja: Madam Deputy Speaker, it does.

The Deputy Speaker (Sen.(Prof.) Kamar): As much as we would like to allow you latitude as Senators, please let us make sure we get the regulations out. You have already attracted another intervention from Sen. Shiyonga.

Sen. Sakaja: I have not accepted.

Sen. Shiyonga: I am standing on a point of information which might not be for you, but good for---

The Deputy Speaker (Sen. (Prof.) Kamar): No, Senator! You have to direct your information and if the Senator is not willing to receive---

Sen. Sakaja: Madam Deputy Speaker, I am not interested anymore. Let me give my argument.

The Deputy Speaker (Sen. (Prof.) Kamar): Let him wind up; you will do it in your contribution.

Sen. Sakaja: I still have time. How much time do I have?

The Deputy Speaker (Sen. (Prof.) Kamar): You have finished your time, but I will give you three minutes.

Sen. Sakaja: Madam Deputy Speaker, we have rules on how long a contribution is done. This is not a Statement, but a report. When we discuss a report, we passed how much time someone can speak. I still have time.

The Deputy Speaker (Sen. (Prof.) Kamar): I am Sorry. This is the 20 minutes' debate. He still has a lot of time. He has over 10 minutes.

Sen. Sakaja: Madam Deputy Speaker, first of all, those were points of argument. I would like to convince my colleagues that in the Senate, when we debate, you do not have to agree with what I am saying. Just because you do not agree with it, does not mean it is not right. You can have your opinion and I have mine.

In my opinion, this is an extremely unfair way of identifying marginalised areas. There is what Article 204 says, and that is the first thing I said when I came up here.

If you read the Report, it states how they came up with the marginalisation policy. They came up with it through bottoms-up. If you look at Page 6, it says-

“Consistent to the principle of subsidiarity, the second marginalisation policy recommended a bottom-up approach in project implementation and recommends for the strengthening and rationalisation of implementation mechanisms.”

We are talking about how to use regulations on the money, which is in billions, to sort out those areas that were identified in the marginalisation policy. In as much as what we are passing is the regulations, what are the regulations giving effect to? These regulations were gazetted. Even before the regulations, the marginalisation policy was gazetted. If the marginalisation policy is gazetted, it must come to the Committee on Delegated Legislation.

Madam Deputy Speaker, you cannot say that because we are not talking about the marginalisation policy, but the regulations, to implement a bad thing. You did not look at the marginalisation policy. To me, this is abdication of work. The Committee should question what the regulations are meant to implement.

I oppose because if we are talking about access to water. It might look like areas in Nairobi have access to clean drinking water, but they do not. Look at Nairobi River and what is happening in our counties where people are dying of cholera. The biggest cholera outbreak has been in Nairobi and not any other part of the country.

I do not understand any method of identification. For the record, because I have seen which Senators are trying to intervene when it came to the matter of revenue sharing, I stood with counties. This is because I believe when it comes to resources, the counties that were marginalised deserved to get that money, I believe in one Kenya.

People are fair-weather in this House; that when things suit you, you forget people who have stood with you.

There cannot be any justification as to why those children next to Korogocho in Dandora who are walking on faeces as I speak, you say they are not marginalised areas, yet we are talking about sanitation. Those are the words the Chairman has used. That is sanitation, access to water and healthcare. There might be many buildings called hospitals in Nairobi, but are there drugs? Why do we have a high mortality rate in the City? Because of that, I completely oppose this report. Ideally, we need to revisit the marginalisation policy.

There is no way I will accept the knife that is going to slaughter, yet this is what is going to implement a flawed policy. I will not accept this tool that will implement a policy that is flawed and does not take due regard to the majority of the marginalised in this country. I will not, and will vote 'No.'

(Sen. Olekina spoke off record)

Kindly ask Sen. Olekina to stop arguing from his seat. He will have his turn to speak and support or oppose this report. It is good that county governments have been brought on board. These projects will not be implemented by county governments, but the national Government within counties.

There must be a different approach to how we sort out and bring people up to speed. As I said earlier, my issues of water in Nairobi need not just an intervention in Nairobi City County, but also in Murang'a where we have Ndakaini, Ndarugu River and the Northern Collector Tunnel. You might be sorting out the issue of access to water in Nairobi by creating an intervention in the next county. This is exactly what the principle of subsidiarity means.

The principle of subsidiarity is simple; that a service is best offered at the lowest level compatible with the benefit area of that service. This is how we must be approaching development. This is development economics 101.

When I accepted the first point of order, I was waiting for the Chairperson to convince me how you would ignore some areas like Nyalenda slum in Kisumu, where people there, lack access to basic things.

Why do you think we have fires every two weeks in Nairobi, especially Mathare slum? It is because of lack of proper connectivity of electricity; such that people are going to get fake power connections and they are burning their houses; people are dying. Will you say there is electricity in Nairobi City County so we leave it? Is it proper? Is it affordable?

The Equalisation Fund to some extent in those areas would have been subsidising electricity access in the slums. This is the creative way to look at it. Something can look like it has been provided, but is the benefit area compatible with that area enjoying the provision of the service?

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

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

The Temporary Speaker (Sen. Nyamunga): Sorry, Senator. Sen. Cherargei, what is your point of intervention?

Sen. Cherargei: Madam Temporary Speaker, the Chairperson of the Committee on Delegated Legislation, Sen. Faki, has told this House that this was just for the administration of the regulations and not an identification of marginalised areas. I have seen the report and the marginalised areas have been identified. The Senator for Nairobi City County should separate the issues. In the report, we are not discussing the identification of marginalised areas, but the management and administration. Is it in order to mislead the House, yet the report is indicating something else?

The Temporary Speaker (Sen. Nyamunga): Sen. Were, what is your point of order? I am going to ask Members to quote the Standing Orders.

Sen. Were: After this. Thank you, Madam Temporary Speaker. I want to help clear and the Chairperson can attest to this. There is no way that you can develop the ‘how’ without looking at the ‘who,’ even in your development. If you are saying that, ‘this fund will be administered in this way,’ to who? Eventually the ‘who’ is intermingled with the ‘how’. We cannot separate those two. We cannot say that these regulations are not discussing who is receiving the Equalisation Fund and is only talking about the ‘how’. You cannot discuss the ‘how’ without quoting intrinsically the ‘who.’

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

Sen. Sakaja: I thank my sister because she sees the point. There is no way I can support the implementation of something that I see as completely unfair. The regulations are giving effect to the implementation of the marginalisation policy. How would you support that and tell your people in Nairobi City County that you are taking care of their interest? Those are the interests of my people. I cannot explain consciously to the people in Mukuru Kwa Reuben why a policy to help people get water has been passed and Nairobi City County has been left out, yet they deserve that.

Everybody will have a chance. Even if mine is a single vote ‘No,’ it will still pass. However, my point must be heard.

I would urge that when Members make interventions, you ask them what is out of order because a point of argument is not a point of order. When you rise on a point of order, you say what is out of order in terms of the rules of debate and the way the person is moving, or if they have said something unparliamentary.

Madam Temporary Speaker, allow me to go on. If you look at Clause 22(3) it says-

“In identifying the programmes and projects for inclusion in the work plan, the County Executive Committee Member (CECM) responsible for matters relating to finance shall take into account;

(i) the criteria recommended by the Commission on Revenue Allocation (CRA).”

Madam Temporary Speaker, we already have a problem with this. If you allow this to pass, then they will be implementing that which is patently unfair for the majority of the people of Kenya.

It further says:

“(ii) the costing of the projects, the recommendations by CRA and guidelines issued by the board.”

Additionally, nothing constrains or restricts the implementation to what has been recommended by the CRA. If the Senate was creative in many respects because it is a House of equalization, we could have a designed an even better matrix on how we implement the Equalization Fund. Otherwise, that fund will continue being unimplemented.

Madam Temporary Speaker, from the brief by the Chairperson of the Committee, I see that 34 counties will benefit. Many of the counties that are set to benefit from the fund have been left behind for a long time in terms of health, roads, education and many other things.

The folly and the fallacy in the minds of many people is that just because they stay in Lavington and other posh estates in the City of Nairobi, it does not mean that the people of Nairobi County are enjoying that which you think there is. The level of lack of access to the things that Article 204 talks about is highest per capita and per individual in this capital city. I wish the Committee had time to go around and witness the lives of many residents of Nairobi City County in the slum areas.

The other day, I went to officiate the opening of a basketball court in Korogocho where I was accompanied by Mr. Masai Ujiri of the Toronto Raptors. Later, when, I sat down with Mr. Ujiri, he told me that in as much as we are helping the residents of that areas, the hardest thing for him to imagine is that the players who will use that basketball court are going to be exercising and panting heavily next to a dumpsite. The amount of money that is used to treat respiratory illnesses in that area is so high. The life expectancy of children in that area is lower than any other part of this country because of poor sanitation. How then do I say that Nairobians do not deserve to be addressed in terms of sanitation? A different language should have been used.

Madam Temporary Speaker, I would like to advise my colleagues from the 34 counties to change their attitude. The mentality that one does not have because another one has, is wrong. Their counties will lose nothing if the slums of Nairobi are included.

It is for that reason that when Nairobi City County was gaining Kshs134 million on the Division of Revenue last year, I stood with their counties because I understand what devolution and development is. We ultimately had a win-win outcome. The Nairobi City County ended up gaining Kshs3.3 billion because I focused on the interest of the whole country.

When I talk about the people of Mukuru, Korogocho, Kibera, Kawangware and other slum dwellings, I am not talking against the people of your counties. That is the attitude that the Senate needs to have. A candle does not lose its light by lighting another candle. In fact, in the process of lighting another candle, it burns brighter. In as much as the 34 counties that are listed deserve the funds---

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

The Senate Majority Leader (Sen. Poghisio): Madam Temporary Speaker, my intention is not to disrupt the Senator for Nairobi City County. This is Nairobi so he has the right to speak. Sen. Sakaja can tell us all about Nairobi City County. However, the one thing that I would like to remind him is that the Senate did a public participation on this matter. The CRA invited the Senate and that is the point at which he could have differed or increased what he thinks. We all approved the formula that is before us. I would like to remind Sen. Sakaja that this formula is not new; he may have just forgotten.

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

Sen. Sakaja: Madam Temporary Speaker, I have always assumed that the Senate Majority Leader knows his truths. He knows who knows what happened. Just because something that I opposed then passed, does not mean that I accept it now. If it was unfair then, it is still unfair now and I still do not believe in it.

Instead of the Senate Majority Leader telling me that it was passed, he should explain to me how I will tell Mama Akinyi that it is okay for her to be on a sewer and that she has not been covered in the sanitation policy. That is my point which I firmly believe in.

I believe in this country. However, we cannot have a first class country with second class citizens. Every Kenyan who has been deprived of access to these things across the country deserves it from Habaswein to Kuria, but so do the urban poor in Nairobi, Kisumu, Mombasa and Nakuru counties. The urban poor have also not been able to access these things for the last 50 years.

Madam Temporary Speaker, I beg to oppose.

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

Sen. Olekina: Madam Temporary Speaker, I rise to support this report by the Senate Sessional Committee on Delegated Legislation, Report on the Consideration of the Public Finance Management (Equalization Fund Administration) Regulations, 2021 and Approval of the Public Finance Management (Equalization Fund Administration) Regulations, 2021.

I have listened keenly to the submission by my friend, Sen. Sakaja. I am a firm believer that neglect of the slum areas by the national Government is not tantamount to marginalization. What is happening in Nairobi City County is that the national Government has neglected areas that they were supposed to develop.

Article 204 is very clear in terms of how this policy is---

The Temporary Speaker (Sen. Nyamunga): There is a point of order by Sen. Sakaja.

Sen. Sakaja: On a point of order, Madam Temporary Speaker. It takes two to tango. I will, therefore, do what they have done. Is it in order for Sen. Olekina to mislead this House that there is a difference between neglect in what I am talking about; that the national Government and County Government of Nairobi have neglected Nairobi, but what we are dealing within the equalization fund is different.

Article 204 of the Constitution talks about areas that have been left behind in terms of access because of neglect. The Governments that we had from Independence decided that the Northern Frontier counties should sort themselves out.

According to Sessional Papers No.1 of 1965, the National Government focused on what they called productive areas. The fact that schools were not built in the arid areas is neglect. The fact that water and electricity was not made available to far-flung areas is neglect. The neglect that the people of Nairobi City County have gone through since Independence is the same to the neglect that has made sure that counties such as Narok and Marsabit do not have access services. Is Sen. Olekina in order to mislead the House that there is a difference between what the poor in Nairobi City County go through compared to what the poor people of Garissa have gone through.

The Temporary Speaker (Sen. Nyamunga): Sen. Olekina, are you in order?

Sen. Olekina: Madam Temporary Speaker, I believe that I am in order because Article 204 is quite clear. In any case, anyone who can read can differentiate between poverty and marginalization. Slums are mushrooming everywhere on a daily basis as a result of the rural-urban migration. However, the marginalized areas are quite clear even in the Constitution.

I recently visited Marsabit County and I was shocked. People do not access to electricity. Equalization fund talks about the access to electricity, water and roads. The people of Nairobi City County benefit from a good road network such as the Express Way. The Equalization Fund intends to uplift the marginalized areas which are the ones that have been left behind in development and do not have access to the basic services.

I was shocked to find out that since the equalization fund was set up, money has never been allocated. The Serem Commission did not allocate about Kshs7.4 billion.

Currently, that fund has over Kshs51 billion. The Senate is supposed to unlock those funds. I agree with the courts that if the regulations were not gazetted and if the process was not clear, Parliament should step in and unlock those funds. We are now discussing modalities of unlocking the funds, but I would be lying to you and fellow Kenyans if I said that I do not want Narok County to get the Kshs2.1 billion which has been locked by a court ruling since somebody went and stopped that money from going to the counties to help people.

Madam Temporary Speaker, I am looking for my notes. I am sorry I was just a bit rattled because I know how painful this is. I know how people are living in abject poverty. If you go to Marsabit, Narok, Kajiado counties, you will understand what I am talking about. It is not the entire country that people are suffering. In urban areas, it is the county governments and the national Government that neglect because the amount of money that we allocate to counties and the amount of money which Nairobi City County or cities are allocated by the national Government is a lot compared to what the people from Isiolo should be getting.

I would like to beseech each one of us here to approve this regulation so that those projects which were carried out by Kenyans and were not paid for can be paid. If you look at the figures, Narok County was supposed to receive about Kshs760 million during the first policy. However, not the full amount was utilized in Narok County. If that

money was utilized, those people who built hospitals, sunk boreholes and built roads were never paid. Those are Kenyans; they are business people who are trying win tenders so that they can proceed.

The second policy was supposed to give Narok County about Kshs1 billion. I will be happy if a child in Mosiro has electricity and access to drinking water. However, that child is not having access to that drinking water because we are now trying to differentiate between poverty and marginalization.

I do not subscribe to the school of thought that people should be poor, but if you live in a slum area it is the national Government and the county government which ensure that you have got those basic services.

It will take you eight hours to access some areas in Kajiado West in Kajiado County because of poor roads. Those people are marginalized. They have no access to anything. So, should we be arguing here and saying that a City like Nairobi which in the last year there have been about six or seven new hospitals that have been opened by the President at night----. Nairobians can go to those hospitals. Did we allocate any money for those hospitals to be built? No. That is why the framers of the Constitution thought about those people who may not have that influence to be able to win a tender and ensured that money is set aside for them so that they can get those services.

When I read this Constitution, I am happy that it talks about 24 delegations to be able to approve this. I want to beseech my good friends that yes, I hear you and I feel your pain. I feel the pain of *Mama Mboga*. I feel the pain of a child who wakes up every single morning to flying toilets. However, I also want you to feel the pain of a young woman who lives somewhere down Kitui where there is no access to roads and no water, but she has to go to school.

Every single day we are called upon by our citizens to build water pans for them. We do not have any money allocated to us as Senators. However, you end up selling your cows so that you can put up a water pan for the people in Kilgoris because they are marginalized and also because somehow the sharable revenue which has been given to Narok County is not enough to build water pans everywhere. When you go to the second policy on marginalization, that small community would have got a water pan or a dispensary.

If you look at the Ministry of Health policy in terms of where a dispensary should be built, you will be shocked. You have to have about 5,000 people for you to have a Level 1 Hospital. Where are you going to get those people in Mosiro? Where are you going to get those people in Narosora? You cannot.

I think it is about time that instead of us behaving like we should be setting up a sinking fund of putting money where it does not even earn interest, we should unlock these funds to support those people for three reasons.

I have met with so many people who spent their own money to build beautiful health facilities. They are like big white elephant projects now and these people were never paid anything. A lady came to see me in my home the other day and said: "Please, Senator, I took a loan. Please go and approve those regulations so that I can be paid my money."

What is the point of us setting aside money as per the Constitution? Twenty years since 2011 will soon lapse. What happens to those people who put all their money in projects for the national Government, but they have never been paid? What is the point of us saying we have a Constitution which is a living document that says set money aside to develop these areas, but then we continue bickering here and arguing and then those people do not benefit?

I would like to request my colleagues that instead of even coming up with another formula or policy, we extend the second generation policy because even those people who are supposed to have benefited from the onset, never benefited.

If we are able to extend this second policy, we will be unlocking a lot of money. In fact, if my figures are right, we are looking at unlocking another Kshs11 billion. The first one was about Kshs7.6 billion which was never allocated. In total, because I am really passionate about this issue and I do not want to miss my point, we have Kshs51 billion lying somewhere.

We have hardworking Kenyans who have spent their money, taken loans, had their vehicles auctioned because we in this House of Parliament could not pass regulations and unlock this stalemate. It is about time that we now started thinking about our economy. People talk about succession being the cause of all of our problems every single day. Should we leave this to the courts to be deciding for us?

Yesterday everybody in the streets was happy saying finally the courts have seen the pain that we are going through as Kenyans when they put a stop on KRA introducing the excise tax on petroleum products. That helped Kenyans. Now let us think about the children of those contractors. Let us think about those areas which could be benefitting.

If I take you to Narok, I will show you buildings which were built, about four or five years ago. They are idle because of that court case. This is because we have not been able to agree to release this money.

I know last year, Sen. Sakaja, did a fantastic job. The distinguished Sen. Sakaja originally from Narok, but lives in Nairobi. He has had some roots in western Kenya. He came to the rescue of counties like my county which was losing about Kshs1.5 billion.

Now I can thank him, but I want him to put himself in the position of that small child that he supported that time, or a child who he supported in Wajir County, who has got no hope of tomorrow and release this money to be given to them.

I am not saying that you are not concerned about that child in Wajir.

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

The Temporary Speaker (Sen. Nyamunga): What is your point of order, Sen. Sakaja and start by quotation. You advised me to be insisting on quotation now I am advising you, now you can take the cue.

Sen. Sakaja: Madam Temporary Speaker, yes, it is Standing Order No.72. Could the Clerk give me a copy of the Standing Orders.

The Temporary Speaker (Sen. Nyamunga): I do not know what happened. The Standing Orders are nowhere in this House. The Constitution is also missing.

Sen. Sakaja: Madam Temporary Speaker, it is not Standing Order No. 72, but 115 on irrelevance.

Is the Senator for Narok relevant by misleading the House that I have anything against children from counties that are gaining by saying that the children of Nairobi City County should also be included?

If he listened to my submissions, I finished by saying that a candle does not lose its light by lighting another candle. The same way I stood for all your counties, is the same way he must also remember the poor and the marginalized in Nairobi City County, who are not accessing sanitation and electricity hence the fires in Mathare slums every two weeks and those who are unable to access water, healthcare and sanitation.

That is the point I am making.

So, is he in order to personalize that there is somebody in this House who does not care about the poor in Wajir or Garissa?

If there is someone who has paid the political cost for caring for the people of his county, is me. That is in the record and anybody can see it. Ten times including arrests, intimidation, banners and billboards being put against me. I care about the whole country. It also means that I care for my people in Nairobi.

The Temporary Speaker (Sen. Nyamunga): Sen. Olekina, I hope you have noted Sen. Sakaja's concerns.

Sen. Olekina: Yes, Madam Temporary Speaker. I have noted the concerns of my good friend, Sen. Sakaja.

I want to state it here for the records that Sen. Sakaja cares about all the children in this country. I just want him to understand that I am not saying that he does not care. However, I want him to distinguish between being marginalized and poor. You could live somewhere in Nairobi, for example, in Lavington and you are poor, but not marginalized. This is because you can access clean water.

The issue is clear. Urban areas have access to services that marginalized areas do not have. Urban areas have access to good roads unlike in Narok County. Also, children in poor remote areas in Narok County do not have access to these services.

Madam Temporary Speaker, when you listen to the people of Narok on a daily basis, they only ask for three things. One, is water, two, good roads and three, a hospital. This is what marginalization means. This is what the framers of the Constitution had in mind. They set aside a percentage of all the money appropriated on each financial year, to be used for equalization to allow areas which were historically left behind to slowly catch up.

Madam Temporary Speaker, I would be happy if one day, I have three roads to get to Narok. That way, I will not get stuck at the escarpment and spend two days because there is only one road to Narok.

I will be so happy if I go to a place in Enaibor Ajjik in Narok and get clean water. I would be so happy if I stop my frequent visits to the Permanent Secretary (PS), Ministry of Energy or Rural Electrification Authority (REA) to request them to give electricity to the people of Enesamblai and Kilgoris.

If you bring a child from those areas to Nairobi City County, he will think he is in heaven because everything here is different. When it comes to the issue of Dandora---

(Loud consultations)

I only have two more minutes to go. So, let me finish.

Madam Temporary Speaker, there is Kshs7.6 billion which was not allocated. I hope to convince Sen. Sakaja to approve and support these regulations. Sen. Faki has done a fantastic job. Two weeks ago, he brought another good report that will save this country.

There is Kshs12.4 billion which was allocated, but only Kshs1million of that was spent. The other is pending bills. Out of that, if you deduct the Kshs20 billion, there is about Kshs30 billion which is lying idle.

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

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

Sen. Sakaja: Madam Temporary Speaker, is the Senator for Narok in order to keep misleading the House in defining what marginalized is. His statement is that marginalization is not poverty. However, poverty is as a result of marginalization.

The dictionary defines marginalized as a person, group or concept treated as insignificant or peripheral. Those people who have been living in abject poverty in the slums of Nairobi have been treated as insignificant or peripheral.

Beyond the dictionary, the Constitution in Article 260 defines what a marginalized community is.

It states

(1) “a community that, because of its relatively small population or for any reason, has been unable to fully participate in the integrated, social and economic life of Kenya as a whole.

There are many of those in Nairobi including the Nubians in Kibera, the Oromos and Boranas in Kiamaiiko.

Sen. (Rev.) Waqo knows them. I was with them last week. They are marginalized and have never been brought up to speed.

(2) A traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;

A marginalized group is a group of people who because of laws or practices before, on or after an effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27(4).

There are groups in this city that have been discriminated from development because of their ethnicity.

If you go to Kibra, many successive governments in the city have ignored those people because of being politically-incorrect. They are also marginalized. You know what I am talking about. It is not a race to the bottom. We are not trying to see whose poverty is worse. I am saying Nairobi City County must be included. I have not said Narok should be removed. So, why do you have a problem with Nairobi City County? My vote is only one.

The Temporary Speaker (Sen. Nyamunga): The point is noted.

Sen. Sakaja: The regulations will be passed. You will have 24 votes, but I will vote 'no'. Do not try to convince me. Talk to other Senators and not me.

(Sen. Olekina consulted loudly)

The Temporary Speaker (Sen. Nyamunga): No problem. If your time is 'eaten' it will be given to you. I would like to advise all of us whichever side of the coin we are supporting, to try our best to galvanize enough Members to reject or accept the report. That will help us. Let us give Members time to debate.

Sen. Olekina, kindly finish. You now have one minute if not half.

Sen. Olekina: Madam Temporary Speaker, I have five minutes. I have been stopped five times.

The Temporary Speaker (Sen. Nyamunga): No. The yellow light is on.

Sen. Olekina: Madam Temporary Speaker, I have a lot of respect for Sen. Sakaja. He asked me whether I was in order to continue misleading this House.

There is a difference between marginalized poor and marginalized and poverty. The dictionary is clear. I am not saying that people who live in Narok are poor, but they are marginalized. They are capable of making a good living if the State, which they pay taxes to, and the Constitution, set money aside for them to have good roads and access to clean water.

I do not have to change his mind, but the facts are stubborn. We are dillydallying. It is time for us to continue being progressive. We can only become progressive if we have a sunset clause and act towards making sure that whatever was passed as a sunset clause does not lapse when we do not actualize what the framers of the Constitution had in mind.

Finally, I am happy with the work being done by the Committee on Delegated Legislation. They are making sure that all these regulations which will come to this House are scrutinized. Every policy that will come here will be scrutinized. Let us go and unlock this money.

I beseech all the Senators, not only from the marginalized counties. The way we stood together and showed the country that we cared, we unlock these funds. This is because even if you live in Nairobi, your grandmother or mother lives in the rural area. You can access clean water, but your mother will not access it or a good road.

Sometimes when you go to see your mother, she will give you potatoes, maize and green beans, among other produce. She will have to give you only when you visit her. However, she would like to send you her farm produce by road at any given time.

Madam Temporary Speaker, the national Government and county government should stop neglecting slums. Just a few years ago, Nairobi City County was given a lot of money to upgrade Kibra slum and other slums, but corruption messed up everything. Instead of upgrading them, people ended misappropriating funds.

Let us not confuse neglect and being marginalized. Our people are marginalized. This is an opportunity for us to show this country that we care about every part of this

country getting access to clean water, good hospitals and roads, so that we can all develop and live our dream; if there is anything like a Kenyan dream.

Madam Temporary Speaker, I support.

The Temporary Speaker (Sen. Nyamunga): That was a good one.

Sen. Farhiya.

Sen. Farhiya: Thank you, Madam Temporary Speaker, for giving me this opportunity to speak to this report. From the onset, I thank His Excellency Uhuru Muigai Kenyatta for requesting us to pass this Bill so that he can assent to it. He promised us when we made our visit to the State House last time that he will assent to it. I am so grateful to him.

The second equalization formula was passed in this House in June 2016. For those who were here, the argument about who should or should not have been on that list should have happened at that time. Now we are going to the third formula.

The first formula was for only 14 counties that were really marginalized, but they never benefited. The second one is for 1,424 sub locations that were assessed and should have benefited from this up to date.

I want to indulge the other Members who are not in this list to support it because there will be a third generation formula. Let me give you the amounts because I heard people arguing about the figure. What is allocated so far from the equalization fund is Kshs21.8 billion, but we should have been allocated Kshs29 billion. What should be set aside according to the revenue that we generated was Kshs29.4 billion and not Kshs21.8 billion.

Madam Temporary Speaker, one of my former colleagues from Oxfam that I worked with a long time ago in 1995 or 1996 called me the other day. At that time, he was a procurement person. He told me that his money is stuck in the National Treasury and he completed his project in 2018. He is really struggling. This money needs to be unlocked because the initial regulations were rejected. The governors were not happy and they took it to court.

The improvement from the other regulations to this one is the fact that there are at least two representatives for the Council of Governors (CoG). There is one from the CoG and another one from this House. I assume they will represent the interest of counties. As Senators, we will nominate someone into that board. I think that it is much better than it was.

Madam Temporary Speaker, I think that which areas should be in or out, is the argument that we need to give when we pass the third generation formula. Like Sen. Olekina, I am really grateful to our brother Sen. Sakaja for helping us with the formula. His time is coming and we will support him to ensure that Kibra slum is included to be benefit.

This equalization fund should have started in 2010 once the Constitution was passed. It is 11 years late. Can you imagine that somebody who the Constitution had recognized had a problem and his problem has not been solved 11 years later? As a House, we need to be conscious of that fact and the fact that there are people who have not been paid since 2018. As you are very much aware, capital does not come for free.

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Most people who implement projects borrow from banks. There are so many people who will be bankrupted if we do not pass these regulations.

These people are not only from the marginalized counties only. I am sure that the greater number of people whose money is stuck are from Nairobi City County because that is where the majority of the capital comes from. People have completed projects and have not been paid. Their capital is stuck with the Government because there is no legislation to pay because the initial regulations were rejected.

Madam Temporary Speaker, I heard people talking about having one road. From Modogashe up to Wajir County, there is no good road that is at bitumen level. Every time it rains in Wajir County, people get stuck. You know the kind of insecurity we have in our place.

There are certain basic services that are non-existent in some of these marginalized places. The Constitution has identified them very clearly. They are roads, health and electricity. As I speak, there are zones in Wajir County that only get electricity for three hours. The generators that we have are 10 or 20 years old. They are diesel generators. This is despite the fact that Wajir has an abundance of solar power. Seeing that there are no funds to install things like solar electricity. We are still suffering lack of electricity, yet we have solar resource in abundance.

Madam Temporary Speaker, if the things are implemented, these places will be at par with other areas. If there were roads, electricity and health centres in these areas that are now marginalized were fixed, they will get out of the marginalization bracket and other people will come in.

So, many of the initial 14 counties and 1,224 sub-locations that were covered by the first and second formula of the Equalization Fund will get out of that list. As for now, the criteria is set, mapping has been done and economics parameters have been measured. They will get out of that and new ones will come in.

Madam Temporary Speaker, when we pass the next formula, let us look at it critically. The second generation formula was passed in June 2016 in this House. However, up to now, the areas that were impacted have not benefited from this.

I urge this House to pass these regulations so that ongoing projects are completed. There are so many incomplete projects. Capital was invested and because some of them were not paid, the project is halfway done. For the others, even when the project is completed, they cannot hand over because the Government still owes them money.

I beseech fellow Senators to pass these regulations, so that once the rightful people are identified using clear criteria--- For economic prosperity of this country, and also so that we are at par with each other, it is high time we passed these regulations. Of course, issues are also there.

Our Chairperson mentioned that there are certain things that need to be rectified. The National Treasury promised that they will be rectified within six months after we pass these regulations. So, the few anomalies that were identified by stakeholders were not identified the first time during the consultations. There are new things that were identified and they promised to rectify.

The regulations have not been in place for 11 years and there is no proper legal framework to operational use the fund. If we reject them now, it will probably take another 11 years. That means the Equalization Fund will have lapsed because it was to be in place for 20 years but 11 have already gone.

Madam Temporary Speaker, as I support the Motion, I urge my fellow Senators to pass these regulations. I thank you.

The Temporary Speaker (Sen. Nyamunga): Hon. Members, there is still a lot of interest on this matter. I know you are allowed 20 minutes. If you can make it shorter, the better so that all Members get time to make their contributions.

Sen. M. Kajwang': Madam Temporary Speaker, I thank the Committee on Delegated Legislation that has kept us busy in the past few weeks by bringing reports in a timely manner.

We are all aware that if the Committee decides not to bring reports to the House, those regulations take effect automatically. I want to congratulate Sen. Faki for making sure that regulations do not take effect by default but after consideration by the Senate.

Allow me to start with the good, then go to the bad and the ugly of what we have before us. It is difficult to talk about these regulations without making reference to the Second Generation Marginalization Policy. If the Marginalization Policy would have come to this House, following what we now know as a result of the long drawn discussion on revenue allocation and following what we now know on computation of the formula for allocation of revenue, I am sure it would have been scrutinized much further.

The Second Generation Marginalization Policy did not just have pros on definitions of marginalization and new terms like deprivation index but it also had a formula that would be used to allocate resources to the areas that have been identified as marginalized.

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

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

Mr. Temporary Speaker, Sir, in the First Generation Marginalization Policy, 14 counties were listed as beneficiaries. In the Second Generation Marginalization Policy, 34 counties are going to benefit from the funds that shall be appropriated as Equalization Fund.

Homa Bay County was not a beneficiary in the First Generation Marginalization Policy. I am happy that in the Second Generation Marginalization Policy, Homa Bay County is among the 34 counties that will benefit. Homa Bay County has got about 20 locations that are going to benefit from these funds.

In Suba North, for example, the people of Kayanja have been marginalized for a long time. The people of Usao and Soklo in Mfangano are going to get some money that will specifically be directed towards provision of water, doing roads and provision of electricity and health facilities in those areas.

When I look at areas like Ndhiwa Constituency, the people of Kabuoch North and Lokonyango locations are going to get access to the money. In Kanyamua, the people of Kwamo and Kwandiku locations are going to get the money.

If you go to Kisumu where the distinguished Sen. Nyamunga comes from, the people of Nyando, Wang'anga, Anyuro, Nyangore and Obumba locations are going to get money. That is why I like the Second Generation Marginalization Policy because it has expanded the scope and will ensure that pockets of marginalization that exist across the country are addressed rather than looking at the entire country as either black or white.

The first policy took the northern part of Kenya and particularly pastoralist counties and tagged them as marginalized yet there are pockets of marginalization everywhere. The people of Mfangano, Remba, Nyandiwa, Kiwa and Migingo feel marginalized and should have access to this Fund.

I have seen some of the comments by key stakeholders who were consulted on these regulations. That now brings me to the bad and the ugly of these regulations. On the introductory pages, Paragraph 8 states that necessary amendments will be brought before the House within six months. I am a bit worried when we pass regulations on the basis that within six months, the National Treasury will come back here with amendments.

We know the reputation of the National Treasury. Once they have their way, they behave like adolescent boys and girls. Once they have their way, you will never see them again. Unfortunately, I do not buy the promise that the National Treasury will come back to us within six months to amend these regulations. I wish we could have the right regulations that satisfies the requirements and desires of all the stakeholders.

If you look at page 7 of the report, there is quite bureaucracy on the administrative structure of the Fund because we have a county technical committee, a sub-county technical committee and a project identification and implementation committee.

The CRA is the body that is constitutionally mandated to advise Parliament and the nation on the Equalization Fund. On page 12, Paragraph 41 talks about over-representation of the NG-CDF in those structures.

You will realise that in the county technical committee, there are NG-CDF managers and then the national NG-CDF Fund Manager. In the sub-county technical committee, there is also a NG-CDF manager. In the project identification and implementation committee, there is also a NG-CDF manager. Nowhere have I seen a sub-county administrator or ward administrator being involved in identification, monitoring and implementation of projects under this Fund. That is a bad sign.

Additionally, the CRA has raised the flag on expenses of the Fund. As I speak, in the First Generation Marginalization Policy, 4.8 per cent was allocated to administration. That is Kshs598 million. With public procurement procedures, sinking a well may cost Kshs2 million. The Kshs598 million being used in administration could probably drill 280 wells. We must ensure that we have a reasonable cap on the administrative expenses of the Fund. The CRA expressed that concern and it is captured by the Chairman very clearly on page 12 of the report.

The Controller of Budget (CoB) is another important constitutional entity. In Paragraph 44 on page 12, the CoB says that “a little more needed to be done for the regulations to work efficiently”. Remember, it is the CoB that shall authorize withdrawals from this Fund and they are telling us that this thing is not ready for implementation. We are going to run into headwinds when it comes to implementation and drawing of money from this Fund.

Let us consider another critical stakeholder; the Central Bank of Kenya (CBK). Sen. Faki rightly sought the views of the CBK on those regulations. The CBK expressed concern on the issue of comingling of funds. They are saying that the regulations are not explicit as to where the funds shall be deposited. Of course, the regulation says that this money shall be sent to counties as conditional grants the same way we have conditional grants under the DORA and the CARA.

Remember, the county technical committee will be chaired by the county administrator and not the county Government and we are going to have conflicts. There is no way counties will receive money. The CECM Finance will receive money and pass it to the county technical committee headed by the county commissioner. We are going to have conflicts. All the elected leaders are represented in that County Technical Committee.

The Governor is there through the CECM for finance, the ward representatives are there, the Member of Parliament is there through the National Government Constituency Development Fund (NG-CDF). It is only the Senator who is approving the policy and regulations that has absolutely no role to play in those structures. I think that needs to be corrected.

Let us look at another stakeholder – the Council of Governors (CoG). On page 11 paragraph 38, they have said – “halt the regulations” because they are concerned about a few things. If the CRA, the Controller of Budget (CoB) the Central Bank of Kenya (CBK) and the CoG have told us there is something wrong that needs to be looked at before this regulation should come into force, I think we should listen to them.

The National Treasury itself has admitted that there could be some imperfections which will be corrected in six months. Why the rush? Why can we not get the right regulations?

We are not opposing or debating the policy which is already adopted by the House. As I started my debate, I said I am happy that the policy has expanded from 14 to 34 counties. As a result, my people are beneficiaries.

Mr. Temporary Speaker, Sir, if you go to places such as Suba South you have little islands such as Kiwa which no one ever goes to. In fact, politicians visit it once in five years just to get the votes and disappear. As a result of that second marginalization generation policy, the people of Malongo, Kitawa, Uterere, Nyamrisra, Rangwa and all those areas in Suba South do not even sound like areas that are in Luo Land because they have been neglected for long.

I am happy with the second policy. What Members should be concerned about – which is probably why Sen. Sakaja was landing into trouble – is that this debate is not about the policy. The policy has already been adopted and is cast in stone.

I urge the House to consider those views by the critical stakeholders; the CBK, CoG, COB and CRA.

Page 6 of this report has the composition of Equalization Fund Advisory Board. The Senate and the National Assembly have each a nominee. The problem I have is that the National Assembly has cast it in stone that their nominee shall be a pastoralist.

We are still looking at Equalization Fund as a carrot for pastoralists. We are still looking at pastoralists as people who do not belong to this country such that we must extend certain favors and yet, they pay taxes. A pastoralist herding 50 heads of camel is richer than somebody else who is purporting to be hawking in the middle of Nairobi or sitting with his PhDs in Kisumu.

It is dangerous for us to do a regulation and say that the nominee of the National Assembly must be a pastoralist. If this fund is going to apply in places such as Soklo in Mfangano, should we then demand that the nominee be a fisherman because the people there are fishermen? That is a very dangerous matter that can be informed by the procedures we adopt as Parliament but should not be cast in stone.

I am glad the Senate has left it open and said it shall have one nominee. It is dangerous for us to restrict the National Assembly nominee to be a pastoralist.

On the sunset clause that is talked about in the Constitution, definitely, this Parliament must move to extend the tenure of the Equalization Fund because a lot of time has been lost. These marginalized areas ought to have benefited from that money because it is not a favour but a constitutional entitlement to those people who have been left behind when other parts of the country were leapfrogging in terms of development.

The High Court of Kenya had initially pronounced itself on the matter and said that disbursement of the money should be through counties. If it is through counties, it should follow that management should be through counties.

I have already elaborated my concerns about the County Technical Committee that is chaired by the County Commissioner. We are not talking small amounts of money. They are not as small as the monies that go to county as Road Maintenance Levy Fund (RMLF) but hundreds of millions of Kenya shillings. We cannot have a situation where the county governor receives the money only to cede it to the County Commissioner sitting with NG-CDF chairs and members.

Mr. Temporary Speaker, Sir, I do not see why you should still bring in the aspect of NG-CDF chairs, Secretaries and members into the Equalization Fund. This is because it is different from the national Government Development Fund and the national Government Affirmative Action Fund.

If we are to bring in the NG-CDF, then those people on the national Government Affirmative Action might also want to be represented on that table and then we are going to have a very crowded situation.

I feel that these regulations, even though urgent, could benefit from some short moment of reflection. I do not trust the Executive and National Treasury to come back to this House within six months. I trust the concerns raised by the CRA, CoB, CBK and CoG and a few Members on this Floor, that we still need to do a little bit more.

This Equalization Fund should be made to work in a manner that does not bring other bottlenecks or prompt someone to go to court to seek annulment of the regulations. We all agree on the policy which I think is wonderful. This regulation is just an instrument for making sure that policy is implemented.

I urge Sen. Faki that even calling the vote on this matter you probably might want to ask the Chair to give you a little bit of time to do some consultation. You can also convince those of us who are assigning a lot of weight to the reservations by the various stakeholders. Otherwise, a very good idea might be lost because you have not interrogated the facts properly.

Sen. (Dr.) Musuruve: Thank you, Mr. Temporary Speaker for giving me this opportunity to support this report that has been brought forward by Sen. Faki.

It is good that it has been brought here. Article 204 of the Constitution speaks clearly on Equalization Funds. It is premised on the fact that the far-flung areas that are marginalized should enjoy the basic rights such as water, electricity and all the essentials that are in other areas.

At one time, I was the Vice-Chair of the National Council of Nomadic Education in Kenya. Issues came up that there were no schools in North Eastern Kenya and that children were learning under trees and all that. There were sorry pictures that we were seeing.

From the time the money started being disbursed, are there indicators of success in those areas. This is because in some of those areas one still sees children learning under trees and no water at all. If monies have been disbursed each year, what are the indicators of success?

We cannot say we want an area to be equal to others but when money is taken there, you do not see any indicators of success. When we come to the Floor of this House and say there are not schools, water and that children are leaning under trees can we also have indicators of success since the Fund started going to those areas.

I believe there is also lack of transparency in the manner in which these funds are being used. I am happy that this report speaks of ways of managing the funds that disbursed to those areas. There is need for oversight just to find out what is happening in those areas. If money has been disbursed for eleven years; what can we say as a House that those areas have achieved from the Equalization Fund?

If those areas have not achieved anything, when the 20 years have passed, they will want to add 20 more years. This could be unfair because the Fund is supposed to move from point 'A' to 'B' to 'C'. Areas that are marginalised should come up with a matrix of how the money has helped those areas in terms of schools, electricity, healthcare and developments that are supposed to reach the 'ground'. Article 204 of the Constitution is well meaning, that all areas should have these basic necessities.

It is not only the marginalised areas that people do not have electricity and access to roads. Where I come from, in Lugari, there are areas that do not have access to roads and are marginalised. The Equalisation Fund should have also been allocated to such areas that are far flung so that development reaches the common man everywhere. Electricity should also reach the common man everywhere.

In Lugari, there are some areas that have no electricity at all, whereas there are areas that have no accessible roads since colonial times. People are living in a sorry state. When it comes to schools, there are schools constructed out of mud and then the floors are carpeted with cow dung.

When we are talking about marginalised areas, they have not been identified. The Constitution does not spell out the specific marginalised areas, it leaves it open so that all Kenyans can benefit from the Equalisation Fund. Even as the Report is being interrogated, there is need to know that there are Kenyans in the so called, 'well to do counties' who are also being marginalised and are not able to enjoy the benefits and services that every other common Kenyan is supposed to enjoy.

There is need to sanction the misuse of this money. We cannot talk of a lot of money being sent to these counties and then we talk of unfinished projects. How can we have unfinished projects and you want money also to be paid for those projects? We cannot be talking about initiating new projects, yet there are also old projects that money was set aside, people were paid but there is no indicator of success. Then we decide to start new projects.

There is need to interrogate thoroughly to ensure that Kenyans are not getting a raw deal. We should ensure that the Equalisation Fund benefits all Kenyans across the 47 counties. Just like Sen. Sakaja has mentioned, we also have marginalised people in Mukuru kwa Njenga.

In Lugari, we have far flung areas that have never seen electricity or had accessible roads from the colonial days and nobody is speaking on their behalf. There is need to ensure that the Equalisation Fund expands to all 47 counties so that all areas enjoy human rights and the socio-economic benefits stipulated in Article 43 of our Constitution.

Thank you for the opportunity. I hope there will be service for all Kenyans with regard to the Equalisation Funds. Areas like North Eastern and Lugari should also be brought on board so that none is left behind.

I support.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. Halake, you have the Floor.

Sen. Halake: Thank you, Mr. Speaker, Sir. I rise to support the Report of the Sessional Committee on Delegated Legislation and support the request by my Chairman, Sen. Faki, who has done a fabulous job to ensure that the framework is in place for Equalisation Fund. WE have asked the same questions that people have asked in this House. I raised the question on why we are rushing while we have been on it for so long. If I ever had a doubt, today my answer is on the Floor of this House.

There is urgency for this House to approve the Equalisation Fund. Eleven years is a long time to refine, look, interrogate and introspect and make sure that something meant to equalise certain areas is drafted. I congratulate my Chairperson, Sen. Faki and the team. Every question has been dealt with at the Committee level on behalf of the people of Kenya.

There has been debate on the composition of marginalised counties or areas. From the initial 14 counties, we now have 34 counties. To expand it any further is to let

all the 47 counties be in the marginalised category. Our country development measures have been wanting. There is a historical perspective and context to the issue of the Equalisation Fund.

The whole idea around Equalisation Fund was perceived and mooted around the historical injustices that befell the northern part of Kenya, to be specific, and I do not make any apologies. While the rest of Kenya learnt about lockdowns in the pandemic, from 1902, Northern Kenya has been under lockdown, through a colonial legislation that did not allow people from Northern Kenya to access the rest of Kenya. I can go on and give specifics.

That historical injustice is what the Constitution of Kenya 2010 tried to fix by ensuring that a definition of marginalisation is introduced in articles of the Constitution. There are so many characteristics. I do not understand why we are going back to what characterises marginalisation. In the initial 14 counties, there was poor income levels, remoteness, economic deprivation, poor health infrastructure, low level of school enrolment, absence of tarmac roads – for example in Wajir, which got the first tarmac under devolution – and high mortality rates.

A few years ago, there was an international survey under the question: ‘Where is the most dangerous place to give birth for women on earth?’ Guess where the answer was – somewhere in Northern Kenya, specifically Mandera County. These are the issues that our Constitution was trying to fix. We can try to please and apologise about everything, but truth must be told on the Floor of this House, that inequalities in our country have a historical face and a definition of that must not be wished away.

Mr. Temporary Speaker, Sir, I know it has been said that everybody is poor; including people in Korogocho and Kiamaiko who are our relatives. They are deprived, but what if our implementation of the Equalisation Fund and approval would bring equal opportunities at the grassroots? Perhaps this incessant and crazy urban migration that makes people camp on top of sewers will be arrested. The Equalization Fund will arrest urban migration that makes people in Kariobangi have flying toilets.

There is a reason why people move from rural poverty to urban poverty. I am familiar with the assessments done and continue to be done in the humanitarian sector that have beyond reasonable doubt and have basis in science. They have determined that urban poverty is better because you have access to tarmac roads, and energy, which is absent in marginalised areas. We have no access to even the basic 2G communication.

You live and inhabit a place where a woman giving birth has zero chances of survival. This is because in every direction, it is 200 kilometres to the nearest health facility, if you are bleeding.

Mr. Temporary Speaker, Sir, let us not compare oranges to apples. Let us not say that because there are certain stakeholders that have raised concerns--- Of course, there are stakeholders raising concerns about every aspect of our economic, resource allocation and distribution. There are stakeholders who have an issue with even devolution itself. There are people who have an issue with monies going to the county, but we cannot purport to say that because Central Bank of Kenya (CBK) has issues or the Commission on Revenue Allocation (CRA) has some issues, we should be suspended, arrested and

paralysed, and not approve the Equalisation Fund. The Fund was an answer to a historical injustice of a magnitude that should not ever be existing in the 21st Century in a country that is democratic and has a semblance of the rights of its people.

I was just looking at some of the things; that in 2015 the President even offered an apology for historical injustices that the people of Northern Kenya suffered. I could pull out what he said and how the promises were made to ensure that within the constraints and provision of our Constitution, those inequalities will be rectified and fixed. Equalisation Fund is one of those initiatives that are strategic and are in direct response to historical injustices that have kept many counties outside and in the periphery of development and gross human rights violation.

Mr. Temporary Speaker, Sir, the idea that we should all suffer and not all get the money if not all of us are getting it is really disturbing. I thank Sen. Sakaja for supporting us during the revenue allocation and the formulae discussion. However, that does not mean that now when other aspects of that fixing of the historical problems that our counties have faced, therefore, the idea that we either get it or we all lose it is really disturbing. We should get above that.

The limited livelihood opportunities in some of these counties is glaring. Whereas an urban poor in Nairobi can access the neighbouring affluent areas for work, even if its very menial, and access industries in these places, that is not an option that is available to some of the people that live and inhabit those areas.

Mr. Temporary Speaker, Sir, the promulgation of the new Constitution was precisely to cure these things. There are progressive elements in this Constitution, including the recognition of marginalised and minority groups, and the specific provisions of resource allocation and mechanism for bridging the inequalities. Article 27 on the Bill of Rights and Article 56 on minorities are all very clear. I cannot believe we are now going back to questioning the very Constitution that took us 20 years to make.

All of these questions had been answered. Good or bad, below optimal or not, we have a good thing. The same way whether or not this Equalisation Fund is below optimal, there is no excuse for us to continue denying the fact that we must approve it, move on and learn from it. Perhaps, then as this House, we have the mandate to oversight it. Why are we not going to say that we will go with it because we do not want perfection to be the enemy of good?

Mr. Temporary Speaker, Sir, Equalisation Fund as it stands today, if released to the counties, and now very few counties are outside of that ambit anyway, will give us opportunity to learn what is working and what is not. It will give us an opportunity to correct course if at all then this is not something that we can implement. However, to say that let us all be paralysed because we must all get this fund, is to defeat the very devolution that this House is supposed to ensure it survives.

This House will be judged very harshly if every opportunity for devolution to be strengthened and historical injustices to be fixed is defeated on the Floor of this House. Why did we come here? We have a job. If the Equalisation Fund passes today and it does not do as per the provisions of these regulations or the Constitution, this House has the

capacity and mandate to go and oversight it and ensure that representation as per the Constitution and oversight is conducted.

Mr. Temporary Speaker, Sir, I urge this House, let us not go down in history as having defeated any effort, channel or bridge that our Constitution has provided the marginalised communities and counties to equalise and fix historical injustices.

In 1902, a Kenyan from these marginalised parts of this country had to get a special pass to come to any part of this country. Such was the periphery in which some of these counties lived. However, acknowledging new facts and realities--- Of course, those have been expanded, but to say 34 counties is too little, let all the 47 counties, then why have a special fund if then it is all 47 counties?

Mr. Temporary Speaker, Sir, I would like to congratulate the Committee and its Chairperson for a job well done. The Committee has asked all these questions and held the National Treasury to account. The Committee has made sure there is a clause and a timeframe within which anything that we are not satisfied with is fixed. If then we say our hands are tied, is this House saying that we have no muscle to oversight? Is this House saying then that we cannot do our duty because of the fact that we cannot oversight the Executive?

With those few remarks, I support and I urge this House that we should not go down in history as the House that decided to ensure that neo-inequalities and neo-marginalisation and neo-discrimination took root and denied a chance to the people for whom the Constitution of Kenya came into existence, and instead, ensured that they continued to remain in the periphery of development, rights and any other socioeconomic injustice that has been meted on them, all the way from the colonial era to today.

Mr. Temporary Speaker, Sir, I support and hope that this House will pass these regulations.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. (Eng.) Hargura, proceed.

Sen. (Eng.) Hargura: Thank you, Mr. Temporary Speaker, Sir. These regulations and the Report have been very clearly submitted in this House as required by law. The Equalisation Fund has been something which we have been expecting to improve the living conditions of people in the marginalised areas. It is clear in law that in our Constitution, we set out to provide 0.5 per cent of our budget of all the revenues collected by the national Government in each year. However, has that been followed?

From what we have been given, by the Financial Year 2018/2019, there should have been about Kshs29.4 billion set aside, but only Kshs21.7 billion has been allocated. It is clear that the national Government is not following the Constitution there. We demand that by the time this fund is implemented, then it should be the entitled amount and not the actual allocated amount.

Mr. Temporary Speaker, Sir, on the implementation, it is clear we had the first generation formula which CRA did. It came up with 14 counties. The amount allocated of Kshs12.4 billion has not been spent. That is where the pressure is coming from because, initially, projects had been identified, procurement and works done in some cases and they have not been paid. That is what Members are referring to.

We are also getting pressure from our constituents who have benefited from those contracts and have not been paid. It is a painful thing during these difficult times if you have your money tied somewhere. However, we have to make sure that things are done properly for posterity, so that we do not just address short-term issues and getting into deeper problems.

Mr. Temporary Speaker, Sir, the second generation formulae by Commission on Revenue Allocation (CRA) was passed by Parliament in June 2016 which identified 34 counties covering 7,131 sub locations in 107 constituencies. If my memory serves me right, I do not know how practical this distribution in this format is.

I remember very well, the last on that list was a sub location in Murang'a County which was getting Ksh4 million. How do you administer Kshs4 million from this fund going to a sub location in a county where maybe that is the only beneficiary? Sometimes we have to see how practical it is to implement these funds.

Mr. Temporary Speaker, Sir, I also remember in the Eleventh Parliament, the National Assembly did a constitutional amendment to put this fund under Constituency Development Fund (CDF) which was rejected by Senate and that is why it did not take effect. However, it is clear in the implementation of these regulations, the Public Finance Management Act 2012, Section 205 is clear on how it is done.

My concern is maybe to the Chairperson of the Committee. Section 205 (6) says that the regulation will be deemed approved if any of the Houses does not approve or reject within 15 days after it has been submitted to the House. These regulations according to the report were submitted on 9th August, 2021. They were tabled on 7th September, 2021 before the Committee and now it is 28th September, 2021.

When does the 15 days count? We might be discussing something whose fate has been accomplished already by not working within the 15 days. Maybe these regulations have kicked in. When the Chairperson will be replying, he should state to us whether we are still within the period of approving or already the thing has elapsed and taken effect or we are just doing an academic exercise here debating them.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. Faki, proceed.

Sen. Faki: Mr. Temporary Speaker, Sir, I confirm that we are still within time to approve the regulations.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. (Eng.) Hargura, proceed.

Sen. (Eng.) Hargura: Thank you, Mr. Temporary Speaker, Sir. Now I will try to summarise on the issue of the administration of the fund. That is where I have issues. The Equalisation Fund Advisory Board at the national level is clearly stated where the Senate, National Assembly, Council of Governors (CoG), and Principal Secretaries (PSs) for the Ministry of National Treasury and Ministry of Devolution and ASALs have a representative.

I do not have any issues with the National Assembly proposal that their representative will come from pastoralists community. It is very good if it is identified that way. This is because the possibility of any of the other Members being from a pastoralists community will be slim. It is good if one institution ring-fences that position to be from a pastoral community because it is the only one which has identified that.

Mr. Temporary Speaker, Sir, when it comes to the composition of their boards at the other levels like the county technical committee, this fund covers only county government functions such as roads, water, health, and electricity. These are county government functions. You give these funds to the county as conditional grants. If you look at the board, the chair is the County Commissioner.

The Members of Parliament (MPs) are literally in it because the NG-CDF and the secretaries are appointees of the MPs. The county government in a board chaired by the County Commissioner is represented by a County Executive Committee Member (CECM) for Finance and we are told is co-chairing. That is where we need to make amendments.

Mr. Temporary Speaker, Sir, it has to be chaired or co-chaired by the governor and the County Commissioner if he or she has to be there. I do not see why funds are sent to the counties, then still at that level they are being handled by the national Government officials. It does not show anything like this fund has been sent to the counties as a conditional grant. This is because everything is headed by the national Government officials.

Even at the sub county level, it is the same thing. It is the Deputy County Commissioner (DCC) with the NG-CDF committee chair. There is not even a sub county administrator at that level. At that level, the composition and implementation where the actual business is run by the national Government. Where does the county government which is given the fund play its role? We are taking the national politics again to that level.

Mr. Temporary Speaker, Sir, I do not see why NCDF is in because it only covers education and security. Equalisation Fund does not cover any of those functions. So, where does the CDF come in? We need to have amendments to the regulations so that the composition at that level be clearly the county government. Maybe the national Government is represented by the administrators, but not the CDF because it has nothing to do with these funds.

Since there is that interference at that level, we need to first make those amendments before we can give the regulations the go-ahead. We are giving money to the county level then it is being managed by the national Government then those funds will not perform the functions they are performing.

Mr. Temporary Speaker, Sir, I have problems with the NG-CDF there because I have experience with the Roads Maintenance Levy Fund (RMLF) at the constituency level. The NG-CDF committee is running it and the Kenya Rural Roads Authority (KeRRA) is only the technical and administrative staff. Everything is being done by the MP.

This is another way of getting the MPs to this Equalisation Fund. I know the Chairperson has said there will be room for amendments within six months. If that will be possible, then we can see how it can be adopted. If that is not there, then we would rather not start a thing which we cannot amend.

I will leave my comments at that, waiting for the assurance from the Chairperson if that amendment will be assured so that we can support it. If not, then we cannot start a process which we cannot control at the end.

Mr. Temporary Speaker, Sir, thank you.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. (Prof.) Kindiki, proceed.

Sen. (Prof.) Kindiki: Thank you, Mr. Temporary Speaker. These regulations are long overdue. They have been brought pursuant to Article 205 of the Constitution. They are before this House or were submitted to the Committee of this House subject to Section 11 (2) of the Statutory Instruments Act. Under that Act, the Committee is required under Section 15 (2) of the Statutory Instruments Act to table a report before this House on the regulations or statutory instruments proposed.

It is now ten years since the new Constitution which is no new any longer recommended the establishment of an Equalisation Fund to cater for areas which had been left out in development of our country since 1963, and indeed, since Kenya became a State.

Mr. Temporary Speaker, Sir, Article 204 (6) is the one that capped the Equalisation Fund to 20 years. I am afraid even after the remaining ten years, the problem of marginalisation is so entrenched and systemic that we will not have rectified the ravages of marginalisation that have accumulated for the last 80 to 90 years in our country.

I, therefore, hope at the appropriate time when we will have to amend our Constitution - I hope it will be before the lapse of this fund - we might have to extend the timeline for rectifying inequality and marginalisation in our country.

Mr. Temporary Speaker, Sir, it takes in many countries up to 40 to 50 years of serious policy and fiscal interventions to rectify historical and systemic inequities. I will give two examples which will suffice. First, much of Northern and Western Australia which is above 45 per cent of that country is the famous Australian Desert.

However, after about 50 years of serious infrastructural and fiscal interventions in that area, it is one of the most highly developed parts of Australia. It contributes significantly to the development of that country although it is a desert country. The areas that we consider waste or desert today could actually be the areas that would provide for this country sustainably as we deplete agricultural potential because of climate change and other factors including population growth.

Mr. Temporary Speaker, Sir, the second example is the famous World West in America. Much of western parts of the USA just about 100 years ago was wasteland. However, the American Government decided to pump serious money to build infrastructure, connectivity and productivity in that area.

As a result of that intervention, today, one of the states in that part of America, California is the sixth biggest economy in the world competing with nation states yet it is just a small state within the federal states of the USA. Los Angeles, Las Vegas, all these big and popular cities are located in what was otherwise a desert.

Mr. Temporary Speaker, Sir, therefore, this tendency to equate marginalised areas, dryland areas, pastoralist areas as wasteland actually is erroneous. We must start

looking at pumping money into these areas as a way of building sustainability in the long-term for our country.

The amounts we are speaking about here will not change this country. This is tokens and peanuts. This is a waste of time. I dare say, if you want to turn around this country, you must focus serious amounts of money deliberately to build infrastructure and the productive sectors in these marginalised areas for a period not less than 30 years and with amounts not less than Kshs20 billion per county going directly into development projects. Sending small amounts of money to sub locations will only act as palliative care to a very serious and entrenched disease. As you know, painkillers only soothe the patient and reduce the pain but they do not cure the disease.

I dare say that it is good now we are going to have project identification and implementation committees as recommended by the Commission on Revenue Allocation (CRA) in its 2018 Second Marginalisation Policy. The role of county governments has also been highlighted and brought on board which is positive and the need also to deal with stalled projects. Some of the projects initiated using this fund have already stalled. There is no need of even having new projects if the old ones have not been completed.

Mr. Temporary Speaker, Sir, initially there were 14 counties identified then the policy changed to areas within counties that are marginalized. While that is positive because I believe there are counties which appear generally as well off. However, inside there are pockets of marginalisation. A good example is Kiambu County here. There is an area called Rusengeti just bordering Mai Mahiu and Narok area which is extremely marginalised. Ithanga in Murang'a County is very poor and marginalised yet it is a small area within a county which is highly productive in other areas. This focus is important. I think it has not been exhausted.

Mr. Temporary Speaker, Sir, I see for Tharaka Nithi County, initially it was missing from the initial 14 counties but now I see two constituencies from Tharaka Nithi County have been included. That is with Maara Constituency having two locations and Tharaka Constituency having five locations identified.

I wonder where Chuka/Igambang'ombe Constituency is. One of the most remote and marginalised parts of Tharaka Nithi County is a ward called Igambang'ombe which is in Chuka/Igambang'ombe Constituency. This is work in progress which should continue.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. Olekina, proceed for a point of information.

Sen. (Prof.) Kindiki: Mr. Temporary Speaker, Sir, yes, I am willing to be informed.

Sen. Olekina: Mr. Temporary Speaker, Sir, I am very happy with the former Deputy Speaker. I wanted to inform the former Deputy Speaker that you can sit down with the CRA and identify these areas. I frequently visit their office to look at the parameters they use in identifying the areas which are marginalised. I am quite happy that you have noted the shift from counties to areas. This area that you are highlighting that is being marginalised still has an opportunity to be considered.

Thank you.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Proceed, Sen. (Prof.) Kindiki.

Sen. (Prof.) Kindiki: Mr. Temporary Speaker, Sir, thank you. Thank you, Sen. Olekina, for that information. Thank you for concurring that indeed the focus to areas within counties is more accurate. I will just reiterate what I said earlier that the amounts that are proposed are minimal and they will have zero effects even if we do it for the next 50 years.

We need to pump money where in a particular county you identify areas which are marginalised in that county and allocate Kshs20 billion for development of infrastructure and the productive sectors in that county consistently for about 20 to 30 years. That is what will bring turn-around.

Mr. Temporary Speaker, Sir, I will say two more points because I see time is up. The first one is on the need to shift the thinking of Kenyans from Sessional Paper No. 10 of 1965 which is the source of all these problems. That the so-called wasteland hosts the future of our country.

There is something in development politics called solidarity development where you pump money or resources to an area that does not appear to be bringing returns to the economy today. That is with the hope that in future the whole country will depend on that area when we have depleted the resources that are productive today. Therefore, some of these areas should even have very good incentives for investors, tax incentives for development and so forth and so on.

Mr. Temporary Speaker, Sir, the last point I want to make is the following. We must differentiate between rural poverty and urban poverty. Both sets of poverty are bad enough but rural poverty is more debilitating. While an urban slum dweller could have electricity in their shack, the rural peasant has no power, water and hospital. In any case, the nearest hospital in a rural constituency is 10 kilometres away.

Thank you. My time is up.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. (Prof.) Kindiki, your time is not up. We inform you that you have a balance of eight minutes next when this Order appears on the Order Paper.

ADJOURNMENT

The Temporary Speaker (Sen. (Dr.) Lelegwe): Honourable Senators, it is now 6.30 p.m., time to adjourn the House. The Senate therefore stands adjourned until Wednesday, 29th September, 2021 at 2.30 p.m.

The Senate rose at 6.30 p.m.